

CASE NO. _____ (CAPITAL CASE)

IN THE SUPREME COURT OF THE UNITED STATES

CHARLES RUSSELL RHINES,
Petitioner,

v.

STATE OF SOUTH DAKOTA,
Respondent.

On Petition for a Writ of Certiorari to
The Supreme Court of the State of South Dakota

APPENDIX A
IN SUPPORT OF
APPLICATION FOR AN EXTENSION OF TIME FOR THE FILING OF
PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF SOUTH DAKOTA

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Counsel of Record
*Member of the Bar of the Supreme
Court

*Counsel for Petitioner, Charles Russell
Rhines*

Dated: March 19, 2018

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *
STATE OF SOUTH DAKOTA,)
Plaintiff and Appellee,) ORDER
vs.) #28444
CHARLES RUSSELL RHINES,)
Defendant and Appellant.)

Appellant having served and filed a motion for relief from the circuit court's judgment in the above-entitled matter, and appellee having served and filed a response thereto along with a motion to file exhibits under seal, and appellant having served and filed a reply thereto, and Lambda Legal Defense and Education Fund having served and filed a motion for leave to file a brief of amicus curiae, and the Court having considered said motions, responses, and replies, and being fully advised in the premises, now, therefore, it is

ORDERED that Appellee's motion to file exhibits under seal is granted;

ORDERED that Appellant's motion for relief from the circuit court's judgement is denied. Appellant cites *Pena-Rodriguez v. Colorado*, ___ U.S. ___, 137 S. Ct. 855, 197 L. Ed. 2d 107 (2017), arguing that the jury improperly considered his sexual orientation in the penalty phase of his trial. Assuming, but not deciding, that this appellate Court has original jurisdiction to grant relief from a circuit court's final judgment under SDCL 15-6-60(b)(6) based on an

#28444, Order

alleged change in conditions, and assuming but not deciding that the constitutional rule articulated in *Pena-Rodriguez* is to be retroactively applied, this Court declines to apply *Pena-Rodriguez*. It is this Court's view that neither Appellant's legal theory (stereotypes or animus relating to sexual orientation) nor Appellant's threshold factual showing is sufficient to trigger the protections of *Pena-Rodriguez*; and it is

ORDERED that Lambda Legal Defense and Education Fund's motion for leave to file a brief of amicus curiae is denied as moot.


DATED at Pierre, South Dakota, this 2nd day of January, 2018.

BY THE COURT:



David Gilbertson, Chief Justice

ATTEST:


Clerk of the Supreme Court
(SEAL)

(Justice Janine M. Kern disqualified.)

PARTICIPATING: Chief Justice David Gilbertson, Justices Steven L. Zinter, Glen A. Severson and Steven R. Jensen.

STATE OF SOUTH DAKOTA
In the Supreme Court

I, Shirley A. Jameson-Fergel, Clerk of the Supreme Court of South Dakota, hereby certify that the within instrument is a true and correct copy of the original thereof as the same appears on record in my office. In witness whereof, I have hereunto set my hand and affixed the seal of said court at Pierre, S.D. this

2nd day of Jan, 20 18.


Clerk of Supreme Court

Deputy

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

JAN - 2 2018


Clerk