

No. 25–6873

In the Supreme Court of the United States

JULIUS JARREAU MOORE,
Petitioner,

v.

STATE OF ARIZONA,
Respondent.

*On Petition for Writ of Certiorari
to the Arizona Supreme Court*

BRIEF IN OPPOSITION

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**CAPITAL CASE
QUESTIONS PRESENTED FOR REVIEW**

Julius Jarreau Moore was convicted of murdering three people and attempting to murder a fourth person based on overwhelming eyewitness, physical, and corroborating evidence. He was then sentenced to death. After his direct appeal, Moore sought post-conviction relief. The state superior court rejected the three claims Moore now advances in his certiorari petition and, as to two of them, held that Moore had waived the claims under firmly established state procedural rules. The court alternatively held that none of the claims were colorable. Moore sought further review in the Arizona Supreme Court, but that court denied review.

The questions presented are:

1. Did the superior court err in denying Moore's claim that his due-process rights were violated by law-enforcement misconduct when Moore failed to show that any misconduct occurred?
2. Did the superior court err in denying Moore's claim that trial counsel was ineffective in the guilt phase when counsel's actions were objectively reasonable and when Moore suffered no prejudice given the overwhelming evidence of guilt?
3. Did the superior court err in denying Moore's claim that he was incompetent during trial when the contemporaneous trial record failed to show incompetency?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW.....	2
TABLE OF CONTENTS.....	3
TABLE OF AUTHORITIES.....	5
INTRODUCTION.....	7
STATEMENT OF THE CASE.....	8
I. Overwhelming Evidence of Guilt.....	8
II. Conviction and Appeal.....	11
III. Post-Conviction Claims and Superior Court’s Ruling.....	12
A. Police Misconduct Claim.....	13
B. Ineffective Assistance Claim.....	15
C. Competency Claim.....	16
IV. No Further State Review.....	17
REASONS FOR DENYING THE PETITION.....	18
I. This Case is a Poor Vehicle for Reviewing the Questions Presented.....	18
A. The superior court’s decision on two of the three issues raised here rests on independent and adequate state law grounds.....	19
B. Moore failed to meet his minimal burden of showing his claims were colorable, and as a result, the superior court did not hold an evidentiary hearing.....	20
C. The superior court’s decision has no impact on any other case.....	22
II. Moore Seeks this Court’s Intervention Merely to Correct Purported Errors in the Superior Court’s Decision, but Regardless, the Decision is Correct.....	22
A. The superior court correctly denied Moore’s due process claim based on alleged police misconduct.....	23
B. The superior court correctly denied Moore’s claim of ineffective assistance of trial counsel.....	28

C. The superior court correctly denied Moore’s due process claim based on his alleged incompetency to stand trial.....	34
CONCLUSION.....	35
Appendix 1: Exhibit 109 of 2007 sentencing trial (Exhibit J of State’s response to PCR petition).....	1a
Appendix 2: Exhibit 110 of 2007 sentencing trial (Exhibit K of State’s response to PCR petition).....	3a
Appendix 3: Crime scene photograph depicting knife (Exhibit P of State’s response to PCR petition).....	5a
Appendix 4: Crime scene photograph depicting knife (Exhibit S of State’s response to PCR petition).....	7a
Appendix 5: Detective Sallie Dillian’s supplemental report (excerpt from Exhibit A of State’s response to PCR petition).....	9a
Appendix 6: Various police reports and documentation (excerpt from Exhibit 74 of Moore’s third supplemental PCR petition).....	41a
Appendix 7: Full-size crime-scene photograph of casing from Moore’s bedroom (Exhibit BB of State’s response to PCR petition).....	54a
Appendix 8: Full-size crime-scene photograph of Item 45 (Exhibit Z of State’s response to PCR petition).....	56a
Appendix 9: Crime-scene photograph of Item 46 (Exhibit CC of State’s response to PCR petition).....	58a
Appendix 10: Second supplemental affidavit of Richard Watkins (excerpt from Exhibit 63 of Moore’s second supplemental PCR petition).....	60a
Appendix 11: Second supplemental affidavit of Frank J. Rodgers (excerpt from Exhibit 64 of Moore’s second supplemental PCR petition).....	65a
Appendix 12: Third supplemental affidavit of Frank J. Rodgers (excerpt from Exhibit 66 of Moore’s amended third supplemental PCR petition).....	70a
Appendix 13: Third supplemental affidavit of Richard Watkins (excerpt from Exhibit 67 of Moore’s amended third supplemental PCR petition).....	77a
Appendix 14: Corrected declaration of Dr. David M. Bosch (excerpt from Exhibit 69 of Moore’s amended third supplemental PCR petition).....	86a
Appendix 15: Excerpt of State’s response to PCR petition.....	92a
Appendix 16: Affidavit of Alan D. Feliciano (Exhibit 26 of Moore’s initial PCR petition).....	103a

