

No. 22-6383

ORIGINAL

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

JAMES T. WOO — PETITIONER
(Your Name)

vs.

THE PEOPLE OF THE STATE OF COLORADO — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

DISTRICT COURT, EL PASO COUNTY, COLORADO
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

James Woo, DOC # 179463
(Your Name)
Colorado State Penitentiary
P.O. Box 777
(Address)

Canon City, CO 81215
(City, State, Zip Code)

No telephone, no fax, no email
(Phone Number)

QUESTION(S) PRESENTED

I. Whether the district court improperly misused a protective order to deprive Woo, a pro se defendant, of access to terabytes of discovery in his case files that were outside the scope of the protective order and critical to his ability to investigate and raise post-conviction claims.

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:

RELATED CASES

- The People of the State of Colorado v. James Takchuan Woo, No. 2016CR2069, District Court, El Paso County, Colorado. Judgment entered Feb. 6, 2018.
- The People of the State of Colorado v. James Takchuan Woo, No. 2018CA584, Colorado Court of Appeals. Judgment entered Nov. 25, 2020.
- The People of the State of Colorado v. James Takchuan Woo, No. 2021SC 8, Colorado Supreme Court. Judgment entered Mar. 29, 2021.
- James Takchuan Woo v. The People of the State of Colorado, No. 21-5539, Supreme Court of the United States. Judgment entered Nov. 1, 2021.
- The People of the State of Colorado v. James Takchuan Woo, No. 2016CR2069, District Court, El Paso County, Colorado. Judgment entered Dec. 6, 2021.
- The People of the State of Colorado v. James T Woo, No. 2022CA184, Colorado Court of Appeals. Judgment entered Mar. 21, 2022.
- James T. Woo v. The People of the State of Colorado, No. 2022SC327, Colorado Supreme Court. Judgment entered Sep. 12, 2022.

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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 _____ 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 _____ 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 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 _____ court appears at Appendix _____ 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 _____.

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: _____, 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. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was September 12, 2022. A copy of that decision appears at Appendix C.

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

Colo. Crim. P. 16(III)(c). Custody of Materials.

Materials furnished in discovery pursuant to this rule may only be used for purposes of preparation and trial of the case and may only be provided to others and used by them for purposes of preparation and trial of the case, and shall be subject to such other terms, conditions or restrictions as the court, statutes or rules may provide. Defense counsel is not required to provide actual copies of discovery to his or her client if defense counsel reasonably believes that it would not be in the client's interest, and other methods of having the client review discovery are available. An attorney may also use materials he or she receives in discovery for the purposes of educational presentations if all identifying information is first removed.

Colo. Crim. P. 16 (III)(d). Protective Orders.

With regard to all matters of discovery under this rule, upon a showing of cause, the court may at any time order that specified disclosures be restricted or deferred, or make such other order as is appropriate, provided that all material and information to which a party is entitled must be disclosed in time to permit the party to make beneficial use thereof.

Colo. Crim. P. 35 (See Appendix D)

Colo. RPC 1.16(d)

Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

U.S. Const. amend. I (See Appendix D)

U.S. Const. amend. XIV, § 1 (See Appendix D)

STATEMENT OF THE CASE

Woo was convicted of first-degree murder and sentenced to life without parole in the underlying criminal case on February 6, 2018. Appendix A, p 1, ¶ 1.¹ This matter arises from Woo's failed attempts in the five years thereafter to obtain his case files in order to investigate grounds for post-conviction relief pursuant to Colo. Crim. P. 35(c).

On December 22, 2017, one month before Woo's trial, his defense counsel conceded to People's motion for a protective order concerning intimate images of the victim specifically on a "disc of photos", which People provided in discovery discs 90-91. Id. at p 8, ¶ 7-p 9, ¶ 1; p 9, ¶ 5.

After his conviction, Woo requested Counsel to surrender his client file pursuant to Colo. RPPC 1.16(d). Against Woo's objection, Counsel brought the attorney-client matter to the court's attention by filing a motion on May 22, 2018 requesting permission to release discovery hard drives² in his possession to Woo's family, essentially implying that the hard drives contained contents relevant to the protective order to which he conceded in the first place. Id. at p 1, ¶ 3. At a hearing on May 25, 2018, the court denied the motion and ordered Woo to state specifically what items he wanted from the hard drives and why he wanted them.³ Id. The Colorado Court of Appeals dismissed Woo's appeal of this ruling based on the lack of a final appealable order in case no. 2019CA202.

