No. 24-5290

IN THE

SUPREME COURT OF THE UNITED STATES

KEVIN D. STUNES — PETITIONER
(Your Name)

vs.

THE STATE OF COLORADO — 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

Kevin D. Stunes, #65875
(Your Name)
Colorado State Penitentiary
P.O. Box #777
(Address)

Canon City, CO. 81215-0777
(City, State, Zip Code)

None (incarcerated)
(Phone Number)

QUESTION(S) PRESENTED

1) When a state regulates a claim of ineffective assistance of trial counsel, i.e., a claim of constitutional entitlement to its postconviction review venue, does due process require that a defendant be allowed the opportunity to develop that claim?

2) When trial counsel proffers a defense of voluntary intoxication as defense against a first degree murder charge, is she ineffective when she fails to consult with an expert and provide an expert's testimony in support thereof?

LIST OF PARTIES

[X] 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

Stunes v. People, Colo. Sup. Ct. No. 23SC943 (May 20, 2024)

People v. Stunes, Colo. App. No. 22CA2011 (Nov. 30, 2023)

Stunes v. People, Colo. Sup. Ct. No. 13SC22 (Jan. 27, 2014)

People v. Stunes, Colo. App. No. 09CA2020 (Nov. 29, 2012)

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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 _____ 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[ ] is unpublished.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 United States district 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[ ] is unpublished.

[X] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the Colorado Supreme Court denying certiorari court appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was _____.

[ ] 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).

[x] For cases from **state courts:**

The date on which the highest state court decided my case was May 24, 2024. A copy of that decision appears at Appendix B.

[ ] 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).

STATEMENT OF THE CASE

On Nov. 29, 2009, Mr. Stunes turned himself into the police and admitted to having killed his girlfriend in a methamphetamine (meth.) induced rage. The police eventually tested Mr. Stunes' level of intoxication, however, given sufficient time had passed (approximately 24 hours) his level was extremely low. Forensic tests of his girlfriend revealed that her meth. blood level was .317 nanograms per liter, indicating that Mr. Stunes' blood level at the time of her death was at least that high, as he always did the lion's share of the meth. they did together.

Due to Mr. Stunes' confession, no plea offer was ever tendered and he was charged and tried on a single count of first degree murder, as well as a count of tampering with physical evidence. In Colorado, to convict one of having committed first degree murder, the prosecution must show that a defendant acted with both "specific intent" and "after deliberation." See § 18-3-102(1)(a) C.R.S. Counsel's theory of defense at trial was thus that Mr. Stunes was so intoxicated on meth. that he could not form either the specific intent or after deliberation elements of first degree murder and hence was only guilty of second degree murder. Despite advancing this theory of defense, counsel never attempted to obtain and expert on meth. intoxication or present evidence showing meth.'s effects on a person. Instead, counsel merely cross-examined the state's expert. Respectfully, counsel lacked sufficient expertise to perform her constitutionally mandated duty of subjecting the prosecution's case to a meaningful adversarial testing. As a result, Mr. Stunes was convicted of first degree murder and sentenced to life without the possibility of parole.

Mr. Stunes, through counsel filed a direct appeal and his convictions were affirmed. See People v. Stunes, Colo. App. No. 2009 CA 2020, Nov. 29, 2012 (not published pursuant to C.A.R. 35(f). Certiorari was sought and denied. See Stunes v. People, Colo. Sup. Court No. 13SC22, Jan. 27, 2014 (2014 Colo. Lexis 23, 2014 WL 278913).

In Aug. of 2022, Mr. Stunes filed a motion for postconviction relief under Colorado Rule of Criminal Procedure 35(c), (Crim.P. 35(c)). In that motion, he raised two claims of ineffective assistance of trial counsel, one of which is raised herein. This Crim.P. motion raised sufficient facts, which if proven true, would have entitled Mr. Stunes to relief.[1] However, the trial court summarily denied that motion, finding that counsel's deficiencies were strategic in nature, hence Mr. Stunes could not satisfy Strickland v. Washington's, 466 U.S. 668 (1984), prejudice requirement. Mr. Stunes appealed and a division of the Colorado Court of Appeals affirmed that summary dismissal. See Appendix A. Certiorari was sought and denied. See Appendix B (May 20, 2024, 2024 Colo. Lexis 425, 2024 WL 2409583).