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Arizona v. Youngblood</i> , 488 U.S. 51 (1988)	24
<i>Burt v. Titlow</i> , 571 U.S. 12 (2013).....	29
<i>California v. Trombetta</i> , 467 U.S. 479 (1984).....	23, 24
<i>Carriger v. Lewis</i> , 971 F.2d 329 (9th Cir. 1992)	20
<i>Cnty. of Sacramento v. Lewis</i> , 523 U.S. 833 (1998).....	23
<i>Cullen v. Pinholster</i> , 563 U.S. 170 (2011)	29
<i>Dist. Att’y Off. Third Jud. Dist. v. Osborne</i> , 557 U.S. 52 (2009)	21
<i>Drope v. Missouri</i> , 420 U.S. 162 (1975).....	34
<i>Dusky v. United States</i> , 362 U.S. 402 (1960)	34
<i>Ford v. Georgia</i> , 498 U.S. 411 (1991)	19
<i>Foster v. Chatman</i> , 578 U.S. 488 (2016)	19, 20
<i>Harris v. Reed</i> , 489 U.S. 255 (1989).....	19
<i>Ortiz v. Stewart</i> , 149 F.3d 923 (9th Cir. 1998)	20
<i>Padilla v. Kentucky</i> , 559 U.S. 356 (2010)	28
<i>Pennsylvania v. Finley</i> , 481 U.S. 551 (1987)	20
<i>Rosales-Mireles v. United States</i> , 585 U.S. 129 (2018).....	23
<i>Smith v. Stewart</i> , 241 F.3d 1191 (9th Cir. 2001).....	20
<i>State v. Amaral</i> , 368 P.3d 925 (Ariz. 2016).....	21
<i>State v. Carriger</i> , 692 P.2d 991 (Ariz. 1984).....	21
<i>State v. Kolmann</i> , 367 P.3d 61 (Ariz. 2016).....	13
<i>State v. Moore</i> , 213 P.3d 150 (Ariz. 2009)	8, 11, 12
<i>State v. Scrivner</i> , 643 P.2d 1022 (Ariz. App. 1982).....	21
<i>State v. Shrum</i> , 203 P.3d 1175 (Ariz. 2009).....	19
<i>State v. Spreitz</i> , 39 P.3d 525 (Ariz. 2002)	21
<i>State v. Watton</i> , 793 P.2d 80 (Ariz. 1990)	21

<i>Stewart v. Smith</i> , 536 U.S. 856 (2002).....	19
<i>Strickland v. Washington</i> , 466 U.S. 668 (1984).....	28, 29, 30, 31
<i>United States v. Russell</i> , 411 U.S. 423 (1973).....	23
<i>United States v. Salerno</i> , 481 U.S. 739 (1987).....	23
<i>United States v. Valenzuela-Bernal</i> , 458 U.S. 858 (1982)	24

Rules

Ariz. R. Crim. P. 32.....	20, 21
Ariz. R. Crim. P. 32.1(a)	19, 21
Ariz. R. Crim. P. 32.11(a)	21
Ariz. R. Crim. P. 32.2(a)	19
Ariz. R. Crim. P. 32.2(a)(3)	13, 20
Sup. Ct. R. 10	18
Sup. Ct. R. 10(b).....	18
Sup. Ct. R. 10(c)	18

Other Authorities

Adam Trahan and Daniel M. Stewart, <i>Examining the Utility of Frontloading Mitigation in Capital Cases when Faced with Overwhelming Evidence of Guilt</i> , 51 No. 2 Crim. Law. Bulletin ART 4 (2015)	33
American Bar Association <i>Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases</i> , 31 Hofstra L. Rev. 913, 1047 (2003)	33

INTRODUCTION

There is no compelling reason to grant certiorari here. First, this case is a poor vehicle for addressing the questions presented. This Court has no jurisdiction over two of the three issues because they were resolved on independent and adequate state law grounds. And no evidentiary hearing was held on any of the issues given Moore's failure to state a colorable claim. Besides that, the only decision below is from the state superior court, whose decision has no impact on any other case.

Second, Moore has identified no conflict or unsettled legal questions but merely asks for error correction. This is far from a compelling reason to grant certiorari. Even so, the superior court's decision is correct. Indeed, Moore offered no evidence of police misconduct, no basis to second-guess counsel's decisions, and no contemporaneous record evidence showing he was incompetent during trial.

Put simply, none of the questions presented warrant certiorari, especially in light of the overwhelming evidence of guilt. The petition should be denied.

STATEMENT OF THE CASE

In November 1999, Moore shot four people at a crack house, killing three of them and injuring the fourth. *State v. Moore*, 213 P.3d 150, 154–55, ¶¶ 2–12 (Ariz. 2009), *cert. denied*, 558 U.S. 1053 (2009). A grand jury indicted him that same month of three counts of first-degree murder, one count of attempted first-degree murder, and one count of first-degree burglary. *Id.* at 155, 161, ¶¶ 12, 49. The State later presented overwhelming evidence of Moore’s guilt at trial.

I. **Overwhelming Evidence of Guilt.**

Before the murders, Moore told his girlfriend that he saw the people who tried to “run him over” and he was not going to “let that shit fly.” R.T. 9/18/01, at 128–29, 163–64. He drew a map for his girlfriend of where to look for him “if anything happened.” *Id.* at 116, 128. He then left and took a fully loaded Makarov handgun with him that he and his girlfriend bought after someone tried to run him over. *Id.* at 118–19, 122, 127–28, 162–65, 167–69; R.T. 9/20/01, at 77–82. Moore later returned home, showed his girlfriend the handgun with an empty clip, and admitted, “I just shot four people.” R.T. 9/18/01, at 133, 162–63, 167–68.

The surviving victim, Debra Ford, identified Moore as the shooter. R.T. 9/13/01, at 55–56. At the time of the shooting, she had known Moore as “Jay”—one of Moore’s nicknames—and had “hung around” him several times years earlier. R.T. 9/12/01, p.m., at 25–28; R.T. 9/18/01, at 174. Ford saw Jay again the night of the shootings at the crack house and spent time with him before the shootings. R.T. 9/12/01, p.m., at 27–28, 30–32. Later that night, Ford witnessed Jay confront one of

the victims on the porch, asking, “Do you have a problem with me?” R.T. 9/13/01, at 21–25. She then witnessed Jay shoot that victim and immediately turn and shoot her in the neck, paralyzing her. *Id.* at 25–40, 45–46; R.T. 9/12/01, a.m., at 30–31. She then heard Jay fire several more shots inside the crack house where the other two murder victims were found dead. R.T. 9/13/01, at 39–40; R.T. 9/12/01, a.m., at 37–46.

Within hours of the attack, Ford twice identified “Jay” as the shooter while in “extremely critical” condition at the hospital and while worried she would die. R.T. 9/17/01, at 14–19, 68–74. She gave a description of the shooter that matched Moore. *Id.*; R.T. 9/24/01, a.m., at 46. The day after the shooting, police showed Ford the photograph of a man named Tony Brown, who had been at the crack house not long before the murders. R.T. 9/24/01, a.m., at 30–35. She told police that Brown had fought one of the murder victims before the shootings but had not shot the victims. *Id.* at 33–35. She explained that Jay, acting alone, had shot her and the other three victims. *Id.* at 34–38.

