

No. \_\_\_\_\_

IN THE

**SUPREME COURT OF THE UNITED STATES**

**JEREMIA JOSEPH LOPER – PETITIONER**

**vs.**

**NATE KNUTSON, WARDEN – RESPONDENT**

**ON PETITION FOR WRIT OF CERTIORARI TO**

**UNITED STATES COURT OF APPEALS, EIGHTH CIRCUIT**

**PETITION FOR WRIT OF CERTIORARI**

**Jeremia Joseph Loper**

**1047 17<sup>th</sup> Avenue South**

**St. Cloud, MN 56301**

**320-493-7804**

## QUESTIONS PRESENTED

1. Was Mr. Loper denied the right to a fair trial and the effective assistance of counsel when his trial attorney failed to investigate readily available exculpatory evidence, *inter alia*, and thus failed to subject the prosecution's case to meaningful adversarial testing?
2. Given the fundamental nature of the effective assistance of counsel, and its ability to ensure a fair trial, does appellate counsel have a responsibility to raise such an issue by whatever procedure is necessary – especially absent their client's ability to raise the issue?
3. Does appellate counsel's failure to raise clearly meritorious claims, absent the client's ability to raise them, constitute ineffective assistance of counsel?
4. Does a Court's refusal to consider said claims, when they were raised at the earliest possible opportunity, deny a defendant the right to at least one review, the right to a redress for his grievances, and/or the right to due process?
  - a. Relatedly, doesn't *Coleman* provide an exception for any procedural default arising out of such a situation?
  - b. If not, does *Martinez* provide an exception?

5. Does a Court's refusal to grant counsel to raise a claim of ineffective assistance of counsel, at the first opportunity to raise such a claim, cross constitutional boundaries?
6. Was it a denial of the right to provide a defense when the prosecution didn't narrow down the time of the alleged offense in the charging document? Did he leave the document over vague when a narrower time frame was available?
7. Was a certificate of appealability improperly denied?

## **LIST OF PARTIES**

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceedings in the court whose judgement is the subject of this petition is as follows:

**Attorney for respondent:**

Michael J. Lieberg, Reg. No. 0269141

Stearns County Attorney

Administration center, Rm. 448

705 Courthouse Square

St. Cloud, MN 56303

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that the writ of certiorari issues to review the judgement below.

**OPINION BELOW**

**For cases from the federal courts:**

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

The opinion of the United States district court appears at Appendix B to the petition and is unreported.

The report and recommendation of the Magistrate appears at Appendix C to this petition.

**Related cases:**

This case originated in State Court, the files and records were transferred to the United States District Court, for the District of Minnesota upon a 28 U.S.C 2254 petition. All the opinions were unreported.

## **JURISDICTION**

The date on which the United States Court of Appeals decided my case was December 17, 2019.

A timely petition for rehearing was denied by the United States Court of Appeals on the following dates: January 17, 2020, and a copy of the order denying rehearing appears at Appendix D.

An extension of time to file the petition for a writ of certiorari was granted to and including June 16, 2020 on March, 25, 2020 in Application No. Unknown, I did not receive a number.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

### **United States Constitution First Amendment**

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

### **United States Constitution Fifth Amendment**

“No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

### **United States Constitution Sixth Amendment**

“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.”

### **United States Constitution Fourteenth Amendment**

“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 September of 2014 Mr. Loper was hauled into court with an attorney ill prepared. Mr. Loper had informed his attorney Jason Rolloff (hereafter Mr. Rolloff), that he was not living in the location at the time specified by the alleged victim. Mr. Rolloff did not question anyone regarding this, nor did he seek any other way to verify Mr. Loper's whereabouts during the timeframe alleged. This was an important element to the crime and important to being able to form a defense.

Without proper investigation Mr. Rolloff did not have a proper picture of all the facts. This made him incapable of subjecting the prosecution's case to meaningful adversarial testing, be it through cross examination or some other avenue. Additionally, Mr. Rolloff never informed his client about redactions done to his statement. This resulted in an arguably faulty statement being introduced into evidence.

Because of Mr. Rolloff's inability to subject the prosecution's case to adversarial testing, Mr. Loper was found guilty.

Immediately after receiving the guilty verdict Mr. Loper applied to the State Public Defenders office to help with an appeal. A letter was returned informing Mr. Loper that he had to wait till after sentencing. Had the office read his entire application they would have been aware of grounds to motion for a new trial. Nevertheless, Mr. Loper did as was asked and waited till after sentencing.

In his application Mr. Loper informed the Public Defenders Office of multiple issues with the trial, including but not limited to, informing them of multiple witnesses that could testify that Mr. Loper was not living in, nor visiting, the area where and when this crime allegedly occurred. The appointed counsel actively discouraged these witnesses from helping. (Affidavits or contact information available upon request).

During the time for direct appeal Mr. Loper was moved from the general prison population to a county jail, due to overcrowding. This created a lot of issues in the ability to communicate with counsel and made it so Mr. Loper was unable to file anything on his own behalf.

Mr. Loper's attorney brought forth one claim on appeal, insufficient evidence to support the verdict. None of Mr. Loper's claims were included. We will never know what would have happened had his claims been included, but without them he lost. *State v. Loper*, 2016 WL 764140 (Minn. Ct. App. Feb 29, 2016), review denied (May 17, 2016).

