25-7284

No. 24-2894

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

STACY STRICKLIN – PETITIONER

vs.

SUPERINTENDENT MICHAEL CAPRA – RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

STACY STRICKLIN

EASTERN CORRECTIONAL FACILITY

P.O. BOX 338

NAPANOCH, NEW YORK 12458-0338

QUESTION(S) PRESENTED

(1)

Should this Court grant this petition for a writ of certiorari to determine whether trial counsel failed to investigate the surveillance video used to rebut the intoxication defense, and because his trial counsel advising him of waiving his Constitutional Right to a jury and rejecting the prosecutor's plea offer before counsel watched the video was unreasonable.

(2)

Should this Court grant this petition for a writ of certiorari to determine whether the prosecutor introduced evidence at trial from a non-testifying witness; thereby violating appellant's Constitutional Right to confront his accusers is flatly contrary to defendant's Constitutional Right.

LIST OF PARTIES

X – All parties in the caption of the case on the cover page.

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TABLE OF AUTHORITIES

STATUTES AND RULES

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 A 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[✓] is unpublished.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 2024 WL 3431945; 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[ ] is unpublished.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 _____ 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[ ] is unpublished.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 _____ 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[ ] is unpublished.

JURISDICTION

[ ] For cases from federal courts:

[ ] 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: September 19 2025 and a copy of the order denying rehearing appears at Appendix A.

[ ] 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
A copy of that decision appears at Appendix .

[ ] 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 writ of Certiorari was granted to including _____ (date) on _____ (date) in Application No._____

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. "In all criminal prosecution, the accused shall enjoy the right to have assistance of counsel for his / her defense ... United States Constitution, Amendment VI, AND to be confronted with witness against,

2. "NO State shall ... deprive any person of life, liberty, or property without due process of law." United States Constitution, Amendment XIV.

STATEMENT OF THE CASE

Petitioner Stacy Stricklin was convicted by a non-jury trial of Murder in the Second Degree; P.L. § 125.25 (1), arising out of a birthday party. Petitioner and his girlfriend, Michelle Fernandez attended in February 2010. Petitioner is alleged to have consumed alcohol and cocaine at the party (R. 211, 479-81; Id. at 213-16, 229, 233-36, 240, 481. At some time or point, Fernandez left the part, spent time with a friend, and returned home. Id at 219-20,236, 414, 482-83. Several hours later, Petitioner went to Fernandez's apartment; entered the bedroom where Fernandez was sleeping, beat her, hit her, and asphyxiated her resulting in Fernandez's death. Id. at 313, 347-56, 375-83, 436, 454-62.

As relevant to the present petition, the prosecutor noted that it had provided the defense with a surveillance video from Fernandez's apartment building where Fernandez was killed-which showed Petitioner "walking down a few hallways." Id. at 14. Defense counsel informed the Court that he had received the tape but was unable to do so with the prosecution's equipment. Id at 13-16. Defense counsel and Petitioner successfully viewed the surveillance video during a lunch recess in the middle of the Suppression hearing, before trial began. Id. at 32-33. Second, the prosecution asked the court for permission to put on the stand a witness who would testify to threatening statements made by Petitioner and Fernandez. Id. 15-18, 681-82. The Court determined it would allow the testimony to come into evidence. Id. at 18. Third, the prosecution applied pursuant to ***People v. Sandoval***, 34 N.Y.2d 371, 374 (1974), for permission to introduce evidence of Petitioner's prior criminal convictions, should Petitioner take the stand in his own defense. R. 18-20. The Court denied the request. Id. at 20.

Following trial, Fernandez's friend testified that in the hours before Fernandez died, Petitioner became angry and threatened to kill Fernandez. Id at 411. Fernandez's neighbor testified that he entered Fernandez's bedroom on the night of her death having been summoned by Fernandez's mother for help and witnessed Petitioner sitting on top of the bed with blood on his face. Id at 345-50. Moreover, forensic experts testified that the bite marks on Fernandez matched Petitioner's dental impressions. Id. at 472-74, 1193.

