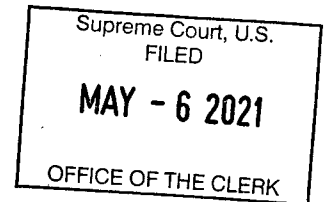


No. **20-8425** **ORIGINAL**

IN THE
SUPREME COURT OF THE UNITED STATES



Phillip Lee Carson — PETITIONER
(Your Name)

VS.

David Shinn, Director, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

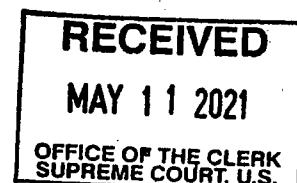
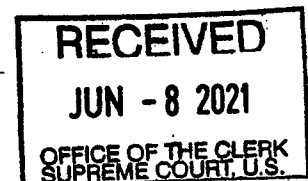
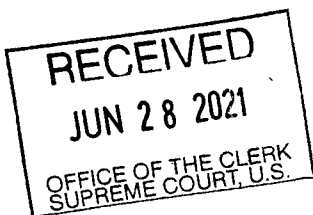
PETITION FOR WRIT OF CERTIORARI

Phillip Lee Carson
(Your Name)

Arizona State Prison, #91914, P.O. Box 3200, Unit A-14
(Address)

Florence, Az. 85132
(City, State, Zip Code)

520-868-0201 (Eymann Complex)
(Phone Number)



QUESTION(S) PRESENTED

I. Do the 5th and 14th Amendments still guaranty a defendant (U.S. citizen) the right to the Due Process of Law? (USCA 5th & 14th Amendments)

II. Has the Supreme Court of the United States overturned its own precedent in Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L. Ed 215 (1963); Giglio v. United States, 405 U.S. 150 (1972); United States v. Bagley, 473 U.S. 667 (1985); United States v. Agurs, 427 U.S. (1976); and 28 USCA § 2254 (d)(i), where this Court decided that:

a) A defendant has the Constitutional right to present a fair and complete defense?

III. Has the Supreme Court of the United States overturned its own precedent in United States v. Agurs, 427 U.S. 97, 103, 96 S.Ct. 2392, 49 L. Ed 2d 342 (1976), where this Court decided that:

a) False testimony is material "if there is a reasonable likelihood that [it] could have affected the judgement of the jury".?

IV. Has the Supreme Court of the United States overturned its own precedent in United States v. Bagley, 473 U.S. 667 (1985), where this Court decided that:

a) Favorable evidence includes both exculpatory and impeachment material that is relevant to guilt or punishment.?

V. Has the Supreme Court of the United States overturned its own precedent in Williams v. Taylor, 529 U.S. 362, 120 S.Ct. 1479, 146 L. Ed 2d 435 (2000), where this Court decided that:

a) A state Court decision is Contrary to Supreme Court's clearly established precedent if state Court applies a rule that Contradicts governing law set forth in Supreme Court's cases, or

b) Under the "contrary to" clause of 28 U.S.C. § 2254; under the "unreasonable application" clause, a state Court identified the correct governing legal principle from the Supreme Court's decision, but unreasonably applies that principle to the facts of the prisoners case, or (incorrectly determines factual predicate)?

VI. Is Petitioner guaranteed his 5th and 14th USCA amendment rights to present a full and fair opportunity to develop facts in state Court where he alleges that: 1) Prosecution knowingly (or should have known) used false evidence, suppressed material evidence, false testimony (with proof recorded on a CD) in Newly Discovered Exculpatory Evidence; 2) Petitioner's Due process rights were violated by the state and Petitioner's jury were not allowed to judge the full picture, 3) Prior testimonies of states witnesses should be impeached for credibility purposes due to Perjury; Brady, Giglio, Agurs, 28 USCA § 2254(d)(i) and Schulp v. Delo, 513 U.S. 298, 330, 115 S.Ct. 851, 130 L. Ed. 2d 808 (1995), where the State Court Denied at "Notice" level of PCR, denying a full and fair brief,?

