IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

BRIAN ALLEN WILKINS, Petitioner, vs. HON. GARY DONAHOE, Criminal Presiding Judge of the Superior Court of the State of Arizona, In and For the County of Maricopa; HON. TERESA SANDERS, HON. EMMET RONAN, HON. DAVID K. UDALL, Judges of the Superior Court of the State of Arizona, In and For the County of Maricopa Respondents, And STATE OF ARIZONA EX REL. NEHA BHATIA, ELIZABETH ORTIZ, LYNN KRABBE, N. VICTOR COOK; Maricopa County Attorneys Respondents-Real Parties in Interest	Court of Appeals No. Maricopa County Superior Court Cause No. CR-2008-145947-001 SE

PETITION FOR SPECIAL ACTION

Brian A. Wilkins
PO Box 66
Tempe, AZ 85280
480-529-0964
brianw@operation-nation.com
In Propria Persona Petitioner

TABLE OF CONTENTS

Table of Authorities

CASES

STATUTES

RULES

OTHER

JURISDICTIONAL STATEMENT

The Arizona Court of Appeals, Division One, has territorial jurisdiction over the Superior Court of Maricopa County to hear the present Petition for Special Action, pursuant to *Rule 4(b), Rules of Procedure for Special Actions*. Petitioner has been deemed indigent by the Maricopa County Superior Court, and thus, exempted from docketing fees. Circumstances exist, *Id*. *Rule 7(b),* to bring this action in the appellate court because, *inter alios*, the highest judicial officer in the Maricopa County Superior Court's Criminal Division has failed in his legally mandated duty to perform a ministerial act which he has no discretion in the manner of its performance. See Hunt v. Schilling, 27 Ariz. 1, 229 Pac. 99(1924), rehearing denied, 27 Ariz. 235, 232, Pac. 554 (1925); *Board of Barber Examiners v. Walker,* 67 Ariz. 156, 192 P. 3d 723 (1948) citing Robert Lesher, 7 Ariz.L.Rev. 42 (1965). Special Action jurisdiction is appropriate when there is no equally plain, speedy and adequate remedy by appeal. *Rule 1(a), supra, Special Actions*.

Essentially, the present Petition for Special Action represents Petitioner's only real remedy to either compel the Superior Court to review his Petition for Post Conviction Relief, as it is lawfully mandated to do, or, preferably, for the Court of Appeals to review said PCR Petition *de novo*. Most of the claims

raised, along with the trial court's refusal to adjudicate, are purely matters of law and procedure. *See State v. Decenzo,* 199 Ariz. 355, ¶ 2, 18 P.3d 149, 150 (App. 2001)("[we] review a trial court's denial of post-conviction relief for an abuse of discretion); "An abuse of discretion includes an error of law." *State v. Rubiano,* 214 Ariz. 184, ¶ 5, 150 P.3d 271, 272 (App. 2007). "A question of law [is] subject to…de novo review. *See State v. Virgo,* 190 Ariz. 349, 352, 947 P.2d 923, 926 (App. 1997).

The trial court has refused to review and adjudicate the PCR petition filed by the Petitioner in Maricopa County Superior Court on July 13, 2009, in the time allowed, pursuant to *13 A.R.S. §§ 4231 & 4236*, *Ariz. R. Crim. P. 32, and Constitution of Arizona Art. 2 § 11*. Since there is no lower court ruling to review, regarding said PCR Petition, other than the July 2, 2009 order (attached) which acknowledged the Notice of PCR has been filed, and the March 30, 2009 sentencing of the Petitioner, this Court should consider the matter anew, the same as if it had not been heard before, and no PCR decision was previously rendered. *United States v. Silverman,* 861 F.2d 571, 576 (9th Cir. 1988). The issues raised are of statewide importance, *Citizens Clean Elections Comm'n v. Myers,* 196 Ariz. 516, 517, 1 P.3d 706, 707 (2000), as to protect the Constitutional rights of (indigent) persons accused of crimes in Arizona, especially, *inter alia*, their right to a public speedy trial by jury, their

right to counsel at arraignment, and their "Faretta" right to self-representation if they so choose.

