

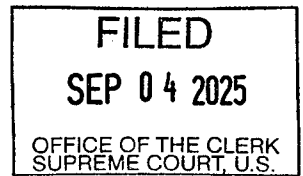
25-5868

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

KENNETH KIRBY — PETITIONER
(Your Name)



vs.

JUDGE KRISTIN LEMARE ET AL. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE SUPERIOR COURT, MARICOPA COUNTY
FOR THE STATE OF ARIZONA

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

PETITION FOR WRIT OF CERTIORARI

KENNETH KIRBY
(Your Name)

ARIZONA STATE PRISON - LEWIS COMPLEX
BARCLAY UNIT, P.O. BOX 70
(Address)

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

N/A
(Phone Number)

QUESTIONS PRESENTED

- 1) DOES THE JUDGE'S ACTIONS AND DECISIONS DEMONSTRATE BIASNESS IN FAVOR OF THE PROSECUTION RESULT TO FUNDAMENTAL UNFAIRNESS UNDER DUE PROCESS?
- 2) DID THIS MATTER'S PROCEEDINGS DEMONSTRATE ANY KIND OF HYBRID REPRESENTATION?
- 3) DOES DNA TESTING IN ANY WAY INTERFERE WITH APPEAL PROCEDURES?
- 4) WAS IT ABUSE OF DISCRETION TO STAY THE POST-TRIAL MATTERS?
- 5) PETITIONER IN ITS POST-TRIAL MOTIONS PRESENTED MERITORIOUS CLAIMS OF FALSE WITNESSES, FALSE EVIDENCE, CONSTITUTION VIOLATIONS AND AGGREGIOUS PROSECUTOR'S MISCONDUCT ALSO PETITIONER PRESENTED A BRADY CLAIM OF DNA TESTING OF FALSE VICTIM. DOES THE ABOVE CLAIMS RESULT TO IRREPARABLE INJURY TO THE PETITIONER DUE TO THE STAY?
- 6) IS IT PROPER TO STAY TESTING OF DNA EVIDENCE THAT WERE NEVER TESTED

QUESTIONS PRESENTED

BUT THE EXPERTS OF THE STATE TESTIFIED
THEY WERE COLLECTED AND PROVIDED
DETAILS ABOUT THEM PREJUDICING THE
PETITIONER?

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:

PHILIP DANIEL CARROW - STATE COUNSEL
MARICOPA COUNTY
STATE OF ARIZONA

RELATED CASES

STATE V. KENNETH KIRWI, NO. 1 CA-CR 24-0622,
ARIZONA COURT OF APPEAL DIVISION 1,
MARICOPA COUNTY, PETITION PENDING TO
BE FILED - DIRECT APPEAL.

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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 August 1971
A copy of that decision appears at Appendix C. 2025

☐ 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
DUE PROCESS WITHIN MEANING OF PROVISIONS OF
14TH AMENDMENT PROVIDES THAT NO STATE SHALL
DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY
WITHOUT DUE PROCESS OF LAW, WEST COAST HOTEL
CO. V. PARRISH, 300 U.S. 379 (1937). DEPRIVATION
OF PHYSICAL LIBERTY INVOLVES THE 14TH
AMENDMENT VIOLATION. DUE PROCESS ALSO
ENSURES DISCLOSURE OF EXCULPATORY OR
IMPEACHING EVIDENCE WHEN REQUESTED.
THE ABOVE CONSTITUTE IRREPARABLE INJURY

6TH AMENDMENT ENSURES THE ACCUSED HAS
A RIGHT TO COUNSEL AND TO WAIVER. THIS
INCLUDES THE RIGHT TO MANAGE HIS OWN
DEFENSE BY ASKING COUNSEL FOR
ASSISTANCE IN HIS CRITICAL STAGE OF
SENTENCING; FARETA V. CALIFORNIA, 422 U.S.
806, 821 (1975).

STATEMENT OF THE CASE

THE PETITIONER FILED THE FOLLOWING POST-TRIAL MOTIONS THAT LED TO THIS MATTER.

(i) MOTION FOR APPOINTMENT OF INVESTIGATOR AND DNA EXPERT FILED 12/05/2024

(ii) MOTION FOR POST-CONVICTION DNA TESTING FILED 12/12/2024.

(iii) SUPPLEMENT MOTION TO VACATE JUDGMENT FILED 01/29/2025. THE INITIAL (ORIGINAL) MOTION HAS BEEN ADDRESSED IN A DIFFERENT SETTING.

IN THIS MATTER THE COURT AT CERTAIN INSTANCES CONSIDERED THE PETITIONER PRO SE AND OTHER TIMES CONSIDERED PETITIONER REPRESENTED BY COUNSEL. THE CONTENTIOUS ISSUE IS THAT IT IS ALLEGED THE PETITIONER WAS REPRESENTED BY COUNSEL WHEN HE FILED THE ABOVE MOTIONS AND THEREFORE SHOULD BE STRICKEN OFF.

