

IN THE
SUPREME COURT OF THE UNITED STATES

JULIUS JARREAU MOORE,

Petitioner,

v.

STATE OF ARIZONA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY AND ARIZONA SUPREME COURT

REPLY BRIEF SUPPORTING PETITION FOR WRIT OF CERTIORARI

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**PETITIONER'S REPLY TO STATE'S BRIEF IN OPPOSITION
QUESTIONS PRESENTED FOR REVIEW
CAPITAL CASE**

Once again, as previously asserted in his Petition for Writ of Certiorari, *Capital* Petitioner Julius Jarreau Moore has consistently maintained his innocence in this case for over twenty-five (25) years, from the time of his initial arrest in 1999, until the present.

While it is true that Petitioner Moore was convicted at his 2001 jury trial of multiple counts of first degree murder, his convictions were actually discovered on collateral or post conviction appeal to have been the result of previously unknown grave constitutional improprieties, which included the sad and most troubling fact that former trial counsel failed to properly investigate his case *nor call a single witness* at trial despite compelling exculpatory evidence being readily available, including that the State only had one (1) eyewitness, Deborah Ford, who, herself, could not identify Mr. Moore as the perpetrator of the YCH homicides on multiple occasions, and that the credibility of the State's physical and corroborating evidence was put into serious question by not only the third party culpability evidence as to the original suspect Tony Brown, yet by uncontroverted expert testimony supporting egregious police misconduct. Regrettably, these egregious failures and hidden police misconduct resulted in Mr. Moore being sentenced to death in 2007.

Thereafter, Petitioner's Post Conviction Relief (PCR) team and subsequent collateral appeal brought to light the referenced egregious police misconduct, the brazen ineffective assistance of counsel, and that Petitioner Moore was definitely incompetent at the time of his 2001 guilt phase trial. These powerful and colorable claims, though first discovered in post conviction, were subsequently denied by the Maricopa County Superior Court without a hearing, being erroneously precluded under Rule 32.2 ARCrImP because they were all constitutional in nature and of significant constitutional magnitude, whereby under Arizona law in *Stewart v. Smith*, they could not be precluded by the Court absent a finding that each claim had been knowingly, intelligently and voluntarily waived by the Defendant, *Id.* 202 Ariz.446, 46 P.3d 1067 (Ariz. 2002), which finding was never made by the lower Superior Court in its summary dismissal.

Petitioner's post conviction claims are further described as follows.

First, as to the alleged egregious state misconduct, Petitioner's PCR claims included that police had not only *planted evidence* in Mr. Moore's bed to wrongly tie or connect him to the murders, yet that the State had *deliberately destroyed* exculpatory DNA evidence to prevent it from ever being tested. Most notably, this alleged misconduct occurred after the State's only eyewitness could not identify Moore as the perpetrator of the crimes on multiple occasions. Uncontroverted expert testimony was presented by the defense in post conviction led by experts who had both worked as Assistant Directors of the Phoenix Police Department Crimelab, Criminalist Richard Watkins and Crime scene Expert Frank Rogers.

Second, it was alleged that Petitioner Moore had also suffered grave ineffective assistance of trial counsel, who failed to properly investigate his case nor to even present a defense, failing to call a single witness at trial though readily available, this despite substantial third-party culpability evidence existing as to the original suspect, one Tony Brown. Instead, trial counsel improperly frontloaded purported "mitigation" of Moore's

alleged crack cocaine addiction on cross examination of the State's witnesses, from which the jury could have easily inferred that Petitioner was guilty of the homicides due to said alleged addiction. Though the State suggested in post conviction that former counsel's failures were strategic, the United States Supreme Court has consistently held that a defense attorney has a duty to investigate, whereby the failure's to so is never strategic, yet grossly ineffective.

Finally, it was alleged that Petitioner's Sixth Amendment rights were further violated because he was not competent at the time of trial due to the severe *diabetic ketoacidosis* he suffered throughout the 2001 guilt phase of trial, which medically induced incompetency was caused by the Maricopa County Jail's contemporaneous refusal to properly feed and give prescribed medications to Moore at that time even though he was diagnosed as a Type I Diabetic at age 18.

