No. 20–7988

IN THE
SUPREME COURT OF THE UNITED STATES

ROBERT POYSON,
PETITIONER,
-vs-
STATE OF ARIZONA,
RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF ARIZONA

BRIEF IN OPPOSITION

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CAPITAL CASE
QUESTIONS PRESENTED FOR REVIEW

1. Did the Arizona Supreme Court correctly conduct a second independent review under *McKinney v. Arizona*, following the Ninth Circuit's identification of *Eddings* error in the state court's initial independent review of Poyson's three death sentences?

2. Did the Arizona Supreme Court's second independent review correctly include only Poyson's proffered mitigation where the Ninth Circuit left undisturbed the previously independently reviewed aggravating circumstances found proved beyond a reasonable doubt?

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INTRODUCTION

Poyson was convicted and sentenced to death for his participation with two co-defendants in the 1996 murders of Leta Kagen, her 15-year-old son, Robert Delahunt, and Roland Wear in order to steal Wear's truck. The Arizona Supreme Court independently reviewed the sentencing court's decision twice—once on direct appeal in 2000, and then again in 2020, following a finding of error by the Ninth Circuit. Poyson contends that the Arizona Supreme Court erred in its second independent review by failing to accord his proffered mitigation sufficient weight and by refusing to re-evaluate affirmed findings of the capital aggravators despite no identified error. Poyson's contentions fail under *McKinney v. Arizona*, 140 S. Ct. 702 (2020), and he has presented no "compelling reasons" for this Court's review. U.S. Sup. Ct. R. 10.

STATEMENT OF THE CASE

Petitioner met Leta Kagen, her son, Robert Delahunt, and Roland Wear in April 1996. *State v. Poyson (Poyson I)*, 7 P.3d 79, 83, ¶ 2 (Ariz. 2000). Poyson was then 19 years old and homeless. *Id.* Kagen allowed him to stay with her and the others at their trailer in Golden Valley, near Kingman, Arizona. *Id.* In August of the same year, Kagen was introduced to 48-year-old Frank Anderson and his 14-year-old girlfriend, Kimberly Lane. *Id.* They, too, needed a place to live, and Kagen invited them to stay at the trailer. *Id.*

Anderson[1] informed Poyson that he was eager to travel to Chicago, where Anderson claimed to have organized crime connections. *Poyson*, 7 P.3d at 83, ¶ 3. Because none of them had a way of getting to Chicago, Anderson, Poyson, and Lane formulated a plan to kill Kagen, Delahunt, and Wear in order to steal the latter's truck. *Id.*

On the evening of August 13, 1996, Anderson commenced an attack on 15-year-old Delahunt by slitting his throat with a bread knife. *Poyson*, 7 P.3d at 83, ¶ 4. Poyson heard Delahunt's screams and ran to the travel trailer. *Id.* While Anderson held Delahunt down, Poyson bashed his head against the floor. *Id.* Poyson also beat the victim's head with his fists and pounded it with a rock. *Id.* This, however, did not kill Delahunt, so Poyson took the bread knife and drove it through his ear. *Id.* Although the blade penetrated the victim's skull and exited through his nose, the wound was not fatal. *Id.* Poyson thereafter continued to slam Delahunt's head against the floor until he lost consciousness. *Id.* According to the medical examiner, Delahunt died of massive blunt force head trauma. *Id.* In all, the attack lasted about 45 minutes. *Id.* Remarkably, Kagen and Wear, who were in the main trailer with the radio on, never heard the commotion coming from the small trailer. *Id.*

After cleaning themselves up, Poyson and Anderson prepared to kill Kagen and Wear. *Poyson*, 7 P.3d at 83, ¶ 5. They first located Wear's .22 caliber rifle. *Id.* Unable to find any ammunition, Poyson borrowed two rounds from a young girl who lived next

[1] Anderson, tried separately, was also convicted and sentenced to death for each murder. *State v. Anderson*, 111 P.3d 369 (Ariz. 2005).

