

No. 23-7068

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

JAN 08 2024
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Mari J. Whelan
(Your Name) PETITIONER

Will Brady vs. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
Colorado Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI
Mari J. Whelan
(Your Name)
P.O. Box 777
(Address)
Canon City, CO, 81215
(City, State, Zip Code)

RECEIVED
FEB 15 2024
OFFICE OF THE CLERK
SUPREME COURT, U.S.

(Phone Number)

QUESTION(S) PRESENTED

- 1) Did the Judge Brady err in not providing an attorney to represent Jabari J. Johnson in his 35(c) Evidentiary hearing?
- 2) Did the Attorney Jenna Kauszka err in not providing effective assistance of counsel?
- 3) Is Jabari J. Johnson entitled to effective assistance of counsel for post conviction Crim. P. 35(c)?
- 4) Is Jabari Johnson entitled to an attorney under his statutory right to Counsel for post conviction Crim. P. 35(c)?
- 5) Did the Judge Brady Abuse her discretion in not recusing herself when obvious bias and prejudice was evident?
- 6) Did Judge Brady violate both Plaintiffs 14th and 6th Amendment rights to Due Process of Fairness and right to counsel?

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

TABLE OF CONTENTS

OPINIONS BELOW	45
JURISDICTION.....	6
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	7
<i>Table of Authorities . . .</i>	<i>8</i>
STATEMENT OF THE CASE	9
REASONS FOR GRANTING THE WRIT	12
CONCLUSION.....	13
<i>proof of service . . .</i>	<i>15</i>

INDEX TO APPENDICES

APPENDIX A <i>United States Court of Appeals- For the 10th Circuit</i> <i>Added . . .</i>	<i>16</i>
APPENDIX B <i>U.S. District Court- District of Colorado</i> <i>Added . . .</i>	<i>17</i>
APPENDIX C	
APPENDIX D	
APPENDIX E	
APPENDIX F	

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 On 10/26/23; 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☒ is unpublished.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 On 10/26/23; 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 10/26/23.

☐ 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 _____.
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

Both the plaintiff's 14th, 6th along with his 1st Amendment rights were violated along with statutory rights violated regarding Colorado Revised Statute 21-1-104 and 21-1-103.

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Breeman, 939 P.2d at 1351 . . .	page 11
Commonwealth v. Priovolos, 552 Pa. 364, 715 A.2d 420 (1998) . . .	page 12
Evitts v. Lucey, 469 U.S. 387, 396, 105 S.Ct. 830, 83 L.Ed.2d 982 (1985) . . .	page 12
Griglio v. United States, 405 U.S. 150 . . .	page 10
Giles v. Maryland, 386 U.S. 58, 87 S.Ct. 788 L.Ed. 7d 730 (1967) . . .	page 11
Holloway v. Ark., 435 U.S. 475 (1978) . . .	page 10
People v. Bergerud, 223 P.3d 686, 704 (Colo. 2010) . . .	page 10
People v. County of Otero, 271 F.3d 955, 961 (10th Cir. 2001) . . .	page 10
People v. Duran, 757 P.2d 1096, 1097 (Colo. App. 1988) . . .	page 12
People v. Hickey, 914 P.2d 370, 379 (Colo. App. 1995) . . .	page 12
People v. Swain, 959 P.2d 426, 430-31 (Colo. 1998) . . .	page 12
People v. Valdez, 789 P.2d 406 (Colo. 1990) . . .	page 11
Rippro v. Baker, U.S. Sup. Ct. 2017 . . .	page 11
Sheritz v. State, 380 N.W. 2d 404 (Iowa 1985) . . .	page 12
Silva v. People, 156 P.3d 1164 (Colo. 2007) . . .	page 10
Strickland v. Washington, 466 U.S. 608, 104 S.Ct. 2051, 80 L.Ed. 679 (1984) . . .	page 11
Toussaint v. Commr. of Corr., 242 Conn. 689, 699 A.2d 1003 (1997) . . .	page 12
Turner v. Ohio, 273 U.S. 510 (1927) . . .	page 10
U.S. v. Taylor, 487 U.S. 326, 355-57, 108 S.Ct. 2415 (1983) . . .	page 11