Capital Petitioner Julius Jarreau Moore therefore respectfully reasserts and presents the following three key questions in his request for certiorari in the case at bar:

- 1) Whether the State's alleged egregious misconduct in both planting evidence in Petitioner Moore's bed to wrongfully tie him to the homicides, and by deliberately destroying exculpatory DNA evidence related to blood found on a knife near the first chronological victim's body, violated this Court's authority in *United States v. Russell*, 411 U.S. 423, 93 S.Ct. 1637 (1973) and *Arizona v. Youngblood*, 488 U.S. 51, 109 S.Ct. 333 (1988), respectively holding that outrageous governmental conduct and the purposeful destruction of evidence by police, if proven, require dismissal of his case with prejudice?
- 2) Whether *Capital* Petitioner Moore's 6th Amendment right to be represented by competent trial counsel was violated due to substantial Ineffective Assistance of Counsel (IAC) he received at his 2001 guilt phase trial as defined by *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984) and *Hinton v. Alabama*, 571 U.S. 170, 134 S.Ct. 1081 (2014) due to former counsel's failure to not only properly investigate and present readily available and compelling 3rd Party culpability evidence as to the original suspect, yet in his failure to call a single witness in Petitioner's defense, and which resultant abdicated defense was most substantially comprised of the cross examination of State's witnesses to purportedly "frontload mitigation" as to his alleged addiction, suggesting to the jury that he was guilty in this case and constituting such grave ineffective assistance of counsel or misconduct so as to rival that which occurred in *McCoy v. Louisiana*, 584 U.S. 414, 138 S.Ct. 1500 (2018)?
- 3) Whether Petitioner Moore's Sixth and Fourteenth Amendment federal constitutional right to a fair trial was violated under *United States v. Dusky* by the lower Arizona court because he was not competent at the time of his 2001 guilt phase jury due to the serious medical condition diabetic ketoacidosis caused by the Maricopa County Jail's refusal to properly feed him nor give him prescribed insulin medication?

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INTRODUCTION

Contrary to the State's suggestion otherwise, there are more than compelling reasons to grant certiorari in this case.

First, this case is a *very* good vehicle for addressing the questions presented. The United States Supreme Court has jurisdiction over all three (3) of the issues *Capital* Defendant Moore has raised in his Petition for Writ of Certiorari because they are federal questions that squarely fall under the Sixth and Fourteenth Amendments to the federal constitution and were not resolved on independent and adequate state law grounds given that the issues were never discovered until Post Conviction, whereby they may not be precluded as the State would hope, especially since Mr. Moore did not knowingly, intentionally nor voluntarily waive them in the Arizona courts as required by applicable Arizona law in *Stewart v. Smith, Id.*, 202 Ariz. 446, 46 P.3d 1067 (Ariz. 2002). The State is fully aware of the Arizona Supreme Court's decision in *Stewart*, yet apparently chooses to ignore that the Maricopa County Superior Court made no finding, whatsoever, that *Capital* Petitioner Moore had made a knowing, intelligent or voluntary waiver of his constitutional claims, nor have they suggested that they are not of significant constitutional magnitude requiring Petitioner's waiver which alleged Police

Misconduct violating federal due process, Ineffective Assistance of Counsel and Mental Incompetency at Criminal Trial obviously are. Moreover, the State should not be allowed to benefit from constitutional error which is somehow concealed due to the circumstances, especially when the constitutional error is due to the State's own misconduct that it has tried to conceal for over twenty-five (25) years and could be responsible for the death of an innocent man.

Secondly, while no evidentiary hearing was held on any of the issues, this was due to the Arizona Maricopa County Superior Court plainly erring by violating Petitioner Moore's due process rights in this regard because it refused to believe that any of the evidence presented on behalf of Petitioner Moore was true, in blatant violation of State and federal law by which due process requires an evidentiary hearing be held when the evidence presented in post conviction, if considered or presumed to be true for colorable claim analysis purposes, undermines confidence in the outcome of a post conviction case.

Given the lower Arizona Superior Court abused its discretion by failing to presume the truth of the claims and related evidence presented, and by entering summary dismissal of Petitioner's post-conviction appeal

despite material issues of fact presented regarding each claim, and the Arizona Supreme Court's denial of review, *Capital* Petitioner should still be given an opportunity for review by this most honored Supreme Court, especially given the Arizona Courts failed to follow their own law and procedural rules in denying Mr. Moore an Evidentiary hearing.

