

No. _____

25-5932

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

GARLAND RAY GREGORY, JR. – PETITIONER

VS.

STATE OF SOUTH DAKOTA – RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI

SOUTH DAKOTA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

Garland Ray Gregory, Jr. #01566
Mike Durfee State Prison
1412 Wood Street
Springfield, South Dakota 57062-2238

QUESTIONS PRESENTED

1. Is a Sixth Amendment ‘erroneous deprivation of choice of counsel’ structural error, an error of the most fundamental character, properly before the court as a coram nobis claim?
2. Does the South Dakota court’s holdings not recognizing petitioner’s Sixth Amendment ‘erroneous deprivation of counsel of choice’ structural error claim, as a valid coram nobis claim, violate his Fourteenth Amendment Equal Protection of the Law right?

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IN THE
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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is unpublished.

The opinion of the South Dakota Fourth Judicial Circuit Court appears at Appendix B, and is unpublished.

JURISDICTION

The date on which the highest state court decided my case was October 3, 2025. A copy of that decision appears at Appendix A.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

STATEMENT OF THE CASE

The South Dakota state court has decided petitioner's Sixth Amendment question in a way that conflicts with relevant decisions of this Court, and violates the Fourteenth Amendment.

choice was wrongfully deprived, see United States v. Senke, 986 F.3d 300, 323 (3rd Cir. 2021). Replacing counsel for an imagined conflict of interest (sic – having been appointed a part-time law trained magistrate, being foreseeable that the case could be overturned and assigned to him) is intrinsically fraudulent. Pursuant to SDCL § 16-12B-17² petitioner's original habeas counsel not prevented from continuing to represent him at the crucial juncture [when the proceedings were remanded back to circuit court (Gregory v. State, 325 N.W.2d 297 (S.D. 1982))] he was removed. Additionally, anything other than re-arrangement would not transpire before a part-time law trained magistrate.

Recognized by at least one other court, the attorney-client relationship formed between assigned counsel and indigent necessitates the right to representation by that attorney as counsel of his own choosing. See People v. Ellis, 225 A.D.3d 784, 785 (N.Y. 2024). As such, the Fourteenth Amendment liberty interest to counsel pursuant to SDCL § 21-27-24³, protected against arbitrary action of the state. See Wilkinson v. Austin, 5445 U.S. 209, 221 (2002). Petitioner's claim is properly before the court as a coram nobis claim.

² SDCL § 16-12B-17 Practice of law by a magistrate. “Any attorney who is a part-time magistrate may practice law under any such conditions as judges sitting en banc in the judicial circuit may provide, subject to Supreme Court rule.”

³ SDCL § 21-27-24 Counsel appointed for indigent applicant. “If a person has been committed, detained, imprisoned, or restrained of liberty, under any color or pretense whatever, civil or criminal, and if upon application made in good faith to the court or judge thereof, having jurisdiction, for a writ of habeas corpus, it is satisfactorily shown that the person is without means to prosecute the proceeding, the court shall, if the judge finds the appointment necessary to ensure full and fair, and impartial proceeding, appoint counsel for the indigent pursuant to chapter 23A-40.

In review of petitioner's coram nobis Sixth Amendment structural error claim 'erroneous deprivation of right to counsel of choice', the South Dakota court violated petitioner's Fourteenth Amendment Equal Protection of the Law constitutional right. The state court held "In South Dakota, the jurisdiction of the court to grant relief under a writ of error coram nobis is limited in scope. The relief allowed under the writ of error coram nobis pertains only to errors of fact or fundamental jurisdiction errors... Here petitioner has alleged no error of fact, nor has he alleged a jurisdictional defect." 40CIV25-207.

Petitioner appealed the decision to the South Dakota Supreme Court, who ordered petitioner to show cause why his appeal should not be dismissed. Petitioner filed a response to the order to show cause (copy at Appendix C) September 18, 2025. South Dakota Supreme Court dismissed appeal October 3, 2025 (copy at Appendix A)

The United States Supreme Court holds "Coram nobis includes errors 'of the most fundamental character'." United States v. Morgan, 346 U.S. 502, 512 (1954).

REASONS FOR GRANTING THE PETITION

1. The South Dakota court abused its discretion, its ruling based on an erroneous view of the law, see Cooter & Gell v. Hartmarx, 496 U.S. 384, 405 (1990), treating petitioner differently than those similarly situated, violating the Fourteenth Amendment. See City of Cleburne, Tex. v. Cleburne Living Center, 473 U.S. 432, 439 (1985).

The state court's ruling expresses that petitioner's Sixth Amendment 'erroneous deprivation of choice of counsel' claim not reviewable under coram nobis. This is not what the Supreme Court says. The 'erroneous deprivation of right to counsel of choice'; a structural error

and violation of the Sixth Amendment, is an error of the most fundamental character, in the second class of constitutional error. See *Greer v. United States*, 593 U.S. 503, 513 (2021); *United States v. Gonzalez-Lopez*, 548 U.S. 140, 146-148 (2006), an error of the most fundamental character properly before the court as a *coram nobis* claim. *Morgan*, *supra*. The touchstone of ‘structural error’ affecting the framework within the process, and not simply the process itself, see *Lopez*, *supra* at 148, being of fundamental unfairness and unreliability, see *Lopez*, *supra* at 159, intrinsically harmful affecting substantial rights, requiring automatic reversal without regard to their effect on the outcome. See *Neder v. United States*, 527 U.S. 1, 7 (1999). The South Dakota Supreme Court expressing likewise in *Guthmiller v. Weber*, 804 N.W.2d 400, 406 (S.D. 2011) “As one court states, “A structural error resist harmless error review completely because it *taints the entire proceeding*” (emphasis added) *State v. Levy*, 156 Wash.2d 709, 132 P.3d 1076, 1083 (2006).”

The state court’s “Petitioner has alleged no error of fact, nor has he alleged a jurisdictional defect” 40CIV25-207, denies petitioner Fourteenth Amendment Equal Protection of the Law, treating petitioner differently than those similarly situated, *Cleburne*, *supra*, by exclusion; ‘*coram nobis* including errors of the most fundamental character’, *Morgan*, *supra*, an abuse of discretion, its ruling based on an erroneous view of the law. *Hartmarx*, *supra*.

The state court’s “Petitioner has filed numerous petitions for post conviction relief. The Court is thoroughly familiar with all the filings.” 40CIV25-207, conflicts with the Court’s “An application for the writ is properly viewed as a belated extension of the original proceeding¹ during which the error allegedly transpired.” *United States v. Denedo*, 556 U.S. 904 912-913 (2009). The ‘erroneous deprivation of right to counsel of choice’ occurred at the moment the

¹ The petitioner’s January 27, 1998 Post-Conviction/Habeas filing.

2. The South Dakota court's refusal to recognize petitioner's Sixth Amendment 'erroneous deprivation of right to counsel of choice' structural error claim, violates his Fourteenth Amendment Equal Protection of the Law right.

Equal Protection of the Law, directing that all persons similarly situated shall be treated alike, Cleburne, *supra*, protects petitioner's right to have his structural error claim, an error of the most fundamental character which *coram nobis* review includes, *Morgan*, *supra*, reviewed by the court pursuant to U.S.C. § 1651(a) All Writs Act.

CONCLUSION

Petitioner's *coram nobis* claim, a structural error and of most fundamental character is properly before the court pursuant to U.S.C. § 1651(a) All Writs Act. Petitioner entitled to review of his claim.

Respectfully Submitted

This 9th day of October, 2025.

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