STATUTES AND RULES

C.R.S. 21-1-103 . . .	page 12
C.R.S. 21-1-104 . . .	page 12

OTHER

STATEMENT OF THE CASE

Judge Jill Brady on 7/13/22 did not allow Sabari L. Johnson to submit evidence in case 15-CR-2337 (post conviction) regarding attorney Jenna Kruszka's ineffective assistance of counsel in which:

- 1) Kruszka did not retrieve 120 Photos needed to Amend Petition
- 2) Kruszka did not visit
- 3) Kruszka did not retrieve medical documentation which was required to visit with Kruszka due to need of wheelchair to visit.
- 4) Kruszka did not draft a motion regarding need of wheelchair to visit.
- 5) Kruszka did not interview Sabari Johnson's mother who requested to speak with her and had vital information regarding Elizabeth Mangum and Danielle Fauther.
- 6) Kruszka lost files of Andrew Bryant, Mia Cryster, and Craig Cox stating go get evidence myself indicating the lawyer is not calling me back and doesn't know why he's not calling/returning phone calls.
- 7) Kruszka did not continue the 3/17/22 court date after she was told to do so.
- 8) Kruszka did not interview witnesses Sabari Johnson told her to.
- 9) Kruszka turned her phone off not allowing Sabari Johnson to call her failing to setup a call blocking Sabari Johnson.
- 10) Kruszka attempted to coerce witnesses to switch their story.
- 11) Kruszka did not supplement Petition at the date it was due.
- 12) Kruszka redacted every name in discovery when she's obligated to redact numbers and addresses not witnesses from their statements.
- 13) on 3/30/22 Kruszka threatened Sabari Johnson stating that if she doesn't work Darren Cantor Executive Director of ADC won't provide another attorney. Kruszka then began to commit further illicit acts of ineffective counsel.
- 14) From 7/13/22 Kruszka requested on 3 occasions to current date his entire file from Kruszka, yet she claimed not to receive my request.

All evidence was withheld from Plaintiff from 6/18/22- 7/18/22 by Sgt Mott of El Paso County to prove Kruszka's actions. Brady intentionally denied Sabari Johnson the right to be heard also denied Sabari Johnson of presenting evidence and denied Sabari Johnson of a conflict hearing.

From 7/13/22 Judge Jill Brady forced Sabari Johnson to be pro-se as:

- 1) Brady did not return Plaintiff's 120 Photos sent to the court in which is evidence proving he had 100,000 during the time of his arrest which proves Sabari had no need to rob anyone, yet while pro-se Brady acted illicitly withholding evidence.

15) Brady would not adequately respond to Plaintiff's motions as Plaintiff is pro-se.

- 16) Brady did not allow Sabari Johnson to write Judge McHenry or speak to him, the very Judge who initially stated that Andrew Bryant the lawyer in case 15-CR-2337 found that conflict existed as McHenry indicated that Sabari didn't get a fair trial, yet Brady violated Plaintiff's 1st Amendment Right as Plaintiff is pro-se.

17) Brady did not allow Sabari Johnson's extension of time to Amend Petition until it was late and submitted the Amended Petition.

- 18) Brady aided DOC and tried to have Sabari Johnson killed while at CSP, SCF, and CCF due to wide range of evidence she is not trying to allow me to present. Sabari Johnson has told Brady that he have not been provided his file for case 15-CR-2337.

Brady is bias refuse to recuse herself to provide fairness restricting Due Process, Regulations Counsel Catherine Shea intentionally aided Kruszka covering Kruskas actions allowing Sabari L. Johnson to be subjected to ineffective assistance of counsel.

On 12/18/22 in case 15-CR-2337 Sabari Johnson filed (Motion Notifying This Court of COOC staff members Jeff Long, Jackson, Robert Dick, Weaver, Koenig, and Vasquez advising inmates in opening their doors as Sabari Johnson requests this court to send Sabari Johnson's RJun Skolowski's response to Johnson's 9/6/22 Amended Supplemental 35c Motion further asking for an extension.