For example, Petitioner's case has the appearance of validity, such that, when the evidence presented as to each claim is considered as true for colorable claim analysis purposes, such evidence would have changed the outcome of the case by creating a reasonable doubt as to its result, thus undermining confidence in the outcome of Petitioner's case for post conviction relief purposes. *See Hinton v. Alabama*, 571 U.S. 263, 275, 134 S.Ct. 1081 (2014) citing *Strickland v. Washington* at 695, 104 S.Ct. 2052 (1984) ["When a defendant challenges a conviction, the question is whether there is a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt."] In other words, if the evidence presented, if true, creates a reasonable doubt as to Mr. Moore's convictions, then he should have at least been allowed an evidentiary hearing because that is what due process requires.

This is also inherently true given the numerous fact and expert

witness affidavits provided by Petitioner Moore in post conviction briefing at the State level, with the State having arguably waived its right to object to the granting of such a hearing due to the fact that under Arizona law “the State’s [post conviction relief] response must include a memorandum ... and must include any affidavits, records or other evidence that contradicts the petition’s allegations”. Rule 32.9(a)(2) Ariz. R. Crim. P..

In this case, although Petitioner Moore provided multiple factual and expert affidavits supporting each of his claims, the State never provided any such evidence to contradict his compelling allegations or constitutional claims of Police Misconduct related Due Process violations, Ineffective Assistance of Counsel and Mental Incompetence at the time of trial.

Here, Petitioner Moore respectfully asserts that absent the alleged errors which are supported by uncontroverted evidence, the factfinder would have had a reasonable doubt respecting his guilt or the fairness of his convictions entitling him to an Evidentiary Hearing, especially given the reasonable doubt created by both the State’s misconduct in planting evidence in his bed to wrongly tie him to the homicides and in purposely destroying DNA evidence that would have inferentially exonerated him, as well as given the strong and uncontroverted factual and expert witness

evidence supporting both the ineffective assistance of counsel claim in failing to investigate and present compelling third party culpability evidence regarding the original suspect in the case (Tony Brown) and Mr. Moore's mental incompetency claim.

Third, Petitioner Moore has identified unsettled legal questions and is not merely asking for error correction. For example, by granting Certiorari in the case at bar this most honored Court may clarify for the first time or settle legal questions as to the practical application of the United States Supreme Court's decisions in *United States v. Russell* and *Arizona v. Youngblood*, and whether the facts presented in this case respectively fulfill what was contemplated by this most honored Court regarding both outrageous governmental conduct, *United States v. Russell*, 411 U.S. 423, 93 S.Ct. 1637 (1973), and the purposeful destruction of evidence in a criminal case, *Arizona v. Youngblood*, 488 U.S. 51, 109 S.Ct. 333 (1988), by which the Arizona Courts were required to dismiss with prejudice. Further, as to the Ineffective Assistance of Counsel and Competency issues presented in this case, they are arguably unique and may constitute areas of the law never previously explored or settled as to the following: 1) whether a failure to investigate and present *even a single witness* in a criminal trial abounding

with third party culpability evidence may be ineffective assistance of counsel under *United States v. Cronin*, 466 U.S. 648, 104 S.Ct. 2039 (1984) and *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984) and 2) whether medically induced mental incompetency may be found to violate the 6th Amendment and the principles of due process requiring a new trial under *Dusky v. United States*, 362 U.S. 46280 S. Ct. 788 (1960).

PETITIONER CONTROVERTING STATEMENT OF THE CASE

In November, 1999 the Yale Crackhouse Homicides (YCH) which are the subject of the case at bar occurred at 1808 E. Yale St. in Phoenix, Arizona. While the State is correct that Defendant Moore was indicted by a Grand Jury in November of 1999, his indictment was due in large part to the State's false claim before the Grand Jury that police had found a ziplock plastic bag containing both a shell casing (Item 26A) and projectile or bullet (Item 26B) in Mr. Moore's bed purportedly connecting him to the YCH murder weapon. See Petition for Writ of Certiorari at pp. 7-8 *citing* Appendix E, Petitioner's Amended Petition for Review, pp. 115-16 *citing* Petitioner's Exhibit #84; 2nd Suppl. Declaration Larry A. Hammond, pp. 10-12 attached as Petitioner's Appendix of Exhibits (Volume 2), Appendix J.

