
In the Supreme Court of the United States

RYAN JAMES HOYT,

Petitioner,

v.

STATE OF CALIFORNIA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA SUPREME COURT

BRIEF IN OPPOSITION

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CAPITAL CASE
QUESTIONS PRESENTED

1. Whether the trial court violated petitioner's due process rights by granting the California State Bar's motion to quash a subpoena for disciplinary records regarding one of petitioner's trial attorneys.

2. Whether petitioner established a violation of his Sixth Amendment right to the effective assistance of counsel based on his trial attorney's purported conflict of interest.

DIRECTLY RELATED PROCEEDINGS

California Supreme Court:

People v. Hoyt, No. S113653, judgment entered January 30, 2020
(this case below).

In re Hoyt on Habeas Corpus, No. S217299 (pending).

Santa Barbara County Superior Court:

People v. Hoyt, No. 1014465, judgment entered February 7, 2003 (this
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STATEMENT

1. In an escalating dispute between a drug dealer and one of his sellers in 2000, the dealer enlisted petitioner Ryan Hoyt, his associate, in a scheme to kidnap the seller's half-brother, 15-year-old Nicholas Markowitz. Pet. App. 3. A few days after the kidnapping, the dealer grew worried about penal consequences if the kidnapping were discovered and decided to eliminate Markowitz. *Id.* Soon afterward, Hoyt acknowledged to an acquaintance that he and an accomplice had shot and killed Markowitz in Santa Barbara and had covered the body in a ditch. *Id.* at 10-11. Hikers then discovered Markowitz's body in a national forest near Santa Barbara. *Id.* at 12. Markowitz had been shot nine times with a fully automatic weapon. *Id.* at 13-14. Hoyt was arrested a few days after the discovery of the body and, after receiving *Miranda* admonitions and speaking with his mother, he informed jail officials that he wanted to be interviewed. *Id.* at 14. Hoyt told detectives that, with the incentive of erasing his own drug debt, he had been enlisted to kill Markowitz, and that he had killed and buried Markowitz. *Id.* at 15-16.

2. The district attorney of Santa Barbara County charged Hoyt with first-degree murder and kidnapping for ransom or extortion, and further alleged, as a special circumstance making the murder punishable by death, that the murder had been committed during a kidnapping. Pet. App. 2; see Cal. Penal Code §§ 187(a), 190.2(a)(17)(B). In November 2001, the jury found Hoyt guilty

as charged and, after a separate penalty trial, returned a verdict of death. Pet. App. 2; 17 Clerk's Transcript 3978-3986.

In February 2002—a few days prior to Hoyt's scheduled sentencing—his retained counsel, Cheri Owen, tendered her resignation from the California State Bar while disciplinary charges were pending against her. Pet. App. 92. Owen's co-counsel took over the case for a short time. *Id.* at 94. In the spring of 2002, Hoyt retained new counsel, Robert Sanger, to represent him. *Id.* at 94. The formal sentencing hearing was postponed until February 2003 to allow Hoyt's new counsel time to investigate and prepare a comprehensive motion for new trial. *Id.*

In September 2002, the new counsel subpoenaed State Bar records concerning Owen for the purpose of preparing the new-trial motion. Pet. App. 165, 168. The State Bar objected on grounds of statutory privilege. *Id.* at 149. Owen moved to quash the subpoena, arguing in part that disclosure would jeopardize her safety for cooperating in State Bar investigations of other attorneys and in Los Angeles County District Attorney investigations of non-attorneys. *Id.* at 157, 160. Hoyt's counsel argued that in camera review by the trial court of State Bar complaints lodged against Owen was necessary to help ascertain whether she had performed deficiently in Hoyt's case, whether she had diverted defense funds, and whether she had been ill or preoccupied with competing demands during the trial. *Id.* at 92, 146-148, 171-172. The trial court denied the request to produce and review the documents, explaining that

the question of whether Owen had performed competently depended on what she had done in Hoyt's case, not on complaints made in other cases. *Id.* at 91-93, 148.

Hoyt moved for a new trial, largely on grounds of alleged ineffective assistance by Owen. Pet. App. 94-95. He asserted, among other things, that Owen had been saddled with a conflict of interest, partly on account of a written agreement—dated more than two months after the jury's guilt and penalty verdicts—by which Hoyt had waived attorney-client privilege and had granted Owen literary rights to Hoyt's life story. *Id.* at 174-177. He also argued, again, that Owen had resigned from the State Bar to avoid disciplinary proceedings and that she had misused funds. *Id.* at 101-102, 152, 177. The trial court denied the motion. *Id.* at 119, 152-156. As to the question of the literary agreement and the alleged misuse of funds, the trial court explained that it saw no proof of prejudice. *Id.* at 109-111.

