

No. \_\_\_\_\_

\_\_\_\_\_  
IN THE  
SUPREME COURT OF THE UNITED STATES  
\_\_\_\_\_

Brian Anderson \_\_\_\_\_ — PETITIONER  
(Your Name)

vs.

Colorado \_\_\_\_\_ — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Colorado Appellate Court  
\_\_\_\_\_  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Brian Anderson # 64193  
\_\_\_\_\_  
(Your Name)

Sterling Correctional Facility  
\_\_\_\_\_  
(Address)

Sterling, Colorado P.O. Box 6000 , 80751  
\_\_\_\_\_  
(City, State, Zip Code)

None  
\_\_\_\_\_  
(Phone Number)

## QUESTION(S) PRESENTED

The U.S. Supreme Court, ruled in Nelson V. Colorado 137 S.CT. 1249 at 1252  
(2017).

OPINION : Justice ,Ginsburg.

Absent conviction of a crime,one is presumed innocent.

QUESTION : Does Colorado Revised Statutes 18-3-302 **Supersede** Nelson V.  
Colorado 137 S.CT. 1249 (2017).

## 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:

(B)

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**TABLE OF AUTHORITYS :**

1. Nelson V. Colorado 137 S. CT. 1249 (2017). Pages, A, 4, 5, 7, 9.
2. Johnson V. Mississippi 108 S. CT. 1981 (1980). Pages, 5, 7, .
3. Chambers V. Colo. Dept. Of Corr. 205 F. 3d 1237 (2000). Page, 7.
4. Stovall V. Deno 87 S. CT. 1967 (1967). Page, 7.
5. Linkletter V. Walker 85 S. CT. 1731 (1965). Page, 8.

**STATUTES :**

1. Colorado Revised Statute, 18 -3-302. Pages, 3, 5, 7.

**U.S CONSTITUTIONAL AMENDMENTS :**

1. U.S. Constitutional 14<sup>TH</sup> Amendment, Due Process. Pages, 3, 5.

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 \_\_\_\_\_ 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reported at \_\_\_\_\_; or,  has been designated for publication but is not yet reported; or,  is unpublished.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 United States district 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reported at \_\_\_\_\_; or,  has been designated for publication but is not yet reported; or,  is unpublished.

For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix   A   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 \_\_\_\_\_.

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   Sep - 17 - 2018  .  
A copy of that decision appears at Appendix   A  .

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

1. The U.S. Constitutional Provisions are the, U.S. 14<sup>TH</sup> AMENDMENT, DUE PROCESS CLAUSE.

2. The Colorado Statute is (C.R.S.) Colorado Revised Statute, 18-3-302.



## STATEMENT OF THE CASE

The Petitioner, Brian Anderson was convicted in 1991 of Criminal Attempt To Commit Murder In The 1ST Degree, Second Degree Kidnapping, First Degree Assault, Aggravated Robbery, & Aggravated Motor Vehicle Theft.

Arapahoe County, District , Judge, Kenneth Stuart, vacated the conviction, verdict, & sentence for the Aggravated Robbery & utilized the Aggravated Robbery to enhance the sentence for the Second Degree Kidnapping.

### SENTENCING TRANSCRIPTS:

Page 633, Line 25 :

Page 634, Line 1 :

Page 641, Lines 24, 25 :

Page 642, Lines 3, 4, 5 :

The Petitioner, Brian Anderson Motioned the Arapahoe County, District Court, pertaining to a Illegal sentence., when the U.S. Supreme Court ruled in Nelson V, Colorado 137 S.CT.1249(2017).

Nelson V. Colorado at, 1251, 1255, 1256 : Once those convictions were erased, the presumption of their innocence was restored. (Citing) Johnson V. Mississippi 108 S.CT. 1981(1988). After a conviction has been reversed, unless & until the Defendant should be retried, he must be presumed innocent of that charge .

Nelson V. Colorado at, 1251: Colorado may not presume a person adjudged guilty of no crime, nonetheless guilty.

Nelson V. Colorado at, 1252: OPINION: Justice, Ginsburg.

Absent conviction of a crime, one is presumed innocent.

Nelson V. Colorado at, 1256: The presumption of innocence lies at the foundation of our Criminal Law. (Citing) Coffin V. U.S. 15 S. CT. 394 (1895).

Johnson V. Mississippi 108 S. CT. 1981 (1988).

CASE SUMMARY, at 1981.

OVERVIEW: A inmates Death Sentence was predicated, in part on a conviction that was reversed. The U.S. Supreme Court reversed & remanded "stating" the prior conviction provided no legitimate support for the Death Penalty, and there was no proof of guilt on the prior offense. And the use of the prior conviction that was reversed was prejudicial.

The Colorado, Legislators created & designed Laws, that violate the U.S. Constitution, 14TH Amendment, Due Process Clause. The design is to utilize charges to punish Defendants, instead of convictions.

