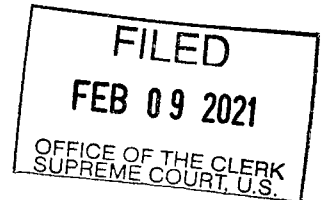


No. 20-7176

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

JEFFREY S. DAVIS — PETITIONER
(Your Name)



vs.

DORA B. SCHRIRO et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The United States District Court For The District of Arizona
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jeff S. Davis #134652
(Your Name)

ASPC-Tucson, P.O. Box 24401
(Address)

Tucson, AZ 85734-4401
(City, State, Zip Code)

NA
(Phone Number)

QUESTION(S) PRESENTED

1. Did the Court of Appeals error by not addressing the certified questions from the district court's Certificate of Appealability (COA), granted Petitioner?
2. Did the Court of Appeals error by treating Petitioner's petition as a habeas petition when it was an appeal of an adversely determined Rule 6D(b)(6)?
3. Did the Court of Appeals error when it found Petitioner did not address the finding that he had misled the district court on issue of diligence, even though Petitioner addressed this exact issue with extensive briefing?
4. Did the Court of Appeals commit legal error in dismissing Petitioner's argument that cause to excuse any procedural default was also occasioned by Arizona's collateral review scheme between 1989 and 2002?
5. Are the questions presented by Petitioner of exceptional importance to state prisoners in Arizona that litigated ineffective assistance of counsel claims (IAC) between 1989 and 2002?

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

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

DAVID SHINN DIRECTOR, ADOL,
MARK BRNOVICH, ARIZONA ATTORNEY
GENERAL.

RELATED CASES

Petitioner-Appellant is unaware of any
related cases.

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>Gonzalez v. Crosby</u> , 545 U.S. 524, 535 (2005)	7, 13
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<u>Padgett v. Wright</u> , 587 F.3d 983, 985 n. 2 (9th Cir. 2009)	9,
<u>Phelps v. Alameida</u> , 569 F.3d 1120, 1134-39 (9th Cir. 2009)	7,
<u>State v. Escareno-Meraz</u> , 307 P.3d 1013, 1014 ¶ 6 (Ariz. App. 2013)	11, 12
<u>State v. Valdez</u> , 770 P.2d 313, 319 (Ariz. 1989)	9,

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

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

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

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

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix D to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the Arizona Supreme Court court appears at Appendix E to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was September 25, 2020.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: November 6, 2020, and a copy of the order denying rehearing appears at Appendix C.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

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

☒ For cases from **state courts**:

The date on which the highest state court decided my case was Dec. 5, 2003.
A copy of that decision appears at Appendix E.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Ariz. Const. art. 2 § 24
 U.S. Const. amend. V
 U.S. Const. amend. XIV § 1
 U.S. Const. art. IV § 2

18 U.S.C. § 3742(a)
 28 U.S.C. § 1291
 28 U.S.C. § 2254(d)(1)
 28 U.S.C. § 2254(d)(2)
 28 U.S.C. § 2254(e)(1)
 28 U.S.C. § 2254(d)(2)
 A.R.S. § 13-4033(A)(1)
 A.R.S. § 13-4231(1)
 A.R.S. § 13-4234(C)

STATEMENT OF THE CASE

In February 1998, the Petitioner, Jeffery S. Davis, was convicted of first-degree murder following a jury trial, based on immunized and plea-bargain paid for testimony — without the Pima County Attorney's office ever producing a body, weapon, crime scene, or forensic evidence of any kind. Petitioner was sentenced to life in prison in March of 1998.

Petitioner filed, through appointed counsel, a petition for post-conviction relief on 07/26/1999; denied 11/19/1999. Retained Counsel filed a second PCR on 12/11/2000; denied 7/25/2001. Appointed counsel filed Petitioner's Direct Appeal in 2002; denied 05/01/2003. The Arizona Supreme Court denied review 12/04/2003. Petitioner, through retained counsel, filed a timely 2254 Habeas petition on 10/26/2004; denied 09/19/2007. Motion to Reconsider denied in 2008. The Ninth Circuit Court of Appeals denied review in 2008.

