

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 19-301

Judge:

Complainant:

ORDER

November 27, 2019

The Complainant alleged a superior court judge improperly denied his petition for post-conviction relief.

The role of the Commission on Judicial Conduct is to impartially determine whether a judicial officer has engaged in conduct that violates the Arizona Code of Judicial Conduct or Article 6.1 of the Arizona Constitution. There must be clear and convincing evidence of such a violation in order for the Commission to take disciplinary action against a judicial officer.

The Commission does not have jurisdiction to overturn, amend, or remand a judicial officer's legal rulings. The Commission reviewed all relevant available information and concluded there was not clear and convincing evidence of ethical misconduct in this matter. The complaint is therefore dismissed pursuant to Commission Rules 16(a) and 23(a).

Copies of this order were distributed to all appropriate persons on November 27, 2019.

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2019-301

In The Court of The state of Arizona

In And For The County of

State of Arizona,

Case No.

Plaintiff: Respondent,

Petitioner's Motion For Rehearing

vs

Defendant: Petitioner.

Assigned to the Honorable

COMES NOW Defendant: Petitioner

, in pro per, pursuant to Rule 32.9(a), Ariz. R. Crim. P., and hereby moves

this Court for rehearing on his Petition for Post-Conviction Relief and the court's Minute Ruling ("MR.") filed on

This Motion is further supported by the attached

written response by with

by

and Replies dated

"titled"

"and"

"both with attachments, [See MR. filed on

(See Attachments with Exhibits A through D)

Here, Petitioner argues that the Court's findings on the claims raised by him in this PCR petition are precluded by Rule 32.2(a)(1) because the claims were previously adjudicated against him in other post-conviction proceedings is an abuse of the trial court's discretion pursuant to State v. Seaton, 193 Ariz. 165, 127, 970 P.2d 937, 939 (App.1999); Rule 32.2(b) regarding claims 1 through 7 because those claims under Rule 32.1(d), (e), (f), (g), and (h) are exempt from preclusion based on Rule 32.2(b) and because he has asserted valid reasons for the impediments or failure to raise them previously. See 92

U.S.C. §§ 1988, 1986 civil rights conspiracy claim and A.R.S. § 13-2623. See also Murray v. Carrier, 477 U.S. 478, 488, 106 S.Ct. 2634, 2645, 91 L.Ed.2d 237 (1986); United States v. MacBain, 777 F.Supp. 1507 (N.D. Cal. 1991); United States v. Morrison, 499 U.S. 361, 161 S.Ct. 645, 66 L.Ed.2d 541 (1991) under Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2252, 50 L.Ed.2d 674 (1984); In the Matter of Petition to Amend R. 3 of the Arizona Rules of Professional Conduct, Ariz. Sup. Ct. No. R-11-0033; United States v. Jones, 525 U.S. 402, 132 S.Ct. 545, 151 L.Ed.2d 911 (2002). The court also found it has subject matter jurisdiction over the offenses for which Petitioner was convicted. See Article IV, § 14(4) of the Arizona Constitution (The court has subject matter jurisdiction in felony cases). However, former A.R.S. §§ 13-659, 13-607.01 and 13-702 in their entirety was recognized as unconstitutional in 2008 by State v. Head, an unreported Arizona case. Accordingly, these statutes were unconstitutional from their inception and therefore at the time of Petitioner's offenses or crimes charged in this case and the trial court never required subject matter jurisdiction. The Constitution of this state, section 30, art. II, provides that:

State v. Smith, 64 Ariz. 376, 378,

159 P.2d 205 (1945) (We must conclude that it is the settled law that in a criminal case the court requires no jurisdiction of the subject matter of an alleged offense unless the jurisdictional facts constituting the offense are set forth in the indictment, and that where the court is without jurisdiction of the subject matter a judgment of conviction will be reversed in this court even on plea of guilty, for jurisdiction cannot be conferred by consent.). See State v. Espinoza, 203 Ariz. 421, 576 P.2d 95 (App. 2012) (In analyzing whether a court has exceeded its jurisdiction, the court of Appeals is instructed to distinguish between those constitutional or statutory provisions that expressly set forth or limit the jurisdiction of a court from those that merely direct how that jurisdiction should be exercised. State v. Smith, 203 Ariz. at 378.

Here, as noted above, Petitioner moves to dismiss with prejudice each of the indictments in this case for crimes against because without a valid law there can be no crime charged under that law, and where there is no crime or offense there is no controversy or cause of action, and without a cause of action there can be no subject matter jurisdiction to try a person (see Petitioner) accused of violating said law. The court then has no power or right to hear and decide the allegations in this instance involving such invalid or nonexistent laws. [See H.R. filed on September 6, 2019 at 2].

These authorities and others make it clear that if there are no valid laws charged against Petitioner, there is nothing that can be deemed a crime, and without a crime there is no subject matter jurisdiction. Further, invalid or

unlawful laws makes the complaint fatally defective and insufficient, and without a valid complaint there is a lack of subject matter jurisdiction. Smith, supra; Espinosa, supra.

As noted above, Petitioner asserts that the former A.R.S. §§ 13-609, 13-601.01 and 13-702 were invalid from their inception and at the time of his offenses or crimes charged, and do not constitutionally exist now as they do not conform to certain constitutional prerequisites, and thus are no laws at all, which prevents subject matter jurisdiction to the above-named court illegally holding him imprisoned in this instance.

