

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

PATRICE E. BROWN,
Petitioner/Appellant,

v.

DAVID SHINN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS,
Respondent/Appellee.

No. 2 CA-HC 2020-0011
Filed April 30, 2021

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Pinal County
No. S1100CV202001523
The Honorable Christopher J. O'Neil, Judge

AFFIRMED

Patrice E. Brown, Florence
In Propria Persona

APPENDIX-A

BROWN v. SCHINN
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MEMORANDUM DECISION

Vice Chief Judge Staring authored the decision of the Court, in which Presiding Judge Espinosa and Judge Eckerstrom concurred.

STARING, Vice Chief Judge:

¶1 Appellant Patrice Brown challenges the trial court's November 2020 order dismissing his petition for a writ of habeas corpus. For the following reasons, we affirm.

¶2 Brown, an inmate with the Arizona Department of Corrections, filed a petition for a writ of habeas corpus in October 2020. He asserted the indictment against him had declared he was "charged with being 'in violation of A.R.S. § 13-604.01'" but that "statute was recognized as unconstitutional by the judicial branch . . . and repealed in 2008." Brown thus argued that "[r]eference to an unconstitutional statute render[ed] the indictment void." He further reasoned that "the court which tried him was without jurisdiction" because the indictment was "the jurisdictional instrument upon which the accused stands trial."

¶3 In November 2020, the trial court dismissed Brown's petition. It explained that the petition "represents a challenge to the legality of [Brown's] indictment, conviction, and sentence in a criminal case" and that "[a]ny challenge to a conviction and sentence imposed by the Superior Court of Arizona may be brought in a post-conviction relief proceeding." However, "[t]aking the Petition on its face," the court determined that "no relief can be granted under this action." This appeal followed.

¶4 On appeal, Brown reasserts his claim. He contends that, because his indictment referred to § 13-604.01, which "was recognized as unconstitutional by the judicial branch," the trial court lacked subject-matter jurisdiction and he "is entitled to be discharged." He also points out that, in its order, the court "did not dispute the fact that . . . § 13-604.01 is unconstitutional" or that it had lacked subject-matter

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jurisdiction.¹ We review the denial of a writ of habeas corpus for an abuse of discretion. See *State v. Cowles*, 207 Ariz. 8, ¶ 3 (App. 2004).

¶5 Generally, “[i]n Arizona, the writ of habeas corpus may be used only to review matters affecting a court’s jurisdiction.” *In re Oppenheimer*, 95 Ariz. 292, 297 (1964). Brown’s jurisdictional claim is based on a purportedly defective indictment. But even assuming Brown were correct that his indictment was flawed, a deficient charging instrument does not deprive a court of subject-matter jurisdiction. See *State v. Maldonado*, 223 Ariz. 309, ¶ 13 (2010). The trial court therefore did not err in concluding Brown was not entitled to relief. See *State v. Perez*, 141 Ariz. 459, 464 (1984) (appellate court obliged to affirm trial court’s ruling if result legally correct for any reason).

¶6 We therefore affirm the trial court’s order dismissing Brown’s petition for a writ of habeas corpus.

¹Citing Rule 32.3, Ariz. R. Crim. P., Brown also maintains the trial court should have transferred his petition “to the court where [he] was convicted and sentenced.” To the extent his petition challenged the validity of his conviction or sentence from a different court, such that it should have been treated as a petition for post-conviction relief, we agree. See A.R.S. § 13-4233; Ariz. R. Crim. P. 32.3(b). However, in its order, the court explained that it was “[t]aking the Petition on its face,” presumably treating it as a petition for writ of habeas corpus, rather than one of post-conviction relief.

NOV 20 2020

IN THE SUPERIOR COURT

PINAL COUNTY, STATE OF ARIZONA

Date: 11/20/2020

THE HON CHRISTOPHER J O'NEIL

By Judicial Assistant: Cathy Walker

PATRICE E BROWN,

Plaintiff(s),

vs.

DEPARTMENT OF CORRECTIONS,

Defendant(s)

) **S1100CV202001523**

) **NOTICE**

The Court has reviewed the Petition for a Writ of Habeas Corpus. Although the Petition names David Shinn of the Arizona Department of Corrections as Respondent, the Petitioner asserts that he is imprisoned pursuant to a sentence imposed by the Superior Court of Arizona. The Petition represents a challenge to the legality of the Defendant's indictment, conviction, and sentence in a criminal case.

Taking the Petition on its face, the Court **FINDS** that no relief can be granted under this action. Any challenge to a conviction and sentence imposed by the Superior Court of Arizona may be brought in a post-conviction relief proceeding as provided under the Arizona Rules of Criminal Procedure.

Therefore, **IT IS ORDERED** dismissing the Petition and closing the file.

Dated this 20th day of November, 2020.


JUDGE OF THE SUPERIOR COURT

Mailed/distributed copy: 11/ /2020

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JUDGE / O'NEIL**



Supreme Court

STATE OF ARIZONA

ROBERT BRUTINEL
Chief Justice

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TRACIE K. LINDEMAN
Clerk of the Court

October 12, 2021

RE: PATRICE E BROWN v DAVID SHINN
Arizona Supreme Court No. CV-21-0150-PR
Court of Appeals, Division Two No. 2 CA-HC 20-0011
Pinal County Superior Court No. CV202001523

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on October 12, 2021, in regard to the above-referenced cause:

ORDERED: Petition for Review = DENIED.

A panel composed of Chief Justice Brutinel, Vice Chief Justice Timmer, Justice Beene and Justice King participated in the determination of this matter.

Tracie K. Lindeman, Clerk

TO:

Patrice Edmond Brown, ADOC 156811, Arizona State Prison,
Florence - Eymann Complex-Cook Unit

Michael E Gottfried

Kent P Volkmer

Jeffrey P Handler

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APPENDIX-C

**Additional material
from this filing is
available in the
Clerk's Office.**