No. 18-6621

IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL

ALOENG KELLY VANG — PETITIONER
(Your Name)

vs.

TOM ROY, MINNESOTA COMMISSIONER OF CORRECTIONS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

the United States District Court for the District of Minnesota
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Aloeng Kelly Vang, OID #244196, pro se
(Your Name)

7600 525th Street
(Address)

Rush City, Minnesota 55069-2227
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. Where offers of straight pleas to the district court is permitted under state law, does state criminal defendants receive their Sixth Amendment right to effective assistance-of-counsel where counsel fails to carry out the defendants wishes to plea guilty to the charged offense, and the defendants are force to stand trial and be convicted on a more severer indicted crime and punishment?

2. Whether the prejudice prong of ineffective-assistance claims involves examining the effect of deficient performance upon the proceeding already held rather than looking to hypothetical results of a hypothetical future prosecution?

3. What is the appropriate analytical framework for gulity pleas involving straight pleas where state law doesn't require consent from the government?

4. In regards to straight pleas, is a criminal defendant "ultimate authority" to plead guilty infringed if the state intervene with the defendant from pleading guilty to the charged offense?

LIST OF PARTIES

[X] 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:

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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

[X] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[X] reported at 2018 U.S.App. LEXIS 10379; 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[ ] is unpublished.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 B to the petition and is

[X] reported at 2017 U.S.Dist. LEXIS 166844; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[X] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix D to the petition and is

[X] reported at 881 N.W.2d 551; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the State Postconviction court appears at Appendix E to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

TABLE OF AUTHORITIES CITED

CASES **PAGE NUMBER**

STATUTES AND RULES

JURISDICTION

[x] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was April 24, 2018.

[ ] No petition for rehearing was timely filed in my case.

[x] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: April 24, 2018, and a copy of the order denying rehearing appears at Appendix A.

[ ] 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).

[x] For cases from **state courts**:

The date on which the highest state court decided my case was July 6, 2016. A copy of that decision appears at Appendix D.

[ ] 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

Constitution of the United States, Amendment VI, Right to Effective Assistance of Counsel Clause: "In all criminal prosecutions, the accused shall enjoy the right to.... have the Assistance of Counsel for his defence."

The right of a state prisoner to seek federal habeas corpus relief is guaranteed in 28 U.S.C. § 2254. The statutory relief under "AEDPA" is set forth in 28 U.S.C. § 2254(d)(1).

STATEMENT OF THE CASE

On September 3, 2013, the State of Minnesota charged Petitioner by criminal complaint in Ramsey County District Court with one count of second-degree intentional murder, Minn. Stat. § 609.19, subd. 1(1). In the ensuing months, Petitioner told his attorneys he wished to plead guilty to the charged offense, and by January, 2014, Petitioner made clear he was willing to do so with no sentencing agreement with prosecutors. But instead of scheduling a plea hearing, as state law allowed them to do, Petitioner's attorneys presented Petitioner's desire to plead guilty as an "offer" to prosecutors. Prosecutors rejected that "offer," but Petitioner's attorneys did not take any steps in court to allow their client to exercise his wish to plead guilty.

On February 12, 2014, prosecutors convened a grand jury, which that day indicted Petitioner for first-degree premeditated murder, Minn. Stat. § 609.185(a)(1), and second-degree intentional murder. Following a court trial, the Honorable Diane Alshouse found Petitioner guilty of both counts. The court sentenced Petitioner on the first-degree murder count to the mandatory sentence of life in prison without possibility of release.

Petitioner timely appealed to the Minnesota Supreme Court. After the Minnesota Supreme Court granted his motion to stay his direct appeal and remand the case to the Ramsey County District Court, Petitioner filed a petition for postconviction relief. Petitioner argued he had received ineffective assistance of trial counsel under the Sixth Amendment to the United States Constitution. Petitioner argued that counsel's performance was deficient because counsel did not act on his expressed desire to plead guilty to what was, at the time, the only charge against him. Petitioner argued that this deficient performance prejudiced him because, had counsel followed Petitioner's

instructions, Petitioner would have been convicted of second-degree, not first-degree, murder and his sentence would have been no more than 40 years in prison, Minn. Stat. § 609.19, subd. 1(1), rather than life in prison without possibility of release, Minn. Stat. § 609.185(a)(1).