PARTIES

Real Parties in Interest are the State of Arizona ex rel. Maricopa County Attorneys whom, at different points in time, lead the prosecution against the Petitioner in the above referenced case. Lynn Krabbe was the prosecutor throughout most pre-trial proceedings (August 11, 2008 – March 2, 2009). N. Victor Cook was the prosecutor (supervisor) who was initially assigned to handle PCR proceedings. Neha Bhatia was the prosecutor who drafted and filed the State's Response to Petitioner's PCR Petition. Elizabeth Ortiz is the prosecutor currently assigned to PCR proceeding in above referenced case.

Petitioner Brian Allen Wilkins, proceeding *in propria persona*, brought a PCR Petition regarding above referenced case, in the Superior Court of Maricopa County, which said trial court has refused to adjudicate, demonstrated by, *inter alia*, procedural time limits which have now expired without proper action being taken by said trial court.

STATEMENT OF THE ISSUES

1. Have Judge Donahoe and Judge Sanders abused discretion by not following procedurally mandated timelines, pursuant to *Ariz. R. Crim. P. 32.6*?

2. Did Judge Emmet Ronan abuse discretion by vacating Petitioner's trial on January 12, 2009, without a written motion being filed by either the State or the public defenders?
3. Did Judge David K. Udall abuse discretion by not holding a "Faretta" hearing after Petitioner filed a pro-se motion indicating he would "be representing [himself]?"
4. Is a plea agreement, which is signed months after its expiration date, valid for conviction and sentencing purposes, and did Judge Sanders abuse discretion by accepting and sentencing the Petitioner pursuant to said plea agreement?

STATEMENT OF FACTS AND ARGUMENT

Petitioner, after his constitutionally-mandated trial was vacated without written motion or reasons given by the Court on January 12, 2009, signed a plea agreement on March 2, 2009[1] and was sentenced, on March 30, 2009, to one year of probation, thousands of dollars in fines, 224 hours of community service, "anger management" and "alcohol" "treatment" for one count of undesignated disorderly conduct and one count of undesignated possession of paraphernalia.[2]

[1] The plea agreement was signed by the Petitioner on March 2, 2009, however said plea expired, and was thus void, on October 22, 2008.

[2] Details of said case can be derived from the record, specifically the Petition for Post-Conviction Relief and its Exhibits, the State's Response, Petitioner's reply and the plea agreement.

Petitioner, arguing the "existence of circumstances [render Rule 32 proceedings] ineffective to protect [his] rights, *28 U.S.C. § 2254(b)(ii),"* filed a petition for writ of habeas corpus in the U.S. District Court of Arizona on May 1, 2009. The Superior Court of Maricopa County had already violated nearly every constitutional right guaranteed to the Petitioner, including, *inter alia*, Judge Emmet Ronan vacating Petitioner's trial without a written motion being filed by either State's counsel or the public defender representing the Petitioner at the time, without extraordinary circumstances being presented by counsel or the Court, and without reasons given by the Court on the record. See *Ariz. R. Crim. P. 8.5*. Petitioner also brought claims that he was denied his right to counsel at arraignment, ineffective assistance of counsel, denial of his "Faretta" right to self-representation, and malicious prosecution in that prosecutor Lynn Krabbe presented and used false evidence to convict the Petitioner. Petitioner expected more of the same in any further proceedings in said trial court. The petition for federal habeas corpus was dismissed without prejudice on June 9, 2009, for failure to exhaust state remedies.

On June 19, 2009, Petitioner filed a timely, *pro-se* Notice of Post-Conviction Relief in the Maricopa County Superior Court, raising all of the same claims. The Petition for Post-Conviction Relief and fourteen (14) Exhibits supporting the petition were filed on July 13, 2009. Also filed on July 13 were motions to

compel the Maricopa County public defender's office to surrender to the Petitioner, any and all files and documents pertaining to this case[3] and another motion for clarification, specifically to clarify the availability of stand-by counsel, for the Court to use the Petitioner's correct address and e-mail for correspondence, and for a transcript of the January 12, 2009 hearing in which the Petitioner's right to a public trial by jury was unconstitutionally revoked. Petitioner had also filed a Request for Preparation of Record on June 19, 2009, for said January 12 transcript. The State filed its response on July 28, 2009. The Petitioner filed his reply to the response on August 2, 2009.

