

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ANDY BUXTON — PETITIONER
(Your Name)

vs.
SCI-MERCER and THE ATTORNEY GENERAL OF THE STATE OF
PENNSYLVANIA

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ANDY BUXTON
(Your Name)

MS#1885 801 BUTLER PIKE
(Address)

MERCER, PA 16137
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

WHETHER THE FEDERAL COURT SUSTAINS A PRISONER'S ATTACK ON A CONVICTION OR SENTENCE AFTER THE SENTENCE HAS BEEN SERVED? SHOULD THE DISTRICT COURT HAVE ISSUED THE APPROPRIATE RELIEF OF AN INJUNCTIVE STYLE ORDER ADDRESSING THE INJURY OR THE WRONG SUCH AS ORDERING THE PETITIONER'S CONVICTION BE EXPUNGED UNLESS THE STATE GAVE HIM A NEW TRIAL? (**SIBRON V. NEW YORK, 392 U.S. 40, 55 (1968)**) (**A.M. V. BUTLER 360 F.3D 787.802 (7TH CIR. 2004)**)

WHETHER THE DISTRICT COURT SHOULD HAVE CONSTRUED PETITIONER'S PETITION AS A CHALLENGE TO HIS PRESENT CONVICTION BEING THAT HE IS IN PROPRIA PERSONAM?

DUE TO PETITIONER'S COLLATERAL CONSEQUENCES OF HIS CONVICTION BUT HIS INABILITY TO VOTE, ENGAGE IN CERTAIN EMPLOYMENT, HOLD PUBLIC OFFICE, OR SERVE AS A JUROR. AFTER EXHAUSTING HIS REMEDIES WHICH TOOK UNTIL MIDDLE 2016 ARE SUFFICIENT TO RENDER THE INDIVIDUAL "IN CUSTODY" REQUIREMENTS? (**MALENG V. COOK, 490 U.S. 488, 490-92 (1989)**)

DUE TO THE FACT THIS CASE BIRCHFIELD V. N. DAKOTA, 136 S. CT, 2160 ALSO § 2254 RULE 2(b) THIS CONVICTION WAS NOT ONLY USED TO CONVICT PETITIONER ON PRESENT CONVICTION BUT ALSO HAD EFFECT ON FUTURE DETENTION DID THE DISTRICT COURT HAVE JURISDICTION TO ENTERTAIN PETITIONER'S CLAIM?

DUE TO THE SERIOUS SIXTH AMENDMENT VIOLATIONS IN REGARDS OF THIS CONVICTION LEADING TO THE BREAKDOWN IN THE STATE COURT PROCESS IN WHICH HE WAS IN CUSTODY DO THIS COURT HAVE JURISDICTION TO CORRECT THIS INFIRMITY?

WHETHER UNDER THE CIRCUMSTANCES PRESENTED THE PETITIONER IN THIS CASE WAS "IN CUSTODY" UNDER HIS 2013 STATE SENTENCES AT THE TIME HE FILED HIS PETITION, AND SINCE HIS PETITION MAY BE READ AS A CHALLENGE TO THAT SENTENCES AS ENHANCED BY THIS INVALID DUI CONVICTION, IS THE "IN CUSTODY" REQUIREMENT FOR FEDERAL HABEAS CORPUS JURISDICTION SATISFIED? (**LOWERY V. YOUNG, 87 F.2D 1309, 1311 (7TH CIR. 1989)**) (**YOUNG V. VAUGHN, 83 F.3D 72 (3RD CIR. 1996)**)

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:

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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 C.A.NO.17-2895; 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 "B" to the petition and is

☒ reported at CASE#2:17-CV-00062-DSC-MPK DOC#17,15; 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 _____ 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 12-12-2017.

☐ 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: 1-10-2018, 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 _____.
A copy of that decision appears at Appendix _____.

☐ 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

The Fifth Amendment to the United States Constitution provides in relevant part;"No person shall be held to answer for an infamous crime,nor shall he be compelled in any criminal case to be a witness against himself,nor be deprived of life, liberty,without due process of law."

The Sixth Amendment to the United States Constitution provides."In all criminal prosecutions, the accused shall be informed of the nature and cause of the accusation ; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor,and have the Assistance of counsel for his defense."

The Fourteenth Amendment to the constitution of the United States:"No State shall make,enforce any law which shall abridge the privilegdes or immunity of a citizen of the United States,nor shall a state deprive any person of life,liberty,without due process of law;nor deny any person within jurisdiction the equal protection of the laws."

The Cornerstone of Our American legal System rests on this recognition of the Constitution as the Supreme law of the Land,and the paramount duty of the Federal Judiciary is to uphold that law. Thus,therein,We shall invoke Petitioner's behalf ,Nunc Pro Tunc,the protections,fundamental rights,and entitlements due to him,Further ,when we find that a breakdown in the States Judicial System occurred,or We need to prevent a miscarriage of justice from occurring; We must act under Our Supreme Powers to reinstate rights unknowingly lost,Must rehabilitate or correct Constitutional Violations found to exist,after a State/Federal Government Official repeatedly failed to meet Constitutionally Mandated Requiremnts. Instantly,it becomes the solemn duty of this Court to assure compliance with the Constitution. Pursuant to Article VII." The Right to Jury trial." Also see Article VI.Sec.2."This Constitution and the Law of the Land,sic. . . shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby,any thing on the Constitution,sic. . ."

STATEMENT OF THE CASE

The petitioner in this case filed a 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody on 1-13-17. Petitioner was seeking to attack his Driving Under the Influence("DUI") conviction in which his Sixth Amendment was totally violated based on the **Gideon** Rule and not only used to convict him in the current sentence but also was used to enhance the sentence. Also due to the collateral consequences and inability to vote, or serve as juror, engage in certain employment, and hold public office all together was sufficient to render "in custody" requirement. In which the district court after de novo review of the report and recommendation as well as the objection and the record of this case dismissed for lack of subject matter jurisdiction and denied certificate of appealability on 8-16-17.

Petitioner timely filed an appeal with the third circuit appeals court. In which was denied on 12-12-17. Due to the meritorious claims petitioner raised these claims and asked for a "SUR PETITION FOR REHEARING" which was denied on 1-10-18.

REASONS FOR GRANTING THE PETITION

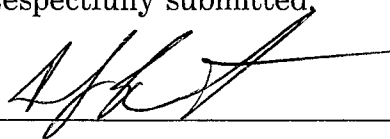
Based on *Maleng v. Cook* this court reversed the District Courts judgement the United States Court of Appeals for the Ninth Circuit held that the individual was "in custody", for purposes of such a challenge to the expired conviction, satisfying the requirement of 28 U.S.C.S § 2241(c)(3). On Certiorari, the United States Supreme Court affirmed. In petitioner's case in fact demonstrates that "collateral consequences" of the conviction still exists to show that this case or controversy continues and that a favorable decision would redress the injury or wrong. This court should permit the lower courts to correct the constitutional infirmity. (*Fieldman v. Perrill*, 902 F.2d 1445, 1449-50 (9th Cir. 1990)) (*Young v. Vaughn*, 83 F.3d 72 (3rd Cir. 1996)) (*Cook v. Maleng*, 847 F.2d 618-19 (9th Cir. 1998)) (*Gamble v. Parsons*, 898 F.2d 117 (10th Cir.)) (*Brock v. Weston*, 31 F.3d 887 (9th Cir. 1991))

Based on petitioner's substantial showing of denial of federal rights issuing a certificate of probable cause should have been granted. When construed with the deference owing to a pro se litigant **Therefore** satisfied the "In custody" requirement.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: FEBRUARY 5TH, 2018