No. 23-7364

In the Supreme Court of the United States

JORGE GALINDO,

Petitioner,

v.

NEBRASKA,

Respondent.

On Petition for Writ of Certiorari to the Nebraska Supreme Court

BRIEF IN OPPOSITION

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CAPITAL CASE

QUESTION PRESENTED

Jorge Galindo received a sentence of death for his role in an armed bank robbery that left five people dead. Galindo, who was 21 during the murders, argued at sentencing that his youth and immaturity were mitigating factors. The sentencing panel received Galindo's evidence of his youth and immaturity and concluded he did not make the showing needed to establish the mitigating factor. Galindo appealed his sentence but did not challenge the panel's conclusion on youth as a mitigating factor. Later, Galindo brought a post-conviction action alleging he received ineffective assistance of counsel because of his attorney's failure to appeal the sentencing panel's finding on youth. The district court denied Galindo's request for an evidentiary hearing. The question presented is:

Whether the district court erred in refusing to order an evidentiary hearing on ineffective assistance of counsel where Galindo's prior attorney failed to appeal the sentencing panel's conclusion that his youth was not a mitigating factor.

PROCEEDINGS DIRECTLY RELATED TO THIS CASE

In addition to the proceedings identified in Galindo's petition, the State of Nebraska is also aware of the following proceeding:

Galindo's Habeas Petition: *Jorge Galindo v. Rob Jeffreys*, case no. 4:23CV3241 (D. Neb.).

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STATUTES OR OTHER PROVISIONS INVOLVED

In addition to the statutes and other provisions identified in the petition, this case also involves Neb. Rev. Stat. § 29-2521(3). That statute provides:

> (3) When a jury renders a verdict finding the existence of one or more aggravating circumstances as provided in section 29-2520, the panel of judges shall, as soon as practicable after receipt of the written report resulting from the presentence investigation ordered as provided in section 29-2261, hold a hearing to receive evidence of mitigation and sentence excessiveness or disproportionality. Evidence may be presented as to any matter that the presiding judge deems relevant to (a) mitigation, including, but not limited to, the mitigating circumstances set forth in section 29-2523, and (b) sentence excessiveness or disproportionality as provided in subdivision (3) of section 29-2522. Any such evidence which the presiding judge deems to have probative value may be received. The state and the defendant and his or her counsel shall be permitted to present argument for or against sentence of death. The presiding judge shall set forth the general order of procedure at the outset of the sentencing determination proceeding. After the presentation and receipt of evidence and argument, the panel shall determine an appropriate sentence as provided in section 29-2522.

BRIEF IN OPPOSITION

Across two cases, Petitioner Jorge Galindo was convicted of five counts of first-degree murder, six counts of use of a deadly weapon, one count of robbery, and one count of burglary. He was then sentenced to death. Galindo's petition seeks review of his post-conviction case, complaining that Nebraska law unconstitutionally precluded his capital sentencing panel from considering evidence of his youth as a mitigating circumstance. That argument, however, is intertwined with his claim he received ineffective assistance of counsel on appeal. At a minimum, that makes this a poor vehicle for review. More importantly, Galindo's arguments are wrong. Nebraska law does not preclude a sentencing panel from considering youth, and Galindo's sentencing panel received and considered substantial evidence of his youth. The Court should deny the petition.

STATEMENT OF THE CASE

I. On September 26, 2002, Galindo and two co-conspirators attempted to rob a bank in Norfolk, Nebraska. Pet. App. 33a. The men entered the bank with semi-automatic handguns and almost immediately shot and killed four bank employees and one customer: Lisa Bryant, Lola Elwood, Jo Mausbach, Samuel Sun, and Evonne Tuttle. Pet. App. 33a–34a. Galindo was the first person to enter the bank and killed one person, Ms. Elwood, with three shots. Pet. App. 33a–34a, 38a. Autopsies revealed that all five victims died "agonizing deaths," with Ms. Elwood dying from bleeding into her chest cavities. Pet. App. 34a.

Galindo also fired his weapon at Micki Koepke, a customer who entered the bank just after the shootings. Pet. App. 34a, 38a. Galindo fired at least two shots at

her. Pet. App. 34a. Those shots shattered a glass wall and caused minor injuries to Koepke. Pet App. 34a. Galindo and his co-conspirators continued their crime spree after leaving the bank. They robbed Jerae Anderson at gunpoint and stole her car. Pet. App. 35a. They also burglarized Terry Beck's residence and stole his pickup truck. Pet. App. 35a. Galindo participated in planning the robbery. Pet. App. 38a, 40a. He helped obtain guns, recruited one of his co-conspirators, and attempted to recruit three others to participate. Pet. App. 38a, 40a.