The defense, in turn, introduced evidence to support an intoxication defense. Defense counsel presented testimony from Petitioner's family members and friends as to Petitioner's intoxicated state on that evening. Id. at 180-257, 316, 32, 475-501. Among other witnesses, Petitioner's friend, Charles Gallspie testified about events at the birthday party that Petitioner attended with Fernandez's on the night Fernandez was killed. On cross-examination, Charles testified that he did not remember various things the prosecutor was asking about. Over defense counsel's objection, the Trial Court permitted the prosecution to refresh Charles's memory with out-of-Court statements made to the police by his brother, Teddy Gallspie, who attended the party and who did not testify at trial. See, Id at 248-51.

The defense also presented testimony from defense expert Dr. Gulrajani, who opined that Petitioner had been too intoxicated to form the requisite intent to murder Fernandez. Id at 510-57. On cross-examination, Dr. Gulrajani, admitted that he had not viewed the surveillance video that depicted Petitioner walking down hallways in Fernandez's apartment building on the night of her death. Id. at 550. The prosecution also asked Dr. Gulrajani, whether his opinion regarding some of Petitioner's representations would change if he learned Petitioner had been convicted of biting another woman in the past. Id. at 539. The prosecution then sought to introduce evidence

of one of Petitioner's propensity to bite people. Id. at 540. The Court allowed the criminal record into the evidence for the limited purpose of seeing whether it affected Dr. Gulrajani's opinion. Ibid.

At the conclusion of Trial, Petitioner was convicted of Second Degree Murder. Id at 651. The Court sentenced Petitioner to a prison term of 25 years to Life. Id. at 672.

Appeal

The Defendant's claim that he was deprived of his Constitutional right to the effective assistance of counsel is based, in part, on matter outside the record, and thus, constitutes a "mixed claim" of ineffective assistance, ***People v. Maxwell***, 89 A.D.3d 1108, 1109 (2011); see ***People v. Evans***, 16 N.Y.3d 571, 575 n 2 (2011). In this case it is not evident from the matter appearing on the record that Defendant was deprived of the effective assistance of counsel (See, ***People v. Terrell***, 78 A.D.3d 865, 866 (2010); ***People v. Morris***, 187 A.D.2d 460, 461-62 (1992); ***People v. Eason***, 160 A.D.2d 1018, 19 (1990)). Since the defendant's claim of ineffective assistance cannot be resolved without reference to matter outside the record, a C.P.L. § 440.10 proceeding is the appropriate forum for reviewing the claim in its entirety (See, ***People v. Freeman***, 93 A.D.3d 805 (2012); ***People v. Maxwell***, 89 A.D.3d at 1109; ***People v. Rohlehr***, 87 A.D.3d 603, 604 (2011).

Appellate Division Decision

The Defendant failed to preserve for Appellate review his contentions that the prosecutor's questioning of a defense witness about statements made to the police by a non-testifying witness violated the defendant's right under the Confrontation Clause of the Sixth Amendment of the United States Constitution, as he did not object on that ground, ***People v.***

Currie, 131 A.D.3d 1265, 1266 (2015); ***People v. Prince***, 128 A.D.3d 987 (2015)). In any event, the contention is without merit because the non-testifying witness's statements were not offered as evidence of the truth of the matter asserted therein (See ***People v. Crawford***, 54 A.D.3d 961, 962 (2008); ***People v. Algarin***, 15 A.D.3d 411, 412 (2003); ***People v. Ortiz***, 135 A.D.2d 743, 744 (1987)).

REASONS FOR GRANTING THE PETITION AS TO THE FIRST QUESTION PRESENTED

Petitioner's case presents this Court with another round in the ceaseless litigation over ineffective assistance of counsel (IAC). The United States Supreme Court Second Circuit of New York Court of Appeals continuing refusal to recognize that.

I. Ineffective Assistance of Counsel

Petitioner Stacy Stricklin, raised two sets of ineffective assistance of counsel, arguments, both stemming from trial counsel's delay in reviewing the surveillance video that depicted Petitioner walking in Fernandez's death. First, Petitioner alleges that he received ineffective assistance because Trial Counsel failed to timely investigate the video and ensure Dr. Gulrajani viewed the video prior to trial. See R. 700-11. Second, Petitioner alleges that he received ineffective assistance because trial counsel advised him on whether to waive his right to a jury trial and whether to accept the prosecution's offer before reviewing the video. Id. at 711-13. In denying Petitioner's motion to vacate, the state trial court considered and rejected both claims. Id. at 1176-80. The District Court states, Petitioner fails to demonstrate that the state court's decision was contrary to or an unreasonable application of established federal law.

