

No. 23-6677

IN THE SUPREME COURT OF THE UNITED STATES

MICHAEL ISIDORO SANCHEZ,
Petitioner,

v.

RYAN THORNELL DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS;
KRISTIN K. MAYES, ARIZONA ATTORNEY GENERAL,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR REHEARING

Michael Sanchez, # 290235
Petitioner, Pro-per.
A.S.P.C. Kingman / Huachuca Unit
P.O. Box 6639
Kingman, AZ 86402

GROUND:

IF THE NINTH CIRCUIT'S DECISION IS ALLOWED TO STAND THEN ARIZONA'S OF-RIGHT RULE 33 PCR PROCEDURE WILL CONTINUE TO CAUSE INDIGENT PLEADING DEFENDANTS TO SUFFER THE INJURY OF BEING DENIED THE FEDERAL CONSTITUTIONAL RIGHT TO COUNSEL IN THE FIRST APPEAL AS OF-RIGHT.

FACTS:

Arizona's of-right Post-Conviction Relief (PCR) procedure for indigent pleading defendants is thier first appeal as of-right and is a direct review proceeding. All parties agree on this.

No finding of frivolity or whether counsel conducted a diligent search of the record for arguable issues is required by the PCR court at any time after first PCR counsel submits an "anders brief" under Arizona's of-right PCR procedure.

If a "viable issue" is discovered by the PCR court upon its review of the pro per PCR petition then counsel will remain as "advisory counsel" and is not required to advance an advocates brief on that issue under Arizona's of-right PCR procedure.

ARGUMENT:

The federal constitutional right to counsel applies to indigent pleading defendants in Arizona's of-right PCR proceeding, a direct review. See, *Summers v. Sahrino*, 481 F.3d 710, 717 (9th Cir. 2007). As a result *Anders v. California*, 386 U.S. 738 (1967) and its progeny apply to Arizona's of-right PCR proceedings. See, *Chavez v. Brnovich*, 42 F.4th 1091, 1098 (9th Cir. 2022).

Because no "Anders review" is required under Arizona's of-right PCR procedure - "We cannot say that there was a finding of frivolity by either of the [Arizona] courts or that counsel acted in any greater capacity than merely as *amici curiae* which was condemned in *Ellis*." *Smith v. Robbins*, 528 U.S. 259, 271 (2000) (citing, *Anders*, 386 U.S. at 743). Cf. *State v. Chavez*, 243 Ariz. 313, 318 (Ct. App. (2017) ("superior courts are not required to conduct Anders review in a Rule 32 of right petition!").

Because no advocates brief is required under Arizona's of-right PCR procedure after the court finds a "viable issue", indigent pleading defendants are left completely without representation during the appellate court's actual decisional process." See, *Penson v. Ohio*, 488 U.S. 75, 88 (1988). Cf. *Lammie v.*

Barker, 185 Ariz. 263, 264 (1996) ("Unlike counsel's role under Anders...").

Accordingly, both aspects of the "Douglas right" to counsel are violated under Arizona's of-right PCR procedure, because as shown above there is no finding of frivolity or that counsel acted in any greater capacity than as amicus curiae, and no advocates brief is provided for a nonfrivolous appeal. See, Smith, 528 U.S. at 280 (noting that "the Penson procedure permitted a basic violation of the Douglas right to have counsel until a case is determined to be frivolous and to receive a merits brief for a nonfrivolous appeal").

The Anders procedure is recognized as an "exception" to the right to counsel in the first appeal as of-right. See, Penson, 488 U.S. at 83. But "once a court determines that the trial record supports arguable claims, there is no basis for the exception and, as provided in Douglas, the criminal appellant is entitled to representation." Id. at 84. Not so under Arizona's of-right PCR procedure.

Thus, Arizona's of-right PCR procedure invites "the actual or constructive denial of the assistance of counsel altogether" which "is legally presumed to result in prejudice." Id. at 88.

CONCLUSION:

If the Ninth Circuit's decision is allowed to stand then countless numbers of indigent pleading defendants will continue to be stripped of their federal constitutional right to counsel in their first appeal as of-right, without a reasoned or legitimate basis to do so.

The Supreme Court should grant the petition for a writ of certiorari and evaluate Arizona's Rule 33 procedure - an ineffective corrective process which permits the federal constitutional right to counsel to be swallowed by the Anders Limitation, in the first of-right appeal for indigent pleading defendants.

Respectfully submitted this 27th day of March 2024.

Michael Sanchez
Michael Sanchez, # 290235

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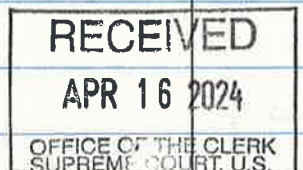
v.

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Respondents.

CERTIFICATE OF RESTRICTED GROUNDS

I, Michael I. Sanchez, Petitioner, hereby certify that the grounds raised in the attached petition for rehearing are restricted to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented and that it is presented in good faith and not for delay.

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PROOF OF SERVICE

I, Michael I. Sanchez, do declare that on March 27, 2024, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and PETITION FOR REHEARING on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage pre-paid. All parties required

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to be served have been served in like manner at the following address:

Arizona Attorney General
Kristin K. Mayes
1275 West Washington Street
Phoenix, AZ 85007

I declare under penalty of perjury that the foregoing is true and correct. 28 U.S.C. § 1747.

Executed this 27th day of March 2024.

By: Michael Sanchez
Michael Sanchez, #290235