¹ The Colorado Court of Appeals affirmed Woo's conviction on November 25, 2020 (case no. 2018CA584). Woo's petitions for writ of certiorari were denied by the Colorado Supreme Court on March 29, 2021 (case no. 2021SC8) and by this Court on November 1, 2021 (case no. 21-5539). Id. at p 2, ¶ 7.

² The discovery hard drives contain data extracted from at least 16 electronic devices seized from the victim, Woo, and others.

³ This order was issued during the pendency of Woo's appeal of his conviction, perfected on March 26, 2018. Id. at p 1, ¶ 2.

Counsel moved to withdraw on March 18, 2019. Id. at p1, ¶4.⁴ Woo filed a pro se motion on March 29, 2019 requesting the court to order Counsel to release case files before withdrawal. In response to the court's order for a status report, Counsel indicated that Woo had sought all files other than protected images of the victim. Id. at p2, ¶1.

On September 18, 2019, Woo filed two additional pro se motions. Id. at p2, ¶2. One sought the return of some of Woo's seized properties and the release of all material in discovery hard drives other than protected images of the victim. Id. The other alternatively sought the removal of the protective order unless People proved the allegation upon which it was based. Id. On February 4, 2020, People responded that the court lacked jurisdiction to issue any order during the pendency of the appeal. Id. at p2, ¶3.

At a hearing on February 6, 2020, the court allowed Counsel to withdraw, ruling that Counsel could release all discovery to Woo except for a six-Terabyte (6TB) hard drive. Id. at p2, ¶4. It reiterated that Woo had to specify what he wanted from the hard drive, and declined to address both of Woo's September 18, 2019 motions based on the ongoing appeal. Id.

On June 29, 2020, the Court of Appeals again dismissed Woo's appeal of this ruling based on the lack of a final appealable order. Id. at p3, ¶2. On August 27, 2020, the Colorado Supreme Court denied Woo's petition for a rule to show cause pursuant to its original jurisdiction under C.A.R. 21 regarding this issue (case no. 2020SA287).

On December 6, 2021, with Woo's conviction affirmed on appeal, the district court, under a different judge, vacated all of the above orders it issued during the appeal of Woo's conviction based on lack of jurisdiction. Id. at p3, "JURISDICTION"; p6, ¶4. It

⁴ The "March 18, 2020" date in the court's summary in Appendix A is a typographical error.

reconsidered Woo's September 18, 2019 motions and: (1) reserved ruling on the property return request (Id. at p 6, ¶¶1-3); (2) denied Woo's request for redacted access to the discovery (Id. at p 8, ¶¶4-6); and (3) denied Woo's request to remove protective order (Id. at p 9, ¶3). As to the property return request, the court ordered Woo to "re-raise this issue, if necessary, after the Colorado Supreme Court takes some action in Woo v. El Paso County Sheriff's Office and Fourth Judicial District Attorney's Office, Supreme Court case 20SC865." Id. at p 6, ¶3. The court further indicated that it might lack jurisdiction to address any issue not falling under Colo. Crim. P. 35. Id. at p 9, ¶3.

Woo appealed. He indicated that he was not appealing the property request ruling and that the other two unrelated and independent rulings would be left indefinitely unappealable if it was unnecessary to re-raise the property request issue. The Court of Appeals again dismissed Woo's appeal based on the lack of a final order on March 21, 2022. Appendix B. The Colorado Supreme Court denied Woo's petition for writ of certiorari as to this issue on September 12, 2022. Appendix C.

Woo preserved his pro se requests for redacted access to all discovery material in hard drives outside the scope of the protective order, or, alternatively, for the removal of the protective order, in his September 18, 2019 Motion for Release of Properties and Discovery and Motion for the Removal of Protective Orders. Appendix A, p 2, ¶2.

REASONS FOR GRANTING THE PETITION

This Court should grant certiorari pursuant to Rule 10(c) because the state court here decided an important question of law that has not been, but should be, settled by this Court. The state court essentially foreclosed Woo's ability to investigate and raise post-conviction claims by exploiting a protective order concerning contents of no relevance to the criminal case for the ulterior purpose of barring his access to terabytes of his own case files that were outside the scope of the protective order. Its ability to bar Woo's access to terabytes of discovery pursuant to Colo. Crim. P. 16(III)(d), while asserting the lack of authority to order redacted access excluding the small portion of actual protected content, reveals the lack of relevant authorities to prevent prosecutors and courts from exploiting this loophole and employing such tactic to deprive all pro se criminal defendants of access to their case files. This, in effect, precludes their ability to pursue post-conviction claims, potentially violating the right to petition the government for redress of grievances guaranteed by U.S. Const. amend. I and due process pursuant to U.S. Const. amend. XIV, § 1.

