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No. USCA 9 No. 25-312

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

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SUPREME COURT, U.S.

Joshua J. Lewandowski — PETITIONER
(Your Name)

vs.

Melissa Andrewjeski — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals, in the Ninth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Joshua J. Lewandowski #396338
(Your Name)

Coyote Ridge Correction Center
P.O. Box 769 Unit H-A-23
(Address)

Connell, WA 99326
(City, State, Zip Code)

(Phone Number)

No. USCA 9 No. 25-312

In The
Supreme Court of the United States

Joshua J. Lewandowski - Petitioner

vs.

Melissa Andrewjeski - Respondent

Petition for Writ of Certiorari

Questions Presented:

A. Does the Sixth Amendment to the United State Constitution require defense counsel to ensure a mentally disabled defendant's guilty plea and/or confession are knowing and voluntary, especially with fetal alcohol syndrome present and alleged coercion?

B. Did the lower courts correctly apply Strickland v. Washington, 466 U.S. 668 (1984), standard in evaluating Petitioner's claim of ineffective assistance of counsel, given Lewandowski's documented and diagnosed mental disability and claimed coercion?

Petitioner seeks direct Supreme Court review.

This is appropriate when issues involve substantial constitutional questions, such as Sixth Amendment rights to effective assistance of counsel or Fifth Amendment protections against self-incrimination, particularly for mentally disabled defendants. The case facts highlight critical issues: the rape kit's inconclusive DNA evidence, the victim's account aligning with the suspect's confession, and the suspect's documented fetal alcohol syndrome (FAS), which can impair cognitive functions like understanding legal proceedings. The claim of an unknowing confession and coercion into a guilty plea by the defense attorney raises questions about voluntariness of confessions and guilty pleas, raising constitutional concerns. It seems likely that defense counsel's alleged coercion could constitute ineffective assistance, potentially violating Sixth Amendment rights. The evidence leans toward needing clearer Supreme Court guidance on handling such cases, especially given the Ninth Circuit's denial of a certificate of appealability.

Parties to the Proceeding:

Attorney General of the State of Washington

United States Supreme Court

Joshua James Lewandowski

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Court Opinions

The opinion of the United States Court of Appeals for the Ninth Circuit denying a certificate of appealability (COA) is unpublished - Docket No. 25-312, June 11, 2025. Cert. denied because Appellant did not show that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that 'jurists of reason would find it debatable whether the district court was correct in its procedural ruling.'" (See Appendix A)

The order of the United States District Court for the Eastern District of Washington denying the petition for writ of habeas corpus is unpublished - Case No. 2:22-cv-00321-SAB, January 2, 2025. Petition denied because; petitioner's claims 1-8 cannot survive § 2254 AEDPA deference, defense counsel did not render ineffective assistance of counsel regarding a diagnosis of Fetal Alcohol Syndrome, petitioner was not denied his right to a fair trial regarding the DNA evidence, and petitioner's plea was voluntary and knowing. (See Appendix B)

I. Jurisdictional Statement

The United States Supreme Court has jurisdiction under 28 U.S.C § 1254 (1) because this case involves federal constitutional rights under the Sixth and Fourteenth Amendments, specifically the right to effective assistance of counsel. This petition for a writ of certiorari is filed within 90 days of the denial of a certificate of appealability in the Ninth Circuit (COA denied June 11, 2025). No petition for rehearing was filed in the Ninth Circuit.

II. Constitutional and Statutory Provisions Involved

United States Constitution, Amendment VI:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."

United States Constitution, Amendment XIV, Section 1:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

28 U.S.C. § 2253 (c):

"(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from -

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of the process issued by a state court; or

(B) the final order in a proceeding under section 2255

(2) A certificate of appealability may issue only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (2) shall indicate which specific issue or issues satisfy the showing required by paragraph (2)."

