

No. 12-7517

IN THE
SUPREME COURT OF THE UNITED STATES

RICHARD DALE STOKLEY,
PETITIONER,

vs

STATE OF ARIZONA,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF ARIZONA

BRIEF IN OPPOSITION
AND RESPONSE TO APPLICATION FOR STAY

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QUESTION PRESENTED FOR REVIEW

Does this Court's opinion in *Maples v. Thomas*, 132 S. Cr. 912 (2012), provide Stokley an avenue of relief for his post-conviction counsel's failure to raise a meritless post-conviction claim that the Arizona Supreme Court violated *Eddings v. Oklahoma*, 455 U.S. 104 (1982), in its independent review of Stokley's death sentence when the state court considered, but assigned little weight to, Stokley's proffered mitigation evidence?

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DECISIONS BELOW

On November 27, 2012, a majority of the active, non-recused judges of the United States Court of Appeals for the Ninth Circuit denied Petitioner Richard Dale Stokley's petition for rehearing en banc of the panel's decision denying Stokley's request to stay the issuance of the mandate based on his assertion that *Maples v. Thomas*, 132 S. Ct. 912 (2012), provides a basis for relief. *Stokely v. Ryan*, 2012 WL 5928279 (C.A.9 (Ariz.)). On November 21, 2012, the panel denied Stokley's request to stay issuance of the mandate in light of *Maples*. *Stokley v. Ryan*, 2012 WL 5883592 (C.A. 9 (Ariz.)). The unanimous panel decision affirming the district court's denial of Stokley's petition for writ of habeas corpus is found at *Stokley v. Ryan*, 659 F.3d 802 (9th Cir. 2011). The decision of the United States District Court for the District of Arizona denying Stokley's petition for habeas relief was unpublished. *Stokley v. Ryan*, 2009 WL 728492 (D. Ariz.)).

STATEMENT OF JURISDICTION

The Ninth Circuit issued its decision denying a rehearing en banc on November 27, 2012. This Court has jurisdiction under the United States Constitution Article III, Section 2 and 28 U.S.C. § 1254(1).

PROVISIONS INVOLVED

The Sixth Amendment provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

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.

Stokley 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. *See State v. Stokley*, 182 Ariz. 505, 512-13, 898 P.2d 454, 461-62 (1995).

After pursuing direct review and post-conviction relief in the Arizona state courts, Stokley filed a habeas petition in federal district court, which was denied on March 17, 2009. Stokley's appeal from that decision was denied by the Ninth Circuit in *Stokley v. Ryan*, 659 F.3d 802 (9th Cir. 2011). This Court denied Stokley's petition for certiorari on October 1, 2012. *Stokley v. Ryan*, No. 11-10249, 2012 WL 1643921 (Oct. 1, 2012). On November 21, 2012, the Ninth Circuit denied Stokley's request to stay issuance of the mandate based on *Maples*. *Stokley v. Ryan*, 2012 WL 5883592 (C.A.9 Ariz.), and denied en banc review of that decision on November 27, 2012. *Stokley v. Ryan*, 2012 WL 5928279 (C.A.9 (Ariz.)).

REASONS FOR DENYING THE WRIT

The Ninth Circuit correctly concluded that Stokley is not entitled to relief on his procedurally defaulted and meritless claim that the Arizona Supreme Court did not properly consider Stokley's proffered mitigation when the state court independently reviewed Stokley's two death sentences. The Ninth Circuit's opinion did not decide "an important question of federal law that has not been, but should be, settled by this Court," or decide "an important federal question in a way that conflicts with relevant decisions of this Court." *See* Rule 10(c), Rules of the Supreme Court. Nor did it enter a decision in conflict with a decision of another United States court of appeals on the same matter or decide an important federal

question in a way that conflicts with a decision of a state court of last resort. *See* Rule 10(a), Rules of the Supreme Court.

ARGUMENT

THE NINTH CIRCUIT CORRECTLY CONCLUDED THAT *MAPLES* AFFORDS NO BASIS TO STAY ISSUANCE OF THE MANDATE BECAUSE STOKLEY WAS NOT ABANDONED BY COUNSEL. FURTHER, THERE WAS NO *EDDINGS* ERROR.

There was no Maples error.

