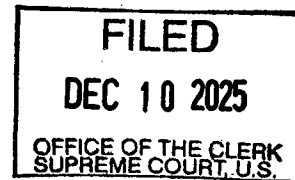


No. 25-7114



IN THE  
SUPREME COURT OF THE UNITED STATES

Brian Vasquez — PETITIONER  
(Your Name)

vs.

The State of Colorado — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Colorado Court of Appeals

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Brian Vasquez, #182250

(Your Name)

Colorado State Penitentiary, Box #777

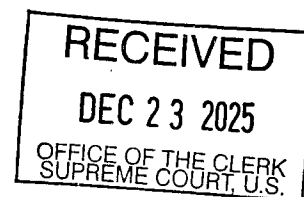
(Address)

Canon City, CO. 81215-0777

(City, State, Zip Code)

Unknown

(Phone Number)



## QUESTION(S) PRESENTED

- 1) When counsel provides erroneous advice which causes a defendant to accept a plea he otherwise wouldn't have, and such misadvice does not manifest itself for years, should any procedural default be correctly imputed to the state?

## LIST OF PARTIES

- All parties appear in the caption of the case on the cover page.
- All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

## RELATED CASES

**TABLE OF CONTENTS**

OPINIONS BELOW ..... 1

JURISDICTION.....

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....

STATEMENT OF THE CASE .....

REASONS FOR GRANTING THE WRIT .....

CONCLUSION.....

**INDEX TO APPENDICES**

- APPENDIX A ...decision of Colorado Court of Appeals denying postconviction action;
- APPENDIX B ...Order of Colorado Supreme Court denying certiorari.
- APPENDIX C
- APPENDIX D
- APPENDIX E
- APPENDIX F

TABLE OF AUTHORITIES CITED

CASE LAW:

<u>Ardolino v. People</u> , 69 P.3d 73 (Colo. 2003).....	9
<u>Coleman v. Thompson</u> , 501 U.S. 722 (1991).....	8
<u>Hill v. Lockhart</u> , 474 U.S. 52 (1985).....	7, 8
<u>Kowalski v. Tesmer</u> , 543 U.S. 125 (2004).....	9
<u>Missouri v. Frye</u> , 566 U.S. 134 (2012).....	7
<u>Padilla v. Kentucky</u> , 559 U.S. 356 (2010).....	7
<u>People v. Weidemer</u> , 852 P.2d 424 (Colo. 1993).....	9, 10
<u>Silva v. People</u> , 156 P.3d 1164 (Colo. 2007).....	9
<u>Strickland v. Washington</u> , 466 U.S. 668 (1984).....	7, 8

STATUTES AND RULES:

28 U.S.C. Section 2244.....	8
16-5-402 C.R.S.....	5, 8, 9, 10
17-22.5-405 C.R.S.....	5
18-1-410 C.R.S.....	9
Colorado Rule of Criminal Procedure 35(c).....	9

IN THE  
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

**OPINIONS BELOW**

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix \_\_\_\_\_ to the petition and is

- reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

- reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix <sup>A</sup>\_\_\_\_\_ to the petition and is

- reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the Colorado Supreme Court \_\_\_\_\_ court appears at Appendix <sup>B</sup>\_\_\_\_\_ to the petition and is

- reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

## JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was Nov. 17, 2025.  
A copy of that decision appears at Appendix B.

A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_ A \_\_\_\_.

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

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

### United States Constitution, Amend. VI:

"In all criminal prosecutions, the accused shall enjoy the right...to have the Assistance of Counsel for his defence."

### United States Constitution, Amend. XIV:

"Sec. 1...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..."

### 28 U.S.C. Section 2244(d)(1)(B):

"(d)(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to a judgment of a State court. ~~The limitation period shall run from the latest of -~~

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action,"

### Colorado Revised Statute, Section 16-5-402(2)(d):

"(2) In recognition of the difficulties attending the litigation of state claims and the potential for frustrating various statutory provisions directed at repeat offenders, former offenders, and habitual offenders, the only exceptions to the time limitations specified in subsection (1) of this section are:

(d) Where the court hearing the collateral attack finds that the failure to seek relief within the applicable time period was the result of circumstances amounting to justifiable excuse or excusable neglect."

## STATEMENT OF THE CASE

On Sept. 28, 2018, Mr. Vasquez entered a plea, based upon counsel's erroneous advice as to how much time he'd have to serve. Mr. Vasquez entered a plea to six sexually based offenses, all of which involved young girls between the ages of 14-17 and all of whom were, at one point or another, Mr. Vasquez's students. The offenses varied in degree of severity, i.e., some were merely sexting cases, while other involved actual physical relations.