The State responded by arguing, among other things, that any deficiency did not prejudice Petitioner because, had he tried to plead guilty, the State would have responded "by dismissing the second-degree complaint."

The postconviction court denied the petition and denied Petitioner's request for an evidentiary hearing on it.

Petitioner timely appealed the denial of his postconviction petition to the Minnesota Supreme Court. The Minnesota Supreme Court consolidated that appeal with Petitioner's appeal from the judgement of conviction. On July 6, 2016, the Minnesota Supreme Court affirmed Petitioner's convictions, holding that Petitioner's ineffective-assistance-of-counsel claim "fails on the second prong of Strickland [v. Washington, 466 U.S. 668 (1984),][because][Petitioner] has not proven that he was prejudiced" by trial counsel failing to file a written request to schedule an appearance or otherwise arrange for Petitioner to straight plea to second-degree murder because "the state could have dismissed the complaint without the [state district] court's approval even if [Petitioner] had procured a plea hearing" and "then could have convened a grand jury to seek an indictment for first-degree premeditated murder." State v. Vang, 881 N.W.2d 551, 557 (Minn. 2016)(App. D). The Minnesota Supreme Court did not address the first prong of Strickland. Id.

Petitioner then brought a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in the United States District Court for the District of Minnesota. On federal habeas, "Petitioner argue[d] that, in reaching [its] conclusion, the Minnesota Supreme Court unreasonably applied Strickland

because the appellate court's analysis was not confied to the effect of trial counsel's performance on the criminal proceeding at hand, but impermissibly considered 'the possible impact of ... [trial counsel's alleged] deficient performance on a hypothetical, future proceeding: a subsequent case, charging first-degree murder, initiated by grand-jury indictment.'" Vang v. Roy, 2017 U.S. Dist. LEXIS 167177, at *21 (App. C).

Even though on habeas Petitioner legal argument was that the State court unreasonably applied this Court's Strickland prejudice standard by looking to hypothetical results of a hypothetical future prosecution rather than examining the effect of the deficient performance upon the proceeding already completed; in its Report and Recommedations dated September 12, 2017, the federal magistrate judge determined that it was "not necessary to the resolution of [Petitioner's] petition to define precisely what constitutes the 'proceeding'" meant by this Court's Strickland decision. Id. at *22. In resolving Petitioner's case, the magistrate judge applied the legal standard set out in this Court's Missouri v. Frye, 132 S.Ct. 1399 (2012), decision.

On October 10, 2017, the United States District Judge, Joan N. Ericksen, adopted the magistrate's report and recommendation to deny the petition for writ of habeas corpus with prejudice and certificate of appealability. Vang v. Roy, 2017 U.S. Dist. LEXIS 166844 (D. Minn., Oct. 10, 2017)(App. B). And on April 24, 2018, the Eighth Circuit Court of Appeals denied Petition for rehearing by the panel and rehearing en banc. Vang v. Roy, 2018 U.S. App. LEXIS 10379 (8th Cir. Minn., Apr. 24, 2018)(App. A).

A. Background

The facts of the crime are not in dispute. On September 1, 2013, between 12:30 a.m. and 1:00 a.m., Jeffrey Elling and his girlfriend, D.H., were crossing the street when Vang sped past them in his car. Vang parked his car in the driveway of his cousin, a neighbor of Elling's. Elling approached Vang and the two exchanged words. Elling pushed Vang, who fell to the ground. Then Elling walked back to his house.

