

GERALD GWEN # 332970

40 ASTC - RED ROCK CORRECTIONAL

1752 EAST ARICA ROAD

ELY, AZ. 85131

IN THE SUPREME COURT OF THE
UNITED STATES

GERALD VAUGHN GWEN,

PETITIONER,

VS.

KRIS MAJOR, ATTORNEY GENERAL

STATE OF ARIZONA, et al.

RESPONDENTS.

NO. 23-5712

PETITION FOR REHEARING RE:
WRIT OF CERTIORARI

PURSUANT TO USCS SUPREME COURT RULE 44,

PETITIONER GERALD GWEN, MOVES THE COURT FOR GRANT OF HIS
PETITION FOR REHEARING FROM DENIAL OF CERTIORARI.

THE COURT HAS JURISDICTION UNDER 28 USC § 2646.

I. THE TYPICAL AND USUAL OR ACCEPTED COURSE OF JUDICIAL PROCEEDING
A PETITION FOR RECONSIDERATION OR REHEARING ARE LIMITED IN
SCOPE TO INTERVENING CIRCUMSTANCES OF A SUBSTANTIAL OR CHANGING
EFFECT FROM A PARTICULAR COURT OPINION OR DECISION.

THE SUPREME COURT CLERK'S NOTICE OF DENIAL OF CERTIORARI ATTACHED
NO WRITTEN OPINION OR EXPLANATION FOR THE DENIAL, NOR DOES
THE CLERK'S NOTICE PROVIDE WHICH JUSTICES PARTICIPATED IN THE
OPINION OR DECISION RENDER. SEE AMERICAN WORLD AIRWAYS, INC.,
382 U.S. 25, 86 S.Ct. 153, 15 L.Ed.2d 21 (1965)

Petitioner, to date, has not been provided a copy of the Court opinion in the case pursuant to VCS Supreme Ct. R41;

"The Court opinion will be released by the clerk immediately upon their announcement from the Bench."

It is observed the Supreme Court implied jurisdiction over writ of certiorari when it ordered respondent, Arizona State Attorney General, to file a reply to Petition for writ of certiorari.

Regardless whether the Court opinion issues or not, the denial itself provides basis why the Court should grant Petition for rehearing.

In the alternative the Court should consider extension of time to provide Petitioner with a copy of the Court opinion denying certiorari to allow Petitioner to provide adequate ground distinctly. Petitioner believes Clerk's notice of denial of certiorari with or without a written opinion represents finality of litigation, as expressed by the notice, but not yields to interest of justice and would make unfair strict application of that decision a departure of due process. See, *Gonsouck v. Pan American World Airways, Inc.*, 382 U.S. 25, 86 S. Ct 153, 15 LEd 2d 21 (1965).

II GROUNDS FOR REHEARING:

1. The Supreme Court, in later like case, expressed doubt whether its decision in present case has been consistent with earlier Supreme Court decisions;

2. NO STATE COURT ADJUDICATED THE CONSTITUTIONAL QUESTION PRESENTED ON THE MERIT OR WAS NOT CONSIDERED AT ALL;

3. THE FEDERAL DISTRICT COURT DEPRIVED PETITIONER OF RIGHT TO STATUTORY - MANDATED FEDERAL HEARING UNDER 28 USC § 2254(d), 2254(e)(1). IN *Toussaint*, 372 US 293 (1963), THE SUPREME COURT HELD "A FEDERAL HEARING IS 'MANDATED' IN SUCH SITUATIONS... THE PETITION FOR WRIT OF HABEAS CORPUS CLEARLY ESTABLISHES THAT IT HAS MET THE SUPREME COURT'S STRINGENT REQUIREMENT IN ALL RESPECTS. THIS SUPREME COURT ALSO OPINED 'THE DUTY TO TRY THE FACTS FIRST IN EVERY CASE IN WHICH THE STATE COURT HAS NOT AFFORDED A FULL HEARING'";

4. NO FEDERAL COURT HAS ADEQUATELY ADJUDICATED PETITIONER'S VARIOUS CONSTITUTIONAL CLAIMS BROUGHT UNDER 28 USC § 2254 ON THE MERIT;

5. THE DISTRICT COURT REPORT AND RECOMMENDATION DETERMINED THE STATE PROSECUTOR'S COMMENT(S) AMOUNTED TO REVERSIBLE ERROR;

6. NO FEDERAL COURT CONSIDERED OR MADE A DETERMINATION WHETHER PETITIONER'S CONVICTION WAS OBTAINED IN VIOLATION OF THE FEDERAL CONSTITUTION, THUS AVOIDING THE CONSTITUTIONAL QUESTION OF "ABSOLUTE INNOCENCE";

7. THIS COURT SHOULD GRANT REHEARING BECAUSE THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT REJECTED HIS NOTICE OF APPEAL VIOLATED PETITIONER'S RIGHTS UNDER 28 USC § 2253 AND RULE 3-4 OF THE FEDERAL RULES OF APPELLATE PROCEDURE, WHICH

1 A violation of the Federal Constitution, Article II, § 9, CL 2.
2 where by the Supreme Court has termed necessity of hearing
3 policy to be proscribed against suspending the writ of habeas
4 corpus, TOWSEND, 372 US at 311. ("State criminal convictions must
5 be tested in Federal Habeas corpus proceedings." See also,
6 FREEMAN V. ZAHRADEK, 429 US 111 (Dissent from denial of certiorari);
7 STONE V. POWELL, 428 US 465 (1976).

