No. 19-5247

IN THE SUPREME COURT OF THE UNITED STATES

Charles Michael Hedlund, Petitioner,

vs.

State of Arizona, Respondent.

CAPITAL CASE

ON PETITION FOR A WRIT OF CERTIORARI TO THE ARIZONA SUPREME COURT

REPLY BRIEF IN SUPPORT OF CERTIORARI

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases

State Cases

State Statutes

Other

REPLY BRIEF IN SUPPORT OF CERTIORARI

Petitioner Charles Michael Hedlund rests upon and incorporates the arguments he presented in the petition for a writ of certiorari he filed in this Court on July 18, 2019.

Hedlund respectfully requests that this Court grant a writ of certiorari. Should this Court decline to do so, then the parties agree: "this Court should hold Hedlund's petition in abeyance pending the resolution of [James] McKinney's case." (State's Br. at 1, citing *McKinney v. Arizona*, No. 18-1109.) McKinney's case is set for oral argument in this Court on December 11, 2019.

Hedlund and McKinney are co-defendants and brothers, though Hedlund was convicted of one count of first-degree murder, as opposed to McKinney's two, and though his sentence rests on one aggravator, as opposed to McKinney's multiple aggravators.[1]

Here, the United States Court of Appeals for the Ninth Circuit found that Hedlund's death sentence violated the Eighth and Fourteenth Amendments to the United States Constitution because mitigating evidence that lacked a causal connection to his crime was not actually considered or permitted to give effect to a

[1] The sole statutory aggravating factor upon which the Arizona Supreme Court determined Hedlund to be eligible for a sentence of death, to wit, that the murder was committed "as consideration for the receipt, or in expectation of the receipt, of anything of pecuniary value," *see* former A.R.S. § 13-703(F)(5), was repealed in relevant part by the State of Arizona effective August 27, 2019. *See* A.R.S. § 13-751(F) (West 2019).

life sentence. *Hedlund v. Ryan*, 854 F.3d 557, 587 (9th Cir. 2017) (citing *Eddings v. Oklahoma*, 455 U.S. 104, 113–15 (1982)).[2] Further, the Ninth Circuit found that this error had a "substantial and injurious effect" on Hedlund's sentence and was, therefore, not harmless. *Id.* That is, the failure to give effect to mitigation that was not causally connected to the crime caused actual prejudice to Hedlund, and met the high bar of *Brecht v. Abrahamson*, 507 U.S. 619, 637 (1993). In imposing this heavy burden on petitioners in *Brecht*, this Court noted that the granting of the writ of habeas corpus is "an extraordinary remedy, 'a bulwark against convictions that violate fundamental fairness.'" *Id.* at 633 (citation omitted). Given the already-

[2] Hedlund disputes the State's claim that the causal nexus error the Ninth Circuit identified was limited to consideration of childhood abuse and long-term alcohol use. (State's Br. at 18, n.4.) The Ninth Circuit's analysis pertained to the trial court and the Arizona Supreme Court analyses of mitigation in their entirety. Though the Ninth Circuit mentioned in one part of its opinion that the Arizona Supreme Court found the mitigating factors of childhood abuse and long-term alcohol use did not outweigh the aggravating factors because they lacked a causal connection, *Hedlund*, 854 F.3d at 584, the trial court essentially excluded the other evidence entirely due to its lack of a causal nexus, *see* App. 168a–172a (trial court discounting mitigation evidence because it did not prove two statutory mitigating factors that pertained to Hedlund's state of mind at the time of the crime). The Arizona Supreme Court adopted the trial court's analysis. *See* App. 87a. The Ninth Circuit cited the trial court's statement that none of the mitigating factors, considered separately and cumulatively, affected Hedlund at the time of the crime. *Hedlund*, 854 F.3d at 586–87 (quoting App. 172a). In that same sentence, the trial court explained that the finding that no mitigating factors were connected to Hedlund's state of mind or abilities at the time of the crime, was "not limited to the personality traits discussed by [defense mental-health expert] Dr. Holler, past drug and alcohol use . . . and the child abuse[.]" App. 171a–172a. Lastly, Hedlund's brain damage, post-traumatic stress disorder, and impairments were the result of his childhood abuse, and deeply intertwined with it.

determined import of the excluded mitigation evidence, it was essential that a court hear such evidence firsthand in order to fully consider and weigh its strength.

Once the conditional writ was issued, the underlying judgment was effectively invalidated, which permitted "the State [to] seek a new judgment (through a new trial or a new sentencing proceeding)." *Magwood v. Patterson*, 561 U.S. 320, 332 (2010) (quoting *Wilkinson v. Dotson*, 544 U.S. 74, 83 (2005)). *Magwood* makes clear that because the Ninth Circuit granted a conditional writ of habeas corpus, Hedlund's state judgment is, as a matter of law, no longer final, thereby entitling him to the right to a jury trial under *Hurst v. Florida*, 136 S. Ct. 616 (2016). The State asserts that federal courts may not determine whether Hedlund's conviction is final. (State's Br. at 25–29.) This is incorrect. *See Gonzalez v. Thaler*, 565 U.S. 134, 152 (2012) (rejecting "state-by-state definitions of the conclusion of direct review").

The Arizona Supreme Court's partial, truncated independent review was not an adequate correction of the constitutional error that infected Hedlund's sentencing proceedings.[3] The State relies heavily upon *Styers v. Ryan*, 811 F.3d 292 (9th Cir.

[3] The State asserts that the Ninth Circuit left the remedy for the identified causal nexus error open to include a partial independent review in the Arizona Supreme Court. (State's Br. at 30–31.) This is incorrect. In addition to the grounds stated in the Petition for Certiorari, a panel of the Ninth Circuit cited *McKinney v. Ryan* for the proposition that where a state court judgment involves an unreasonable application of clearly established federal law, "the appropriate remedy is to remand the case to the district court with instructions to retain jurisdiction and grant the writ unless, within a reasonable time, the State grants [Petitioner] a new trial consistent with due process." *Anderson v. Gipson*, 902 F.3d 1126, 1135 (9th Cir. 2018) (citing *McKinney v. Ryan*, 813 F.3d 798, 827 (9th Cir. 2015) (en banc)).

2015), *State v. Styers*, 254 P.3d 1132 (Ariz. 2011), and *Clemons v. Mississippi*, 494 U.S. 738 (1990). (*See, e.g.*, State's Br. at 2, 23, 26.) However, the State ignores that these cases predate *Hurst*.

The State also ignores that Hedlund's entire sentencing proceedings were tainted by the causal nexus error, as evidence and argument centered upon evidence that would show a causal connection. *See Madison v. Alabama*, 139 S. Ct. 718, 731 (2019) (holding that state courts "may not rely on any arguments or evidence tainted" by legal error when determining whether a death sentence is warranted).

Hedlund and McKinney seek the same thing, to which every defendant facing the ultimate punishment of death is entitled: the opportunity to have a sentencer hear all mitigating evidence firsthand, and to have a sentencer weigh the strength and quality of that evidence, without limitation, against the strength and quality of any statutory aggravating evidence, before imposing a sentence of death. The sentencer must not only be able to consider such mitigation evidence, but must be able to give effect to it—that is, it must be able to be considered substantial enough to warrant leniency even where it is not causally connected. *See Tennard v. Dretke*, 542 U.S. 274, 284–85 (2004). Hedlund has never had a court conduct this analysis. A death sentence imposed without such full consideration cannot stand. *See Eddings*, 455 U.S. at 112.

Respectfully submitted: November 14, 2019.

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