THE STATE FILED A MOTION DATED 01/23/25 (EXHIBIT 1) TO STRIKE OFF PETITIONER'S MOTIONS (i) AND (ii) ABOVE, AND THE COURT GRANTED RELIEF DATED 01/27/2025 (EXHIBIT 2). THE STATE'S REASONING WAS THAT PETITIONER WAS REPRESENTED BY COUNSEL.

THE COURT PROCEEDED ON ITS OWN TO

STATEMENT OF THE CASE

REJECT PETITIONER'S SUPPLEMENT MOTION TO VACATE JUDGMENT DATED 02/05/2025 (EXHIBIT 3), WHEN THE COURT HAD PREVIOUSLY GRANTED THE PETITIONER TO EXCEED PAGES DATED 01/10/2025 (EXHIBIT 4).

THE COURT RECOGNIZED THE PETITIONER AS PRO SE UNDER 2 INSTANCES; (i) ON THE MINUTE ENTRY DATED 01/10/25 (EXHIBIT 4) IT STATES "THE COURT IS IN RECEIPT OF THE DEFENDANT'S PRO PER MOTION" AND THE MINUTE ENTRY HAD NO DEFENSE COUNSEL'S NAME IN IT. (ii) THE MINUTE ENTRY DATED 01/21/2025 ADDRESSING PETITIONER AS PRO SE, PETITIONER'S NAME IN THE MINUTE ENTRY IN LIEU OF A DEFENSE COUNSEL (EXHIBIT 5).

ON 09/24/2024 COURT PROCEEDING PETITIONER WAS PRO SE AND COUNSEL TOWNSEND APPEARED AS ADVISORY COUNSEL, THE PETITIONER REQUESTED COUNSEL TOWNSEND TO REPRESENT HIM IN THE CRITICAL STAGE OF SENTENCING ONLY (EXHIBIT 6 P 3-4). OTHER CONTRACT DOCUMENTS OF TOWNSEND ATTACHED (EXHIBIT 7 AND 8) ALSO SUPPORTS THE ASSERTION

STATEMENT OF THE CASE

THAT TOWNSEND WAS HIRED SPECIFICALLY FOR SENTENCING ONLY.

AFTER SENTENCING TOWNSEND WITHDREW AS COUNSEL ON 11/05/2024 (EXHIBIT 9) AS PREVIOUSLY IMPLIED

THE PETITIONER FILED MOTIONS FOR RECONSIDERATION AND MOTIONS FOR FACT FINDING AND LAWS THAT LED TO THE COURT REFERRING THE ABOVE MOTIONS (i), (ii) AND (iii). INSTEAD THE COURT MADE AN ARBITRARY AND CAPRICIOUS DECISION TO STAY THE MATTER UNTIL THE APPEAL IS FINALIZED (APPENDIX A)

REASONS FOR GRANTING THE PETITION

THE JUDGE DEMONSTRATED BIASNESS IN ITS ACTIONS AND DECISIONS PREJUDICING THE PETITIONER. WHEN THE STATE FILED ITS MOTION DATED 01/23/25 (EXHIBIT 1) THE STATE VIOLATED RULE 1.7(C) OF THE ARIZ. R. CRIM. P. BY NOT SERVING THE PETITIONER A COPY OF THE MOTION AS DIRECTED BY COURT (EXHIBIT 5). THE JUDGE HASTILY DECIDED ON THE MOTION WITHIN 5 DAYS NOT GIVING THE PETITIONER A CHANCE TO RESPOND AS DIRECTED BY THE SAME COURT (EXHIBIT 5). THE COURT EARLIER ACKNOWLEDGED PETITIONER AS PRO SE AND ALLOWED HIM TO FILE A SUPPLEMENT MOTION SEE EXHIBIT 4, THEN THE COURT ALTERED ITS DECISION IN ITS MINUTE ENTRY DATED 02/05/25 SEE EXHIBIT 3 REJECTING THE PETITIONER AS PRO SE.

THE PETITIONER WAS PREJUDICED BECAUSE THE COURT ACTED ON HIS POST-TRIAL MOTIONS AFTER 60 DAYS OF THEIR FILING SO AS TO SPECIFICALLY DENY PETITIONER ANOTHER CHANCE TO REFILE MOTION TO VACATE JUDGMENT WHICH HAS A STRICT TIME LIMIT OF 60 DAYS AFTER SENTENCING RULE 24.2(b) OF THE ARIZ. R. CRIM. P. ALSO WHEN TOWNSEND

REASONS FOR GRANTING THE PETITION.

TOWNSEND WITHDREW AS COUNSEL ON 11/5/24
IT TOOK OVER 90 DAYS FOR THE JUDGE TO
ACKNOWLEDGE HIS WITHDRAWAL AS COUNSEL.

