

No. 23-15962

IN THE
SUPREME COURT OF THE UNITED STATES

LARRY DONNELL DUNLAP 124173 — PETITIONER
(Your Name)

VS.

ARIZONA ATTORNEY GENERAL et al. — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

☒ Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

United States District Court of ARIZONA
United States Court of Appeals for the Ninth Circuit Court

☐ Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

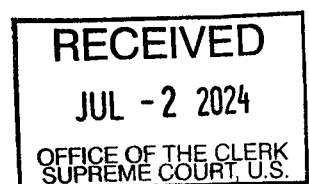
☐ Petitioner's affidavit or declaration in support of this motion is attached hereto.

☐ Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

☐ The appointment was made under the following provision of law: _____
_____, or

☐ a copy of the order of appointment is appended.

Larry Donnell Dunlap
(Signature)



**AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, Larry Donnell Dunlap^{12/173}, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Self-employment	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Income from real property (such as rental income)	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Interest and dividends	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Gifts	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Alimony	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Child Support	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Retirement (such as social security, pensions, annuities, insurance)	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Disability (such as social security, insurance payments)	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Unemployment payments	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Public-assistance (such as welfare)	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Other (specify): _____	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Total monthly income:	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
<u>NONE</u>	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
<u>N/A</u>	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____

4. How much cash do you and your spouse have? \$ _____
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
<u>N/A</u>	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☐ Home
Value N/A

☐ Other real estate
Value N/A

☐ Motor Vehicle #1
Year, make & model N/A
Value _____

☐ Motor Vehicle #2
Year, make & model N/A
Value _____

☐ Other assets
Description N/A
Value _____

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
N/A	\$	\$
	\$	\$
	\$	\$

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name	Relationship	Age
N/A		

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ 0	\$ N/A
Are real estate taxes included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Is property insurance included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ 0	\$ N/A
Home maintenance (repairs and upkeep)	\$ 0	\$ N/A
Food	\$ 0	\$ N/A
Clothing	\$ 0	\$ N/A
Laundry and dry-cleaning	\$ 0	\$ N/A
Medical and dental expenses	\$ 0	\$ N/A

	You	Your spouse
Transportation (not including motor vehicle payments)	\$ <u>0</u>	\$ <u>N/A</u>
Recreation, entertainment, newspapers, magazines, etc.	\$ <u>0</u>	\$ <u>N/A</u>
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$ <u>0</u>	\$ <u>N/A</u>
Life	\$ <u>0</u>	\$ <u>N/A</u>
Health	\$ <u>0</u>	\$ <u>N/A</u>
Motor Vehicle	\$ <u>0</u>	\$ <u>N/A</u>
Other: _____	\$ <u>0</u>	\$ <u>N/A</u>
Taxes (not deducted from wages or included in mortgage payments)		
(specify): _____	\$ <u>0</u>	\$ <u>N/A</u>
Installment payments		
Motor Vehicle	\$ <u>0</u>	\$ <u>N/A</u>
Credit card(s)	\$ <u>0</u>	\$ <u>N/A</u>
Department store(s)	\$ <u>0</u>	\$ <u>N/A</u>
Other: _____	\$ <u>0</u>	\$ <u>N/A</u>
Alimony, maintenance, and support paid to others	\$ <u>0</u>	\$ <u>N/A</u>
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ <u>0</u>	\$ <u>N/A</u>
Other (specify): _____	\$ <u>0</u>	\$ <u>N/A</u>
Total monthly expenses:	\$ <u>0</u>	\$ <u>N/A</u>

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes

☒ No

If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☒ No

If yes, how much? _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes

☒ No

If yes, how much? _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 4/20, 2024


(Signature)

No. 23-15962

IN THE
SUPREME COURT OF THE UNITED STATES

LARRY DONNELL DUNLAP 124173 — 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 Court
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

LARRY DONNELL DUNLAP 124173
(Your Name)

ASPC Lewis Complex P O BOX 70 Barchey Red unit
(Address)

Buckeye Arizona 85326
(City, State, Zip Code)

(623) 386-6160
(Phone Number)

QUESTION(S) PRESENTED

1. Did petitioner Exhaust state Remedies?
2. Did petitioner commit Procedural Default?
3. Did Petitioner Overcome the Procedural Default?
4. Did the Court Abuse its discretion in this case?
5. CAN petitioner statutory Tolling of the Limitation Period is petitioner relief in this case?
6. CAN Petitioner Equitable Tolling of the Limitation Period is petitioner relief in this case?
7. WAS petitioner 14th Amendment Rights to the Federal Constitutional Violated in this case?