> Vang was angry and frustrated about the encounter. He left his cousin's house, drove home, and retrieved a firearm from his garage. Vang then returned to Elling's house, rang the doorbell, and hid behind a tree. As Elling opened the front door, Vang fired two shots, one of which struck Elling in the neck. Vang fled the scene while Elling bled to death. Vang later returned to the scene, identified himself, and was arrested.

State v. Vang, 881 N.W.2d at 553-54. Two days later, the State filed a complaint charging Petitioner with one count of second-degree intentional murder, Minn. Stat. § 609.19, subd. 1(1). Id. at 554. Attorneys Evan Tsai and Barbara Deneen were appointed to represent Petitioner. On September 16, 2013, Petitioner pleaded not guilty. Id.

Petitioner hoped to reach an agreement with prosecutors and eventually enter a guilty plea to the charged offense. Vang Aff. ¶5 (App. F). In October, November, and December 2013, Petitioner's attorneys conducted plea negotiations with Assistant Ramsey County Attorney Adam Petras. (App. F, ¶7). October 22, 2013, Petitioner, through counsel, offered to plead guilty to second-degree intentional murder in exchange for a sentence within the presumptive range of 278-391 months in prison. Vang, 881 N.W.2d at 554. Hoyos and Petras rejected that offer on November 4, 2013, but expressed "hope [that] the negotiating process continues between the parties." Hoyos suggested to Tsai that a trial could be avoided if Petitioner agreed to plead guilty to the charged offense and to accept the statutory maximum sentence of 480 months in prison. Id.

At a December 10, 2013, hearing, prosecutors noted that the State had not decided whether to present the case to a grand jury. The trial judge set January 13, 2014, as the deadline for negotiations. On January 4, 2014, Petitioner told Tsai he wanted to plead guilty to the charged offense of second-degree intentional murder even if it meant accepting the statutory maximum sentence of 480 months in prison. Vang v. Roy, 2017 U.S. Dist. LEXIS 167177, at *3. On January 9, 2014, Tsai told Hoyos that Petitioner "had agreed to Mr. Hoyos' suggestion" and was ready to plead guilty and be sentence accordingly.

Id. Hoyos responded on January 16, 2014, by requesting a chambers conference between the parties and the trial judge. Id. An unrecorded conference took place in the trial judge's chambers on January 21, 2014. Id. at *3 - *4.

> "'During this conference, [the same prosecutor] indicated that the State would not accept the plea offer of [Petitioner] and that he was not authorized to provide notice to the defense regarding whether the State would be submitting ... [the] matter to the grand jury or not. The prosecutor suggested that [Petitioner's trial counsel] attempt to convince managing attorneys in the county attorney's office to accept [Petitioner's] most recent offer.'"
>
> At or around this time, Petitioner's trial counsel informed Petitioner 'that the prosecutor no longer wanted [him] to plead guilty to the charged offense even if [he] received the statutory maximum sentence.' Petitioner 'emphasized to [his trial-counsel] how much [he] wanted to plead guilty to the charged offense' and 'asked ... if [he] could enter a plea without the prosecutor's agreement.' Petitioner's trial counsel informed him 'that they would try to convince the prosecutor or his supervisor to accept a guilty plea to the charged offense.' On January 27, Petitioner's trial counsel sent a letter to the director of the criminal division, requesting consideration of 'an alternative resolution to [Petitioner's] case which would avoid a sentence of life without the possibility of release.' 'There was no response.'
>
> At some point, the prosecutors knew that the county attorney had decided 'to pursue a grand jury indictment of first-degree premediated murder.' 'On February 12, ... a grand jury indicted [Petitioner] on charges of first-degree premeditated murder and second-degree intentional murder.' Petitioner proceeded to a bench trial.

Vang v. Roy, 2017 U.S. Dist. LEXIS 167177, at *4 - *5. [citations omitted].

