No. 21-5961

IN THE SUPERME COURT OF THE UNITED STATES

David K. Horsley – Petitioner

VS.

State Of Ohio – Respondent

On a Petition for a Writ of Certiorari to
the Court of Appeals of Ohio, Fourth Appellate District, Pickaway County.

PETITION FOR WRIT OF CERTIORARI

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Question Presented

To clarify if what the United States Court held in *Garza v. Idaho*, 586 U.S. 10 (2019) applies to Ohio App. R. 26 (B)(1) which requires a defendant to prove ineffective assistance of counsel to reopen an appeal that was originally denied based on an appeal waiver.

A state appellate procedure is in conflict with the Court precedent set in *Garza v. Idaho*, 586 U.S.__ (2019).

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Petitioner, David K. Horsley, respectfully petitions this Court for a writ of certiorari to review the judgment of the 4th District Court of Appeals in this case.

OPINION AND ORDER BELOW

The opinion of the Supreme Court of the State of Ohio, Case no. 2021-0750, Decision entry 2021-Ohio-2615, (Pet. App. 2) and the lower court opinion of the 4th District Court of Appeals for the State of Ohio, Case no. 99C33, (Pet. App. 1) are both published on the Ohio Supreme Court website as required by Rep.Op.R. 3.2 dated July 1, 2012.

JURISDICTION

The judgment of the Supreme Court of the State of Ohio entered on August 3, 2021.

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

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment to the U.S. Constitution provides that "In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense."

The Fourteenth Amendment to the U.S. Constitution provides that "nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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STATEMENT OF THE CASE

In April of 1999, I appeared 2 hours late for court. I was taken into custody and told if I did not sign a plea agreement the court could take my ex gf's home as it was used to secure my appearance. I immediately signed the plea agreement. The attorney that was assigned to my court case was Attorney William Archer. I plead guilty to O.R.C. 2903.13(C)(5), misdemeanor charge of Assault. In exchange, the prosecutor dropped a felony failure to appear charge. The assault is a felony 4 because the alleged victim was a police officer. He is both alleged victim and investigator. No in car videos were turned over by the prosecutor's office in reply to discovery.

I was ordered to go to a Community Based Correctional Facility and was denied entry because I refused to admit guilt. This generated another court date at which I learned my attorney had been hired as an assistant prosecuting attorney for the same prosecutors office that was prosecuting my court case. I was represented by Attorney McHenry at that hearing. He was just a fill in attorney and the trial court assigned Attorney Tracy Leonard the next day on August 9, 1999. (App. E) Attorney Leonard then filed a motion to disqualify the prosecutor's office showing nonfrivolous arguable merits on the record.(App H) I requested a withdraw of plea hearing as Attorney Archer was a party in the charge of felony failure to appear and as such could not represent me as counsel when the plea was signed. He was also

seeking a position with the same prosecutors office that prosecuted my case while handling my case at the same time.

The trial court ruled against me and I requested an appeal. Attorney Leonard filed the appropriate paperwork to include Notice of Appeal which shows my desire to appeal. (App J) One month after she had filed the appeal paperwork I was contacted in prison by a woman on the phone whom I was told was my attorney. She asked if I wanted an appeal and I said no, hung up and walked away. The call could not have lasted a minute. There was no explanation of the pros and cons of withdrawing my appeal. I had not spoken to her since the withdraw of plea hearing at the beginning of October.

In addition, the motion to withdraw my appeal was not signed by Attorney Leonard (App D), and she had already requested to be removed and asked for an appellant attorney assigned to be assigned to my case. (App F) The motion to waive my appeal was signed by Attorney McHenry. He was not my attorney and never spoke to me about an appeal and filed no Anders brief with the appeal as required by *Anders v. California,* 386 U.S. 738, 744 (1967); *Pension. v Ohio,* 488 U.S. 75, 79-85 (1988). (App D)

The ruling in *Anders* and *Pension* applies to both defense counsel and the appellate court. They are required to review the record for nonfrivolous arguable merits that can be raised on appeal. The record shows nonfrivolous arguable merits on the record as contained in Attorney Leonard's motion to recuse the Pickaway County Prosecutors Office, due to hiring the defense attorney that the trial court had assigned to represent me in this court case, which raises important 6th and 14th Amendment questions. (App H)

I served the stated sentence of 270 days in prison.