door. *Id.* Later that evening, Poyson cut the telephone line to the trailer so that neither of the remaining victims could call for help. *Id.*

Poyson and Anderson entered Kagen and Wear's bedroom once they had gone to sleep. *Poyson*, 7 P.3d at 83, ¶ 6. Poyson first shot Kagen in the head, killing her instantly. *Id.* After quickly reloading the rifle, he shot Wear in the mouth, shattering his upper right teeth. *Id.* A struggle ensued, during which Poyson repeatedly clubbed Wear in the head with the rifle. *Id.* The fracas eventually moved outside. *Id.* At some point, Anderson threw a cinder block at Wear, hitting him in the back and knocking him to the ground. *Id.* While Wear lay on the ground, Poyson twice kicked him in the head. *Id.* He then picked up the cinder block and threw it several times at Wear's head. *Id.* After Wear stopped moving, Poyson took his wallet and the keys to his truck. *Id.* Poyson concealed Wear's body with debris from the yard. *Id.* Poyson, Anderson, and Lane then took the truck and traveled to Illinois, where they were apprehended several days later. *Id.*

After concluding direct appeal and state collateral review, Petitioner sought relief by way of federal habeas corpus. The district court denied his petition. *Poyson v. Ryan (Poyson II)*, 685 F. Supp. 2d 956 (D. Ariz. 2010). The Ninth Circuit, relying on its own case law,[2] reversed the district court and conditionally granted habeas relief, finding that the Arizona Supreme Court—in independently reviewing Poyson's death sentences—improperly required a nexus between his mitigation evidence about a difficult childhood and mental health issues and having found no such nexus,

[2] Specifically, *McKinney v. Ryan*, 813 F.3d 798 (9th Cir. 2015) (en banc).

erroneously refused to consider this mitigation evidence. *Poyson v. Ryan (Poyson III)*, 879 F. 3d 875, 889 (9th Cir. 2018).[3] The Arizona Supreme Court subsequently conducted a second independent review in response to the Ninth Circuit's identification of *Eddings* error in the state court's initial independent review, and re-affirmed Poyson's three death sentences. *State v. Poyson (Poyson IV)*, 475 P.3d 293, 303, ¶ 47 (Ariz. 2020). Specifically, the court noted that after considering "*all* the mitigating evidence, . . . it is not sufficient to warrant leniency in light of the three aggravators proven by the State, especially given the extraordinary weight of the multiple murders aggravator and the particular weightiness of the other two aggravators." *Id.* at ¶ 46 (emphasis added).[4] Poyson seeks review of that decision.

REASONS FOR DENYING THE WRIT

The Arizona Supreme Court correctly conducted a second independent review—considering all proffered mitigation in light of all proved aggravation—following the Ninth Circuit's identification of a perceived *Eddings* error, consistent with the procedural approved by this Court last year in *McKinney.*

[3] This Court denied the Arizona's petition for writ of certiorari. *Ryan v. Poyson*, 138 S. Ct. 2652 (2018).

[4] The trial court found three capital aggravators beyond a reasonable doubt: (1) each murder was committed in expectation of pecuniary gain, (2) the murders of Delahunt and Wear were committed in an especially cruel manner, and (3) multiple homicides were committed. *Poyson IV*, 475 P.3d at 296, ¶ 4; *Poyson I*, 7 P.3d at 87–88, ¶¶ 23–28.

I. THE ARIZONA SUPREME COURT CORRECTLY CONDUCTED A SECOND INDEPENDENT REVIEW, INCLUDING CONSIDERATION AND ASSIGNMENT OF APPROPRIATE WEIGHT TO POYSON'S PROFFERED MITIGATION.

