No. 20–6772

IN THE
SUPREME COURT OF THE UNITED STATES

CHRISTOPHER J. SPREITZ,
PETITIONER,

-vs-

DAVID SHINN, ET AL.,
RESPONDENTS.

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

BRIEF IN OPPOSITION

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CAPITAL CASE
QUESTIONS PRESENTED FOR REVIEW

1) Should this Court grant certiorari to review the Ninth Circuit's unpublished order denying Spreitz's motion to stay his appeal and to remand two sentencing-ineffectiveness claims under *Martinez v. Ryan*, 566 U.S. 1 (2012), where the order is not precedent and affects only Spreitz's case, the standards governing such a remand are well-established, and Spreitz has identified no inter-circuit conflict or compelling federal issue in need of resolution?

2) Did the Ninth Circuit err by declining to stay Spreitz's appeal and remand his ineffective-assistance claims under *Martinez*, where those claims were not procedurally defaulted and, alternatively, Spreitz failed to prove that the claims were "substantial" under *Martinez* and that post-conviction counsel was ineffective in litigating them?

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INTRODUCTION

The Ninth Circuit granted partial habeas relief as to Petitioner Christopher Spreitz's sentence based on an appellate Eighth-Amendment error under *Eddings v. Oklahoma*, 455 U.S. 104 (1982), and *McKinney v. Ryan*, 813 F.3d 798 (9th Cir. 2015) (en banc). *See Spreitz v. Ryan ("Spreitz IV")*, 916 F.3d 1262 (9th Cir. 2019). Arizona elected not to petition this Court for a writ of certiorari and instead initiated error-correction proceedings before the Arizona Supreme Court. *See McKinney v. Arizona*, 140 S. Ct. 702 (2020); *State v. Styers*, 254 P.3d 1132 (2011). That court has set a briefing schedule, under which Spreitz's opening brief is due April 5, 2021. *See* Arizona Supreme Court No. CR–94–0454–AP, Dkt. 50. Nonetheless, Spreitz asks this Court to review the Ninth Circuit's unpublished order denying his original and renewed motions to stay his appeal and to remand for the district court to consider two sentencing-ineffectiveness claims under *Martinez v. Ryan*, 566 U.S. 1 (2012).

Spreitz has not offered a compelling reason for certiorari. The unpublished order Spreitz challenges is not precedent and the error he alleges affects only his case. *See* Rule 10, Rules of the United States Supreme Court ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."). Spreitz has identified no circuit conflict on the question presented and no novel federal issue of widespread importance. *See id.* Moreover, the Ninth Circuit's order was correct on the merits. For these reasons, this Court should deny certiorari.

STATEMENT

Ruby Reid was last seen alive on May 18, 1989, leaving a Tucson bar on foot around 11:30 p.m. App. A-1. At the same time, Spreitz and his roommate were drinking at a different bar nearby. *Id.* The pair returned home around midnight and Spreitz promptly left again to "pick up a date." *Id.* Less than an hour later, a police officer observed Spreitz and his vehicle in a convenience-store parking lot. *Id.* Spreitz was clad in a white t-shirt and torn jeans with spandex shorts underneath, and his car was operating normally. *Id.* Spreitz was speaking to another man. *Id.*

Around 1:45 a.m., the same officer saw Spreitz's car in downtown Tucson. *Id.* This time, however, the car was smoking heavily and leaving a trail of oil in its wake. *Id.* The officer conducted a traffic stop and removed Spreitz from the vehicle. *Id.* Spreitz had taken off his jeans and was wearing only his spandex shorts. *Id.* He was still wearing a white t-shirt, but it was torn and—along with his arms, legs, hands, and shoes—was covered with blood and feces. *Id.* Spreitz claimed that he had fought with the man with whom he had been speaking in the parking lot. *Id.*

In the meantime, a second officer had responded, and Spreitz led both officers to the scene of the purported fight. App. A-1–A-2. But the area bore no evidence of an injured man, an altercation, or the source of damage to Spreitz's car. App. A-2. The officers photographed Spreitz, issued a repair order for his car, and released him, noting that he smelled of alcohol but did not appear impaired. *Id.* On his return home,