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

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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Holland v Florida, 560 US 631, 645 (2010)	5
Miles v Prunty, 187 F.3d 1104, 1107 (9th Cir. 1999)	5
Pace v Diguglielmo, 544 U.S. 408, 418 (2005)	5
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STATE v Tarango, 914 P.2d 1304 (Ariz. 1996)	5

STATUTES AND RULES

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 August 17 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: December 4 2023, and a copy of the order denying rehearing appears at Appendix C.

☐ 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 November 8 2021.
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

14th Amendment Rights Federal Constitutional due process

STATEMENT OF THE CASE

On November 7, 2020, petitioner filed his Notice of PCR in state v Dunlap NO. CR 52543 Pima County Superior Court. petitioner claims that his Notice was untimely, but he claims that it was not his fault because of new law. state v Tarango 914 P.2d 1300 (Ariz. 1996) Petitioner claims that his sentence that was imposed by the court was not authorized by law. On November 11, 2020, Petitioner filed his prose PCR petition. Petitioner claims that he was entitled to relief pursuant to state v Tarango, 914 P.2d 1304 (Ariz. 1996). Petitioner claims that he found out through his legal research that he has relief under state v Tarango, 914 P.2d 1304 (Ariz. 1996). Petitioner claims that he had a parole hearing in 1998 and he was denied parole, because the parole board did not follow the finding in state v Tarango and he was denied parole in April of 1996 and that petitioner was eligible for Tarango relief. Petitioner claims that the Board of Parole has failed to re-certify him since 1998 which has violated petitioner's 14th Amendment right of due process of his 8th Amendment rights against cruel and usual punishment and equal protection. On February 1, 2021 the Rule 32 court concluded that petitioner did not raise this issue in a timely manner and that petitioner failed to provide the court with sufficient reasons why petitioner did not raise the claim earlier. Petitioner claims that the court abuse his discretion in this case. On March 15, 2021 Petitioner filed his petition for review seeking appellate review of the denial of his PCR, and in petitioner appeal he claims that state v Tarango is applicable to his sentencing and represents a change of law. Petitioner further claims that the trial court judge continued to show bias against anything that petitioner files in court. On May 26, 2021, the Arizona court of Appeals granted review, but denied relief. On June 11, 2021, petitioner filed his petition for review with the Arizona Supreme Court. On November 8, 2021 the Arizona Supreme Court denied petitioner's petition for review. On December 28, 2021, the Arizona court of Appeals issued its state mandate in this case. On August 3, 2021 petitioner filed his petition under 28 U.S.C. 2254 for a writ of habeas corpus claiming that ADOC owes him 64 years in back time due to their failure to re-certify him every six months for parole credit from December of 1996 to 2021. On October 4, 2021 the state filed their answer.

