

24-6780

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

FEB 24 2025

OFFICE OF THE CLERK
SUPREME COURT, U.S.

EARL FELTON CRAGO — PETITIONER
(Your Name)

vs.

State of Arizona — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Earl F. Crago # 115357
(Your Name)

ASPC-LEWIS, PO Box 70
(Address)

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

(Phone Number)

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

1. Whether a state court can amend a defendant's judgment of conviction to a harsher term of imprisonment when the state's statute's do not give them jurisdiction over the subject matter?
2. Whether the Federal court has jurisdiction to hear in a successive petition for writ of habeas corpus a claim that the state court did not have subject matter jurisdiction to amend defendant's judgment of conviction to a harsher term of imprisonment?
3. Whether U.S. Constitution requires the Federal court to ~~correct~~ intervene when a state court sentences a U.S. citizen to a harsher term of imprisonment when the state court did not have subject matter jurisdiction to do so?

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. Arizona Superior Court, Cochise County, Case No. CR94000471
 - (a) Decision & Order, May 4, 2011
 - (b) Decision & Order, October 29, 2020
 - (c) Decision & Order, December 18, 2020
2. Arizona Court of Appeals
 - (a) No. 2CA-CR 2011-0162-PR, Decision, September 9, 2011
 - (b) No. 2CA-CR 2021-0011-PR, Decision, March 25, 2021
 - (c) No. 2CA-CR 2024-0062-PR, Decision, July 31, 2024
3. Arizona Supreme Court
 - a. No. CR-24-~~02~~-0227-PR, Order, February 7, 2025.

4. United States District Court - District of Arizona

(a) No. CV 22-339-TUC-JAS, ORDER, September 28, 2022,

(b) No. CV 22-339-TUC-JAS, R & R, May 23, 2023

(c) No. CV 22-339-TUC-JAS, ORDER, January 22, 2024

5. United States District Court For The Ninth Circuit

(a) No. 13-73476, ORDER, March 13 2014

(b) No. 24-603, ORDER, October 31, 2024

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APPENDIX C : Superior Ct. No. CR 94000471, Order, December 18, 2020.	
APPENDIX D : AZ. CT. APP. NO. 2 CA-CR 2021-0011-PR, March 25, 2021.	
APPENDIX E : AZ. CT. APP. NO. 2 CA-CR 2011-0162-PR, September 9, 2011.	
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TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Albino v. Baca, 747 F3d. 1162, 1170 [3] (9th cir 2014)
Baker v. Grice, 169 U.S. 284 (1897)
Riggins v. Nevada, 504 U.S. 127 (1992)
State v. Dawson, 164 Arizona 278 (Ariz. 1990)
U.S. v. Cotton, 535 U.S. 625, 630 (2002)

STATUTES AND RULES

Arizona Revised Statute ("A.R.S.") 13-4032
Arizona Rules of Criminal Procedure ("Ariz. R. Crim. P.") 24.3

OTHER

Fourteenth Amendment - due Process.

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 F, L 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 J, K 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, D, E 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 Arizona Superior court appears at Appendix B, C, G 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 February 7, 2025. A copy of that decision appears at Appendix I.

☐ 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

Constitutional Amendment 14 sec.1 :

"... nor shall any State 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 its laws."

Arizona Revised Statute 13-4032 (5) :

"An appeal may be taken by the State from [] a sentence on the grounds that it is illegal."

Arizona Rules of Criminal Procedure, Rule 24.3 :

"(a) no later than 60 days of the entry of judgment and sentence [] the court may correct any unlawful sentence."

"(c)(1) In non capital cases, the Party appealing a final decision under Rule 24.3 must file a notice of appeal with the trial court clerk no later than 20 days after entry of the decision."

State v. Dawson, 164 Ariz. 278 (Ariz. 1990) :

"In the absence of a timely appeal or cross appeal by the State seeking to correct an illegally lenient sentence, an appellate court has no subject matter jurisdiction to consider the issue."

United States v. Cotton, 535 U.S. 625, 630 (2002):

subject matter jurisdiction claims "can never be waived or forfeited", and a court "is obliged to notice the limits of its own jurisdiction, and to protect the litigant against

improper exercises of judicial authority."

Albino V. Baca, 747 F.3d 1162, 1170 [3] (9th Cir. 2014)

"a court has an independent obligation to determine whether subject-matter jurisdiction exists, even when no party challenges it."

United States v. Garren, 884 F.2d 427, 431 (9th Cir 1989):

It violates the double jeopardy clause to increase a sentence of imprisonment in which a prisoner had a legitimate expectation of finality in

STATEMENT OF THE CASE

The issue at hand is whether the Arizona State courts had subject matter jurisdiction to amend Mr. Crago's sentence and whether the Federal court must correct errors involving judgments issued by state courts lacking subject matter jurisdiction.