To establish a claim of ineffective assistance of counsel under the Sixth Amendment, Petitioner must show that (1) "counsel's representation fell below an objective standard of

reasonableness," and (2) "There is a reasonable probability that, but for counsel's unprofessional error, the result of the proceeding would have been different." ***Strickland v .Washington***, 466 U.S. 668, 694 (1984). The review of an attorney's performance, already "highly differential." ***Knowles v. Mirzayance***, 556 U.S. 111, 124 (2009) (citation omitted), become doubly so on habeas review when "a state court has [already] decided that counsel performed adequately," ***Dunn v. Reeves***, 141 S.Ct. 2405, 2410 (2021) (per curiam) (Citation omitted). In this context, a Petitioner must not only satisfy ***Strickland's*** requirements, ***Knowles***, 556 U.S. 124, but also show that the state court's ruling was unreasonable, id. at 123.

Herein, Petitioner's first ineffective-assistance claims based on his trial counsel's failure to timely to investigate the video and ensure Dr. Gulrajani watch the video. The district court state fails both prongs of ***Strickland*** test. To begin, the district court says Petitioner has not demonstrated that defense council's actions fell below an objective standard of reasonableness. The district court goes further to state defense counsel reviewed the video prior to the start of trial and could have easily requested an adjournment to reconsider trial strategy, See R. 1179 n. 1.

The district court found, defense council's decision not to change his strategy of pressing an intoxication defense was reasonable given the available evidence of Petitioner's intoxication, which the surveillance video did not completely undermine. The district court, though states the video did not completely undermined. As the state court noted in denying petitioner's motion to vacate, although the video depicted petitioner "exhibiting relative coordination and balance," it also captured his "swaying slightly, and leaning against the walls as he walked through the hallways and staircases, which defense counsel argued was indicia of [petitioner's] impaired

motor skills." Id. at 1178-79. The Court indeed convicted Petitioner of Second Degree Murder. It concluded there was sufficient evidence to support giving a charge on the intoxication defense. Id. at 1174.

The district Court finds moreover, given that the surveillance video did not disprove the intoxication defense and that trial counsel could have requested to adjourn trial after viewing the video. Petitioner also cannot demonstrate a reasonable probability that the result of his trial would have been different but for his counsel's failure to earlier investigate the video. This is wrong, because although the surveillance video did not disprove the intoxication defense but could have given more of support and aid to the Court, especially if the video shows defendant swaying slightly and leaning against the walls as he walked through the hallways and staircases, this will be unreasonable.

Herein the Petitioner's second ineffective assistance claim based on counsel's failure to watch the video before advising Petitioner on the prosecution's plea offer and waiver of his jury trial right flares no better. The district court judge states, even assuming this claim is exhausted, petitioner has not demonstrated an entitlement to relief, because there is no indication in the record that had trial counsel reviewed the surveillance video earlier, he would have given Petitioner different advice on whether to accept the prosecution's plea offer and whether to waive his right to a jury trial. As such, the state court's rejection of Petitioner's ineffective assistance claims was contrary to or an unreasonable application of clearly established federal law.

2. Petitioner's remaining claims are not procedural barred. The district court states Petitioner's remaining claims are procedurally barred. Here, the district court states, The Appellate Division

rejected Petitioner's claims of a confrontation clause in violation. Prosecutorial misconduct, and ***Rosario*** violation because they were not presented for Appellate review. See, ***Stricklin***, 152 A.D.3d at 550-51. The district court states accordingly those claims are barred because the Appellate Division rejected them on an independent and adequate state law ground. "New York court's application of their rules regarding the preservation of legal issues for appellate review in criminal cases-codified at N.Y. Crim. Proc. Law § 470.05 (2) – constitute[s] independent and adequate state grounds" for a decision, barring relief under section § 2254. ***McPherson v. Keyser***, No. 20-161-pr. 2021 WL 4452078, at *2 (2d Cir. Sept. 29, 2021), Cert. Denied, 142 S.Ct. 1235 (2022); see ***Garvey v. Duncan***, 485 F.3d 709, 720 (2d Cir. 2007). ([T]he procedural bar of § 470.05 (2) constitutes an independent and adequate state ground for the Appellate Division, in the alternative, rejected Petitioner's claims on merits relying on, See ***Velasquez v. Leonardo***, 898 F.2d 7, 9, (2d Cir. 1990) (holding that a state court's finding that petitioner's claims were not preserved for appellate review" under N.Y. Crim. Proc. Law § 470.05 (2) "barred [the court] from reaching the merits of his ... federal claims ... even where the state court has also ruled in the alternative on the merits of the merits of the federal claim[s]") (discussing ***Harris v. Reed***, 489 U.S. 255 (1989)) This claim was contrary to or an unreasonable application of clearly established law.