On July 2, 2009, regarding the Notice of PCR filed by the Petitioner, Rule 32/Criminal Presiding Judge Gary Donahoe ordered the following:

-Petitioner is indigent

-Petitioner shall represent himself in Rule 32 proceedings

-transcripts for the March 2 settlement conference and March 30 sentencing are to be prepared and filed "within 60 days" of said minute entry

-Court will notify Petitioner when all transcripts have been filed

-Matter shall be assigned to sentencing judge, Teresa Sanders to determine how the case will proceed.

[3] Petitioner was represented by three (3) Maricopa County public defenders throughout the pre-trial stages of the proceedings: David Allen Brown, Michael Ziemba, and William Peterson.

On August 31, 2009, the 60 day time frame ordered by the Court for transcripts to be prepared and filed, expired without Petitioner being notified of said transcripts being produced and filed with the Court. The State filed its response to the Petitioner's PCR Petition on July 28, 2009. The Petitioner's reply was procedurally due by August 12; fifteen (15) days after receiving the State's response. See *Ariz R. Crim. P. 32.6(b).* The Court was required to review the Petition on September 1, and either dismiss it, decide it on the merits, or set a date for a plenary hearing. *Id 32.6 (c).* The Court has not only failed to review the Petition in the time allowed by rule, but has also failed to rule on the two post-conviction motions and a preparation of records request filed by the Petitioner. Petitioner has shown good cause for discovery, as he seeks the files of the present case from the Maricopa County public defender's office to confirm the allegations made in the PCR petition. The Court is thus authorized to grant discovery. *Canion v. Cole,* 210 Ariz. 598, 600, ¶ 10, 115 P.3d 1261, 1263 (2005). Judge Donahoe has ordered Judge Sanders assigned to the proceedings, however, a fundamental conflict of interest exists, *38 A.R.S. § 503(B)*, *Ariz R. Crim. P. 32.4 (e),* in that one of the claims presented by the Petitioner in his PCR petition pertains to Sanders' secretary and said secretary's contact with a State official, John Wertsching, who attempted to obstruct the

Petitioner's right to pursue any sort of post-conviction review of said case. See *PCR Petition at 10-11*.

In the present case, unless special action jurisdiction is accepted, the constitutional and statutory rights of the Petitioner will continue to be violated without review or remedy from the appellate courts. Petitioner has done everything he procedurally and lawfully has the right to do, in attempting to compel the Superior Court to review a conviction he believes is unconstitutional. However, the Superior Court, along with Maricopa County prosecutors, continually abuse processes by disregarding criminal procedures, so to avoid reviewing the Petitioner's PCR petition and motions in support of said PCR Petition. Said PCR Petition, again, has statewide importance because of the questions raised, especially, *inter alia*, whether the Superior Court may disregard *Ariz. R. Crim. P. 8.5* and simply revoke a criminal defendant's right to a public, speedy trial by jury to force said defendants into signing plea agreements. Further, the claims Petitioner raised regarding being denied counsel at arraignment, denied his "Faretta" right to self-representation, and the State's contention, in its response to Petitioner's PCR Petition, that the Arizona Supreme Court's decision in *State v. Joe U. Smith, 140 Ariz. 355, 681 P.2d 1374 (1984)* does not pertain to all public defenders, specifically David Allen Brown because he, "is a pretrial attorney who handles a high volume of cases in

an attempt to achieve a resolution efficiently" (see State's Response to PCR at 4) also all have statewide importance. *Citizens Clean Elections Comm'n v. Myers, supra.* Petitioner continues to be deprived of life and liberty without due process of the laws because of the trial court's continual abuses of discretion.

STANDARD OF REVIEW

Petitioner has reviewed many hundreds of criminal cases in Arizona, and has yet to find a precedent for a judge simply ignoring a timely Rule 32 Petition or a judge revoking a defendant's right to trial. Because both issues are a matter of law, this Court has the discretion to review *de novo*. *State v. Virgo, supra*. In addition, since the issues presented are "clear issues of law" that are likely to recur; special action jurisdiction can be accepted to resolve the issue and prevent unnecessary cost and delay to other litigants. *Summerfield v. Superior Court, 144 Ariz. 467, 469-70, 698 P.2d 712, 714-15 (1985) (citation omitted) (accepting special action jurisdiction to determine whether parents of a viable fetus that was stillborn as a result of medical malpractice can maintain wrongful death suit).*