In 1995, Mr. Crago was convicted for first degree murder. Mr. Crago was sentenced to a life term without eligibility of release for 25 years. The court stated "It is further ordered: [] the Defendant will be required to do mandatory community supervision sentence - one day for every seven days sentenced to, for a total of 3 years, 7 months." Appendix G, p. 3. (emphasis mine)

For the first ten years of incarceration, the Arizona Department of Correction notified Mr. Crago that he was serving a 25 year "flat" sentence with a sentence expiration date of 2019 followed by 3 years 7 months of community supervision. Appendix H.

In 2011, the Arizona Court of Appeal ruled that "the imposition of community supervision was contrary to law" and "had no bearing on Crago's life sentence." Appendix E ¶¶ 9, 11.

In 2014, the Ninth Circuit Court of Appeal ruled that

"the 2011 state court decisions effectively amended the petitioner's judgment of conviction by removing the community supervision provision from [Crago's] sentence." Appendix F, p.1.

In 2020, the Arizona Superior Court ruled that Crago's sentence of life with release to community supervision after 25 years was "illegally lenient." Because the state did not appeal the sentence, under Arizona law the sentence became final and binding, the state courts did not have jurisdiction over the subject matter in 2011 to correct the sentence to a harsher term of imprisonment. The court ordered the state to release Crago from prison. Appendix B, p.6 and Appendix C, p.1.

In 2021, the Arizona Court of Appeal reversed the 2020 Superior Court decision. The appellate court held that the community supervision portion of the sentence had no bearing on the life sentence, and the 2020 decision by the Superior Court was precluded. Exhibit D.

In 2022, the Arizona Court of Appeal further ruled that it was not bound by the 2014 Ninth Circuit decision, the 2020 Superior Court's decision saying the Arizona Court of Appeal,

did not have subject matter jurisdiction in 2011 to amend Crago's sentence was precluded, and Crago's "sentence expiration date was and always has been the end of his life." Appendix A, p.4, n.2.

Crago filed a petition for review to the Arizona Supreme Court, the Arizona Supreme Court issued a order on February 7, 2025 declining to consider the petition. Appendix I, p.1.

Crago filed a federal writ of habeas corpus to the U.S. District Court in Arizona. The District Court held that the federal court does not have jurisdiction to hear a claim (that the state did not have subject matter jurisdiction to amend Crago's sentence to a harsher term of imprisonment) in a second in time habeas petition without permission from the 9th circuit. Appendix J and K.

The 9th Circuite denied a certificate of appealability holding essentially that a federal court does not have jurisdiction in a successive habeas petition to review whether a state court had subject matter jurisdiction to amend Crago's sentence to a harsher term of imprisonment. Appendix L, p.1.

REASONS FOR GRANTING THE PETITION

This case raises significant questions regarding the limits of state court authority and the procedural safe guards surrounding criminal sentencing.

Conflict in State Court Decisions:

The varying interpretations by different courts within the state of jurisdictional authority in sentencing amendments creates a conflict that requires resolution.

Significance to Federal Law:

This case implicates fundamental principles of due process and the authority of state courts, raising questions relevant to federal jurisdictional standards.

In the present case the state court amended Mr. Craigo's sentence years after the original sentence was issued without a timely appeal by the state. This action was beyond the court's subject matter jurisdiction and thus the amended sentence is invalid. See *State v. Dawson*, 164 Ariz. 278 (Ariz. 1990).

The Federal court has a duty to correct errors involving judgments issued by state courts lacking subject matter jurisdiction. See *U.S. v. Cotton*, 535 U.S. 625, 630 (2002) and *Albino v. Baca*, 747 F.3d 1162, 1170 [3] (9th Cir. 2014).

In light of these precedents, the federal court must correct the error made by the Arizona state courts in amending Mr. Crago's sentence without subject matter jurisdiction. The 2020 Superior Court ruling, which reinstated the original sentence, should be upheld, and the 2021/2022 Arizona Court of Appeals rulings, which precluded the reinstatement of the lenient sentence, should be overturned.

CONCLUSION

In conclusion, the Arizona state courts lacked subject matter jurisdiction to amend Mr. Crago's sentence, and the Federal court has the duty to correct this error. Therefore, we respectfully request that the petition for a writ of certiorari should be granted and this court uphold the 2020 Superior court ruling and overturn the 2021 and 2022 Arizona Court of Appeals rulings.

Respectfully Submitted,

Earl F. Crago

Earl F. Crago, pro per

Date: February 24, 2025