Brown confirmed that he struck one of the victims, but then when he was leaving the crack house, he saw Moore hiding in the bushes nearby with a “big gun.” R.T. 9/13/01, at 98–103, 125, 127–29. Moore told Brown that he was about to “smoke the people” inside and asked, “Do you want to get them with me?” *Id.* at 104–05, 113–14. Brown did not take Moore seriously and took off. *Id.* at 105. Brown later rapidly picked Moore out of a lineup. R.T. 9/24/01, a.m., at 45–60.

After the killings, Moore flagged down a woman named Sarry Ortiz, who was driving on the same street as the crack house. R.T. 9/18/01, at 27–29, 31–36, 51, 55. Ortiz lived across the street from the crack house and had previously met both Moore and Ford. *Id.* at 5, 7–9, 26, 29–30. Ortiz drove Moore around, took him to a public restroom where he washed his hands, and later picked up Moore’s girlfriend and drove her and Moore around. *Id.* at 4, 9, 36–37, 50, 70, 134–35. Ortiz felt uneasy around Moore and commented to a friend she picked up that “something strange” was “going on.” *Id.* at 36–40. At one point, Ortiz drove past and later stopped at the crack house after noticing “[s]omething was going on.” *Id.* at 39–41. Ortiz saw Ford lying on the ground and exited the car. *Id.* at 39–42, 91. Moore stopped his girlfriend from also exiting the car, commanding, “Get back in the car. Those are the people I just shot.” *Id.* at 135–37.

Ortiz returned after getting help for Ford and found Moore in the driver’s seat, attempting to put the car into gear. *Id.* at 42–44. Moore appeared “nervous” as though he “wanted to hurry up and get out of there.” *Id.* at 82. Ortiz exclaimed, “There’s bodies over there.” *Id.* at 202. But Moore said, “You don’t see any bodies.” *Id.* at 82. Ortiz reclaimed the driver’s seat, and when she later dropped off the couple, Moore told her that she “was giving him a ride,” she “took him to his girlfriend’s house,” and “that would be the alibi.” *Id.* at 46, 83–84, 136–37, 183. Ortiz later quickly identified Moore in a lineup. R.T. 9/24/01, a.m., at 45–60.

Moore and his girlfriend hid with her friends the day of the murders. R.T. 9/18/01, at 112–14, 138–42, 147–49. He cut off his braids. *Id.* at 151, 154–58; R.T.

9/13/01, at 165. He traded away the gun. R.T. 9/18/01, at 154. His girlfriend saw a news report on the murders broadcasting another person's description a couple days later, but he told her that that person had left before the shooting. *Id.* at 148–49. He also said he had been careful not to leave fingerprints or cigarette butts. *Id.* at 168–73. And he explained that he shot the man who tried to run him over and felt bad he shot the others because “they didn’t have anything to do with it.” *Id.*

The physical evidence corroborated the eyewitness accounts. The medical examiner confirmed that the three murder victims died of gunshot wounds. R.T. 9/17/01, at 79, 86–124. Testing showed that the fatal bullets were shot from Moore’s Makarov handgun. *Id.* at 113–15; R.T. 9/20/01, at 88–91. Testing also showed that two projectiles found inside the crack house and a projectile found under the comforter of Moore’s bed were also fired from Moore’s gun. R.T. 9/19/01, at 44–46, 98–101; R.T. 9/24/01, p.m., at 10–11; R.T. 9/20/01, at 83–87, 91–93. Police found a poster and two books about guns in Moore’s bedroom, including a book tabbed to the section on a Makarov handgun. R.T. 9/19/01, at 95–98; R.T. 9/24/01, p.m., at 9–10; 2007 Exh. 76. Moore’s girlfriend confirmed the gun police recovered was the gun she and Moore purchased and the one Moore carried the night of the murders. R.T. 9/18/01, at 118–23, 127–28, 154; R.T. 9/13/01, at 153–56.

II. Conviction and Appeal.

At trial’s end, the jury convicted Moore on all counts. *Moore*, 213 P.3d at 155, ¶ 12. A subsequent jury imposed two death sentences and a life term. *Id.* at 155–56, ¶ 14.

Moore appealed and raised more than 10 claims to the Arizona Supreme Court. *Id.* at 156–72, ¶¶ 15–139. He failed, however, to claim on appeal (and at trial) that police destroyed, planted, or tampered with evidence or that he was incompetent to stand trial. *Id.* The Arizona Supreme Court rejected his claims and affirmed his death sentences. *Id.* at 172, ¶ 140.

III. **Post-Conviction Claims and Superior Court’s Ruling.**

Moore then sought post-conviction relief (“PCR”) in the state superior court. As relevant here, he raised the three claims he now raises in his certiorari petition: (1) the police destroyed, planted, and tampered with evidence in violation of his due process rights,¹ including planting a shell casing (Item 26A) in his bed and destroying blood evidence on a knife (Item 22) found at the scene; (2) his trial counsel was ineffective during the guilt phase for failing to present a third-party culpability defense, offer evidence of Moore’s alibi, adequately cross-examine witnesses, and present good-character evidence, and was ineffective for front-loading mitigation; and (3) he was incompetent to stand trial during the guilt phase of trial in violation of due process because of his diabetic ketoacidosis. *See* Pet. App. 141a, 211a–12a.

The superior court considered Moore’s claims in a thorough, 44-page decision and rejected all of them, dismissing his PCR petition. *Id.* at 71a.–114a. It rejected

¹ Moore raised other police and prosecutorial misconduct issues, but Moore focuses only on this aspect of the claim in his certiorari petition.

the first and third claims—police misconduct and incompetency claims—as precluded under Arizona Rule of Criminal Procedure 32.2(a)(3) because Moore waived them when he failed to raise them at trial and on direct appeal. *Id.* at 97a, 109a. The court alternatively rejected the first and third claims, and rejected the second claim, without holding an evidentiary hearing because they were “not colorable” for the reasons below. *Id.* at 72a; see *State v. Kolmann*, 367 P.3d 61, 64, ¶ 8 (Ariz. 2016) (stating colorability standard, which requires a petitioner to allege facts that, if true, probably would have changed the verdict or sentence).