Petitioner, who was 19 years old at the time of the offense, testified at trial that on September 1, 2013, he weighed about 105 pounds and was 5'3" tall. FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER, for Judgment of Conviction, at ¶36. (App. G). Petitioner began drinking around 11:00 a.m. on August 31, 2013, and had some food and more liquor throughout the day. (App. G, at ¶37). He went to pick up his wife and son late in the evening or early morning of September 1, 2013. (Id. at ¶38). He admitted he was driving too fast and as he drove into the driveway of 1435 York, he heard a voice. (Id.). He got out of car and recognized Elling as a neighbor who he had waved to in the past.

(Id.). Elling was approximately 6'1" tall. (Id. at ¶7). Petitioner explained that Elling and him exchanged words and Elling pushed him down, yelling about Petitioner's careless driving. (Id. at ¶39). Petitioner then moved his car further up the driveway and entered 1435 York Avenue. He went back to York Avenue, parking his car about a block away to think. (Id. at ¶42). He was upset and had mixed emotions about the altercation. (Id. at ¶40). When asked what was the purpose of going back to York Avenue with a gun, Petitioner testified that he was going to ask the man why he had pushed him and to apologize. (Id.). He admitted he was scared and wanted the gun for protection, that it made him feel safer. (Id.). Eventually Petitioner walked up and rang the doorbell to talk with Elling but then lost his nerve, so ran and hid behind a tree near the end of the driveway. (Id. at ¶43). His back was to the tree as he heard the door open. (Id. at ¶44). He had never fired a gun before and didn't aim it, but was pointing the gun at the house. (Id.). He pulled the trigger, heard a loud pop and saw the man fall. (Id.). He claimed he was trying to scare the man so he wouldn't mess with him again, and he never intended to shoot him. (Id.). "It wasn't supposed to hit him," Petitioner only tried to scare the victim by letting off a few rounds. (Id. at ¶30).

According to Petitioner, he doesn't know why he fired the second shot. (Id. at ¶45). He was scared and ran. (Id. at ¶30, ¶45). Two hours later, Petitioner returned and ducked under the police tape marking off the scene. (App. F, ¶2, ¶3). He immediately gave his name to a police officer and was taken into custody. (Id.). During his four hour interview with law enforcement he was respectful and give a full confession that included giving officers the whereabouts of the gun and ammunition. (Id. at ¶5).

REASONS FOR GRANTING THE PETITION

The court rulings below shows the need for this Court's intervention and exercise of its judicial discretion. As a result of the Minnesota Supreme Court's decision, and the federal courts approval of how the Minnesota Supreme Court settled Petitioner's type of Sixth Amendment ineffective assistance-of-counsel claims, all Minnesota state courts are now bound by stare decisis to apply an analytical framework articulated by this Court that doesn't adequately address the type of Sixth Amendment ineffective assistance-of-counsel claims that arised in Petitioner type of case. Among other things, this instant case presents the important question of whether the same condition in the analytical framework held in the Frye and Lafler v. Cooper, 132 S.Ct. 1376 (2012), analysis that requires a court to determine whether the prosecution would not have intervened with the court's acceptance of a guilty plea, applies to cases that involve straight pleas to the district court from a criminal defendant?

This Court has not yet dealt with the issue of what say so do a prosecution have in situations where state law permits a criminal defendant to straight plea to the court instead of waiting on the prosecution to offer a plea deal; nor has this Court dealt with how to apply Strickland's prejudice test where defense counsel failed to effectuate their client's desire to plead guilty to the charged offense by scheduling a court appearance so Petitioner could straight plea as state law permit one to do without consent of the prosecution. These important questions of federal law should be settled by this high Court. This Court can, by granting this petition, assure that all criminal defendants ultimate authority to plead guilty to the charged offense is protected in all scenarios and effectuated with the customary skills and diligence of a competent attorney.

Further, the court rulings below also shows that there is a need for this Court to define what it meant by "the proceeding" in the context of Strickland's second prong for ineffective assistance-of-counsel claims, being that it appears that the lower courts here has a conflicting view from that of the Strickland's Court. Proper guidance from this Court on the questions presented in this Petition is urgently needed, which makes this case an apt case to grant certiorari.

