

No. 12-7527

IN THE
SUPREME COURT OF THE UNITED STATES

RICHARD DALE STOKLEY,
PETITIONER,

-vs-

STATE OF ARIZONA,
RESPONDENT.

PETITION FOR WRIT OF HABEAS CORPUS

RESPONSE IN OPPOSITION AND
OPPOSITION TO MOTION TO STAY EXECUTION

THOMAS C. HORNE
ATTORNEY GENERAL

KENT E. CATTANI
DIVISION CHIEF COUNSEL
(COUNSEL OF RECORD)

JEFFREY A. ZICK
SECTION CHIEF COUNSEL
1275 WEST WASHINGTON
CAPITAL LITIGATION SECTION
1275 WEST WASHINGTON
PHOENIX, ARIZONA 85007-2997
TELEPHONE: (602) 542-4686
JEFFREY.ZICK@AZAG.GOV
CADOCKET@AZAG.GOV

ATTORNEYS FOR RESPONDENT

QUESTION PRESENTED FOR REVIEW

Petitioner Richard Stokley argued in state court that death sentences imposed as a result of his sexual assault and murder of two 13-year-old girls were improper because his co-defendant had previously been sentenced to 20 years imprisonment for his involvement after pleading guilty to second-degree murder. The Arizona Supreme Court rejected Stokley's argument, noting that the sentence negotiated by the co-defendant was the result of a disparity of evidence at the time of the co-defendant's trial. The court further noted that the co-defendant was 20 years old at the time of the crime, while Stokley was thirty-eight.

Having failed to raise this issue as part of his federal habeas proceedings under 28 U.S.C. § 2254, and having failed to explain why it was not raised in that forum, has Stokley established the exceptional circumstances necessary to warrant this Court's exercise of jurisdiction under 28 U.S.C. §§ 2241 and 2242?

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Stokley's petition correctly sets forth the decisions below in which the Arizona Supreme Court affirmed his convictions and sentences (in 1995) and in which the federal courts denied federal habeas relief (in the United States District Court for the District of Arizona in 2009 and in the United States Court of Appeals for the Ninth Circuit in 2012).

STATEMENT OF JURISDICTION

This Court has original jurisdiction to consider writs of habeas corpus under exceptional circumstances under 28 U.S.C. §§ 2241 and 2242.

PROVISIONS INVOLVED

The Eighth Amendment provides:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The Fourteenth Amendment provides in relevant part:

No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The Arizona Supreme Court summarized the facts surrounding the crimes for which Stokley was convicted as follows. On the Fourth of July weekend, 1991, two thirteen-year-old girls, Mary and Mandy, attended a community celebration near Elfrida, Arizona. Thirty-eight-year-old Stokley also attended the festival to work as a stuntman in Old West reenactments.

Mary and Mandy, along with numerous other local children, camped out at the celebration site on July 7. That night co-defendant Randy Brazeal, age twenty, showed up at the campsite. Brazeal had previously dated Mandy's older sister and knew Mandy. The girls were also seen standing next to Brazeal's car speaking to Brazeal, who was in the driver's seat, while Stokley was in the passenger seat. Around 1:00 a.m. on July 8, 1991, the girls told a friend they were going to the restroom. They never returned.

The next day Brazeal surrendered himself and his car to police in Chandler, Arizona. The hood of the car had semen stains, as well as dents matching the shape of human buttocks. Palm prints on the hood matched Brazeal. The back seat had semen stains matching Stokley and also had blood stains. Police found a bloody pair of men's pants in the car.

Meanwhile, Stokley called a woman in Elfrida asking her to send someone to pick him up in Benson, Arizona. The woman asked about the missing girls, to which Stokley replied, "What girls? I don't know anything about any girls." Police arrested Stokley that same day at a Benson truck stop. Police found blood stains on his shoes, and his pants looked as if they had recently been cut off at the knee.