VII. Did the panel of the Ninth Circuit err by deciding a "jurist of reason would find it debatable whether petition states a valid claim of the denial of a constitutional right", and that Petitioner was NOT FACTUALLY INNOCENT, where Petitioner was DENIED an Evidentiary Hearing at Every Court Stage,

a) Violating: Commonwealth v. Williams, 119 N.E. 3d 117 (Mass. 2019); Insigne v. Morgan, 403 F.2d 117 (2005)?

LIST OF PARTIES

- [] All parties appear in the caption of the case on the cover page.
- [✓] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

1) Mark Brnovich, Attorney General
[COR LD Htc Dep. State Atty Gen.]
OFFICE OF THE ATTORNEY GENERAL
1275 W. Washington St.
Phoenix, AZ. 85007-2926
for:

2) David Shinn, Director of the
Arizona Department of Corrections
1601 W. Jefferson St.
Phoenix, AZ. 85007

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☒ reported at No. 20-16548; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☒ reported at CVA-00827-DIX-ROS-CDB; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**: (*References made to by Federal Courts above*):

The opinion of the highest state court to review the merits appears at Appendix D to the petition and is

☒ reported at No. CA-CR 15-0691 PRPC; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the SUPERIOR COURT OF ARIZONA court appears at Appendix E to the petition and is

☒ reported at CR1990-005235; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was January 15, 2021.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: February 10, 2021, and a copy of the order denying rehearing appears at Appendix C.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The need for uniform rule on point!

• *Quinn v. United States*, 349 U.S. 481, 82-1 USTC ¶13,555 (S.Ct. 1955) (1955).

2. Question involves principles settlement of which is of importance to public as

distinctly from parties, and there is a real embarrassing conflict of opinion and authority between Court of Appeals and Supreme Court;

• *Alper v. United States*, 340 U.S. 481, 71-2 L.R.M. (BNA) 2382, 19 Lab. Cas. (2d) ¶6492, 1951 U.S. Lexis 2492 (1951); *Rice v. Sioux City Memorial Park Cemetery Ass'n*, 349 U.S. 70, 75 S.Ct. 614, 99 L.Ed. 897, 1955 U.S. Lexis 2663 (1955).

3. Petitioners questions are of importance to the S.Ct., as related to the stand with respect to clarity of authority, due process, prosecutorial misconduct, police suppression of evidence and an FBI informant's (Hickman's).

• *Shapiro v. United States*, 359 U.S. 131, 54-2 USTC ¶9553, 22 L.Ed. 2d 291, 1954 U.S. Lexis 985 (1954).

4. Ninth (9th) Circuit decision presents conflict with uniform course of decisions previously made on some questions by other Courts of Appeals "Reasonable Doubt?"

• *Goldwater, Inc. v. Heiman*, 369 U.S. 463, 82-2 USTC ¶9382, 54-2 USTC ¶9382, 22 L.Ed. 2d 39, 1962 Trade Cas. (CCH) ¶7001, 1962 U.S. Lexis 2306 (1962); *Slack v. McDaniel*, 359 U.S. 473, 484 (1959).

5. S.Ct. has unqualified power to grant certiorari upon petition of petitioner.

• *Green v. Green*, 353 U.S. 699, 131 S.Ct. 2000, 79 L.Ed. 2d 1118, 22 Fla. L. Weekly Fed. 1019, 2011 U.S. Lexis 4466 (2011).

6. S.Ct. has power to issue writs of certiorari, exercised under All Writs Act.

• *McClain v. Carlin*, 37 U.S. 268, 30 S.Ct. 501, 41 L.Ed. 2d 23, 1960 U.S. Lexis 1397 (1960); R.S. § 716, Corred into "All Writs Act" [28 U.S.C. 1651].

7. Certiorari and importance of issue "at hand in question";

• *Forryth v. Hammond*, 460 U.S. 506, 17 S.Ct. 665, 41 L.Ed. 1075, 1897 U.S. Lexis 2045 (1897).

