No. _____

In the Supreme Court of the United States

TSAI-FEN LEE,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Washington

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether Trial Court erred in accepting defendant Tsai-Fen Lee to plead guilty when the plea was on its face equivocal.

2. Can Lee's guilty plea be considered voluntary when she was deprived of liberty by her own counsel for almost 4 months?

3. Whether it is an effective assistance of counsel when trial counsel fails to perform basic research regarding the law.

4. Whether the petitioner's constitutional rights to effective assistance of counsel and due process were violated when her appellate counsel failed to utilize investigation results and failed to raise substantial claims of coercion and ineffective assistance of trial counsel in the opening brief.

5. Whether the denial of the petitioner's pro se motion for reconsideration by the lower court, after ruling on the merits, warrants Supreme Court review to address the deficiencies in the appellate process.

LIST OF PROCEEDINGS

The Supreme Court of Washington

Case No. 102333-2

In the Matter of the Personal Restraint of Tsai Fen Lee

Ruling Denying Review: November 22, 2023

Order to Deny Motion to Modify: March 6, 2024

Court of Appeals of the State of Washington, Division One

Case No. 84274-9-I

In the Matter of the Personal Restraint Petition of Tsai Fen Lee

Opinion: July 31, 2023

Order Denying Reconsideration: August 15, 2023

The Supreme Court of Washington

Case No. 99453-6

State of Washington v. Tsai Fen Lee

Order entered on June 7, 2021

Court of Appeals of the State of Washington,
Division One

Case No. 78512-5-I

State of Washington v. Tsai-Fen Lee

Opinion: November 16, 2020

Order Denying Reconsideration: December 28, 2020

Washington State Superior Court, King County

Case No. 16-1-02293-2 SEA

State of Washington v. Tsai Fen Lee

Judgement entered on May 11, 2018

Washington State King County Superior Court

Case No. 15-2-18274-9

Cassandra Mitchell v. Tsai-Fen Lee

Protection Order issued on September 1, 2015

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Direct Appeal Opinion

The State Court of Appeals' opinion in case no. 78512-5-I was issued on November 16, 2020. App.26a-32a. The order denying motion for reconsideration was issued on December 28, 2020. App.46a. The State Supreme Court's order to deny petition for review in case no. 99453-6 was entered on June 7, 2021. App. 24a-25a.

Personal Restraint Petition Opinion

The State Court of Appeals' opinion in case no. 84274-9-1 was issued on July 31, 2013, and is reproduced at App.5a-23a. The motion for reconsideration was denied by the State Court of Appeals on August 15, 2023, and is reproduced at App.36a. The Deputy Commissioner's ruling to deny discretionary review in case no. 102333-2 was entered on November 22, 2023, and is reproduced at App.1a-4a. The State Supreme Court's order denying a motion to modify was entered on March 6, 2024, and is reproduced at App.44a.

JURISDICTION

Lee's motion to modify the Deputy Commissioner's ruling was denied by the Washington Supreme Court on March 6, 2024. App.44a. Lee invokes this Court's jurisdiction under 28 U.S.C. § 1257, having timely filed this petition for writ of certiorari within ninety days of the Washington Supreme Court's judgment.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. amend. VI

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

U.S. Const. amend. XIV

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; 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.

STATEMENT OF THE CASE

I. Background

Tsai-Fen Lee was a student at Urban Yoga Spa in Seattle for several years. Cassandra Mitchell is a yoga instructor who taught at Urban Yoga Spa. Mitchell alleged that Lee sent her harassing messages on social media via Facebook and Instagram beginning in or around July 2015. On September 1, 2015, the King County Superior Court issued a Stalking Protection Order that prohibited Lee from contacting Mitchell. App.111a-114a. It's worth noting that Lee did not attend the Protection Order hearing (App.125a-134a).

On January 22, 2016, Seattle police officer Matt Newsome arrested Lee when she attempted to take a yoga class at Urban Yoga Spa. He served Lee with a copy of the Protection Order. On March 27, 2016, Mitchell claimed that Lee sent her messages threatening to kill her if Mitchell did not refund money that Lee claimed she was entitled to receive. App.111a-114a. On April 8, 2016, the State charged Lee with one count of Felony Stalking and set bail at $150,000. App.115a-116a.

