

No. 24-7157, 24A1077

IN THE SUPREME COURT OF THE UNITED STATES

BENJAMIN RITCHIE,
Petitioner,

v.

STATE OF INDIANA,
Respondent.

On Petition for a Writ of Certiorari
to the Indiana Supreme Court

**REPLY IN SUPPORT OF APPLICATION FOR STAY OF EXECUTION
AND PETITION FOR WRIT OF CERTIORARI**

--- CAPITAL CASE ---

EXECUTION SCHEDULED FOR TUESDAY, MAY 20, 2025

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REPLY ARGUMENT

I. THE COURT SHOULD GRANT CERTIORARI BECAUSE THE INDIANA SUPREME COURT VIOLATED DUE PROCESS BY DEPRIVING MR. RITCHIE OF THE OPPORTUNITY TO PRESENT AT THE STANDARD FEDERALLY REQUIRED FOR REVIEWING AND PRESERVING A CLAIM OF INEFFECTIVE ASSISTANCE OF INITIAL-COLLATERAL REVIEW COUNSEL UNDER UNITED STATES SUPREME COURT PRECEDENT.

A. The Indiana Supreme Court Committed Legal Error in its 2-2 Order by Misapplying *Martinez*.

The Indiana Supreme Court evaluated Ritchie's request for permission to file a successive petition for post-conviction relief under a standard that did not allow for review of initial collateral review counsel's performance. The Indiana Supreme Court did not examine Ritchie's claim under a standard equitable to that which is used when reviewing direct appeal counsel's performance. Proper application of an equitable standard, as required by *Martinez v. Ryan*, 566 U.S. 1 (2012), would have created a *Strickland v. Washington*, 466 U.S. 668 (1984), standard, at minimum, for evaluating initial collateral review counsel's performance.¹

Ritchie's request that his claims be evaluated under a standard required by *Martinez* and *Trevino v. Thaler*, 569 U.S. 413 (2013), instead of the inadequate Indiana precedent, was explicitly rejected because the Indiana Supreme Court was short one justice and Ritchie failed to show his claim met a fully developed *Strickland* standard. Refusing to reconsider state court precedent which fails to

¹ Other jurisdictions apply *Strickland* to counsel appointed in postconviction proceedings. See, e.g., *People v. Hickey*, 914 P.2d 377, 379 (Colo. App. 1995); *Lozada v. Warden*, 613 A.2d 818, 823 (Conn. 1992); *Stovall v. State*, 800 A.2d 31, 37, 38 (Md. Ct. Spec. App. 2002); *Jackson v. Weber*, 637 N.W.2d 19, 23 (S.D. 2001); *Johnson v. State*, 681 N.W.2d 769, 776–77 (N.D. 2004).

satisfy U.S. Supreme Court precedent because one member of the Court, without request, recused himself, violates Ritchie's rights protected by the 14th Amendment to the United States Constitution. It is legal error to deprive Ritchie of the opportunity to develop a record at a reviewing standard less than equitably required per *Martinez*, *Trevino*, and *Shinn v. Ramirez*, 596 U.S. 366 (2022).

Respondent fails to address how the Indiana Supreme Court's application of *Baum v. State*, 533 N.E.2d 1200 (Ind. 1989) is affected by *Shinn*. *Shinn* set the requirement that a petitioner must first present and develop the record in the state court to bring a claim of ineffective assistance of initial-collateral review counsel for potential habeas review. To develop a claim viable for federal habeas review of ineffective assistance of initial-collateral review counsel consistent with *Martinez*, the state in which the claim is brought must allow the claim to be developed if a substantial claim is shown under the equitable standard from direct appeal. *Shinn*, 596 U.S. at 366.

The legal error committed by the Indiana Supreme Court could not be remedied by forcing Ritchie to fully develop a *Strickland* claim at a stage where only a substantial showing or "reasonable possibility" is required. Ind. Post-Conviction Rule 1(12)(b). Ritchie's request before the Indiana Supreme Court was not for relief from his death sentence. Rather, at this stage, Ritchie was asking to develop the record at a standard that comports with U.S. Supreme Court precedent for assessing initial collateral review counsel's performance. By demanding more, the Indiana Supreme Court committed legal error.

B. Ritchie has Made a Substantial Showing for Relief Under the Equitable Standard Required by *Martinez, Trevino, and Shinn*.

The Indiana Supreme Court failed to apply any coherent procedure which would allow a petitioner to satisfy the standard for permission to file a successive collateral review petition, let alone a procedure that comports with *Martinez, Trevino, and Shinn*. Ritchie has shown a substantial claim for relief under the equitable standard, *Strickland*, which should exist in Indiana. The dissenting Justices, including the Chief Justice, recognized that Ritchie had provided enough information to grant permission to file a successive petition for post-conviction relief. As Chief Justice Rush stated:

To authorize a successive petition, Ritchie need only establish “a reasonable possibility” that he is entitled to relief. Ind. Post-Conviction Rule 1(12)(b). In making that determination, we can consider any material we deem relevant. *Id.* If, as Ritchie asserts, the evaluations “provide specific diagnosis on the FASD spectrum” and explain how the injuries to his “brain diminish the weight of the aggravating circumstances and increase the weight of the mitigating circumstances,” that relevant evidence would establish the requisite “reasonable possibility.” Additionally, one of Ritchie’s post-conviction attorneys filed an affidavit confirming “Ritchie had easily identifiable red flags associated with” FASD “that should have alerted” post-conviction counsel “to seek an evaluation.” Notably, the attorney also affirmed that “Ritchie was provided inadequate post-conviction representation.”