3. In a unanimous opinion authored by Justice Kruger, the California Supreme Court affirmed the judgment on automatic appeal. Pet. App. 2, 103. The court rejected Hoyt's claim that he was entitled to discovery of the State Bar records. *Id.* at 92-93. The court explained that the records were privileged under state law and that, because Hoyt had failed to show how State Bar complaints made by others would prove that Owen had acted incompetently in his case, Hoyt had not suffered any due process violation. *Id.* at 93-94. In upholding the trial court's denial of Hoyt's new-trial motion, the state supreme

court explained that Hoyt’s claim of ineffective assistance of counsel failed on appeal because the trial record, standing alone, did not show that Owen had performed incompetently in a way that prejudiced Hoyt. *Id.* at 96-102. The court also rejected Hoyt’s request to compel the trial court to “reconsider its handling” of his claims that Owen had been acting as an informant for the Los Angeles District Attorney and that she had diverted defense investigation funds. *Id.* at 103. The court ruled that the trial court had not abused its discretion by rejecting the claims because they were unsupported by the record and because, in any event, there was no showing of prejudice. *Id.*

4. While his automatic appeal was pending, Hoyt—represented by the Habeas Corpus Resource Center of California—filed a 433-page petition for a writ of habeas corpus in the California Supreme Court. Pet. 10 n.5. In proceedings related to that petition, the successor to the now-retired trial judge approved a subpoena for State Bar records pertaining to former attorney Owen, subject to a protective order. Order, *People v. Hoyt*, Santa Barbara Superior Ct. No. 1014465 (January 21, 2017). Hoyt’s habeas counsel then obtained 12,000 pages comprising those State Bar records. Pet. 9. Habeas counsel cites those records in arguing, in the state habeas petition, that Owen labored under a conflict of interest at his trial. *Id.* at 10. That petition is pending in the California Supreme Court.

ARGUMENT

Hoyt seeks review on the questions of whether he was unfairly denied access to or in camera review of State Bar records that allegedly could have proved that his trial attorney's interests conflicted with his own and whether a presumption of prejudice should arise from the purported conflict. Pet. i, 12-27. The California Supreme Court correctly rejected Hoyt's constitutional claims on the record that was before it on direct appeal. In any event, this petition presents an unsuitable vehicle for considering those claims: Hoyt has already obtained the records addressed by his denial-of-access claim. And he is presently using those records to litigate his conflict-of-interest claim in a pending state habeas proceeding. If the state court rejects that claim, Hoyt will have an opportunity to seek further review in this Court in the context of a proceeding where the record actually contains the disputed documents.

1. Hoyt first claims that the state courts unconstitutionally denied his request for access to or in camera review of State Bar records that, he posits, would have contained evidence that his retained trial lawyer labored under a conflict of interest. Pet. 12, 14-23. But Hoyt acknowledges that he now has been granted access to the State Bar records—indeed, to “over 12,000 pages of responsive documents.” *Id.* at 5-6. And he already has presented the records to the California Supreme Court, in support of conflict-of-interest and ineffective-assistance-of-counsel claims, in a pending petition for a writ of habeas corpus. *Id.* at 9-10 & n.5. Hoyt thus has already obtained the same

remedy—access to the records for use in proving his Sixth Amendment claims regarding Owen’s representation—that he seeks from this Court.

Hoyt responds that state habeas corpus proceedings will be “neither adequate nor effective to safeguard [his] trial rights.” Pet. 14. But he does not explain how habeas corpus affords less redress for Sixth Amendment claims than a direct appeal. The California Supreme Court has consistently recognized that “ineffective assistance of counsel claims are more appropriately decided in a habeas corpus proceeding.” Pet. App. 96-97; *see, e.g., People v. Rundle*, 43 Cal. 4th 76, 174 n.48 (2008). This Court takes the same general view. *See Massaro v. United States*, 538 U.S. 500, 504-505 (2003).

Despite Hoyt’s suggestion to the contrary (Pet. 3), the California Supreme Court has not barred judicial consideration of the State Bar records relating to Hoyt’s trial counsel. That court determined, in the context of reviewing Hoyt’s direct appeal, only that the trial court did not err in declining to consider or release the records over the State Bar’s privilege objection. Pet. App. 93-94. It never ruled that the records are necessarily or categorically irrelevant to Hoyt’s Sixth Amendment claims. Instead, it explained that Hoyt had “failed to show” how “complaints made by others about Owen’s performance as a lawyer . . . would bear on whether she committed prejudicial errors in her representation of defendant.” *Id.* at 94. Nothing in that explanation bars Hoyt from trying to make that showing in his pending state habeas proceeding based

on specific information in the State Bar records that have now been provided to him.