• *Fields v. United States*, 205 U.S. 292, 27 S.Ct. 543, 51 L.Ed. 807, 1907 U.S. Lexis 1397 (1914).

8. Matter subject to review by jurisdiction of S.Ct. of every question involved;

• *Stoffing v. Constantine*, 287 U.S. 378, 53 S.Ct. 1907, 77 L.Ed. 375 (1932); 28 U.S.C. 1253, P.T. IV, Ch. 81, S.Ct. (331253) (25).

9. Public Interest;

• Public Law 116-344, approved 01.13.2021, with a gap of public law 116-283.

STATEMENT OF THE CASE

CRIME

- 1) In 1990 (April 25) Petitioner saw his then live in spouse of [7] years in her ex-husbands truck with her left arm around his neck. Petitioner already believed those two were having an affair with each other.
- 2) Petitioner pulled in front of their truck in his car and stopped, causing both vehicles to stop, the truck pulled over up onto the sidewalk, the alleged paramour exited his truck and in anger ran around the back of Petitioner's car to the drivers side door.
- 3) Petitioner believed his wifes paramour had a sawed-off shotgun and 38 pistol with him or in his truck therefore Petitioner exited his car as 'paramour' confronted Petitioner's side car door, Petitioner exited his car after grabbing his handgun (.357) from under his drivers seat (which he always carried in car).
- 4) Petitioner believed his life was in danger by 'paramour' because Petitioner knew of weapons in the paramours truck, and Petitioner had seen paramour carry a handgun in the small of his back holster, Petitioner told paramour to stop, they both argued angrily, paramour came at Petitioner in a lowered wrestlers take-down move.
- 5) Petitioner fired one shot that went into paramours heart at a downward 30° projection, killing the paramour. Petitioner left his car, jumping into the paramours truck with Petitioner's wife and then drove up the side of South Mountain, held his wife hostage and sexually assaulted her.
- 6) Petitioner left his car way behind with no rifles or guns in it, though he had a couple pocket knives. Petitioner kept his .357 on his person after the argument and shooting. The Petitioner advised Detective Hutchens (after his surrender and arrest) that the paramour has a sawed-off shotgun and a handgun with him or in his truck.

TRIAL

- 7) Petitioner was found competent to stand Trial but not for pro se status, Petitioner did not take the Stand, Petitioner was offer a 17 yr. plea Agreement, however he went to trial and claimed SELF DEFENSE and McNaughtin Rule.
- 8) The State knew Paramour had a sawed-off shotgun and pistol, however the state knowingly allowed his witnesses to Commit Perjury on the Stand to Petitioner's Jury, the States Witness gave false testimonies, however Petitioner's Trial counsel could not force states witnesses to tell the truth.
- 9) Petitioner's witness Army Sgt. Jose Caneira saw paramour with a pistol in the small of his back holster and testified to it. But... the States more than [4] witnesses gave false testimonies about the pistol and sawed-off shotgun.
- 10) Lead Detective inventoried the paramours guns and assortment of "Bicentennial" (Red, white and Blue) Knives and bullets (assorted i.e. shotgun shells, 22 rounds etc) as Petitioner's, but... they were from the paramours truck and not Petitioner's car. Lead Detective Hutchens planted and suppressed this information and gave false and perjured testimony to Petitioner's Jury.
- 11) The Petitioner's Jury convicted him on ALL charges, to include First Degree Murder with a 25-life Sentence, and the Jury believed the perjury and false testimonies and Evidence.

22

25 years Later at Parole Board (First)

- 12) On May 14, 2015 at Petitioner's First Parole Board, the States Key Witnesses reversed the testimonies that they gave Petitioner's Jury in 1992, admitting to the parole Board that the paramour did have a sawed-off shotgun and pistol (.22) of which were indeed at the crime scene in the paramours truck and Not the Petitioner's Car, as Petitioner's Jury heard.

