

JUN 21 2022

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22-5001

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Robert Cassero Gomez — PETITIONER
(Your Name)

vs.

David Shinn — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Mr. Robert Cassero Gomez #131401
(Your Name)

ASAC Gorman SW I
(Address)

P.O. box 4000 Florence, AZ 85132
(City, State, Zip Code)

(Phone Number)

ORIGINAL

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JUN 28 2022

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

1. Whether Arizona's Rule 32 Post-Conviction Relief Procedures Violates A "Pro Se" Prisoner's Sixth and his Fourteenth Amendment Due Process-U.S. Constitutional Rights by Refusing to provide him A Realistic Opportunity to Vindicate his Liberty Interest in Utilizing State Procedures to challenge his trial Counsel's effectiveness and other related claims.

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:

RELATED CASES

1. State v. Gomez CR-2002-1007 Arizona Superior Court be Pima County Judgment entered 12 July 21
2. State v. Gomez 2CA CR 2021-0076 PR Court of Appeals for State of Arizona VII-Two Judgment entered 5 Nov 21
3. State v. Gomez CR-21-0375 PR Arizona Supreme Court Judgment entered 11 April 22
4. Gomez v. David Shinn Case NO 22-cv-0197 TUC-PM-JR U.S. District Court for District of Arizona

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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☐ is unpublished.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☐ is unpublished.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 A 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 Alaska Superior Court Fairbanks court appears at Appendix B 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 11 April 22.
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

- 1. U.S. Const. Fourth Amend. Illegal Search and Seizure Clause.
- 2. U.S. Const. Fifth Amend. Double Jeopardy Clause
- 3. U.S. Const. Fifth Amend. Right to Remain Silent - Miranda Violation.
- 4. U.S. Const. Sixth Amend. Right of Defendant to Confront Witnesses
Against them.
- 5. U.S. Const. Sixth Amend. Right to Effective Counsel
- 6. U.S. Const. Fourteenth Amend. Procedural Due Process; Equal
Protection Clause; Substantive Due Process.

STATEMENT OF THE CASE

The Procedures utilized during (Gomez's) aborted Direct Appeal failed to provide Adequate And/or effective Appellate Review. The decision by the state to deliberately choose to move counsel ineffective claims outside of the direct Appeal process is not without consequence for the states ability to assert a procedural default in later proceedings, and such defense should be deemed waived.

Furthermore, the Central impediment to the pursuit of (Gomez's) fight to a fair trial is explicitly attributed to a horrible, flawed justice system marked by egregious prosecutorial misconduct - Brady Violations. (Gomez) alleges that he did not personally waive his liberty interest to challenge his counsel's ineffectiveness and if the Rule of preclusion does not apply to a claim of sufficient constitutional magnitude it follows that derivative (ITC) claims are likewise not precluded.

In addition (Gomez) alleges that the state withheld Brady Evidence which invalidates the personal waiver Requirement during Appeal.

After (Gomez's) direct Appeals Counsel (a Statement was filed with the Court stating: No issue of Counsel merit to pose on (Gomez's) behalf were found, the court allowed Counsel to withdraw, then on its own initiative it vacated the sentence and remanded the case for Resentencing - Citing Blake v. Washington 542 U.S. 296 (2004)

The fact that First-Cler Counsel did not Apprise Blake prior to withdrawing demonstrates (ITC) and is sufficient to excuse any waivers to reinstate his Appeal. The state roundly criticized Blake in numerous Arizona Sentencing guidelines.

While a lawyer isn't required to predict a change in the law, an attorney can be found deficient if he or she fails to raise a claim whose merit is clearly foreshadowed at the time. Counsel should have been aware of this controversy at the first-tier level and was therefore deficient. An attorney's failure to perform basic research on a point of law is a quintessential example of unreasonable performance under *Strickland v. Alabama* 57 U.S. 263 (2014).