A. Police Misconduct Claim.

As to the first claim, the superior court found that Moore failed to show that the police had ordered the destruction of blood evidence on the knife, Item 22. Pet. App. 100a. The superior court further found that Moore had “not shown that there was blood evidence on Item 22,” the knife, “or that the alleged blood evidence related to the crimes at issue.” *Id.* The court had previously explained in its ruling that Moore’s allegation that “Item 22 contained untested blood belonging to Brown or someone other than Moore [was] speculative” and “the police reports and the scene detective’s testimony refute[d] this claim.” *Id.* at 94a. The court had also explained previously in its ruling that one of Moore’s exhibits “refute[d] the allegation that Brown’s foot injury was caused from being stabbed with Item 22 during the murder,” meaning Moore failed to show a “connection between ‘the actual perpetrator’ and the alleged evidence on Item 22.” *Id.*

The superior court also recognized that Moore’s allegation that the shell casing, Item 26A, was planted in his bed after Ford failed to identify him was belied by the record. *Id.* at 100a. The court explained how a detective identified Moore through other means and because of that, the “police had evidence that linked Moore to the murders independent of Ford’s identification” “at the time of the search warrant.” *Id.*

The court further found, “[a]s discussed” previously in its ruling, that Item 26A was not relied on by the prosecution and was not identified by the criminalist as having been fired from Moore’s Makarov handgun. *Id.* In its previous discussion, the court found that “Item 26A did not play ‘a prominent role’ in his conviction.” *Id.* at 92a. And as to that finding, the court explained that the crime-scene detective “did not link Item 26 to the crime scene or the Makarov firearm,” the criminalist did not “identif[y] the Makarov as having fired Item 26A” or “link[] Item 26A to the murders,” and the prosecutor did not reference Item 26A. *Id.* at 92a–93a. The court also noted in its previous discussion that the criminalist “identified Item 26B as having been fired from the Makarov” and the State argued “Item 26B matched the Makarov firearm,” but that Moore was “not alleg[ing] any impropriety or tampering with respect to Item 26B.” *Id.* at 93a. The court further explained in that discussion that Moore’s claim did not undermine the criminalist’s “testimony identifying the autopsy projectiles to the Makarov firearm.” *Id.*; *see id.* at 93a–94a (concluding misconduct claim related to Item 45, another shell casing, was “not colorable for the reasons related to Item 26A”).

B. Ineffective Assistance Claim.

The superior court concluded as to the ineffective assistance claim that Moore had not shown that his trial counsel's performance was deficient or prejudicial. *Id.* at 105a–09a. The court first found that Moore had “not shown that trial counsel unreasonably failed to investigate or present Moore’s alibi or evidence of third party culpability.” *Id.* at 106a. The court instead found that trial counsel “investigated and made a reasoned strategic decision not to present the alibi defense, which counsel believed was not credible,” and trial counsel “challenged the evidence of guilt and presented a guilt-phase defense-strategy centered on the theory that Brown or someone else committed the murders.” *Id.* at 107a. The court found no deficient performance or prejudice “[g]iven the strength of the prosecution’s evidence and the available defenses.” *Id.* The court found “Moore’s allegations [were] largely cumulative to the arguments made by trial counsel and the testimony elicited at trial.” *Id.*

The court next assumed *arguendo* that “trial counsel failed to conduct an adequate investigation into Moore’s good character and reputation for non-violence.” *Id.* But even if that was the case, it found that “there [was] no reasonable probability of a different guilt phase verdict.” *Id.*

The court then found that trial counsel was not deficient in cross-examining Debra Ford and Tony Brown. *Id.* at 108a. The court explained that the record showed that “trial counsel adequately challenged Ford’s in-court identification and emphasized Ford’s inability to identify Moore in the prior photo-line ups.” *Id.* The

court also explained that “the jury heard considerable testimony and argument about Brown’s fight with [one of the victims],” and that “counsel adequately challenged this evidence and argued that it established another person committed the murders.” *Id.* The court further found no prejudice. *Id.* It highlighted the fact that challenging Ford’s identification would not have rebutted the State’s overwhelming evidence showing Moore was the shooter. *Id.* It also found no reasonable probability of a different result even if counsel had made the “additional arguments” about Brown. *Id.*

Last, the court found that “frontloading mitigation is a common defense strategy in a capital case.” *Id.* The court did “not share Moore’s conclusion that trial counsel effectively pleaded him guilty” but instead found that the record showed “trial counsel challenged the State’s evidence of guilt and argued that Moore did not commit the murders.” *Id.* at 109a. The court found that Moore had “not shown that counsel performed unreasonably by previewing mitigation evidence during the guilt trial” or shown a reasonable probability of a different result. *Id.*

C. Competency Claim.

Finally, the superior court rejected Moore’s claim that he was incompetent to stand trial because of his diabetic ketoacidosis. *Id.* at 110a. The court found that the record rebutted the claim and “Moore ha[d] not shown any indicia of incompetency in the record to demonstrate that he was unable to understand the proceedings or assist in his defense.” *Id.* The court explained that the “PCR expert did not observe Moore during trial or base the incompetency opinion on

contemporaneous observations.” *Id.* The court also explained that “Moore has not alleged that the trial court ignored evidence of his incompetency, and the record provides no support for Moore’s claim that he was unable to understand the proceedings or assist in his defense.” *Id.* The court further explained that “[t]rial counsel did not make a record about Moore’s inability to stay awake, focus, or assist with his defense, and the trial court did not express any concerns during the long trial days.” *Id.*

IV. No Further State Review.

Moore petitioned for review in the Arizona Supreme Court. *Id.* at 119a. He raised, among other claims, the three claims he now raises in his certiorari petition. *Id.* at 211a–12a. The Arizona Supreme Court denied review. *Id.* at 116a. Moore now petitions for certiorari.

