

AO 241 (Rev. 09/17)

CV20-02450-PHX-DGC--JZB

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DEC 21 2020	
CLERK U.S. DISTRICT COURT DISTRICT OF ARIZONA	
BY _____	DEPUTY

PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court		District:	BY _____	DEPUTY
Name (under which you were convicted): <i>Alexander Duane Odette</i>			Docket or Case No.: <i>2016-124829 001</i>	
Place of Confinement: <i>ARIZONA DEPARTMENT OF CORRECTIONS</i>		Prisoner No.: <i>317317</i>		
Petitioner (include the name under which you were convicted) <i>Alexander Duane Odette</i>		Respondent (authorized person having custody of petitioner) <i>v. DAVID SHIN ETAL</i>		
The Attorney General of the State of:				

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:
Superior Court of Arizona in the County of Maricopa 201 W Jefferson St Phoenix, AZ 85003
- (b) Criminal docket or case number (if you know): *2016-124829-001*
2. (a) Date of the judgment of conviction (if you know): *March 13, 2017*
- (b) Date of sentencing: *March 17, 2017*
3. Length of sentence: *19 Years*
4. In this case, were you convicted on more than one count or of more than one crime? Yes No
5. Identify all crimes of which you were convicted and sentenced in this case:
Count 1 Sexual conduct with a minor
Count 3 ATtemp to Commit Sexual Conduct with a minor
Count 4 ATtemp to Commit Sexual Conduct with a minor
6. (a) What was your plea? (Check one)

<input type="checkbox"/> (1) Not guilty	<input type="checkbox"/> (3) Nolo contendere (no contest)
<input checked="" type="checkbox"/> (2) Guilty	<input type="checkbox"/> (4) Insanity plea

ALEXANDER D. ODETTE # 317317
ASPC FLORENCE, SOUTH UNIT
Po Box 8400
FLORENCE, AZ 85132

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

ALEXANDER DUANE ODETTE

Petitioner

V

DAVID SHINN ETAL

Respondent

CR-2016-124829-001 DT

PETITION FOR WRIT
OF HABEAS CORPUS

The Petitioner Alexander D. Odette respectfully requests appointment of legal counsel to assist the petitioner with writing and submitting the brief and arguments for this filing. The petitioner has not any schooling in-law, and is not bar licensed and would like assistance in properly submitting the petition. There is limited resources available to the petitioner to assist in his legal case while incarcerated, in the interests of justice the petitioner respectfully requests this request to be granted.

Alexander D. ODETTE



Pro-per

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(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to?

(c) If you went to trial, what kind of trial did you have? (Check one)

- Jury Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

- Yes No

8. Did you appeal from the judgment of conviction?

- Yes No

9. If you did appeal, answer the following:

(a) Name of court: Superior Court of Arizona

(b) Docket or case number (if you know): 2016-124829-001

(c) Result: Relief Denied

(d) Date of result (if you know):

(e) Citation to the case (if you know):

(f) Grounds raised: Ineffective assistance of Counsel, Abuse of Discretion, Violations to the Fifth, Sixth and Fourteenth Constitutional amendments, and Violations to Sections Four, ten and twenty Four of the Arizona State Constitution, Due process and equal protections under the law, and Violations to the rules of the Court, and the eighth Amendment.

(g) Did you seek further review by a higher state court? Yes No

If yes, answer the following:

(1) Name of court: The Appellate Court of Arizona

(2) Docket or case number (if you know): CR 2016-124829-001

(3) Result: Relief Denied

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(4) Date of result (if you know): _____

(5) Citation to the case (if you know): Brief Submitted

(6) Grounds raised: Ineffective assistance of Counsel, Abuse of Discretion, violations to the Fifth, Sixth, eighth, and Fourteenth amendments, sections four ten, Fifteen and Twenty Four State amendments,

(h) Did you file a petition for certiorari in the United States Supreme Court? Yes No

If yes, answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court? Yes No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: Superior Court of Arizona

(2) Docket or case number (if you know): 2016-124829-001 DT

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: motion to Preclude the State

(5) Grounds raised: Violation to the Rules of the Court ARS 13-4236(a) rule 32.6 (a) and rule 16.1 (c), and rule 33.1. Violation to the Fifth and Fourteenth amendments, and sections Four, Fifteen and twenty Four of the Arizona Constitution. Abuse of Discretion and Violation to Due process and equal protections under the law.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes No

(7) Result: Dismissed as Frivolous and no prejudice

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(8) Date of result (if you know): NOV 27, 2018

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: Superior Court of Arizona

(2) Docket or case number (if you know): 2016-124829-001 DT

(3) Date of filing (if you know): Dec 8, 2018

(4) Nature of the proceeding: motion to vacate

(5) Grounds raised: Fatal errors in indictment, Violation to due process. Insufficiency of evidence to uphold conviction. Indictment is void due jurisdictional defect. Violations to 5Th, 14Th amendments, Sections 15 and twenty Four of the Arizona Constitution. The Insufficiency of evidence to uphold conviction.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes No

(7) Result: Taken under advisement

(8) Date of result (if you know): _____

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

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(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes No

(7) Result: _____

(8) Date of result (if you know): _____

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes No

(2) Second petition: Yes No

(3) Third petition: Yes No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: *Ineffective Assistance of Counsel in violation of the US Constitutional Amendments 5th, 6th, and 14th.*

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

There was not any effective challenges to the States motion to amend the indictment and enhance the charges. The defense did not present any meaningful defense to the charges. The defense was insistant upon taking a plea.