Indeed, the decision below took care to note that the State Bar records had been preserved for habeas proceedings. Pet. App. 93, n.13. Further, Hoyt’s petition states that the California Supreme Court now has “accepted,” under seal, an exhibit containing excerpts of those records as part of his pending state habeas corpus proceedings. Pet. 10, n.5. This reflects settled California law confining state court appellate review to matters that were part of the appellate record but allowing a petitioner to go beyond that record to support a Sixth Amendment claim advanced in a habeas proceeding. *See People v. Fayed*, 9 Cal. 5th 147, 212-213 (2020); *People v. Doolin*, 45 Cal. 4th 390, 429 (2009).

Hoyt also asserts (Pet. 12, 19-20) that the decision below conflicts with *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987). That is incorrect. *Ritchie* involved discovery of evidence indicating that the defendant might be innocent of the charged crime. The records at issue included interviews with the defendant’s own daughter—the victim of the charged sex crime—and previous reports by an unidentified source about the abuse of the defendant’s children. *Ritchie*, 480 U.S. at 43-44. Here, in contrast, Hoyt sought records pertaining to complaints made to the State Bar about his trial counsel’s conduct of other cases, in aid of a post-verdict inquiry into trial counsel’s performance. Hoyt did not identify any reason why the lower courts should have concluded that

those records were “material to guilt or punishment.” *Id.* at 57. In any event, there is no need to address that question now that Hoyt has been provided with the documents he originally sought.

2. Hoyt also contends (Pet. 23-27) that the state courts improperly rejected his Sixth Amendment conflict-of-interest claim without presuming that the alleged conflict was prejudicial under *Cuyler v. Sullivan*, 446 U.S. 335 (1980). He argues that federal circuit decisions conflict with each other on whether such a presumption applies outside the context addressed by *Sullivan*—a lawyer’s simultaneous or successive representation of clients with conflicting interests—and whether it extends to cases where a defense counsel is the subject of a criminal investigation. *Id.* at 3, 24-26. But this case does not present an opportunity for addressing any such conflict.

Even if it were assumed that *Sullivan* applies where a defense attorney is the subject of a criminal investigation by the prosecuting agency, the record in this appeal does not establish that predicate. Hoyt acknowledges as much when he complains that the trial court’s alleged error in denying access to the State Bar records resulted in the circumstance that Hoyt “lacked material evidence to show actual conflict”; and that, “[e]ssentially, the California courts held that [Hoyt] failed to show evidence of an actual conflict, while denying [him] review of *the* evidence from which he could make such a showing.” Pet. 27 (emphasis in original). The petition quotes statements by Hoyt’s trial attorney that she was involved in “investigations by the . . . Los Angeles

County district attorney.” *Id.* at 6. But those statements, by themselves, do not establish that the attorney was the subject of the investigations, or that the Santa Barbara County District Attorney—which was prosecuting Hoyt’s case—had any involvement.

Nor does the California Supreme Court’s resolution of Hoyt’s appeal foreclose consideration of his Sixth Amendment claims in habeas proceedings based on evidence beyond the appellate record. *See, e.g., Fayed*, 9 Cal. 5th at 212-213. The state supreme court held only that “the trial record alone”—a record that Hoyt acknowledges does not contain the evidence needed to show the conflict of interest he alleges (*see* Pet. 27)—did not establish a constitutional violation. Pet. App. 102-103. As noted above, *supra* pp. 6-7, California law specifically authorizes Sixth Amendment claims to be litigated, based on added facts, by way of a habeas petition. Now that Hoyt has obtained the State Bar records, he will be able to argue, in his pending state habeas petition, that those documents show ineffectiveness or a conflict of interest warranting a presumption of prejudice under the Sixth Amendment. If the state court ultimately rejects those claims, Hoyt may file a certiorari petition seeking to challenge that result based on the full record. There is no reason for this Court to review Hoyt’s presumption-of-prejudice theory prematurely, in the absence of any record establishing the alleged underlying conflict.

Finally, Hoyt overstates the degree of any tension in the federal circuits over the question he seeks to litigate. In *Reyes-Vejerano v. United States*, 276

F.3d 94, 99 (1st Cir. 2002) and *United States v. Stitt*, 552 F.3d 345 (4th Cir. 2008), for example, the courts never found an actionable conflict and never reached the presumption-of-prejudice question. In *United States v. Levy*, 25 F.3d 146 (2d Cir. 1994), defense counsel simultaneously represented both the defendant and a co-conspirator and was suspected of aiding the co-conspirator's attempted escape. And in *United States v. McLain*, 823 F.2d 1457, 1463-1464 (11th Cir. 1987), and *Thompkins v. Cohen*, 965 F.2d 330, 332 (7th Cir. 1990), defense counsel was under investigation by the same prosecutor who was prosecuting his client. Thus, even if the record here were sufficient for Hoyt to establish that his trial attorney was the subject of a criminal investigation by the Los Angeles district attorney, that would not create a square conflict with the cited cases.¹

¹ The amicus curiae brief in support of Hoyt proceeds from the unestablished premise that Hoyt's trial counsel in fact labored under the alleged conflict of interest.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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