No. 19-7091

IN THE

SUPREME COURT OF THE UNITED STATES

ALAN MATTHEW CHAMPAGNE

Petitioner

vs.

STATE OF ARIZONA

Respondent

On Petition for a Writ of Certiorari

to the Supreme Court of Arizona

REPLY BRIEF OF PETITIONER

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ALAN MATTHEW CHAMPAGNE,
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On Petition for a Writ of Certiorari to the
Supreme Court of Arizona

REPLY BRIEF IN SUPPORT OF CERTIORARI

CAPITAL CASE

INTRODUCTION

The State claims that the settled law of *Holloway v. Arkansas*, 435 U.S. 475, 98 S.Ct. 1173 (1978), which requires substitution of counsel under the Sixth Amendment where counsel admits there is a conflict of interest, is irrelevant to this Petition. The State bases its claim on an apparently conciliatory statement trial counsel made in court about her troubled relationship with the Petitioner, a statement the Petitioner flatly, immediately disputed and is belied by the record. This conciliatory statement was made at a hearing *months* after the trial court had failed to remove trial counsel, where after trial counsel had *conceded* a conflict of interest existed between them and Petitioner and required substitution with new counsel. Pet. App. 50.

At the latter hearing, Pet. App. 83, trial counsel stated, without explanation, that she thought the relationship between her and Petitioner wasn't "irretrievably broken"

and that they could work together, see also, Brief in Opposition, p. 6. At that same hearing, however, trial counsel accused Petitioner of refusing jail visits, Pet. App. 82—something he had just disputed, Pet. App. 79—and that Petitioner had expressed "hostility" toward the defense team. Pet. App. 82.

"Hostility" would not be surprising, for as Petitioner had told the court,

> The prosecutor was informed by one of the jurors, that they were aware of her sleeping and snoring during that trial. Pet. App. 77.

Trial counsel had admitted to the court Petitioner was filing a bar complaint against trial counsel over this. Pet. App. 50. Even so, the State asserts that this "not irretrievably broken" remark, however unsupported by the record and, concededly, seized upon by the Arizona Supreme Court, e.g. Pet. App. 20, settles the question.

But that's simply the wrong standard of review. This wasn't a divorce case, it was a capital murder prosecution, and whether the relationship between them was "irretrievably broken" was wholly beside the point. And despite those mollifying words, trial counsel depicted the Petitioner to the court as lying about refusing jail visits and exuding "hostility." Pet. App. 79-82.

The courts below never dealt with the fact that months earlier—and some three years before trial—trial counsel *admitted* to the court's presiding judge on July 23, 2013 that there was indeed a conflict of interest that *required* her replacement:

> (Co-counsel) and I agree that we -- albeit we're not happy about it and we're hesitant about it but **we need to be removed** from representing Mr. Champagne any further. **We agree that there is a bonafiable (sic) conflict of interest** in this case. … And so I think he does have a good faith basis to

> ask for new counsel in this matter. Pet. App. 50 (emphasis **added**).

Nonetheless, the trial court summarily denied the motion for new counsel. Pet App. 51. But under *Holloway*, counsel's admission required a full stop, withdrawal, and appointment of new counsel:

> An attorney's request for the appointment of separate counsel, based on his representations regarding a conflict of interests, should be granted, considering that he is in the best position professionally and ethically to determine when such a conflict exists or will probably develop at trial; that he has the obligation, upon discovering such a conflict, to advise the court at once; and, that as an officer of the court, he so advises the court virtually under oath. 435 U.S. 485-486.

In the face of the initial denial of his motion, Petitioner almost immediately renewed his request for new counsel, Pet. App. 55-56, At the hearing before the trial court on the renewed request for new counsel, trial counsel admitted that she and Petitioner were still struggling and Petitioner restated his request orally as well. Pet. App. 66-67.

At that October 2, 2014 hearing, trial counsel misstated that the presiding judge had denied the motion[1] because "the trial was so close in time," *id.*, when in fact this case would not be tried until the summer of 2017, some three years *after* Petitioner's requests for new counsel. See, e.g. Petitioner's August 2017 jury allocution, Pet. App. 90.