The appellate court, in turn, repeatedly precludes appellate review despite the lack of anything further for the trial court to decide, apparently concluding that all post-sentence orders are unappealable for the lack of a final order. This renders Woo perpetually remediless despite having exhausted all options to obtain his case files for the past five years. Given the lack of relevant authority to protect pro se criminal defendants from such abuse of discretion, this Court should grant certiorari to provide guidance.

I. The district court improperly misused a protective order to deprive Woo, a pro se defendant, of access to terabytes of discovery in his case files that were outside the scope of the protective order and critical to his ability to investigate and raise post-conviction claims.

A. Additional Facts

On the first day of trial on January 22, 2018, Counsel began by making defense's seventh request for trial continuance since November 30, 2017, admitting seven times that defense was "playing catch-up" (TR 1/22/18, pp 2:24-3:2; p 3:14; p 11:8-20; p 13:6-14); that catching up to the "plethora of discovery" admitted in the case "appear[ed] to be an impossible task" (*Id.* at p 4:3-10); and that he "own[ed] up to the fact that [defense was] playing catch-up" (*Id.* at p 13:6-9).

In response to the district court's February 6, 2020 order, Counsel filed a letter on March 9, 2020 indicating that he released all discovery discs except discs 90-91, subjected to protective order, and discs 106A-E, which contained the victim's cell phone data and he purportedly could not copy. Appendix A, p 2, ¶ 5. Counsel did not provide any of the seven discovery hard drives⁵ despite the court's order restricting only a 6TB drive.

On March 25, 2020, Woo filed a motion requesting all material not subjected to protective order that Counsel did not release, including discs 106A-E, all court documents, and discovery hard drives other than the 6TB drive. *Id.* at p 2, ¶ 6. The court never addressed this motion.

At Woo's contention that it was impossible to make file requests without an index of

⁵ At Counsel's August 20, 2020 admission to the Colorado Supreme Court Attorney Regulation Counsel (case no. 21-1654). The court was likely unaware of the additional six hard drives.

file names, the court ordered People to consult with its Tech for an index in its February 6, 2020 order. On June 15, 2020, People filed a notice indicating no such consultation and providing no index, but only a list of the 16 seized devices that were extracted into the 6TB discovery drive. People claimed that only the data from an iPad belonging to Woo's ex-wife, a SIM card, and several photos of seized devices could be released. Woo filed a response on July 21, 2020 arguing that People was clearly exploiting the protective order for the ulterior purpose of barring access to terabytes of legitimate discovery and preventing Woo from finding evidence in support of a post-conviction claim.

The court took no action for the next 15 months despite Woo's January 28, 2021 motion for the court to address the pending issues. *Id.* at p 2, ¶ 8. On October 8, 2021, the court ordered the parties to file a status report, which resulted in its December 6, 2021 order at issue here. *Id.*

Finally, in denying Woo's request for his redacted discovery, the court notes "there is a sense of fundamental fairness that should allow Mr. Woo, even after his conviction and denied appeal, to have materials necessary to participate in whatever remains of his defense. And discovery, at least the relevant discovery, is the method to do that." *Id.* at p 8, ¶ 4.

B. Law and Analysis

"Upon the termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as... surrendering papers and property to which the client is entitled". Colo. RPC 1.16(d).

Due to Counsel's withdrawal and Woo's pro se status, Woo should be entitled to his

client file pursuant to RPC 1.16(d). In light of former Counsel's admission on the first day of trial that defense was playing catch-up and that it was impossible to catch up to the plethora of discovery admitted in the case, Counsel clearly did not review all discovery. Contrary to the court's erroneous assertion that Woo "received the bulk of discovery" (Appendix A, p 8, ¶¶ 5-6), the discovery discs that Counsel released total in the order of only gigabytes. By far the most voluminous portion of the "plethora of discovery" that Counsel referenced is in the discovery hard drives, which contain well over six terabytes of data from all electronic devices seized in the case. Any material evidence missed by Counsel is unlikely to be found in discovery discs organized by People and the Sheriff, but in the vast quantities of largely unexplored data in the discovery hard drives, such as that from the victim's computers and communication devices. Such information can be critical to Woo's ability to raise post-conviction claims concerning ineffective assistance.