REASONS FOR GRANTING THE PETITION
AS TO THE SECOND QUESTIONS PRESENTED

II Petitioner's case presents this court with another round in the ceaseless litigation over the Confrontation Clause of the Sixth Amendment and the New York State hearsay rules. Petitioner argued that the prosecutioner's questioning of a defense witness about statements made to the police by a non-testifying witness violated Petitioner's United States Constitutional VI, and XIV Amendments, right to due process. ***Smith v. Arizona***, 602 U.S. 779, 144 S.Ct. 1785 (2024); in operation, the clause protects a defendant's rights of cross-examination by limiting the prosecution's ability to introduce statements made by people not in the court room. The clause thus bars the admission at of an absent witness's statements unless the witness in unavailable and the defendant had a prior chance to subject her to cross-examination. ***Crawford v. Washington***, 541 U.S. 36, 53-54, 124 S.Ct. 1354. This prohibition "applies only to testimonial hearsay." ***Davis v. Washington***, 547 U.S. 813, 823, 126 S.Ct. 2266, and in that two word phrase is two limits. First, in speaking about "witness" – or "those who bear testimony" – the clause confines "itself to" testimonial statements, a category this court has variously described. Id, at 823, 826, 126 S.Ct. 2266. Second, the clause bars only the introduction of hearsay-meaning, out-of-court statement offered" to prove the truth of the matter asserted." ***Anderson v. United States***, 417 U.S. 211, 219, 94 S.Ct. 2253.

To be clear, the clause thus bars the admission at trial of an absent witness's statements unless the witness's statements unless the witness in unavailable and the defendant had a prior chance to subject cross-examination. ***Crawford v. Washington***, 541 U.S. 36, 53-54, 1245 & 2266. Therefore, the district court judge was wrong because herein this case, Petitioner has met

his burden, that the prosecutor introduced evidence at trial, form a non-testifying witness, thereby violating Appellant's Constitutional Rights to confront his accusers is flatly contrary to petitioner's Constitutional right. U.S.C.A. VI, and XIV.

Stricklin's confrontation claim can succeed only, if the non-testifying statements came into evidence for the non-testifying statements came into evidence for their truth. As earlier explained, the clause applies solely to "testimonial hearsay "***Davis***, 547 U.S. at 823, 125 S.Ct. 2266 (emphasis added); see supra, at 1792 *1793, and that means the clause "does not bar the use of testimonial statements for purpose other than establishing at 1797, the truth of the matter asserted. ***Crawford***, 541 U.S. at 60 n. 9, 124 S.Ct. 1354. So a court analyzing a confrontation claim must identify the role that a given out-of-court statement here.

Due to the prosecutor introducing evidence at trial form a non-testifying witness which is testimonial hearsay thereby violating Stricklin's Constitutional right to confront his accusers. The correct case to solve this case, ***Crawford v. Washington***, 541 U.S. 36, 53-54, 124 S.Ct. 1254. This prohibition "applies to testimonial hearsay ***Davis v. Washington***, 547 U.S. 813, 823, 125 S.Ct. 2266; and in the two-word phrase are two limits. First in speaking about witnesses" or "those who bear testimony" – the clause confines itself to "testimonial statements," a category this Court has variously described. Id. at 823, 826, 126 S.Ct. 2266. And second, the clause bars only the introduction of hearsay – meaning out-of-court statements offered "to prove the truth of the matters asserted.

To, introduce evidence at trial from a non-testifying witness that is testimonial, would be violating Petitioner's Constitutional rights to confront his accusers, would be unreasonable according to the Constitution, and well clearly established law.

CONCLUSION

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE GRANTED.

Respectfully submitted,

Stacy Stricklin, *Pro se*,