When confronted with initial allegations on these case, Mr. Vasquez openly admitted to them and fully cooperated with authorities, to his ultimate detriment. Mr. Vasquez retained private counsel who ultimately advised him to accept a 40-life sentence, advising him he would serve approximately 15 years to initial parole eligibility. Having no reason to question counsel's advice and having no knowledge of the law, Mr. Vasquez entered his plea. At no point did counsel or the court advise him he'd be required to serve seventy-five percent of the minimum term or at least thirty (30) years before he'd become parole eligible. Mr. Vasquez was sentenced and sent to a private facility at the beginning of the COVID-19 pandemic and which had little to no legal access. There he served his sentence and given the nature of his offenses, kept the facts of said hidden. In other words, Mr. Vasquez did not discuss his offense with anyone and when asked only said he was serving a 40 year sentence, continuing to believe he would be parole eligible in 15 years. It should also be noted that private facilities in Colorado have very few case managers, which with whom inmates have little if any contact, except by written kite.

In late 2023, a sign up sheet for application to apply to be placed at the Colorado State Penitentiary's Incentive Living Unit was posted at Mr. Vasquez's private facility. Mr. Vasquez signed up, was accepted and transferred to said. In 2024, Mr. Vasquez had his first in-person classification review (at the private facilities classification reviews are done on paper, outside of the inmate's presence and one never sees the results of said). During the review, Mr. Vasquez inquired as to when he would become eligible to be placed in the requisite sex-offender treatment program that is required by law before any sex-offender may be released to parole. He was advised that he was some 18 years or more away from said. Confused, Mr. Vasquez asked why when, as he understood it, he only had to serve 15 years to initial parole eligibility and given he had about 8 years served, he should be getting close (an inmate generally becomes eligible for such treatment at 5 years to initial parole eligibility date). Case management explained to Mr. Vasquez, given the nature of his case, the only sentence reduction he receives off his minimum term of 40 years is "earned time," which amounts to twenty-five percent maximum of one's sentence and only accumulates as time is served. See section 17-22.5-405 C.R.S.

Mr. Vasequez investigated the matter and sought collateral review of his conviction, claiming misadvice by counsel, i.e., ineffective assistance and stating that "but for" counsel's misdavice he would not have accepted the plea. Because he was past the 3 year time limit for seeking such review (see section 16-5-402(1) C.R.S.) he claimed justifiable excuse/excusable neglect exception to the statutory limitations for seeking such review under subsection (2)(d)

of section 16-5-402 C.R.S.

Mr. Vasquez's collateral attack was summarily denied with the trial court finding that Mr. Vasquez could have simply looked at the Dept. of Correction's website to ascertain his initial parole eligibility date (as if Mr. Vasquez has access to the internet). Mr. Vasquez appealed and the Colorado Court of Appeals found the same. See Appendix A, page 3-4, para. 6. Certiorari was sought and denied by the Colorado Supreme Court. This Petition for Certiorari followed.

## REASONS FOR GRANTING THE PETITION

- 1) When counsel provides erroneous advise which causes a defendant to accept a plea he otherwise wouldn't have, and such misadvice does not manifest itself for years, should any procedural default be correctly imputed to the state?

All criminal defendants have a Sixth Amendment right to receive the effective assistance of counsel at every critical stage of the proceedings against them. See Missouri v. Frye, 566 U.S. 134, 140 (2012). This is true regardless of whether the defendant elects to go to trial or enter a plea. Id. Counsel must not only advise a defendant when there is a plea offer, but also must render adequate and competent advice as to the consequences a defendant faces if he/she accepts any plea offer and subsequent sentence. Id., 566 U.S. at 140-142 (citing Hill v. Lockhart, 474 U.S. 52 (1985); Padilla v. Kentucky, 559 U.S. 356 (2010)).

In Padilla, this Court determined that "It is quintessentially the duty of counsel to provide her client with available advice about an issue like deportation, and the failure to do so 'clearly satisfies the first prong of the Strickland analysis.'" Id., 559 U.S. at 371 (quoting Hill, 474 U.S. at 62); see also, Strickland v. Washington, 466 U.S. 668, 687 (1984)(requiring that a defendant show that counsel's performance was deficient and that this deficiency prejudiced the defendant before relief may be granted).

Padilla addressed counsel's failure to advise concerning potential deportation; whereas Hill addressed misadvice concerning parole eligibility. This Court declined to find that Hill had established Strickland's prejudice prong, given

Hill (unlike Mr. Vasquez) has not alleged in the lower tribunals that "but for" counsel's misadvice, he would not have entered a plea and instead insisted upon going to trial. See Hill, 474 U.S. at 60.

