No. 21-6693

In the Supreme Court of the United States

JOEY ROGERS,

Petitioner,

v.

STATE OF LOUISIANA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
LOUISIANA SUPREME COURT AND COURT OF APPEAL, THIRD CIRCUIT

BRIEF IN OPPOSITION

JEFF LANDRY
Attorney General
ELIZABETH BAKER MURRILL
Solicitor General
SHAE MCPHEE
Deputy Solicitor General
J. TAYLOR GRAY*
Assistant Attorney General
**Counsel of Record*
Louisiana Department of Justice
1885 N. Third Street
Baton Rouge LA 70802
(225) 614-6867
GrayJ@ag.louisiana.gov

QUESTIONS PRESENTED

(1) In light of the unique facts of this case, did the state courts violate Petitioner Joey Rogers' due process rights by refusing to allow him to withdraw his guilty plea?

(2) Did the state courts violate this Court's well-established ineffective-assistance-of-counsel precedents?

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INTRODUCTION

Petitioner Joey Rogers was arrested and indicted for second-degree murder after he shot and killed Robert Butler. Rogers confessed to the murder. Prior to trial, Rogers' attorney engaged in plea negotiations and ultimately brokered a reduction of the charge to manslaughter. Rogers then pleaded guilty to manslaughter. However, prior to sentencing, he sought to withdraw his guilty plea—contending his counsel was ineffective and his plea was not made knowingly or voluntarily. The state district court denied this motion and sentenced Rogers to 20 years in prison (the minimum possible sentence for a crime subject to the firearm sentencing enhancement).

Rogers appealed, but the state intermediate appellate court denied relief. The Louisiana Supreme Court denied his writ application. Rogers now petitions this Court for a writ of certiorari.

The Court should deny Rogers' petition. He identifies no novel issue of federal or state law and he alleges no splits of authorities among state or federal courts. At most, Rogers is merely seeking error correction, and such requests are rarely granted by this Court.

In any event, the state courts did not commit any error for this Court to correct. Rather, they properly considered and rejected Rogers' motion to withdraw his guilty plea. His incapacity claim and his ineffective assistance claim are meritless and do not warrant this Court's review.

STATEMENT OF THE CASE

1. On August 10, 2011, authorities arrested Petitioner Joey Rogers for shooting and killing Robert Butler. Butler had been an acquaintance of Rogers' family for

many years. On the day of the killing, Rogers had been smoking "legal weed." Rogers went to Butler's home and shot him, killing him.

Authorities questioned Rogers about the killing. Rogers first implausibly claimed that an unknown man walked into Butler's home, shot him, and left. However, Rogers eventually confessed to committing the murder himself. He also made this confession to his attorney.[1] Rogers would later claim that Butler routinely abused him sexually, and that one of the investigating officers punched him in the jaw in order to force a confession. Neither allegation was ever corroborated.

2. On December 9, 2011, the State of Louisiana filed a bill of information charging Rogers with manslaughter.[2] Five days later, the grand jury returned an indictment charging him with second-degree murder.[3]

Years passed, and Rogers eventually pleaded guilty to manslaughter on August 4, 2015—pursuant to a plea agreement with the State. Before Rogers pleaded guilty, the State invoked the sentencing enhancement found in La. C.Cr.P. art. 893.3(E)(1)(a), elevating the minimum sentence—as the court explained on the record to Rogers—to a mandatory 20 years. After accepting the guilty plea, the district court delayed imposing a sentence so Rogers could prepare for a sentencing hearing. On March 21, 2016, the case was recused to the Louisiana Attorney General's office.

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[1] A hearing to vacate the guilty plea, at which Petitioner's attorney was called to testify, resulted in the attorney-client privilege being waived.

[2] *See* La. R.S. 14:31.

[3] *See* La. R.S. 14:30.1.