First-Tier Counsel's deficient performance prejudiced GAMEZ. The showing here requires a reasonable probability that but for Counsel's deficient performance (GAMEZ) would have prevailed on Appeal. (GAMEZ) didn't need to show he would have received a different sentence, but only that had appellate counsel raised Blakey, there was a reasonable probability that (GAMEZ) would have received a new sentencing proceeding. First-Tier Counsel's ineffective performance is of sufficient constitutional magnitude especially because it came at a time when (GAMEZ) was promised effective assistance to challenge whether (GAMEZ) received a fair trial pursuant to the Fourteenth Amendment - PROPER DUE PROCESS CLAIM.

In *Khalbert v. Michigan* 545 U.S. 605 (2005), the Supreme Court held that the Due Process and Equal Protection clause require the appointment of Counsel for defendants convicted on their pleas, who seek access to first-tier review in the Michigan Court of Appeals. The procedures that the state used to allow first-tier Counsel to withdraw failed to afford "adequate and/or effective appellate review," the court was required to conduct an independent investigation to determine first-tier Counsel's performance.

Not Every Appellant Court thereafter

In *Anders v. Cal.* 386 U.S. 353 (1963) the U.S. Supreme Court instructed that the proper procedure for Appellate Counsel to withdraw requires the filing of a brief referring to anything in the record that arguably supports an appeal. Allow the defendant to raise any points he chooses to, the court must make its own investigation to determine whether the appeal is 'wholly frivolous'.

The State Unreasonably Applied Clearly Established Federal Law by allowing First Tier Counsel to withdraw and failing to Appoint Replacement Counsel and most provide (CAMEZ) A New First Tier Review with Constitutional Protections.

Additionally, (CAMEZ) argues that the ruling in *State v. Arellano* 470 P.3d 644 (Ariz. 2020) constitutes A Significant Change in the law, AND/OR AN illegal sentence pursuant to Ariz. Crim. P. 32.1 (c)(g), AND is NOT subject to the preservation rule.

Recently, the Arizona Supreme Court declared its Gang Associated statute was Unconstitutional and Modified the statutory penalties for Defendants State of Conviction.

In *Arellano*, the Supreme Court in essence determined that Section 13-1502 (B)(2), which enhances the sentence for threatening or intimidating if the defendant is a Criminal Street Gang Member is NOT Constitutional because it increases A Criminal Sentence based Solely upon gang status in violation of Substantive Due Process.

The *Arellano* court answered the question of whether Mere Association with a gang violates the Due Process clause of the U.S. AND Arizona Constitutions which both state: "that NO person shall be deprived of Life, Liberty or property without

due process of law"

In State v. Gomez, CR 50525 (Gomez) signed a plea bargain to: Participating In A Criminal Street Gang in violation of ARS 13-2308 A(2)(G) and (H) (1996). In the present case this court used (Gomez)'s Prior Conviction to enhance the statutory penalties of his offense(s), and was used as an Aggravated Factor in Blakely - requiring a resentencing.

(Gomez) argues, Arevato significantly changed ARS 13-2308 and his offense is thus a "Covered Offense" to qualify for a sentence reduction. The illegal statute shifts the entire Sentencing Scale making all Modified Statutory penalties Offenses(s) "Covered Offenses".

In Scales v. U.S. 367 U.S. 203 (1961), the U.S. Supreme Court held that the punishment on a status or a conduct can only be justified by reference to the relationship of that status or conduct to other concededly criminal activity or that link ("or Nexus") between the status and Criminal Activity. Must be sufficiently Substantial to satisfy the Due Process clause, the Scales Court explained.

Although the court in Arevato found that increasing a Misdemeanor charge to a felony for "Merely being part of a gang" is unconstitutional, the legal premise in the present case would be the same:

"Enhancing the statutory penalties for merely being part of a gang is unconstitutional because it does not require a Nexus between the gang

Association And Criminal Conduct noting that other courts in Tennessee And Florida, for example have similarly, held gang membership penalties unconstitutional for lack of Nexus.

The Unconstitutional Statute had A Anchoring effect on (Gomez's) Sentence And Violates (Gomez's) Sixth Amendment Right to have A Jury determine Fact issues.

