No. 23-5769 ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

BRANDON M. JEFFERSON — PETITIONER
(Your Name)

vs.

THE STATE OF NEVADA et. al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

BRANDON M. JEFFERSON
(Your Name)

1200 PRISON ROAD
(Address)

LOVELOCK, NEVADA 89149
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. DID THE PETITIONER HAVE THE SIXTH AMENDMENT RIGHT UNDER THE U.S. CONSTITUTION TO BE REPRESENTED BY LEGAL COUNSEL DURING ALL STAGES OF HIS CRIMINAL PROSECUTION IN THE STATE OF NEVADA, AND SPECIFICALLY, DURING A SCHEDULED CALENDAR CALL?

2. DID THE PETITIONER HAVE THE SIXTH AMENDMENT RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL DURING HIS CRIMINAL PROSECUTION IN THE STATE OF NEVADA?

3. DOES THE PRESUMPTION OF PREJUDICE AND/OR UNRELIABILITY ATTACH TO A CRIMINAL PROCEEDING IN WHICH THE PETITIONER WAS TOTALLY WITHOUT COUNSEL IN THE STATE OF NEVADA UNDER THE LAWS OF THE UNITED STATES AND THE U.S. CONSTITUTION?

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:

TIM GARRETT, WARDEN FOR LOVELOCK CORRECTIONAL CENTER.

NEVADA DEPARTMENT OF CORRECTIONS.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

[ ] For cases from **federal courts:**

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

[✓] reported at JEFFERSON v. THE STATE OF NEVADA, # 22-16210; or,

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

[ ] is unpublished.

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

[✓] reported at JEFFERSON v. THE STATE OF NEVADA, NO. 3:18-CV-00064-HDM; 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[ ] is unpublished.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 _____ 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 August 08, 2023.

[ ] 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: August 08, 2023, 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 _____. A copy of that decision appears at Appendix _____.

[ ] 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

The Sixth Amendment to the United States Constitution provides in relevant part: "In all Criminal Prosecutions the accused shall have assistance of Counsel for his defence."

"The court has uniformly found constitutional error without any showing of prejudice when counsel was either totally absent, or prevented from assisting the accused during a critical stage of the proceeding." U.S. v. Cronic, 466 U.S. 648, 659 n.25 (1984).

Actual or Constructive denial of counsel presumed to result in prejudice Strickland v. Washington, 466 U.S. 668, 692 (1984).

In the State of Nevada, the public defender shall counsel and defend the indigent person at every stage of the proceedings. NRS. 180.060(3)(a). Failure of Counsel to appear for scheduled calendar call requires a court to vacate the trial date Five Star Capital Corp. v. Ruby, 124 Nev. 1048-1050 (2008). Under Nevada's Court room rules, Counsel's attendance for Scheduled Calendar Call is mandatory. E.D.C.R. Rule 2.69(c)(4).

"In every case the court should be concerned with whether, despite the strong presumption of reliability, the result of a particular proceeding is unreliable because of a breakdown in the adversarial process that our system counts on to produce just results." Strickland v. Washington, 466 U.S. at 696 (1984).

STATEMENT OF THE CASE

The court of Appeals for the Ninth Circut held in this case that the petitioner had not shown that jurists of reason would find it debatable whether his petition stated a valid claim of the denial of his constitutional rights under Slack v. McDaniel, 529 u.s. 473, 484 (2000), Where the record showed two lawyers assigned to his defense had both been totally absent during a critical stage of his prosecution. During that proceeding the prosecutor assumed the responsibility of defense counsel and made decisions about when the petitioner's trial would start and when a defense opposition to a motion in limine would be heard.

The record also shows that police detectives' knew or had reason to know that information they produced was untrastworthy before they placed petitioner under arrest for investigation and interrogation purposes. Petitioner claimed Counsel was ineffective under Kimmelman v. Morrison, 477 u.s. 365 (1986); for failing to file motions to suppress evidence and dismiss the case against the petitioner despite knowing these facts. To which the Ninth circut disagreed.

The Ninth Circut also disagreed with petitioner's claim that his counsel was ineffective under Strickland v. Washington, 466 u.s. 668 (1984), for his failure to file a motion to suppress a confession obtained by police because the petitioner made a verbal request to remain silent and police disregarded his post-Miranda invocation in violation of Michigan v. Mosley, 423 u.s. 96 (1975). The U.S. District Court of Nevada does not with certainity conclude whether the Mosley violation occured and in the context of habeas litigation, the Nevada State Courts' refuse to ajudicate this ground for relief going on seven years to date.

REASONS FOR GRANTING THE PETITION

I. THE NINTH CIRCUIT COURT OF APPEALS HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT AND OTHER FEDERAL CIRCUIT COURTS OF APPEALS.

The longstanding rule of the Sixth Amendment to the U.S. Constitution provides criminal defendants with the right to the assistance of counsel for their defense. U.S.C.A 6. this court has elaborated that not only does this right extend to critical stages of a Prosecution, Rothgery v. Gillespie County, 128 S.Ct. 2578, 2583, 2591-92 (2008), but that counsel's absence during a stage of a prosecution where his presence is required, is legally presumed to result in prejudice. Strickland, 466 U.S. at 692 (1984); Cronic, 466 U.S. at 659 n.25 (1984); Mickens v. Taylor, 535 U.S. 162, 166 (2002).

