No. 25-5096
(CAPITAL CASE)

IN THE
Supreme Court of the United States

CHRISTOPHER JOHN SPREITZ, PETITIONER,

v.

STATE OF ARIZONA, RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

AMY P. KNIGHT
Counsel of Record
JOHN R. MILLS
JACK MALSIN
PHILLIPS BLACK, INC.
1721 Broadway, Suite 201
Oakland, CA 94612
(888) 532-0897
a.knight@phillipsblack.org

DAVID EUCHNER
ERIN SUTHERLAND
PIMA COUNTY PUBLIC DEFENDER'S OFFICE
33 N. Stone Ave., 21st Floor
Tucson, AZ 85701

Counsel for Christopher John Spreitz

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INTRODUCTION

The central truth of this case—that the court below and the State here refuse to acknowledge—is that Arizona can choose to cure its *Eddings* error in various ways: (1) with a new independent review as part of the direct appeal, in which case the record is closed but intervening changes in the law must apply, or (2) as collateral review, where the court must consider both the existing collateral review record and any relevant extra-record mitigating evidence a defendant offers. Either way, it must conduct review on an individualized, case-by-case basis, determine what weight to give each piece of mitigating evidence, and cannot assign the mitigating evidence minimal weight in the abstract based on precedent rather than assessing the case and defendant before it.

Arizona cannot mix and match, which it has done here. If the decision stands, Arizona will be able to avoid both applying current precedent and considering new evidence, all while extending the error that precipitated the need for this remedy in the first place.

REASONS FOR GRANTING THE PETITION

I. A DE NOVO ASSESSMENT OF A CAPITAL SENTENCE REQUIRES CONSIDERATION OF ALL MITIGATING EVIDENCE IN THE RECORD IN LIGHT OF CURRENT UNDERSTANDING

A. If Arizona Chooses to Cure Its *Eddings* Error in a Collateral Proceeding, It Must Apply the Rules Applicable in Collateral Proceedings

Arizona has failed to address a critical fact: it chose to make this a collateral proceeding rather than part of the direct appeal proceeding. Petitioner has neither claimed it is unconstitutional to cure an *Eddings* error via a "new independent review," nor that the cure cannot be provided by an appellate court. This Court has already said that both of those avenue are acceptable in *McKinney v. Arizona*, 589 U.S. 139 (2020), and Petitioner does not dispute that. Rather, the problem is that Arizona explicitly chose to, indeed, fought in this Court for its right to, classify this as a collateral proceeding, and yet has now refused to treat it as such.

The State never acknowledges that it made that choice, nor that there is a difference between direct appeal and collateral review. The *McKinney* Court held that Arizona could cure this error "in collateral proceedings as appropriate and provided under state law." 589 U.S. at 147. Arizona law does not provide for collateral review in a criminal proceeding in any procedure that is necessarily limited to the trial record. Instead, collateral review by its very nature contemplates extra-record evidence. *See, e.g., State v. Allen*, 220 P.3d 245, 249 (Ariz. 2009) ("[S]uch claims require evidence outside the record for resolution and therefore must be raised in a

Rule 32 proceeding."); *State v. Spreitz*, 39 P.3d 525, 526 (Ariz. 2002) (describing prior Arizona practice of requiring claims of ineffective assistance of counsel that arise during direct appeal to be filed separately in a collateral proceeding where evidence can be taken, which can then be consolidated for review with the direct appeal); *see also* Ariz. R. Crim. P. 32.3(b) ("If a court receives any type of application or request for relief—however titled—that challenges the validity of the defendant's conviction or sentence following a trial, it must treat the application as a petition for post-conviction relief."). Arizona had the option to treat this review as part of the direct appeal, where the record would be closed. But now, having chosen to conduct this review in a posture that accommodates additional evidence, it cannot, consistent with *Eddings,* close the door to relevant mitigating evidence.

Thus, when the State argues that applying *Eddings* would "require[] consideration of newly discovered post-trial mitigation evidence in every capital case" and that "the Arizona Supreme Court would need to accept presentation of new evidence in order to independently review a death sentence," (BIO at 20–21), it is missing a crucial point: that the requirement to consider new evidence only applies if the State chooses to use, for remedying its constitutional error, a procedure that contemplates such evidence.

It has done so here, and thereby avoided the need to apply intervening changes in the law. If the State does not wish to accept new evidence in a review, it can conduct that review on direct appeal (where the original constitutionally faulty review

occurred) with a closed record, and apply new rules of law—including *Ring v. Arizona*, 536 U.S. 584 (2002)—that came to be in the interim. Or, it can declare the direct appeal over, treat this as collateral review, and consider the evidence presented. But it cannot have it both ways—a closed record like an appeal *and* the law frozen in 1998 like collateral review.

Similarly, the State's complaint that applying *Eddings* would require appellate courts to "become initial triers of fact" (BIO at 20) arises only because Arizona decided to make this a collateral proceeding but assign the task to an appellate court. That was an odd choice. Perhaps in recognition that appellate courts are ill-equipped to take new evidence, Arizona typically requires collateral proceedings to begin in the trial courts, even in capital cases. But it is Arizona's choice to make.