1. See Appendix C, Memorandum of Law in Support of Motion for Postconviction Relief.

REASONS FOR GRANTING THE PETITION

1) When a state regulates a claim of ineffective assistance of trial counsel, i.e., a claim of constitutional entitlement, to its postconviction review venue, does due process require that a defendant be allowed the opportunity to develop that claim?

The Fourteenth Amendment of the United States Constitution provides that no state may "deprive any person of life, liberty, or property, without due process of law." U.S. Const., amend. XIV, § 1. Its Due Process Clause "confers both substantive and procedural rights." Albright v. Oliver, 510 U.S. 266, 272, 114 S. Ct. 807 (1994). "Procedural due process ensures that the state will not deprive a party of [a liberty interest] without engaging fair procedures to reach a decision, while substantive due process ensures the state will not deprive a party of [a liberty interest] for an arbitrary reason, regardless of the procedures procedures used to reach that decision." Hyde Park Co. v. Santa Fe City Council, 226 F.3d 1207, 1210 (10th Cir. 2000); see also, Collins v. City of Harker Heights, 503 U.S. 115, 125, 112 S. Ct. 1061 (1993).

The issue presented to this Court is twofold, i.e., 1) whether there is a procedural due process right to evidentiary development of a claim of ineffective assistance of trial counsel, created by § 18-1-410(1) C.R.S., especially given Colorado has regulated review of such claims to the postconviction review venue; or 2) whether such review is a substantive right given such regulation of review.

In order to address this question, Mr. Stunes needs to establish a bedrock for presentation of this principle.

It is well-established that there is a Sixth Amendment right to assistance of counsel at every critical stage of criminal proceedings against a defendant. U.S. Const., amend VI; see also, Gideon v. Wainwright, 372 U.S. 335, 339-40 , 83 S. Ct. 792 (1963). This right to counsel also guarantees that counsel be effective. See Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2502 (1984); Garza v. Idaho, 586 U.S. 232, 237, 139 S. Ct. 738 (2019).

In Massaro v. U.S., 538 U.S. 500, 504-06, 123 S. Ct. 1690 (2003), this Court discussed in detail the idea of requiring review of claims of a violation of a defendant's right to effective assistance of counsel in a collateral review venue rather than on direct appeal. Id. There this Court found not only is a state free to require such claims to be raised on collateral review; but also, the raising of such claims in that venue may be best, as it allows the trial court, sometimes even the same judge who conducted the trial, to take evidence and testimony, in turn judging the weight and credibility of said. Id. This Court also found that requiring such claims to be raised in this venue would keep an appellate court from speculating as to the merits of any such claim and reaching the merits of claims which lack said, or passing on those that do. Id, at 504-05 (discussing idea that review of these types of claim on a defendants direct appeal would require review on an undeveloped record.); see also, Shinn v. Ramirez, 596 U.S. 366, 409, 142 S. Ct. 1718 (2022)(dissent of Sotomayor, citing Massaro supra); Martinez v. Ryan, 566 U.S. 1, 13, 132 S. Ct. 1309 (2012)(discussing need for development of such claims.)

In recognition of the limitations of pro-se, prisoner, litigants, (see Halbert v. Michigan, 545 U.S. 606, 620-22, 125 S. Ct. 2583 (2005)), and regulation of claims of ineffective assistance of trial counsel to a state's collateral review venue, in Martinez v. Ryan, supra, this Court fashioned a remedy by which a state prisoner litigant may show cause and prejudice for procedural default of such a claim. Id, 566 U.S. at 13-14. In Martinez, this Court further discusses the idea that in some states, counsel is appointed on every first collateral review motion; while others, like Colorado appoint counsel only if evidentiary develoment is deemed necessary. Martinez, 566 U.S. at 14-15. Excuse for procedural default of a claim of ineffective assistance of trial counsel is allowed if: 1) counsel is not appointed in the initial-review postconviction application; or 2) if initial-review postconviction counsel was ineffective. Id at 14. Moreover, to be allowed excuse, the litigant must show that his/her claim of ineffective assistance of trial counsel "[i]s a substantial one, which is to say that the prisoner must demonstrate that the claim has some merit." Id.