II. Galindo was convicted in this case on five counts of first-degree murder and five counts of use of a deadly weapon to commit a felony. Pet. App. 35a. He was convicted in a separate case of robbery, burglary, and an additional count of use of a deadly weapon to commit a felony. Pet. App. 35a. The jury empaneled found that Galindo had a substantial history of serious assaultive or terrorizing criminal activity, that he committed his murder to conceal a crime, that his murder was especially heinous, atrocious, cruel, or manifested exceptional depravity, among other things. Pet. App. 36a.

During Galindo's sentencing proceedings, his counsel presented "abundant personalized evidence about Galindo's age-related characteristics and development." Pet. App. 13a; *see* Pet. 4. The sentencing panel received the evidence about Galindo, who was 21 when the crime occurred. Pet. App. 12a–13a, 32a. But it "did not find Galindo's age, cognitive function, or cognitive development to be mitigating circumstances in any way." Pet. App. 13a; *see* Pet. App. 39a, 41a. The sentencing panel acknowledged that a doctor testified that Galindo "has mental retardation,

frontal lobe impairment, behavioral abnormalities, and emotional disorders." Pet. App. 39. However, noting that an expert witness for the State contravened these conclusions, the panel concluded Galindo's assertions "[were] not supported by the evidence." Pet. App. 39a.

The panel acknowledged mitigating circumstances in Galindo's cooperation with law enforcement following his arrest. Pet. App. 40a–41a. However, the panel found that mitigating circumstance was partially offset by his failure to demonstrate remorse. Pet. App. 41a. Balancing that mitigating circumstance with the aggravating circumstances for the five murders that the jury found, the panel "conclude[d] and [found] beyond a reasonable doubt that the mitigating circumstance does not approach or exceed the weight of the existing aggravating circumstances." Pet. App. 42a. It thus imposed a sentence of death. Pet. App. 42a–44a.

Galindo appealed his conviction and sentence. His 99-page opening brief argued 20 errors. Brief of Appellant, *State v. Galindo*, 774 N.W.2d 190 (Neb. 2009) (Nos. S04-443 & S04-1326), 2006 WL 6437831. But he did not appeal the sentencing panel's determination that his youth was not mitigating. *See id.* The Nebraska Supreme Court affirmed Galindo's sentence. *State v. Galindo*, 774 N.W.2d 190 (Neb. 2009). This Court denied Galindo's petition for certiorari on his direct appeal. *Galindo v. Nebraska*, 559 U.S. 1010 (2010).

III. In 2011, Galindo moved for post-conviction relief, arguing, among other things, that his counsel on direct appeal was ineffective in failing to appeal the sentencing panel's conclusion that his youth was not a mitigating circumstance. Pet.

App. 47a, 49a. Galindo sought an evidentiary hearing on his counsel's ineffectiveness. Pet. App. 47a, 56a. The district court denied the motion, holding that Galindo failed to show he was prejudiced by his counsel's performance. Pet. App. 58a–59a. The Nebraska Supreme Court affirmed. The court explained that nothing precluded the sentencing court from receiving evidence of his youth. Pet. App. 14a. And counsel presented evidence of youth, but the sentencing court simply found it was not mitigating. Pet. App. 12a–13a. His counsel therefore could not have been ineffective in not appealing the preclusion of his youth as a mitigating circumstance because his youth was not precluded as a mitigating circumstance. Pet. App. 14a.

REASONS FOR DENYING THE PETITION

The Court should not grant certiorari for three reasons. *First*, this case is a poor vehicle for Galindo's questions presented. *Second*, Galindo is wrong to label Nebraska as an outlier. The Nebraska Supreme Court has not departed from the Court's precedent or differed from all other states in how youth is treated as a mitigating factor. *Third*, the Nebraska Supreme Court did not err in affirming the district court's decision declining to order an evidentiary hearing because Galindo's counsel on direct appeal was not ineffective. The Court should deny the petition.