The U.S. Constitution (*Fourteenth Amendment*) and the Arizona Constitution (*Art. 2 § 4*) guarantee all citizens the right to life and liberty which cannot be abridged without due process of law. The Sixth Amendment (via the Fourteenth Amendment) of the U.S. Constitution guarantees all citizens accused of a crime the right to a fair, public, speedy trial by jury; the right to counsel at all

"critical stages" of prosecution; and the right to represent himself in Court if he so chooses. The State of Arizona's rules of criminal procedure are "intended to provide for the just, speedy determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration, the elimination of unnecessary delay and expense, and to protect the fundamental rights of the individual while preserving the public welfare," *Ariz R. Crim. P. 1.2.*

The only issue which may prevent *de novo* review of the present PCR Petition through this Special Action is the Arizona Supreme Court clearly articulating that "ineffective assistance of counsel claims are to be brought in Rule 32…proceedings. Any such claims improvidently raised in a direct appeal . . . will not be addressed by appellate courts regardless of merit." S*tate v. Spreitz,* 202 Ariz. 1, ¶ 9, 39 P.3d 525, 527 (2002); see also *State ex rel. Thomas v. Rayes,* 214 Ariz. 411, ¶ 20, 153 P.3d 1040, 1044 (2007) ("We therefore hold, consistent with Spreitz, that a defendant may bring ineffective assistance of counsel claims only in a Rule 32 post-conviction proceeding—not before trial, at trial, or on direct review."). In the present case, however, Petitioner made every legal effort in his Rule 32 Petition for PCR to address the ineffective counsel claims, but the trial court, again, has refused to adjudicate said petition. Further, a special action is not a "direct review/appeal." Special Actions are "relief previously obtained against a body, officer, or person by writs of certiorari, mandamus, or prohibition." *Rule*

1(a), Arizona Rules of Procedure for Special Action. The purpose of the present special action is to compel the trial court to adjudicate said PCR Petition consistent with a ruling by this Court. However, since said trial court has refused to do so, *de novo* review is proper.

I. Abuse of discretion by Judges Donahoe and Sanders

As Petitioner previously states, there is not much precedent for a trial court disregarding time mandates pursuant to *Ariz. R. Crim. P. 32.6(c)* for deciding PCR petitions. However this Court has concluded that "the rule requires the [trial] court to act no later than twenty days after the expiration of petitioner's time to reply to the State's response," *State v. Curtis, 185 Ariz. 112, 115, 912 P. 2d 1341, 1344 (App. 1995).* That twenty (20) day period expired on September 1, 2009 without action taken by the trial court in the present case. The Petitioner is thus being prejudiced by the trial court's refusal to obey procedurally mandated time limits because he continues to be deprived of life and liberty without due process of the law.

II. Abuse of Discretion by Judge Ronan

As stated in the PCR Petition, the Petitioner's January 12, 2009 "trial management conference," which he was supposed to be selecting jurors, was vacated, *sua sponte*, by Judge Ronan. No written motion was filed

by either the State or the public defenders, thus no reasons justifying the continuance are on record, as required by *Ariz. R. Crim. P. 8.5(a)*. Further, Judge Ronan also never stated on the record "specific reasons for the continuance," *Id 8.5(b).*

The last day the trial court could hold the Petitioner's trial without violating his right to speedy trial was February 7, 2009. The State will argue the Petitioner did not "assert" his speedy trial right. *Sixth Amendment, U.S. Constitution; Art. 2 §§ 23 & 24, Arizona Constitution*. However, Petitioner did assert said right to public defender Michael Ziemba, but was rebuffed. See PCR Petition, 6. However, a defendant's trial may only be continued upon written motion by counsel. See, *e.g., State v. Kasten, 170 Ariz. 224, 226-27, 823 P.2d 91, 93-94 (App.1991)(upholding trial court's granting of state's motion for continuance where victim was missing and prosecutor had no knowledge that victim was reluctant to testify).* Not only was Petitioner's right to a speedy trial violated, but his right to trial by jury was revoked entirely.