REASONS FOR DENYING THE PETITION

This Court grants certiorari “only for compelling reasons,” Sup. Ct. R. 10, and Moore has presented no such reason. Moore has not shown that “a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals.” Sup. Ct. R. 10(b). He has also not shown that the state superior court “decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.” Sup. Ct. R. 10(c).

Moore instead raises two issues over which this Court has no jurisdiction. And all three issues were not developed at an evidentiary hearing and were last resolved by a state trial court.

Putting aside these vehicle problems, Moore’s petition merely seeks error correction. But general error correction is not a compelling reason for granting certiorari. Sup. Ct. R. 10 (“A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.”). Finally, even if certiorari were warranted for general error correction, Moore has not shown that the superior court erred in any way.

The petition should be denied.

I. This Case is a Poor Vehicle for Reviewing the Questions Presented.

There are three reasons why this case is a poor vehicle for reviewing the three questions presented. First, this Court lacks jurisdiction over two of three

issues because the decision on those issues below rests on independent and adequate state law grounds. Second, Moore failed to meet his minimal burden of showing his claims were colorable, and as a result, the superior court did not hold an evidentiary hearing. Last, the decision below impacts only Moore's case.

A. The superior court's decision on two of the three issues raised here rests on independent and adequate state law grounds.

"This Court lacks jurisdiction to entertain a federal claim on review of a state court judgment 'if that judgment rests on a state law ground that is both independent of the merits of the federal claim and an adequate basis for the court's decision.'" *Foster v. Chatman*, 578 U.S. 488, 497 (2016) (quoting *Harris v. Reed*, 489 U.S. 255, 260 (1989)). A state law ground is independent of the merits of the federal claim when resolution of the state procedural law question does "not depend upon a federal constitutional ruling on the merits." *Stewart v. Smith*, 536 U.S. 856, 860 (2002). And a state procedural rule is an adequate bar to federal review if it was "firmly established and regularly followed" when applied by the state court. *Ford v. Georgia*, 498 U.S. 411, 424 (1991).

Arizona Rule of Criminal Procedure 32.1(a) provides for post-conviction relief when "the defendant's conviction was obtained, or the sentence was imposed, in violation of the United States or Arizona constitutions." Rule 32.2(a), however, "precludes collateral relief on a ground that either was or could have been raised on direct appeal or in a previous PCR proceeding." *State v. Shrum*, 203 P.3d 1175, 1178, ¶ 12 (Ariz. 2009). This preclusion rule is both an "independent" and "adequate" basis to preclude federal review. *See Smith*, 536 U.S. at 860 (concluding

“Rule 32.2(a)(3) determinations are independent of federal law”); *Smith v. Stewart*, 241 F.3d 1191, 1195 n.2 (9th Cir. 2001) (“We have held that Arizona’s procedural default rule is regularly followed [or adequate] in several cases.”), *reversed on other grounds*, 536 U.S. 856 (2002); *see also Ortiz v. Stewart*, 149 F.3d 923, 931–32 (9th Cir. 1998) (rejecting argument that Arizona courts have not “strictly or regularly followed” Rule 32), *overruled on other grounds as recognized in Apelt v. Ryan*, 878 F.3d 800, 827–28 (9th Cir. 2017); *Carriger v. Lewis*, 971 F.2d 329, 333 (9th Cir. 1992) (en banc) (rejecting assertion that application of procedural default rules in Arizona had been “unpredictable and irregular”).

Moore could have raised his police misconduct and competency claims based on the due process clause—issues in the first and third questions presented—both in the trial court and on direct appeal. But because he failed to do so, the superior court found that Moore was precluded from receiving post-conviction relief on the claims under state law. Pet. App. 97a, 109a; *see* Ariz. R. Crim. P. 32.2(a)(3) (generally precluding constitutional claims “waived at trial or on appeal”).

Consequently, the decision below on the issues raised in the first and third questions presented rests on independent and adequate state law grounds, and this Court lacks jurisdiction to review them. *See Foster*, 578 U.S. at 497.

B. Moore failed to meet his minimal burden of showing his claims were colorable, and as a result, the superior court did not hold an evidentiary hearing.

States are not constitutionally required to offer defendants a mechanism for collateral review. *See Pennsylvania v. Finley*, 481 U.S. 551, 557 (1987). And when

they do, states have flexibility in deciding the procedures for such proceedings. *Dist. Att’y Off. Third Jud. Dist. v. Osborne*, 557 U.S. 52, 69 (2009).

Arizona has chosen to allow defendants to seek post-conviction relief. The rule that governs those proceedings for capital defendants is Arizona Rule of Criminal Procedure 32. *See* Ariz. R. Crim. P. 32.1(a). Rule 32 “allows a defendant to raise issues unknown or unavailable at trial,” and it “furnish[es] an evidentiary forum for the establishment of facts underlying a claim for relief, when such facts have not previously been established of record.” *State v. Watton*, 793 P.2d 80, 85 (Ariz. 1990) (quoting *State v. Scrivner*, 643 P.2d 1022, 1024 (Ariz. App. 1982), *disapproved on other grounds*, *State v. Spreitz*, 39 P.3d 525 (Ariz. 2002)). But Arizona requires that defendants “strictly comply with Rule 32 or be denied relief.” *State v. Carriger*, 692 P.2d 991, 995 (Ariz. 1984).

A superior court under Rule 32 is required to dismiss a defendant’s petition if it “determines that no remaining claim presents a material issue of fact or law that would entitle the defendant to relief under this rule.” Ariz. R. Crim. P. 32.11(a). In other words, defendants are entitled to an evidentiary hearing only if their petition presents a non-precluded, timely claim that is “colorable”—one that “has alleged facts which, if true, would probably have changed the verdict or sentence.” *State v. Amaral*, 368 P.3d 925, 928, ¶ 11 (Ariz. 2016) (emphasis omitted).