I maintained my innocence and was constantly looking for a way to overturn my conviction that was not subject to discretion as the 4th Appellate district caprice is to cover up and protect both police and attorneys from any legal liability for misconduct. Id., *See* section 2. I finally figured out that I would have to do it myself and asked myself how to accomplish this task and it was by attacking the waiver to appeal which I then googled and which brought me to the ruling in *Garza v, Idaho*, 586 U.S. __ (2019). I then immediately filed a motion to reconsider my appeal. (App I) It is based on the ruling in *Garza* that states,

> "In Roe v. Flores-Ortega, 528 U. S. 470 (2000), this Court held that when an attorney's deficient performance costs a defendant an appeal that the defendant would have otherwise pursued, prejudice to the defendant should be presumed "with no further showing from the defendant of the merits of his underlying claims." Id., at 484.

My request to reopen my appeal was denied by the 4th Appellate District of Ohio citing Ohio App. R. 26 (B)(1) stating that I had failed to show ineffective assistance of counsel. When we review the record we see that the motion to withdraw did not include an *Anders* brief. (App D) That is deficient performance of counsel that resulted in my being denied an appeal which my Notice of Appeal shows that I wanted. (App J) Had the appellate court reviewed the case, as it should have, it would have spotted the lack of an *Anders* brief with my motion to withdraw my plea. That and reading what this Court held in *Garza v. Idaho* should have resulted in me being granted an appeal and having counsel assigned. But that isn't

what happened. They did not apply the *Anders* review standard for reviewing reopening of an appeal. A review was not performed in 1999 and it was not done in 2021.

The 4th District Court of Appeals ruling states that counsel did a fine job and makes no mention of counsel's failure to submit an *Anders* brief which shows deficient performance on its face. In *Garza*, this court held that when an attorney's deficient performance costs a defendant an appeal he otherwise would have taken then he gets an appeal and that I need show nothing further. Ohio App. R. 26 (B)(1) requires I show ineffective assistance of counsel which is in direct conflict with what this Court held in *Garza v. Idaho*, 586 U.S. 10 (2019).

> "Instead, we reaffirm that, "when counsel's constitutionally deficient performance deprives a defendant of an appeal that he otherwise would have taken, the defendant has made out a successful ineffective assistance of counsel claim entitling him to an appeal," with no need for a "further showing" of his claims' merit, ibid., regardless of whether the defendant has signed an appeal waiver." *Garza v, Idaho*, 586 U.S. 10 (2019

In addition, we see that the attorney who signed the motion to withdraw my appeal was not my assigned counsel. Attorney Tracey Leonard was assigned on August 10, 1999, (App E) and then filed a motion to be removed and new appellate counsel assigned. (App F) Attorney McHenry is noted in an entry of continuance as he stood in for my attorney who could not represent me as he had been hired as assistant prosecutor in the same court that he was representing me in. (App G) I had no conversation with Attorney McHenry after the August 18, 1999, court date

and certainly not about the pros and cons of pursuing my appeal while I was incarcerated.

The issue is that I, as a pro se litigant, only need request my appeal to be reopened to trigger a review as required in both *Anders v. California,* 386 U.S. 738, 744 (1967) and *Pension. v Ohio,* 488 U.S. 75, 79-85 (1988). The appellate court has the same requirements under *Anders* and *Pension* as the defense counsel to review the case for nonfrivolous arguable merits to be raised on appeal. Records show no transcript of the withdrawal of plea hearing were created so we know that no review was performed by the appellate court or the Ohio Supreme Court. The records also show nonfrivolous arguable merits on appeal contained in the motion to recuse the prosecutor's office submitted by Attorney Leonard. (App H) I appealed to the Ohio Supreme Court which refused jurisdiction.

I believe all I, as a pro se litigant, needed to do is file a request to reconsider my appeal to trigger a review for nonfrivolous arguable merits. While the record is incomplete it does show a nonfrivolous arguable merit on the record.

For the reasons stated above, I request that the decision issued by the Court of Appeals of Ohio, 4th Appellate District, Pickaway County, be reversed.

