

Name of Person Filing: John C. McCluskey, No. 74469
Mailing Address: NM Penitentiary, P.O. Box 1059
City, State, Zip Code: Santa Fe, NM 87504-1059
Daytime/Evening Phone No. _____
ATLAS Number (if applicable) _____
Attorney Bar Number (if applicable) _____
Representing: Self Petitioner Respondent

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VIRLYNN TINKELL
SUPERIOR COURT CLERK

**SUPERIOR COURT OF ARIZONA
MOHAVE COUNTY**

State of Arizona
Plaintiff

John Charles McCluskey
Defendant

Case No. CR 2010-00823
**PETITION FOR POST
CONVICTION RELIEF**

INSTRUCTIONS: In order for this petition to receive consideration by the court, each applicable question must be answered fully but concisely in legible handwriting or by typing. When necessary, an answer to a particular question may be completed on an additional blank page, making clear to which question such continued answer refers.

Any false statement of fact made and sworn to under oath in this petition could serve as the basis for prosecution and conviction for perjury. Therefore, exercise care to assure that all answers are true and correct.

A person unable to pay costs of this proceeding and to obtain services of counsel without incurring substantial hardship to himself or his family may complete the Defendant's Financial Statement and Request for Appointed Counsel.

No issue which has already been raised and decided on appeal or in a previous Petition may be used as a basis for this petition.

Take care to include every ground for relief which is known and which has not been raised and decided previously, since failure to raise any such ground in this petition will bar it's being raised later.

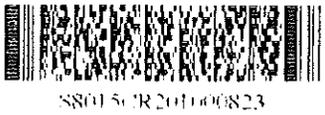
When the petition is complete, mail it to the Clerk of the Superior Court in, P.O. Box 7000, Kingman, AZ 86402.

1. Petitioner's Name: John Charles McCluskey
Petitioner's prison number (if any): 74469

2. Petitioner is now:
A. On Parole
B. On Probation
C. Confined in Penitentiary of New Mexico -- Santa Fe

3. A. Petitioner was convicted of the following crime(s): Escape: kidnapping (2 counts); armed robbery (2 counts); aggravate assault (2 counts); misconduct involving weapons

- B. Petitioner was sentenced on 06/17/11 to a term of 43 years commencing on _____ following a:



- Trial by Jury
- Trial by Judge without a Jury
- Plea of Guilty
- Plea of No Contest in the Superior Court for Mohave County, with Judge _____ presiding.

C. The file number of the case was CR 2010-00823.

4. Petitioner is eligible for relief because of:

- The introduction at trial of evidence obtained pursuant to an unlawful arrest.
- The introduction at trial of evidence obtained by an unconstitutional search and seizure.
- The introduction at trial of an identification obtained in violation of constitutional rights.
- The introduction at trial of a coerced confession.
- The introduction at trial of a statement obtained in the absence of a lawyer at time when representation is constitutionally required.
- Any other infringement of the right against self-incrimination.
- The denial of the constitutional right to representation by a competent lawyer at every critical stage of the proceeding.
- The unconstitutional use by the state of perjured testimony.
- An unlawfully induced plea of guilty or no contest.
- Violation of the right not to be placed twice in jeopardy for the same offense.
- The abridgement of any other right guaranteed by the constitution or the laws of this state, or the constitution of the United States, including a right that was not recognized as existing at the time of the trial if retrospective application of that right is required.
- The existence of newly-discovered material which requires the court to vacate the conviction or sentence. (Specify when petitioner learned of these facts for the first time, and show how they would have affected the trial.)

- The lack of jurisdiction of the court which entered the conviction or sentence.
- The use by the state in determining sentence of a prior conviction obtained in violation of the United States or Arizona constitutions.
- Sentence imposed other than in accordance with the sentencing procedures established by rule or statute.
- Being held beyond the term of sentence or after parole or probation has been unlawfully revoked.
- The failure of the judge at sentencing to advise petitioner of his right to appeal and the procedures for doing so.
- The failure of petitioner's attorney to file a timely notice of appeal after being instructed to do so.
- The obstruction by state officials of the right to appeal.
- Any other ground within the scope of Rule 32 of the Arizona Rules of Criminal Procedure (please specify)

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- _____
- _____
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- _____
- _____
- _____

5. The fact in support of the alleged error(s) upon which the petition is based are contained in Attachment A. (State facts clearly and fully; citations or discussions of authorities need not be included).