II. Arraignment Hearing Proceedings

At arraignment on January 23, 2018, Lee's public defender Kevin McCabe directed to Court, "I don't believe that it's probable cause that the crime of stalking has occurred. The reason I say that is because this statute is worded in the conjunctive and indicates that the stalking must violate the Protection Order, uh, and, when I read the Certification, only one of the

incidents that the Certification lists occurs after the date of service of the order . . . in order to be stalking, it has to be multiple." App.86a-87a. He further added, "And, then we'll do whatever motion is, whether, you know, NAP Step might be appropriate on the Motions Calendar, or it might be appropriate on the Trial Calendar." App.88a.

III. Lee Remained In Custody Pending Trial

On February 28, 2018, Lee's case was transferred to the attorney Lee and her father retained. Lee's father wired funds to Lee's attorney in order to bail her out of the King County jail. Despite having these funds available, Lee's trial counsel consistently declined to facilitate the posting of her bail because of his mistaken belief that Lee would be released into ICE custody if she posted bail. As a result, Lee continued to be detained in the King County jail for 118 days until her eventual release after pleading guilty and being sentenced to credit for time served.

IV. Trial Court Proceedings

On May 8, 2018, the State filed an amended information, replacing the charge of Felony Stalking with one count of Unlawful Imprisonment. App.109a-110a. On the same day, Lee appeared in open court with her attorney and entered a guilty plea to that charge (App.99a-106a). The statement included the following words: "I, Tsai Fen Lee, did, without intent to threaten, harm, frighten, or injure Cassandra Mitchell, knowingly prevent Cassandra Mitchell from leaving the yoga studio on or around March 27, 2016". App.105a. The Court asked Lee if she understood that she was giving up her right to a trial and the requirement that the State prove its charge against her beyond a reason-

able doubt. Lee responded, "I have no option, because my parents they are very old, and they want me to go home as soon as possible . . . and this is the only way I can go home as soon as possible." She admitted to the Court that "the only reason [she's] pleading guilty today is so [she] can be released at an earlier . . . time." App.71a. She had been in jail for almost four months on a charge that carried a maximum sentence of three months. App.73a.

The Court explained that she "could stay longer and have a right to trial." Lee responded, "But my-I don't know what-because my lawyer they don't want to bail me out, so I have to stay in jail." When the Court asked her if she understood that she was "now going to have a criminal record" and whether she was aware she was "giving up that opportunity [to go to trial] to potentially be found not guilty," Lee admitted in response, "I don't know . . . because I am in jail, I cannot fight for myself. I mean, I cannot find information by myself. I have to listen to what lawyer told me." App.73a-74a.

Lee was sentenced on May 11, 2018, to one month in jail with credit for time served. At the time of sentencing, she had served 118 days in jail. App.92a.

V. Personal Restraint Petition Proceedings

The direct appeal raised an argument regarding an alleged police report that was not listed as probable cause in the charging document.

After exhausting her direct appeals, Lee filed a Personal Restraint Petition (PRP) pursuant to RAP 16.4 on July 8, 2022.

However, the briefs filed by appellate counsel in the PRP matter did not address the issue of an involun-

tary plea based on coercion. Furthermore, the briefs failed to include the issue that trial counsel neglected to conduct basic research regarding the law of felony stalking, despite investigation results indicating that Lee did not commit the crime of stalking.

Because the opening brief and the amended reply brief did not address the issues of Lee's coerced plea and the trial counsel's deficient performance under the *Strickland* test, Lee requested her appellate counsel to withdraw from her case. Following the withdrawal, she filed a pro se reply brief that included these two issues, which had not been previously raised in the PRP proceedings.

The Washington Court of Appeals denied the PRP, ruling:

> "Lee's desire to be released from confinement, however, demonstrates neither that she was misinformed regarding the consequences of her plea nor that, as a result, her guilty plea was rendered involuntarily." App.22a.

The Court also stated:

> "In her reply brief, Lee additionally appears to assert that her plea was involuntary due to counsel's purported failure to interview witnesses and to seek dismissal of the original felony stalking charge. According to Lee, these purported misrepresentations impacted her decision to plead guilty to the unlawful imprisonment charge. However, again. Lee asserts no misunderstanding of the consequence of her guilty plea. Accordingly, she cannot establish that the plea was involuntary." App.22a. n10.