While this is not the question before this Court and instead the question is one of whether procedural default of such a claim may be imputed to a state when the defendant is subjected to ineffective assistance of counsel, the issue is paramount to the issue at bar, nonetheless.

Assuming arguendo that when a claim of misadvice as to parole eligibility is properly presented, it satisfies both prongs of the Strickland test, what isn't clear is whether that same ineffective assistance is sufficient to allow equitable tolling of any statutory time limitation for seeking collateral review of one's plea entry. Mr. Vasquez respectfully submits that it is and thus respectfully moves this Court to grant certiorari in order to establish controlling precedent.

Analogous to Mr. Vasquez's issue are both this Court's ruling in Coleman v. Thompson, 501 U.S. 722, 754 (1991), this Court determined that any such default on a habeas application may in fact be imputed to the state if such default occurs at a time when the defendant has a constitutional right to such assistance of counsel. Id., 501 U.S. at 755; see also e.g., 28 U.S.C. Section 2244(d)(1)(B); (allowing equitable tolling of federal statute of limitations due to governmental interference.)

In Colorado, section 16-5-402(2)(d) C.R.S. allows that Colorado's 3 year statute

of limitations within one must seek collateral review of any conviction may be tolled if the defendant can demonstrate circumstance that amount to justifiable excuse or excusable neglect. See section 16-5-402(2)(d) C.R.S.; see also, People v. Weidemer, 852 P.2d 424, 428-29, 435-38 (Colo. 1993)(discussing circumstances that might amount to said, as well as constitutional considerations as to why such exemption may be allowed). This said, the State courts did not allow for any such exception to the 3 year statutory time limit for seeking collateral review and instead found that because Mr. Vasquez's parole eligibility date was available on the internet, i.e., the Colo. Dept. of Corr. website, something no prisoner has access to, Mr. Vasquez was not entitled to such exception. See Appendix A, page 3-4, para. 6.

Mr. Vaquez contends that the issue here is similar to that addressed by this Court in Kowalski v. Tesmer, 543 U.S. 125, 127 (2004). Kowalski dealt with the State of Michigan amending its constitution to allow for a defendant to appeal his conviction, following the entry of a plea, only by leave of the court. Id. Immediately after this amendment, judges started denying leave to appeal. Id. Sadly, in Kowlaski the petitioner bringing a challenge to this procedure lacked standing to do so.

Mr. Vasquez's case is similar in that Colorado requires any unpreserved challenge to one's plea entry, i.e., a challenge based upon facts discovered after the plea was entered and the defendant sentenced, to be brought in a collateral attack motion under Colo. Rule of Criminal Procedure 35(c) and section 18-1-410 C.R.S.

In such an action, the defendant has no right to assistance of counsel unless he or she sets forth a claim, which if true, would entitle the defendant to some form of relief. See Ardolino v. People, 69 P.3d 73, 76-77 (Colo. 2003); see also e.g., Silva v. People, 156 P.3d 1164, 1165 (Colo. 2007)(allowing that a defendant only has a limited statutory right to assistance of counsel in pursuit of collateral review of one's conviction). While in theory this case law indicates that the assistance of counsel should be readily available, in most cases, like here, that is not the case. Instead, (again like here), a court summarily denies the defendant's initial-review collateral attack motion, finding any reason to do so, e.g., a defendant claiming he was misadvised as to parole eligibility by counsel could have discovered this misadvice and timely sought review by accessing the internet, something no prisoner has access to.

If this isn't sufficient in itself to violate due process, add in a requirement that circumstance amounting to justifiable excuse or excusable neglect must be presented by the prisoner if, (due to ineffective assistance of counsel), he or she doesn't become aware of the claim until after the time limitation for seeking collateral review has lapsed. See section 16-5-402(2)(d) C.R.S.; Weidemer supra.

The question is then whether in such circumstances as that above, there's a Sixth and Fourteenth Amendment violation based upon counsel's ineffectiveness requiring assistance of counsel and an opportunity to substantiate such a claim? Mr. Vasquez respectfully submits there is, as any such procedural default may correctly be imputed to the State of Colorado, given counsel's ineffectiveness occurring at

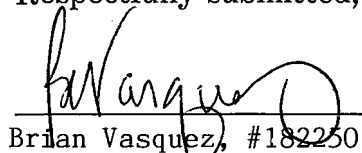
at a time when there was a Sixth Amendment right to effective assistance.

Mr. Vasquez again moves this Court most respectfully to grant certiorari and establish precedent in order to protect Mr. Vasquez's and all criminal defendants' Sixth and Fourteenth Amendment rights.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

  
\_\_\_\_\_  
Brian Vasquez, #182250

Date: Dec. 2<sup>ND</sup>, 2025