6. Supporting Exhibits:

- A. The following exhibits are attached in support of the petition:
- Affidavits (Exhibit(s)) # _____
 - Records (Exhibit(s)) # _____
 - Other Supporting Evidence (Exhibit(s)) # _____

B. No affidavits, records or other supporting evidence are attached because:

7. Petitioner has taken the following actions to secure relief from his convictions or sentences:

A. Direct Appeal Yes No (If yes, then name the courts to which appeals were taken, date, number and result) Arizona Court of Appeals--Division One, mandate issued October 2, 2011 Case No. 1 CA-CR 11-0464; judgment affirmed

B. Previous Rule 32 Proceedings Yes No, (If yes, name the courts in which such petitions were filed, dates, numbers and results, including all appeals from decisions on such petitions)

C. Previous Habeas Corpus or Special Action Proceedings in the Courts of Arizona Yes No (If yes, name the courts in which such petitions were filed, dates, numbers and results, including all appeals from decisions on such petitions):

D. Habeas Corpus or Other Petitions in Federal Courts:
 Yes No (If yes, name the districts in which petitions were filed, dates, court numbers, civil actions or miscellaneous, and results, including all appeals from decision on such petitions)

8. Petitioner was represented by the following lawyer's at (place name of counsel in the blanks and their address if known.):
Arraignment and plea: John Pecchia and Jason Steffen, Mohave County Public Defender's Office
Trial: John Pecchia and Jason Steffen, Mohave County Public Defender's Office
Sentencing hearing: John Pecchia and Jason Steffen, Mohave County Public Defender's Office
Appeal (if any): Jill L. Evans, Mohave County Appellate Defender's Office

Preparation, presentation or consideration of any previous petitions or motions for post-conviction relief filed in connection with this conviction: _____

9. The issues which are raised in this petition have not been finally decided nor raised before because (state facts):
This petition alleges that my trial counsel was ineffective.

10. Because of the foregoing reasons, the relief which the petitioner desires is:

- A Release from custody and discharge
- B A new trial
- C Correction of Sentence
- D The right to file a delayed appeal
- E Other relief (specify): _____

11. Petitioner is presently represented by counsel:

- Yes No If yes then his or her name and address: _____
- If no, does the petitioner request the court to appoint counsel to represent him in this proceeding:
- Yes No _____

OATH OR AFFIRMATION

NEW MEXICO
 STATE OF ~~ARIZONA~~)
SANTA FE) ss.
 County of ~~Mohave~~)

I swear or affirm that this petition includes all the claims and ground for post-conviction relief that are known to me, that I understand that no further petitions concerning this conviction may be filed on any ground of which I am aware but do not raise at this time, and that the information contained in this form and in any attachments is true to the best of my knowledge or belief.

[Signature]

 Petitioner's Signature

10-19-12

 Date

Sworn to or affirmed before me this 19 day of Oct., 2012

by JOHN McCUSKEY

My Commission Expires: 4/24/16

[Signature]

 Notary Public/Deputy Clerk

Attachment A

The facts supporting my claim that my trial counsel, John Pecchia, provided me ineffective assistance of counsel are:

- (1) Mr. Pecchia did not meaningfully discuss my case and defense with me, and did not even try to talk with witnesses I asked him to call. He also did not take seriously or challenge conditions of confinement that hurt my ability to participate in my defense. For example, he did not ask the Court to consider using shackles instead of a stun belt during trial, although I specifically asked him to do that and told him that the stun belt was distracting me. He also did not effectively challenge the conditions of my confinement during trial, such as the county sheriff's office waking me every four hours, which caused me to be tired and distracted during trial. Mr. Pecchia rarely visited me in the months before trial and so I was unable to meaningfully participate in my defense.
- (2) Mr. Pecchia did not object when the prosecutor helped a witness identify me at trial by standing directly behind me while asking the witness to identify me. Trial Trans. Day 3 at 14-16.
- (3) Mr. Pecchia did not effectively litigate motions important to my defense, including the motion for change of venue. Although my case received a lot media attention (both nationally and locally) by the time of trial, Mr. Pecchia attached only one such article to the motion.
- (4) My appellate counsel, Jill Evans, was ineffective for failing to meet me at least one time, failing to cover my record with me so that I could point out where Mr. Pecchia made errors, and failing to appeal the issues I have addressed in this writ.