REASONS FOR GRANTING THE PETITION

1. This Court's Ruling in *Garza v. Idaho*, 586 U.S. 10 (2019), is in Conflict with Ohio App. R. 26 (B).

Ohio App. R. 26 (B) requires a person prove ineffective assistance of counsel to reopen an appeal. I must show deficient performance of appellate counsel and how I was prejudiced by that deficiency. However, this Court held in *Garza v. Idaho*, 586 U.S. __, 10 (2019) that when counsels deficient performance denies an appeal that the defendant would have otherwise taken then they get an appeal and need not show anything further.

The State of Ohio requires a *pro se* litigant to prove these things in Ohio App. R. 26 (B) without acknowledging the rulings in *Anders v. California,* 386 U.S. 738, 744 (1967) and *Pension v. Ohio*, 488 U.S. 75, 79-85 (1988). In these Court rulings the appellate court must review the case for merits rather than placing that burden on a *pro se* litigant seeking to reopen an appeal that was denied based on a waiver of appeal. The *Anders* requirement to conduct an examination of the record falls upon the appellate court and not the *pro se* litigant as Ohio App. R. 26 (B) requires.

This shows that Ohio App. R. 26 (B) is in conflict with what this Court held in *Anders v. California,* 386 U.S. 738, 744 (1967) and *Pension. v. Ohio*, 488 U.S. 75, 79-85 (1988) as the State of Ohio imposes the review for merits onto the *pro se* litigant rather than on the appellate court as required by *Anders* and *Pension.*

Defense counsel did not include an *Anders* brief when he submitted the motion to withdraw my request for an appeal and that shows deficient performance of counsel. (App C) I have a right to effective assistance of counsel as this Court held in *Strickland v Washington*, 466 U.S. 668. And the failure to submit an *Anders* brief is deficient performance on its face. I have a right to appellate review of my case for

nonfrivolous arguable merits to raise on appeal. Defense counsel failed to abide by these procedural safeguards in failing to file an *Anders* brief which resulted in me being denied an appeal. The 4th District Court of Appeals in granting my motion to withdraw from my appeal also failed to list any nonfrivolous arguable merits to be found in the record. (App D) There are nonfrivolous arguable merits to the record as the motion to recuse the prosecutor's office shows. (App H)

I have failed to meet the requirements, in Ohio App. R. 26 (B), to the appellate courts satisfaction and my appeal has been denied in a ruling based on failing to show ineffective assistance of counsel and how I was prejudiced by that deficiency.

But if we impose the *Anders* brief requirement, that applies to both the defense counsel and the appellate court, we see that I need only request to reopen my appeal for it to trigger appellate review as the appellate court cannot proceed to rule on the matter until the *Anders* review is completed. No transcript of the withdraw of plea hearing was ever created for review so we are certain no proper review has been completed. In addition, the motion to recuse raises important 6th and 14th Amendment issues and the result is that I have denied due process by being denied effective assistance of counsel.

So we see an entirely different outcome by applying the *Anders* review requirement to the procedure used by the State of Ohio to reopen an appeal. This shows Ohio App. R. 26 (B) to be deficient as it fails to require an *Anders* review by the appellate court in considering to reopen an appeal that was denied based on an appeal waiver.

Defense counsels failure to file an *Anders* brief along with my motion to waive my right to an appeal shows deficient performance of counsel on its face. (App C) Therefore, what this Court held in *Garza v, Idaho,* 586 U.S. 10 (2019) applies,

> "Instead, we reaffirm that, "when counsel's constitutionally deficient performance deprives a defendant of an appeal that he otherwise would have taken, the defendant has made out a successful ineffective assistance of counsel claim entitling him to an appeal," with no need for a "further showing" of his claims' merit, ibid., regardless of whether the defendant has signed an appeal waiver." *Garza v, Idaho,* 586 U.S. 10 (2019)

Ohio App. R. 26 (B) denies due process as it imposes the review requirements onto a defendant when the rulings in *Anders* and *Pension* specifically place it upon defense counsel and the appellate court.

The State of Ohio has an estimated 11,500,000 people whose appellate rights are in jeopardy right now. I believe the Court must rule on this issue as it affects a large number of people who are at risk being denied their 14th Amendment right to Due Process, an appeal, by way of a denial of their 6th Amendment right to effective assistance of counsel.

2. In Considering the Question Presented, We Must Also Consider if Allowing a Defendant to be Denied an Appeal at the Discretion of the Appellate Court is a Procedure that Denies Due Process.

