

No. 20-5378

IN THE
SUPREME COURT OF THE UNITED STATES

JAMES LYNN STYERS,
PETITIONER,

-vs-

DAVID SHINN,
DIRECTOR, ARIZONA DEPT. OF CORRECTIONS, et al.,
RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION

MARK BRNOVICH
ATTORNEY GENERAL

BRUNN (BEAU) W. ROYSDEN III
SOLICITOR GENERAL

LACEY STOVER GARD
DEPUTY SOLICITOR GENERAL/CHIEF
OF CAPITAL LITIGATION

GINGER JARVIS
ASSISTANT ATTORNEY GENERAL
CAPITAL LITIGATION SECTION
(COUNSEL OF RECORD)
2005 N. CENTRAL AVE.
PHOENIX, ARIZONA 85004
CLDOCKET@AZAG.GOV
TELEPHONE: (602) 542-4686

ATTORNEYS FOR RESPONDENT

CAPITAL CASE

QUESTION PRESENTED FOR REVIEW

Did the Ninth Circuit Court of Appeals employ the correct narrow inquiry in denying Styers's request for a certificate of appealability from the district court's dismissal of his second or successive habeas petition, which included a claim that the Arizona Supreme Court should have considered new mitigation evidence in its re-independent reweighing of aggravating and mitigating factors?

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INTRODUCTION

In December 1989, Styers shot 4-year-old Christopher Milke three times in the back of the head, killing him, and leaving his body in a desert wash—after telling Christopher that he was taking him to visit Santa Claus. Christopher was the son of the woman (Debra Milke) with whom Styers shared an apartment. After killing Christopher, Styers and co-defendant Roger Scott went to a local mall, where they carried out a ruse that they had lost Christopher and Styers enlisted help from mall security officers to “search” for him. For these crimes, Styers stands convicted of first-degree murder, conspiracy to commit first-degree murder, kidnapping, and—after over 30 years of extended due process and appellate proceedings in state and federal court—remains appropriately sentenced to death for his murder of a young child who trusted him. The Arizona Supreme Court independently reweighed the sentencing court’s decision to impose the death penalty twice—once on direct appeal and then again following a finding of error by the Ninth Circuit.

Now, in this case governed by the Anti-terrorism and Effective Death Penalty Act (AEDPA), Styers again attacks the Arizona Supreme Court’s re-independent reweighing of his capital sentence, and, further, argues that the Ninth Circuit did not apply the correct standard when denying his request for a certificate of appealability. Styers has not shown that the Ninth Circuit has entered a decision in conflict with another United States court of appeals on the same matter, or that it decided an important federal question in a way that conflicts with a decision by a state court of last resort or with relevant decisions of this Court. U.S Sup. Ct. R. 10. Simply put, Styers offers no compelling basis for this Court to grant certiorari.

STATEMENT OF THE CASE

As stated, Styers shot and killed the four-year-old son of his then girlfriend in December 1989, and a jury subsequently convicted him of first-degree murder, conspiracy to commit first-degree murder, child abuse, and kidnapping. *State v. Styers (Styers I)*, 865 P.2d 765, 769 (1993). With respect to the murder count, the trial court found three aggravating factors and no mitigating factors sufficiently substantial to call for leniency and imposed the death penalty. *Id.* at 770; *Styers v. Schriro (Styers II)*, 547 F.3d 1026, 1028 (9th Cir. 2008). After concluding a direct appeal¹ and state collateral review, Styers petitioned the federal district court for a writ of habeas corpus.

The district court denied Styers's habeas corpus petition. *Styers v. Schriro*, 2007 WL 86944 at *22 (D.Ariz. Jan 10, 2007); *State v. Styers (Styers III)*, 254 P.3d 1132, 1133, ¶ 3 (2011). However, the Ninth Circuit reversed and granted relief, finding that the Arizona Supreme Court—in independently reviewing Styers's death sentence—improperly required a nexus between Styers's post-traumatic stress disorder (PTSD) and the crime and, having found no such nexus, erroneously refused to consider Styers's PTSD as a mitigating circumstance.² *Styers II*, 547 F.3d at 1034–36; *Styers III*, 254 P.3d at 1133, ¶ 3. The Ninth Circuit thus instructed the district court to grant Styers's petition for writ of habeas corpus

¹ This Court denied certiorari, 513 U.S. 855 (1994), and the Arizona Supreme Court issued the mandate on October 14, 1994, concluding direct review in this case.