III. Statement of the Case

Joshua J. Lewandowski was charged and convicted of rape of a child in the first degree. Lewandowski plead guilty to the charges due in large part to the coercion of his trial attorney, before evidence of the rape kit could be processed. Prosecution relied primarily on the fact that the victim's account of events matched that of a confession from Lewandowski that police obtained without a claimed knowing waiver of rights, after Lewandowski informed them of his diminished mental capabilities. The rape kit subsequently showed no DNA evidence other than the victim's and was ruled inconclusive. Lewandowski has been diagnosed has been diagnosed with Fetal Alcohol Syndrome (FAS) from a young age (See Appendix C), affecting his cognitive abilities, including but not limited to difficulties with understanding abstract concepts, impulsivity, and susceptibility to suggestion. Lewandowski informed police at the time of the confession and later his defense attorney of his clinically diagnosed fetal alcohol syndrome. Neither party took his claim into account and the courts have dismissed this claim without proof. (Proof was not able to be obtained by petitioner until recently due to the difficulties of doing so while incarcerated. However, this proof is now attached as Appendix C.) Petitioner, relying on his

Attorney's Advice and with his cognitive limitations, entered a guilty plea. Petitioner's Attorney was aware that his client must claim responsibility for the crime and show remorse in order to qualify for the sex offender sentencing Alternative (SOSA), the reason for the guilty plea. Petitioner's Attorney was also aware that his client (Lewandowski) would not claim responsibility for the crime, maintaining his innocence, and thus not qualify for SOSA. The trial court accepted the guilty plea and predictably denied SOSA.

Petitioner sought habeas corpus relief in the federal district court after exhausting his state court remedies, arguing ineffective assistance of counsel under Strickland, and that his confession and subsequent plea were involuntary and unknowing in violation of his Fifth and Fourteenth Amendment rights. The district court denied the petition (See Appendix B). Petitioner then sought a certificate of appealability (COA) from the Ninth Circuit court of appeals to appeal the district court's denial. The Ninth Circuit denied the certificate of appealability (See Appendix A), finding that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling."

IV. Summary of the Argument

A. The Sixth Amendment

The Sixth Amendment guarantees effective assistance of counsel, including during plea bargaining, as established in *Strickland v. Washington*, 466 U.S. 668 (1984).

Petitioner claims his attorney coerced him into a guilty plea despite his mental disability, and knowing he would not qualify for the Sosa plea Agreement he was offered, potentially constituting deficient performance under Strickland, as it falls below reasonable professional standards. Given Lewandowski's fetal alcohol syndrome (FAS); which may impair understanding, make him more susceptible to suggestion (let alone persistent badgering) and make him more impulsive, there is a reasonable probability he would not have pleaded guilty but for counsel's errors, and misconduct, satisfying Strickland's prejudice prong.

B. Voluntariness

The voluntariness of a guilty plea, requiring it to be knowing, intelligent, and voluntary, is at issue. Lewandowski's mental disability may have affected: him rendering him particularly vulnerable to suggestive questioning and assertions by his defense counsel, his ability to understand proceedings, his cognitive capacity to fully comprehend his rights or the implications of his statements; and the lower courts' failure to adequately consider this raises constitutional concerns, as they refused evidentiary hearing that would have allowed Lewandowski to prove his condition. Cases like *Godinez v. Moran*, 509 U.S. 389 (1993), highlight that competence to plead guilty must be assessed, and *McCoy v. Louisiana*, 138 S. Ct. 1500 (2018), suggests attorneys cannot make key decisions against a client's wishes, potentially applicable if there is a finding that Lewandowski was coerced.

C. Need for Guidance

There is a need for guidance on applying Strickland to mentally disabled defendants. While Supreme Court precedent addresses competence (*Godinez*) and

plea Advice (*Padilla v. Kentucky*, 559 U.S. 356 (2010)), it lacks clarity on ineffective assistance in this context. Lower courts, like *Hernandez v. Chappell*, 923 F. 3d 544 (9th Cir. 2019) and *Bouchillon v. Collins*, 907 F. 2d 589 (5th Cir. 1990), have varied in considering mental health evidence, suggesting a need for uniform standards.