Ohio App. R. 26 (B) fails to permit the examination of the procedures used to review the request to reopen the appeal in a due process context. We should not only look at it in a 6th Amendment of the United States context but also in a 14th Amendment of the United States context in considering if a person should be granted a request to reopen an appeal.

In considering any 14th Amendment implications we must ask if there are inherent prejudices in a procedure that allows a single appellate judge to decide if an appeal is reopened? Circumstances dictate that there are inherent prejudices in imposing the requirements of *Strickland* on *pros se* litigants. Appellate judges being able to exercise their discretion on the matter is a procedure that denies due process. The test in *Aetna,* 475 U.S. at 825 (quoting Ward, 409 U.S. at 60,)

> "is whether the ... situation is one 'which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear, and true between the state and the accused . . . .' Aetna, 475 U.S. at 825 (quoting Ward, 409 U.S. at 60)"

Under the principles laid out in *Aetna* and *Ward,* we see that actual influence is not necessary as it only mattered "whether the situation would offer a possible temptation to the average ... judge to...forget the burden of proof necessary to obtain a conviction..." So proof is not required when the procedure itself has the potential to harm the innocent.

Then we need to apply the principle of Blackstone's ratio. John Adams said it best. John Adams in his opening arguments dated December 3-4, 1770,

> "We find, in the rules laid down by the greatest English Judges, who have been the brightest of mankind; We are to look upon it as more beneficial, that many guilty persons should escape unpunished, than one innocent person should suffer. The reason is, because it's of more importance to community, that innocence should be protected, than it is, that guilt should be punished;..."

It is clearly established principle, that this nation was founded upon, that the innocent must be protected in the application of law.

Does imposing the legal requirements of *Strickland v. Washington* 466 U.S. 668, 669, create prejudice against a wronged defendant?

Imposing this procedure on a *pro se* litigant provides a means of hiding some malfeasance or gross negligence on part of the police or lawyers involved in a specific case.

The 4th District Appellate Court in the State of Ohio is made up of rural counties with a small number of lawyers in each county with many doing double duty in other counties. The "temptation" to protect ones colleagues, who these attorneys have formed lifelong working relationships with, creates an inherent prejudice against anyone who suggests they may have committed any form of misconduct in conflict with the standards set by *Aetna and Ward.* They are lawyers and their instincts are to protect their friends and family from any legal liability associated with performing their jobs to the point that they may "forget the burden of proof necessary to convict a defendant." Pp. 2-3 So allowing the appellate court to decide who can reopen an appeal and who cannot reopen an appeal is inherently prejudicial to having a fair and impartial review under the requirements of *Strickland v. Washington* 466 U.S. at 669.

This is specifically concerning, as if appellate judges were to agree on a specific unconstitutional caprice that is followed district wide, such as to protect a police officer who arrests and assaults those that they feel should be arrested and assaulted in spite of constitutional protections, as that puts the entire community in jeopardy. Then the judges unconstitutional caprice can be shielded by their own discretion by being the one to decide of a person ever gets an appeal or not. That procedure represents a conflict within itself.

That caprice appears in this case to be anyone the police officer says committed a domestic assault without any evidence to support that claim or investigation into actual fact in a court of law thus denying due process. And that decision fell onto a single appellate judge who ruled without a review of the facts or a hearing on the matter. That is the prejudice I face when seeking to reopen my appeal. A prejudice that is inherent to allowing a judge to decide his friends fate in deciding whether to rule in favor of me reopening my appeal. That discretion has the potential to cover up a lot of harm being caused a community by unscrupulous individuals seeking to make more arrests solely for the money it brings into rural courts and to law enforcement as authorized by Ohio' s laws and procedures. This poses another question.

Are there inherent prejudices in the State of Ohio's laws and procedures?

The State of Ohio has created inherent prejudices against me in this court case which start from the point of arrest and extend into the appellate court. It has provided a motive and means for the police to make false arrests as arrests in these situations have been financially incentivized by the State of Ohio.

The motive being putting people in jail for the extra money the jail can bill the city for when they exceed their allotment of beds as county commissioners are allowed to bill municipalities on a per bed basis. O.R.C. Section 341.23 (A), allows county commissioners to enter into contracts for holding prisoners with municipalities and O.R.C. 341.14, requires payment for the incarceration of each of those prisoners in advance. So if a person is taken to jail then the jail gets paid immediately.