Having ducked the central issue, Arizona wrongly suggests this issue was already settled in *McKinney*. To be clear: while this Court did say Arizona was not required to conduct a full re-sentencing, this Court has never decided, in *McKinney* or anywhere else, the question of what evidence a state court must consider in conducting a re-weighing it has chosen to classify as collateral review. The Arizona Supreme Court has, on multiple occasions, refused to consider new evidence offered for the first time in that proceeding, but this Court has not decided the constitutionality of that restriction, nor has it ever addressed whether the re-weighing court, no matter what type of proceeding the state chooses, must consider all evidence that is *already* in the record from earlier collateral proceedings. The fact

that the Arizona Supreme Court has imposed this restriction does not make it constitutional.

Additionally, this is not a question of whether the state followed its own law (although failure to do that would violate defendants' right to procedural due process). It is a question of whether that law that it continues to follow—and that some other states have also followed, as discussed *infra*—runs afoul of the Eighth and Fourteenth Amendments. Arizona's repeated and incorrect insistence that it does not, in a series of death penalty cases, is a good reason to intervene.

B. This Case Squarely Implicates the Circuit Split on Evidence to Be Considered When Remedying a Non-Evidence-Related Error in a Capital Sentencing

As for the circuit split, Arizona has identified ways in which the implicated cases are not identical to this case, but it cannot distinguish away the core legal principle in each case: what evidence must be considered by a court reconsidering which sentence to impose following an error at sentencing that did not affect what evidence was presented? In an "independent review," just as in a sentencing or re-sentencing, the court determines "whether, based on the record before [it], [the Court] believe[s] that the death penalty should be imposed." *State v. Carlson*, 48 P.3d 1180, 1197 (Ariz. 2002); *see also State v. Spreitz*, 945 P.2d 1260, 1278 (Ariz. 1997) (court "examined the entire record to weigh and consider the aggravating and mitigating circumstances[.]"). It is that activity, not the label, that raises this question.

In *Sivak v. State*, 731 P.2d 192, 194 (Idaho 1986), the error did not affect what evidence was presented at the sentencing hearing; it was in what the court did with that evidence. The Idaho Supreme Court explained that in light of *Lockett* and *Eddings*, it was error to refuse in the proceeding on remand to hear new, additional mitigation evidence—including evidence that did not even exist at the time of the first hearing. *Id.* at 196–98. As Arizona points out, *Creech v. Arave*, 947 F.2d 873 (9th Cir. 1991), *rev'd in part on other grounds sub nom. Arave v. Creech*, 507 U.S. 462 (1993), raised the same question in a federal habeas proceeding. BIO at 15–16. The Ninth Circuit, like the Idaho Supreme Court, believed there was "no rational basis for distinguishing the evidence of a defendant's good conduct while awaiting trial and sentencing, and evidence of a defendant's good conduct pending review of a death sentence which is vacated on appeal." 947 F.2d at 881–82 (9th Cir. 1991).

The Sixth Circuit in *Jackson v. Cool*, was even more explicit. There, the problem again was not in the presentation of the mitigating evidence, but rather in the judge's unethical contact with the prosecution in the preparation of the sentencing opinion. 111 F.4th 689 (6th Cir. 2024). On remand, the judge refused to consider additional proffered mitigating evidence, and instead "resentenced Jackson based on the stale, ten-year-old mitigation record." *Id.* The Ohio court had ruled that "[n]o binding authority holds that the Eighth Amendment requires a resentencing judge to accept and consider new mitigation evidence at a limited resentencing when the defendant had the unrestricted opportunity to present mitigating evidence during

his original mitigation hearing." *Id.* at 703. The Sixth Circuit deemed that contrary to and an unreasonable application of *Lockett* and *Eddings*. *Id.*

Thus, all three courts, including the Circuit that covers Arizona, held the Eighth Amendment requires the consideration of whatever relevant mitigating evidence was offered in a new proceeding to choose between a life and death sentence even where the prior proceeding had not unlawfully restricted the presentation of evidence.

The other side of the split says exactly what Arizona says: that where the error in sentencing did not affect what evidence was presented, there is no need to consider any additional evidence when re-imposing a sentence. In *State v. Chinn*, there was a sentencing jury, which recommended death after hearing all the evidence; the error occurred in the judge's "performing his independent review" before imposing a final sentence. 709 N.E.2d 1166, 1173 (Ohio 1999), *cert. denied*, 528 U.S. 1120 (2000). The Court ruled that where there was no restriction on the introduction of mitigating evidence, *Lockett* did not require the consideration of anything else in a re-do of the imposition of sentence. 709 N.E.2d at 1180–81. The Supreme Court of South Dakota said the same in *State v. Berget,* 853 N.W.2d 45 (S.D. 2014), and further explained that *this* Court "has not determined . . . that a capital defendant has a categorical constitutional right to introduce new mitigation evidence discovered after a sentencing hearing in which the defendant was given the opportunity to present all mitigation he evidence he desired," nor "whether a remand for a *limited* resentencing