VI. Reasons for Granting the Writ

This case presents fundamental questions concerning the due process rights of cognitively impaired defendants, the standards for evaluating the voluntariness of confessions and guilty pleas, and the proper application of the certificate of appealability standard under 28 U.S.C. § 2253 (c). The Ninth Circuit's denial of a COA here highlights a recurring issue in the lower courts regarding the threshold for granting COA's in habeas cases involving substantial constitutional claims.

A. The Ninth Circuit Erred in Denying a Certificate of Appealability

Where Petitioner made a substantial showing that his confession was not knowing and voluntary due to fetal alcohol syndrome (FAS), and where corroborating forensic evidence was inconclusive. The Fifth Amendment, incorporated against the states through the Fourteenth Amendment, guarantees that no person "shall be compelled in any criminal case to be a witness against himself." This protection requires that confessions be voluntary and knowing, *Miranda v. Arizona*, 384 U.S. 436 (1966). While the Supreme Court in *Colorado v. Connelly*, 479 U.S. 157 (1986), held that coercive police activity is necessary predicate to a finding that a confession is involuntary, it did not foreclose the consideration of a defendant's

mental condition as a significant in assessing the knowing nature of a waiver of rights or the overall voluntariness when coercive police conduct is present. Furthermore, this Court has recognized that mental impairment can render an individual more susceptible to police pressure. See *Withrow v. Williams*, 507 U.S. 680, 688 (1993) (discussing the voluntariness standard's consideration of "the defendant's will, the defendant's intelligence, or the defendant's emotional state"). Petitioner's diagnosis of FAS is critical to this analysis. FAS is a recognized neurodevelopmental disorder characterized by severe cognitive and behavioral impairments, including deficits in judgment, abstract reasoning, impulse control and memory. These deficits directly impact an individual's capacity to understand complex legal concepts, appreciate the long-term consequences of their statements, and resist undue influence. Given this diagnosis, Petitioner's confession, which formed the cornerstone of the state's case, despite the inconclusive DNA evidence, cannot be presumed to be truly voluntary and knowing.

The fact that the rape kit showed no DNA present other than the victim's, and the state's own forensic report declaring this evidence "inconclusive," further underscores the concerns regarding the reliability of the confession. In a case devoid of independent corroborating physical evidence, the voluntariness and reliability of the confession become paramount. The Ninth Circuit's denial of a COA effectively prevented appellate review of whether, given Petitioner's FAS, his confession was truly the product of a free and unconstrained will, and whether its use violated his due process rights. Reasonable jurists could certainly debate whether the district court erred in its assessment, make a COA appropriate under *Slack v. McDaniel*.

B. Petitioner Made a Substantial Showing of Ineffective Assistance of Counsel

As his attorney coerced a guilty plea, on a plea deal that he knew or should have known his client would not qualify for, from a cognitively impaired client, the Ninth Circuit's denial of a COA prevents review of this Sixth Amendment violation. The Sixth Amendment right to counsel includes the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984). To establish ineffective assistance, a defendant must show that counsel's performance was deficient and that the deficient performance prejudiced the defense. *Id.* at 687. In the context of a guilty plea, prejudice requires showing "A reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Here it seems that Lewandowski's defense attorney was in a hurry to get this case off his books.