Petitioner filed a pro se Motion for Relief from Judgment Pursuant to Martinez v. Ryan, 566 U.S. 1 (2012), through a Rule 60(b)(6) on April 15, 2014. The district court granted granted partial relief on 03/03/2015, ordering additional briefing from the state; denied 03/06/2019. A Motion to Reconsider was filed 03/25/2019; denied 03/26/2019.

Petitioner then filed his Notice of Appeal and

Motion for Certificate of Appealability on 04/22/2019. The district court granted COA on 04/24/2019. See Appendix F.

Petitioner filed his pro se Opening Brief to the Ninth Circuit Court of Appeals on 06/18/2019; Petitioner included a Form CJA-23 requesting counsel be appointed. Request was granted, pro se petition was stricken per Order on 06/28/2019, see Appendix G. Opening Brief by appointed Counsel was filed on 11/14/2019.

The Court filed a Memorandum Disposition on 09/25/2020, denied as moot. A petition for Rehearing en Banc was filed 10/08/2020; Appendix I. Rehearing en Banc denied 11/06/2020; Appendix C.

This Petition for Certiorari is timely filed.

REASONS FOR GRANTING THE PETITION

1. Did the Court of Appeals error by not addressing the certified issues from the district court's Certificate of Appealability, granted Petitioner?

In the Court's Memorandum filed 09/25/2020, it stated "Davis on appeal to this court filed an opening brief that did not squarely address either the certified issues or the district court's lengthy decision." Appendix A, at 4.

This is incorrect. Petitioner addressed each point encompassed by the COA in his Opening Brief. See Appendix H, at 51-63.

Petitioner argued presumption of correctness, *Id.* at 55-56; the matter of ineffective assistance of counsel, *Id.* at 60-62; and demonstrated that the district court erred in ruling that he failed to exhaust his sufficiency of evidence claim in state courts, *Id.* at 62-63.

Petitioner addressed each point encompassed by the COA, showed state courts' rulings on his IAC claims were contrary to or an unreasonable application of federal law, *Id.* at 51.

The U.S. Supreme Court should address this important issue to insure circuit courts

understand that COA questions that have been addressed by a petitioner shall be addressed and not ignored. Petitioner's right to due processes has been violated.

2. Did the Court of Appeals error by treating Petitioner's petition as a habeas petition when it was actually an appeal of a Rule 60(b)(6)?

The matter before this Court is an adverse ruling on the appeal of a Rule 60(b)(6) motion. Petitioner was not required to address the underlying IAC issues in his petition to the Court of appeals. A movant seeking relief under Rule 60(b)(6) is burdened by a showing of extraordinary circumstances justifying the reopening of the final judgment. F.R. Civ. P. 60(b)(6); Gonzalez v. Crosby, 545 U.S. 524, 535 (2005).

The court of appeals imposed its own more stringent requirements upon Petitioner's Rule 60(b)(6) motion. This may be happening in other circuits. The Ninth Circuit uses its Phelps v. Alameida, 569 F.3d 1120, 1134-39 (9th Cir. 2009), ruling combined with Gonzalez, supra, when the U.S. Supreme Court has only used Gonzalez as its guide to determine extraordinary circumstances in a

Rule 60(b)(6) motion. This additional burden placed upon the Petitioner by the Court of appeals prevented him from having his substantial issues reviewed. The Ninth Circuit's practice of placing additional burdens upon Rule 60(b)(6) motions surely affects countless petitions presented for review.

The U.S. Supreme Court should address this over-step by accepting review of this petition.

3. Did the Court of Appeals error when it found Petitioner failed to address the finding that he misled the district court regarding diligence?

Petitioner addressed this issue with extensive briefing. Petitioner addressed his diligence in his Rule 60(b)(6), his Motion to Reconsider and then in his appellate brief. See Appendix H, at 52-54.

The appellate court's assesment is not supported by the briefing or appellate record. Petitioner has diligently contested his conviction for 24 years straight, pursuing every legal avenue available to him.