After the Court of Appeal's denial of the PRP, Lee filed a pro se motion for reconsideration (App.54a-58a). The State opposed the motion for reconsideration, stating (1) that Lee's case was similar to the unpublished case of *State v. Sok* (No. 83759-1-I, 2023 WL 1103860 (2023 Unpublished)) and that reasoning should be used to deny her motion; and (2) the Court should decline to consider issues raised for the first time on appeal (App.47a-53a).

The Court of Appeals denied the motion to reconsider on August 15, 2023. App.45a. This petition addresses constitutional and procedural issues raised in the motion for reconsideration of the PRP, specifically a coerced plea and ineffective assistance of counsel.

REASONS FOR GRANTING THE PETITION

I. THE WASHINGTON COURT OF APPEALS OVERLOOKED CRITICAL PORTIONS OF THE COLLOQUY BETWEEN LEE AND THE TRIAL COURT JUDGE. THE TRIAL COURT HAS A DUTY TO ASCERTAIN THAT A GUILTY PLEA IS VOLUNTARY BEFORE ACCEPTING IT BECAUSE A GUILTY PLEA CONSTITUTES A WAIVER OF CONSTITUTIONAL RIGHTS.

Courts have long held "[t]hat a guilty plea is a grave and solemn act to be accepted only with care and discernment . . ." *Brady v. United States*, 397 U.S. 742, 748, 90 S.Ct. 1463, 1468, 25 L.Ed.2d 747 (1970) By pleading guilty, the defendant is waiving their constitutional right to a trial, therefore it "must be voluntary but [also] must be knowing, intelligent

acts done with sufficient awareness of the relevant circumstances and likely consequences." *Id.* The trial court had a duty to determine if Lee's plea was properly entered.

The first issue here is whether Lee's plea was unequivocal. The trial court erroneously accepted Lee's plea even though it contained language that "was so equivocal on its face that the trial court should have required the defendant to stand trial rather than to accept such an equivocal plea." *State v. Stacy*, 43 Wash.2d 358, 361, 261 P.2d 400 (1953).

A plea is "equivocal" "whenever a defendant attempts to make a plea which by its very wording couples a protestation of innocence with an assertion of guilt . . . " *State v. Stacy*, 43 Wash.2d 358, 363, 261 P.2d 400, 402 (1953); *see also State v. Mullin*, 66 Wash.2d 65, 66, 400 P.2d 770 (1965); *State v. Knutson*, 11 Wash.App. 402, 404, 523 P.2d 967 (1974); *State v. Watson*, 1 Wash.App. 43, 45, 459 P.2d 67 (1969). "An equivocal plea calls the defendant's understanding into question." *State v. Hubbard*, 106 Wash.App. 149, 156, 22 P.3d 296, 299 (2001). Our courts have always held that pleas that are equivocal must be refused by the trial court. *Stacy*, 43 Wash.2d 358.

Here, it is clear that Lee's proffered plea was equivocal. The prosecutor's purported basis for Lee's plea was a statement which the prosecutor read to Lee in court. App.68a. Though Lee agreed to adopt that statement as hers, she contradicted that statement during the court's *voir dire*. App.71a-74a.

Since Lee's statements in court regarding her plea contained wording that coupled her assertion of guilt with a protestation of innocence then it cannot be said

that Lee's plea was "freely, unequivocally, intelligently and understandingly made in open court . . . with full knowledge of his legal and constitutional rights and of the consequences of his act." *Woods v. Rhay*, 68 Wash. 2d 601, 605, 414 P.2d 601, 604 (1966); *State v. Martin*, 94 Wash.2d 1, 7 (1980).

The Washington State Court of Appeals overlooked critical portions of the colloquy between Ms. Lee and the trial court judge:

> THE COURT: And you're giving up that right today?
>
> MS. LEE: Yeah. I – yeah, I have no option, because my parents they are very old, and they want me to go home as soon as possible.
>
> MS. LEE: And this is the only way I can go home as soon as possible.
>
> THE COURT: Okay. Um, is the only reason you're pleading guilty today is so you can be released at an earlier –
>
> MS. LEE: Yeah.
>
> THE COURT: – an earlier time?
>
> MS. LEE: Because I have been in jail for – for almost four month. Okay. I want to go home.
>
> (App.71a)

Further discussions during the plea colloquy revealed that Ms. Lee did not wish to plead guilty.

