

QUESTION(S) PRESENTED

Does a court render a judgment which violates the law and is void when it renders its judgment in compliance with the mandatory provisions of an unconstitutional; thus repealed statute?

Does an indictment which specifically charge a defendant of being in violation of an unconstitutional; thus repealed statute defeat the trial court's jurisdiction over the subject matter of the action?

Can relief be granted under a habeas corpus action when the petitioner collaterally attacks the judgment and the jurisdiction of the trial court?

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:

Patrice E. Brown, Petitioner,
David Shinn, Department of Corrections,
Respondents.

RELATED CASES

Patrice E. Brown v. Department of Corrections No. S1100CV202001523
Judgment entered Nov. 20, 2020.

Patrice E. Brown v. David Shinn, Director, Arizona Department of Corrections No. 2 CA-HC 2020-0011. Judgment entered April 30, 2021.

Patrice E. Brown v. David Shinn No. CV-21-0150-PR
Judgment entered Oct. 12, 2021.

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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 _____ to the petition and is

reported at _____; 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 is unpublished.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 _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from state courts:

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

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the Arizona Court of Appeals court appears at Appendix A to the petition and is

reported at _____; 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 is unpublished.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 _____.

[] 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: _____, 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. § 1254(1).

For cases from state courts:

The date on which the highest state court decided my case was 10-12-21. A copy of that decision appears at Appendix C.

[] 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

United States Constitution Amendment Fourteen, Section 1.

[Citizens of the United States] All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

Arizona Constitution Art. II, § 3. The Constitution of the United States is the Supreme law of the land.

A.R.S. Const. Art. II, § 4. Due process of law. Section 4. No person shall be deprived of life, liberty, or property without due process of law.

A.R.S. § 13-4132. Discharge of prisoner held on process. If it appears, on the return of the writ, that the prisoner is in custody by virtue of process from any court of this state, or judge or officer thereof, the prisoner shall be discharged in any one of the following cases subject to the restrictions of section 13-4131: 1. When the jurisdiction of the court or officer has been exceeded. 2. When the imprisonment was at first lawful, but by some act, omission or event, which has taken place afterward, the party has become entitled to be discharged. 3. When the process is defective in some matter of substance required by law rendering the process void. 4. When the process, though proper in form, has been issued in a proceeding not authorized by law.

5. When the person having custody of the prisoner is not the person authorized by law to detain him. 6. Where the process is not authorized by a judgment, order or decree of any court, nor by any provision of law. 7. Where a party has been committed on a criminal charge without reasonable or probable cause.

STATEMENT OF THE CASE

Shortly before Brown submitted his Petition for a Writ of Habeas Corpus Under A.R.S. § 13-4132(1)(3), Brown read a declaration written and signed by the Honorable Richard D. Nichols of Pima County Superior Court. In his declaration, Judge Nichols revealed the following:

⁶⁶ A.R.S. § 13-604 in its entirety [i.e. all of its subsections] was recognized as unconstitutional in 2008 in an unreported Arizona case. The legislature attempted once more to supplant the use of Hannah priors when it enacted A.R.S. §§ 13-702.01 and 13-702.02; however, both of these statutes were also found unconstitutional, and were repealed on January 1, 2009.⁶⁹

Because of its repugnance to the Constitution, the former A.R.S. § 13-604.01, as amended by Laws 2008, Ch. 97, § 1 and Laws 2008 Ch. 195 § 1 was repealed effective January 1, 2009 by Laws 2008 Ch. 301 § 18.

Relying on the Honorable Judge Nichols' declaration, mentioned above, Brown submitted a Petition for a Writ of Habeas Corpus to the Pinal County Superior Court. The syllogism of Brown's Petition for writ of habeas corpus is as follows: 1) the judicial branch of Arizona's government recognized former A.R.S. § 13-604.01 as unconstitutional, and unconstitutionality dates from the enactment of any such statute; therefore, 2) the State's indictment against Brown is unconstitutional, because it specifically charge Brown of being in violation of A.R.S. § 13-604.01, and if any part of any document is unconstitutional the

whole document is unconstitutional; thus, 3) the State's indictment against Brown defeated the trial court's jurisdiction over the subject matter; hence, 4) the entire process of the trial court is void.

The Superior Court determined that the Petition for writ of habeas corpus represents a challenge to the legality of conviction and sentence; however, instead of following the procedure set out by Rule 32.3(b), and transferring the Petition to the County in which Brown was sentenced, the Court dismissed the Petition, and stated that no relief can be granted under a Habeas Corpus action.