The U.S. Supreme Court should review this issue for the sake of equity and to

address the Circuit Court's habit of avoiding substantive issues of pro se petitioners. (Searching for Ninth Circuit dispositions containing + "pro se" + "We do not consider" among cases citing to Padgett v. Wright, 587 F.3d 983, 985 n.2 (9th Cir. 2009), yields 1,840 results¹. Same wording used in the appellate Court's Memorandum. See Appendix A, at 5).

4. Did the Court of Appeal commit legal error in dismissing Petitioner's argument that Cause to excuse any procedural default was also occasioned by Arizona's collateral review scheme between 1989 and 2002?

During the time Petitioner pursued collateral review, Arizona steered petitioners on collateral review to litigate IAC claims before proceeding to direct appeal. See State v. Valdez, 770 P.2d 313, 319 (Ariz. 1989). When Petitioner attempted to file a successive PCR petition before returning to direct appeal proceedings, the trial court, then state appellate court, both ruled the rule of preclusion barred review. This judicial directive to stay

9.

1. https://scholar.google.com/scholar?hl=en&as_sdt=5%2C114%2C129&cites=150677485345301067288&scipsc=18&q=%2B%22pro+se%22+%2B%22We+do+not+consider%22&btnG=

appeals pending resolution of Ariz. Rule 32 proceedings created a procedural system that effectively prevented defendants from having an opportunity to litigate IAC claims in state courts, thus precluding review by habeas courts.

Given Arizona's as-applied procedural scheme, the state ground was not adequate to support the judgment; therefore, the federal petition should have been resolved in a different manner. see Lee v. Kemna, 534 U.S. 362 (2002) (finding state procedures inadequate). Accordingly, the issues presented to the district court were adequate to deserve encouragement to proceed to an evidentiary hearing or to vacature of Petitioner's conviction.

The court of appeals committed legal error by dismissing this argument by avoiding its review.

The U.S. Supreme Court should review this important issue which has adversely affected hundreds of Arizona inmates, as well as this Petitioner, and denied petitioners due process. See XIV Amendment.

5. Are the questions presented by Petitioner of exceptional importance to state prisoners in Arizona that litigated IAC claims between 1989 and 2002?

In Martinez, the Supreme Court noted that deferring consideration of ineffective-assistance-of-trial-counsel claims until the collateral-review stage is not without consequences for Arizona's ability to assert a procedural default in later proceedings. 566 U.S. at 13.

Post- Martinez, Arizona's intermediate courts of appeal restrictively interpreted Martinez, and concluded that where the Supreme Court did not ground its decision in a Constitutional right, the decision did "not alter established Arizona law," and therefore did not constitute a significant change in law under Rule 32.1(g), State v. Escareno-Meraz, 307 P.3d 1013, 1014 ¶16 (Ariz. App. 2013). As of 11/14/2019, the intermediate appellate courts in Arizona invoked Escareno-Meraz 114 times to bar IAC claims in successive PCR proceedings.

The blanket invocation of Escareno-Meraz, to deny review of IAC claims in successive Rule 32 proceedings is strong evidence there is an absence of available state corrective process in Arizona. See 28 U.S.C. § 2254(b)(1)(B)(i).

Petitioner litigated IAC claims from 7/26/1999 until the Arizona Supreme Court denied review on 12/05/2003. Intermediate appellate courts barred successive PCR petitions raising IAC claims. Petitioner did not return to state courts to re-urge his Martinez claims due to its futility as set forth above.

The U.S. Supreme Court should review the issues within this petition and conclude that the Martinez claims could be presented to state courts anew.

Based on the foregoing authorities and arguments, Petitioner respectfully request that the Court grant his request for Rule 60(b)(6) belief and remand for further proceedings upon review of the merits of his claims. The whole purpose of Rule 60(b)(6) is to make an exception to finality, Gonzalez, 545 U.S. at 528, and the exception is warranted where state procedures were inadequate to vindicate federal rights and the Court of Appeals denied to review Petitioner's Certified issues from the **CONCLUSION** district Court.

The petition for a writ of certiorari should be granted.

Respectfully submitted, By:

J. L. Davis

Date: February 8, 2021