> THE COURT: It is a choice, even though it isn't a choice. I mean, you could stay longer

and have a right to trial.

MS. LEE: But my – I don't know what – because my lawyer they don't want to bail me out, so I have to stay in jail.

. . . .

MS. LEE: Yeah. I just want to get – get out of jail and go home.

. . . .

THE COURT: But you're giving up that opportunity to potentially be found not guilty.

MS. LEE: I don't know.

THE COURT: Potentially.

MS. LEE: I don't know. Because –

THE COURT: But that would require you having to stay in jail until you get your trial date.

MS. LEE: But because I am in jail, I cannot fight for myself. I mean, I cannot find information by myself. I have to listen to what lawyer told me. And, yeah, this is my situation

THE COURT: Mmm hmm.

MS. LEE: Because I can – I want to fight for myself, but I can't, because I'm in jail. So, the only way I can fight for myself is if I get out of jail. But if I get out of jail, I have to plead guilty.

And if I plead guilty, I have to go home. So, it's very complex.

(App.72a-74a)

Lee's statements indicate that her plea was not voluntary; she felt it was the only way she would be released after spending months in jail. The plea agreement would have resulted in only one month of jail time with credit for time served. App.66a. Had the court accepted this recommendation, Lee would have been released immediately and served no further jail time. Thus, the guilty plea was the only means to secure her release. The plea colloquy shows that she wished to defend herself, but she felt compelled to plead guilty because she was being held in jail against her wishes. Had she been released on bail, she would not have pled guilty. Therefore, her plea was not voluntary.

> The voluntariness of a plea is determined by considering the relevant circumstances surrounding it. A guilty plea is involuntary and invalid if it is obtained by mental coercion overbearing the will of the defendant. The trial court has a duty to ascertain that a guilty plea is voluntary before accepting it. Because a guilty plea constitutes a waiver of constitutional rights, the inquiry into voluntariness is constitutionally mandated. *State v. Williams*, 117 Wash.App. 390, 398, 71 P.3d 686, 690 (2003), (*see also Brady* 397 U.S. 742, 749-750).

Lee's trial counsel was instructed to post her bail with the bail money he received from Lee's father. Despite Lee's requests, her counsel consistently refused to post her bail. It is unclear why Lee's counsel kept her in jail, but it is evident that his actions went against Lee's wishes and caused her to remain incarcerated for almost four months. Lee's plea was entered after she

had been deprived of liberty by her own counsel for nearly four months.

Lee's plea and conviction were entered under duress due to her extended incarceration, leading her to believe that pleading guilty was the only way to secure her release. Counsel's actions amounted to coercion. Coercion is defined as " the act of coercing; use of force or intimidation to obtain compliance." *Coercion*, Dictionary.com (accessed April 10, 2024). Coerce is defined as:

> 1. to compel by force, intimidation, or authority, especially without regard for individual desire or volition;
>
> 2. to bring about through the use of force or other forms of compulsion; exact.
>
> *Coerce*, Dictionary.com (emphasis added) (accessed April 10, 2024)

Further, Washington has defined coercive control as behavior that is used to cause another to suffer physical, emotional, or psychological harm, and in purpose or effect unreasonably interferes with a person's free will and personal liberty. RCW 7.105.010 4(a) (emphasis added).

Counsel's failure to post bail effectively coerced the guilty plea. As held in *Brady*, a guilty plea can be deemed involuntary if mental coercion has overborne the defendant's will. *See Brady,* 397 U.S. 742, 750 (1970). "If an individual's will was overborne at the time he confessed, the confession cannot be deemed 'the product of a rational intellect and a free will.'" *Reck v. Pate*, 367 U.S. 433, 440, 81 S.Ct. 1541, 1546, 6 L.Ed.2d 948 (1961). The standards that apply to a

coerced confession should apply equally to a coerced guilty plea.

> "A plea of guilty is more than a confession which admits that the accused did various acts; it is itself a conviction; nothing remains but to give judgment and determine punishment. Admissibility of a confession must be based on a 'reliable determination on the voluntariness issue which satisfies the constitutional rights of the defendant.' A plea of guilty is more than an admission of conduct; it is a conviction. Ignorance, incomprehension, coercion, terror, inducements, subtle or blatant threats might be a perfect cover-up of unconstitutionality." *Boykin v. Alabama*, 395 U.S. 238, 242, 89 S.Ct. 1709, 1711, 23 L.Ed.2d 274 (1969).

