

No. 20-6772

IN THE
SUPREME COURT OF THE UNITED STATES

CHRISTOPHER SPREITZ, Petitioner,

vs.

DAVID SHINN,
Director, Arizona Department of Corrections,
Rehabilitation & Reentry, Respondent.

**On Petition for Writ of Certiorari to
the United States Court of Appeals for the Ninth Circuit**

REPLY TO BRIEF IN OPPOSITION

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REPLY TO BRIEF IN OPPOSITION

Respondent leads in its Introduction and in its Reasons for Denying the Writ with the suggestion that certiorari should be denied because the Ninth Circuit has granted the writ as to Spreitz's capital sentence conditioned on the State of Arizona's correction of constitutional error inflicted by the Arizona Supreme Court's employment of a causal nexus test in violation of *Eddings v. Oklahoma*, 455 U.S. 104 (1982), in refusing to give effect to Spreitz's mitigating evidence in its *de novo* independent review of aggravating and mitigating evidence in imposing the death sentence on direct appeal. Brief in Opposition at 1, 9 (citing *Spreitz v. Ryan*, 916 F.3d 1262 (9th Cir. 2019)). To the extent Respondent suggests that the partial writ grant by the Ninth Circuit moots the claims brought by Spreitz pursuant to *Martinez v. Ryan*, 566 U.S. 1 (2012), that suggestion is misplaced.

This Court recently determined that an Arizona habeas petitioner for whom the Ninth Circuit granted a conditional writ of habeas corpus as to a capital sentence due to *Eddings* error is entitled to no more than *post-conviction* reweighing of mitigating evidence presented at sentencing that occurred, in that case, more than 25 years earlier, and not the *resentencing* to which he would be entitled under *Ring v. Arizona*, 536 U.S. 584 (2002), if the error correction necessarily reopened direct review. *McKinney v. Arizona*, 140 S. Ct. 702, 707-09 (2020). The Arizona Supreme Court again imposed a sentence of death on McKinney, *State v. McKinney*, 426 P.3d 1204 (Ariz. 2018), consistent with *all* other cases for which *Eddings* error was the basis of a conditional writ grant by the Ninth Circuit and the Arizona Supreme

Court's purported correction of that error. *See State v. Poyson*, 475 P.3d 293, 296 (Ariz. 2020) *State v. Hedlund*, 431 P.3d 181, 183-84 (Ariz. 2018); *State v. Styers*, 254 P.3d 1132, 1133 (Ariz. 2011). Contrary to the historical record of causal nexus application later set forth in *McKinney v. Ryan*, 813 F.3d 798, 802-03 (9th Cir. 2015) (en banc), cert. den. 137 S. Ct. 39 (2016), the Arizona Supreme Court, in the first of the returned error correction cases, evinced the position that it failed to apply such a test. *Styers*, 254 P.3d at 1135; *id.* at 1136 (Hurwitz, Vice Chief Judge, dissenting).

Thus, Respondent's implication that certiorari should be denied because Spreitz was otherwise the recipient of a writ grant by the Ninth Circuit as to his death sentence is disingenuous. The Ninth Circuit recently stayed the district court's grant of the conditional writ on *Eddings* error where the district court explicitly stated that it was not deciding the *Martinez* claim remanded by the Ninth Circuit precisely because it was granting relief based on *Eddings*. *See Doerr v. Ryan*, No. 20-99002 (9th Cir. Apr. 10, 2020), ECF No. 16 at 2. Doerr had argued that the district court's grant of relief based on *Eddings* could be illusory based on the fates that befell all of the other Arizona petitioners to that point for whom the conditional writ was granted based on *Eddings* error once they returned to the Arizona Supreme Court. *See Doerr*, Ninth Cir. No. 20-99002, ECF No. 11, at 7 (Mar. 20, 2020).

