No. 18-7983

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

ERIC LAURSON — PETITIONER (Your Name)

vs.

THE STATE OF COLORADO —

RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

COLORADO COURT OF APPEALS

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

(Your Name)

Eric Laurson, #99598
Arkansas Valley Correctional Facility
12750 State Highway 96, Lane 13
Ordway, CO. 81034

(Address)

(City, State, Zip Code)

(Phone Number) (None-incarcerated)

QUESTION(S) PRESENTED

1) **May procedural default of the review of a claim of constitutional entitlement, which a state regulates to the collateral review venue, be properly imputed to the state?**

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:

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

CASES PAGE NUMBER

STATUTES AND RULES

OTHER

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[ ] reported at _____; or, [ ] has been designated for publication but is not yet reported; or, [ ] is unpublished.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[ ] reported at _____; or, [ ] has been designated for publication but is not yet reported; or, [ ] is unpublished.

[**X**] 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,
[**X**] is unpublished.

The opinion of the Colorado Court of Appeals appears at Appendix A, to the petition and is

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[ ] has been designated for publication but is not yet reported; or, [**X**] is unpublished.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

[X] For cases from state courts:

The date on which the highest state court decided my case was Oct. 15, 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

Fourteenth Amendment of the United States Constitution

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

In 1998, Mr. Laurson was charged and ultimately tried for one count of felony murder, one count of attempted second degree murder, one count of first degree assault and one count of attempted aggravated robbery with respect to two individuals. Mr. Laurson, following conviction, was sentenced to life without the possibility of parole on the felony murder count, plus a thirty year cumulative sentence on the remaining convictions, Mr. Laurson appealed and a division of the Colorado Court of Appeals affirmed his convictions and sentences. See People v. Laurson, 15 P.3d 791 (Colo. App. 2000), cert. denied, (Colo. Sup. Ct. Case No. 00SC597, Jan. 16, 2001).

Mr. Laurson then filed an initial-review postconviction application (under Colorado Rule of Criminal Procedure 35(c), and the trial court appointed counsel to represent him. Appointed counsel (of which there were two), retained the case eight-plus years, with the last attorney withdrawing after Mr. Laurson complained of the delay, claiming she could find no merit.[1]

As a result, the trial court summarily dismissed the Crim.P.Rule 35(c) motion, did not appoint counsel for appellate purposes and forced Mr. Laurson to appeal pro-se. Not knowing what to do or how to proceed, Mr. Laurson failed to properly designate the record for appellate review and properly argue the issues on appeal. Consequently, the Colorado Court of Appeals denied Mr. Laurson's pro-se appeal, given he had not provided the record for appellate review and finding that his arguments were vague and conclusory. See People v. Laurson, (Laurson II), Colorado App. No. 10CA1789 (July 26, 2012)(not published pursuant to C.A.R. 35(f)), cert. denied, (Colo. Sup. Court Case No. 12SC601, Feb. 19, 2013).

Immediately thereafter, Mr. Laurson filed a second Crim.P.Rule 35(c) motion, which was denied

[1] It should be noted that Mr. Laurson's second attorney, Amber St. Claire, had the case herself for six years, after which she said she could find no merit and withdrew because Mr. Laurson complained about her not advancing his case.

as being successive. Mr. Laurson appealed and that denial was upheld. See People v. Laurson, (Laurson III), Colo. App. No. 13CA0535 (July 10, 2014), cert. denied (Colo. Sup. Court Case No. 14Sc624, March 23, 2015).

This brings us to the action being appealed in this case, which was the final Crim.P.Rule 35(c) motion filed in early 2016, which raised several issues previously unavailable. Mr. Laurson's last motion too was summarily denied as being successive, he appealed and that denial was affirmed. See Appendix B. he sought certiorari review from the Colorado Supreme Court and they also denied review (Mr. Laurson sought review on the issue raised herein). He now respectfully moves this Court to grant review and issue an opinion as to whether procedural default of the review of a claim of constitutional entitlement, which a state regulates to the collateral review venue, may be properly imputed to the state.