3. The proceedings were subject to multiple delays over the following year, but on June 12, 2017, Rogers, with new counsel, moved to vacate his guilty plea. According to Rogers, he lacked the requisite intellectual capacity to plead guilty and his previous attorney had failed to protect his rights as a defendant.

The district court held a hearing on Rogers' motion to vacate the guilty plea on September 26, 2017. The court heard at length from Rogers' counsel, Nancy Dunning, to determine whether she had provided ineffective assistance of counsel to Rogers. The court also received testimony from an expert witness, Dr. Loretta Sonnier, regarding Rogers' competency at the time he submitted his plea.

Dunning discussed her entire representation of Rogers—pre-trial to guilty plea. Having met with him approximately 10 times, she knew he had a hearing problem, as well as a potential learning disability. She explained that she has a background in teaching intellectually disabled individuals, and it was her view that he always understood what she was explaining to him. Additionally, she had represented several thousand defendants over a 20-plus-year career, and she claimed to be adept at spotting disability. She described Rogers as "diminutive" in their conversations, but she never considered him to be incompetent, in spite of any potential learning disability. She testified that, to whatever extent he lacked understanding of some issue or fact, he absorbed information and concepts as time went on, and he was able to assist her in representing him.

It was Dunning's view that based on the existence of the confession, if Rogers went to trial he would be convicted of second-degree murder and receive a mandatory

life sentence. Additionally, Rogers confessed to her that he shot the victim, and he did not indicate to her that it was any sort of heat of passion killing. Therefore, she intended to procure a plea offer for manslaughter. She then planned emphasize her client's diminutive personality as mitigation in the sentencing phase. To that end, Dunning had sought out at least one expert, a psychologist, but that expert declined to take the case.

At a subsequent meeting, the prosecutor made a plea offer for manslaughter with a sentence of 40 years. Dunning made a counteroffer of 10 to 15 years, but the prosecutor rejected it. He did, however, withdraw the 40-year sentence. Dunning later sent a letter to Rogers apprising him of the details of the plea negotiations and advising him that accepting an offer of manslaughter was in his best interest. She had previously explained the nature of plea agreements to Rogers, and she had provided details about parole eligibility for violent crimes.

Rogers accepted the plea offer of a reduction to manslaughter. According to Dunning, the prosecutor served her with a notice invoking of La. C.Cr.P. art. 893.3(E)(1)(a), which would result in a mandatory minimum of 20 years for the manslaughter conviction. Dunning explained to Rogers what the notice meant and how it affected the sentence he would receive.[4] Since a 20-year sentence was preferable to mandatory life if Rogers went to trial on the murder and was convicted (which, as she explained at length, she believed was very likely), Dunning intended

[4] Dunning now claims that she does not believe Rogers had an adequate comprehension of those effects, but this contradicts her other testimony that Rogers could, in fact, comprehend such issues when she explained them.

to go through with the plea and seek a downward departure under La. C.Cr.P. art. 893.3(H). Prior to accepting the plea, the district court engaged in a colloquy with Rogers, which included the following questioning:

> Q. They've imposed the provisions of 893.3…Notwithstanding any other provision of law to the contrary, if the defendant commits a felony with a firearm as provided for in this Article, and the crime is considered a violent felony as defined in this paragraph, the court shall impose a minimum term of imprisonment of ten years. In addition, if the firearm is discharged during the commission of such violent felony, the court shall impose a minimum term of imprisonment of twenty years.
>
> So if the facts turn out that you used a firearm and that was the weapon that killed the person, then a minimum sentence is twenty, the maximum is forty. You understand that?
>
> A. Yes, sir.
>
> Q. A violent felony for the purpose of this paragraph shall be second degree sexual battery, aggravated burglary, carjacking, armed robbery, second degree kidnapping, manslaughter, or forcible rape. Manslaughter is your crime. You understand that?
>
> A. Yes, sir.
>
> * * *
>
> Q. Ms. Dunning is your lawyer. She's been appointed?
>
> A. Yes, sir.
>
> Q. Are you satisfied with her representation?
>
> A. Yes, sir.
>
> * * *
>
> Q. …You are, in fact, going to incriminate yourself by saying that you did whatever [the prosecutor] is going to put in as a factual basis. You understand?