in a capital case that effectively excludes such newly discovered mitigation evidence is constitutionally invalid," but that "lower courts have attempted to fill that void," with authorities on each side. 853 N.W.2d at 58. In other words, *Berget* itself recognized the split, then sided with Ohio and Arizona. In its Brief in Opposition at 18, Arizona even identified an additional state on its side the split that also recognizes the conflict: Alabama. *See Keaton v. State*, 375 So.3d 44, 146 (Ala. Crim. App. 2021) ("Like the Ohio Supreme Court and the South Dakota Supreme Court, we conclude that Keaton's reliance on *Skipper* and *Davis* [*v. Coyle*, 475 F.3d 761 (6th Cir. 2007)] is questionable."). There is no denying that Idaho and the Sixth and Ninth Circuits have resolved this same issue in direct conflict with Ohio, South Dakota, Alabama, and now Arizona.

The State then suggests this Court should deny certiorari because it has done so before when the same question has arisen, asserting this same conflict, in cases from Alabama and Ohio. BIO at 18–19. That simply demonstrates that the issue has continued to recur, and the split is deepening. That is strong reason to grant certiorari.

II. ARIZONA CONTINUES TO IMPOSE A CAUSAL NEXUS REQUIREMENT

Arizona concedes that under *Eddings,* it cannot adopt "objective rules" that "preclude the sentencer from giving effect to the mitigating evidence." BIO at 23–24. Thus, the State appears to agree that the Arizona Supreme Court must not minimize

categories of mitigating evidence as a matter of law. Yet that is precisely what occurred here.

Throughout its opposition, Arizona seeks to recast Mr. Spreitz's request for Eighth Amendment-mandated individualized consideration as a complaint that the Arizona Supreme Court gave insufficient weight to his mitigating evidence. That grossly misreads the Petition. Mr. Spreitz's request is for this Court to require the Arizona Supreme Court to individually assess the evidence in mitigation presented in this case, without treating any category of evidence as having de minimis weight as a matter of law. In other words, the constitutional infirmity is not in the weight afforded, but in how the court below determined how much weight to afford.

In declaring that the evidence was entitled to little weight, the Arizona Supreme Court did not simply explain its impact in this case; it cited its pre-*McKinney* jurisprudence for the legal proposition that a causal connection to the crime is required for mitigating evidence to be given anything beyond de minimis weight. *See, e.g.,* App. 11a ("However, '[s]ubstance abuse and mental health issues are entitled to little weight when there is no connection to the crime . . .'") (quoting *State v. Poyson*, 475 P.3d 293, 298 (Ariz. 2020) (in turn citing *State v. Prince*, 250 P.3d 1145 (Ariz. 2011)); App 13a–14a ("However, we afford such a mitigating circumstance minimal weight 'absent evidence tying it to the crime.'" (quoting *State v. McCray*, 183 P.3d 503, 511 (Ariz. 2008)). Thus, the Arizona Supreme Court has

extended the very *Eddings* violation that was the origin of need for a new de novo sentencing.

Remarkably, the Arizona Supreme Court even assigned little weight to Mr. Spreitz's youthfulness. App. 9a–11a (limiting consideration to general "immaturity"). That decision defies this Court's jurisprudence recognizing that, among other things, youth are far less able to make rational decisions and consider consequences, providing a clear "nexus" to nearly any offense. *See*, *e.g.*, *Graham v. Florida*, 560 U.S. 48, 68 (2010) ("[P]arts of the brain involved in behavior control continue to mature through late adolescence."). Arizona does not attempt to defend that defiance, and it is reason enough on its own for the Court to intervene.

As amici explain, Arizona's causal nexus test "continues to deprive capital defendants of their Eighth Amendment right to an individualized sentencing" and affects capital cases in many contexts beyond the Arizona Supreme Court's de novo independent review. Amicus Br. at 20. If the Court does not grant review, capital cases in Arizona will be implicated from investigation through post-conviction adjudication of any claim regarding sentencing error. And those cases will likely again face reversal at the Ninth Circuit because of Arizona's continued defiance of this Court's precedents.

CONCLUSION

For the foregoing reasons, as well as those in Mr. Spreitz's Petition, he requests the Court grant his petition.

Respectfully submitted,

AMY P. KNIGHT
Counsel of Record
JOHN R. MILLS
JACK MALSIN
PHILLIPS BLACK, INC.
1721 Broadway, Suite 201
Oakland, CA 94612
(888) 532-0897
a.knight@phillipsblack.org

DAVID EUCHNER
ERIN SUTHERLAND
PIMA COUNTY PUBLIC DEFENDER'S OFFICE
33 N. Stone Avenue, 21st Floor
Tucson, AZ 35701

COUNSEL FOR PETITIONER

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