REASONS FOR GRANTING THE PETITION

1) **May procedural default of the review of a claim of constitutional entitlement, which a state regulates to the collateral review venue, be properly imputed to the state?**

In Martinez v. Ryan, 132 S.Ct. 1309, 1317 (2012), this Court held:

> "Where, as here, the initial-review collateral proceeding is the first designated proceeding for a prisoner to raise a claim of ineffective assistance at trial, the collateral proceeding is in many ways the equivalent of a prisoner's direct appeal as to the ineffective-assistance claim. This is because the state habeas court "looks to the merits of the clai[m]" of ineffective assistance, no other court has addressed the claim, and "defendants pursuing first-tier review . . . are generally ill equipped to represent themselves" because they do not have a brief from counsel or an opinion of the court addressing their claim of error. Halbert v. Michigan, 545 U.S. 605, 617, 125 S. Ct. 2582, 162 L. Ed. 2d 552 (2005); see Douglas, supra at 357-358, 83 S. Ct. 814, 9 L. Ed. 2d 811.
>
> As Coleman recognized, an attorney's errors during an appeal on direct review may provide cause to excuse a procedural default; for if the attorney appointed by the State to pursue the direct appeal is ineffective, the prisoner has been denied fair process and the opportunity to comply with the State's procedures and obtain an adjudication on the merits of his claims. See 501 U.S., at 754, 111 S. Ct. 2546, 115 L. Ed. 2d 640; Evitts v. Lucey, 469 U.S. 387, 396, 105 S. Ct. 830, 83 L. Ed. 2d 821 (1985); Douglas, supra, at 357-358, 83 S. Ct. 814, 9 L. Ed. 2d 811. Without the help of an adequate attorney, a prisoner will have similar difficulties vindicating a substantial ineffective-assistance-of-trial-counsel claim. Claims of ineffective assistance at trial often require investigative work and an understanding of trial strategy. When the issue cannot be raised on direct review, moreover, a prisoner asserting an ineffective-assistance-of-trial-counsel claim in an initial-review collateral proceeding cannot rely on a court opinion or the prior work of an attorney addressing that claim. Halbert, 545 U.S., at 619, 125 S. Ct. 2582, 162 L. Ed. 2d 552. To present a claim of ineffective assistance at trial in accordance with the State's procedures, then, a prisoner likely needs an effective attorney.
>
> The same would be true if the State did not appoint an attorney to assist the prisoner in the initial-review collateral proceeding. The prisoner, unlearned in the law, may not comply with the State's procedural rules or may misapprehend the substantive details of federal

constitutional law. Cf., e.g., id., at 620-621, 125 S. Ct. 2582, 162 L. Ed. 2d 552 (describing the educational background of the prison population). While confined to prison, the prisoner is in no position to develop the evidentiary basis for a claim of ineffective assistance, which often turns on evidence outside the trial record.

A prisoner's inability to present a claim of trial error is of particular concern when the claim is one of ineffective assistance of counsel. The right to the effective assistance of counsel at trial is a bedrock principle in our justice system. It is deemed as an "obvious truth" the idea that "any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him." Gideon v. Wainwright, 372 U.S. 335, 344, 83 S. Ct. 792, 9 L. Ed. 2d 799 (1963). Indeed, the right to counsel is the foundation for our adversary system. Defense counsel tests the prosecution's case to ensure that the proceedings serve the function of adjudicating guilt or innocence, while protecting the rights of the person charged. See, e.g., Powell v. Alabama, 287 U.S. 45, 68-69, 53 S. Ct. 55, 77 L. Ed. 158 (1932) ("[The defendant] requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence"). Effective trial counsel preserves claims to be considered on appeal, see, e.g., Fed. Rule Crim. Proc. 52(b), and in federal habeas proceedings, Edwards v. Carpenter, 529 U.S. 446, 120 S. Ct. 1587, 146 L. Ed. 2d 518 (2000).

This is not to imply the State acted with any impropriety by reserving the claim of ineffective assistance for a collateral proceeding. See Massaro v. United States, 538 U.S. 500, 505, 123 S. Ct. 1690, 155 L. Ed. 2d 714 (2003). Ineffective-assistance claims often depend on evidence outside the trial record. Direct appeals, without evidentiary hearings, may not be as effective as other proceedings for developing the factual basis for the claim. Ibid. Abbreviated deadlines to expand the record on direct appeal may not allow adequate time for an attorney to investigate the ineffective-assistance claim. See Primus, Structural Reform in Criminal Defense, 92 Cornell L. Rev. 679, 689-690, and n. 57 (2004) (most rules give between 5 and 30 days from the time of conviction to file a request to expand the record on appeal). Thus, there are sound reasons for deferring consideration of ineffective-assistance-of-trial-counsel claims until the collateral-review stage, but this decision is not without consequences for the State's ability to assert a procedural default in later proceedings. By deliberately choosing to move trial-ineffectiveness claims outside of the direct-appeal process, where counsel is constitutionally guaranteed, the State significantly diminishes prisoners' ability to file such claims. It is within the context of this state procedural framework that counsel's ineffectiveness in an initial-review collateral proceeding qualifies as cause for a procedural default."