In June of 2016 Mr. Loper was transferred back to prison. Sometime thereafter, he was informed that he could file a post-conviction petition challenging the legality of his conviction. He then set about gathering the facts and law relevant to his claims.

On July 27, 2017 Mr. Loper filed his petition for post-conviction relief with Stearns county alleging, *inter alia*; prosecutorial misconduct, judicial misconduct, ineffective assistance of both appellate and trial counsel, and various due process violations. This was the first time his claims were brought before a court.

The State Public Defenders Office also filed for a correction of sentence at this time. A claim they missed the first time around. Had Loper not filed his petition, it is still likely his sentence would exceed what is allowed by law.

On October 16, 2017 the State filed its memorandum in opposition to the petition, alleging that Mr. Loper's claims were either *Knaffla* barred, without merit, or both.

On November 17, 2017 Mr. Loper filed his amended petition, response memorandum, and Addenda A through D. He clarified why his claims shouldn't be considered *Knaffla* barred and elaborated more on his claims.

January 11, 2018 Stearns County District Court filed an order denying his petition. It held that all the claims were *Knaffla* barred with the exception of ineffective assistance of appellate counsel and denial of access to the courts. The court did not consider the effect of combined circumstances on his ability to bring claims to the court. Nor did the court weigh the seriousness of his accusations and the impact they could have had if they had been raised by counsel when and how they should have been.

Loper appealed. On March 8, 2018 Mr. Loper filed his informal brief. He argued that the court inappropriately applied *Knaffla* and/or abused their discretion in finding no material facts in dispute necessary to warrant an evidentiary hearing. Mr. Loper further stated the District Court erred when it held that his claims were barred for failure to give an excuse for why he was unable to bring his claims on direct appeal. Mr. Loper did put

forth reasons, reasons that would fall directly under the exception to procedural default found in *Coleman*<sup>1</sup>, and if not *Coleman* then certainly *Martinez*<sup>2</sup>.

On April 27, 2018 the State rested on the procedural default in their reply.

August 13, 2018 the State Court of Appeals affirmed. *Loper v. State*, 2018 WL 3826274 (Minn. Ct. App. Aug 13, 2018).

Mr. Loper petitioned the Minnesota Supreme Court for review, which was denied.

September 7, 2018 Mr. Loper filed his petition for writ of habeas corpus, and a motion for extension of time to file a memorandum of law, with the United States District Court, for the District of Minnesota. He argued again that the procedural bar is excused and that his claims warrant relief.

On July 17, 2019 the Court adopted the Magistrate's report and recommendation and denied Mr. Loper's petition and dismissed the action with prejudice.

August 2, 2019 the case was transmitted to the United States Court of Appeals, Eighth Circuit.

December 17, 2019 application for certificate of appealability was denied.

January 17, 2020 petition for rehearing was denied.

After receiving an extension, Mr. Loper now petitions this Court.

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<sup>1</sup>*Coleman v. Thompson*, 501 U.S. 722 (1991)

<sup>2</sup>*Martinez v. Ryan*, 566 U.S. 1 (2012)

## REASONS FOR GRANTING THE PETITION

1. This case represents a serious breakdown in the justice system. A breakdown where claims are going unheard and the potential for the suffering of Innocents is great. Being that serious trial errors aren't being considered there is a great risk that innocent people are suffering wrongful deprivation of liberty. The Fourteenth Amendment holds that "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." In this case, Minnesota has done just that. Mr. Loper has repeatedly pointed out serious due process violations and the Courts, under the guise of procedural default, have ignored them. Therefore, up to this point, no Court has seriously considered his claims. This goes beyond just the one case. Without guidance from this Court, there is the potential for this situation to keep happening and for serious fundamental claims to fall through the cracks and thus escape review.
2. Mr. Loper has been and still is filing pro-se. His claims have never been given the benefit of counseled briefing, despite repeated requests for counsel. How much more precise and concerning could the claims be had he someone trained in law and willing to do the investigation necessary to prepare such claims.
3. The courts have decided things in a way that directly conflicts with this Courts rulings. So much so as to call for an exercise of this Court's supervisory power.

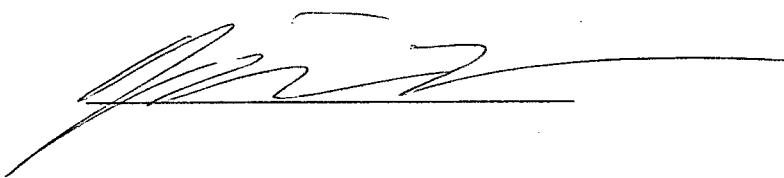
4. I do not believe it's been answered if an appellate attorney has a responsibility to raise non-frivolous claims if the client is unable to raise them himself/herself?

## CONCLUSION

Mr. Loper has been denied his right to a fair trial, his right to at least one review and his right to security in his personal freedom. He has shown time and time again that his claims should not be considered barred and that they, at the very least, warrant consideration. Now he is asking just that, that this Court give him the consideration no other Court has.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John Loper".

Date: 6/10/2020