At the final, December 1, 2014 hearing on the substitution motions, Petitioner re-urged his motion, and in response trial counsel essentially accused the Petitioner of

[1] Maricopa County Superior Court has a practice of referring motions for change of counsel to the Presiding Criminal Judge.

lying to the court about whether he had refused legal visits from her at the jail and claimed he wouldn't cooperate with her mitigation specialist. Pet. App. 79-81.

Instead of providing a responsive explanation of what had become of the "bonafiable" conflict of interest, trial counsel complained the rest of her caseload had kept her from working on Petitioner's capital case and admitted that she and her team hadn't seen Petitioner in months because of his supposed "hostility." Pet. App. 82.

A client who allegedly refuses counsel's visits, then ostensibly lies about that to the court and purportedly displays hostility to the defense team and won't cooperate with the mitigation specialist doesn't reasonably sound like someone in a retrievable attorney/client relationship. Again, this was almost three years before the capital trial, and months after trial counsel had conceded in court there was a conflict and that she and co-counsel needed to be replaced.

The presiding judge again denied the motion, even as trial counsel did not explain why her position had changed about a conflict existing that required new counsel, and even as the Petitioner pleaded,

> She fell asleep during my last trial. Maybe it was overwhelming, whatever, but as a professional you should not be sleeping during someone's trial. That is my life on the line, you know. Just by her actions alone in that case, I feel that there is grounds for insufficient counsel. I ask out of respect to the Court that I be granted new counsel, please. Pet. App. 83

The Petition should be granted.

ARGUMENT

THIS COURT SHOULD GRANT CERTIORARI TO CORRECT ARIZONA'S FAILURE TO ABIDE BY THIS COURT'S DECLARATION, UNDER THE SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS, THAT COUNSEL SHOULD BE REPLACED UPON COUNSEL'S ADMISSION OF A CONFLICT OF INTEREST

Respectfully, denying certiorari will allow the Arizona to overlook this Court's settled law, under *Holloway*, that counsel should be replaced upon an admitted conflict of interest.

The Constitution is the supreme law of the land and the opinions of this Court are binding on the states. "This Constitution, and the Laws of the United States. which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land." U.S. Const. Art. VI., cl. 2. "[T]he sovereignty of the States is limited by the Constitution itself." *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528, 548, 105 S.Ct. 1005 1016 (1985). The Fourteenth Amendment makes this Court's opinions on the Sixth Amendment right to counsel and the Eighth Amendment right to be free of cruel and unusual punishment binding on the states.

Respectfully, Arizona does not have the sovereignty to disregard *Holloway*'s instruction that where counsel timely concedes that a conflict exists between attorney and client that the trial court must grant the motion and appoint new counsel. 435 U.S. 485-486.

As in *Holloway*, the courts below here made no pretense of conducting the adequate inquiry:

> In this case the trial court simply failed to take adequate steps in response to the repeated motions, objections, and representations made to it, and no prospect of dilatory

practices was present to justify that failure. 435 U.S. 437.

Here, Petitioner was not dilatory. He acted three years before his capital case went to trial. In *Maples v. Thomas*, 565 U.S. 266, n. 8, 132 S.Ct. 912, 925, n. 8, 181 L.Ed.2d 807 (2012), a "significant conflict of interest" arose when the attorney's "interest in avoiding damage to [his] own reputation" was at odds with his client's "strongest argument—i.e., that his attorneys had abandoned him." *Christeson v. Roper*, 574 U.S. ___, 135 S. Ct. 891, 190 L.Ed.2d 763 (2015) (internal quotation marks omitted). In *Christianson* the abandonment was counsels' missing of a filing deadline that would have blocked further proceedings. Here, trial counsel's sleeping at a trial netting a 700-year sentence, and the damage that would have caused her reputation had it been the basis for an order of substitution, tends to explain her claims that the attorney/client relationship was not irretrievably broken, despite the record below. In fact, counsel's attempted explanations only underlined the conflict's potency.

CONCLUSION

The petition should be granted.

RESPECTFULLY SUBMITTED February 8, 2020.

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