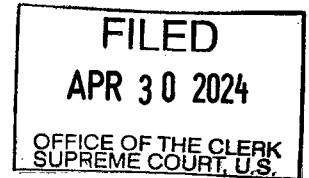


23-7381
No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



LARRY DONNELL DUNLAP — PETITIONER
(Your Name)

vs.

ARIZONA ATTORNEY GENERAL et al., — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Ninth Circuit
~~UNITED STATES SUPREME COURT~~
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

LARRY DONNELL DUNLAP ADCR 124173
(Your Name)

ARIZONA DEPARTMENT OF CORRECTIONS REHABILITATION & RE-ENTRY
ASD LEWIS COMPLEX-PO BOX 70-Buckeye Red Unit
(Address)

Buckeye, Arizona 85326
(City, State, Zip Code)

(623) 386-6160
(Phone Number)

QUESTION(S) PRESENTED

1. Did the Arizona Superior ^{Court} Violate Petitioner 14th Amendment Rights to the Federal Constitutional of due process when the court denied Petitioner's Special-Action Relief When the Court abused its discretion?

A. Standard Of Review

B. Petitioner Establish that the Board Of Arizona Executive Clemency denied him due process.

1. Due process requirements applicable to commutations.

2. Petitioner did establish that the Board denied him due process.

C. Did the Arizona Statute that Govern Board Of Executive Clemency proceeding, is that Arizona Statute discriminatory toward Black male sex offenders in violation of Petitioner 14th Amendment Rights due process?

D. Petitioner Other Claims Entitle him to Special Action Relief?

1. Petitioner was entitled to relief on his equal protection.

2. Petitioner could collaterally attack his conviction in a special action petition seeking review of a commutation denial.

3. The Record support Petitioner Claims that the Arizona Board of Executive clemency did not do an investigation into his conviction when they the members falsely relied upon false information that Plaintiff had accepted a plea deal instead of going to a trial, Violated petitioner 14th Amendment Rights to due process?

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:

Arizona Department of Corrections Rehabilitation & Reentry
Director David Shunn et al

Arizona Governor Doug Ducey et al

RELATED CASES

Brittain v Hansen 451 F.3d 982, 991 (9th Cir. 2006)

Board of Pardons v Allen, 482 U.S. 369 1075.Ct 2415, 96 L.Ed2d 303 (1987)

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CASES

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STATUTES AND RULES

ARS. 12-2101 (A) (1)
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ARS 31-402 (A)
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ARS 31-411
ARS 39.121.01
ARS 41-1005 (A) (7)

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OTHER

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 _____; 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 _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the _____ 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.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was December 18 2023.

☐ 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 July 2019.
A copy of that decision appears at Appendix B.

☐ 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

Arizona Constitution Art. 2, § 4

Arizona Constitution Art. 2 § 13

Arizona Constitution Art 5, § 5

United States Constitutional 14th Amendment

Statutes

A.R.S. 12-2101 (A) (1)

A.R.S. 13-603 (L)

A.R.S. ~~31~~-402 (A)

A.R.S. 31-403

A.R.S. 31-402 (C) (2)

A.R.S. 31-411

A.R.S. 39.121.01

A.R.S. 41-1005 (A) (7)

