

No. 14-____

IN THE
SUPREME COURT OF THE UNITED STATES

JOSEPH R. WOOD,
PETITIONER,

-vs-

STATE OF ARIZONA,
RESPONDENT.

**PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF ARIZONA**

BRIEF IN OPPOSITION

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CAPITAL CASE

QUESTIONS PRESENTED FOR REVIEW

Does this Court have jurisdiction where the state court decision below rests on an independent and adequate state law ground?

Did the Arizona Supreme Court violate the Eighth Amendment by failing to consider mitigating evidence absent a causal relationship to the crimes?

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OPINION BELOW

The Pima County Superior Court denied Wood's petition for post-conviction relief on procedural grounds in an unpublished order. (Pet. App. A.) The Arizona Supreme Court denied discretionary review in an unpublished order. (Pet. App. B.)

STATEMENT OF JURISDICTION

This Court is without jurisdiction under 28 U.S.C. § 1257(a) because the judgment below rested on an independent and adequate state law ground.

CONSTITUTIONAL PROVISIONS INVOLVED

Article III, Section 2, clause 1 of the United States Constitution provides: "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their authority"

The Eighth Amendment provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

STATEMENT OF THE CASE

Less than 48 hours before his scheduled execution for two murders he committed in 1989, Petitioner Joseph Wood asks this Court

to correct a purported error under *Tennard v. Dretke*, 542 U.S. 274 (2004), that he failed to raise in the state courts until 20 years after his direct appeal, 17 years after his initial post-conviction relief proceeding, 8 months after the conclusion of his federal habeas corpus proceeding, and about 2 weeks after the State of Arizona requested a warrant of execution from the Arizona Supreme Court.

A jury convicted Wood of two counts of first-degree murder for the August 7, 1989, murders of his estranged girlfriend Debra Dietz and her father Eugene Dietz. *State v. Wood*, 881 P.2d 1158, 1165–66 (Ariz. 1994). After an aggravation-mitigation hearing, the trial court found two aggravating circumstances: Wood was convicted of one or more other homicides during the commission of each offense, A.R.S. § 13–703(F)(8), and in the commission of the offenses Wood knowingly created a grave risk of death to another person or persons in addition to the victims, A.R.S. § 13–703(F)(3). *Id.* at 1174. The trial court also found the following mitigating circumstances:

Lack of any prior felony convictions and any other mitigating circumstances set forth in the presentence report, including all testimony presented by the psychiatrist ... [in] mitigations [sic] of sentence. Including the chemical substance abuse problems which you have suffered from, the Court finds that ... [the] mitigating circumstances are not sufficiently mitigating to outweigh the aggravating factors found by this Court beyond a reasonable doubt.

Id. at 1175. The court sentenced Wood to death for each murder. *Id.* at 1166.

The Arizona Supreme Court affirmed Wood’s convictions and sentences on direct appeal. *Id.* at 1158. The state court independently reviewed the aggravating and mitigating evidence and determined that the trial court correctly concluded that the aggravating circumstances outweighed the mitigating circumstances, thus supporting the imposition of the death penalty. In reviewing the mitigation evidence, the court concluded that Wood failed to prove the A.R.S. § 13–703(G)(1)¹ mitigating factor, which applies if the defendant’s “capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirement of the law was significantly impaired, but not so impaired as to constitute a defense to prosecution.” *Id.* at 1175–76. The court also found that Wood’s “impulsive personality and history of substance abuse” merited little weight as non-statutory mitigation because he was not under the influence during the murders and there was no evidence that his impulsivity left him unable to control his conduct. *Id.* at 1176. Next, the court rejected Wood’s argument that he

¹ This statute is currently codified at A.R.S. § 13–751(G).

established two additional statutory mitigating circumstances—that he was under unusual and substantial duress, and that he could not reasonably have foreseen that his conduct would cause or would create a grave risk of death. *Id.* The court also noted that “[d]espite close scrutiny,” the record revealed no other non-statutory mitigating circumstances. *Id.* at 1176–77. Finally, even though Wood proffered his childhood in a dysfunctional family as a mitigating factor, the court found this claim unsubstantiated and lacking in mitigating weight in the absence of any evidence that “his allegedly poor upbringing related in any way to the murders.” *Id.* at 1177.