The superior court in the proceedings below dismissed Moore’s petition for post-conviction relief without ordering an evidentiary hearing because Moore failed to meet his minimal burden of showing that his claims were colorable. Pet. App.

72a, 81a. Without an evidentiary hearing, the allegations and evidence Moore offered to support his non-colorable claims have not been subjected to the level of adversarial testing that an evidentiary hearing affords. Indeed, Moore's supportable and un rebutted allegations were taken as true in the superior court.

Because Moore presented no colorable claim, the evidentiary record leans one sided, making this case a poor vehicle for resolving the questions presented. The better path would be to wait to review claims that arise from a post-conviction proceeding in Arizona when a defendant has stated a colorable claim and the superior court has held an evidentiary hearing on the claims.

C. The superior court's decision has no impact on any other case.

Because the Arizona Supreme Court declined review, Moore is seeking certiorari to review the decision by the state superior court. But that court is a trial court, not an appellate court, and as such, its decision has no precedential value and no impact on any other case.

II. Moore Seeks this Court's Intervention Merely to Correct Purported Errors in the Superior Court's Decision, but Regardless, the Decision is Correct.

A review of the certiorari petition reveals that Moore is not seeking this Court's intervention to resolve any conflicts in authority or unsettled legal questions but instead is asking this Court to intervene to merely correct what he sees as errors in the superior court's decision. Pet. at 12 (requesting that this "Court grant certiorari to correct the Arizona state courts' multiple violations of his federal constitutional rights in this case based upon this United States Supreme Court's

decisions”). This is far from a compelling reason to accept certiorari. See S. Shapiro, K. Geller, T. Bishop, E. Hartnett, & D. Himmelfarb, *Supreme Court Practice* § 5.12(c)(3), p. 352 (10th ed. 2013) (stating that “error correction . . . is outside the mainstream of the Court’s functions and . . . not among the ‘compelling reasons’ . . . that govern the grant of certiorari”).

Regardless, the superior court correctly resolved the issues raised in the questions presented in its thorough and well-reasoned decision. There is therefore no reason to grant certiorari even for the error correction Moore seeks.

A. The superior court correctly denied Moore’s due process claim based on alleged police misconduct.

The Due Process Clause “prevents the government from engaging in conduct that ‘shocks the conscience,” *United States v. Salerno*, 481 U.S. 739, 746 (1987), meaning “the behavior of the governmental officer is so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience,” *Rosales-Mireles v. United States*, 585 U.S. 129, 137–38 (2018) (quoting *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 847 n.8 (1998)).²

The Due Process Clause also protects a defendant’s right to present a defense. To protect that right, “the Court has developed ‘what might loosely be called the area of constitutionally guaranteed access to evidence.’” *California v.*

² Moore cites the “outrageous” conduct language in *United States v. Russell*, 411 U.S. 423 (1973), an entrapment case that does not clearly apply here. See Pet. at 6–7. But that does not matter because Moore has failed to show any police misconduct, let alone outrageous conduct.

Trombetta, 467 U.S. 479, 485 (1984) (quoting *United States v. Valenzuela-Bernal*, 458 U.S. 858, 867 (1982)). The State violates a defendant’s due process rights if it destroys evidence that “both possess[ed] an exculpatory value that was apparent before the evidence was destroyed, and [was] of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means.” *Id.* at 489.

However, if the State destroys evidence that lacks apparent exculpatory value at the time of destruction, a defendant seeking to show a due-process violation must establish that the State destroyed the evidence in bad faith. *Arizona v. Youngblood*, 488 U.S. 51, 58 (1988). “The presence or absence of bad faith by the police for purposes of the Due Process Clause must necessarily turn on the police’s knowledge of the exculpatory value of the evidence at the time it was lost or destroyed.” *Id.* at 56 n.*.

Here, Moore claimed that the police planted or tampered with evidence (shell casings) and destroyed evidence (blood on a knife), among other misconduct allegations that he has not raised in his certiorari petition. *See* Pet. App. 141a, 211a, 232a–45a. The superior court’s decision to reject the claim, however, is correct because Moore failed to show any police misconduct, as explained below.

1. ***Knife (Item 22).***

In the superior court, Moore provided no affidavits or statements from anyone with first-hand knowledge of the alleged tampering with Item 22, and he presented no objective evidence that any tampering occurred. Instead, he engaged

in the following reasoning. First, he interpreted two photographs that were admitted as trial exhibits to depict blood on the knife's blade. Second, he noted that there was currently no blood—or DNA in any form—on the knife. From this, Moore deduced that the police must have cleaned the knife and intentionally destroyed the blood he believed was on it. But this theory was mere conjecture.

The two exhibits Moore cited did not prove there was blood on the knife's blade. At best, and only with the most strained viewing, the photographs showed a discoloration that may or may not be interpreted as having a reddish tinge. Opp. App. 1a–4a. Contrary to Moore's assertions, the discoloration is not readily identifiable as blood. *See id.* More important, Moore omitted from his pleadings in the superior court at least 11 other crime-scene photographs of the knife that show no hint of a reddish substance on either side of the blade. *E.g.*, Opp. App. 5a–8a. Consistent with these photographs, a crime-scene detective documented in her report—authored on November 17, before Moore became a suspect and before any conceivable motive to “frame” him developed—that there was no blood on the knife. Opp. App. 14a, 30a. The detective later testified under oath at trial that, while there were blood droplets near the knife, there was no blood on the knife itself. R.T. 9/19/01, at 30–31.

Moore also did not prove the police ordered the destruction of any evidence. Moore attributed nefarious motives to a detective's actions in submitting Item 22 to the crime laboratory for DNA analysis and preservation but subsequently cancelling that request. But that detective merely withdrew his request to test Item 22 and

other items of evidence for DNA, and to preserve the same. Opp. App. 43a–45a, 51a–53a. The detective did not order that any evidence be destroyed or direct that Item 22 be stored so that biological evidence would not be testable in the future. *Id.* At trial, when defense counsel made an issue of a detective’s failure to pursue additional forensic testing, the detective explained that the Department had prioritized its use of resources in response to what the investigation had revealed. R.T. 9/24/01, p.m., at 17, 34. By the time the DNA request was withdrawn, detectives had amassed compelling evidence against Moore, none of which suggested the knife had anything to do with the murders.