As recognized in Martinez, Colorado is a state which regulates claims of ineffective assistance of trial counsel to the postconviction review and appoints counsel only if a claim is deemed meritorious. Id, at 14. Moroever, this Court in Wood v. Milyard, 566 U.S. 463, 466, 132 S. Ct. 1826 (2012), recognized that Crim.P. 35(c) provides in relevant part that: "[E]very person convicted of a crime is entitled as a matter of right to make application for postconviction review upon the groun[d]...[t]hat the conviction was obtained or sentence imposed in violation of the Constitution or laws of the United States or the constitution of this state." Id, 566 U.S. 466 n.1. See also, Ardolino v. People, 69 P.3d 73 (Colo. 2003).

The Colorado Supreme Court also has recognized not only that a postconviction motion is the best forum for raising a challenge to trial counsel's effectiveness; but also that defendants have regularly been discouraged from raising any such claim on direct appeal. Id, 69 P.3d at 77 (citing Massaro supra); see also, Dooly v. People, 2013 CO 4, ¶ 6, 302 P.3d 259. This is why that Court again found that:

> "Undoubtedly it will sometimes be the case that the trial record reveals evidence of guilt so strong and so unlikely to have been adversely affected by counsel's alleged deficiencies that denial of an ineffective-assistance claim would be justified without an evidentiary hearing. Unless the issue was expressly litigated, however, it is far less likely that a trial record will demonstrate that potentially prejudicial acts or omissions of counsel were not only strategic choices but were ones that were reasonable in light of the law and facts of which counsel was, or reasonably should have been aware. If a criminal defendant has alleged acts or omissions by counsel that, if true, could undermine confidence in the defendant's conviction or sentence, and the motion, files, and record of the case do not clearly establish that those acts or omissions were reasonable strategic choices or otherwise within the range of reasonably effective assistance, the defendant must be given the opportunity to prove they were not." [2]

In other words, if a defendant presents a plausible claim of ineffective assistance of counsel, under Ardolino's standards, he should be given the opportunity to prove the substance of any such claim. Id. The Colorado Supreme Court then goes on to say, in essence, that while there is a presumption that trial counsel acted reasonably, unless it is clear from the record why counsel acted or failed to act in the way the defendant claims is ineffective, there must be an evidentiary hearing on the matter. Id, 69 P.3d at 78-79.

Ardolino supra, is supported not only by People v. Simpson, 69 P.3d 79, 81 (Colo.

2. See Ardolino supra at 77.

2003)(quoting Crim.P. 35(c)(3) and finding that "[a] trial court must hold an evidentiary hearing 'unless the motion and the files and record of the case show to the satisfaction of the court that the prisoner is not entitled to relief...'" and "[T]o warrant a hearing, a defendant need only assert facts that, if true, would provide a basis for relief."): but also BY Crim.P. 35(c)(3) itself.

When you couple Crim.P. 35(c)(3)'s requirements, with those stated in § 18-1-410(1) C.R.S., on their face they seem sufficient to allow for review of any valid claim of ineffective assistance of trial counsel. Sadly, however, as is readily apparent from Mr. Stunes' case, they are not. See Appendix C (Memorandum of law setting forth sufficient grounds for relief based upon facts outside the trial court's available record for review, but summarily denied nonetheless with a finding that counsel's actions were strategic.)