"Defense Counsel is not required to provide actual copies of discovery to his or her client if... other methods of having the client review discovery are available." Colo. Crim. P. 16(III)(c). Here, Counsel never gave Woo an opportunity to review any of the hard drives. Moreover, Crim. P. 16(III)(c) does not address custody of material when Counsel withdraws and the defendant is left pro se.

While there is little relevant authority, the Washington appellate court indicates: "Whether a criminal defendant is entitled to copies of his or her case file or discovery materials is governed by CrR 4.7(h)(3) and RPC 1.16(d)." ⁶ State v. Padgett, 4 Wn. APP. 2d 851, 854, 424 P.3d

⁶ Referencing Washington's counterparts to Colo. Crim. P. 16(III)(c) and Colo. RPC 1.16(d).

1235, 1236-37 (2018).

It is worth noting that although CrR 4.7(h)(3) and RPC 1.16(d) require disclosure without a showing of need, the ends of justice are best served by timely disclosure of a client file to an individual investigating the possibility of postconviction relief through a PRP... If a defendant is denied access to his client file and related materials, he will be deprived of a critical resource for completing a viable PRP.⁷

424 P.3d at 1237. This is precisely the situation Woo has faced in the five years since his conviction. He has been deprived of a critical resource for a Colo. Crim. P. 35(c) claim.

Here, the district court issued a protective order pursuant to Colo. Crim. P. 16(III)(d), turning Woo's request for his client file from Counsel to a request for a redacted version from the court. Although Woo conceded to the exclusion of all protected contents, the court still required him to specify what he wanted among well over a million files in over six terabytes. This, by design, rendered the process not only unduly cumbersome, but practically impossible, as Woo had never seen much of the contents and could not have known what to request. People refused to provide an index of files, effectively claiming that nothing meaningful and relevant to the case could be released. The court then vacated its previous orders, barring Woo's access altogether. Its analysis treated the issue as though Woo requested additional new discovery rather than simply redacted access to his own client file that the court banned in the first place. Appendix A, pp 6-8. Its conclusion is that it has authority to bar Woo's access to his discovery, but no authority to order a redacted version. The prosecution and the court thus improperly used a protective order concerning gigabytes of

⁷ Referencing Personal Restraint Petition, Washington's rough counterpart to Colo. Crim. P. 35(c) for post-conviction remedy pursuant to Rev. Code Wash. (ARCW) 10.73.010 - 10.73.900.

immaterial contents with no relevance to the case for the ulterior purpose of barring Woo's access to over six terabytes of legitimate discovery from all electronic devices seized in the case. This effectively precludes Woo's ability to investigate and raise post-conviction claims pursuant to Colo. Crim. P. 35(c), potentially violating the right to petition the government for redress of grievances guaranteed by U.S. Const. amend. I and due process pursuant to U.S. Const. amend. XIV, §1. The court and People's actions here are in stark contradiction to the court's opinion that Woo should have materials necessary for post-conviction claims out of fundamental fairness. Appendix A, p 8, ¶4.

With respect to the dismissal of Woo's appeal based on the lack of a final order, the district court here declined to address Woo's property return motion and simply instructed Woo to re-raise the issue in the future if necessary. Id. at p 6, ¶3. The other two rulings denying Woo's requests for redacted access to his discovery and removal of protective order were independent and unrelated issues. Id. at p 2, ¶9. By denying these motions, the court effectively ended the proceeding, leaving nothing more for the court to do to completely determine the rights of the parties. See Water Rights of E. Cherry Creek Valley Water & Sanitation Dist. v. Greeley Irrigation Co., 2015 CO 30, ¶11 ("A final judgment is one that ends the particular action and leaves nothing more for the trial court to do to completely determine the rights of the parties."). The legal effect of the order here is final. The court's indication that it may lack jurisdiction to address any issue not falling under Colo. Crim. P. 35 (Appendix A, p 9, ¶3) further supports the finality of its ruling. The Court of Appeals' repeated dismissal of Woo's relevant appeals renders Woo perpetually remediless.

The question of whether a pro se criminal defendant is entitled to the client file upon counsel's withdrawal in order to investigate grounds for post-conviction relief, with reasonable redaction of material subjected to protective order, is an important issue faced by all criminal courts that affects all pro se criminal defendants. Without proper guidance, the government can arbitrarily use any protective order to deprive defendants of access to all case material unrelated to the protective order as a matter of tactic, stripping defendants of a critical resource for investigating post-conviction claims.

This Court should grant certiorari review to provide guidance to courts addressing this issue, correct the district court's decision, and ensure pro se criminal defendants have reasonable access to their case files for post-conviction relief purpose.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



James Woo

Date: December 7, 2022