A. Yes, sir.

Q. You authorize the Court to sentence you anywhere between twenty and forty years. That's the range. Do you understand?

A. Yes, sir.

Dr. Loretta Sonnier testified that she administered the MacArthur Assessment for Competency to stand trial. After her testing and questioning of Rogers, she could not conclude that he was incompetent to stand trial or enter the guilty plea. At most, she suggested that Rogers "was more similar to someone that is incompetent to stand trial than someone that is competent. She indicated that while she believed Rogers may have been incompetent, he could be made competent with the right explanation of things.[5]

Dr. Sonnier had no knowledge of the specific manner in which Ms. Dunning communicated the charges or plea arrangement to Rogers. Instead, her administration of the McArthur Assessment involved ascertaining his understanding of the proceedings from memory, almost two years later. Furthermore, she testified that Rogers could understand the proceedings, past and present, because his current counsel had worked with him to make sure he did. However, it was apparent that, without any knowledge of Dunning's preparation with Rogers prior to the plea, Dr. Sonnier could not offer any sort of conclusion about whether he did or did not understand the proceedings at that earlier point in time.

[5] Dunning, for her part, claims she did just that. ("Dr. Sonnier concludes that he was incompetent under the circumstances, but that he could be made competent or become competent if somebody other than myself, apparently, represented him and explained things to him in terms that he could understand. But I did that.").

The district court questioned Dr. Sonnier about Rogers' ability to understand the proceedings, the nature of the charge, and the plea, under the factors of *State v. Bennett*, 345 So. 2d 1129 (La. 1977):

> Q. …Do you find that Mr. Rogers understands the nature of the charge and can appreciate the seriousness?
>
> A. Yes.
>
> Q. That he can do that?
>
> A. Yes.
>
> Q. Whether he understands what defenses are available?
>
> A. Hmm –
>
> Q. Now you stated in your report that if you go down to his level and explain it to him, he can get by.
>
> A. So does he understand the defenses available? I believe he can understand, that's true. With the right explanation, that he could.
>
> Q. Whether he can distinguish a guilty plea and a not guilty plea and understand the consequences of each. Didn't he do that in your questioning?
>
> A. He did.
>
> Q. Whether he has an awareness of his legal rights?
>
> A. He has an awareness.
>
> Q. Whether he understands the range of possible verdicts and the consequences of a conviction?
>
> A. I would say yes.
>
> * * *
>
> Q. Can he assist counsel?
>
> A. If given the right information when things are explained to him, he can assist counsel.

> Q. Facts to consider in determining accused's ability to assist in his defense include whether he is able to recall and relate the facts pertaining to his actions and whereabouts at certain times.
>
> A. So I would say that I did not fully assess that factor.

The district court concluded there was no reason to believe Rogers was induced or coerced into the guilty plea. Furthermore, as to his alleged intellectual deficiencies, the district court noted that, based on the testimony of Dr. Sonnier, Rogers possessed at least the minimum capacity to enter a knowing and voluntary guilty plea under Louisiana law.

On February 14, 2018, the district court held a sentencing hearing. Rogers called several witnesses in his favor, including: Warren Gregoire, Jr., a circumstantial witness to the murder; Larry Holland, a police officer involved in the investigation; Ashley Irby Hammons, the lead detective on the case; and Devon White, the nephew and neighbor of the victim. And Rogers filed a request for a downward departure from the minimum mandatory sentence. *See* La. C.Cr.P. art. 893.3(H).