The motion reads as follows:
On 1/19/23 Jill Brady responded to the defendant's Prior (Motion Notifying This Judge Jill Brady that Defendant have not received his file entirely. Brady also Brady did not order Kruszka to provide the file in its entirety to his family. stated she will not order Kruszka to provide the documents to his family. Brady then said she will not grant any further extensions of time and that the defendant's reply is due 2/6/23. Judge Brady is racially prejudiced and legally bias towards the defendant she provides less than fair practices against defendant denying him of his 14th Amendment rights also retaliating against the Plaintiff.

Regulation Counsel Catherine Shea agreed with Kruska's ineffective assistance of counsel in her numerous responses to Plaintiff's complaints, as Darren Cantor aided violating Due Process as well.

All individual defendants are conspiring against the Plaintiff in retaliation due to their knowledge of his need for his wheelchair.

On 6/13/23 Judge Jill Brady granted an evidentiary hearing regarding 35(c) stating she's only providing a one hour hearing on the following claims:

- 1) Whether Counsel was ineffective for not interviewing or investigating Adrian Garrett, Sarah Bennett and Willis Earl Jenkins Jr.
- 2) The alleged newly discovered evidence of the alleged conversation between Elizabeth Manum and Danielle Feather.
- 3) Whether counsel was ineffective for seeking the admission of certain prior acts of the victim Mr. Williams, as reverse similar evidence.

The People shall prepare a writ for the defendants in person appearance once the hearing is scheduled.

Patrick Cretzler states the Plaintiff is a defendant in case 15-CR-2337 indicated in 2020 the same reason that Jabari Johnson should be granted a new trial in Jill Brady's 6/30/23 granting an evidentiary hearing.

Sheriff Bill Elder of El Paso County has not transferred the Plaintiff to county for his evidentiary hearing because Plaintiff needs a wheelchair conspiring against Plaintiff as she knows Plaintiff needs a wheelchair.

Nurse DiAnne Northvine-Cruz of El Paso County exposes the need on 12/17/21

Argument Summary

Under the law the Plaintiff has a Sixth Amendment Right to Communicate with his attorney, and a statutory right to have counsel for post conviction Crim. P. 35(c) ineffective assistance when their lies arguable merit.

see Silva v. People, 156 P.3d 1164 (Colo. 2007) (Adequate Counsel is required according to the limited statutory right counsel must provide effective assistance as measured by the two pronged Strickland v. Washington test, see Silva v. People, 156 P.3d 1164 (Colo. 2007) (Adequate Counsel is required where defendant's Section (c) Petition is wholly unfounded and has arguable merit as determined by the court and state Public Defender Office).

see People v. County of Otero, 271 F.3d 955, 961 (10th Cir. 2001) (First Amendment Rights and free speech extend to right to retain and consult with

attorneys).

see People v. Berglund, 223 P.3d 686, 704 (Colo. 2010) (a defendant who cannot or doesn't communicate with his attorney cannot assist or know what's going on with his case).

yet Jabari Johnson was denied by Judge Brady illicitly and unfairly failing to provide adequate counsel in retaliation. Judge Brady denied Jabari of presenting evidence to prove ineffective counsel on 7/13/22 for conflict of interest hearing against Attorney Jenna Kruska, attempting to frustrate and impede on Jabari's access to the court regarding Jabari Johnson Crim. P. 35(c) intending to have the defendant's conviction continue rather than providing Jabari Johnson with the best possible option of effective counsel to be acquitted yet the Judge is prejudiced and bias refusing to provide fundamental fairness from Jabari Johnson to be Pro-se without providing a fair hearing.

see Hallaway v. Ark., 435 U.S. 475 (1978) (established that under some circumstance trial court has a constitutional obligation to inquire into the existence of an actual conflict and the violation of that duty will constitute itself as an abridgment of the defendant's constitutional right to counsel).

see Turned v. Ohio, 273 U.S. 51 (1927) (Chief lack of judicial bias to be an essential element of fundamental fairness and therefore over-turned a state conviction where the trial judge had a pecuniary interest in having the case result in a conviction rather than an acquittal).

see Brady suppresses evidence of 120 Photos actually withholding the pictures which Plaintiff (needs) for his Crim. P. 35(c) evidentiary hearing.

see Giulio v. United States, 405 U.S. 150 (1966) (Under the due process clause the prosecution suppression of material evidence justifies a new trial).

see Giles v Maryland, 386 U.S. 58, 87 S.Ct. 788, 16 L.Ed. 2d 730 (1967) (Evidence which might be helpful to a defendant and which is suppressed by the police, prosecution or which is ignored by a trial court when presented to it results in a denial of due process of law just as surely as would for example the knowing or perjured testimony).