It is counsel's actions which distinguish this case from *State v Sok*, No. 83759-1-I, 2023 WL 1103860 (2023 Unpublished[1]) cited by the State. In that case, Sok was unable to post bail and pled guilty to be released because he wanted to be reunited with his son who had received a cancer diagnosis. Here, Lee's trial counsel refused to post her bail despite receiving the bail money from Lee's parents and her repeated requests. It is unclear why counsel chose to do this, but it is a fact that he acted against Lee's wishes, resulting in her being held in jail for almost four

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[1] Pursuant to GR 14.1(a), "unpublished cases have no precedential value and are not binding on any court." However, they may be cited for their persuasive value as a nonbinding authority. The State cited *Sok* in their response brief and urged the appellate court to follow its ruling.

months. Lee entered her plea after being deprived of her liberty by her own counsel for this extended period. The U.S. Constitution guarantees that "no person shall be deprived of liberty or life without due process of law, encompassing the right to be free from convictions except upon proof beyond a reasonable doubt of guilt." U.S. Const. amend. XIV.

Therefore, Lee's plea should be found involuntary.

II. DUE TO TRIAL COUNSEL'S ACTIONS AND TO PREVENT ERRONEOUS DEPRIVATIONS OF THE RIGHT TO COUNSEL, THIS COURT SHOULD GRANT REVIEW UNDER THE STANDARDS ESTABLISHED IN STRICKLAND.

U.S. Const. amend. VI states that the accused shall enjoy the right to have the assistance of counsel for his defense. This Court has recognized that "the right to counsel is the right to the effective assistance of counsel." *McMann v. Richardson*, 397 U.S. 759, 771, n. 14, 90 S.Ct. 1441, 1449, n. 14, 25 L.Ed.2d 763 (1970). The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result. *Strickland v. Washington*, 466 U.S. 668, 686, 104 S.Ct. 2052, 2063-64, 80 L.Ed.2d 674 (1984).

"Ineffective assistance under *Strickland* is defined as deficient performance by counsel resulting in prejudice, 466 U.S., at 687, 80 L.Ed.2d 674, 104 S.Ct. 2052, with performance measured against an 'objective standard of reasonableness,' *id.*, at 688, 80 L.Ed.2d 674, 104 S.Ct. 2052 'under prevailing professional norms,' *ibid.*; *Wiggins v. Smith*, *supra*, at 521, 156 L.Ed.2d 471, 123 S.Ct. 2527." *See Rompilla v.*

Beard, U.S. 374, 380 (2005). Deficient performance is performance falling "below an objective standard of reasonableness based on consideration of all the circumstances." *State v. McFarland*, 127 Wash.2d 322, 334–35, 899 P.2d 1251 (1995). Reasonable conduct for an attorney includes the duty to research the relevant law. *Strickland*, 466 U.S. at 690–91, 104 S.Ct. 2052. *State v. Kyllo*, 166 Wash. 2d 856, 862, 215 P.3d 177, 180 (2009). An attorney's ignorance of a point of law that is fundamental to his case combined with his failure to perform basic research on that point is a quintessential example of unreasonable performance under *Strickland*. *Hinton v. Alabama*, 571 U.S. 263, 274, 134 S.Ct. 1081, 1089, 188 L.Ed.2d 1 (2014).

Here, counsel failed to perform basic research regarding the stalking charge. Washington defines stalking as:

> (1) A person commits the crime of stalking if, without lawful authority and under circumstances not amounting to a felony attempt of another crime:
>
> He or she intentionally and repeatedly harasses or repeatedly follows another person;
>
> . . . .
>
> (4) Attempts to contact or follow the person after being given actual notice that the person does not want to be contacted or followed constitutes prima facie evidence that the stalker intends to intimidate or harass the person. "Contact" includes, in addition to any other form of contact or communication, the sending of an electronic communication to the person.

. . .