Wood filed a petition for post-conviction relief in the state trial court on March 1, 1996, raising issues from the trial and direct appeal. (Pet. App. A, at 1–2.) The trial court dismissed the petition and the Arizona Supreme Court denied discretionary review on November 14, 1997. (*Id.*) Wood then filed petition for writ of habeas corpus in the federal district court. After the district court denied the petition, the Ninth Circuit affirmed, and this Court denied certiorari. *Wood v. Ryan*, 134 S. Ct. 239 (2013); *Wood v. Ryan*, 693 F.3d 1104 (9th Cir. 2012); *Wood v. Schriro*, 2007 WL 3124451 (D. Ariz. Oct. 24, 2007). During the pendency of his federal proceedings, Wood filed a second petition for

post-conviction relief in the state trial court on August 2, 2002. (Pet. App. A, at 2.) The trial court dismissed the petition and the Arizona Supreme Court denied review. (*Id.*)

On April 22, 2014, after Wood had exhausted all state and federal appeals, the State of Arizona filed a motion for warrant of execution. (*Id.*) On May 6, 2014, Wood filed the petition for post-conviction relief at issue here. (*Id.*) In the petition, Wood argued that the Arizona Supreme Court violated *Tennard* by failing to consider mitigating evidence in the absence of a causal connection to the murders. (*Id.* at 2–4.) On July 9, 2014, the state trial court dismissed the petition, finding this claim untimely on state-law procedural grounds. (*Id.* at 3–4.) On July 17, 2014, the Arizona Supreme Court denied discretionary review. (Pet. App. B.)

REASONS FOR DENYING THE WRIT

Not only is this Court without jurisdiction to review the decision below, but even if it had jurisdiction, this case presents no reason, much less a compelling one, to grant a writ of certiorari. *See* Sup. Ct. R. 10.

This Court lacks jurisdiction over the federal question Wood presents because the state court decision “rests on a state law ground that is independent of the federal question and adequate to support the

judgment.” *Coleman v. Thompson*, 501 U.S. 722, 729 (1991) (citing *Fox Film Corp. v. Muller*, 296 U.S. 207, 210 (1935)).

Even if this Court had jurisdiction, there is no “compelling reason[]” to grant certiorari because the Arizona Supreme Court did not decide an important federal question in conflict with the decision of another state court of last resort or a United States court of appeals, nor did it decide an important question of federal law that should be settled by this Court or in a way that conflicts with this Court’s decisions. *See* Sup. Ct. R. 10. Rather, the Arizona Supreme Court’s decision makes clear that it fully complied with the Eighth Amendment by considering all of the mitigation in the record.

1. THIS COURT LACKS JURISDICTION BECAUSE THE STATE COURT DECISION RESTS ON AN INDEPENDENT AND ADEQUATE STATE LAW GROUND.

This Court will not review a question of federal law decided by a state court if the decision rests on a state ground that is independent of the federal question and adequate to support the judgment. *See, e.g., Fox Film*, 296 U.S. at 210. This principle applies whether the state law ground is substantive or procedural. *Id.*; *Herndon v. Georgia*, 295 U.S. 441 (1935). “In the context of direct review of a state court judgment, the independent and adequate state ground doctrine is jurisdictional.”

Coleman, 501 U.S. at 729. This is so because given that this Court “has no power to review a state law determination that is sufficient to support the judgment, resolution of any independent federal ground for the decision could not affect the judgment and would therefore be advisory.” *Id.* (citing *Herb v. Pitcairn*, 324 U.S. 117, 125–26 (1945)).

This Court lacks jurisdiction over the state court judgment at issue here because it rests solely on a procedural state law determination independent of the federal question. Arizona law strictly limits post-conviction relief (“PCR”) proceedings to the specific grounds for relief enumerated in Arizona Rule of Criminal Procedure 32.1. *State v. Carriger*, 692 P.2d 991, 995 (Ariz. 1984). The rule “allows a defendant to raise issues unknown or unavailable at trial,” which, if proven, would show that “the conviction or sentence was obtained in disregard of fundamental fairness, which is essential to our concept of justice.” *State v. Watton*, 793 P.2d 80, 85 (Ariz. 1990). Accordingly, the reviewing court must first “identify all claims that are procedurally precluded” under Rule 32. Ariz. R. Crim. P. 32.6(c). Rule 32.2(a) states that a defendant “shall be precluded from relief under this rule based upon any ground”:

- (1) Raisable on direct appeal under Rule 31 or on post-trial motion under Rule 24;
- (2) Finally adjudicated on the merits on appeal or in any previous collateral proceeding;
- (3) That has been waived at trial, on appeal, or in any previous collateral proceeding.

