

In the
Supreme Court of the United States

Donte Johnson,

Petitioner,

v.

The State of Nevada,

Respondent.

*On Petition for Writ of Certiorari
to the Supreme Court of Nevada*

Reply to Respondent's Brief in Opposition

CAPITAL CASE

Rene Valladares
Federal Public Defender, District of Nevada
Randolph M. Fiedler
Counsel of Record
Benjamin A. Gerson
Assistant Federal Public Defenders
411 E. Bonneville Ave., Ste. 250
Las Vegas, NV 89101
(702) 388-6577
(702) 388-5819 (fax)

Counsel for Petitioner

TABLE OF CONTENTS

Table of Contents	i
Table of Authorities	ii
Argument	1
I. Johnson’s petition raises a federal question.	1
Conclusion	3

TABLE OF AUTHORITIES

Federal Cases

<i>Strickland v. Washington</i> , 466 U.S. 668 (1984)	1
--	---

ARGUMENT

I. Johnson’s petition raises a federal question.

Despite recognizing that Johnson’s petition for writ of certiorari raises questions under *Strickland v. Washington*, 466 U.S. 668 (1984)—a case of this Court construing the federal Constitution—the State’s heading claims that the petition does not raise a federal question. It does. *See* Pet. at 9 (citing *Strickland* and progeny); *id.* at 10 (arguing that the Nevada Supreme Court’s decision “signals the constitutional rule in *Strickland* is optional”).

Heading notwithstanding, the State’s argument appears to be that the Nevada Supreme Court’s “discretionary” standard is consistent with *Strickland*’s recognition that “there are countless ways to provide effective assistance in any given case.” Br. in Opp. at 2 (quoting *Strickland*, 466 U.S. at 689). But the State overstates the meaning of this language from *Strickland*. *Strickland* was explicit that only “strategic choices made after thorough investigation of law and facts” “are virtually unchallengeable.” *Strickland*, 466 U.S. at 690. “[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” *Id.* at 691.

The issue in this case is that trial counsel did *not* make a reasonable choice to *not* investigate coerced confessions or a corresponding reasonable choice *not* to present a coerced confession expert. Treating the “decision not to call a witness at trial” as being “within counsel’s discretion,” without regard to whether counsel investigated or even made a choice at all, is contrary to *Strickland*. *See* App. 8.

The State also argues that the Nevada Supreme Court appropriately concluded there was no prejudice. *See* Br. in Opp. at 3. But the witnesses whose testimony was implicated were crucial to the State’s case, particularly testimony that Johnson confessed to these homicides. Notably, both the Nevada Supreme Court and the State rely on “physical evidence” that corroborates the testimony. App. 9; Br. in Opp. at 3. But neither identify what the physical evidence is, and neither acknowledge that Johnson challenged the physical evidence that was available. *See* App. 9–10, 12.

Thus, the State is three times wrong: Johnson’s petition raises a federal question; there cannot be a discretionary decision where counsel failed to conduct a reasonable investigation or make any strategic choice whatsoever; and counsel’s deficient performance was prejudicial because the coerced statements of the witnesses were crucial to the State’s case.

///

///

///

CONCLUSION

Based on the foregoing, Johnson requests that this Court grants his request for a writ of certiorari.

Dated this 25th day of March, 2024.

Respectfully submitted,

Rene L. Valladares
Federal Public Defender

/s/ *Randolph M. Fiedler*
Randolph M. Fiedler
Counsel of Record
Assistant Federal Public Defender

/s/ *Benjamin A. Gerson*
Benjamin A. Gerson
Assistant Federal Public Defender