

No. 19-8499

IN THE
Supreme Court of the United States

OCTOBER TERM, 2020

RYAN JAMES HOYT,
Petitioner,

v.

THE STATE OF CALIFORNIA,
Respondent.

CAPITAL CASE

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

**PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN
OPPOSITION TO PETITION FOR WRIT OF CERTIORARI**

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Petitioner files this reply to address three contentions in Respondent's Brief in Opposition.

I. The Trial Record Established the Predicate that Cheri Owen Labored Under a Personal Conflict of Interest.

Respondent argues that the conflict was not apparent in the trial record. (Opposition at 8-9.) Respondent is mistaken.

The trial court quashed Petitioner's subpoena for his resigned attorney Cheri Owen's State Bar records on state privilege grounds. At that time, the trial court had before it six "red flags" of a conflict of interest arising from Owen's personal interest in avoiding criminal investigation, disbarment, and insolvency:

- Owen asserted that her personal safety might be jeopardized by such discovery because she had been "integrally involved" as a confidential informant for another prosecutor and the State Bar *during* Petitioner's trial, which relationship she had previously hidden from the trial court and Petitioner. (Pet. App. I, p. 160.)
- Owen resigned from the State Bar with disciplinary charges pending, before Petitioner was formally sentenced to death, and without prior notice to the trial court or to Petitioner. (Pet. App. A, p. 92.)
- Owen withdrew from the capital representation without prior approval of the trial court or Petitioner's consent. (Pet. App. M, p. 202; *cf.* Cal. Code Civ. Proc., § 284.)
- Owen executed an exclusive literary rights and waiver of privilege agreement with Petitioner one day before she tendered her resignation from the State Bar, which was, by itself, a breach of trust and the duty of candor. (Pet. App. K, pp. 189-190.)
- Owen absconded with public monies that were authorized for the investigation of Petitioner's capital murder defense. (Pet. App. K, pp. 191-192.)

- Owen was too ill and distracted to litigate his trial defense. (Pet. App. J, pp. 165-173; Pet. App. K, pp. 174-188; *see also* Pet. App. E, pp. 120-133.)

This Court need not determine the floor below which a trial judge cannot fairly be expected to inquire into a personal conflict to find that the indicia of conflict before this trial judge triggered that duty. The amicus curiae brief is spot on because the premises of breach of trust, and of an apparent, if not conclusive, personal conflict of interest were established in the trial record and warranted discovery of the records and a presumption of prejudice.

II. The State Bar Records Contained Material Evidence of the Attorney's Personal Conflict of Interest.

Respondent argues that Petitioner's subpoena sought only evidence of Owen's "conduct in other cases," which would not shed significant light on her misconduct here. (Opposition at 3, 7.) Respondent is mistaken.

Petitioner's original subpoena sought "any and all documents pertaining to attorney Cheri A. Owen, who was admitted to the California State Bar on June 9, 1999, with state bar number 201893. The documents should include but are not limited to all notes, reports, complaints and investigative notes and reports." (Pet. App. L, p. 194.) Conclusive proof was in the hands of a state agency, the California State Bar. Indeed, it has recently emerged that the State Bar counsel commented that Owen's conduct was "especially egregious." No trial judge could truly gauge the extent of Owen's personal conflict of interest and breach of loyalty

in this case without reading the State Bar records which gave rise to that comment.

III. This Case is a Suitable Vehicle to Address Conflict of Interest Inquiry Duty and Presumption of Prejudice.

Respondent argues that this case is not a suitable vehicle because Petitioner Hoyt has “already obtained the records addressed by his denial-of-access claim.” (Opposition at 5.) Respondent is mistaken.

Unlike the typical habeas conflict of interest claim, this issue arose when the attorney resigned from practice while her client’s case was in the trial court. Successor counsel then raised that attorney’s personal conflict of interest, and the need for records in the hands of a state agency, as the basis for a new trial. Thus, Petitioner litigated the post-trial motion “to permit the trial court to avoid the potential error in the first place.” *Massaro v. United States*, 538 U.S. 500, 508 (2003). It is for such cases that this Court stated in *Massaro*, “[w]e do not hold that ineffective-assistance claims must be reserved for collateral review.” *Id.*

Habeas review cannot address whether the trial court erred by quashing the subpoena. That is why the proper remedy here is a rehearing of the new trial motion with consideration of this suppressed evidence by the trial court, not the state Supreme Court on discretionary habeas review. *Cf.* Opposition at 5-6.

This Court’s certiorari review is the proper vehicle to decide that the trial court did not meet its duty of inquiry into this attorney’s personal conflict of

interest, and that prejudice should be presumed in such cases of actual conflict as a needed prophylaxis for the right to counsel.

CONCLUSION

The petition for a writ of certiorari should be granted.

Dated: July 27, 2020

Respectfully submitted,



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