The law is well-established in Arizona that a conviction will not be reversed unless the record shows an error prejudicial to some substantial right of the defendant. *State v. Vasko,* 193 Ariz. 142, 148, ¶ 25, 971 P.2d 189, 195 (App. 1998) citing *Birch v. State,* 19 Ariz. 366, 171 P. 135

(1918). The historic test for whether the error is prejudicial is whether defendant has shown a reasonable probability that the verdict would have been different if the error had not been committed. *Vasko,* supra, citing *State v. Brady,* 105 Ariz. 190, 461 P.2d 488 (1969). Because the Petitioner was not allowed a public trial by jury, he was not given the opportunity to present evidence in his favor, including, *inter alia*, the selective enforcement of self-defense laws in Arizona by the Tempe Police and Maricopa County prosecutors, in that the Petitioner (who is "black") was put in a life and death situation when a "white" attacker assaulted and extorted him for money. Just as a state cannot enact criminal laws applicable on their face only to African-Americans or Latinos, neither can its agents enforce facially neutral (self-defense) laws on the basis of race. *See Jones v. Sterling,* 210 Ariz. 308, 110 ¶13, P.3d 1271 (Ariz. 2005). The fact that several Tempe and other Maricopa County "white" residents are immune from prosecution when they are forced to defend themselves, usually against "black" or Latino intruders or attackers, and the fact the City of Tempe has recently decided not to forward several such cases to the Maricopa County prosecutor's office, but instead, *sua sponte*, dismissing such charges, casts reasonable doubt on the integrity of the case against the Petitioner. Thus, the Petitioner was

prejudiced by his trial being unconstitutionally revoked, as it is highly likely, based on the evidence, that the Petitioner would have been acquitted at trial. Further, the State's alleged victim, Michael Arthur Wood, would have had to incriminate himself on the stand at trial because he was on probation at the time for criminal simulation, and was intoxicated the night he attacked and extorted the Petitioner. Therefore it is highly unlikely he would have shown up for trial, as admitting to these facts on the stand would have constituted unequivocal probation violations. Further, public defender Michael Ziemba specifically argued in his motion to modify Petitioner's release condition, "since [Wilkins] is not likely facing a DOC term either upon conviction at trial or under a plea agreement…[he] is not a flight risk." See PCR Exhibits. However, as trial approached, Ziemba became ineffective and malicious by threatening Petitioner with "prison" if he did not sign the plea. Arizona courts recognize that a defendant may seek relief from a conviction on the basis that counsel's ineffective assistance induced a guilty plea. *See, e.g., State v. Ysea,* 191 Ariz. 372, 379, ¶¶ 23-24, 956 P.2d 499, 506 (1998); *State v. Anderson,* 147 Ariz. 346, 351-52, 710 P.2d 456, 461-62 (1985).

III. Abuse of Discretion by Judge Udall

The Petitioner, from jail, filed a *pro-se* motion to modify his release conditions which was received by the trial court on August 19, 2008. In said motion, Petitioner made clear he was preparing for "pro-se representation."[4] At the time Petitioner filed said PCR Petition, the *pro-se* motion was not present as a minute entry in said case; though now, after Petitioner filed his PCR Petition, the motion shows up in Maricopa County records as being "filed" on September 23, 2008 and is now available as an electronic docket. However the postmark on the envelopes and the docket record on other sources clearly show the motion was received by the trial court on August 19, 2008.

In determining whether a defendant's "Faretta" rights have been respected, the primary focus must be on whether he had a fair chance to present his case in his own way. *McKaskle v. Wiggins,* 465 U.S. 168 (1984); Sager v. Maass, 907 F. Supp. 1412 (D. Or. 1995) (holding trial court's failure to warn petitioner about dangers of self-representation is reversible error), aff'd, 84 F.3d 1212 (9th Cir. 1996). Judge Udall failed to hold any sort of hearing on the motion filed by the Petitioner, and said motion was not docketed until Petitioner filed his PCR Petition; and said motion's docket date, incorrectly, is more than one month after the trial court actually received said motion. The Petitioner was prejudiced because he was forced to allow a public defender to represent him against his

[4] See PCR Petition for further details.

will and Petitioner was not given any opportunity to speak in court about the issue. While in jail, Petitioner witnessed a defendant removed from Court and charged with contempt for speaking on his own behalf. Petitioner was also forced to sit in a Maricopa County Jail while time passed and evidence dissipated in said case because his pro-se motion was ignored.