Until this Court intervenes, these issues is likely to recur. Minnesota stare decisis settling the questions relating to ineffective assistance with respect to straight guilty plea offers to the court is the law of the State. There is high percentage of a chance that this issue will recur in other jurisdictions in the country. For instance, as this Court recognized in Frye and Lafler, back in 2012 "ninety-seven percent of federal convictions and ninety-four percent of state convictions are the result of guilty pleas," "criminal justice today is for the most part a system of pleas, not trials." Frye, 132 S.Ct. at 1407; Lafler, 132 S.Ct. at 1381. As such, here is another issue that arose from this system of pleas that deserves this Court's attention. This Petition presents the opportunity for this Court to establish the appropriate analytical framework for guilty pleas involving straight pleas.

I. The manner in which the lower courts resolved Petitioner's Sixth Amendment ineffective assistance-of-counsel claim is erroneous because the lower courts did not apply an appropriate analysis.

As Petitioner indicated above, there is no analytical framework articulated by this high Court when reviewing cases that involve straight pleas. As a result, the lower courts here were left to gather guidance from whatever authority they could find from this Court that they determined dealt with the issue at hand. For example, even though the federal magistrate judge conceded that "Frye's factual premise--defense counsel's failure to inform the defendant

of the plea offers extended by the prosecutor--differ from [Petitioner's] case," the court still determined that Frye's analysis is applicable to Petitioner's claim and ultimately concluded that "the Minnesota Supreme Court reasonably applied Strickland and its progeny." Vang v. Roy, 2017 U.S. Dist. LEXIS 167177, at *24 - *25. The magistrate judge based its determination on the legal conclusion that "the ultimate analysis of prejudice under Strickland is the same: would the State have gone along with the plea." Id. at *24. This view of Strickland is misguided.

First, this requirement of Strickland/Frye is not appropriate for straight plea scenarios. Specifically, Frye dealt with a favorable plea deal that was formally proposed by the prosecution but wasn't communicated to the defendant and the time had lapsed to accept the prosecution offer. While this incident deals with the defendant's unfavorable offer to the court to plead guilty and receive the statutory maximum for the charged offense. A charge the prosecution had filed in court for a total of approximately 5 months and 11 days. And second, Minnesota law allowed Petitioner to plead guilty "to the charged offense... any time after the commencement of the Omnibus Hearing." Minn. R. Crim. P. 11.08. The omnibus hearing was held on September 16, 2013, and at any point thereafter Petitioner could have pleaded guilty. Moreover, nothing in Minnesota law required the prosecutor to consent to a defendant's guilty plea to the charged offense.[1] Nor would such a requirement make sense. Where a defendant wishes to take responsibility for the crime, as charged, without a trial, the prosecutor has noting to oppose.[2]

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[1] In Minnesota, a "defendant cannot enter a guilty plea at the Rule 8 hearing" if the prosecutor gives notice of intent to present the case to a grand jury. Minn. R. Crim. P. 8.02, subd. 2. This rule was inapplicable here for two reasons. First, the Rule 8 hearing had come and gone by the time Petitioner decided he wanted to plead guilty. Second, prosecutors never gave notice of intent to present the case to a grand jury.

[2] In Minnesota, the consent of the prosecutor can be requested, but is not

Consequently, the proposed Fyre (and similar Lafler) analysis used to settle Petitioner's case does not adequately address how should a reviewing court access this type of ineffective assistance/guilty plea claim raised here. As shown above, the lower courts ruling is erroneous and this Court is the only Court that can prevent substantial errors like this from recurring.

II. The decision below misapplies this Court's precedent.

Reduced to its essentials, Petitioner contended that his attorneys' performance was constitutionally deficient because counsel did not act upon his expressed wish to plead guilty to the charged offense. The Minnesota Supreme Court held that Petitioner was not prejudiced by this performance because, had Petitioner attempted to plead guilty, "the State could have dismissed the complaint...[and] then could have convened a grand jury ... to seek an indictment for first-degree premeditated murder." Vang, 881 N.W.2d at 557. The federal habeas court determined that there was no need to define what this Court meant by "the proceeding." Vang v. Roy, 2017 U.S. Dist. LEXIS 167177, at *22.