After reading Stokley his *Miranda* rights, police questioned him at the Benson police station. At first he denied any knowledge of the girls, but after hearing about Brazeal's arrest and being asked about "a particular mine shaft around Gleason," he admitted that he and Brazeal had sexually assaulted the girls. He admitted having sex with "the brown haired girl" (Mandy) and stated that Brazeal had sex with both of them. He also said he and Brazeal had discussed

killing the girls, after which Stokley choked one and Brazeal strangled the other. He admitted, "I . . . choked 'em . . . There was one foot moving though I knew they was brain dead but I was getting scared . . . They just wouldn't quit. It was terrible." Stokley also admitted using his knife on both girls. After killing the girls, they dumped the bodies down a mine shaft.

Stokely led the police to the abandoned mine shaft and expressed hope that the trial would not take long so he could "get the needle and get it over with." After explaining how they had moved timbers covering the shaft to dump the bodies, he pointed out where he and Brazeal had burned the girls' clothes.

Police recovered the nude bodies from the muddy mine shaft. Autopsies showed that both girls had been sexually assaulted, strangled (the cause of death), and stabbed in the right eye. The strangulation marks showed repeated efforts to kill, as the grip was relaxed and then tightened again. Both victims suffered internal and external injuries to their necks. Evidence was consistent with each victim being killed by a different perpetrator. In particular, Mary's body had a mark on the neck consistent with Brazeal's boot, whereas bruise marks on Mandy matched the soles of Stokley's shoes. DNA analysis indicated that both defendants had intercourse with Mandy. Mary's body cavities were filled with mud, making DNA analysis impossible. *See State v. Stokley*, 182 Ariz. 505, 512–13, 898 P.2d 454, 461–62 (1995).

On direct appeal, Stokley argued that Brazeal's more lenient sentence should be considered in mitigation. The Arizona Supreme Court rejected this argument:

Although sentences of co-defendants may be considered in mitigation, *Cook*, 170 Ariz. at 66, 821 P.2d at 756; *State v. Watson*, 129 Ariz. 60, 64, 628 P.2d 943, 947 (1981), where the difference in sentences is a result of appropriate plea bargaining, it may not be considered in mitigation. *State v. Gillies*, 142 Ariz. 564, 571, 691 P.2d 655, 662 (1984), *cert. denied*, 470 U.S. 1059, 105 S. Ct. 1775, 84 L. Ed. 2d 834 (1985). “[I]t is not mere disparity between the two sentences that is significant, but, rather, unexplained disparity.” *State v. Schurz*, 176 Ariz. 46, 57, 859 P.2d 156, 167, *cert. denied*, 510 U.S. 1026, 114 S. Ct. 640, 126 L. Ed. 2d 598 (1993). Where the first degree murder is found especially cruel, heinous, or depraved, “even unexplained disparity has little significance.” *Id.* The sentence negotiated by co-defendant was the result of a disparity of evidence at the time of co-defendant’s trial, causing the state to enter into a plea agreement. In addition, it must be remembered that co-defendant was twenty years old. *But see Walton*, 159 Ariz. at 589, 769 P.2d at 1035 (affirming death sentence of twenty year old defendant). Defendant was thirty-eight.

182 Ariz. at 502, 898 P.2d at 473.¹ The Arizona Supreme Court also rejected an argument similar to that advanced in the instant petition (Petition at 5) that Stokley’s limited criminal history was entitled to significant weight in mitigation:

Although defendant has no prior felony conviction, he also does not have a law abiding past. He has a history of misdemeanor arrests and offenses including a conviction for disorderly conduct in 1973, two arrests for public drunkenness in 1977, and arrests for assaults on two former wives, one in 1978 and the other in 1986. Unlike the trial court, in our independent reweighing, we conclude that this thirty-eight year old defendant’s lack of a felony record is a nonstatutory mitigating circumstance, but the weight to be given it is substantially reduced by his other past problems with the law.

182 Ariz. at 523, 898 P.2d at 472.

¹ The disparity in the evidence also included the fact that DNA test results were not available at the time Brazeal plead guilty. Additionally, Stokley confessed his involvement in the murders, but Brazeal did not. (Petition at 6–7.)

REASONS FOR DENYING THE WRIT

Stokley has not established “exceptional circumstances” warranting the exercise of this Court’s discretionary powers under Section 2241. Stokley is attempting to raise an issue that could have been pursued in a writ of habeas corpus under 28 U.S.C. § 2254, as amended by the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”). He offers no reason for having failed to do so, and his request that this Court entertain an original writ should be summarily denied.