Sadly, the evidence presented at trial was one-sided given defense

counsel failed to call a single witness to testify or to even properly investigate the State's case or available defense witnesses or trial defenses, with the State focused on three (3) witnesses (Deborah Ford, Jessica Borghetti and Sarry Ortiz) and initially uncontested forensic evidence. Ultimately in post conviction both the State's misconduct and defense counsel's failures were discovered, along with substantial evidence that Defendant was incompetent at the time of trial. These discoveries put into serious question the fairness of Petitioner's trial and the accuracy of his convictions undermining the credibility of each key State witness¹, and presented compelling third party culpability evidence related to the original suspect, together with uncontroverted experts who challenged the forensic evidence to the point that the State's claim of overwhelming evidence is not only highly questionable, it must be set aside, along with Defendant's unjust convictions.

¹ For example, the main witnesses and scientific evidence used by the State to contrive his conviction at trial were arguably substantially discredited to the PCR Court based upon the post conviction investigation and the following new evidence: 1) that the State's only eye witness Deborah Ford was *unable to identify Petitioner Moore as the perpetrator of the homicides on multiple occasions* including immediately prior to trial, 2) that State's key witness Jessica Borghetti *admitted that she had lied to police during the homicide investigation involving Mr. Moore*, and had even laughed when confronted by the State about her dishonesty, advising the State would have "to figure it out", 3) that the State's 2nd key witness, Sarry Ortiz, admitted for the first time in post conviction that she had actually seen the original suspect Tony Brown running from the crimescene immediately after the shooting and that he was known to be a dangerous/violent individual, while Petitioner Moore was a nice young man, and 4) that the validity of the physical or forensic evidence tying Petitioner Moore to the crimes had been called into serious question by two (2) former Assistant Directors of the Phoenix Police Department Crimelab, Richard Watkins and Frank Rodgers.]

PETITIONER'S REASONS FOR GRANTING CERTIORARI

For obvious reasons the State of Arizona may not want *Capital* Petitioner Julius Jarreau Moore's case to ever receive a fair hearing or his alleged contrived conviction may come to light. However, notwithstanding the State's alleged incorrect or limited facts and questionable legal argument, there are still compelling reasons to grant certiorari in his case which he respectfully requests to be allowed to summarize as follows.

First, the case at bar is a good vehicle for reviewing the questions presented which involve arguably unsettled areas of federal law or United States Supreme Court authority requiring clarification and requested application in order to benefit a death row inmate who is progressively becoming totally blind due to diabetic retinopathy. *Infra.*`

Second, contrary to the State's incorrect assertions, the superior court's decision allegedly precluding two of the three issues raised by Petitioner Moore was **not** correct under Rule 32.2 ARCrImP and applicable law in *Stewart v. Smith*, supra, because neither the Police Misconduct nor the Incompetency issues existed at the time of Mr. Moore's trial and were not discovered until post conviction, and both issues are of significant constitutional magnitude requiring a waiver by Petitioner which never

occurred.

Third, a review of his certiorari petition reveals the United States Supreme Court's intervention in this case is required to finally resolve unsettled legal questions involving both Outrageous Governmental Conduct and the Destruction of Evidence as respectively discussed by the U.S. Supreme Court in *U.S. v. Russell* and *Arizona v. Youngblood* and how they may be or should have been applied to his case. Moreover, such review may also allow unsettled legal issues as to the specifically alleged Ineffective Assistance of Counsel and medically induced Mental Incompetency at criminal trial to be resolved as well.

Fourth, a review of the evidence in *Capital* Petitioner Moore's case, which has been included in his previously filed Petition for Writ of Certiorari and related Appendices and are deserving of appropriate review by this most honored United States Supreme Court, shows that his case is meritorious and worthy of this most honored Court's granting of certiorari in order to properly settle the referenced issues of federal law and apply any favorable holding by this great Court to his case.

CONCLUSION

Based upon the foregoing facts and legal argument, including Petitioner Moore's previously filed Petitioner for Writ of Certiorari and related Appendices, Mr. Moore's Petition for Writ of Certiorari should be granted.

While it may be argued that there is no urgency in taking up review in this case which still has federal habeas review available, such would be most sadly incorrect. As referenced in State proceedings and to this honored Court in requesting an extension of time to file his Petition for Writ of Certiorari, due to his progressing diabetes Petitioner Julius Jarreau Moore is most tragically losing ground each day as to his eyesight which had been greatly compromised by the bilateral retinal detachments resulting from the diabetic retinopathy he has suffered over the last 10-15 years, and from which he is sadly going from being substantially legally blind to being totally blind with each passing day, month and year.

RESPECTFULLY SUBMITTED this 24th day of June, 2026.

_____/s/_____
Patrick C. Coppen, Esq.
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Copy of the foregoing hand
delivered/faxed/e-mailed this
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