The district court denied Rogers' request for downward departure and sentenced him to 20 years' imprisonment. When imposing the sentence, the district court explained: (1) while La. C.Cr.P. art. 893.3(H) allows the court to deviate from the mandatory minimum if the sentence would be excessive, the court was not inclined to do so because of the benefit Rogers received by having a life sentence taken off the table via the plea agreement; and (2) having considered all of the mitigating and aggravating circumstances, this particular case did not warrant a downward departure in any event. In light of the mitigating circumstances, however, the district

court chose not to sentence Rogers above the minimum 20-year sentence. At that time, defense counsel filed a motion to reconsider sentence, which the district court denied; defense counsel also filed a motion for appeal, which the district court granted.

4. On May 26, 2021, the Third Circuit Court of Appeal affirmed the rulings of the trial court. Pet. App. A1.[6] First, the Third Circuit held, "Defendant did not meet the requisite burden of showing that he lacked capacity such that the district court should have vacated his guilty plea." *Id.* at A9. Second, noting that one of the assignments of error was implicitly an ineffective assistance of counsel claim, the Third Circuit found that it "cannot say plea counsel's overall performance was deficient pursuant to *Strickland* [*v. Washington*, 466. U.S. 668 (1984)]." *Id.* at A11. The court also noted:

> [Dr. Sonnier] only assessed about half of the *Bennett* criteria. It is apparent from the record that Sonnier did not assess Defendant in light of this state's prevailing legal standards. Thus, she was unable to address the district court's questions regarding Defendant's capabilities in light of *Bennett* . . . . Dr. Sonnier focused on a *medical* assessment of Defendant, and did not provide an opinion that was pertinent to the governing *legal* standard, i.e., *Bennett*.

Id. at A9. The Third Circuit then held:

> Looking to the record of the plea itself, there is no indication in the record that anything was amiss or that the Defendant did not understand the proceedings. . . . Having observed Defendant during the plea hearing and heard the testimony at the motion to vacate the plea, the district court was within its discretion to deny the motion. Current counsel notes that the prosecutor invoked La.Code Crim.P. art. 893.3 requiring a twenty-year minimum sentence, after the plea deal was signed. However . . . the district court addressed this issue in the ruling, noting it discussed fully with Defendant and his plea counsel the effects

[6] *Accord State v. Rogers*, 2020-504 (La. App. 3 Cir. 5/26/21), 319 So.3d 405.

> of the article 893.3 enhancement on his sentence during the plea colloquy. Therefore, we find Defendant has failed to establish that he lacked the mental capacity to understand the plea, or that plea counsel's actions hampered his understanding of the plea.

Id. at A11–14. Finally, the Third Circuit pointed out that the district court "considered the sentence to be an agreed-upon sentence as part of the plea bargain which acknowledged the mandatory minimum imposed be La.Code Crim.P. art. 893.3." *Id*. at A15.

Rogers filed a writ application with the Louisiana Supreme Court, which was denied on October 1, 2021. Pet. App. B1.[7]

5. Rogers now seeks a writ of certiorari from this Court. He again raises the issues of whether the state district court properly denied his motion to withdraw guilty plea and whether accepting his guilty plea violated his due process rights.

REASONS FOR DENYING THE PETITION

I. ROGERS SEEKS ERROR CORRECTION.

Rogers argues that the state courts misapplied well-settled constitutional jurisprudence in denying his request to withdraw his guilty plea. Specifically, Rogers contends that the state district court misapplied this Court's precedents that set standards for measuring the competency of a criminal defendant to plead guilty. *See* Pet. 9 (citing *Godinez v. Moran*, 509 U.S. 389 (1983); *Parke v. Raley*, 506 U.S. 20, 28–29 (1992); *Westbrook v. Arizona*, 384 U.S. 150 (1966)). Rogers also contends that the state courts misapplied this Court's ineffective-assistance-of-counsel precedents. *See* Pet. 11–18 (citing *Padilla v. Kentucky*, 559 U.S. 356, 373 (2010); *Lafler v. Cooper*, 566

[7] *Accord State v. Rogers*, 2021-0885 (La. 10/1/21), 324 So.3d 1052.