I. This Case Is a Poor Vehicle for Galindo's Questions Presented.

The thrust of Galindo's petition is his argument that the Eighth Amendment requires a sentencing court to consider a defendant's youth as a mitigating factor and that Nebraska law precluded his sentencing panel from doing so. Even accepting Galindo's portrayal of Nebraska law, this appeal is a poor vehicle to decide that issue

because it is wrapped in the district court's denial of an evidentiary hearing on his ineffective-assistance-of-counsel claim. Galindo identifies no split of authority on the standard the Nebraska Supreme Court applied to his ineffective-assistance-of-counsel claims. Nor does he argue the State Supreme Court departed from this Court's precedents on the issue.

Galindo cannot separate the mitigating-factor issue from the ineffective-assistance-of-counsel claim because the former is procedurally barred as a standalone claim. This Court does not review issues resolved on procedural state law grounds. *See Coleman v. Thompson*, 501 U.S. 722, 729 (1991). Galindo seeks this Court's review of a post-conviction motion. In Nebraska, "[t]he need for finality in the criminal process requires that a defendant bring all claims for relief at the first opportunity." Pet. App. 4a. And the Nebraska Supreme Court has "consistently said that a motion for postconviction relief cannot be used to secure review of issues that were known to the defendant and which were or could have been litigated on direct appeal." Pet. App. 4a. Galindo could have raised his youth-as-a-mitigator argument on direct appeal. He did not. *See* Brief of Appellant, *State v. Galindo*, 774 N.W.2d 190 (Neb. 2009) (Nos. S04-443 & S04-1326), 2006 WL 6437831. The argument is barred as a standalone claim and thus not appropriate for the Court's review.

Both of Galindo's first two questions presented are based entirely on his barred youth-as-a-mitigator argument. *See* Pet. ii. Galindo, in his third question presented, advances the same argument under the banner of ineffective assistance of counsel. That argument, of course, is not procedurally barred. But it does not directly tee up

the mitigating-factor issue. The appeal would instead concern the application of the ineffective-assistance-of-counsel standard, i.e., whether appellate counsel's failure to raise the argument fell below an objective standard of reasonableness and that such failure prejudiced him so severely that he was deprived of the right of a fair proceeding. *See Strickland v. Washington*, 466 U.S. 668, 687–88 (1984). These additional hurdles make this appeal a poor vehicle to address the central legal issue Galindo identifies.

II. Galindo Has Not Identified a Split.

Galindo asserts that Nebraska's approach to youth as a mitigator conflicts with "***every*** other state court of last resort." Pet. 29. He also argues that Nebraska's approach is out of line with the Court's precedent. Galindo is wrong on both. Galindo's errors flow from his misconstruction of Nebraska law on youth as a mitigating factor. With an accurate view of Nebraska law, it becomes clear that Nebraska is not misaligned with (1) other states or (2) the Court's precedent.

A. Galindo's portrayal of Nebraska as an outlier among states is premised on his misapprehension of Nebraska law. Galindo asserts that "Nebraska is the ***only*** modern death penalty jurisdiction that has not authorized consideration of youth in mitigation." Pet. 11. But Nebraska does "authorize[] consideration of youth in mitigation." *Id.*

The Nebraska Supreme Court explained that Nebraska law "does not preclude the sentencing panel from using a capital defendant's age or related considerations as *nonstatutory* mitigating circumstances." Pet. App 14a. Indeed, Nebraska capital

sentencing statutes provide that "[e]vidence may be presented as to *any matter* that the presiding judge deems relevant to [] mitigation" and "*[a]ny such evidence* which the presiding judge deems to have probative value may be received." Neb. Rev. Stat. § 29-2521(3) (emphasis added). So where the presiding judge deems evidence of youth "relevant to mitigation," such evidence "may be received." *Id.*

Galindo makes much of the Nebraska Supreme Court's holding that "age," as a mitigating circumstance under Neb. Rev. Stat. § 29-2523, refers only to advanced age and not youth. *See* Pet. 4, 5, 11. But the Nebraska Supreme Court clarified that this means only that youth is not one of the *statutory* circumstances that sentencing courts *must* find mitigating if they are present. Pet. App. 14a. Youth, according to the court, remains a *non-statutory* factor a court is *permitted*, but not required, to consider as mitigating. *See* Pet. App 14a. Nebraska does not preclude sentencing courts from considering youth.