In *Felker v. Turpin*, 518 U.S. 651, 663–64 (1996), this Court noted the limitations imposed on successive federal habeas petitions under Section 2254, and stated that “[t]hese restrictions apply without qualification to any ‘second or successive habeas corpus application under section 2254.’” *Id.* at 662. In addressing the interplay between Section 2254 and Section 2241, this Court noted that “[w]hether or not we are bound by these restrictions, they certainly inform our consideration of original habeas petitions.” *Id.* at 663. Furthermore, “[t]he added restrictions which [Section 2254] places on second habeas petitions are well within the compass of [the evolving body of equitable principles underlying federal habeas proceedings] and we hold that they do not amount to a ‘suspension’ of the writ. . . .” *Id.*

This Court further noted that Rule 20.4(a) delineates the standard under which an original writ may be granted:

A petition seeking the issuance of a writ of habeas corpus shall comply with the requirements of 28 U.S.C. §§ 2241 and 2242, and in particular with the provision in the last paragraph of § 2242 requiring

a statement of the “reasons for not making application to the district court of the district in which the applicant is held.” If the relief sought is from the judgment of a state court, the petition shall set forth specifically how and wherein the petitioner has exhausted available remedies in the state courts or otherwise comes within the provisions of 28 U.S.C. § 2254(b). To justify the granting of a writ of habeas corpus, the petitioner must show exceptional circumstances warranting the exercise of the Court’s discretionary powers and must show that adequate relief cannot be obtained in any other form or from any other court. These writs are rarely granted.

Id.

Stokley has not proffered any reason for not making this claim as part of his original federal habeas proceedings. He should not be permitted to sidestep the restrictions Congress has imposed on successive petitions to raise a claim that could have been pursued years ago. *Cf. Rice v. Lamana*, 451 F.Supp.2d 755, 763 (D.S.C. 2006) (“Congress saw fit to limit the availability of Section 2255 petitions, and the United States Supreme Court determined in *Felker* [] that Congress was within its right to do so under the AEDPA. To determine that Congress limited the availability of Section 2255 on the one hand, but intended to allow petitioners the availability of the Writ under Section 2241 on the other hand, would clearly be contrary to the purpose of the AEDPA.”).

Finally, Stokley’s claim, even if it were properly before this Court, would not entitle him to relief because proportionality review in death penalty cases is not constitutionally required. *See Pulley v. Harris*, 465 U.S. 37, 43–44 (1984) (rejecting claim that the Eighth Amendment requires a state appellate court, before it affirms a death sentence, to compare the

sentence in the case before it with the penalties imposed in similar cases if requested to do so by the prisoner); *see also Walton v. Arizona*, 497 U.S. 639, 655 (1990).

Moreover, as noted by the Arizona Supreme Court, in the instant case the disparity between Stokley's sentence and that of his co-defendant Brazeal is not unexplained and reflects a difference in the evidence available at the time Brazeal was scheduled to go to trial. The disparity is further explained by the differences in age between Stokley and Brazeal (Stokley was thirty-eight; Brazeal was twenty).

In upholding death sentences imposed for *two* murders in a case involving brutal sexual assaults against 13-year-old girls, the Arizona Supreme Court's denial of Stokley's "proportionality" claim was not an unreasonable application of this Court's jurisprudence, *see* 28 U.S.C. § 2254(d), and does not warrant the exercise of this Court's authority under Section 2241. Because Stokley's petition is meritless, this Court should deny his application for stay (No. 12A550). *See Hill v. McDonough*, 547 U.S. 573, 584 (2006) (petitioners must demonstrate a strong likelihood of success on the merits to warrant a stay).

CONCLUSION

Based on the foregoing authorities and arguments, Respondents respectfully requests this Court to deny Stokley's petition for writ of certiorari, and deny Stokley's application for stay.

Respectfully submitted,

THOMAS C. HORNE
Attorney General



KENT E. CATTANI
Division Chief Counsel
(Counsel of Record)
Criminal Appeals /
Capital Litigation Division

JEFFREY A. ZICK
Section Chief Counsel
Attorneys for RESPONDENT

2953495