Poyson contends that the Arizona Supreme Court, in conducting its second independent review following the Ninth Circuit's identification of a perceived *Eddings* error, violated this Court's case law regarding individualized sentencing for capital defendants. (Pet. at 10.) Any suggestion that Arizona's highest court failed to consider the mitigating evidence is laid to rest by its *Poyson IV* opinion, where the court discussed in great detail the six mitigating circumstances proffered by Poyson. 475 P.3d at 297–303, ¶¶ 16–40. In addition, the opinion refutes Poyson's claim that he was not afforded constitutionally required individualized sentencing. Poyson essentially argues that a court cannot be said to have "given effect to" mitigating evidence unless the court concludes that the evidence does, in fact, call for leniency, or in other words, that the court assigns his mitigation the weight he desires. However, this is not the law.

While relevant mitigating evidence may not be excluded as a matter of law from the individualized capital sentencing process,[5] there is no mandate on the weight to be assigned by the capital sentencer, or by a reviewing court during reweighing on collateral review, as happened here. *See McKinney*, 140 S. Ct. at 707; *Clemons v. Mississippi*, 494 U.S. 738, 741 (1990). As the Ninth Circuit has itself recognized, upon a second reweighing, when the Arizona Supreme Court has considered all the proffered

[5] *See Eddings v. Oklahoma*, 455 U.S. 104 (1982).

mitigation, and yet has decided to give it little weight, nothing more is required for a constitutionally individualized decision. *Styers v. Ryan*, 811 F. 3d 292, 298–99 (9th Cir. 2015) ("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.")[6] Moreover, this Court has "never held that a specific method for balancing mitigating and aggravating factors in a capital sentencing proceeding is constitutionally required." *Kansas v. Marsh*, 548 U.S. 163, 175 (2006).

Contrary to Poyson's claim, and to the Ninth Circuit's belief, Arizona has never employed a threshold test for relevance before considering, or "giving effect to" mitigation evidence. The Arizona Supreme Court has made clear, both prior to and after the *Tennard* decision, that the sentencer in a capital case should not be prohibited from considering any proffered mitigation, but that the absence of a causal nexus to the crime may be considered in assessing the quality, strength, weight or significance to be afforded the proffered evidence. *See State v. Anderson*, 111 P.3d at 392, ¶¶ 96–97." *See State v. Pandeli*, 161 P.3d 557, 575, ¶ 72 (Ariz. 2007); *see also State v. McCall*, 677 P.2d 920, 935 (Ariz. 1983) ("When a defendant is being sentenced for first-degree murder, the sentencing court must consider, in addition to the mitigating circumstances of A.R.S. § 13–703(G), any aspect of the defendant's character or record and any circumstance of the offense relevant to determining whether a sentence less than death might be appropriate."); *State v. Sansing*, 77 P.3d 30, 37, ¶¶ 26–28 (Ariz. 2003) (absent expert testimony linking cocaine use to defendant's capacity to control his conduct or

[6] *See Tennard v. Dretke*, 542 U.S. 274, 287 (2004).

his capacity to appreciate the wrongfulness of his actions at the time of the murder, defendant did not establish statutory mitigating circumstance or weighty non-statutory mitigation); *State v. Newell*, 132 P.3d 833, 849, ¶ 82 (Ariz. 2006) ("[w]e do not require that a nexus between the mitigating factors and the crime be established before we consider the mitigation evidence ... the failure to establish such a causal connection may be considered in assessing the quality and strength of the mitigation evidence."). *See also State v. Johnson*, 133 P.3d 735, 751, ¶ 65 (Ariz. 2006); *State v. Ellison*, 140 P.3d 899, 927, ¶ 132 (Ariz. 2006); *State v. Hampton*, 140 P.3d 950, 968, ¶ 89 (Ariz. 2006); *State v. Harrod*, 183 P.3d 519, 534, ¶ 60 (Ariz. 2008); and *State v. Prince*, 250 P.3d 1145, 1168, ¶ 94 (Ariz. 2011). Significantly, the court stated in *Poyson IV*, when discussing Poyson's mitigating factors, noting that "[we] may attribute less mitigating weight to evidence that lacks a connection to the crime." *Poyson II*, 475 P.3d at 297–98, ¶ 16.