(C.R.S.) Colorado Revised Statute 18-3-302. Second Degree Kidnapping.

1. Any person who knowingly seizes & carries any person from one place to another without his consent & without lawful justification, commits Second Degree Kidnapping.

3. Second Degree Kidnapping is a Class 2 Felony, if any of the following circumstances exist.

(a). Sexual Assault.

(b). Robbery.

The utilization of the Robbery Charge that was Vacated elevates the Class Of Felony & elevates the Sentencing Range.

Without the use of the Vacated Robbery Conviction, the Petitioner Brian Anderson would have been Sentenced between 8-16 Years. And would have been released from Prison approximately 9 Years ago. But with the utilization of the Vacated Robbery Conviction, the Petitioner was Sentenced to 48 Years & is eligible for Parole in the Year 2028. All the Charges with Convictions, the Petitioner Brian Anderson has already done those Sentences. And is incarcerated now, due to a Vacated Robbery Conviction.

PLEASE OBSERVE, APPENDIX A, PAGES 6, 7, FROM THE COLORADO APPELLATE COURT:

Page 6: See James, 117 P.3d at 96-98 concluding that the evidence was sufficient to support the defendants conviction for Class 2 Second Degree Kidnapping involving a victim of a Robbery where the Defendant was acquitted of committing Aggravated Robbery, etc.

Last Sentence on Page 6. See also Aguilar Ramos.

Page 7: 224 P.3d at 402-04 upholding the Defendants conviction for class 2, Second Degree Kidnapping involving a victim of a sexual assault, even though he was acquitted of committing sexual assault against the same victim.

PLEASE OBSERVE APPENDIX B, THE RECONSIDERATION, LAST PAGE. (Due to bad copys a Guard made, the page # is not shown). ARAPAHOE COUNTY, DISTRICT COURT.:

To be convicted of Second Degree Kidnapping the Jury had to find as an element of that charge that a Robbery occurred, etc, Thus it is immaterial whether or not Anderson was ultimately convicted of robbery, whether or not he was sentenced for robbery, or whether or not the Court vacated the charge. A party can be convicted of one charge & not convicted of another.

CONCLUDING ARGUMENT:

The Petitioner Brian Andersons Robbery Conviction was Vacated & utilized to Enhance the Petitioners Sentence, violating Nelson V. Colorado 137 S. CT. 1249 (2017). & Johnson V. Mississippi 108 S. CT. 1981 (1988).

THE U.S. COURT OF APPEALS 10TH CIR., RULED AGAINST THE USAGE OF CHARGES, UTILIZE TO PUNISH, COLORADO INMATES IN THE YEAR 2000.

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Chambers V. Colo. Dept. Of Corr. 205 F. 3d 1237 (2000).

Outcome: Order was affirmed in part because defendant Corrections Departments withholding of earned time did not constitute an ex post facto effect on plaintiffs inmates crime of robbery, but reversed in part because arbitrarily withholding earned time for plaintiffs refusal to admit an unproven sexual offense denied plaintiff due process.

Headnote # 11 at 1243: Procedural Due Process Scope Of Protection. An inmate who has not been convicted of a sexual offense has a liberty interest in not being branded a sex offender.

RETROACTIVE STANDARDS:

Stovall V. Deno 387 S. CT. 1967 at 1969, 1970 & Headnote # 1 (1967).

CRITERIA: (a). the purpose to be served by the New standards.

The U.S. Supreme Court ruled in Nelson V. Colorado 137 S. CT. 1249 (2017), absent a conviction, one is presumed innocent.

The state Of Colorado is utilizing charges, not convictions to punish Defendants.

CRITERIA : (b). the extent of the reliance by law enforcement authorities on the old standards.

The State Of Colorado relays on charges, not convictions to enhance Defendants Sentences, under C.R.S. 18-3-302. Hundreds of inmates are incarcerated, under this Law.

CRITERIA: (c). The effect on the administration of justice of a retroactive application of the New Standards.

The effect would be applying the U.S. 14th amendment, Due Process Clause to all Colorado Laws. Federal Courts have forced pieces of the Due Process Clause on Colorado laws in Chambers V. CDOC & Nelson V. Colorado.

See, Linkletter V. Walker 85 S. CT. 1731 at Headnote # 3, at 1736 (1965), regarding Retroactive Standards.

**REASONS FOR GRANTING THE PETITION**

The Granting of the Petition would allow the U.S. Constitution 14TH Amendment Due Process Clause & Nelson V. Colorado 137 S.C.T. 1249 (2017), to be **Superior** over Colorado Revised Statute 18-3-302.

At this moment the U.S. Constitutional 14TH Amendment Due Process Clause & Nelson V. Colorado 137 S.C.T. 1249 (2017), is **Inferior** to Colorado Revised Statute 18-3-302.

**CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Brian Anderson

Date: January = 11 - 2019