

No. 21-7067 ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

DEC 13 2021

OFFICE OF THE CLERK

Kimmie D. Baker — PETITIONER
(Your Name)

vs.

State of Arizona — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Arizona Supreme Court
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Kimmie D. Baker
(Your Name)

1550 E. Thunderbird #2106
(Address)

Phoenix, Az 85022
(City, State, Zip Code)

623-219-2621
(Phone Number)

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QUESTION(S) PRESENTED

- 1, Should the holding of United States V. Eberhart 546 U.S. 12 (2005). ("that in this Case Government neglected to respond and not Contest the merits of the July 7, 2020 motion, nor by moving to dismiss on the basis of untimeliness 361 U.S. at 221, Be Reviewed on Writ of Certiorari,
- 2,
 - (a) a new trial motion was filed shortly after it was discovered on July 7, 2020, but the Government failed to rule on the motion.
 - (b) the motion alleges Exculpatory evidence that would have changed the out come of the trial.
 - (c) the motion pertains to a July 26, 2012, hearing to inlimine and preclude at trial a Arizona Department of Economic Security Side Variance Report associated with it's adjudication findings.

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 Superior Court Decision; 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 is unpublished.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 is unpublished.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 B to the petition and is
 reported at Arizona Court of Appeals; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the Arizona Supreme Court court appears at Appendix C to the petition and is
 reported at Superior Court Arizona; 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 is unpublished.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).

[V] For cases from state courts:

The date on which the highest state court decided my case was September 22, 2021.
A copy of that decision appears at Appendix K&A 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

The Fourth, Sixth, and Fourteenth, Amendment's

4th: Unreasonable Search and Seizures

6th: Right to a impartial Jury

14th: No State Shall deprive any person of life, liberty, or property, without due process of law; nor deny to any Person within its Jurisdiction the equal Protection of the law.

Provision Involved:

28 U.S.C § 2680, Section 1346(b) Shall not apply

28 U.S.C. § 1257(a)

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
United States V. Eberhart	126 S. Ct 403 (2005)
United States V. More	709 F. 3d 287 (4th Cir 2013)
United States V. Pizza	647 F. 3d 559 (5th Cir. 2011)
United States V. Bank	546 F. 3d 507 (7th Cir. 2008)
United States V. Verlaque	485 F. 3d 553 (10th Cir. 2007)
United States V. Hernandez	433 F. 3d 1328 (11th Cir 2005)
United States V. Tarango	396 F. 3d 666 (5th Cir 2005)
United States V. Scroggins	379 F. 3d 233 (5th Cir 2004)

STATUTES AND RULES

Federal Statute:

Under 28 U.S.C. § 2680, the
Provision of Section 1346(b) of this title
Shall not apply to: (h) Any claim arising out
of assault, battery, false imprisonment, false
arrest, malicious prosecution, abuse of process,
libel, slander, misrepresentation, deceit, or
interference with contract rights, or to (j) any

OTHER

Federal Statute:

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

LIST OF PARTIES

[V] 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:

RELATED CASES

STATEMENT OF THE CASE

Petitioner Kimmie Dwayne Baker (hereinafter "Petitioner"), a former Tempe Union High School District Head Security Guard. This Case arises from a alledge burglary and theft in October 2011, out of Tempe High School Tempe Arizona. The charges were ultimately Scratched, and Petitioner were later indited. After a lengthly trial a Jury found Petitioner guilty. Petitioner filed several rule 32, Post-Conviction Petitions. On July 7, 2020, Petitioner after discovering newly discovered evidence of a "Side Variance Report" generated by the Arizona Department of Security, file a motion seeking a new trial, See attached exhibit (A). On or about July 26, 2012, a hearing was held to Inlimine the adjudication findings of the Department of economic Security which were found in favor of Petitioner. At the said time petitioner didn't have in his custody or control a copy of the "Side Variance report". Without such said Report the State was able to argue that the Tempe Union High School district never made any statements to the Arizona Department of Economic Security Unemployment about why it was determined that Petitioner should be terminated thereby Severing Petitioner's Contract of employment. Petitioner filed the July 7, 2020,

Newly discovered evidence motion as soon as it was discovered. Seeking a new trial. The motion was never ruled on by Judge Timothy Ryan see Appendix (A). The July 7, 2020, motion is exculpatory evidence and would have changed the outcome of the trial.

REASONS FOR GRANTING THE PETITION

The Court Should grant the writ in agreement
Eberhart v. United States 546 U.S. 12 (2005).

Eberhart v. United States 546 U.S. 12 (2005) Considered Federal Rule of Criminal Procedure 33(a) allows a district Court to "vacate any Judgment and grant a new trial if the interest of Justice so requires." But "(a)ny motion for a new trial grounded on any reason other than newly discovered evidence must be filed within 7 days after the Verdict or finding of guilty, or within such further time as the Court sets during the 7-day period. Petitioner had no other choice but to bring to the Courts attention after discovery of the Newly Discovered Evidence on July 7, 2020. This piece of Evidence is Exculpatory and would have changed the outcome of the trial. The Government neglected to respond and not contest the merits of the motion nor by moving to dismiss on the basis of untimeliness. For Said neglect and argument presented by Petitioner this writ should be granted and demanded for a hearing.

In the interest of Justice the July 7, 2020, motion deserves a hearing, Judge Timothy Ryan refused to take any further action at the time see appendix (A).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Kim D. Baker

Date: January 19, 2022