The panel below assumed without deciding that there was *Maples* error. *Stokley v. Ryan*, 2012 WL 5883592 at *1. The State of Arizona disagrees that there was any *Maples* error because Stokley has not made a prima facie showing that his post-conviction counsel abandoned him within the meaning of *Maples*. In *Maples*, lawyers representing the inmate ceased representation without telling him. The lawyers failed to file a notice of appeal on Maples' behalf, preventing appellate review of his denied claims. Maples' attorneys did not serve as his agents in any meaningful sense; and they left him in a situation where he lacked the assistance of any authorized attorney, so that, "in reality, he had been reduced to a pro se status." 132 S. Ct. at 927.

In contrast, Stokley was always represented by active counsel. The fault he now attributes to his post-conviction counsel is her failure to raise a claim under *Eddings v. Oklahoma*, 455 U.S. 104 (1982), alleging that the Arizona Supreme Court did not properly consider mitigation evidence as part of its independent review of Stokley's death sentences. Such alleged failure is not "abandonment," and not the actions of an attorney who has left his or her client to fend for himself.

Unlike Maples' counsel, Stokley's counsel continued to act as his agent, and he is bound by counsel's actions. *Maples*, 132 S. Ct. at 922 (“[W]hen a petitioner’s postconviction attorney misses a filing deadline, the petitioner is bound by the oversight and cannot rely on it to establish cause.”). Accordingly, *Maples* does not provide Stokley with an avenue for relief.

There was no Eddings error.

Even assuming counsel “abandoned” Stokley within the meaning of *Maples*, Stokley is not entitled to relief. He urges that post-conviction counsel’s alleged abandonment prevented him from raising a post-conviction claim that the Arizona Supreme Court violated this Court’s decision in *Eddings* and *Skipper v. South Carolina*, 476 U.S. 1, 4-5 (1986), by “categorically excluding relevant and compelling mitigation evidence” (specifically difficult childhood and good behavior in jail). (Petition, at 13.) *Stokley v. Ryan*, 2012 WL 5883592, at * 2. However, the Ninth Circuit correctly concluded that “on balance, the Arizona Supreme Court’s opinion suggests that the court did weigh and consider all the evidence presented in mitigation.” 2012 WL 5883592, at * 2.

The Arizona Supreme Court, in independently reviewing Stokley’s death sentences, considered, discussed and analyzed each of the aggravating and mitigating factors individually, thus fully complying with the dictates of *Eddings*. *Stokley*, 898 P.2d at 465-74. For example, the Arizona Supreme Court specifically addressed Stokley’s proffered statutory mitigation including: Stokley’s capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law (as affected by alcohol, head injuries and mental disorders);

Stokley's "relatively minor" participation; the possibility that there was "no reasonable foreseeability" that his conduct would create a grave risk of death to another. The state court also considered Stokley's proffered nonstatutory mitigation, including: historic substance abuse; lack of prior felony record; cooperation with police; disparity of co-defendant's sentence; leniency; prospect for rehabilitation; family history; mental condition and behavior disorders; good character; good behavior while incarcerated; lack of future dangerousness if confined to prison; felony murder instruction; remorse and lack of evidence showing that Stokley killed or intended to kill Mary. *Stokley*, 898 P.2d at 468-74; *Stokley v. Ryan*, 2012 WL 5883592, at * 2-3.

The Arizona Supreme Court prefaced this lengthy analysis by acknowledging:

The sentencing judge must consider any aspect of the defendant's character or record and any circumstance of the offense relevant to determining whether the death penalty should be imposed. . . . The sentencing court must, of course, consider all evidence offered in mitigation, but is not required to accept such evidence.

Stokley, 898 P.2d at 468 (emphasis added, internal citations omitted); *Stokley v. Ryan*, 2012 WL 5883592, at * 2. The state court further explained:

When a death sentence is imposed in Arizona this court independently reviews the entire record for error, determines whether the aggravating circumstances have been proved beyond a reasonable doubt, considers any mitigating circumstances, and then weighs the aggravating and mitigating circumstances in deciding whether there are mitigating circumstances sufficiently substantial to call for leniency.

Stokley, 898 P.2d at 465 (emphasis added); *Stokley v. Ryan*, 2012 WL 5883592, at * 2. The Arizona Supreme Court considered not only the evidence presented to the trial court, but also mitigation that had not been addressed below:

Consistent with our obligation in capital cases to independently reweigh *all potentially mitigating evidence*, and pursuant to the request of defendant, *we have examined and considered the presentence report* that was withheld from the trial judge.