Nebraska is far from the only jurisdiction without a statute that explicitly enumerates youth as a mitigating circumstance but still allows a sentencing court to consider youth. We did not find any statute in Georgia, Idaho, South Dakota, and Texas that expressed youth as a mitigating circumstance (and Galindo's chart does not identify one). Yet, like Nebraska, evidence of youth may be received and considered under a catch-all provision in each jurisdiction. *See* Ga. Code Ann. § 17-10-30; Idaho Code § 19-2515(5)(a); S.D. Codified Laws § 23A-27A-1; Tex. Code Crim. Proc. Ann. art. 37.071 § 2(e)(1); *Sears v. Humphrey*, 751 S.E.2d 365, 378, 380 (Ga. 2013) (evidence of defendant's youth received as a possible mitigator); *Williams v.*

State, 273 S.W.3d 200, 227–28 (Tex. Crim. App. 2008) (same); *State v. Page*, 709 N.W.2d 739, 759 (S.D. 2006) (same); *State v. Scroggins*, 716 P.2d 1152, 1160–61 (Idaho 1986) (youth found to be mitigating). Youth is also not an enumerated mitigator under federal statute but may be considered under a catch-all provision. *See* 18 U.S.C. § 3592(a); *United States v. Roof*, No. 2:15-472, 2016 WL 8678863, at *3 (D.S.C. 2016).

Indiana and Montana statutes include only juvenile status as a mandatory statutory mitigator, yet youth above the age of 18 may be considered. *See* Ind. Code § 35-50-2-9(c); Mont. Code Ann. § 46-18-304(g); *Holmes v. State*, 671 N.E.2d 841, 850 (Ind. 1996), *abrogated on other grounds by Wilkes v. State*, 917 N.E.2d 675 (Ind. 2009); *State v. Keith*, 754 P.2d 474, 484, 486 (Mont. 1988). Other states considered youth as a non-mandatory mitigator before they abolished the death penalty. *See State v. Ross*, 849 A.2d 648, 747 (Conn. 2004); *Zebroski v. State*, 715 A.2d 75, 83 (Del. 1998); *People v. Terrell*, 708 N.E.2d 309, 334 (Ill. 1998). In short, Nebraska is not alone in permitting but not requiring consideration of youth as a mitigator.

B. Galindo also claims that the Nebraska Supreme Court "ignore[d]" this Court's precedent. Pet. ii. On the contrary, Nebraska's approach to youth is consistent with this Court's decisional law. The Court has never required that sentencing courts *conclude* that a defendant's non-juvenile youth mitigates the severity of his crime. Galindo's citations stand for only the propositions that a state may not *prevent* a court from considering youth and the sentencer may not *refuse* to consider it:

- In *Lockett v. Ohio*, the plurality explained "that the Eighth and Fourteenth Amendments require that the sentencer . . . *not be precluded* from considering, as a mitigating factor, any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death." 438 U.S. 586, 604 (1973) (plurality opinion) (emphasis added) (other emphasis removed).
- In *Eddings v. Oklahoma*, the Court held that "[j]ust as the State may not by statute *preclude* the sentencer from considering any mitigating factor, neither may the sentencer *refuse* to consider, *as a matter of law*, any relevant mitigating evidence." 455 U.S. 104, 113–14 (1982) (first and second emphasis added).
- In *Roberts v. Louisiana*, the Court said it was essential "that the capital-sentencing decision *allow* for consideration" of mitigating circumstances such as youth. 431 U.S. 633, 637 (1977) (emphasis added).
- In *Stanford v. Kentucky*, the Court said that age is "one of the individualized mitigating factors that sentencers must be *permitted* to consider." 492 U.S. 361, 375 (1989) (emphasis added).
- In *Johnson v. Texas*, the Court held, "A sentencer in a capital case must be *allowed* to consider the mitigating qualities of youth in the course of its deliberations over the appropriate sentence." 509 U.S. 350, 367 (1993) (emphasis added).

- The majority in *Berger v. Kemp*, 483 U.S. 776 (1987), did not discuss youth as a mitigating factor. Galindo's quotation of the dissent is in the context of whether counsel was ineffective by deciding to not even *present* evidence of his youth at sentencing. *Id.* at 818 (Powell, J., dissenting); *see also id.* at 820–22.
- The Court in *Skipper v. South Carolina* explained that a sentencing court must "not [be] precluded" from considering or "refuse to consider" mitigating evidence. 476 U.S. 1, 4 (1986).