This is why, Mr. Stunes respectfully, initially submits, that Crim.P. 35(c), along with § 18-1-410 C.R.S., create a procedural due process protection, allowing evidentiary development of a claim of ineffective assistance of trial counsel (a claim of constitutional entitlement regulated to the postconviction relief venue), which cannot be denied without offending the Fourteenth Amendment's guarantees. That is, of course, provided that, as was done by Mr. Stunes, a claim is set forth which contains allegations outside of the trial court's available record for review. This is because Colorado has deprived him of his protected interests afforded by Crim.P. 35(c)(3) and § 18-1-410(1) C.R.S., as well as those stated in Ardolino; rendering Colorado's state process inadequate to protect said. See e.g. Reed v. Goertz, 598 U.S. 230, 236, 143 S. Ct. 955 (2023); see also,

Johnson v. U.S., 576 U.S. 591, 595-96, 135 S. Ct. 2551 (2015).

Mr. Stunes submits he has a liberty interest in obtaining meaningful review of his conviction, including all constitutionally afforded protections, such as the Sixth Amendment's right to effective assistance of counsel. See e.g., Douglas v. Calif., 372 U.S. 335, 357-58, 83 S. Ct. 814 (1963)(discussing need for assistance of counsel for an indigent defendant to provide a meaningful appeal); Griffin v. Ill., 351 U.S. 12, 18-19, 76 S. Ct. 585 (1956)(discussing need for indigent defendant to receive transcripts of trial, etc., in order to allow for meaningful appeal); see also, Garza v. Idaho, 586 U.S. 232, 238, 139 S. Ct. 738 (2019)(finding once again that if a state provides an appeal of a conviction, it must afford an indigent that same opportunities as one who is not.)

Colorado is of course a state which provides a defendant a right to appeal. See § 16-12-101 C.R.S.; see also, Hunsaker v. People, 2021 CO 83, ¶ 17, 500 P.3d 1110. And a defendant is entitled to the assistance of counsel on that first appeal as a matter of right. See e.g., Denbow v. Dist. Ct. of Twenty-first Judicial Dist., 652 P.2d 1065, 1066 (Colo. 1982). Subsequently, when Colorado regulates a claim of constitutional entitlement to review in a forum other than that first appeal as a matter of right, how is a defendant ever supposed to receive meaningful review of his Sixth Amendment right to effective assistance of counsel unless a state allows for evidentiary development of such a claim? That is, of course, provided the defendant sets forth a claim (such as that Mr. Stunes presented) that can't be denied without said, as it is outside of the available record for review. See Apepndix C (Memorandum of Law setting forth viable claims of ineffective assistance

of trial counsel that were outside of the available record for review and which if proven true would have entitled Mr. Stunes to relief.)

Mr. Stunes respectfully submits that either the provisions of § 18-1-410 C.R.S. and Crim.P. 35(c)(3) and § 18-1-410(1) C.R.S., along with the Colorado Supreme Court's interpretation of them in Dooly and Ardolino supras, create a protectable liberty interest in that they establish substantive predicates which mandate that a defendant be allowed an opportunity to prove the substance of his/her claim(s); or that the substantive component of the Due Process Clause of the Fourteenth Amendment provides this protection in itself. See e.g., Dobbs v. Jackson Women's Health Org., 597 U.S. 215, 239, 142 S. Ct. 2228 (2022)(citing Collins v. Harker Heights, 503 U.S. 115, 125, 112 S. Ct. 1061 (1992)(discussing what interpretation of "liberty" within the Fourteenth Amendment constitutes); see also, Meyer v. Nebraska, 262 U.S. 390, 399, 43 S. Ct. 625 (1923)(defining in part what "liberty" means). Certainly, loss of one's liberty due to being convicted of a crime is sufficient to warrant protection against an improper or wrongful conviction. See e.g., Indiana v. Edwards, 554 U.S. 164, 170-77, 128 S. Ct. 2378 (2008)(finding right to a fair trial and assistance [thus effective assistance] of counsel is a fundamental right protected by both the Sixth and Fourteenth Amendments).