Because Moore failed to show there was ever blood on the knife, or show the police destroyed the evidence, Moore failed to show any police misconduct.

In any event, even if blood was on the knife and the police failed to preserve it, that fact still would not state a claim under *Trombetta* and *Youngblood* because Moore has failed to show that the blood had apparent exculpatory value and that police knew this fact when they failed to preserve it. In fact, the most reasonable inference is that any blood on the knife would have come from one of the victims, as the knife was resting near an area of blood spatter from the victim’s body, and thus had no exculpatory value. And even if the blood belonged to a third party, that fact would not have exonerated Moore as it would have proven, at best, that the knife stabbed some other person at some unknown point in time.

2. *Shell casings (including Item 26A).*

As with his knife-misconduct claim, Moore failed to proffer any statements or affidavits from persons with first-hand knowledge of any alleged planting or tampering of evidence, and provided no direct, concrete evidence that such misbehavior ever occurred. Instead, his claim rested on affidavits from criminalists who opined, based on their interpretation of crime-scene photographs, that the casings appeared different than they did in 1999. Then, in a dramatic leap in logic—bereft of any factual support—Moore asserted that the only possible explanation for these alleged discrepancies is police misconduct. He is incorrect.

The expert opinions Moore proffered were deeply flawed. The experts relied on crime-scene photographs that depict only a small portion of each bullet, some taken under sub-optimum conditions. For example, the photograph of Item 26A is taken through a plastic bag. Opp. App. 55a. Item 45 is partially ground into dirt and photographed in shadow. *Id.* at 57a. Item 46 is also captured in shadow. *Id.* at 59a. More important, Moore's expert opinions were provisional, recommending review of the original negatives of the crime-scene photographs. *See id.* at 63a, 69a, 76a, 85a, 91a.

Regardless, assuming (without conceding) that some of the casings were different in appearance than they were in 1999, there is no basis to conclude from that fact alone that the items were tampered with, or that police engaged in any other illegal activity. A more realistic explanation for any potential changes is the fact that the evidence at issue has been subjected to three jury trials, has been in

storage for decades, has been extensively tested by both State and defense forensic experts, and was in the custody of defense experts for a significant period. Any difference between the casings' appearance today and in the crime-scene photographs does not mean that the items were not in the same condition when admitted at trial as when collected. There is simply no evidentiary foundation for Moore's position that the items of evidence have been tampered with or planted. He has therefore failed to show any police misconduct.

Finally, the shell casings were not identified as being ejected from the Makarov handgun and thus did not directly tie Moore to the crime scene. Instead, Moore was tied to the scene through the bullets collected there and from the victims' bodies at autopsy. Hence, the shell casings had limited evidentiary value.

B. The superior court correctly denied Moore's claim of ineffective assistance of trial counsel.

Defendants must satisfy two prongs under *Strickland v. Washington*, 466 U.S. 668 (1984), to win a claim of ineffective assistance of counsel: (1) counsel's actions fell below objective standards of reasonableness and (2) the defendant suffered prejudice as a result. 466 U.S. at 687–88. “Surmounting *Strickland*'s high bar is never an easy task.” *Padilla v. Kentucky*, 559 U.S. 356, 371 (2010). And defendants cannot meet their burden if they fail to prove just one of *Strickland*'s prongs. *Strickland*, 466 U.S. at 700.

To prove deficient performance, a defendant must show “that counsel's representation fell below an objective standard of reasonableness.” *Id.* at 688. The evaluating court “must be highly deferential” to “counsel's performance.” *Id.* at 689.

It must make “every effort” to “eliminate the distorting effects of hindsight,” “reconstruct the circumstances of counsel’s challenged conduct,” and “evaluate the conduct from counsel’s perspective at the time.” *Id.* A court must also “indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance” and that counsel’s actions “might be considered sound trial strategy” under the circumstances. *Id.*

This presumption of reasonableness means a court presumes counsel’s actions were tactical rather than neglectful. *Cullen v. Pinholster*, 563 U.S. 170, 191 (2011). It also means that courts must not only give “attorneys the benefit of the doubt” but also “affirmatively entertain the range of possible reasons [defense] counsel may have had for proceeding as they did.” *Id.* at 196 (cleaned up). A silent record cannot overcome the presumption of reasonableness. *See Burt v. Titlow*, 571 U.S. 12, 23 (2013).

To prove prejudice, a defendant must show a “reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Strickland*, 466 U.S. at 694. A showing that counsel’s “errors had some conceivable effect on the outcome of the proceeding” is not enough. *Id.* at 693. Instead, a “reasonable probability” is one “sufficient to undermine confidence in the outcome.” *Id.*

In this case, Moore faulted counsel at the guilt phase of trial for (1) failing to present a third-party culpability defense, (2) failing to offer evidence of Moore’s purported alibi, (3) failing to adequately cross-examine witnesses, (4) failing to

present good-character evidence, and (5) front-loading mitigation. The superior court considered each sub-claim and found no ineffective assistance for specific reasons. Pet. App. 105a–09a. Moore, however, does not address these specific reasons. Regardless, the superior court correctly resolved Moore’s claim.

To start, the superior court correctly found that Moore suffered no prejudice as to each sub-claim. *See id.* Indeed, the evidence against Moore was overwhelming. *Supra* pp. 8–11. The superior court’s disposal of the ineffective assistance claim is correct for this reason alone. *See Strickland*, 466 U.S. at 700.

Even so, and as explained below, the superior court correctly found no deficient performance. Its decision is correct for this reason as well.

