

Wiley Files Petition for Writ of Certiorari in *Brooks v. Colorado*

URGES REVIEW OF COLORADO SUPREME COURT DECISION REGARDING VALIDITY OF A GUILTY PLEA

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Washington, DC – Along with co-counsel Jud Lohnes of the Office of the Colorado State Public Defender and Professor F. Andrew Hessick of the University of North Carolina School of Law, and assisted by law students Darpan Patel and Eric Jon Fisher, Wiley filed a petition for a writ of certiorari in the U.S. Supreme Court on behalf of Kyle Brooks in a case involving the fundamental principles of due process governing criminal guilty pleas. The petition argues that the Supreme Court of Colorado’s decision holding that Mr. Brooks’ guilty plea was constitutionally valid departs from established principles of law and conflicts with decisions of several other appellate courts.

The case arose from a criminal proceeding in which Mr. Brooks received an enhanced sentence based on prior convictions. Mr. Brooks contested the validity of one of those prior convictions, arguing that his guilty plea to the crime of theft was not made voluntarily, knowingly, and intelligently because he had not been informed of one of the essential elements of the crime. In particular, the Information charging Mr. Brooks with theft did not allege that Mr. Brooks intended permanently to deprive the victim of the property stolen. The trial judge omitted the same element in her summary of the crime charged at Mr. Brooks’ plea hearing, with neither defense counsel nor the prosecutor correcting the omission.

The Colorado Supreme Court agreed that Mr. Brooks had made out a prima facie case that his guilty plea was constitutionally invalid. It held, however, that the State had proven by a preponderance of the evidence that the plea was nonetheless voluntary, knowing, and intelligent. In reaching that conclusion, the Colorado Supreme Court

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reasoned that the crime charged was a relatively simple one, that Mr. Brooks had pleaded guilty to misdemeanor theft in a different case previously, and that defense counsel had signed a generic standard form affirming that she had discussed the law and facts with Mr. Brooks.

The petition argues that the Colorado Supreme Court's decision conflicts with U.S. Supreme Court precedent establishing that, for a guilty plea to be valid, the record must affirmatively show that the defendant was advised of the elements of the crime charged. It also asserts that the Colorado Supreme Court's decision conflicts with decisions of the U.S. Court of Appeals for the Second Circuit, the U.S. Court of Appeals for the Eighth Circuit, and the Utah Supreme Court, all holding that a court must assure itself that the defendant understands the nature of the crime charged notwithstanding any private discussions the defendant may have had with defense counsel. The petition further argues that the decision conflicts with a Connecticut Supreme Court decision, which held that a court may not presume that defense counsel's private explanation to the defendant of the crime charged can overcome a misstatement of the crime in the charging document and by the trial judge.

The petition explains that Mr. Brooks' case is especially important because a guilty plea results in the waiver of constitutional rights, including the right of a trial by jury, and because of the frequency with which guilty pleas arise in both state and federal courts.

"Permitting guilty pleas based on 'must have known' inferences is a slippery slope, especially in the context of the pressures of a modern-day criminal justice system to make 'quick and dirty' plea deals the norm," the petition concludes. "It asks little of the government and the courts to assure that the record affirmatively show the elements of the crime charged and that the defendant received notice of the elements and understood them."

Wiley partner Richard A. Simpson is Counsel of Record in the firm's pro bono representation of Mr. Brooks. Wiley associate Ysabelle G. Reyes also participated in drafting the petition.

The petition can be read [here](#).