(6)(e) "Repeatedly" means on two or more separate occasions. RCW 9a.46.110 (2015)[2] (emphasis added)

Lee was not served with the Stalking Protection Order until February 13, 2016. App.112a. She did not have actual notice prior to that date. Any incidents that occurred prior to that date could not be used as prima facie evidence of stalking. (RCW 9a.46.110(4)). Only one of the incidents listed on the Certification occurred after February 13, 2016. App.111a-114a. One instance of the behavior cannot be considered repeated. (RCW 9a.46.110(6)(e)). The State should not have included any instances which occurred prior to Lee being served the Protection Order. Counsel should have known the relevant facts and law and filed a motion to dismiss the charges based on this knowledge. His failure to do so constitutes ineffective assistance of counsel under the *Strickland* standards.

Trial counsel's failure is evident from the record. Before Lee's case was transferred to trial counsel, her public defender, Kevin McCabe, argued at the arraignment hearing on January 23, 2018:

> "I don't believe that it's probable cause that the crime of stalking has occurred. The reason I say that is because this statute is worded in the conjunctive and indicates that the stalking must violate the Protection Order, uh, and, when I read the Certification, only one of the incidents that the Certification

[2] As Ms. Lee was charged in 2016, this is the version of the statute in effect at the time.

> lists occurs after the date of service of the order. . . .
>
> And, I believe, in order to be stalking, it has to be multiple.
>
> . . . .
>
> And, then we'll do whatever motion is, whether, you know, NAP Step might be appropriate on the Motions Calendar, or it might be appropriate on the Trial Calendar" (App.86a-88a).

Under Strickland, to show prejudice, the defendant must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland v. Washington*, 466 U.S. 668, 694, 104 S.Ct. 2052, 2068, 80 L.Ed.2d 674 (1984). Had counsel filed a motion to dismiss based on proper research of the statute and facts, the outcome would likely have been different. This failure was clearly prejudicial to Lee and constituted ineffective assistance of counsel. (*Id.* at 692)

III. APPELLATE LAWYER'S FAILURE TO UTILIZE INVESTIGATION RESULTS AND FAILURE TO RAISE COERCION AND INEFFECTIVE ASSISTANCE OF COUNSEL ARGUMENTS CONSTITUTE A VIOLATION OF THE PETITIONER'S CONSTITUTIONAL RIGHTS.

For those defendants who choose to file an appeal, the Constitution guarantees effective appellate counsel, just as it guarantees effective counsel at trial. *Evitts v. Lucey*, 469 U.S. 387, 397-98 (1985). Lee's appellate counsel failed to utilize investigation results and did not raise arguments regarding a coerced plea and ineffective assistance of trial counsel. This failure

constitutes a violation of Lee's constitutional rights to due process, protection against self-incrimination, and equal protection under the law. As established in *Strickland v. Washington*, 466 U.S. 668 (1984), a two-prong test is used to determine whether an attorney has failed to meet the minimum expectations for effective counsel in criminal proceedings: the performance prong and the prejudice prong. *Ballard v. United States*, 400 F.3d 404 (6th Cir. 2005). Lee's appellate counsel's conduct satisfies both prongs of the *Strickland* test.

Additionally, Lee's appellate counsel neglected to raise the ineffective assistance claim in the initial brief, which potentially constitutes cause to excuse the procedural default, as established in *Martinez v. Ryan*, 566 U.S. 1 (2012), "Where, under state law, claims of ineffective assistance of trial counsel must be raised in an initial-review collateral proceeding, a procedural default will not bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial if, in the [State's] initial-review collateral proceeding, there was no counsel or counsel in that proceeding was ineffective." *Martinez v. Ryan*, 566 U.S. 1, 17, 132 S.Ct. 1309, 1320, 182 L.Ed.2d 272 (2012). The Supreme Court has noted that "failure to consider a lawyer's 'ineffectiveness' during an initial-review collateral proceeding as a potential 'cause' for excusing a procedural default will deprive the defendant of any opportunity at all for review of an ineffective-assistance-of-trial-counsel claim." *See Trevino v. Thaler*, 569 U.S. 413, 428, 133 S.Ct. 1911, 1921, 185 L.Ed.2d 1044 (2013).

Lee's petition for writ of certiorari highlights concerns over prejudice from constitutional rights and

federal law violations, indicating a likelihood of a miscarriage of justice if her federal claim isn't reviewed.

CONCLUSION

For the foregoing reasons, Ms. Lee respectfully requests that this Court issue a writ of certiorari to review the judgement of Washington Court of Appeals.

Respectfully submitted,

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