All the evidence before us points to a strong likelihood that Ritchie suffered from FASD when he committed his crimes... Litigation of Ritchie’s claim of ineffective assistance of post-conviction counsel would ultimately offer a chance to revisit whether the *Baum* standard is appropriate for assessing the effectiveness of post-conviction counsel’s performance in capital cases. Like my concurring colleague, I have doubts.

Ritchie's death sentence is based upon inaccurate information concerning the gravity of his brain damage and condition. The trial prosecutor stated during the penalty phase that no evidence had been provided to the jury showing that Ritchie suffered severe brain damage due to prenatal alcohol exposure. The jury was explicitly told that Ritchie did not have any facial features, and that Ritchie did not have brain damage caused by his mother's alcohol and drug use while she was pregnant with Ritchie. Initial collateral review counsel stated that Ritchie received inadequate post-conviction representation because counsel missed easily identifiable red flags associated with Fetal Alcohol Spectrum Disorder (FASD) that should have alerted them to seek an evaluation. Ritchie's FASD diagnosis includes the presence of both severe brain damage, and the distinctive dysmorphic facial features associated with prenatal alcohol exposure. Ritchie's trial and initial collateral review counsel missed these facial features. A substantial showing of ineffective assistance of counsel under the equitable standard floor set in *Martinez*, which would assess both trial and initial collateral review counsel's performance under *Strickland*, is met on the record presented in the filings with the Indiana Supreme Court. That Court, in a 2-2 vote, instead applied the inadequate Indiana standard from *Baum*. Further, this Court need not address whether the standard has been met, only whether the standard that was applied by the Indiana Supreme Court comported with federal law or if the Indiana standard deprived Ritchie of a federal floor for evaluating the effectiveness of initial-collateral review counsel.

The Indiana Supreme Court has completely insulated itself from federal review of effectiveness of initial-collateral review counsel. A record of ineffective assistance of initial-collateral review counsel developed in the state court, as required by *Shinn*, is meaningless when a state can conduct its review under a standard less than federally required by *Martinez* and *Trevino*.

II. THE COURT SHOULD STAY RITCHIE'S EXECUTION.

A. Ritchie is Likely to Succeed on the Merits.

As stated in the Application for Stay of Execution, Ritchie pursued a request for successor petition for post-conviction relief following the process set in *Shinn*. Under *Shinn*, a petitioner must first present and develop the record in the state court to bring a claim of ineffective assistance of initial-collateral review counsel for potential habeas review. To develop a claim viable for federal habeas review of ineffective assistance of initial-collateral counsel consistent with *Martinez*, the state in which the claim is brought must allow the claim to be developed if a substantial claim is shown under the equitable standard from direct appeal. *Shinn*, 596 U.S. at 366.

The Indiana Supreme Court committed legal error by refusing to apply an equitable standard of review when assessing Ritchie's effectiveness of initial-collateral review counsel claim. The Respondent asserts that Ritchie failed to meet the *Strickland* standard in his request for permission to file a successor petition for post-conviction relief. Respondent's argument is misplaced before this Court. The only issue before this Court is whether Indiana's application of the *Baum* standard,

a standard that only requires counsel to be present at a proceeding, violates federal precedent set in *Martinez*, *Trevino*, and *Shinn*.

B. Ritchie Has Not Delayed in Bringing His Claim.

Ritchie has been timely and diligent in pursuing this litigation. Ritchie sought rehearing on April 23, 2025. Rehearing was denied by the Indiana Supreme Court on April 30, 2025. Ritchie filed the request for a Stay and Writ for Certiorari on May 7, 2025. The Respondent responded on May 15, 2025. The claim that Ritchie brings was not available prior to the exhaustion of state court remedies.

The Respondent challenges the timeliness of a Rule 60(b)(6) Motion filed in the Southern District of Indiana but does not directly challenge the timeliness of this Petition for Writ of Certiorari and Application for Stay of Execution. In accordance with an Order of the Indiana Supreme Court issued on February 25, 1994, current counsel were not authorized to represent Ritchie until the State requested an execution date. Ritchie should not be faulted for lack of counsel.

C. Ritchie Will Suffer Irreparable Injury Absent a Stay.

Absent a stay, Ritchie will be executed without the assurance that he was provided with effective assistance of counsel. Indiana's *Baum* standard prohibits the development of a record for habeas review as required by *Shinn*. States that do not apply an equitable standard of review threaten the vitality of *Martinez*, and the legitimacy of state post-conviction proceedings. The public trust in the system requires ensuring a procedurally fair proceeding with effective counsel. Ritchie's death sentence is based on inaccurate information, rendering it inappropriate.

Conclusion

For the foregoing reasons, and those set forth in the Petition for a Writ of Certiorari and Request for Stay, Ritchie respectfully requests that his application for a stay of execution be granted.

Respectfully submitted,

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