Nonetheless, the Minnesota Supreme Court holding was an unreasonable application of the Sixth Amendment prejudice standard because it did not ask whether, but for counsel's deficient performance, the result of "the plea process," Lafler, 132 U.S. at 1384 (citation omitted), or "the proceeding," Strickland v. Washington, 466 U.S. 668, 694 (1984), would have been different. Indeed, the state court presumed that the result of "the proceeding" would have different: the state court presumed that, had counsel acted reasonably

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necessarily required, for a defendant to plead guilty to a lesser-included version of the charged offense. See Minn. R. Crim. P. 15.07, 15.08; State v. Streiff, 673 N.W.2d 831 (Minn. 2004). But Petitioner wanted to plead guilty to the charged offense, not to a lesser-included version of the charged offense, and the prosecutor did not have to consent to such a plea.

and arranged for Petitioner toplead guilty, the State would have dismissed the complaint, ending "the proceeding" altogether, which would have resulted in Petitioner being release from custody. A reasonable examination of the impact of the deficient performance would have stopped right there, because dismissal of the charging document is the end of the "proceeding" or the "plea process."

Instead of stopping at the end of the proceeding, however, the state court construed the Sixth Amendment prejudice standard to allow it to consider the possible impact of the deficient performance on a hypothetical, furture proceeding: a subsequent case, charging first-degree murder, initiated by grand-jury indictment. This was an unreasonable application of clearly established Federal law. Nothing in Strickland or its progeny examines anything other than the impact of deficient performance on the already-completed proceeding at issue. This Court has never done what hte state court did here: concluded that counsel's deficient performance affected the result of "the proceeding" that had actually occured, but that Petitioner was not prejudiced because some other "proceeding" might have followed.

Far from being merely "incorrect of erroneous," Wiggins v. Smith, 539 U.S. 510, 520-21 (2003), the Minnesota Supreme Court's misapplication of the Sixth Amendment standard was unreasonable because the difference between looking forward and looking backwards is a difference of kind not of degree. The state court should have applied the backwards-looking analysis of Strickland/Lafler and examined the effect of the deficient performance on the outcome of the already-completed proceeding. Instead, the state court looked forward and asked whether the deficient performance would have affected the outcome of a subsequent, hypothetical, future proceeding, one that was separate and apart from the proceeding at issue.

The backward-looking nature of the prejudice inquiry becomes more apparent when compared to forward-looking inquiries of other prejudice tests. For example, a defendant can receive a new trial based upon the discovery of new evidence only if, among other things, "the newly discovered evidence [is] such that its emergence probably will result in an acquittal upon retrial." United States v. Haskell, 468 F.3d 1064, 1076 (8th Cir. 2006). This test looks to what effect the evidence might have on a hypothetical, future "retrial." Id. It does not, as the ineffective-assistance standard does, examine what effect the new evidence might have had on the trial already held.

The Sixth Amendment prejudice standard requires a court to examine the effect of the deficient performance upon the already-completed proceeding, and to determine if, but for the deficient performance, the result of that proceeding might have been different. If the result of that proceeding would have been different, then the fact that another proceeding might have followed is irrelevant. If the Strickland standard was forward-looking in the way the newly-discovered-evidence standard is forward-looking, such an inquiry would have been appropriate because the reviewing court would have to determine whether hte deficient performance "probably will result in an acquittal upon retrial." Haskell, 468 F.3d at 1076. But however, the ineffective-assistance standard is backwards-looking. The Minnesota Supreme Court's decision otherwise was unreasonable.