Brown appealed the court's decision. The Court of Appeals [redacted] affirmed. Brown filed a motion with the Court of Appeals asking for reconsideration, specifically, asking the Court of Appeals to consider whether its decision to affirm contained erroneous determinations of fact or law. The Court of Appeals denied the motion.

Brown filed a Petition for Review with the Arizona Supreme Court. The Arizona Supreme Court denied Review.

REASONS FOR GRANTING THE PETITION

This Court should grant the Petition because a state court has decided an important federal question in a way that conflicts with relevant decisions of this Court. In *Ex parte Lange*, 18 Wall. 163, it was said "⁶⁶Where the proceeding in the state court is void for want of jurisdiction, habeas corpus will lie, and may be issued by any court or judge invested with supervisory jurisdiction in such cases."⁶⁷ Judgments of courts, which at the time the judgments were rendered had no jurisdiction, are absolutely void, and may be attacked and defeated collaterally. *United States v. U.S. Fidelity & Guaranty Co.*, 24 F. Supp. 961, 966 (1938). However, the State court decided that no relief can be granted under a habeas corpus action where the proceeding in state court is void for want of jurisdiction.

The judicial branch of Arizona's government recognized A.R.S § 13-604 and all of its subsection as unconstitutional in 2008; as a result, former A.R.S. § 13-604.01, as amended by laws 2008, Ch. 97, § 1 and Laws 2008, Ch. 195 § 1 was repealed effective January 1, 2009 by Laws 2008, Ch. 301, § 18. Hundreds of Arizona prisoners have been charged of being in violation of former A.R.S. § 13-604 and all of its subsections; however, Arizona's courts have not, and will not, give anyone any relief from the unconstitutional statute. Many inmates have filed Rule 32 post conviction relief petitions, raising the claims of void judgment, lack of subject matter jurisdiction, and unconstitutional indictment only to have their petitions dismissed for untimeliness and preclusion. Brown filed a writ of habeas corpus raising the same claims as above,

and the state court dismissed the writ, and stated that "no relief can be granted under this action."

It is well settled that if a statute pursuant to which a defendant is indicted is "repugnant to the Constitution," then the "prosecution against him has nothing upon which to rest, and the entire proceeding against him is a nullity." *Ex parte Royall*, 17 U.S. 241, 248 (1886). In *Ex parte Yarbrough*, 110 U.S. 651, 654 (1884) it was said, "if the law which defines the offence and prescribes its punishment is void, the court was without jurisdiction, and the prisoners must be discharged."

The United States Constitution Amendment XIV and the Arizona Constitution art. II, § 4 provide that no person shall be deprived of life, liberty, or property without due process of law. See, *Corbin v. Broadman*, 6 Ariz. App. 436, 433 P.2d 289 (1967) Ariz. App. LEXIS 601 (Ct. App. Nov. 10, 1967). Where the phraseology in a statute is recognized as unconstitutional, an indictment pursuant to it would deprive a defendant of due process of law in violation of the U.S. Const. Amend. XIV and the Ariz. Const. art. II, § 4. See, *State v. A.B. Robbs Trust Co.*, 98 Ariz. 293, 404 P.2d 89, 1965 Ariz. LEXIS 278 (July 15, 1965). An indictment pursuant to an unconstitutional thus repealed statute would deprive a defendant of due process under U.S. Const. Amend XIV and Ariz. Const. art. II, § 4. See, *State v. Osborn*, 16 Ariz. App. 573, 494 P.2d 773, 1972 Ariz. App. LEXIS 588 (Ct. App. Mar. 16, 1972).

If "no relief can be granted under a habeas corpus action," and we are untimely and precluded under Rule 32, then we have no avenue for our claims to be heard; however, there are many cases where a

person was convicted and put into prison, then upon discovery of a lack of subject matter jurisdiction, submitted a habeas corpus based upon the jurisdictional defect, and was released. For example, see *Brown v. State*, 37 N.E.2d 73, 77 (Ind. 1941). Allowing people to be restrained and confined pursuant to an unconstitutional bars repealed statute, and failure to even consider their claims of lack of jurisdiction and void judgment; thus, sustaining the unlawful restraint/confinement results in a fundamental miscarriage of justice, for "fundamental fairness is the central concern of the writ of habeas corpus." *Strickland*, 466 U.S. at 697. Therefore, hundreds of Arizona inmates are in great need of this Court to exercise its discretionary jurisdiction.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

P.E. Brown

Date: January 5th, 2022