U.S. 156, 165 (2012); *Strickland v. Washington*, 466 U.S. 668 (1984); *Garza v.* Idaho, 139 S. Ct. 738 (2019); *Hill v. Lockhart*, 474 U.S. 52, 58, 59 (1985)).

Nowhere does Rogers contend that this Court's precedents are unclear or in need of refinement. Rogers' petition identifies no split of lower court authority—nowhere does he argue that the Louisiana courts rendered a decision that conflicts with a decision of a United States court of appeals or any other State's court of last resort. His claims are fact-bound and unlikely to recur.

The state courts correctly addressed Rogers' claim of incompetency to stand trial and assist in his defense, and they did not err by denying his request. But even if the state courts *did* get it wrong on this unique set of facts, Rogers' petition amounts to, at most, a request for error correction. And this Court is not a court of error correction.

1. The crux of the petition—whether the state courts committed error by denying Rogers' motion to withdraw his guilty plea because of his alleged incapacity—is meritless. The state courts fully traversed the claims of Rogers' incapacity and his trial counsel's deficient performance, as described in the opinion of the Louisiana Third Circuit Court of Appeal. Pet. App. A1. The state court correctly determined that Rogers failed to carry his burden. *Id*. at A9, A14.

In making this determination, the state courts correctly applied the law. First, contrary to Rogers' allegation, the district court properly weighed the factors under *State v. Bennett*, 345 So.2d 1129 (La. 1977). Rogers, on the other hand, alleges that the district court erroneously applied the M'Naghten test as to sanity at the time of

the offense.[8] This is simply not true. As the state district court explicitly stated during the testimony of Dr. Sonnier, "We have the *Bennett standard and we have the M'Naghten* standard. We're not talking about M'Naghten. . . . We're talking about *Bennett*." Rogers' argument is at best a misinterpretation of the issues raised at the hearing on the motion to withdraw the guilty plea (which dealt exclusively with Rogers' competency to stand trial, assist in his defense, or enter a guilty plea). In either case, Rogers is incorrect, and this allegation is meritless.

Additionally, the state courts properly applied *Strickland v. Washington*, 466 U.S. 668 (1984). As the Louisiana Third Circuit Court of Appeal stated in its analysis: "To obtain relief under *Strickland*, a defendant must show first that his counsel's performance was deficient and second, that said deficient performance improperly prejudiced his case." Pet. App. A9–10. As the Third Circuit then pointed out:

> It was not unreasonable for Defendant's plea counsel to believe Defendant had a strong chance of being convicted of second-degree murder, which would have subjected him to the possibility of life imprisonment. Seen in this light, plea counsel's strategy of mitigation appears reasonable and falls under the aegis of trial strategy. Thus, we cannot say plea counsel's overall performance was deficient pursuant to *Strickland*. Faced with a confession which she apparently believed to be admissible and having reason to believe Defendant was factually guilty, plea counsel was logically justified in adopting a strategy of attempting to mitigate the ultimate sentencing term.

Pet. App. A11. That approach is manifestly consistent with this Court's precedent. *See Strickland*, 466 U.S. at 688 ("In any case presenting an ineffectiveness claim, the

[8] Also known as the "McNaughton Test" it, generally speaking, seeks to assess insanity of a person at the time of the offense by analyzing whether the individual was able to discern right from wrong. In Louisiana, it is codified in La. R.S. 14:14 ("If the circumstances indicate that because of a mental disease or mental defect the offender was incapable of distinguishing between right and wrong with reference to the conduct in question, the offender shall be exempt from criminal responsibility.").

performance inquiry must be whether counsel's assistance was reasonable considering all the circumstances."). The state courts have certainly not run afoul of other precedent by this Court cited in the petition, and Rogers has made no showing otherwise. Rogers' invocation of opinions such as *Padilla*, *Lafler*, *and Garza*, *supra*, simply have no application to the instant case. And counsel's performance in advising Rogers on the plea agreement, which the state courts correctly determined to rise above an objective standard of reasonableness, meets the *Strickland* standard of guilty pleas, as delineated in *Lockhart*, *supra*.