The federal court below, ruling that State Supreme Court reasonably applied Strickland and its progeny is clearly erroneous. As established above, the court based its determination on the inapplicable Frye analysis that looks at the prosecution's ability to withdraw a plea deal it proposed. Where it just might be suitable for other ineffective assistance claims, just not for the ones that involve straight pleas to the court without consent from the

prosecutor. Compelling reasons exist for this Court to exercise its discretionary jurisdiction. This Court should grant certiorari to set the standard on how the lower courts should treat these type of Sixth Amendment ineffective assistance-of-counsel claims.

III. The lower courts rulings, if allowed to stand, have great implications on the defendant's authority to plead guilty to the charged offense and speedy disposition of a case.

The factual premise to this case was totally available to the prosecution within 36 to 48 hours of the incident. Hours after the incident Petitioner fully confessed and cooperated with the authorities in retrieving vital evidence in the case. Yet and still, the prosecution spent 5 months and approximately 11 days in deciding whether they were going to seek a severer offense (that carried a natural life sentence in prison) against a young 19 year of kid who made an irreversible mistake and clearly tried to step up and take responsible mistake and clearly tried to step up and take responsible for what he did. Since Petitioner case is a first-degree murder, appellate review automatically is reviewed by the Minnesota Supreme Court which opinions are publish for the public to see. The implications here is compelling enough for this Court to exercise its judicial discretion.

The decision to plead guilty was for petitioner to make, as "[a] defendant...has the ultimate authority to determine whether to plead guilty." Florida v. Nixon, 543 U.S. 175, 187 (2007)(quotation omitted); see also United State .v Washington, 198 F.3d 721, 724 (8th Cir. 1999)("A defendant must always make the ultimate decision as to pleading guilty"). The decision to plead is one of the small number of decisions in a criminal case that are for the defendant, not counsel, to make. Jones v. Barnes, 463 U.S. 745, 751 (1983) (holding that defendant "has the ultimate authority to make certain fundamental decisions regarding the case, as to whether to plead guilty, waive a jury,

testify in his or her own behalf, or take an appeal"). A lawyer who disregards the defendant's specific instructions to do one of those things "acts in a manner that is professionally unreasonable." Roe v. Flores-Ortega, 528 U.S. 470, 477 (2000)(citing Rodriguez v. United States, 395 U.S. 327 (1969)).

The implications resulting from the Minnesota Supreme Court's resolution of Petitioner's Sixth Amendment ineffective assistance-of-counsel claim, and the federal courts review of the state court resolution, puts into question how much authority a defendant have to plead guilty. As it stand, the court ruling ultimately found no wrong in counsel not effectuating his client desire to plead guilty to the only charged against him. This communicates and implies that there are limitations to a defendant's "authority."

Further, the lower courts rulings regarding the prosecution ability to block a defendant from straight pleading to the charged offense reinforces this notion. If the Court leave the lower courts decision undefined on this point a prosecutor can read the lower courts decison to provided them the ability to stand in way of a defendant's exercise of his ultimate authority to offer to the court a straight plea of guilt to the charged offense. And like they did here, prosecutor can also delay the speedy disposition of a case by encouraging plea negotiations that lasted 5 months or so with no resolution even when Petitioner agreed to a plea with a statutory maximum sentence consideration proposed by the prosecution. Only to end up seeking an indictment with infromation the prosecution had in its possession 36 to 48 hours after the murder took place. It appears that the prosecution was ability to stall the proceedings until it was ready to seek an indictment on the Petitioner. Petitioner options was slim to none and he was at the mercy of the prosecution. His authoity to plea was diminished and he was force to stand trial because, in part, the employed tatics of the prosecution. This Court should grant

certiorari to determine if a prosection actions can infringe on a criminal defendant's ultimate authority to plead guilty.

Although Supreme Court Rule 10 sets out the considerations governing review by this Court on certiorari; however, the reasons specified is neither controlling nor fully measuring this Court's discretion. Based on this non-limitation, this Court has the authority grant review for the compelling reasons mention above.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Alang Vang

Date: 7/19/18