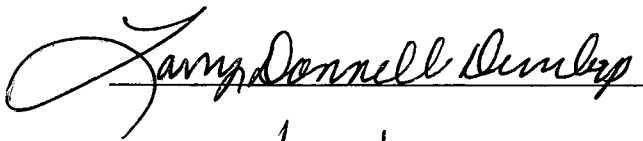
REASONS FOR GRANTING THE PETITION

Petitioner Claims the Court must consider whether Petitioner's Petition is barred by the statute of limitation, when petitioner gave reason when he discovered the relief under Tarango in this case. Petitioner Claims that in this case, that the limitation period is tolled during the time when petitioner in this case properly filed his application for state post-conviction review. In this case on petitioner Claims that the Court could not and was unable to calculate when the statute of limitation began to run and whether to deem petitioner's prior PCR petitions properly filed in this case. Because of the decision of the District Court unable to calculate when the statute of limitation began to run and whether to deem petitioner's prior PCR Petition properly filed in this case. Petitioner Claims that The Supreme Court of the United States has held that 224(d) is subject to equitable tolling in appropriate cases. *Holland v Florida*, 560 US 631, 645 (2010). The Ninth Circuit Court of Appeals will permit equitable tolling of AEDPA's limitations period only if extraordinary circumstances beyond a prisoners control make it impossible to file a petition on time. *Miles v Prunty* 187 F.3d 1104, 1107 (9th Cir. 1999). Petitioner argued that he had been pursuing his rights diligently and that he did not have access to case law nor could he pay to have case law sent to him. *Pace v DiGuglielmo*, 544 U.S. 408, 418 (2005); see also *Holland*, 260 U.S. at 649 (quoting *Pace*). Petitioner Claims that the Court was unable to accurately determine the statutory tolling in this case and the Court ruled that petitioner was granted equitably toll the statute of limitation for petitioner habeas in order to consider the petition. Petitioner Claims that the Court ruling showed that petitioner had exhausted his state remedies and that petitioner had not procedural Default in this case. Petitioner Claims that his 14th Amendment Rights to the Federal Constitutional has been violated by the Respondents in this case and that petitioner ask the Court to remand this case back to the Arima County Superior Court for a evidentiary hearing.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 4/20/2024

No. NO 23-15962

IN THE
SUPREME COURT OF THE UNITED STATES

LARRY DONNELL DUNLAP¹²⁴¹⁷³ — PETITIONER
(Your Name)

VS.

Arizona Attorney General et al — RESPONDENT(S)

PROOF OF SERVICE

I, LARRY DONNELL DUNLAP¹²⁴¹⁷³, do swear or declare that on this date, 4/20, 2024, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI 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 prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Daniel P. Schaack Assistant Attorney General
2005 N. Central Avenue
Phoenix, AZ 85004-1592

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 4/20, 2024

Larry Donnell Dunlap
(Signature)

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

DEC 4 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

LARRY DONNELL DUNLAP,

Petitioner-Appellant,

v.

RYAN THORNELL; ATTORNEY
GENERAL FOR THE STATE OF
ARIZONA,

Respondents-Appellees.

No. 23-15962

D.C. No. 4:21-cv-00314-RCC
District of Arizona,
Tucson

ORDER

Before: PAEZ and HURWITZ, Circuit Judges.

Appellant's motion for reconsideration (Docket Entry No. 15) is denied. *See*
9th Cir. R. 27-10.

No further filings will be entertained in this closed case.



Office of the Clerk
United States Court of Appeals for the Ninth Circuit
Post Office Box 193939
San Francisco, California 94119-3939
415-355-8000

Molly C. Dwyer
Clerk of Court

July 06, 2023

No.: 23-15962
D.C. No.: 4:21-cv-00314-RCC
Short Title: Larry Dunlap v. David Shinn, et al

Dear Appellant

The Clerk's Office of the United States Court of Appeals for the Ninth Circuit has received a copy of your notice of appeal and/or request for a certificate of appealability.

A briefing schedule will not be set until the district court and, if necessary, this court determine whether a certificate of appealability should issue.

Absent an emergency, all subsequent filings in this matter will be stayed pending the district court's determination on the certificate of appealability.

All subsequent letters and requests for information regarding this matter will be added to your file to be considered at the same time the cause is brought before the court.

The U.S. Court of Appeals docket number shown above has been assigned to this case. You must indicate this Court of Appeals docket number whenever you communicate with this court regarding this case. Motions filed along with the notice of appeal in the district court are not automatically transferred to this court for filing. Any motions seeking relief from this court must be separately filed in this court's docket.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

NOV 21 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

LARRY DONNELL DUNLAP,

Petitioner-Appellant,

v.

RYAN THORNELL; ATTORNEY
GENERAL FOR THE STATE OF
ARIZONA,

Respondents-Appellees.

No. 23-15962

D.C. No. 4:21-cv-00314-RCC
District of Arizona,
Tucson

ORDER

Before: TASHIMA and SILVERMAN, Circuit Judges.

Appellant's opening brief (Docket Entry No. 5) is construed as a request for a certificate of appealability. So construed, the request is denied because appellant has not shown that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also* 28 U.S.C. § 2253(c)(2); *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012).

Any pending motions are denied as moot.

DENIED.

**Additional material
from this filing is
available in the
Clerk's Office.**