None of these cases *require* sentencing courts to *conclude* youth is a mitigating factor. Lower courts have recognized this: "[Neither] *Lockett* [nor] *Eddings* require a capital jury to give mitigating effect or weight to any particular evidence." *United States v. Paul*, 217 F.3d 989, 999–1000 (8th Cir. 2000); *accord Clark v. Dunn*, No. CV 16-0454-WS-C, 2018 WL 264393, at *30 (S.D. Ala. Jan. 2, 2018) ("While this line of cases requires a sentencer to *consider* mitigating evidence, it does not require the sentencer to *accept* the evidence as accurate or as mitigating, to *find* the existence of a mitigating circumstance, or to *assign* a mitigating circumstance a particular weight or any weight at all.").

Nebraska statutes and case law align with this Court's precedent. Nothing in Nebraska law "categorically exclude[s] youth as a mitigating factor," as Galindo suggests. Pet. ii. Instead, a Nebraska presiding sentencing judge may receive any evidence he deems to have "probative value" of any circumstance the judge deems "relevant to mitigation," including youth. Neb. Rev. Stat. § 29-2521(3). So, in the

words of the Nebraska Supreme Court, "contrary to Galindo's argument, [Nebraska law] does not preclude the sentencing panel from using a capital defendant's age or related considerations as nonstatutory mitigating circumstances." Pet. App. 14a. This is consistent with the Court's precedent.

III. The Nebraska Supreme Court Did Not Err.

Galindo argues his counsel on direct appeal was ineffective and asks this court to review the question of whether "appellate counsel [can] be ineffective for failing to raise [his youth-as-a-mitigator] claim on direct appeal given this Court's clear precedent establishing error[.]" Pet. ii. Galindo's question assumes Nebraska's treatment of youth as a mitigator is inconsistent with this Court's precedent, an assumption already shown to be false. *See* pp. 8–11, *supra.* His ineffective-assistance-of-counsel argument fairs no better.

Under *Strickland v. Washington*, a claim of ineffective assistance of counsel requires: (1) that counsel's performance was deficient, meaning it fell below an objective standard of reasonableness under prevailing professional norms; and (2) that the deficient performance prejudiced the defense, meaning there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. 466 U.S. at 687, 694. Galindo's argument that his counsel's performance was deficient relies on misstatements of the law and the record. Galindo also fails to show he was prejudiced. Finally, Galindo's complaint with the post-conviction district court's order misses the mark. For these reasons, the Nebraska Supreme Court did not err.

A. Galindo argues that his trial counsel was deficient by failing to raise a "dead-bang winner" on appeal—a term used in the Tenth Circuit Court of Appeals to describe "an issue which was obvious from the trial record and one which would have resulted in a reversal on appeal." *United States v. Challoner*, 583 F.3d 745, 749 (10th Cir. 2009). Galindo asserts that "[h]ad the sentencing panel been *permitted* to consider Mr. Galindo's youth as mitigation, there is a reasonable likelihood . . . the sentencer would have concluded that the balance of aggravating and mitigating circumstances did not warrant death." Pet. 29 (emphasis added). But the sentencing panel was "permitted to consider youth as mitigation." *See* pp. 6–7, *supra*. It just did not find that the evidence of Galindo's youth mitigated the severity of his crime. Nor was it required to. Nothing in the Court's case law requires a sentencing court to conclude that a defendant's non-juvenile youth is mitigating. *See* pp. 8–10, *supra.*

Galindo also paints a picture that the sentencing court refused to consider evidence of youth. Not so. The record demonstrates that the sentencing court considered evidence of his youth. The sentencing court received "abundant personalized evidence about Galindo's age-related characteristics and development." Pet. App. 13a; *see* Pet. App. 12a–13a, 32a, 41a; *see also* Pet. 4. Nebraska statutes provide that any evidence "the presiding judge deems relevant to [] mitigation" may be "received" when the "the presiding judge deems [it] to have probative value." Neb. Rev. Stat. § 29-2521(3). Thus, the court's hearing this evidence shows it considered the evidence to have probative value relevant to mitigation.

