

No. 20-5378

IN THE
SUPREME COURT OF THE UNITED STATES

JAMES LYNN STYERS,

Petitioner,

v.

DAVID SHINN, Warden, et. al.

Respondents.

**Reply in Support of Petition for Writ of Certiorari
To the United States Court of Appeals for the Ninth Circuit**

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INTRODUCTION TO REPLY

Respondents begin their response with a recitation of the facts leading to Mr. Styers' conviction and death sentence. They go on to detail the lengthy procedural history of his case and, along the way, dispute the holding of the Ninth Circuit Court of Appeals which found that the Arizona Supreme Court applied an unconstitutional nexus test to Mr. Styers' evidence of Post-Traumatic Stress Disorder, in violation of the Eighth Amendment.¹ See *Clemons v. Mississippi*, 494 U.S. 738, 748-49 (1990); *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982). *Styers v. Schriro*, 547 F.3d 1026, 1034-35 (9th Cir. 2008) ("*Styers II*"). Respondents' also convey their irritation that Mr. Styers has sought Supreme Court review of his case numerous times in the decades since his conviction and sentence. All of this, it is plain to see, is designed to convince this Court that the crime was so heinous that Mr. Styers' arguments should be given short shrift, that there is no arguable doubt about the correctness of his convictions and sentence, and that he has had more than enough due process. Respondents are exasperated with Mr. Styers and they hope this Court is, too.

The issues now before this Court, however, did not arise until at least 2011, when the Arizona Supreme Court invented a new kind of independent review after the Ninth Circuit reversed Mr. Styers' death sentence. *State v. Styers*, 227 Ariz. 186, 254 P.3d 1132 (2011) (en banc) ("*Styers III*"). The constitutionality of that novel procedure was

¹ Apparently, Respondents likewise dispute the Ninth Circuit's en banc conclusion that the Arizona Supreme Court, for a period of more than fifteen years, consistently violated *Eddings* in its capital sentencing analysis by requiring a defendant to show a causal nexus between his proffered mitigation evidence and the crime. *McKinney v. Ryan*, 813 F.3d 798, 802, 815-16 (9th

affirmed in just the past term. *McKinney v. Arizona*, ___ U.S. ___, 140 S.Ct. 702 (2020).

The first question presented in this petition addresses an issue left open in *McKinney*; that is, whether on independent review of an overturned death sentence due to the failure to appropriately consider mitigating evidence, the state court may, without offending the Eighth Amendment, limit its consideration of mitigation evidence to only that which was previously erroneously omitted rather than considering all of the mitigation presented at the time of the independent review when a sentence of life or death is selected. *See* Cert. Pet. at ii. That question was not answered in the Circuit Court below because it refused to grant a certificate of appealability, after applying a standard that conflicts with this Court’s decision in *Buck v. Davis*, ___ U.S. ___, 137 S.Ct. 759 (2017), and which thus forms the basis of the second question presented in this petition. *Id.* Accordingly, Mr. Styers could not have raised either of these issues sooner. Doing so now is not a tactic to “interpose unjustified delay,” and thus provides no justification for exasperation, by Respondents or any reviewing court. *Bucklew v. Precythe*, ___ U.S. ___, ___, 139 S.Ct. 1112, 1134 (2019). It is undisputed that the mitigation underlying this claim has never been considered by any juror or judge throughout the history of this case.

A writ of certiorari should be granted because there are compelling reasons for doing so, as set forth in Rule 10, Rules of the United States Supreme Court: 1) Mr. Styers has shown that the Ninth Circuit decided an important federal question in a manner that conflicts with relevant decisions of this Court; and 2) the issues presented address important unsettled questions of federal law that this Court should decide.

Cir. 2015).