STATEMENT OF THE CASE

Petitioner Larry Donnell Dunlap, was found guilty of five counts of child molestation and one count of sexual abuse, in 1996 by a jury trial. The trial court sentenced petitioner to three consecutive life sentences, a twenty-eight year sentence, a seventeen-year sentence and an eighteen-month sentence. Petitioner appealed his convictions and the court of appeals affirmed petitioner's conviction but remanded petitioner case for resentencing. On resentencing, the trial court imposed an aggregate totaling 69.5 years in prison. The court of Appeals affirmed those sentences. Petitioner argued the Arizona Board of Executive Clemency policies and Rules are discriminatory against Black male sex offenders. Petitioner maintain that the Board denied him due process and petitioner claims that the Board rules, statutes and policies allows the Board to discriminate against black male sex offenders. That between 1995 and 2018 the Arizona Board of Executive clemency denied every commutation request by black sex offenders. Petitioner claims that the Arizona Revised Statutes 31-402(c)(2) authorizes the Board of Executive Clemency (the Board) to recommend commutation to the Governor. Board policy number 114.1 C1. authorize eligible inmates to apply for commutation. Inmates apply by filing out and submitting the commutation or sentence application form that the Board has created. There are two phases to the Board's commutation process. Policy number 115.6 (6.1). Phase I consists of the Board reviewing an inmate's application packet, which includes the inmate's application files, letters and other relevant information as well as written material that the inmate's family, friends, victims, witnesses, and/or legal counsel have submitted. Neither the inmate nor any members of the public are present during the review. After considering all the written materials submitted to it, the Board votes on whether to pass the inmate to a phase II hearing. Petitioner applied for a commutation of his sentence on August 29, 2017. On December 18, 2017 the Board conducted a phase I in Absentia commutation proceeding. After reviewing petitioner's application and the letters of support, the Board voted not to pass him to a phase II hearing. The Board declined to recommend a commutation to the Governor. Petitioner claims the Board denied petitioner Application, and petitioner challenged the denial by filing a special Action in the Superior Court against the Board and Governor Ducey collectively the Board. In petitioner's special-action petition he claims that the Board had denied his commutation application because he was a black sex offender and that the Board of Clemency members denied petitioner due process of the 14th Amendment of the Federal Constitutional in this case.

REASONS FOR GRANTING THE PETITION

Petitioner contends that his right to due process under Fourteenth Amendment was violated when the State of Arizona arbitrarily and capriciously denied him commutation of his sentences and if not but for the discrimination petitioner claims unquestionably would have received commutation of his sentences by the Board members. That the Board members kept petitioner from getting relief of the provisions of Arizona's Disproportionality Review Act of 1994 (the Act). The genesis of Petitioner's claim is that in 1996 the Arizona Board of Executive Clemency (the Board) intentionally did not inform petitioner that his sentences were eligible for consideration for commutation under the Act. Petitioner claims that the Arizona Clemency statute provides a state prisoner with a protected liberty interest in having his sentence commuted, created liberty interest entitled to protection under the Due process clause. Petitioner argues that despite presenting his federal claims his special action was disposed of by the trial court and the Arizona Court of Appeals without reaching the federal issues. In addition, the interest of comity and federalism call for application of the ~~state~~ principle despite any waiver. Petitioner claims that Arizona law was not independent and adequate. Petitioner was denied of substantive due process of the 14th Amendment. *Brittain v Hansen*, 451 F.3d 982, 991 (9th Cir. 2006). In Petitioner's case the Arizona state statutes made a granting of clemency mandatory upon certain findings it did create a protected liberty interest. *Board of Pardons v Allen*, 482 U.S. 369 107 S.Ct 2415, 96 L.Ed.2d 303 (1987). Petitioner claims that the Arizona statute granted petitioner a protected liberty interest in having the Board consider his case and make a recommendation, and to have the Arizona Governor exercise his discretion over that recommendation. Petitioner submitted in his petition statistics of the discrimination of Black males sex offenders which are ~~capziable~~ ^{capziable} suspect group in this case that was specifically target by the Board and Governor of Arizona. Petitioner provided statistics from the Board of Clemency records that showed that from 1975 to 2019, that 1,952 Male black sex offenders filed their applications for commutation of their sentences and only 300 Male black inmate was granted clemency from the different Governors and different Board members and Petitioner claims that the Respondents did not dispute these numbers

In their answers to the court in this case. In this case, petitioner claims that there was arbitrary or conscience shocking action by the Board ADOC or the state in this case. The Supreme courts cases dealing with abusive executive action have repeatedly emphasized that only arbitrary and capricious and egregious official conduct can be said to be arbitrary in the constitutional sense. Petitioner claims that he has established that an executive abuse of power is constitutionally cognizable, requires a showing of an abuse of power which shocks the conscience. Petitioner claims that the Board, ADOC and the governor in this case refused to legitimate grant petitioner's clemency to release petitioner in this case.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Larry Donnell Dunlap

Date: 4/20/2024