FROM THE ABOVE JUDGE'S ACTIONS AND
DECISIONS IT IS EVIDENT THE JUDGE HAS A
PERSONAL INTEREST IN THE OUTCOME OF THE
POST-TRIAL PROCEEDINGS. THE JUDGE'S ACTIONS
AND DECISIONS WERE SKEWED TOWARDS
FAVORING THE STATE AND HAS BECOME PART
OF THE ACCUSATORY PROCESS VIOLATING DUE
PROCESS CLAUSE OF THE 14TH AMENDMENT;
BRACY V. GRANTLEY, 520 U.S. 899, 904, 117 S.Ct.
1793, 138 L.Ed. 2d 97 (1997). PETITIONER NEED
NOT PROVE ACTUAL BIAS TO ESTABLISH DUE
PROCESS VIOLATION, JUST AN INTOLERABLE RISK
OF BIAS; SEE CAPERTON V. AS. MASSEY COAL
CO., 556 U.S. 868, 881, 129 S.Ct. 2252, 173
L.Ed. 2d 1208 (2009) AND HURLED V. RYAN,
752 F.3d 768 (2014).

IN THIS MATTER THE PETITIONER INSIST
THAT THIS WAS NOT A HYBRID REPRESENTATION.
PARTLY THE PETITIONER REPRESENTS HIMSELF
AND PARTLY BY TOWNSEND SHOULD BE
CONSIDERED HYBRID REPRESENTATION BUT

REASONS FOR GRANTING THE PETITION

TESTING DOES NOT IN ANY WAY INTERFERE WITH DIRECT APPEAL PROCESS.

THE COURT ABUSED ITS DISCRETION IN ISSUING A STAY STATING TO ALLOW FINALIZATION OF THE APPEAL THE TRIAL COURT DID NOT STAY THE UNDERLYING MOTIONS (i), (ii) AND (iii) BUT THE PETITIONER'S MOTIONS REQUESTING RECONSIDERATION AND FACT FINDING AND LAW, THIS WAS ABUSE OF DISCRETION.

THE PETITIONER IS PREJUDICED BECAUSE THE UNDERLYING MATTER ARE STILL STRIKEN OFF HENCE WILL TAKE MORE TIME TO ADDRESS AND CHALLENGE THE MATTER. A STAY IS ISSUED WHEN THE PETITIONER'S BENEFITS ARE PRESERVED. STATUS QUO SHOULD HAVE BEEN PRESERVED IN THIS CASE REVERSE ITS DECISION OF STRIKING OFF MOTIONS AND ISSUING A STAY ONLY WITH MERIT; REED V. RHODES, 472 F.Supp. 603, 1979 U.S. Dist. LEXIS 12430 (1979).

THE STAY WITH REASON BEING TO ALLOW APPEAL PROCESS IS WITHOUT MERIT. IN THIS CASE THE COURT OF APPEALS IS THE ONE WHO

REASONS FOR GRANTING THE PETITION

PHOTOGRAPHS CONSEQUENTLY INVOLVE ACTING BY POLICE OFFICERS, AND THE VIDEO WITH PETITIONER IN IT IS A REFLECTOR OF THE PETITIONER USING ARTIFICIAL INTELLIGENCE THAT IS NOT A LIVE HUMAN BEING.

CLAIM OF JUDICIAL BIAS BY THE TRIAL JUDGE ALLOWING VIDEO OF INTERVIEW OF CHACON TO BE ADMITTED WHEN IT HAD THE PERSON~~X~~ BEING INTERVIEWED HIDE THEIR EYES AND MOUTH CONCEALED TO HIDE THEIR IDENTITY BECAUSE A FALSE VICTIM WITNESS TESTIFIED.

THE ABOVE CLAIMS HAS DEPRIVED THE PETITIONER OF HIS CONSTITUTIONAL RIGHTS CONSTITUTING IRREPARABLE INJURY; HERNANDEZ V. SESSIONS, 872 F.3d 976, 991 (9TH CIR. 2017).

DUE TO THE COLORABLE CLAIMS IN THIS MATTER, IF THIS COURT FINDS THE PETITIONER DEFAULTED ON THE RULES AND PROCEDURES OR REGULATIONS THE FUNDAMENTAL MISCARriage OF JUSTICE SHOULD EXCUSE THE DEFAULT; PICKENS V. SCHIRO, 2009 U.S. DIST. LEXIS 79114 (D. Ariz

SEPT. 3, 2009).

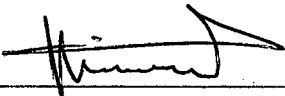
THE U.S. SUPREME COURT SHOULD THEREFORE GRANT THIS PETITION, AND THE PETITIONER REQUESTS THE FOLLOWING:

- (1) REVERSAL OF THE STAY ORDER
- (2) THE TRIAL COURT TO BE ORDERED TO UNSTRIKE THE FOLLOWING MOTIONS, MAKE A RULING ON THEM BECAUSE THE STATE HAS WAIVED THEIR OBJECTIONS
 - (a) MOTION FOR POST-CONVICTION DNA TESTING FILED 12/12/2024
 - (b) MOTION FOR APPOINTMENT OF INVESTIGATOR AND DNA EXPERT FILED 12/05/2024
 - (c) SUPPLEMENT MOTION TO VACATE JUDGMENT FILED 01/29/2025

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: AUGUST 26TH, 2025