ARGUMENT

Respondents agree that the Ninth Circuit found Mr. Styers' Claim 3 (that the Arizona Supreme Court should have considered new and additional mitigating evidence) mooted by the decision in *Styers IV*. Brief in Opposition ("BIO"), pp. 9-10. Yet, the language Respondents point to in their attempt to buttress the Ninth Circuit's conclusion provides no support. *Id.*, at 10, quoting *Styers IV*, 811 F.3d at 298-99. There, the Ninth Circuit's opinion discussed only the Arizona Supreme Court's consideration of the PTSD mitigation evidence. The PTSD evidence was the subject of the Ninth Circuit's first opinion (*Styers II*) and, as a result, was before the Ninth Circuit in the appeal from the district court's refusal to grant the unconditional writ. *Styers IV* addressed only whether the error identified in *Styers II* had been corrected by a constitutionally-sufficient process. Mr. Styers' present petition, and the appeal from its denial from which this petition arises, addressed a constitutional error in the sentence independently imposed by the Arizona Supreme Court in 2011. Thus, Respondents' argument is that, because the Ninth Circuit considered and decided a claim regarding the PTSD evidence, it considered and decided a claim regarding other mitigation evidence developed over a subsequent twenty-year period, even though the Ninth Circuit did not mention the latter claim or evidence and even though the appeal before it, because of its procedural posture, concerned only the claim regarding the PTSD evidence. Respondents point to nothing to indicate the Ninth Circuit decided this claim, other than the Ninth Circuit's own reference to the consideration of a different claim. Certainly, jurists of reason could debate whether a

decision on one claim is proof of a decision on another claim, making the procedural status of this claim appropriate for a COA. *Buck v. Davis, supra; Miller-El v. Cockrell*, 537 U.S. 322 (2003).

Respondents do not dispute that the Arizona Supreme Court failed to comply with *Eddings* when it refused to consider twenty years' worth of mitigation. Instead, Respondents insist the Arizona Supreme Court need not follow the Eighth and Fourteenth Amendments in selecting a capital sentence. Respondents cite *State v. Hedlund*, 431 P.3d 181 (Ariz. 2018), in support of their argument that the Arizona Supreme Court was free to ignore twenty years of mitigation in choosing between life and death for Mr. Styers. BIO, p. 11. In *Hedlund*, the Arizona Supreme Court rationalized its refusal to consider additional, new mitigation by instructing that such evidence "should be admitted first in the trial court[.]" Yet, Mr. Styers was denied that opportunity when the state courts refused to either remand the case for presentation of his new evidence or allow him to proceed in state postconviction following the Arizona Supreme Court's opinion in *Styers III*. Respondents' position that "the Arizona Supreme Court is *not* the sentencer and does not receive new evidence" disregards the crux of that Court's opinion in *Styers III*, the entire foundation of which rested on the Arizona Supreme Court's ability to be the sentencer using its independent review function. It is impossible that the Arizona Supreme Court is the sentencer (allowing it to avoid returning Mr. Styers' case to the trial court to be heard and determined by a jury), but also is not the sentencer (allowing it to avoid the bedrock Eighth Amendment principle of *Eddings*: that a sentencer must be able to consider all of the mitigation before it). That is not, as Respondents argue, a

“determination of state law by the state’s highest court [which] is not reviewable by this Court.” BIO, p. 11 (citation omitted). Instead, it is a flagrant dismissal of the requirements of the Eighth and Fourteenth Amendments.

To be clear, Mr. Styers’ argument is not that an appellate court reviewing a sentence must permit new, additional mitigation to be presented to it. Instead, it is the simple, long-accepted principle that, when choosing between life and death, a sentencer (in this case, the Arizona Supreme Court) must consider all of the mitigation presented to it. At minimum, this was a question debatable among jurists of reason and the COA should have issued.

CONCLUSION

The petition for writ of certiorari should be granted so that this Court can clarify that, when a state court chooses between a life and death sentence following remand from a federal court, the Constitution requires that all mitigation presented be considered, not merely the mitigation that was subject to the previously-identified constitutional error. Alternatively, this Court should remand to the Ninth Circuit Court of Appeals to issue a certificate of appealability so that court may address this question.

Respectfully submitted this 13th day of October, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of October, 2020, one copy of the attached document was deposited in the United States mailbox, first-class postage prepaid, and addressed to counsel for the State of Arizona, Ginger Jarvis, Office of the Attorney General, 2005 N Central Ave, Phoenix, AZ 85004. I further certify that all parties required to be served have been served.

Julie S. Hall

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