Further the Court found Petitioner did not demonstrate by clear and convincing evidence there were newly discovered material facts that he had at the time of trial, thus warranting a reversal of his convictions or a reduction in his sentence. Despite all the medical and psychological reports submitted, including but not limited to, the support by the

alleged and by affidavits of petitioner's which compare, in detail, his pre and post traumatic

provided by Petitioner was that he had in while in See Exhibit B attached, consisting of documented opinion of diagnosed by with supporting attachments, existing at the time of the offenses

changed in this case, see State v. Bilke, 196 Ariz. 51, 52-53, 781 P.2d 28, 29-30 (1989). The decision whether a colorable claim is presented and an evidentiary hearing is warranted is, to some extent, discretionary with the trial court; however,

outer limits to that discretion exist. State v. Adamson, 196 Ariz. 256, 265, 665 P.2d 972, 987 (1983). This case involves the issue of whether the subsequent and which existed at the

time of the offenses charged in this case, together with the other information submitted with the including but not limited to, the or new evidence present a colorable claim insofar as his convictions and

of this case is concerned would likely have altered the verdicts, findings, or sentences in this instance. See Exhibit A. [see M.R. filed on Sept. 6, 2019 at 2]. Thus, the court also found that Petitioner failed to raise a colorable

claim of actual innocence by clear and convincing evidence that would be sufficient to show that no reasonable fact finder would find him guilty of the offenses beyond a reasonable doubt. See Rule 32.1(h), Ariz. R. Crim. P.; State v. King,

153 Ariz. 119, 126, 763 P.2d 233, 246 (1988) (Exhibit C, Condensed Consultation Request by and

1) See Strickland v. Washington, 466 U.S. 668 at 692 (1984); Marshall, supra; see

Practitioner Consultation Report by Dr.

Medical consultation and examination

diagnosis concerning Petitioner's

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not alluded in the Court's

ruling nor the State's Response, see RT

at p.

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see Blakely v. Washington, 542 U.S. 296 (2004) (R.S.

(Exhibit C).

Here, due to the statewide significance of the trial court"

"see id. at

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necessary to this case under Rule 33(d),

Ariz. R. Crim. P. and A.R.S. §13-4240; Harvey v. Moran, 119 F. Supp. 2d 571, 582-84 (E.D. Va. 2000). In this case, Petitioner asserts that

he is the perfect candidate for post-conviction

contending that the results could provide exculpatory results,

which could be a basis for proving innocence. Petitioner concedes that the results could also be inconclusive or could

demonstrate his guilt. See also State v. Superior Court, 113 Ariz. Adv. Rep. 11, 12:161

1 Petitioner argues that the

remedy he seeks, performing the

does not require his release nor does it invalidate his outstanding criminal

judgment. Harvey v. Moran, 119 F. Supp. 2d at 582-84. See also Rule 32.1(h), Ariz. R. Crim. P. I see MR Filed on Sept 6, 2013 at

276 see Exhibits A & C).

Even if Petitioner had committed the offenses charged in this case, which he did not, the

empirical study

by

and clinical associate professor at the

began to study possible

links between

and criminal behavior. In collaboration with

clinical director of the

and

staff psychologist for the

their assessment in

exploring the connection between

and criminal behavior would likely alter the trial court verdicts, findings,

or sentences imposed in this case. Bilke, 162 Ariz. at 52-53, 781 P.2d at 29-30. see Exhibit C.

As noted above and following, Petitioner contends that the trial court abused its discretion and violated his state and federal constitutional rights to due process of law when it denied his request to an expert witness at county expense as an indigent defendant in his _____ to:

"See, e.g., People v. Kennedy, 502 Mich. 266 (2018), Michigan Supreme Court decision, holding that any law or suggestion under MCR 7.25 is applies to expert witnesses is exceeded.

Instead, the Court announced that Bea v. Oklahoma, 470 U.S. 67 (1985) now controls the analysis for the appointment of an expert witness for indigent criminal defendants.

In the U.S. Supreme Court details:

"_____ was denied an opportunity to present an adequate defense.

The Court reasoned that: _____ "is violated when,"

"Here, while Petitioner is not is not entitled to any and all assistance that he seeks without question,"

"the Court said, including but not limited to, Petitioner's _____ again, denied. See Rules 32.4 and 32.9(c), Ariz. R. Crim. P. See also State v. Bilke, 162 Ariz. at 52-53, 791 P.2d at 29-30; Rule 32.1(e)(1) and 32.2(b); State v. Jensen, 193 Ariz. at 107, 970 P.2d at 439.

The failure to challenge the unconstitutional statutes, as noted above and following, is one of many errors that trial, appellate, and Rule 32 counsel committed. Counsel's overall performance does not reflect active or capable advocacy at any stage. To the contrary, their conduct"

"Strickland, 486 U.S. at 696, this over-arching ineffectiveness was responsible for omitting the constitutional challenge(s) at trial. And, if necessary, it provides cause for this Court to reconsider the due process violations resulting from Arizona's and the Federal unconstitutional application of the _____ statutory scheme under former A.R.S. §§ 13-604, 13-604.01 and 13-702. See also Martinez v. Ryan, 132 S.Ct. 1309 (2012), Detrich v. Ryan, 40 Cr. 59001 (9th Cir. 2013); Cone v. Bell, 576 U.S. 449 (2009).

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COMPLAINT ON ITS WEBSITE.**

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REMAINDER OF THE
COMPLAINT IN THIS MATTER,
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COMMISSION ON JUDICIAL
CONDUCT AND REFERENCE
THE COMMISSION CASE
NUMBER IN YOUR REQUEST.**