Newly Discovered Material Evidence (Rule 32 AR12 PCR)

- 13) Petitioner immediately filed a "Notice" of R.32 PCR (13 prs) claiming Due process, 5th and 14th Amend. USA violations, Brady, Giglio and requested Impeachment under 25 USCA § 2254(a)(1), however, the Trial Court Unreasonably Determined Petitioner's case and refused to allow Petitioner the Right to fully Brief a Petition at R.32.
- 14) Petitioner has never been allowed an Evidentiary Hearing by ANY Court, even though he has requested one, IN ORDER to Produce PRIOR STATEMENTS for purpose of Impeaching State Witnesses CREDIBILITY.

REASONS FOR GRANTING THE PETITION

I. The Trial Court Unreasonably determined Petitioners Predicate factor as
 a) that the murder victim (paramour) had a known reputation for carrying guns (Order 8/27/2015 at 13/para.1)

However, Petitioners Notice of PCR R.32.1(c) specifically claimed that
 b) That the prosecutor's failure to disclose impeachment evidence violated Brady, state had a constitutional obligation to disclose impeachment evidence, 28 USC § 2254(d)(1), and (Notice of PCR R.32.1(c) at 4/14-17), and

c) that state prosecutor along with lead investigating detective failed to produce evidence in a murder trial that was favorable to the defense, and (id at 4/18-20) and

d) that The impeachment evidence substantially undermines testimony which was of critical significance at trial such that the evidence probably would have changed the verdict or sentence and, (id at 3/5-11), and.

e) that Impeachment Issue (id at 6/25-27), and (id. at 7/19-22)

f) Petitioner claimed in his "Notice of PCR Giglio, Kyles V. Whitley (id at 8/19, 24-25); Falk V. Kotz, United States V. Kiszewski (id at 9/20-21, 28-29) under Recorded prior statements of material difference; Kyles Due process violations, Kyles, Bagley, Brady, Giglio, Youngblood, and Rules of Court violations by state at (id pg. 10) Rules: R.42 k2. R. prof. conduct and R.3:8 (disclosure of favorable evidence)

g) Petitioner claimed in Notice that his state of mind was relevant for using deadly force, and petitioner claimed self-defense (in 2015, Note that self-defense is cause for claiming factual Innocence in Commonwealth v. Williams [2019]). States witnesses false testimony known by Prosecution would put doubt in Jurors mind over witnesses credibility and cast doubt over their other testimonies - benefiting Petitioner (id at 11/8-11). And Petitioner acted in the heat of passion, but the jury believed states witnesses perjury (id at 11/16-29) Jury was denied the full picture.

h) The District Court magistrate claimed Petitioners Brady Claim had no MERIT (Doc. 40 at 20/12-13, 21) and the District Court Judge agreed with the R&R (Doc. 40) in Courts order (Doc. 77 at 1/19) The R&R Unreasonably determined Petitioners factual Predicate (Doc. 40 at 12/14-15) same as trial Court (Order 8/27/15 at 3/para.1) "Known Reputation" instead of a Credibility of states witness testimonies, as state Appellate Court (9/21/17 at 11) "Victims Reputation" instead of a Credibility issue.

Petitioner was denied a full and fair R.32.1(c) Brief and DENIED an Evidentiary hearing at every Court level (Notice 5/27/2015 at 1/29-30).

11
A REASONABLE JURIST COULD DIFFER WITH THE
NINTH CIRCUITS RULING, under :

Slack V. Mc Daniel, 529, US 473, 483 (2000) ;

Lambright V. Stewart, 220 F.3d 102 (9th Cir-2000) en banc

CONCLUSION

Petitioner respectfully requests 1) The right to fairly and fully Brief his 2015 Notice of PCR R.321(c);
2) An Evidentiary Hearing; 3) A New Trial or 4) Immediate Release from Prison and/or
Absolute Discharge from his First Degree Murder Conviction.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Philip L. Caroc

Date: may 05, 2021