In Ohio, the fees a jail can bill a city for holding a single inmate can range from $80-$100 a day or more. This means the more people taken to jail automatically increases the amount of money the jail takes in. In addition, lawyers handling indigent court cases are

paid $400 a court case which is paid on a per case basis with no oversite into their actions. 5 extra cases a week can generate over $100,000 a year in additional income to both the jail and the group of attorneys handling indigent court cases.

The State of Ohio could fund and build jails based on population rather than actual weekly costs which can be manipulative and as such creates a situation in conflict with the principles on which this nation is founded. Defense attorneys handling indigent cases can be paid on a contractual basis instead of on a per case basis as being paid on a per case basis is a procedure that denies due process.

The means of the "motive and means" is found in Ohio's Warrantless Arrest law O.R.C. 2935.03 (B)(3)(a)(i), that permits arrest based solely on a complaint. No evidence to support a complaint is required to make that arrest and a state constitutional amendment denies a defendant discovery in seeing if what was contained in the complaint is even considered a crime.

O.R.C. 2935.03 (B)(3)(a)(i) states,

> (3)(a) For purposes of division (B)(1) of this section, a peace officer described in division (A) of this section has reasonable grounds to believe that the offense of domestic violence or the offense of violating a protection order has been committed and reasonable cause to believe that a particular person is guilty of committing the offense if any of the following occurs:
>
> (i) A person executes a written statement alleging that the person in question has committed the offense of domestic violence or..."

Police and lawyers are exploiting this loophole for profit. That is a reason why jails are all overcrowded in Ohio. It is the reason I was placed under arrest that night instead of being let go. It is common practice now to violate the accused in certain situations in Ohio.

Those situations are listed in Ohio's Warrantless Arrest law O.R.C. 2935.03. It is profit taking from false arrest. Police now write as many tickets as possible, make as many arrests as possible and do so without being required to show any evidence in support of a complaint or fear of any lawyer representing the indigent bringing the issue of false arrest, based on a lack of evidence, before the trial court because they make more money from those extra arrests as well.

These arrests are made without any evidence to support a complaint and results in a family being torn apart at the first sign of any relationship problems for the money it makes law enforcement and defense attorneys. It results in a person not only being charged with a crime but a crime that is categorized as a "violent crime" resulting in restraining orders preventing a law abiding couple from uniting and a loss of second amendment rights as it is considered a "crime of violence". An attack on the family unit at the first signs of trouble and all done for the profit it makes jails and indigent defense attorneys. Ohio is destroying tens of thousands of families on the odd chance it may stop a domestic violence situation from occurring. This goes against Blackstone's ratio, a principle on which this nation was founded, that is explained by John Adams, "The reason is, because it's of more importance to community, that innocence should be protected, than it is, that guilt should be punished;..." Id., 4. This also has national security implications. It fits the description of domestic terrorism but by offering financial incentives through procedures that encourages police to commit these unconstitutional acts against society rather than by forcing them to do so.

The State of Ohio creates additional prejudice by offering a way for officers getting away with unconstitutional actions by prohibiting their victims from suing if they sign a plea agreement as stated in O.R.C. 2743.48 (A)(2) which was the State of Ohio's caprice in

1999 and proven to be as they have written it into law today. In Ohio, a person can only sue for damages if they have been determined to be a "wrongfully convicted person" and to be considered a "wrongfully convicted person" you cannot have plead guilty to the charge. This creates prejudice against an innocent defendant in a court of law as it offers a temptation to get an innocent person to sign a guilty plea to protect their friends rather than ignore that conflict of interest and protect the innocent.

O.R.C. 2743.48 (A)(2) defines a wrongfully convicted person as,

> "(2) The individual was found guilty of, but did not plead guilty to, the particular charge or..."

So to protect an officer from any legal liability, and harm to their employment record, who has committed an act under the district courts unconstitutional caprice, they must find a way to manipulate a person into signing a plea. This turns officers of the court against an innocent person in a court of law more so than a guilty one as the guilty pose no threat to anyone's career. This is the inherent prejudice I face as a defendant. And should they sign an appeal waiver under some duress, as I did, then it will be a judge from that same district that decides if that person will ever have an appeal.