Spreitz told his roommate's girlfriend that he had fought with a man and was not sure whether the man was still alive. *Id.*

Several days later, a horseback rider discovered Reid's nude body in the desert outside Tucson. *Id.* Leading away from the body were tire tracks, oil stains, footprints, and drag marks. *Id.* Feces-stained articles of clothing, along with a used tampon and two blood-stained rocks, lay near the body. *Id.* Although decomposition prevented a thorough medical examination, a medical examiner opined that Reid had suffered extensive blunt-force injuries and had died from blunt-force trauma to the head. *Id.*

Police soon connected the Reid crime scene to Spreitz, whom they had observed covered in blood and feces several days earlier. *Id.* In the trunk of Spreitz's car, they found blood spatter of a type different from Spreitz's. *Id.* Spreitz promptly confessed to killing Reid. *Id.* He claimed that Reid had failed to honor a promise to have sex with him, leading to a physical altercation. *Id.* Spreitz admitted having forcible sexual intercourse with Reid and to striking her in the head repeatedly with a rock. *Id.*

Based on this evidence, a jury found Spreitz guilty of first-degree murder, sexual assault, and kidnapping. App. A-1. A judge thereafter found that Spreitz had killed Reid in an especially cruel manner, thereby qualifying him for the death penalty. App. A-12–A-13.

Spreitz offered as mitigation his dysfunctional family background, history of drug and alcohol abuse, remorse, impaired capacity to appreciate his conduct's wrongfulness (a statutory mitigating factor under A.R.S. § 13–703(G)(1) (1989)), good behavior in custody, lack of adult felony convictions, lack of a violent criminal history,

and age at the time of the offense (a statutory mitigating factor under A.R.S. § 13–703(G)(5) (1989)). The judge found that Spreitz had been raised in a sub-normal home and that he was immature. App. A-14. The judge further found that Spreitz's problems with alcohol and drugs did not significantly impair his ability to assess his conduct's wrongfulness. *Id.* The judge concluded that the mitigation was not sufficient to warrant leniency in light of the aggravating factor, and imposed a death sentence for the first-degree murder conviction. *Id.* The judge imposed consecutive, 14-year terms of imprisonment for the kidnapping and sexual-assault convictions. App. A-1.

A. *Direct appeal and state post-conviction proceeding.*

The Arizona Supreme Court affirmed Spreitz's convictions and sentences on direct appeal, including the death sentence, after independently reviewing the aggravating and mitigating circumstances. App. A-1–A-17. Spreitz then initiated state collateral-review proceedings and ultimately filed a lengthy state post-conviction relief petition. *See* App C-1–C-87. Among other arguments, Spreitz claimed that his attorney was ineffective at sentencing for failing to present evidence of Spreitz's childhood physical abuse and his intoxication at the time of the offense. App. C-47–C-50.

Spreitz supported his petition with various exhibits, including a report from a psychologist, Dr. Joseph Geffen. App. C-69–C-87. Dr. Geffen summarized at length Spreitz's abusive childhood and his ensuing problems with drugs and alcohol, including his alcohol use on the night of the offense. *Id.* He attributed Reid's murder to the effects of these factors. *Id.*

The post-conviction court found Spreitz's ineffective-assistance claims waived and precluded because Spreitz had not raised them on direct appeal. App. D-3, D-19. Alternatively, the court found that the claims failed on the merits. App. D-11. The Arizona Supreme Court subsequently granted Spreitz's petition for review and reversed the post-conviction court's preclusion ruling. *State v. Spreitz ("Spreitz II")*, 39 P.3d 525, 527, ¶ 10 (Ariz. 2002). The court, however, affirmed the post-conviction court's alternative merits rulings. *Id.*