It is clear from the face of the petition that the state courts properly applied the relevant law and jurisprudence in denying Rogers' motion and constitutional claims. Therefore, the petition is meritless and this Court should deny certiorari.

2. Even if the state courts misapplied constitutional jurisprudence as Rogers contends, granting certiorari would amount to error correction. And this Court is "not a court of error correction." *Martin v. Blessing*, 134 S. Ct. 402, 405 (2013) (Statement of Alito, J., respecting the denial of certiorari); *see Cavazos v. Smith*, 565 U.S. 1, 11 (2011) (Ginsburg, J., dissenting) (quoting E. Gressman, K. Geller, S. Shapiro, T. Bishop, & E. Hartnett, Supreme Court Practice § 5.12(c)(3), p. 351 (9th ed. 2007)); Supreme Court Rule 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of . . . the misapplication of a properly stated rule of law.").

Rogers cannot establish either that the *Bennett* criteria to determine competency—or the state courts' application of it—conflicts with any jurisprudence of this Court or the United States courts of appeals. Moreover, the *Strickland*

standard is clear, and Rogers identifies no split of authority regarding the error he alleges the state courts to have committed. This Court should not grant certiorari to consider these issues.

II. NONE OF ROGERS' OTHER ARGUMENTS WARRANT REVIEW.

Beyond his claims regarding his guilty plea and effectiveness of counsel, Rogers raises a few other issues, none of which merits review.

1. Rogers argues that his counsel forced him to plead guilty with "coercion and inducements." Pet. 25. However, viewing his counsel's performance through the lens of *Lee v. United States*, 137 S. Ct. 1958 (2017), Rogers makes no showing that he received erroneous or untrue information inducing him to plead guilty. Rather, the fact is that Rogers was facing a mandatory life sentence for murder (to which he confessed), and his attorney brokered a reduction to manslaughter. Rogers ultimately received a 20-year sentence, and the district court explained the 20-year minimum to Rogers before he pleaded guilty. As a result, it is difficult to see how Rogers was induced or coerced into pleading guilty against his best interest. Rather, the opposite is true: Rogers avoided a life sentence, due *only* to his counsel's engagement in plea negotiations.

Once again, the state courts committed no error by rejecting this argument. Furthermore, there is no split of authority on this issue—at least Rogers identifies none—and so there is no reason to grant review.

2. Finally, Rogers argues that his counsel was ineffective for failing to object to the so-called violation of the plea agreement by the State. Pet. 31. It is simply not true that the prosecutor violated a plea agreement with Rogers at some point during

negotiations. Counsel for Rogers and the State brokered an agreement to a reduction in charge to manslaughter, which carries a 40-year maximum sentence. No sentence was ever agreed upon. Prior to any plea taking place, the State informed counsel that it would be seeking to enforce the 20-year minimum sentencing enhancement associated with the use of a firearm. Prior to any plea agreement, Rogers was informed of this and counseled regarding its implications. Furthermore, the district court questioned Rogers in detail regarding the 20-year minimum, and the court was satisfied that he understood. The notion that the State "violated" the plea agreement is meritless.

In any event, this argument is fact-based and does not merit this Court's review. *See* Supreme Ct. R. 10.

CONCLUSION

The State of Louisiana respectfully asks the Court to deny Rogers' petition for a writ of certiorari.

Respectfully submitted,

/s/ J. Taylor Gray

JEFF LANDRY
Attorney General
ELIZABETH BAKER MURRILL
Solicitor General
SHAE MCPHEE
Deputy Solicitor General
J. TAYLOR GRAY*
Assistant Attorney General
**Counsel of Record*
Louisiana Department of Justice
1885 N. Third Street
Baton Rouge LA 70802
(225) 614-6867
GrayJ@ag.louisiana.gov