Brady refuses to recuse herself when she has proven unequivocally that she is prejudiced and biased against Jabari Johnson.

see Rippo v Baker, 15 Sup.Ct. 2017 (defendants are entitled to have judges recuse themselves when circumstances suggest that the probability that the judge is actually biased). Brady denied Jabari Johnson of providing proof that attorney Kruszka's performance was deficient and because of her errors the 35(c) would be difficult. Brady allowed the county's Deputy to withhold Jabari Johnson's evidence and refused to continue the 11/3/22 conflict hearing.

see Strickland v Washington, 406 U.S. 168, 104 S.Ct. 2051, 80 L.Ed. 679 (1984)

Brady's actions of not allowing Jabari to speak to witnesses and suppressing evidence for post conviction 35(c) is a clear error of judgement which is apart of discoverable material and the defendant's 14th Amendment Due Process rights of Procedural Due Process Abusing her discretion.

see U.S. v. Taylor, 487 U.S. 326, 255-57, 108 S.Ct. 2413 (1983) (Abuse of discretion is defined as a definite and firm conviction that the trial court commits a clear error of judgement).

Furthermore Plaintiff is subjected to ineffective assistance of counsel by Jenna Kruszka during the judge's deprivation of providing a fair conflict hearing proceedings regarding Jabari Johnson's 35(c) in case 15-CR-2337.

Jenna Kruszka literally did nothing she was required to do as post conviction counsel regarding Plaintiff's 35(c). Jenna (did not) in person visit, retrieve evidence, set up phone call visits, did not answer her phone, blocked her phone number, did not draft adequate motions, coerced witnesses, failed to interview witnesses, lost vital material evidence, failed to continue court dates when asked or failed to even ask to continue, failing to purposely then threatening Jabari Johnson stating that if she does not work out then Jabari Johnson won't get another attorney.

Currently Jabari Johnson has arguable merit with his 35(c) ineffective assistance of counsel case 15-CR-2337 and is scheduled to present witnesses and evidence as he is currently hindered of presenting due to the attorney's ineffective assistance.

Having determined that there exists a limited statutory right to post conviction counsel in Colorado which adopts the Strickland standard for evaluating the effectiveness of post conviction counsel.

Strickland v. Washington created a two prong test for ineffective assistance of counsel claims which places the burden on the defendant to show (1) that counsel's performance was deficient and (2) that the deficient performance prejudiced the defense.

The Strickland test has been adopted explicitly by the Supreme Court of Colorado not only for trial counsel, but also for appellate counsel.

see People v. Valdez, 789 P.2d 406 (Colo. 1990)

In Valdez this court held that the purpose of the Strickland test was to ensure that the process is fundamentally fair. 789 P.2d at 410.

Therefore the test was well suited for appellate as well as trial settings. The Colorado Supreme Court indicated that the test may be equally well suited to evaluate post conviction counsel. Breeman, 939 P.2d at 1351.

Furthermore several other states have also adopted the Strickland standard to ensure that all critical stages the state post conviction process is fundamentally fair for indigent defendants.

see Scheretz v. State, 380 N.W.2d 404 (Iowa 1985); Menzies v. Guleika, 150 P.3d 480 (Utah 2006); Commonwealth v. Priovolos, 552 Pa. 364, 715 A.2d 420 (1998); Tuvieno v. Comm'r of Corr., 242 Conn. 689, 699 A.2d 1003 (1997).

An agency theory however places no requirements on post conviction counsel to provide a modicum of effective assistance. As the United States Supreme Court stated, "a party whose counsel is unable to provide effective representation is in no better position than one who has no counsel at all."

see Evitts v. Lucey, 469 U.S. 387, 396, 105 S.Ct. 830, 83 LE2d 2182 (1985)

For that reason post conviction must at least be minimally effective in order to give any meaning to the limited statutory right to post conviction counsel.