In the present case, the court conducted a thorough review of the six mitigating circumstances proffered by Poyson (i.e., impairment, age, abusive childhood, remorse and cooperation with law enforcement, potential for rehabilitation and good behavior, and family support). *Poyson IV*, 475 P.3d at 297–302, ¶¶ 16–40. It concluded that, although Poyson proved all six mitigating circumstances, five of them did not deserve great weight. With respect to the remaining circumstance (remorse), the court found that "the record is replete with evidence that Poyson had some remorse for the murders he committed." *Id.*, at 301, ¶ 36. The court then concluded that although his remorse was mitigating, it "pale[d] in significance when compared to the strong aggravating

circumstances." *Id.* This is consistent with this Court's jurisprudence, and also complies with its recent decision in *McKinney* affirming this collateral second independent reweighing process. 140 S. Ct. at 708–09.

II. THE ARIZONA SUPREME COURT'S SECOND INDEPENDENT REVIEW CORRECTLY INCLUDED ONLY POYSON'S PROFFERED MITIGATION WHERE THE NINTH CIRCUIT LEFT UNDISTURBED THE PREVIOUSLY INDEPENDENTLY REVIEWED AGGRAVATING CIRCUMSTANCES FOUND PROVED BEYOND A REASONABLE DOUBT.

Poyson's second contention regarding review of his proven aggravating circumstances is also without merit. (Pet. at 21–24.) On direct appeal, the Arizona Supreme Court found three aggravating circumstances in connection with Poyson's murders of Delahunt and Wear: expectation of pecuniary gain, A.R.S. § 13–703(F)(5); especially cruel murder, A.R.S. § 13–703(F)(6); and multiple homicides committed during the same offense, A.R.S. § 13–703(F)(8). The court found two aggravating circumstances in connection with the murder of Kagen: expectation of pecuniary gain and multiple homicides committed during the same offense. *Poyson I*, 7 P.3d at 87–88, ¶¶ 23–28.[7] The Ninth Circuit's identification of a perceived *Eddings* error was limited to mitigation, and thus the Arizona Supreme Court's initial independent review of the existence of the capital aggravators remains affirmed and undisturbed on federal review. *Poyson III*, 879 F.3d at 897.

Moreover, when conducting its second independent review, the Arizona Supreme Court had to address the found aggravators to determine whether the proffered mitigation was sufficiently substantial to call for leniency. After noting that "all three

[7] This brief utilizes the statute numbers as they existed in 2000.

aggravating factors are particularly weighty," the court explained: The "cruelty factor" deserves great weight because of "the prolonged and brutal way Poyson murdered Delahunt and Wear . . . ." *Poyson IV*, 475 P.3d at 302, ¶ 42. The pecuniary gain aggravator is "especially strong here" in light of the fact that all three murders "were not simply incidental to the stealing of Wear's truck but were an integral part of the plan . . . ." *Id.* The multiple homicides factor was entitled to the greatest weight of all; the court noted that, in previous cases when it was the *only* aggravating factor present, the court concluded that it outweighed several mitigating factors and warranted imposition of the death penalty. *Id.* at ¶ 43 (citing *State v. Moore*, 213 P.3d 150, 172, ¶¶ 137–38 (Ariz. 2009) (finding significant mitigating evidence of age and drug abuse insufficient to warrant leniency in light of multiple murders aggravator); *State v. Dann*, 207 P.3d 604, 628, ¶¶ 137–39 (Ariz. 2009) (finding mitigating evidence of child abuse, impairment, and family support insufficient to warrant leniency in light of sole aggravator of multiple murders); and *State v. Armstrong*, 189 P.3d 378, 393, ¶¶ 83–84 (Ariz. 2008) (similar to *Dann*)).

The Arizona Supreme Court conducted an exhaustive second independent review, consistent with *Clemons* and this Court's recent decision in *McKinney*, as required by the Ninth Circuit's identification of a perceived constitutional deficiency in the state court's initial independent review over 20 years ago. This Court should deny Poyson's petition for writ of 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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