B. ***Federal habeas proceedings.***

Spreitz sought federal habeas relief, represented by the same attorney who had represented him in the state post-conviction proceeding. As relevant here, Spreitz alleged—as he had in state court—that sentencing counsel ineffectively failed to investigate and present sufficient evidence of Spreitz's childhood abuse ("Claim 4.2-D") and evidence of Spreitz's intoxication at the time of the offense ("Claim 4.2-E"). Ninth Cir. No. 09–99006, Dkt. 54, ER Vol. I, pp. 151–56. Because the state post-conviction court had adjudicated the claims' merits, the district court reviewed them with deference under the Anti-terrorism and Effective Death Penalty Act (AEDPA). *Id.* ER Vol. II, pp. 360–64. The district court found that the state court had reasonably rejected both claims and denied relief. *Id.* The court further denied evidentiary development on the claims. *Id.*

The district court granted a certificate of appealability on Claims 4.2-D and 4.2-E, along with other claims, and Spreitz accordingly appealed to the Ninth Circuit. *See Spreitz v. Ryan ("Spreitz III")*, 617 F. Supp. 2d 887, 937–38 (D. Ariz. May 12, 2009).

Although he included Claim 4.2-E in his opening brief, Spreitz did not challenge the district court's ruling on Claim 4.2-D. *See* Ninth Cir. No. 09–99006, Dkt. 7. Before the case was argued, this Court recognized in *Martinez*, 566 U.S. at 9, a limited exception to the general rule that state post-conviction counsel's ineffectiveness cannot constitute cause to excuse a procedural default on habeas. Spreitz's attorney thereafter withdrew from representation and current counsel was appointed. Ninth Cir. No. 09–99006, Dkt. 39, 45.

Spreitz moved to stay the appeal and to remand Claims 4.2-D and 4.3-E to the district court for reconsideration under *Martinez*. Ninth Cir. No. 09–99006, Dkt. 49. He alleged that *Martinez* permits a prisoner to rely on post-conviction counsel's ineffectiveness to excuse "the procedural default of supporting facts" for a claim. *Id.* He cited a report from a psychiatrist, Dr. Roy Mathew, which he had submitted in district court but which that court had found unpersuasive. Ninth Cir. No. 09–99006, Dkt. 54, ER Vol. II, p. 363. Dr. Mathew discussed the interaction between cocaine and alcohol and opined that it affected Spreitz's decision to kill Reid. *See id.* Vol. III, pp. 667–71.[1]

A three-judge panel of the Ninth Circuit heard oral argument and deemed the case submitted on July 11, 2013. Ninth Cir. No. 09–99006, Dkt. 78. But the panel subsequently vacated the case's submission pending en banc proceedings in *McKinney v. Ryan*. *Id.* Dkt. 79. Following the *McKinney* en banc decision, the panel ordered supplemental briefing but then granted another stay to accommodate Arizona's petition

[1] Spreitz appears to have abandoned his reliance on Dr. Mathew's report. *See* Pet. 14 n.4.

for writ of certiorari in that case. *Id.* Dkt. 80, 86. After this Court denied certiorari, *see* United States Supreme Court No. 15–1222, the panel lifted the stay and the parties completed supplemental briefing on January 25, 2017. *See* Ninth Cir. No. 09–99006, Dkt. 101.

Around the same time, Spreitz renewed his *Martinez*-based motion to stay and remand, on which the panel had not yet ruled. App. E-1–E-41. He offered supplemental evidence in support of his ineffective-assistance claims: reports from psychiatrist Dr. Pablo Stewart and psychopharmacologist Dr. Paula Lundberg-Love, neither of which he had presented in state or district court. App. E-1–E-41. The newly generated reports discussed the effects of Spreitz's childhood abuse, his cocaine use, the interaction between cocaine and alcohol, and the effect of these factors on the offense. App. E-25–E-41. Spreitz also cited the Ninth Circuit's divided en banc decision in *Dickens v. Ryan*, 740 F.3d 1302, 1316–2020 (9th Cir. 2014) (en banc), which had been decided after oral argument and which recognizes that a prisoner may, notwithstanding *Cullen v. Pinholster*, 563 U.S. 170 (2011), offer new evidence to fundamentally alter an exhausted ineffective-assistance claim, thereby rendering it procedurally defaulted and subject to *Martinez*. App. E-1–E-41.