The Strickland two pronged test has well-developed case law to aid in evaluating the minimal effectiveness of counsel. Because of this case law, Strickland can be easily applied to post conviction counsel for meritorious Crim. P. 35(c) motions.

A limited statutory right to counsel in post conviction proceedings has been recognized by the court of appeals since 1988. People v. Duran, 757 P.2d 1096, 1097 (Colo. App. 1988); People v. Hickey, 919 P.2d 377, 379 (Colo. App. 1995). As explained in Hickey [the] statutory right to counsel is tenuously premised on an interpretation of the statutes creating and governing the office of the state public defender and requiring that office to prosecute post conviction remedies which have arguable merit.

Specifically, the Duran Court relied on section 21-1-103 C.R.S. (1986 Repl. Vol. 813) and section 21-1-104 (1) (b), C.R.S. 1986 Repl. Vol. 813) 757 P.2d at 1097 (Colo. App. 1988). Section 21-1-104 (1) (b) provided that a state public defender shall prosecute and appeals or other remedies before or after conviction that the state public defender considers to be in the interest of justice. The court read other remedies to include meritorious Crim. P. 35(c) motions.

The interpretation that a limited statutory right to post conviction counsel arises out of sections 21-1-103 and 21-1-104 has been around for almost 2 decades. During this time, the General Assembly has amended both of these statutes 5 times see 21-1-103, 1990 Colo. Sess. Laws 1038, 1038-39, subsection 21-1-103, 1992 Colo. Sess. Laws 2165, 2176; 21-1-104, 1994 Colo. Sess. Laws 1473, 1475, 21-1-103, 2000 Colo. Sess. Laws 1479, 1480 21-1-103, 2004, 1994 Colo. Sess. Laws 725, 725-726.

However the General Assembly never amended the statutes to counter the court of appeals interpretation in Duran and Hickey. Under an established rule of statutory construction, the legislature is presumed by virtue of its action in amending a previously construed statute without changing the portion that was construed, to have accepted and ratified the prior judicial construction.

See People v. Suvain, 959 P.2d 426, 430-31 (Colo. 1998). Therefore it appears that the General Assembly has ratified the existence of a limited statutory right to post conviction counsel arising from sections 21-1-103 and 21-1-104.

Furthermore the adoption of the Strickland test does not lead to infinite post conviction proceedings. Under Crim. P. 35(c)(3)(iv), the court is only required to hold further proceedings if the defendant's Crim. P. 35(c) motion has merit.

REASONS FOR GRANTING THE PETITION

Their needs to be NEW precedent other than Strickland v. Washington which plainly interprets an incarcerated persons right to adequate representation at the post conviction stage and the defendant's right to be provided effective assistance of counsel as a statutory right.

These issues are issues that the U.S. incarcerated population face everyday, some of which are actually innocent as their entire life is affected by the intentional failure of effective post conviction counsel or the failure to provide counsel as a statutory right.

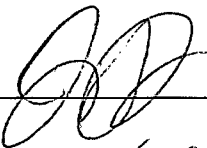
This case would SET a binding legal precedent for future incarcerated individuals to have their cases tried fairly and effectively by counsel due to the courts granting this appeal.

I have merit regarding my Crim. P. 35(c) which was filed by the Plaintiff Pro-se on March 3, 2026. It was granted, however, there was a conflict of interest with the Public defenders office at the trial stage. Jabari Johnson was provided counsel by Patrick Grentzler who was proven to be ineffective at the conflict interest hearing. Yet the next attorney Jenna Kauszka ultimately didn't do anything intentionally because there is no sound case law in place for individuals regarding postconviction attorneys who violate the clients rights to effective assistance of counsel. None the less their needs to be put in place unequivocal case law for individuals who are subjected to ineffective assistance of counsel at the post conviction stage which is extremely unfair to a defendant who has more than enough to be provided a new trial or freedom, but is subjected to ineffectiveness because of their attorney's lack of understanding of the laws or incompetence. Further another issue which needs to be addressed by the United States Supreme Court is the fact that all individuals who have merit stated by courts should be provided an attorney due to the incarcerated individuals limited statutory right. These are extreme issues that AMERICA face and is subjected to on a daily basis in which the U.S. Supreme Court possesses the power to correct.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 1/8/24