² The State continues to disagree with the Ninth Circuit's identified *Eddings* error in this case, now commonly referred to as “*McKinney* error.” *See McKinney v. Ryan*, 813 F.3d 798 (2015). *See also Eddings v. Oklahoma*, 455 U.S. 104 (1982).

“unless the state, within a reasonable period of time, either corrects the constitutional error in Styers’s death sentence or vacates the sentence and imposes a lesser sentence consistent with law.” *Styers II*, 547 F.3d at 1036; *Styers III*, 254 P.3d at 1133, ¶ 3. Granting a motion from the State, the Arizona Supreme Court agreed to conduct a new independent review of Styers’s death sentence to correct the perceived constitutional error. *Styers III*, 254 P.3d at 1133, ¶ 3.

The Arizona Supreme Court first rejected Styers’s contention that the unusual procedural posture of the case amounted to a re-opening of “direct review,” thus undoing his case’s finality and requiring a jury finding of all aggravating factors pursuant to *Ring v. Arizona*, 536 U.S. 584 (2002). *Styers III*, 254 P.3d at 1133, ¶ 4. The court took issue with the Ninth Circuit’s assignment of error to its initial independent review, but “nonetheless . . . consider[ed] whether [Styers’s] PTSD, in combination with the other mitigating evidence, provides mitigation sufficiently substantial to warrant leniency.” *Id.* at ¶¶ 9–10. The court went on to reaffirm Styers’s death sentence.³ *Id.* at ¶¶ 11–17.

Styers then attempted to initiate a new post-conviction proceeding on the basis of the Arizona Supreme Court’s decision, however, on March 21, 2012, the trial court dismissed this attempt as unwarranted and not permitted by the Arizona Rules of Criminal Procedure,⁴ and on October 31, 2012, the Arizona Supreme Court denied review of the trial court’s dismissal.

³ This Court denied certiorari. *Styers v. Arizona*, 132 S.Ct. 540 (2011).

⁴ *See* Rep. App. A.

Meanwhile, Styers moved the district court to grant an unconditional writ of habeas corpus on the grounds that the Arizona Supreme Court did not correct the error identified by the Ninth Circuit, and the district court denied the motion on July 26, 2012.⁵ The Ninth Circuit affirmed the district court’s decision, finding that the Arizona Supreme Court corrected the error the Ninth Circuit previously identified. *Styers v. Ryan (Styers IV)*, 811 F.3d 292 (9th Cir. 2015).⁶ Styers also filed a motion in the district court to set aside the judgment in light of *Martinez v. Ryan*, 132 S. Ct. 1309 (2012), which that court denied.⁷ The Ninth Circuit affirmed. *Styers v. Ryan*, 632 Fed.Appx. 329 (9th Cir. 2015).⁸

On October 30, 2012, while his appeal from the denial of the motion to grant the writ in his original habeas petition pended in the Ninth Circuit, Styers filed a successive petition for writ of habeas corpus in the district court without complying with the dictates of 28 U.S.C. § 2244. The district court partially granted the State’s motion to dismiss, finding that it lacked jurisdiction to consider several claims (Claims 1, 2, 4, and 6) because they were second or successive. (Resp. App. B, at 1, 3–7, 9.) Finding that the remaining claims (Claims 3, 5, 7, and 8) were “unripe” and “not previously raised” because they arose from “events that transpired following issuance of the conditional writ,” the district court stayed

⁵ See 2012 WL 3062799.

⁶ This Court denied certiorari. *Styers v. Ryan*, 137 S. Ct. 1332 (2017).

⁷ See 2013 WL 1149919.