On March 4, 2019, the panel deemed Spreitz's case resubmitted and the same day decided the case. Ninth Cir. No. 09–99006, Dkt. 106–09. In a published opinion, the panel reversed the district court's order denying relief on Spreitz's claim that the Arizona Supreme Court violated the Eighth Amendment and *Eddings* by refusing to consider non-causally connected mitigation in its independent review of Spreitz's death

sentence. *Spreitz IV*, 916 F.3d at 1264–82. Judge Richard Tallman dissented, opining that the state court did not commit *Eddings* error and that, even if it did, such error did not substantially and materially affect the sentence. *Id.* at 1282–98; *see generally Brecht v. Abrahamson*, 507 U.S. 619, 623 (1993).

In a simultaneous, unpublished memorandum decision, the panel unanimously affirmed the district court's denial of habeas relief as to Spreitz's convictions. Ninth Cir. No. 09–99006, Dkt. 109. The panel did not reach Claim 4.2-E (which had been certified and briefed) because it had granted relief separately as to Spreitz's sentence. *Id.* at 2 n.1. And in a separate unpublished order, the court denied Spreitz's *Martinez*-based motion and renewed motion to stay and remand: "We have carefully considered all of the briefs and evidence, and we conclude that Spreitz has not made a sufficient showing to warrant a remand to the district court." App. F–1.

Arizona petitioned for panel and en banc rehearing on the divided opinion granting habeas relief, Ninth Cir. No. 09–99006, Dkt. 114, and Spreitz moved to reconsider the unpublished order denying his request for a *Martinez* remand, *id.* Dkt. 112. While these motions were pending, the panel again stayed the case, this time based on proceedings before this Court in *McKinney v. Arizona*, No. 18–1109, which involved the remedy for *Eddings*/*McKinney* error. Ninth Cir. No. 09–99006, Dkt. 123. Several months after this Court issued its opinion, the Ninth Circuit denied both panel and en banc rehearing, *see id.* Dkt. 129, and Spreitz's motion to reconsider, *see* App. G-1. This petition followed.

REASONS FOR DENYING THE WRIT

Although Spreitz has been granted partial habeas relief as to his sentence, he still asks this Court to review the Ninth Circuit's unpublished order concluding that his sentencing-ineffectiveness claims did not warrant remand for reconsideration under *Martinez*. This Court should deny certiorari. First, the order at issue is unpublished, is not precedent, and affects only Spreitz's case. Second, the panel correctly determined that Spreitz's claims—which were exhausted and thus fell outside *Martinez*'s scope—did not warrant remand.

I. Certiorari is not warranted to review the Ninth Circuit's unpublished, case-specific order denying Spreitz's requested remand.

The order Spreitz challenges is unpublished and does not constitute precedent. As such, even if erroneous (which it is not, *see* § II, *infra*) it has no impact outside Spreitz's case. Spreitz cannot show a compelling need for this Court's intervention to correct a case-specific perceived error. *See* Rule 10, Rules of the United States Supreme Court. This is particularly true because the remand request is fact-bound and does not involve a legal issue of widespread importance. *Id.*

Spreitz presents various unpersuasive arguments to the contrary. He first asserts a need for this Court's guidance on when an appellate court must remand a case to a fact-finding court to determine in the first instance whether a prisoner has shown cause and prejudice under *Martinez*. Pet. i, 22. But this is not a legal question in need of resolution, let alone a compelling one worthy of this Court's attention. This Court set forth in *Martinez* the standard for excusing a procedural default based on post-conviction counsel's ineffectiveness. Courts of appeals confronted with *Martinez*-

based remand motions need simply apply that standard to case-specific facts and arguments to determine whether additional factual development is appropriate.

Moreover, as a practical matter, *Martinez* is almost a decade old. Few, if any, cases remain in which *Martinez* issues were unresolved at the district-court level. *Martinez*-based remand requests will thus occur with dwindling frequency—if at all—going forward. Instead, most *Martinez*-based assertions of cause-and-prejudice will be raised and disposed of in the first instance in district court, generating rulings that appellate courts may review under well-established appellate review standards.