Stokley, 898 P.2d at 468 (emphasis added); *Stokley v. Ryan*, 2012 WL 5883592, at *2.

Because the Arizona Supreme Court did not refuse to consider *any* of Stokley's proffered potentially mitigating evidence, there is no *Eddings* violation. *See Kansas v. Marsh*, 548 U.S. 163, 175 (2006) ("In aggregate, [this Court's] precedents confer upon defendants the right to present sentencers with information relevant to the sentencing decision and oblige sentencers to consider that information in determining the appropriate sentence. The thrust of our mitigation jurisprudence ends here.").

After conducting its analysis and independent review, the Arizona Supreme Court concluded that the mitigation evidence, both individually and collectively, was not sufficiently substantial to warrant leniency. In other words, the court simply did not assign the weight Stokley would have preferred to his proffered mitigation (specifically, difficult childhood and good behavior in jail). The Arizona Supreme Court's analysis is consistent with *Eddings* and is precisely the "type of individualized consideration of mitigating factors required by the Eighth and Fourteenth Amendments in capital cases." *Eddings*, 455 U.S. at 117. *See also Lockett v. Ohio*, 438 U.S. 586 (1978). Because there is no *Eddings* error, Stokley is not entitled to relief under any theory.

Even assuming Eddings error, there was no prejudice.

The panel below correctly found that, even if the Arizona Supreme Court violated *Eddings*, any such error did not prejudice Stokley:

[E]ven assuming the Arizona Supreme Court did commit causal nexus error as to Stokley's good behavior in jail and his difficult childhood, Stokley cannot demonstrate actual prejudice because he has not shown that the error, if any, had a substantial and injurious impact on the verdict.

Stokley v. Ryan, 2012 WL 5883592, at * 2. As the panel pointed out, the state court found three statutory aggravating circumstances proved beyond a reasonable doubt: (1) Stokley was an adult at the time the crimes were committed and the victims were under the age of fifteen; (2) Stokley was convicted of another homicide committed during commission of the offense; and (3) Stokley committed the offense in an especially heinous, cruel, and depraved manner. *Id.* at *3. The panel further noted:

The sentencing court found the following facts beyond a reasonable doubt. Stokley was convicted of murdering two 13-year-old girls over the July 4th weekend in 1991. Stokley is a person of above average intelligence. At the time of the crime, he was 38 years old. Stokley intended that both girls be killed. He killed one of the girls and his co-defendant killed the other. Before the men manually strangled the girls to death, both men had sexual intercourse with the victims. Both bodies were stomped upon with great force, and one of the children bore the clear chevron imprint from Stokley's tennis shoes on her chest, shoulder, and neck. Both victims were stabbed in their right eyes with Stokley's knife, one through to the bony structure of the eye socket. The girls likely were unconscious at the time of the stabbing. The girls' bodies were dragged to and thrown down a mine shaft.

2012 WL 5883592, at * 3, n.1 (internal quotations omitted). In light of these facts and circumstances, the panel correctly concluded that Stokley could not

demonstrate actual prejudice. 2012 WL 5883592, at 2. *See Brecht v. Abrahamson*, 507 U.S. 619, 623 (1993) (prejudice requires a showing that the error has a “substantial and injurious effect” on the sentence); *see also Wong v. Belmontes*, 130 S. Ct. 383, 388 (2009) (per curiam) (a defendant whose counsel failed to present mitigation evidence must establish prejudice under *Strickland v. Washington*, 466 U.S. 668 (1984)).

In light of the three aggravating factors in this case, along with the facts and circumstances of the two murders and sexual assaults, there is little possibility that a new “consideration” of Stokley’s proffered mitigation would result in different sentences. On the contrary, his proffered mitigation of difficult childhood and good behavior in jail in any new review would likely be given precisely what the state courts have already given them—consideration, but minimal weight. A federal court should not overstate the effect of additional mitigation by giving “short shrift” to the number and weight of the proven aggravating circumstances. *See Bobby v. Van Hook*, 130 S. Ct. 13, 20 (2009). The panel below correctly followed this dictate:

In sum, because the claimed causal nexus error, if any, did not have a substantial or injurious influence on Stokley’s sentence, Stokley cannot establish prejudice.

Stokley, 2012 WL 5883592, at * 3.

Because Stokley’s petition is meritless, this Court should deny his application for stay (No. 12A545). *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 request this Court to deny Petitioner's petition for writ of certiorari and deny Stokley's Application for stay.

Respectfully submitted,

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