(b) If you did not exhaust your state remedies on Ground One, explain why: _____

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(c) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Rule 32 Petition

Name and location of the court where the motion or petition was filed: Superior Court of Arizona in and for Maricopa County

Docket or case number (if you know): 2016-124829-001DT

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): No Colorable

Claim

(3) Did you receive a hearing on your motion or petition? Yes No

(4) Did you appeal from the denial of your motion or petition? Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: The Appellate Court of Arizona

Docket or case number (if you know): 2016-124829-001DT

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): Relief Denied

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

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(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One:

GROUND TWO: Violations to the right of Due process and equal protections under the law

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

There was violations to the 5th, 6th, and 14th amendments, along with violations to Sections 4, 10, 15 and 24 of the Arizona Constitution. Counsel was not appointed timely. The State did not follow ARS 13-4236 (A), Rule 32.6 (a), Rule 16.1 (c), Rule 33.1. The State failed to follow proper sentencing guidelines for first time offenders ARS 13-701.

(b) If you did not exhaust your state remedies on Ground Two, explain why:

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

ADD

Yes

No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes

No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Rule 32 Petition

Name and location of the court where the motion or petition was filed: Superior Court OF Arizona in and for Maricopa County,

Docket or case number (if you know): CR-2016-124829-001 DT

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Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): no Colorable Claim
Relief Denied.

(3) Did you receive a hearing on your motion or petition? Yes No

(4) Did you appeal from the denial of your motion or petition? Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: The Appellate Court
of Arizona

Docket or case number (if you know): 2016-124829-001 DT

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): Relief Denied

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two : _____

GROUND THREE: Abuse of Discretion by the Courts.

(a) **Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):**

The State allowed late Filings from the State. Motion to
preclude the State was dismissed without allowing for a
reply memorandum. Transcripts requested was never
recieved by the defendant. The State allowed into
evidence transcripts that were erroneous.

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(b) If you did not exhaust your state remedies on Ground Three, explain why: _____

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes No

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Rule 32 Petition

Name and location of the court where the motion or petition was filed: Superior Court
OF ARIZONA In and For Maricopa County

Docket or case number (if you know): 2016-124829-001 DT

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): Relief Denied

(3) Did you receive a hearing on your motion or petition? Yes No

(4) Did you appeal from the denial of your motion or petition? Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Appellate Court of
Arizona

Docket or case number (if you know): 2016-124829-001 DT

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): Relief Denied

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(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three:

GROUND FOUR: violations to the Arizona Rules of the Court

(a) **Supporting facts** (Do not argue or cite law. Just state the specific facts that support your claim.):

The State violated several Rules of the Court when responding to Rule 32 petition, and when adjudicating on motions filed.

(b) If you did not exhaust your state remedies on Ground Four, explain why:

(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Rule 32 Petition

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Name and location of the court where the motion or petition was filed: Superior Court

Of Arizona In and for Maricopa County

Docket or case number (if you know): 2016-124829-001 DT

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): Relief Denied

(3) Did you receive a hearing on your motion or petition? Yes No

(4) Did you appeal from the denial of your motion or petition? Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Appellate Court of

Arizona Div I

Docket or case number (if you know): 2016-124829-001 DT

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): Relief Denied

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: _____

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13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them:

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available.

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

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16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Sierra Taylor Public Defender
620 W. Jackson St, Ste 4015 PHX, AZ 85003

(b) At arraignment and plea: Same as above

(c) At trial:

(d) At sentencing: Same as above

(e) On appeal:

(f) In any post-conviction proceeding: Andrew C Marcy
222 N. Central Ave Ste 154 PHX, AZ 85004

(g) On appeal from any ruling against you in a post-conviction proceeding: Pro-per

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes No

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.*

During this year we were locked down for several months due to coronavirus. I live in a dorm setting with 36 other inmates and did not have the opportunity to do my legal work, also due to the lockdown I had no access to legal resources. I and many

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Others here are going to be behind on Filing deadlines due to these issues. Now with the Holidays too its made it that much more difficult because the only source for documents, Copies, and notary is the library. The petitioner respectfully Requests the Courts indulgence in allowing my Filing to Still be Considered timely and not to bar me From Filing, due to extraordinary Circumstances with the pandemic and its Far Reaching effects on the legal process.

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -
 - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

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- (2) . The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

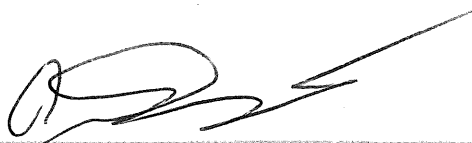
Therefore, petitioner asks that the Court grant the following relief:

To be Sentenced as a
First time offender according to ARS 13-701, reduction in Sentence
with the mitigation factors taken into account,
 or any other relief to which petitioner may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on 12/16/20 (month, date, year).

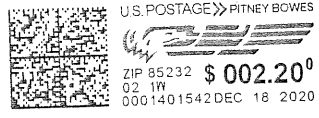
Executed (signed) on 12/16/20 (date).



Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.

ADC # 317317
Arizona State Prison Complex Florence
Unit South Po Box 8400
Florence AZ 85132



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DEC 21 2020

CLERK OF THE COURT
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

District Court of Arizona
United States Courthouse
401 w. Washington ST.
Phoenix, AZ 85003-2118

LEGAL MAIL
AZ DEPT OF CORRECTIONS