Doerr further argued that his *Martinez* claim was not mooted by the conditional writ grant because the district court failed to address the mitigating evidence he developed in the district court in support of his claims that post-conviction relief counsel rendered ineffective assistance that would serve as cause

and prejudice under *Martinez* to excuse the ineffective assistance of trial counsel claim under *Strickland v. Washington*, 466 U.S. 668 (1984)—and that failure undermined the reliability of Doerr’s death sentence demanded by the Eighth Amendment. *Doerr*, Ninth Cir. ECF No. 11 at 7. In staying the writ based on *Eddings* error and remanding, the Ninth Circuit determined that a ruling from the district court on the *Martinez* claim “will assist this Court in the resolution of these appeals.” *Doerr* Ninth Cir. ECF No. 16 at 2.

Here, the absence of any analysis of Spreitz’s *Martinez* remand motion, including the ineffective assistance of counsel claims and supporting facts, similarly implicates Eighth Amendment reliability concerns. While Respondents cite the holding of *Martinez* as sufficient to render *de minimis* Spreitz’s Question Presented as to when remand to the district court is required, BIO at 9-10, Respondents ignore the *Martinez* Court’s engagement with the facts *Martinez* proffered in support of his procedurally defaulted successive state post-conviction petition claims, which informed its analysis and conclusion that remand to the court of appeals was required. 566 U.S. at 6-7, 18. The Ninth Circuit in turn remanded to the district court for application, in the first instance, of this Court’s decision in *Martinez*. See *Martinez v. Ryan*, 680 F.3d 1160 (9th Cir. 2012).

Spreitz submits on certiorari that his ingestion of cocaine in addition to his consumption of vast quantities of alcohol in temporal proximity to the murder formed the metabolite cocaethylene, which greatly exacerbated the impairment *inter alia* of his cognitive functioning and impulse control caused by alcohol consumption alone

and would have proved the statutory mitigating factor that Spreitz could not conform his conduct to the requirements of law. *See* A.R.S. § 13-703(G)(1). Cocaine ingestion evident in a presentence report but which went uninvestigated by trial and post-conviction counsel “fundamentally altered” the ineffective assistance of trial counsel (“IATC”) claim Spreitz brought in his post-conviction relief (“PCR”) petition, which rendered the IATC claim unexhausted and subject to *Martinez* cause and prejudice analysis under *Dickens v. Ryan*, 740 F.3d 1302, 1319 (9th Cir. 2014) (en banc). The underlying IATC claim is “substantial” for *Martinez* purposes. *Martinez*, 566 U.S. at 14. An amendment to Rule 32.1(h) of the Arizona Rules of Criminal Procedure, effective January 1, 2020 (West), which restricts successive PCR petitions based on new evidence to claims of innocence of the crime or non-eligibility for a sentence of death, means that Spreitz will, in the absence of consideration of his *Martinez* claim, lack a vehicle to demonstrate the unreliability of his death sentence based on the failure of trial counsel to apprise the sentencing court of the hijacking of Spreitz’s brain chemistry caused by cocaine ingestion and cocaethylene.

Respondent asserts that the uncontroverted expert opinions of Dr. Pablo Stewart, M.D., an addiction medicine expert, and Dr. Paula Lundberg-Love, Ph.D., a psychopharmacologist, as to the deleterious effects on brain function of cocaethylene “do not materially change the mitigation profile before the sentencing judge or the post-conviction judge” that was based solely on alcohol consumption and childhood trauma. BIO at 14-15. Yet, Spreitz’s ingestion of alcohol and cocaine, and the effect of their metabolite cocaethylene, would unquestionably have led to the conclusion

that Spreitz could not conform his conduct to the requirements of law under A.R.S. § 13-703(G)(1) during his tragic encounter with the victim, a significant change to the mitigation profile. See Appx. E-23 (Dr. Stewart), Appx. E-35 (Dr. Lundberg-Love). Neither the sentencing court nor the Arizona Supreme Court on independent review otherwise found the existence of the G(1) statutory mitigating factor. Respondent's lay opinions must be set aside in favor of findings on a contested issue of fact made by a court of first instance.

The Court should grant certiorari, vacate the Order of the Ninth Circuit in which it denied Spreitz a *Martinez* remand and direct the Ninth Circuit to remand to the district court with directions to consider Spreitz's *Martinez* remand motion and supporting evidence.

Respectfully submitted: February 25, 2021.

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