1. ***Third-party culpability.***

Moore argued that his trial counsel should have pursued a third-party culpability defense focused on Tony Brown. But as the superior court found, Moore failed to show that his trial counsel’s performance was deficient in investigating or presenting a third-party culpability defense because trial counsel “challenged the evidence of guilt and presented a guilt-phase defense-strategy centered on the theory that Brown or someone else committed the murders.” Pet. App. 106a–07a.

Further, Moore’s proposed third-party culpability defense focusing on Tony Brown is speculative in nature, as explained in pain-staking detail in the State’s response in the superior court. *Id.* at 96a–102a. For the reasons stated in that section, Moore has presented no credible evidence that Brown, not Moore, killed the

victims. So any possible failing on counsel's part in pinning the murders on Brown could not have been ineffective.

2. *Alibi.*

Moore contended that his trial counsel unreasonably failed to pursue an alibi defense based on Alan Feliciano's affidavit that he and Moore were together from about 9:30 p.m. on November 15, 1999, until about 5:00 the next morning. But the superior court found that Moore's counsel "investigated and made a reasoned strategic decision not to present the alibi defense, which counsel believed was not credible." Pet. App. 107a.

Indeed, Feliciano acknowledges in his affidavit that he was interviewed by Moore's trial counsel but claims that counsel told him "they did not believe him" and were concerned about having him testify because he is a felon. Opp. App. 106a. Feliciano's affidavit shows that counsel interviewed Feliciano but did not believe him. Counsels' decision not to pursue an alibi defense "after thorough investigation of [the] law and facts" is "virtually unchallengeable," *Strickland*, 466 U.S. at 690, and is not deficient performance.

3. *Cross-examination of Brown and Ford.*

Moore claimed that his trial counsel ineffectively cross-examined Ford and Brown. However, the superior court found that the record showed that "trial counsel adequately challenged Ford's in-court identification and emphasized Ford's inability to identify Moore in the prior photo-line ups." Pet. App. 108a. The court also explained that "the jury heard considerable testimony and argument about

Brown's fight with [one of the victims]," and that "counsel adequately challenged this evidence and argued that it established another person committed the murders." *Id.* Moore has not shown why such actions by counsel were deficient.

4. ***Good-character evidence.***

Moore argued that his counsel should have presented a good-character defense at the guilt phase of trial. The superior court did not rule on whether Moore's counsel performed deficiently but decided that Moore had not suffered prejudice even if that were the case. Pet. App. 107a. The superior court's ruling, however, may be upheld on the deficient performance prong.

Moore's trial counsel did not perform deficiently because this potential defense would have been at best unpersuasive and at worst catastrophic. In fact, even if counsel could have established that Moore was respectful, kind, and non-violent with certain people and under certain circumstances, that evidence would not have overcome the eyewitness and ballistics evidence connecting him to the murders. That evidence also would not have overcome Moore's multiple admissions that he committed the murders. On top of that, if Moore had called character witnesses, the State could have cross-examined them on their awareness of Moore's prior acts of misconduct, including his multiple contacts with the criminal-justice system.

5. ***Front-loading mitigation.***

Moore faulted counsel for using the guilty-phase of trial to front-load mitigation and for effectively pleading him guilty. The superior court, however, did

“not share Moore’s conclusion that trial counsel effectively pleaded him guilty” but found that the record showed his “trial counsel challenged the State’s evidence of guilt and argued that Moore did not commit the murders.” Pet. App. 109a. The court further found that Moore had “not shown that counsel performed unreasonably by previewing mitigation evidence during the guilt trial,” which the court found “is a common defense strategy in a capital case.” *Id.* at 108a–09a.

To be sure, front-loading mitigation is a common strategy, especially in the face of overwhelming evidence as in this case. *See* Adam Trahan and Daniel M. Stewart, *Examining the Utility of Frontloading Mitigation in Capital Cases when Faced with Overwhelming Evidence of Guilt*, 51 No. 2 Crim. Law. Bulletin ART 4 (2015) (citing *American Bar Association Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases*, 31 Hofstra L. Rev. 913, 1047 (2003)). Moore’s trial counsel deployed a strategy that highlighted Moore’s drug use as front-loading mitigation. In doing so, counsel did not concede Moore’s guilt as he implies. Rather, counsel proposed that Moore had been misidentified and that the State had not carried its burden of proof. *See* R.T. 9/25/01, at 66–94. At the same time, counsel elicited testimony concerning Moore’s use of crack cocaine and the effects of that drug in general, thereby sowing the seeds for the mitigation case counsel planned to present. This strategy was reasonable and not deficient under the difficult factual circumstances counsel confronted.

C. The superior court correctly denied Moore’s due process claim based on his alleged incompetency to stand trial.

“It has long been accepted that a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial.” *Drope v. Missouri*, 420 U.S. 162, 171 (1975); *see also Dusky v. United States*, 362 U.S. 402, 402 (1960) (stating that the test for competency is “whether [defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him”).

Moore claimed in this case that he was incompetent because he allegedly experienced diabetic ketoacidosis during trial. He alleged that, during his guilt-phase trial, the jail withheld his medication and failed to monitor his blood sugar, and that the effects of this error were compounded by his irregular meal schedule on trial days. The superior court considered this claim and correctly found that Moore had failed to show he was incompetent, particularly given the lack of a contemporaneous record showing incompetency. Pet. App. 110a.

Indeed, Moore relied primarily on an affidavit by Dr. Stephen Williams, in which Dr. Williams opined that Moore suffered from ketoacidosis and explained the symptoms of that condition. *Id.* at 538a–44a. Dr. Williams based his opinions on interviews, medical records, and video recordings of Moore’s trial, during which Dr. Williams believed Moore appeared fatigued in the afternoons. *Id.* Although Dr. Williams opined that Moore had some physical impairments, absent from his

affidavit is any meaningful discussion of Moore's ability to understand the proceedings and to assist his counsel, which are the relevant inquiries for competency. *See id.*

In fact, even if Moore had diabetic ketoacidosis during trial, that condition alone does not mean he was incompetent. Likewise, his fatigue or late-day inattention does not mean he was incompetent.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted this 26th day of May, 2026.

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