

23-6743 ORIGINAL
No. _____

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SUPREME COURT, U.S.

In The
Supreme Court of the United States

Loren J. Larson Jr.,

Petitioner,

v.

Alaska,

Respondent.

On Petition for a Writ of Certiorari
To the Alaska Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

Loren J. Larson Jr., #204981
Pro-se Petitioner
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QUESTION PRESENTED

Does the Sixth Amendment right to "effective representation" require that an attorney provide meaningful, conflict free consultation prior to the attorney forfeiting the defendant's right to federal review of constitutional claims that the attorney briefed, to preserve for federal habeas corpus review, yet were undecided by the State's Court System which, because of exhaustion requirements, would procedurally default the claims from federal habeas corpus review under 28 U.S.C § 2254?

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Loren J Larson Jr., respectfully petitions for a writ of certiorari to review the judgment of the Alaska Supreme Court.

OPINIONS BELOW

Petitioner was placed in prison for life by a criminal judgment entered on March 11, 1998. The trial court denied petitioner's application for post-conviction relief on April 26, 2021. (Appendix B). Petitioner sought reconsideration by the trial court who denied reconsideration on May 11, 2021. (Appendix C.). Petitioner then sought reconsideration for the trial court to correct its patently false information, which the trial court granted in part. (Appendix D). Petitioner then sought review by the Alaska Court of Appeals who denied relief on April 7, 2023. (Appendix A). Petitioner then filed a Petition for Hearing with the Alaska Supreme Court, but that court denied to hear petitioner's case on October 31, 2023. (Appendix E).

JURISDICTION

The order denying review by the Alaska Supreme Court was entered on October 31, 2023. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(A).

RELEVANT CONSTITUTIONAL PROVISIONS

The Fifth Amendment States in relevant part:

No person ... shall be compelled in any criminal case to be a witness against himself.

The Sixth Amendment states:

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 shall have been committed, which district shall have been preciously 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.

The Fourteenth Amendment states:

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 protections of the law.

STATEMENT OF THE CASE

Several years after Larson's conviction became final, jurors came forward with new evidence that showed structural error in the process that was used by the State of Alaska, Alaska Court System, to strip Larson of his liberty:

"we're supposed to look at everything, his wife not in the courtroom supporting him, shows he is guilty."

"she can't even support him in the court room, he must be guilty."

"she couldn't be in the courtroom because she could not look him in the eye, so he must be guilty."

"I don't care what they say if a man won'[t] testify for himself he is guilty."

"If he won't testify for himself he must be guilty."

"Anyone who won't testify for himself is guilty."

"Specifically I remember Joe Hayes announcing that if Larson did not take the stand in his own defense he was guilty and the other three jurors, the ballet dancer, the fireman from Ester and the tall light haired man all agreeing."

"I also heard several jurors comment that they wished Larson would get up and speak for himself and if not it proved his guilt."

"Mr. Larson's attorney said Mr. Larson was not going to testify for himself. That showed Mr. Larson was guilty of the crime."

See Appendix F-0.

Larson subsequently hired attorney James H. McComas to restore Larson's liberty. Appendix P, 66a. McComas filed an application for post-conviction relief which was denied. McComas then filed an appeal that briefed several constitutional claims, yet many claims were not decided by the court. McComas experienced a "complete and total disgust after reading the court's slip opinion," (Appendix P, 67a ¶ 6A) that was so strong, it incited a conflict of interest within McComas to forgo a petition for rehearing and forfeit Larson's federal habeas corpus review of the claims that were left undecided without first providing Larson with meaningful consultation that the claims were being forfeited. Appendix P, 68a ¶ 6.A.1.

Ultimately, Larson was able to pursue a claim against McComas that effective representation required McComas to engage Larson in meaningful, conflict free consultation prior to McComas having forfeited Larson's federal habeas corpus review of the claims that McComas briefed for Larson, but the court did not decide. Appendix B, 10a n.3. However, the Alaska Court System ruled that Larson did not have a right to meaningful, conflict free consultation from his attorney prior to the attorney forfeiting Larson's federal review of claims that the attorney briefed on Larson's behalf, but went undecided by the court. Appendix A, 1a-6a.

REASON FOR GRANTING THE WRIT

This Court has never decided whether "effective representation" under the Sixth Amendment requires that counsel be conflict-free when deciding whether a Petition for Rehearing should or should not be filed, to preserve a State prisoner's constitutional claims for federal habeas corpus review, once an appellate court has issued an opinion. This is important because Section 2254 requires a habeas petitioner to exhaust the remedies available in state court prior to pursuing federal habeas relief. See 28 U.S.C. § 2254(b)(1)(A); O'Sullivan v. Boerckel, 526 U.S. 838, 842-43 (1999). The exhaustion requirement extends to all levels of relief that is available under state law. O'Sullivan, 526 U.S. at 846-48. Thus, to preserve claims for federal habeas review, a petitioner is required on direct appeal to seek all appeals of right and all discretionary review available under state law. Id. This same rule applies to state post-conviction proceedings, so that a failure to pursue all issues and remedies during state sanctioned collateral proceedings will bar federal relief. See Picard v. Connor, 404 U.S. 270, 275-76 (1971).

Larson emphasizes for the Court that Alaska recognizes "the defendant has the final decision whether to file a petition for hearing with the Alaska Supreme Court after losing their appeal", Appendix A, 5a., and federal constitutional claims are not permitted to be heard in a Petition for Hearing unless they are first addressed by the lower court of appeals. Panamarioff v. State, 2020 Alas. LEXIS 150. However, in Larson's case, Alaska permits Larson's attorney to be the only one making the decision to forgo a petition for rehearing to seek a Petition for Hearing in the Alaska Supreme Court -- even though that decision forfeits Larson's federal habeas review to several unanswered claims and, EVEN WORSE, Larson's attorney was not retained by Larson to file a Petition for Hearing at the time the attorney made his decision to

forfeit Larson's right to federal habeas review so that the attorney could seek a Petition for Hearing to satisfy his own personal litigation agenda:

6.A.1. In my opinion, then and now, the language of the appellate court -- endorsing wink-and-nod trials -- was so unfounded, outrageous, and systematically dangerous, that it provided the perfect vehicle to take to the Alaska Supreme Court. There would be no better case factually or legally for us on pre-deliberation misconduct, and the lengths the lower court went to trying to justify affirmance could potentially draw the Supreme Court's review and ire. I did not want to give the lower court any opportunity to soften or rephrase the language in its decision.

Appendix P, 68a ¶ 6.A.1.

14.G. The lower court's opinion denying relief was filed a year and two days later, on October 24, 2003. I do not specifically recall if I communicated by telephone or by visit with Mr. Larson after that, but I must have, because the original representation did not include a Petition for Hearing. This additional representation must have been requested and agreed on by October 31, 2003, because that is when the additional money for fees and a credit for expenses were deposited.

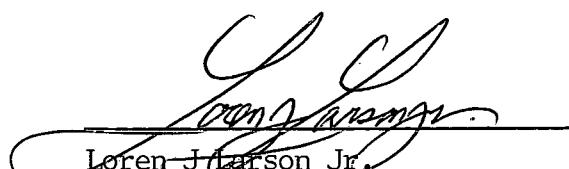
Appendix P, 82a ¶ 14.G.

The question Larson asks this Court to answer applies in a significant way to Larson, but the answer will also apply to all State prisoners who have a right to federal habeas corpus review under 28 U.S.C. ¶ 2254.

CONCLUSION

For the foregoing reasons, Larson respectfully requests this Court to grant Certiorari in this matter.

January 20, 2024
DATE


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