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9 8. THE RESPONDENT, ARIZONA STATE ATTORNEY GENERAL, did not file
10 A response to petition for writ of certiorari, there for concerns
11 the points presented for relief.
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III. The Denial of Certiorari should be reconsidered because it results in a manifest injustice, allows Supreme Court to correct miscarriage of justice or to correct error in regard to relevant Supreme Court decision(s).

The Supreme Court has already granted certiorari or appropriate relief on most federal questions raised or has decided the important federal question most favorable to reversal of a conviction, if not outright grant of certiorari or appropriate relief as the following cases indicate:

ARIZONA V. GANT, 129 Sd. 1710 (2010);

FRANK V. DELAWARE, 98 Sd. 2674 (1978);

UNITED STATES V. WEATHERS,

CRAWFORD V. WASHINGTON, 124 Sd. 1351 (2004);

CRAIG V. KENTUCKY, 106 Sd. 2142 (1980);

DUNNETH V. CHRISTOFORO, 94 Sd. 1868 (1974);

TURNER V. LOUISIANA, 85 Sd. 546 (1965);

SHATROVE V. UNITED STATES, 8 Sd. 270 (1960);

BODDIE V. CONNECTICUT, 91 Sd. 780, 785-87...;

BRADY V. MARYLAND, 83 Sd. 1194 (1963);

GILES V. MARYLAND, 87 Sd. 793 (1967);

UNITED STATES V. MARIN, 92 Sd. 455 (1971);

UNITED STATES V. LOVASO,

BURKS V. UNITED STATES, 98 Sd. 2141 (1978);

RE WINDSHIP, 90 Sd. 1073;

FAY V. NOIA, 83 Sd. 822 (1963);

NADAR V. UNITED STATES, 119 Sd. 1827 (2005);

ARIZONA, V. FULLIMANTE, 111 Sd. 1246 (1991).

1 *Eubbs v. Connelly*, 4 *Sol.* 544

2 *UNITA STATE v. VALENZUELA-BERNAL*, 102 *Sol.* 3440 (1982);

3 *MILLER-EL v. COCKRELL*, 537 *US.* 322 (2003);

4 *JACKSON v. VIRGINIA*, 443 *US.* 307 (1979);

5 *BRECHT v. ABRAHAMSON*, 507 *US.* 619 (1993);

6 *ROSE v. CLARK*, 478 *US.* 570-77-78 (1986);

7 *SCHIRIO v. SUMMERLIN*, 542 *US.* 348 (2004);

8 *THOMPSON v. LOUISVILLE*, 362 *US.* 199;

9 *TOWNSEND v. SAN*, 372 *US.* 293 (1963);

10 *SLACK v. MCDANIEL*, 529 *US.* 473 (2000);

11 *MARMON v. NICOLL*, 26 *Sol.* 744 (1905);

12 *PIERCE v. LOUISIANA*, 306 *US.* 354 (1939);

13 *EX-PARTE HAWK*, 321 *US.* 114 (1944);

14 *RIDEAU v. LOUISIANA*, 373 *US.* 723 (1963);

15 *SINDLER v. UNITA STATES*, 279 *US.* 749;

16 *WHITHROW v. WILLIAMS*, 507 *US.* 680;

17 *JOHNSON v. ZUMBROST*, 304 *US.* 458 (1938);

18 *FREEMAN v. ZATKOSCH*, 429 *US.* 111;

19 *NANWORTH v. SYKER*, 433 *US.* 72 (1977);

20 *UNITA STATE v. MCDONALD*, 456 *US.* 1 (1982);

21 *DAY v. McDONALD*, 547 *US.* 198 (2006);

22 *BROWN v. ALLEN*, 344 *US.* 443 (1953);

23 *KEENE v. TOMMYO-REYES*, 504 *US.* 1 (1992);

24 *HECK v. HUMPHREY*, 512 *US.* 481.

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26 AEPDA Act of 1986, TITLE II.

IV THIS COURT HAS CONSISTENTLY FAVORED, PARTICULARLY THE DUE PROCESS CLAUSE OF THE 14th AMENDMENT, WHICH MAINTAINS AN ADEQUATE CORRECTIVE PROCESS AT BOTH STATE AND FEDERAL LEVEL.