Colorado is a state that regulates claims of constitutional entitlement to collateral review. See Silva v. People, 156 P.3d 1164, 1167 (Colo. 2007)(citing Ardolino v. People, 69 P.3d 73, 77 (Colo. 2003)("defendants have regularly been discouraged from attempting to litigate their counsels'

effectiveness on direct appeal"); People v. Thomas, 867 P.2d 880, 886 (Colo. 1994) ("this court has expressed a preference for having ineffective assistance of counsel claims brought in Crim. P. 35(c) proceedings"); see also e.g., Moore v. People, 318 P.3d 511, 515, 2014 CO 8, ¶ 8 (regulating a challenge to the waiver of a defendant's right to testify to postconviction review versus direct appeal); People v. Walker, 318 P.3d 479, 481, 2014 CO 6, ¶ 1 (regulating a challenge to a defendant's waiver of the right to a jury trial to the postconviction review venue versus direct appeal). Consequently, as noted in Martinez supra, that initial review postconviction application, which posts a challenge to a violation of any of these rights, is in many ways analogous to an extension of the defendant's first appeal as a matter of right.

In the instant case, we have a situation where Mr. Laurson initially had assistance in filing a postconviction motion (by another incarcerated with him who then was released), in which he raised claims of ineffective assistance of counsel.[2] The trial court determined that the motion had sufficient merit to warrant the appointment of counsel; multiple counsel's represented him for a period of over eight years (during the course of which they did nothing), and when Mr. Laurson finally complained, the last attorney (who had the case for over six years), withdrew, stating that all of Mr. Laurson's claims lacked merit (it boggles the mind to believe counsel would represent someone for six years and then say that the claims lacked merit), after representing him for six years). The trial court then summarily dismissed the motion following counsel's assertions and Mr. Laurson was left unrepresented. He attempted to appeal, however, without representation he was unable to properly comply with the procedures for doing so and failed to properly argue the substance of his claims as denied in the trial

The argument as presented herein is fairly straightforward. As was discussed in Martinez, Mr.

[2] It should be noted that when Mr. Laurson filed his initial-review postconviction motion, he was allowed to raise a challenge to any violation that occurred at trial, regardless of whether that challenge could have been made on direct appeal. See People v. Corichi, 18 P.3d 807, 810 (Colo. App. 2000). In 2004, the Colorado Supreme Court changed this procedure and now prohibits the review of any claim which could have been raised on direct appeal or a prior postconviction proceeding, except claims of ineffective assistance of counsel. See Crim.P.Rule 35(c)(3)(VI)/(VII); People v. Walton, 167 P.3d 163, 169 (Colo. App. 2007).

Laurson contends that when he receives ineffective assistance of counsel on his initial-review postconviction motion, any default that occurs due to said may be correctly imputed to the state. Id, 132 S.Ct. at 1318-19 (allowing for "cause" for any procedural default that occurred at the state level as a result of ineffective assistance of postconviction counsel, or the failure to appoint said, when a state regulates claims of constitutional entitlement to that venue and the defendant is timely seeking federal habeas review). Accordingly, he now moves this Court to find/require that the same procedures be required from the states which regulate these types of claims to that venue. In other words, does the Fourteenth Amendment's Due Process Clause, mandate that state adopt the same requisites as this Court did in Martinez, if/when a defendant files a second or subsequent state collateral review action? Mr. Laurson submits that it does and moves this Court to grant certiorari to establish such a rule.

This posit has support from this Court's requirement that all pro-se litigants are entitled to liberal construction in review of their submission. See Haines v. Kerner, 404 U.S. 519, 520-21 (1972). Further support may be gleaned from the fact that this Court also recognizes the limitations of most, if not all pro-se prisoner litigants. See Halbert v. Michigan, 545 U.S. 605, 620-21 125 S. Ct. 2582 (2005)(discussing in detail the limitations of such litigants).

If this doesn't occur, a state may in turn not only cause an unwary, uneducated prisoner to default not only his federal rights, but also any challenge he may have left at the state level. Moreover, further allowance of said is exacerbated by the fact that in Colorado, the courts continue to regulate claims of constitutional entitlement to the collateral review venue. See Silva, Moore, Walker, supras. Accordingly, Mr. Laurson respectfully moves this Court to grant certiorari and establish a rule of law which requires Colorado to comply with the mandates established in Martinez. This as well as all other available relief is respectfully requested.

CONCLUSION

Wherefore, for the reasons stated herein, the petition for a writ of certiorari should be granted.

Respectfully submitted,

Eric Laurson 1228-18

Eric Laurson, #99598
Arkansas Valley Correctional Facility
12750 State Highway 96, Lane 13
Ordway, CO. 81034