Spreitz next faults the Ninth Circuit for disposing of his motions in a brief, unpublished order. Pet. 22–25. He complains that the court did not make clear the test it had applied, and he speculates that the court *might* have applied an incorrect legal standard to determine whether his claims warranted remand. *Id.* In effect, Spreitz asks this Court to presume from the Ninth Circuit's summary order that it did not know and follow the law—the very opposite of the presumption this Court ordinarily applies. *Cf. Lambrix v. Singletary*, 520 U.S. 518, 532 n.4 (1997) (judges are presumed to know and follow the law). And in any event, speculation that the Ninth Circuit silently erred (especially in an unpublished order) does not constitute a compelling reason for certiorari.

For largely the same reasons, Spreitz's assertion that the Ninth Circuit "misunderstood" the *Martinez* decision—which, in his view, emphasizes the need for factual development—is unpersuasive. Pet. 25–29. The panel's order contains no evidence of a misunderstanding; to the contrary, the panel simply determined, after

"carefully consider[ing]" everything he proffered, that Spreitz had not made a sufficient showing to warrant remand.[2] App. F-1. That the Ninth Circuit remanded other, factually distinct cases is of no moment, and does not suggest that the panel committed any error here. *Id.*

Finally, to the extent Spreitz contends that the record was inadequate for the Ninth Circuit to assess the *Martinez* issue, he is again incorrect. *See* Pet. 29. Spreitz proffered with his Ninth Circuit pleadings expert reports from outside the state-court record, as well as other evidence. *See* App. E-1–E-41; *see* Ninth Cir. No. 09–99006, Dkt. 49. The panel "carefully considered all of the briefs and evidence" before denying Spreitz's motion to remand. App. F-1. Spreitz has not shown what material evidence was absent from the record here. And holding a hearing merely to test the experts' credibility, *see* Pet. 29, could only have backfired on Spreitz by subjecting their opinions to cross-examination; as it stands, the Ninth Circuit reviewed the written expert reports, immune from cross-examination, and still concluded that Spreitz had not met his burden. This Court should deny certiorari.

II. The Ninth Circuit correctly determined that Spreitz did not make an adequate showing for remand.

The Ninth Circuit's decision was correct on the merits. First, *Martinez* does not apply to Claims 4.2-D (which was not properly before the court in the first place because, as discussed in the Statement, *supra*, Spreitz failed to brief it) and 4.2-E.

[2] In contrast, Spreitz's argument reveals his misunderstanding of *Martinez*. While this Court recognized in passing that many states channel ineffective-assistance claims to collateral-review proceedings because such claims often turn on extra-record facts, this Court did not address entitlement to federal factual development in *Martinez*, let alone provide a freestanding right thereto. 566 U.S. at 8–9, 13.

Those claims were not procedurally defaulted. Rather, they were raised and adjudicated on the merits in state court, making *Martinez* irrelevant. The claims instead were governed by *Pinholster*, which barred new evidence in federal court unless and until Spreitz overcame AEDPA's limitations. *See* 28 U.S.C. § 2254(d). For this reason alone, there was no error in refusing Spreitz's *Martinez* remand.

Second, assuming, without conceding, that *Dickens* is correct,[3] Spreitz's newly proffered evidence did not fundamentally alter either claim, such that it transformed the claim from exhausted to procedurally defaulted. *See* Pet. 24; *see also Dickens*, 740 F.3d at 1316–20 (new factual allegations fundamentally alter exhausted claim where they "place[] the claim in a significantly different and stronger evidentiary posture than it had in state court") (quotations omitted). As discussed below, Spreitz's newly proffered evidence was largely cumulative to the evidence presented in state court. The new evidence did not change the character of either claim such that it was fundamentally altered within *Dickens*'s meaning.

Third, *Pinholster* aside, Spreitz's claims, even with his new evidence, are not substantial and post-conviction counsel was not ineffective for failing to raise them. *See Martinez*, 566 U.S. at 14 (defining substantial claim as one with "some merit" and requiring prisoner to also show that post-conviction counsel was ineffective under *Strickland v. Washington*, 466 U.S. 668 (1984)).

[3] Although this is not the case to resolve the issue, *Dickens* was incorrectly decided, as it provides a pathway for inmates to circumvent *Pinholster*. Because Dickens died shortly after the Ninth Circuit issued its en banc decision, Arizona was deprived of the opportunity to seek certiorari. *See Dickens v. Ryan*, 744 F.3d 1147 (9th Cir. 2014).