IV. Judge Sanders Abuse of Discretion Accepting Expired Plea Agreement

As Petitioner argues in his reply to State's response to PCR Petition, he never has been and never was interested in signing a plea agreement. The State offered said plea on September 22, 2008 and gave the Petitioner until October 22, 2008 to sign it before the plea offer expired. Petitioner made clear he was ready for trial when he refused to sign said plea on October 22, 2008 during a status conference. Public defender Michael Ziemba declared in his motion to modify release conditions, filed on August 19, 2008, that Petitioner would likely not face prison time at trial or with a plea. Petitioner chose to reject the plea regardless as he maintains his innocence.

Any plea agreement...must be subject to the approval and acceptance of the court. *See Rule 17.4(d), Ariz. R. Crim. P.* See also *Espinoza v. Martin,* 182 Ariz. 145, 894 P.2d 688 (1995). Though Petitioner allows he cannot locate an Arizona case which an expired plea was entered by the trial court for sentencing

purposes, under *State v. Donald,* 198 Ariz. 406, 10 P.3d 1193 (App. 2000), reinstatement of an expired plea offer must be premised on a showing of ineffective assistance of counsel. Further, claims of ineffective counsel may only be brought in Arizona in Rule 32 proceedings. *See State ex. rel. Thomas v. Rayes,* 214 Ariz. 411, 415, ¶ 20, 153 P.3d 1040, 1044 (2007) ("defendant may bring ineffective assistance of counsel claims only in a Rule 32 post-conviction proceeding – not before trial, at trial, or on direct review"). Because Judge Sanders sentenced the Petitioner pursuant to a plea agreement which was expired and said plea could not lawfully be re-instated (because no ineffective counsel claims can be determined pre-trial), said plea agreement is void. If renewal of the plea offer is not appropriate, the probable alternative remedy will be to order a new trial. See *Donald,* supra, ¶45.

V. Release From Probation Pending Appeal

The trial court continues to deprive the Petitioner of life and liberty without due process of the law. *Ariz. R. Crim. P. 7.2(b)(1)* provides:

> After a person has been convicted of any offense for which the person will in all reasonable probability suffer a sentence of imprisonment, the person shall not be released on bail or on his or her own recognizance unless it is established that there are reasonable grounds to believe that the conviction may be set aside on a motion for new trial, reversed on appeal, or vacated in any post-conviction proceeding. The release of a person pending appeal shall be revoked if the person fails to prosecute the appeal diligently.

See also *State v. Kearney, 206 Ariz. 547, 549, ¶ 4, 81 P.3d 338, 340 (App. 2003).*

The Petitioner was sentenced to probation and has been in the custody of probation officer Suzanne Shirleson since March 30, 2009. Because the Petitioner was not sentenced to imprisonment, he is not bound by the similar statute in Arizona, *A.R.S. § 13-3961.01. See State v. Hawkins, 140 Ariz. 88, 90, 680 P.2d 522, 524 (App. 1984).* However, the Petitioner's physical condition, in that he has no real place of residence, factors into the present case. Petitioner has repeatedly informed the probation officer of the fact he cannot reside in the only place of residence he possibly can stay in because of harassment by police and sheriff's deputies once they were made aware the Petitioner resided in said residence. The locks at said residence have been tampered with and patrol cars are frequently parked near the area, as Petitioner told the probation officer. Petitioner does not feel safe in said residence and is forced to live as a virtual transient while appealing said case. It should be noted that the harassment stems from two federal civil rights complaints filed by the Petitioner which are pending in the U.S. District Court of Arizona; one vs. Maricopa County and the Sheriff's Office (CV-09-1380-PHX-LOA) and another vs. the Tempe Police and City of Tempe (CV-09-752-PHX-MHM). The fact the Petitioner cannot find employment because of a "felony conviction," and is exposed to excessive heat (and cold in the winter time) constantly, his health continues to decline, as none of Petitioner's friends or family allow him to stay at their homes because the police and sheriff's offices follow him

around. Because Petitioner is forced to disclose his whereabouts to Maricopa County, and as long as Petitioner is forced to do labor outdoors via "community service," along with his history of high blood pressure and family history of strokes caused by heat, and lack of shelter for rest, his physical condition would militate against confinement via probation. *State v. Hawkins, supra*. None of the above reasons for temporary release from probation pending this special action would be relevant if the trial court had adjudicated Petitioner's PCR Petition in the time procedurally and constitutionally allowed.