(Gomez) Argues the state created an unconstitutional or illegal impediment by withholding details of (Soto's) plea in violation of Brady. During the onset of this case TEO, DPS And PIMA County Attorneys Office knowingly conducted an illegal searches/seizure on (Gomez) and used it to design and embellish information to conceal A botched Raid in A Officer Involved Shooting - Cover-up [CR-20020091].

The Prosecutors Suppression of (Soto's) Immunity deal in State Court distorted the fact-finding process, forcing the State Court to MAKE its finding based on an unconstitutionally incomplete record. This is not A situation where the record was incomplete because of anything (Gomez) did or failed to do, the prosecutor had an "inescapable" Constitutional obligation under Brady v. Maryland 373 U.S. 83 (1963) to produce - the evidence.

The Court And Jury did not hear of Significant Impeachment Evidence that undermined the page 8

Truthfulness of the prosecutors Case (GOMEZ) was denied his Constitutional right to cross-examine Key-Witnesses because the state willfully conceal Brady Material and used it to conceal an illegal arrest. IN Violation of (GOMEZ's) Fourth Amend. U.S. Constitution.

During Closing Arguments the prosecutor testified that ("Solo") didn't testify because he didn't want to be A "Snitch" but in fact the state concealed the plea deal to prevent (GOMEZ) from discovering crucial facts relating to (GOMEZ's) illegal arrest and botched trial. The States statements at trial are Text Book Prosecutorial Misconduct.

In Oregon v. Kennedy 456 U.S. 647 (1982), the U.S. Supreme Court held that the "overreaching test" was inapplicable and further ruled that the Fifth Amend. bars referral only when the governments actions were intended to goad the defendant into moving for a mistrial.

Even more so, important First-Tier Counsel failed to argue that Court error when it denied (GOMEZ) of his right to confront an adverse witness when it limited (GOMEZ's) ability to cross-examine Martin Solo. A defendant has the right to explore via cross-examination a witness motivation in testifying. Delaware v. Van Arsdale 475 U.S. 673 (1986) the Sixth Amend. to the U.S. Constitution guarantee the right of defendant to page 9

Confront Witnesses Against them

The facts surrounding (Gob's) initial detention calls into question the events leading up to (CAMEZ's) illegal arrest. On the night in question several witnesses including (Gob), identified Sandoval as the second suspect. (Gob) immediately changed his story when promised immunity to implicated (CAMEZ). This information did not provide detectives "Exigent-Circumstances" for a Warrantless Arrest but an illegal wiretap is believed to have been placed on (CAMEZ's) Cellphone. Sandoval was Arrested a few days later.

Within a span of three days (CAMEZ) was illegally placed under a Warrantless police surveillance by undercover officers at the Mission Antigua Apartments based on "concocted" information provided by (Gob). Officers lacked "Exigent Circumstances" required to justify a Warrantless entry into the home. Nonetheless, (Officers) initial encounterment with (CAMEZ) was a violation of at least the Fourth Amendment.

The state excluded the identities of the officers who conducted the illegal surveillance at Mission Antigua. The officers criminal histories were relevant in determining whether they had a "Propensity For Violence or Lying". The crucial fact question at (CAMEZ's) trial [CR 2002-0991] was whether (CAMEZ) was the Aggressor.

In *Miller v. Roan* 711 F.3d 948 (9th Cir 2013), the Ninth Circuit Court of Appeals found a due process violation page 10

where the state failed to disclose evidence of Key Witnesses history of lying under oath and other misconduct.

Appellate Counsel failed to Argue 4th Amend. - Illegal Search/Seizure Violation during (Garcia's) direct Appeal. The exclusionary rule provides that evidence obtained through a Violation of the Fourth Amend. should be excluded from Trial. *Mong Sun v. U.S.* 371 U.S. 471 (1963)

(Soto) did not testify at trial but portions of his statements were read into the record by defense attorneys because (Soto) received a lesser sentence did not prevent (Garcia) from questioning him about his Motivation for lying in exchange for immediate release or indicted on lesser counts to avoid a life sentence. (Garcia) has a right to question a cooperating witness about a plea deal, the witnesses possible sentencing exposure before accepting the plea.