⁸ This Court denied certiorari. *Styers v. Ryan*, 137 S. Ct. 647 (2017).

proceedings on those claims because the pending Ninth Circuit review of Styers’s original habeas proceedings had the potential to moot them. (*Id.* at 8–9.)

When the Ninth Circuit affirmed the district court’s dismissal of Styers’s original habeas—including the claim that the Arizona Supreme Court did not correct the identified error in the conditional writ—the district court lifted the stay and ordered Styers to demonstrate cause why the stayed claims “should not be denied as meritless based on the opinion of the Ninth Circuit” in *Styers IV*. (Resp. App. C.) After briefing from both parties, the district court ruled that Styers’s stayed claims (Claims 3, 5, 7, and 8) were “meritless and/or rendered moot by the Ninth Circuit’s decision on *Styers IV*,” and reaffirmed that the previously dismissed claims (Claims 1, 2, 4, and 6) were “dismissed under 28 U.S.C. § 2244(b) as a second or successive petition.” (Pet. App. D, 8/24/17 Order, at 8.) The district court subsequently rejected Styers’s motion to alter or amend the judgment and also denied a certificate of appealability with respect to each of the four meritless and/or moot claims, as well as each of the four dismissed second or successive claims. (Pet. App. D, 10/24/17 Order, at 3–4.)

On November 28, 2018, the Ninth Circuit also denied Styers’s motion for a certificate of appealability. (Pet. App. A.) Styers moved for panel rehearing and rehearing en banc, which was also denied, with no judge voting to rehear the matter. (Pet. App. B, at 1.) Having *sua sponte* stayed the proceedings to await this Court’s decision in *McKinney v. Arizona*, 140 S. Ct. 702 (2020),⁹ the panel issued an amended order on March 11, 2020, again denying Styers a certificate of

⁹ See Rep. App. D.

appealability because “no reasonable jurist could disagree that Styers’s eight claims were mooted by [the Ninth Circuit’s ruling in *Styers IV*]; constituted improper second or successive claims, pursuant to 28 U.S.C. § 2244(b); or were meritless,” and specifically addressing why each claim fit into one or more of those designations. (Pet. App. C, at 1–5.) Styers now files his *fifth* petition for writ of certiorari in this Court.

REASON FOR DENYING THE WRIT

This Court grants certiorari only for “compelling reasons.” U.S. Sup. Ct. R. 10. Styers has not provided any such reasons. Styers accuses the Ninth Circuit of failing to apply the correct standard when denying his request for a certificate of appealability from the denial of his second or successive habeas petition, particularly regarding an *Eddings* claim he contends was not addressed in his initial petition. However, Styers cannot prevail because either his *Eddings* claim was not raised in the Arizona Supreme Court, or it was raised and was subsumed in the Ninth Circuit’s previous opinion in *Styers IV* affirming and approving the Arizona Supreme Court’s re-independent reweighing of his death sentence.¹⁰ Either way, the Ninth Circuit applied the correct standard for denying a certificate of appealability, and this Court should deny certiorari.

¹⁰ A process now also affirmed by this Court in *McKinney*, 140 S. Ct. 702.

THE NINTH CIRCUIT CORRECTLY DENIED STYERS'S REQUEST FOR A CERTIFICATE OF APPEALABILITY FROM THE DENIAL OF HIS SECOND OR SUCCESSIVE HABEAS PETITION.

Styers contends that the Ninth Circuit failed to apply the correct standard when rejecting his request for a certificate of appealability from the denial of his second or successive habeas petition. (Pet. at 9–12.) Styers is mistaken.

Section 2254(c)(2) permits the issuance of a certificate of appealability “*only* if the applicant has made a substantial showing of the denial of a constitutional right.” (Emphasis added.) In three key divided opinions, *Slack v. McDaniel*, 529 U.S. 529 (2000); *Miller-El v. Cockrell*, 537 U.S. 322 (2003); and *Buck v. Davis*, ___ U.S. ___, 137 S. Ct. 759 (2017), this Court has elaborated on the showing that must be made to justify a certificate of appealability following a district court’s dismissal of a state prisoner’s habeas petition. In *Slack*, this Court incorporated the pre-AEDPA standard for issuance of a certificate of probable cause for appeal in a habeas case—as now essentially codified in § 2253(c)—that the “substantial showing of a denial of a constitutional right” includes showing that “reasonable jurists could debate” whether the petition should have been resolved differently or whether the issues presented deserved encouragement to proceed further. 529 U.S. 483–84.