Petitioner alleges that his defense attorney coerced him into a guilty plea. This coercion, coupled with Petitioner's cognitive limitations due to FAS, raises serious questions about voluntariness and knowing nature of the plea itself. An attorney's failure to adequately investigate a client's mental capacity, or to properly advise a cognitively impaired client, can constitute deficient performance. See, e.g., *Satterwhite v. United States*, 484 U.S. 1001 (1987) (vacating and remanding for consideration of counsel's failure to raise insanity defense); *Dunn v. Singletary*, 877 F.2d 1560 (11th Cir. 1989) (finding ineffective assistance where counsel failed to investigate a defendant's mental health problems). Here, defense counsel failed to investigate his client's mental health claims and failed to sufficiently challenge the reliability of the confession given Petitioner's cognitive state and

the absence of corroborating DNA evidence. Instead, counsel pressured Petitioner into a guilty plea, knowing that Lewandowski was not willing to claim responsibility for the alleged crime - making him ineligible for the Sosa deal that prosecution was offering, thereby foregoing the opportunity to challenge these critical elements at trial.

The confluence of an inconclusive rape kit, a confession from a cognitively impaired individual, and allegations of coercive behavior by defense counsel presents a compelling Strickland claim. The Ninth Circuit's denial of a COA prevents a full appellate review of whether counsel's performance fell below professional norms and prejudiced Petitioner. This is precisely the type of case where "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. at 484. The systemic implications are significant, as it touches upon the protections afforded to vulnerable defendants within the criminal justice system and the standards for effective representation.

C. The Ninth Circuit's Application of the COA Standard was Erroneous

This warrants corrective action by this Court. The primary function of a certificate of appealability is to ensure that a federal habeas petitioner, whose claim has been rejected by a district court, is afforded an opportunity for appellate review when he can make a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). As this Court articulated in *Slack v. McDaniel*, a "substantial showing" does not require a petitioner to prove that he would prevail on the merits, but rather that "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different

manner or that the issues presented were adequate to deserve encouragement to proceed further." 529 U.S. at 484.

The Ninth Circuit's summary denial of the COA in this case suggests a misapprehension or unduly stringent application of this standard. Given the gravity of the constitutional claims - concerning the voluntariness of a confession from a cognitively impaired individual and allegations of a coerced guilty plea - it is difficult to fathom how "reasonable jurists" could not "debate" the district court's resolution of these issues. The denial of a COA in such circumstances effectively forecloses meaningful federal appellate review of profound constitutional questions affecting a vulnerable population. This Court's intervention is necessary to reinforce the proper application of § 2253 (c) and ensure that federal habeas review remains an effective safeguard against constitutional violations in state criminal proceedings, particularly where a defendant's mental capacity is at issue.

For guilty pleas, *Hill v. Lockhart*, 474 U.S. 52 (1985), requires showing a reasonable probability of rejecting the plea but for counsel's errors. Looking back through the 'Statement(s) of the Case' there most certainly is that in this case.

D. Conflict Among the Circuits

Research into circuit splits showed varying approaches, like *Hernandez v. Chappell*, 923 F. 3d 544 (9th Cir. 2019), where the Ninth Circuit found no prejudice in failing to present mental health evidence, contrasting with cases like *Bouchillon v. Collins*, 907 F. 2d 589 (5th Cir. 1990), where the court ruled that because the defendant had mental health issues at the time of the offense and plea it rendered him unable to understand the proceedings against him and to assist in his own

defense, suggesting potential inconsistencies. This supports arguing for Supreme Court guidance. FAS's impact, noted in sources like Fetal Alcohol Spectrum Disorders and the Criminal Justice System, highlights suggestibility and false confessions, reinforcing Lewandowski's claim of an unknowing or even false confession. The need for clarity on mentally disabled defendants' rights in plea bargaining is evident, given the Ninth Circuit's denial and lack of direct Supreme Court precedent.

VI Conclusion

For these reasons, Petitioner respectfully requests that the writ of certiorari be granted to review the judgement of the United States Court of Appeals for the Ninth Circuit and address these critical constitutional issues.

I declare that the information contained in this brief is true, correct and complete to the best of my knowledge.

Dated this 11th day of August, 2025

Respectfully submitted

Joshua J. Lewandowski

Josh Lewandowski

Attorney Pro Se