The trial court prohibited (Garcia) from eliciting testimony from (Soto) about a possible life sentence he Abided by accepting the plea deal. The plea deal may have served as a powerful incentive for [him] to cooperate with the state as it prepared for (Garcia's) trial.

(Garcia) was entitled to question (Soto) about his subjective understanding of the benefit of his plea bargain including what sentence he faced, what was offered in the plea agreement, and by whom it was offered by. (Garcia) had the right to explore potential bias on (Soto's) part in his role as the prosecution's Key Witness, including whether

Page 11.

(Soto) provided officers (Gomez's) cell phone number when it obtain an illegal wiretap.

(Gomez) argues that First-Tier Counsel provided deficient performance when it failed to challenge (Gomez's) confession was illegally obtained as Fruits of an illegal Arrest and Nothing Better the causal connection between the illegal Arrest and Confession. The connection between the initial illegal Arrest and (Gomez's) Confession at trial are sufficiently related and should have been suppressed.

After (Gomez) was Arrested detective asked (Gomez) a few questions relating to the criminal charges against him, he immediately invoked his Fifth Amend. - Right to remain silent and requested to consult with a lawyer, pursuant to Miranda.

During the second interrogation at trial the state asked several follow-up questions making the second encounter a de facto extension of the first incident. (Gomez) admits that the confession was a 'Big Mistake' but ultimately the statement is required to be suppressed because they were tainted by the illegality of the unlawful search and seizure.

The rule applies to the direct fruits of a Fourth Amend. violation and indirect fruits of the illegal search if they bear a sufficiently close relationship to the underlying illegality. U.S. v. Adams, 141 F.3d 1328 (9th Cir. 1998)

(CAMEZ) Alleges the Excessive Use of force during the botched raid exacerbated PTSD, Crippling Anxiety, Extreme Hopelessness, Shocks, Badgering resulting in a false confession that was a product of an illegal arrest, high pressure tactics and psychological coercive interrogation techniques induced by egregious activity by the government.

(CAMEZ) Alleges that the presence of a stun belt/shackling claim constitutes a constitutional claim of "Sufficient Constitutional Magnitude" and the trial court erred when it did not hold a hearing to determine if (CAMEZ's) claims were colorable.

In Addition (CAMEZ) Alleges the existence of a external objective factor prevented him from properly presenting the (IAC) claim to the State Court (Described herein). The Supreme Court has cautioned the judiciary to protect the rights of (pro se) litigants. *US v. Sineney-Siman*, 590 U.S. ___, 140 S.Ct. 1579 (2020).

REASONS FOR GRANTING THE PETITION

When the State of Arizona deliberately chose to move trial ineffectiveness claims outside of the direct Appeal process where counsel is constitutionally guaranteed it significantly diminished (CAMEZ's) ability to file a "Ineffective Assistance of Trial Counsel Claim and related claims". Prisoners in (CAMEZ's) position are generally ill equipped to represent themselves, because they do not have a brief from counsel or an opinion of the court addressing their claim of error. *Habert v. Michigan* 545 U.S. 605 (2005).

Furthermore, the Court and jury did not hear of significant impeachment evidence that undermined the trustfulness of the prosecutions case. (CAMEZ) was denied his constitutional right to cross-examine a key witness (Martin Soto) because the state willfully concealed Brady Material of his prior statements made to the police. When (CAMEZ) was preparing to file a new discovered evidence claim based on the declaration from Martin Soto, FBI Agent BRAND JACOBS seized all (CAMEZ's) legal material from his prison cell.

Despite the illegality of (CAMEZ's) conviction the Arizona Courts continued to obstruct (CAMEZ's) right to bring a "Ineffective Assistance of Trial Counsel Claim based on its Preclusion Rule. For the foregoing reasons (CAMEZ) moves this Court to grant relief, AS AVAILABLE.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date:

FF June 22
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ASPC-EMAX-SMU I
P.O. box 4000 - Florence, AZ 85132