This Court further explained the showing required when a district court has dismissed a claim on the merits, versus on procedural grounds. When the district court has dismissed a constitutional claim on the merits, the petitioner must “demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack*, 529 U.S. at 484. When the

district court, however, dismisses a petition (or claim) on procedural grounds without reaching the merits, to justify a COA the prisoner must show (1) “that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right” and (2) “that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Id.* at 484–85. With regard to petitions or claims dismissed on procedural grounds, this Court expounded that the two-component “threshold inquiry” mandated by § 2253(c) may be disposed of by an appellate court in a “fair and prompt manner if it proceeds first to resolve the issue whose answer is more apparent from the record and arguments,” with procedural issues encouraged to be resolved first. *Id.* at 485.

In *Miller-El*, after citing and quoting *Slack* and the text of § 2253(c), this Court further explained:

[t]he COA determination under § 2253(c) requires an overview of the claims in the habeas petition and a general assessment of their merits. We look to the District Court’s application of AEDPA to petitioner’s constitutional claims and ask whether that resolution was debatable amongst jurists of reason. This threshold inquiry does not require full consideration of the factual or legal bases adduced in support of the claims. In fact, the statute forbids it. When a court of appeals sidesteps this process by first deciding the merits of an appeal, and then justifying its denial of a COA based on its adjudication of the actual merits, it is in essence deciding an appeal without jurisdiction.

537 U.S. at 336–37. This Court reiterated this in *Buck*, stating that the “COA inquiry, we have emphasized, is not coextensive with a merits analysis.” 137 S. Ct. at 773. However, this Court acknowledged that when a prisoner’s claim is not debatable, it is also necessarily meritless. *Id.* at 774. This Court also noted that, in determining whether a claim is reasonably debatable pursuant to § 2253(c), this

Court does “not mean to specify what procedures may be appropriate in every case,” just that the inquiry is limited. *Id.*

In its amended order denying Styers a certificate of appealability, the Ninth Circuit conducted the appropriate limited inquiry under § 2253(c) and this Court’s case law, agreeing with the district court that “no reasonable jurist could disagree that Styers’s eight claims were mooted by [*Styers IV*]; constituted improper second or successive claims, pursuant to 28 U.S.C. § 2244(b); or were meritless.” (Pet. App. C, at 2.) Specifically, the Ninth Circuit explained that Claims 1, 2 and 4 (all involving allegations of ineffective assistance of counsel) and 6 (a “*Lackey*”¹¹ claim) were all second or successive because they either were, or could have been, raised in Styers’s initial petition. (*Id.* at 2–3.) Claims 5 and 7 (challenging the Arizona Supreme Court’s failure to remand for a jury finding of aggravators)¹² were mooted by *Styers IV*, where the Ninth Circuit rejected Styers’s habeas petition challenging the Arizona Supreme Court’s re-independent reweighing and alleging that the identified constitutional error (in the initial habeas) had not been corrected. (*Id.* at 4.) Reasonable jurists also cannot debate that Claim 8 (challenging the lack of an automatic state post-conviction review proceeding after re-independent reweighing) was correctly dismissed as unavailable for habeas relief. (*Id.* at 5.) Finally, the Ninth Circuit also correctly concluded that no reasonable jurist can debate that Claim 3 (that the Arizona Supreme Court should have considered *new* and *additional* mitigation evidence in the course of its re-independent reweighing

¹¹ See *Lackey v. Texas*, 514 U.S. 1045 (1995) (Stevens, J., statement respecting denial of certiorari).

¹² See *Ring*, 536 U.S. 584; *Hurst v. Florida*, 236 S. Ct. 616 (2016).

occasioned by the Ninth Circuit’s identification of alleged *Eddings* error in the initial independent reweighing) was mooted by *Styers IV*.