Beginning with Claim 4.2-D, counsel retained an expert witness at sentencing, Dr. Todd Flynn, who authored a report explaining Spreitz's dysfunctional childhood and its effects. App. B-15–B-26. Most of the dysfunction involved neglect or emotional abuse, but Dr. Flynn reported Spreitz being hit by his mother, including an occasion on which she broke a paddle on Spreitz's back. App. B-17. Spreitz's sister also wrote a letter to the sentencing judge, which described his physical abuse. App. 612-15. As previously discussed, the sentencing judge and the Arizona Supreme Court found Spreitz's childhood "subnormal," but gave this factor little weight. App. A-14.

During post-conviction proceedings, Spreitz offered additional evidence of physical abuse, including Dr. Geffen's report, which chronicled such abuse and opined that Spreitz was suffering from its lingering effects at the time of the murder. App. C-73, C-85. Spreitz also presented statements from fact witnesses attesting to his physical abuse. Ninth Cir. No. 09–99006, Dkt. 57, ER Vol. II, pp. 370–84, 406–25. In denying relief, the post-conviction court determined that sentencing counsel had presented "more than sufficient evidence of [Spreitz's] abuse as a child, both physical and emotional." App. D-11.

The additional evidence that Spreitz offers now—which consists of still more instances of abuse and a different expert witness opining as to its detrimental effects—is cumulative to this evidence. And childhood-related mitigation is not significantly weighty in any event. *See, e.g., State v. Pandeli*, 161 P.3d 557, 574, ¶ 72 (Ariz. 2007). There is no reasonable probability that presenting the additional federal evidence

would have affected the post-conviction proceeding's outcome. *See Wong v. Belmontes*, 558 U.S. 15, 22–23 (2009) (no prejudice from failure to present cumulative evidence).

Likewise, with respect to Claim 4.2-E, abundant evidence was presented at trial and sentencing of Spreitz's alcohol consumption and potential intoxication the night he killed Reid. *See* App. A-1–A-2. Dr. Flynn opined that Spreitz was likely intoxicated, despite the officers' observations to the contrary, and that his intoxication likely combined with the psychological effects of his dysfunctional childhood to produce "an uncontrollable outburst of aggression," thereby impairing his capacity to appreciate his conduct's wrongfulness or conform it to the law. App. B-19, B-23; *see generally* A.R.S. § 13–703(G)(1) (1989). And in the post-conviction proceeding, Dr. Geffen discussed Spreitz's history of alcohol abuse and his physiological alcohol dependence, opined that it was likely that Spreitz had experienced an alcohol-related blackout at the time of the murder, and further opined that Spreitz's impairment and mental defects rendered him unable to conform his conduct to the law. App. C-86; *see generally* A.R.S. § 13–703(G)(1) (1989). The post-conviction court denied relief, finding that sentencing counsel had presented "more than sufficient" evidence of Spreitz's alcohol consumption and possible intoxication at the time of the offense. App. D-11; *see also* App. D-7.

The newly generated opinions from Dr. Stewart and Dr. Lundberg-Love add cocaine to the reasons for Spreitz's impairment, but they do not materially change the mitigation profile before either the sentencing judge or the post-conviction judge. Spreitz's theory since sentencing has been that his alcohol use affected his ability to conform his conduct to the law, either alone or in connection with the effects of his

childhood trauma. The addition of cocaine as a factor contributing to his impairment does not bring Spreitz any closer to proving a statutory mitigating factor or a compelling non-statutory one. This is particularly true where Spreitz successfully covered up his crime, evaded capture for several days, and was able to recall the crime. *See State v. Poyson*, 7 P.3d 79, 89, ¶ 35 (Ariz. 2000) (efforts to conceal crime weigh against finding of impairment). Spreitz has failed to show a reasonable probability of a different post-conviction outcome had counsel presented the mitigation Spreitz now proffers. This Court should deny certiorari.

CONCLUSION

Based on the foregoing authorities and arguments, Respondents respectfully request that this Court deny the petition for writ of certiorari.

Respectfully submitted,

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