The Nebraska Supreme Court apparently concluded that the sentencing court considered his youth: "Galindo seems to take the position that in declining to apply [the statutory age mitigator] to him, the sentencing panel concluded that it could not consider his age at all. We disagree." Pet. App. 14a. The State Supreme Court observed that the sentencing panel "did not find Galindo's age, cognitive function, or cognitive development to be mitigating circumstances *in any way*." Pet. App. 13a (emphasis added). In the end, the sentencing panel considered Galindo's youth and cognitive development but determined that the evidence did not support mitigation.

To be sure, the sentencing panel's order did not specifically address its findings as to youth in the section of its order addressing non-statutory mitigating circumstances. *See* Pet. App. 40a–41a. But a sentencing court is not required to put in writing every determination it has made on non-statutory factors. The Nebraska Supreme Court has instructed, "The U.S. Constitution does not require the sentencing judge or judges to make specific written findings with regard to nonstatutory mitigating factors." *State v. Schroeder*, 941 N.W.2d 445, 464 (Neb. 2020); *see also Jeffers v. Lewis*, 38 F.3d 411, 418 (9th Cir. 1994) (en banc) (sentencing court not required to "itemize and discuss every piece of evidence offered in mitigation"). And this Court has explained that "[a]n appellate court . . . is able adequately to evaluate any evidence relating to mitigating factors without the assistance of written jury findings." *Clemons v. Mississippi*, 494 U.S. 738, 750 (1990).

In any event, the sentencing panel explained that it "receiv[ed] evidence of mitigation," Pet. App. 32a, which included evidence of Galindo's youth, but besides

Galindo's cooperation with police, "[t]he panel f[ound] the existence of no other non-statutory mitigating circumstances." Pet. App. 41a. The panel also explicitly determined that Galindo's claim to cognitive defects, which his counsel tied to his youth and immaturity, was not proven by the evidence. Pet. App. 13a, 39a. In other words, evidence of Galindo's youth and immaturity was received but found wanting. Galindo errs by conflating consideration of evidence of youth—which the sentencing court did—and determination that a defendant's youth actually mitigates the crime—which the Court has never required.

There is no "dead-bang-winner" here. Plain and simple: The sentencing court was not precluded from considering youth as a mitigating circumstance, and it did consider evidence of Galindo's youth but rejected it as a mitigating circumstance. Counsel was reasonable in not making these erroneous arguments on appeal.

B. Galindo also fails to show prejudice. Galindo must show that but for counsel's errors, he would have won on direct appeal. *See Strickland*, 466 U.S. at 687. Galindo argues that "had counsel on appeal relied on the foregoing decisions of this Court to raise this issue, it is reasonably likely to have resulted in a reversal on direct appeal." Pet. 29. But the Nebraska Supreme Court rejected Galindo's argument that the sentencing court was precluded from considering his youth. *See* pp. 6–7, *supra*. And Galindo does not explain why the Nebraska Supreme Court would have come to a different conclusion 14 years earlier.

Perhaps recognizing this predicament, Galindo argues that "if the Nebraska Supreme Court had affirmed on direct appeal, certiorari would have been granted

and the decision vacated to pull Nebraska in line with everyone else." Pet. 28. Galindo cites no authority holding counsel ineffective based on a guess that the Court would have granted a petition for certiorari but for counsel's errors. Further, as already explained, the Court then (as now) would have had nothing to "pull Nebraska in line with everyone else." Pet. 28. Nebraska, like many other states and consistent with the Court's case law, allows a sentencing court to consider youth as a mitigator. *See* pp. 7–11, *supra.*

C. Galindo also complains that the post-conviction trial judge adopted verbatim the State's findings of fact and conclusions of law. Pet. 29. Galindo fails to explain how this is relevant to his ineffective-assistance claim. Galindo does not even attempt to tie the post-conviction findings to his claim that his counsel on *direct* appeal was ineffective. Nor can he.

Galindo fails to establish that he was prejudiced by ineffective assistance of counsel. Trial counsel presented evidence of his youth, it was received, and the sentencing court concluded it was not mitigating. Counsel, according to reasonable professional judgment, decided not to appeal that determination. The Nebraska Supreme Court held that decision was reasonable. And Galindo's speculation that this Court would have vacated had the Nebraska Supreme Court rejected the same youth-as-a-mitigator argument 14 years ago does not establish prejudice.

The Nebraska Supreme Court did not err.

CONCLUSION

The petition for a writ of certiorari should be denied.

Dated: August 2, 2024

Respectfully submitted.

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