In Claim 3, Styers alleges that the Arizona Supreme Court conducted a constitutionally insufficient review of his sentence in [*Styers III*], by applying an improper causal nexus requirement to his mitigation *and by failing to consider additional mitigating information beyond the evidence of Styers’s Post-Traumatic Stress Disorder*. But in *Styers IV*, we rejected these same arguments with respect to the constitutional sufficiency of the Arizona Supreme Court’s review of his sentence in *Styers III*. See *Styers IV*, 811 F.3d at 298–99. Accordingly, no reasonable jurist could debate whether Claim 3 was properly dismissed pursuant to our ruling in *Styers IV*.

(*Id.* at 3–4, emphasis added.)

It is this alleged failure by the Arizona Supreme Court to include *new, additional* mitigation in its second independent review that Styers now contends the Ninth Circuit incorrectly dismissed as mooted by *Styers IV*. (Pet. at 12–15.) Styers is again mistaken.

In *Styers IV*, the Ninth Circuit concluded that:

. . . when the Arizona Supreme Court conducted its second independent review, it did not preclude consideration of Styers’s PTSD, as it appeared to do in *Styers I*. . . . In *Styers III*, the Arizona Supreme Court found that Styers failed to present evidence that his PTSD affected him at the time of the crime and that his actions belied any claim that the disorder did affect him. Based on this finding, the Arizona Supreme Court considered the mitigating evidence and decided to give it little weight. Neither *Tennard*, nor *Eddings*, requires more.

Styers IV, 811 F.3d at 298–99, internal citations and footnote omitted. Styers now claims that *Eddings* does require more—that the Arizona Supreme Court should have considered additional mitigation evidence never presented to the sentencing court. (Pet. at 13.) Not only was this claim not raised in *Styers III* (and is thus not

exhausted for purposes of federal review),¹³ but it was also dismissed by the Ninth Circuit’s approval of the Arizona Supreme Court’s reweighing process in *Styers IV* and its finding that *Eddings* had been satisfied. 811 F.3d at 298–99. Moreover, as *Styers* admits (Pet. at 12), the Arizona Supreme Court subsequently rejected this argument in another capital case because it is impermissible under Arizona statutes:

Finally, we decline [the defendant’s] invitation to include the [mitigation] evidence newly developed in PCR and habeas proceedings as part of our independent review. Section 13–755(C) establishes our jurisdiction for independent review and provides that we may “remand[] a case for further action if the trial court erroneously excluded evidence or if the appellate record does not adequately reflect the evidence presented.” Thus, § 13–755(C) indicates that additional evidence should be admitted first in the trial court rather than in this Court.

State v. Hedlund, 431 P.3d 181, 184–85, ¶ 9 (Ariz. 2018). In other words, the Arizona Supreme Court is *not* the sentencer and does not receive new evidence. *See also State v. Lacy*, 929 P.2d 1288, 1301 (Ariz. 1996) (It is for trial court to determine in the first instance, following proper notice to the defendant and an opportunity to be heard, whether death penalty aggravating factor is applicable). Further, the determination of state law by the state’s highest court is not reviewable by this Court. *See McKinney*, 140 S. Ct. at 708. The Ninth Circuit correctly denied a certificate of appealability for this claim and the other seven claims in *Styers*’s second or successive habeas petition.

¹³ *See O’Sullivan v. Boerckel*, 526 U.S. 838, 842 (1999) (a federal habeas court may not grant federal habeas relief on the merits of a claim that was not exhausted in the state courts).

CONCLUSION

This Court should deny certiorari.

Respectfully submitted,

Mark Brnovich
Attorney General

Brunn (Beau) W. Roysden III
Solicitor General

Lacey Stover Gard
Deputy Solicitor General/Chief
of Capital Litigation

Ginger Jarvis
Assistant Attorney General
(Counsel of Record)

Attorneys for Respondents

LIST OF EXHIBITS

- A. RULING, 3/21/2012
- B. ORDER, 4/25/2013
- C. ORDER, 3/28,2017
- D. ORDER, 6/17/2019