THE SUPREME COURT SUGGESTS COGNIZABILITY OF CLAIM "DEPRIVATION OF CONSTITUTIONAL PROTECTIONS" —, WITHHOLDING JUDICIAL REMEDY FOR CONSTITUTIONAL VIOLATIONS" UNITED STATES V. EX REL HERRMAN V. CLAUDE, 350 US. 116 (1956); YOUNG V. RABEN, 337 US. 235 (1949); CHASE V. ILLINOIS, 329 US. 173 (1946); MOORE V. HOLLOMAN, 294 US. 103 (1935); FRANK V. MANGUM, 237 US. 309 (1915).

PETITIONER ASSETS HIS CLAIM ARE "DILATORY" IN THAT HE "INEXCUSABLY" HAS BEEN IGNORED AN OPPORTUNITY TO PROVE HIS INNOCENCE WHILE PROCEEDING IN FEDERAL COURTS, WHO HAVE NOT AND CANNOT PROTECT ANY RIGHT OR PRIVILEGE GUARANTEED TO HIM UNDER THE CONSTITUTION OF THE UNITED STATES.

PETITIONER HAS BEEN DENIED A JUDICIAL REMEDY FOR THE CONSTITUTIONAL VIOLATIONS.

IT KNOWS IT IS NOT THE INTENTION OF THE HIGHEST COURT OF THE LAND TO PASS OPPORTUNITY TO CORRECT MISFEASANCE OF JUSTICE WHEN IT SURFACES, THAT PROTECTIONS DECIDED BY CONGRESS ARE TRANSGRESSED UPON.

IT IS NOT ENOUGH TO CONSIDER THE ACTIONS OF FEDERAL LOWER COURTS AS UNPROFITABLE TO CORRECT ERROR, BUT WHAT NEED TO BE DONE, MUST BE DONE AS LAW AND "JUSTICE REQUIRE".

IV Petitioner seeks suspension of order denying certiorari on
basis the action taken by lower courts have had an adverse
effect on review that was available. The Supreme Court's
denial of certiorari without a summary disposition on the
merits may very well have denied petitioner his substantive
right to due process of law or equal protection of the laws
secured and guaranteed by the Constitution of the United States.

A state and federal court have decided or disregarded an
important question of federal law that has not been settled,
but should be, settled by this court, where the record supports
grant of writ of certiorari.

Petitioner's petition for writ of certiorari does not consist of
erroneous factual findings or raise question of the misapplication
of law, but whether the denial of a substantial right,
privilege or immunity has contributed to the ongoing deprivation
of his liberty.

Wherefore, in all respects, petitioner is entitled to relief of
certiorari as of right. Petitioner moves this court to
exercise the authority vested in Justice of Supreme Court
to suspend order denying certiorari, if for no other reason
to grant right to federal reharing statutorily-mandated.

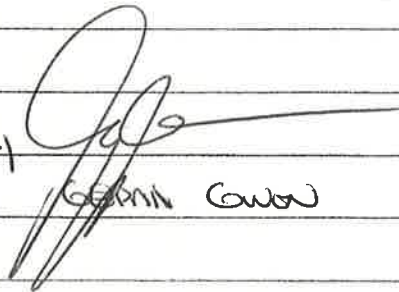
Respectfully Submitted this 5th day of
February, 2024.

Certificate of Counsel

The Petitioner, Gerardo Giron, proceeded proper and filed his Petition for a rehearing in good faith, timely, and for good cause, and not for delay.

Petitioner declares he was not provided a copy of the court's opinion pursuant to USC Supreme Ct. 241.

Signed by



Gerardo Giron

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2 Proof of Service
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4

5 I certify that a copy of motion for re-hearing was placed with
6 the institution mailing system, sent via US mail to
7
8

9 Krist Majes

10 Arizona Attorney General office

11 2005 North Central Ave.

12 Phoenix, Arizona 85004-1580
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CERTIFICATE of compliance

Certificate of compliance pursuant to URS Supreme Court
Rule, R 33.

I Am the petitioner, please.

A.) Petition for rehearing under URS Sup. Ct. R 44;

The undersigned certifies that the petition for rehearing
to which this certificate attaches:

1.) IS submitted on 8 1/2 inch plain paper is within the
page limit of 15 pages pursuant to URS Sup. Ct. R 33 XV (2)(5).

2. THE petition contains 9 handwritten pages.

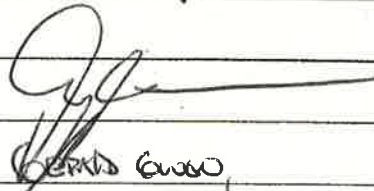
3. THE petition complies with requirement.

I DECLARE that the petition complies with the page limit of
URS Sup. Ct. R 33 (2)(5) AND XV.

DATED THIS 28th day of December,

2023

by


Gerald Green,