For these reasons, Mr. Stunes moves this Court most respectfully to grant certiorari on this issue and establish controlling precedent, as, following the decisions in Martinez and Massaro supras, this is the next logical procedural step. In turn, such a procedural guarantee will lessen the federal court's need

to find the cause and prejudice exception set forth in Martinez. Moreover, given the idea that a state is free to regulate claims of constitutional entitlement to the postconviction venue, as noted in Martinez, a defendant's initial postconviction motion becomes "[i] many ways the equivalent of a prisoner's direct appeal as to the ineffective assistance claim." Id, 561 U.S. at 11. As such, Mr. Stunes seeks review by this Court.

2) When trial counsel proffers a defense of voluntary intoxication as defense against a first degree murder charge, is she ineffective when she fails to consult with an expert and provide an expert's testimony in support thereof?

This Court established in Strickland v. Washington, 466 U.S. 668 (1984), that all criminal defendants have the right to receive effective assistance of counsel during any critical stage of a criminal proceeding. Id at 686. Further, this Court held that a defendant challenging counsel's effectiveness must show not only that counsel's performance was constitutionally deficient, but also that any deficiency prejudiced the defendant. Id at 687; see also, Thornell v. Jones, 144 S. Ct. 1302, 1310, 218 L. Ed. 2d 626 (2024).

The purpose of requiring effective assistance of counsel is to ensure that a defendant receives a fair trial. Strickland, 466 U.S. at 689. Consequently, "[t]he benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relief on as having produced a just result." Id at 689.

This is why this Court found that there is a strong presumption that counsel rendered adequate assistance of counsel and made all decisions following the exercise of reasonable professional judgment. Id at 690. For a defendant to overcome this presumption, it must be shown that counsel failed to act reasonably given the particular circumstance of the case. Id at 688.

Moreover, this Court required a showing that the defendant suffered prejudice as the result of counsel's deficient performance. Id at 691-92. This dictates that the defendant must show there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. Id at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Ibid. It is insufficient to show some conceivable effect, rather, counsel's errors must have been of such significance that it may be said the defendant was denied a fair trial and hence that trial's results are unreliable. Id at 693, 687.

A necessary antecedent to providing the effective assistance demanded by the Sixth Amendment is that counsel conduct sufficient investigations, or make reasonable decisions which make such investigations unnecessary. Strickland, supra at 691; see also, Hinton v. Alabama, 571 U.S. 263, 274, 134 S. Ct. 1081. Moreover, it is fairly well-established that "'[t]he mere incantation of 'strategy' does not insulate attorney behavior [or lack thereof] from review.'" Hooper v. Mullin, 314 F.3d 1162, 1169-70 (10th Cir. 2002). Instead, a court must consider whether that strategy was objectively reasonable given the circumstances. Ibid (citing Roe v. Flores-Ortega, 528 U.S. 470, 481, 120 S. Ct. 1029 (2000)); see also, Wiggins

V. Smith, 539 U.S. 510, 526-27, 123 S Ct, 2557 (2003); U.S. v. Span, 75 F.3d 1383, 1389-90 (9th Cir. 1996); Elias v. Coleman, 2017 U.S. Dist. Lexis 186774, *69 n.13 (W.D. Penn. 2017).

In Mr. Stunes' case, counsel failed to conduct reasonable investigations into obtaining an expert witness concerning the effects meth. and its long term use. As already set forth, § 18-3-102(1) C.R.S., requires for a conviction on a first degree murder charge, that it be proven, beyond a reasonable doubt, that a defendant acted both after deliberation and with specific intent. Id. Given these elements, a defendant is allowed to raise an affirmative defense of voluntary intoxication, i.e., he/she was so intoxicated by a substance voluntarily ingested, that he/she could not form either of these elements. See § 18-1-804 C.R.S.; see also, People v. Miller, 113 P.3d 743, 750 (Colo. 2005).