There are reasonable grounds to believe Petitioner's conviction will be reversed based on the obvious constitutional violations which occurred throughout the prosecution. There is no doubt Petitioner will prosecute the appeal diligently as he went as far as Special Action to compel the trial court to hear his PCR petition, and is working on two related federal complaints.

CONCLUSION

For the foregoing reasons, and because the State does not challenge any of Petitioner's colorable claim of reversible error via its response to his PCR petition, Petitioner request this Court issue an immediate preliminary injunction, enjoining Maricopa County to release the Petitioner from any and all probation deprivations, thus preliminarily vacating judgment rendered on March 30, 2009, until the conclusion of the present special action, as said deprivations unconstitutionally and

unlawfully impede the *pro-se* Petitioner from continuing the appeal process. At the conclusion of the present special action, Petitioner requests this Court reverse the conviction resulting from the expired plea agreement and order the trial court to dismiss said case with prejudice.

DATED this _____ day of September, 2009.

_____

Brian A. Wilkins
PO Box 66
Tempe, AZ 85280
480-529-0964
brianw@operation-nation.com
In Propria Persona Petitioner

CERTIFICATE OF COMPLIANCE

I, Brian A. Wilkins, hereby certify, pursuant to Ariz. Rules of Procedure for Special Actions 7 and ARCAP 14(a)(1), the attached Petition for Special Action uses a proportionately spaced typeface: 14 point, Times New Roman font, is double-spaced, and contains 5,665 words. This Petition does not exceed 30 pages.

_____

Brian A. Wilkins
PO Box 66
Tempe, AZ 85280
480-529-0964
brianw@operation-nation.com
In Propria Persona Petitioner

CERTIFICATE OF FILING AND MAILING

I, Brian Allen Wilkins, hereby certify that on September 14, 2009, the original and six (6) copies of this Petition for Special Action were filed with the Clerk of the Court, Arizona Court of Appeals, Division One, 1501 West Washington, Room 203, Phoenix, Arizona 85007 and two (2) copies were hand delivered to:

Arizona Attorney General's Office
Criminal Appeals Division
1275 West Washington Street
Phoenix, AZ 85007

Maricopa County Attorney's Office
Attn: Elizabeth Ortiz, Neha Bhatia, Lynn Krabbe
301 W. Jefferson, Ste. 800
Phoenix, AZ 85003

As a courtesy, one copy of this Petition for Special Action was served on September 14, 2009, by hand-delivery to:

Hon. Gary Donahoe
Judge of the Superior Court
222 E. Javelina Ave.
Mesa, AZ 85210

Hon. Teresa Sanders
Judge of the Superior Court
222 E. Javelina Ave.
Mesa, AZ 85210

Brian A. Wilkins
PO Box 66
Tempe, AZ 85280
480-529-0964
brianw@operation-nation.com
In Propria Persona Petitioner

APPENDIX OF DOCUMENTS ON COURT RECORD

FILING DATE	DESCRIPTION
9/23/2008	MOT-Pro Se Motion to Modify Release Conditions
1/20/2009	ME: Trial Vacated (note: hearing took place on 1/12/2009; record says 1/20/2009)
3/2/2009	PAG-Plea Agreement
3/30/2009	ME: Sentence – Probation (note: the hearing took place on 3/30/2009; record says 4/1/2009)
6/19/2009	NPC-Notice of Post-Conviction Relief
6/19/2009	RPR-Request for Preparation of Record
7/2/2009	ME: Rule 32 PCR (note: order issued on 7/2/2009; record says filed on 7/10/2009)
7/13/2009	PCR- Petition for Post-Conviction Relief
7/13/2009	MOT-Motion for Clarification
7/13/2009	MOT-Motion to Compel Discovery
7/14/2009	NOF-Exhibits in Support of PCR
7/28/2009	RPP-State's Response to Petition for PCR
8/2/2009	REL-Reply to State's Response to PCR