Examples of other federal circuit courts of appeals interpreting and following the dictates outlined above to defendants similarly situated to the captioned petitioner here can be viewed in: Appel v. Horn, 250 F.3d 203, 217 (3d Cir. 2001); U.S. v. Collins, 430 F.3d 1260, 1268 (10th Cir. (2005); and Mitchell v. Mason, 325 F.3d 732, 747-48 n.1 (6th Cir. 2003).

On July 26, 2012, petitioner's trial counsel was statutorily required to appear for that call. Five star capital corp. v. Ruby, 124 Nev. 1048-50 (2008); E.D.C.R Rule 2.69 (c)(4); and Rothgery, 128 S.Ct. at 2591-92 (2008). However, both attorneys assigned to the petitioner's were total NO SHOWS for calendar call and the petitioner was forced into a trial, no lawyer ever demonstrated they had been prepared for. No opposition to motions in limine filed by the state. No proposed voir dire questions. No proposed jury instructions. No consultation. After this court reviews the order of the Ninth Circuit on this ground for relief at APPENDIX A (P. 1-2); and the U.S. District Court's order at APPENDIX B (P. 16-17), it should remand the case back to the Ninth circuit with instructions to issue a COA and appoint counsel to litigate this ground because these courts' below set an untenably low standard on the sixth Amendment right to counsel on the pacific coast.

II. THE NINTH CIRCUIT'S REASONING IS FLAWED; SEVERAL OTHER FEDERAL CIRCUIT COURTS' OF APPEALS CORRECTLY CAPTURE THE REQUIREMENTS OF STRICKLAND V. WASHINGTON, AND KIMMELMAN V. MORRISON

A. The ninth circuit ruled under Slack v. McDaniel, 529 U.S. 473 (2000), that the petitioner had not demonstrated ineffective assistance of counsel despite irrefutable facts of this case showing first, that a court of competent jurisdiction ordering after an evidentiary hearing that because of police misconduct, the state of Nevada did not have a reasonably trustworthy statement from their primary witness accusing the petitioner of a crime and could not use it during trial as evidence.

Second, Three Nevada Supreme Court justices signing an order affirming the petitioner's convictions, but confirming that detectives' arrested him for investigation. These two facts were known to counsel. Under Kimmelman v. Morrison, 477 U.S. at 382,-83 (1986), trial counsel was supposed to file a motion to suppress all evidence police cataloged as a result of arresting the petitioner for investigation and interrogation under the fourth amendment to the U.S. Constitution and authority of Taylor v. Alabama, 457 U.S. 687, 693 (1982); Dunway v. N.Y., 442 U.S. 200, 202 (1979); and Brown v. Ill. 422 U.S. 590, 605 (1975).

Other federal circut courts have found Kimmelman violations under similar circumstances: U.S. v. Cook, 997 F.2d 1312, 1317-18 (10th cir. 1996); Huynh v. King, 95 F.3d 1052, 1057 (11th cir. 1996); Martin v. Maxey, 98 F.3d 844, 847 (6th cir. 1996); Northrop v. Trippett, 265 F.3d 372, 384 (6th cir. 2001); and Johnson v. U.S., 604 F.3d 1016, 1019-22 (7th cir. 2010).

This court should remand this case back to the Ninth Circuit to issue the COA and appoint counsel to litigate this Kimmelman claim against trial counsel.

B. The Ninth circuit held that a COA was not warranted under Slack regarding petitioner's Strickland claim that counsel was ineffective for failing to file a motion to suppress a confession police obtained in violation of Michigan v. Mosley, 423 U.S. 96, 103-07 (1975); and Miranda v. Arizona, 384 U.S. 436, 473-74 (1966). A defendant's words are to be understood as ordinary people would understand them. Connecticut v. Barrett, 479 U.S. 523, 529 (1987).

Under Miranda, Mosley, and Barrett petitioner's words: "THAT'S ABOUT IT. THAT'S ALL I CAN SAY." See Appendix B P.27. Meant the interrogation was over. Because the U.S. District Court was confused whether there was a Miranda violation, see APPENDIX B p.29-30, then under Slack a COA should have been granted for the Strickland claim because the U.S. District Court's legal conclusion there was no ineffectiveness or prejudice was at least debatable where other circuit courts of appeals have reached correct conclusions for petitioners' strikingly situated as this petitioner. Hendrix v. Palmer, 893 F.3d 906, 922-23 (6th Cir. 2018); Tice v. Johnson, 647 F.3d 87, 101-111 (4th Cir. 2011); Streetman v. Lynaugh, 812 F.2d 950, 956-61 (5th Cir. 1987); and Smith v. Wainwright, 777 F.2d 609, 616-20 (11th Cir. 1985). This court should grant this petition instructing the Ninth circuit to grant a COA and appoint counsel to properly litigate this Strickland claim because there is no legal support for the embarrassing and arbitrary rubberstamp it placed on the U.S. District Court's offensive reasoning.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Brandon M. Jefferson #1094051

Date: SEPTEMBER 12, 2023