Facts show that prejudice is inherent to imposing the procedural requirements of *Strickland v. Washington* 466 U.S. 668, as required by Ohio App. R. 26 (B)(1), on a *pro se* litigant seeking to reopen an appeal that was denied based on an appeal waiver. Those potential 5th and 14th Amendments violations combined with the 6th Amendment implications raised in *Garza*, 586 U.S. ___ (2019), presents a situation where the "probability of actual bias on part of the decision maker is too high to be constitutionally tolerable." *Withrow v. Larkin*, 421 U.S. 35, 47, (1975), quoting *In re Murchison*, supra, at 136; cf. *Tumey v. Ohio*, 273 U. S. 510, 532 (1927).

And a final issue is that permitting the use of an appeal waiver is that its implementation is unfeasible. While this Court has ruled on the procedures in how to handle waiver of appeals and that they require an *Anders* brief and review by the appellate court we see that they are not following that precedent. The Chief Justice of the Supreme Court for the State of Ohio also did not conduct a review of my case. The ruling in *Anders v. California,* 386 U.S. 738, 744 (1967) was issued over 50 years ago and is still not being applied properly today. That fact shows that allowing the use of a waiver of appeal denies due process as it offers the possibility of injuring an innocent person. I consider it a procedure that must be discarded as the potential to harm the innocent is too high to be constitutionally tolerable.

In the ruling issued by the 4th District Court of Appeals we see that the appellate court did not address any of the arguments raised in *Garza v Idaho.* (App A) The judge defends counsel actions and behaves as though no *Anders* brief requirement even exists and that Attorney McHenry did a great job in handling my case. But records show that Attorney McHenry was not my attorney and failed to file an *Anders* brief on behalf. He has never spoken to me about my appeal. (App E) Attorney Leonard was last attorney to represent me in this matter. (App F) This was to gaslight me into thinking that I have no right to an appeal. The appellate court issued this ruling when records show I was denied effective assistance of counsel resulting in me being denied an appeal that records show I had requested. Defense counsels failure to file an *Anders* brief shows deficient performance of counsel on its face and had the appellate court examined the record for nonfrivolous arguable merits and looked at the only court precedent I cited then we would have seen a just result in allowing my appeal and assigning new counsel. No appellate review of my court case for nonfrivolous arguable merits in the record occurred as no transcript has been

created. They simply refuse to do it. All while hiding their own deficient performance. The ruling in *Anders* was issued 50 years ago and the ruling in *Pension v. Ohio* is a landmark court case from the State of Ohio that explains in detail what role the appellate court must play in dealing with waivers of appeal. The appellate court has no excuse as to why it failed to apply the *Anders* requirement. The more workable rule would be to ban waivers of appeal altogether. If no nonfrivolous arguable merits are found that must be stated in the appeal. To deny an appeal is to deny due process.

I believe the financial incentives that encourage police officers to make false arrests affects us all.. It destroys innocence in our communities as shown by the number of overdose deaths in the State of Ohio. People who are victimized by the court system are unable to free themselves from their false convictions and turn to drugs to end their miserable existence as they cannot find work to support themselves. This Court must rule on this case to prevent harm coming to our communities by these financial incentives that create prejudice from the point of arrest to the appellate court. Allowing an attorney to file a motion to withdraw an appeal offers the possibility that an innocent person may be denied an appeal they are otherwise entitled to. As this does not require any guilty people to be set free I fail to see a compelling government interest in denying me an appeal that I was entitled to in the first place.

In the end what purpose does a waiver of appeal do besides hide attorney and police misconduct? What legal argument can defense counsel make that supports waiving their clients right to an appeal? If a person has no nonfrivolous merits on appeal then the appellate court still has to conduct a review of the record for nonf5rivlous arguable merits on the record. It does not reduce the workload on the appellate court. It is a procedure that only protects corrupt cops and lawyers while offering the no benefit to the defendant or the

appellate court and if it offers the defendant no benefit in waiving their appeal then why is it permitted?

While this case is resolved by applying the presumption of prejudice defined in *Garza v. Idaho,* 586 U.S. 10 (2019) this Court must end the practice of permitting independent waivers of appeal as they deny due process as shown in Section (2) of this Petition. They are also unfeasible as appellate courts refuse to abide by these rulings due to the inherent prejudice that exists in our court systems today. It is a procedure that offers the possibility of injuring an innocent person which goes against Blackstone's ratio. A principle on which this nation was built.

CONCLUSION

For the reasons stated above, the petition for a writ of certiorari must be granted.

Respectfully Submitted,

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