Because Mr. Stunes turned himself in and admitted he killed his girlfriend, there was no question of whom committed the crime, rather, the only question was one of degree of guilt. This resulted in counsel advancing the defense of voluntary intoxication, attempting minimize the sentence Mr. Stunes was exposed to, as First Degree Murder in Colorado is a Class One felony and requires a mandatory sentence of life without the possibility of parole. See § 18-1.3-401(1)(a)(IV) C.R.S. On the other hand, Second Degree Murder, as defined by § 18-3-103 C.R.S., is a Class Two felony and carries with it a sentencing range of 16-48 years in prison, plus a 5 year period of mandatory parole. See § 18-1.3-401(1)(a)(IV) C.R.S. (Second Degree murder is considered a "per-se" crime of violence and thus any sentence

imposed upon conviction is imposed in the aggravated sentencing range. See §§ 18-3-103(4) C.R.S.; 18-1.3-406(1)(a) C.R.S.).

While this was a viable defense and one that was strategically sound given the circumstances of the case, counsel needed to investigate and support this defense by seeking an expert at state expense. See e.g., Hinton v. Alabama, supra, 571 U.S. at 273 (quoting Harrington v. Richter, 562 U.S. 86, 106, 131 S. Ct. 770 (2011) ("'Criminal cases will arise where the only reasonable and available defense startegy requires consultation with experts or introduction of expert evidence.'"). Here this simply didn't happen. Instead counsel only cross-examined the prosecution's expert, without even any expert knowledge on meth. intoxication to prepare for said.

There is no clear record as to why counsel failed to consult with or obtain an expert witness. Yet Mr. Stunes was not allowed evidentiary development of this claim. Instead, the trial court summarily denied Mr. Stunes claim of ineffective assistance of counsel by finding counsel's actions were strategic. Then the Colorado Court of Appeals affirmed that summary denial by finding that counsel elicited "[s]ubstantially the same expert testimony..." from the prosecution's expert as that Mr. Stunes claimed a defense expert would have testified to; and that Mr. Stunes failed to "[e]xplain why this [defense expert] testimony would have been more impactful or persuasive coming from a defense expert." See Appendix A, pp. 3-4.

Problematic is the fact, as noted, that the Colorado courts did not allow evidentiary development of this claim. Mr. Stunes did in fact state why a defense expert would have been more persuasive or impactful. See Appendix C, pp. 4-7. Moreover, as noted therein, the prosecution's expert downplayed the effects of meth. and its long term use on a person. A defense expert would have testified to the fact that meth. can produce rage and "whiteouts," which are the equivalent of blackouts which occur in alcoholics. See People v. Garner, 2015 COA 174, ¶¶ 39-40, 381 P.3d 327-28; Venegas v. Giurbino, 2008 U.S. Dist. LEXIS 113357, * 5 (C.D. Cal. 2008) Wheeler v. State, 124 So.3d 865, 885 (Fla. 2013)(same); Wrinkles v. State, 749 NE.2d 1179, 1199 (Ind. 2001)(same).

The foregoing was not elicited by defense counsel, nor did the prosecution's expert admit to any such thing. As a result, counsel's failures were not only constitutionally deficient, but prejudicial as well, as there is a reasonable probability that had counsel obtained such an expert (one which was readily available given the foregoing case law) there is a reasonable probability that Mr. Stunes would not have been convicted of first degree murder, but rather only second and perhaps even manslaughter. Accordingly, prejudice flows from this asserted claim of ineffective assistance of counsel, as Mr. Stunes was denied a fair trial due to said.

In conclusion, the record is also devoid of any reasoning by counsel for failing to seek such an expert. Did counsel not understand she could seek funding for said? Who knows. No, the foregoing questions are questions of fact which require

evidentiary development and evaluation of the strength or the expert's report or testimony. Accord, Thornell v. Jones, 144 S. Ct. 1302, 1310, 218 L. Ed. 2d 626 (2024)(finding that if such expert's testimony or report had been offered at trial, it is difficult to see how a court could make a decision that said would not have created a reasonable probability of a different outcome without evaluation, especially when the prosecution's expert testified to the contrary.)

For these reasons, and because the State of Colorado failed to allow Mr. Stunes evidentiary development of his claim, Mr. Stunes respectfully moves this Court to grant certiorari on this issue.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Kevin D. Stunes

Kevin D. Stunes, #65875

Date: July 29 2024