This preclusion rule “prevent[s] endless or nearly endless reviews of the same case in the same trial court,” and because it “serves important societal interests, Rule 32 recognizes few exceptions.” *State v. Shrum*, 203 P.3d 1175, 1178 (Ariz. 2009) (quoting *Stewart v. Smith*, 46 P.3d 1067, 1071 (Ariz. 2002)).

Arizona Rule of Criminal Procedure 32.1(g), however, allows a defendant to challenge his conviction and sentence in a PCR proceeding when “[t]here has been a significant change in the law that if determined to apply to defendant’s case would probably overturn the defendant’s conviction or sentence.” A defendant can raise such a challenge in a successive PCR petition if the change in the law occurred after his prior PCR petition has been decided. Ariz. R. Crim. P. 32.2(b).

In his PCR petition, Wood argued that a “significant change in the law” occurred when the Arizona Supreme Court decided *State v. Anderson*, 111 P.3d 369 (Ariz. 2005). (Pet. App. A., at 3.) In *Anderson*, the Arizona Supreme Court, citing this Court’s decision in *Tennard*,

noted that “[t]he [Supreme] Court also recently held that a jury cannot be prevented from giving effect to mitigating evidence solely because the evidence has no causal ‘nexus’ to a defendant’s crimes.” *Anderson*, 111 P.3d at 391. Wood argued that at the time the Arizona Supreme Court reviewed his death sentences, it did not follow the standard later acknowledged in *Anderson*, but routinely refused to consider mitigating evidence that did not bear a causal relationship to the murder. (Pet. App. A, at 3.)

The state trial court disagreed that *Anderson* constituted a “significant change in the law as to whether the Arizona Supreme Court must consider mitigating evidence regardless of its nexus to Defendant’s crimes.” (*Id.* at 4.) Consequently, the court dismissed the claim as “untimely as it could have been raised in Defendant’s previous Rule 32 petition.” (*Id.*) *See* Ariz. R. Crim. P. 32.2(a)(3) (precluding claims waived in previous collateral proceeding); *Shrum*, 203 P.3d at 1178 (“Rule 32.2(a) precludes collateral relief on a ground that either was or could have been raised on direct appeal or in a previous PCR proceeding.”).

This Court’s determination that Wood’s causal nexus claim was procedurally precluded was independent of federal law. The state court

concluded that Rule 32.1(g) did not provide Wood with a means to overcome preclusion because *Anderson* did not constitute a “significant change in the law” under Arizona law. Because the court concluded that it was not a significant change, Wood’s claim was precluded under Rule 32.2(a)(3). This Court has previously recognized that Arizona Rule of Criminal Procedure 32.2(a)(3) is independent of federal law. *See Stewart v. Smith*, 536 U.S. 856, 860–61 (2002).

The state law ground is also adequate to support the judgment. This Court’s resolution of the federal question—whether the Arizona Supreme Court considered all of the mitigation in the record—could not affect the judgment because the fact would remain that Wood waived the claim by failing to raise it in his previous PCR proceeding. Thus, any decision of the federal question by this Court “would therefore be advisory.” *See Coleman*, 501 U.S. at 729.

The decision below rests on an independent and adequate state law ground—Wood’s causal nexus claim was procedurally precluded because the state court concluded that he could have raised it in a previous proceeding. Consequently, this Court should deny certiorari because it lacks jurisdiction over the case. *See id.*

II. EVEN IF THIS COURT HAD JURISDICTION, THERE IS NO COMPELLING REASON TO GRANT CERTIORARI.

The record makes clear that the Arizona Supreme Court did not violate the Eighth Amendment by applying an unconstitutional nexus test to avoid considering any of Wood’s proffered mitigation. Accordingly, there is no reason, much less a compelling one, for this Court to grant certiorari. *See* Sup. Ct. R. 10.

In its independent review of Wood’s death sentences, the Arizona Supreme Court engaged in a lengthy and thorough review of all of the mitigation in the record. *Wood*, 881 P.2d at 1175–77. In conclusion, the court stated:

After review of the entire record, we conclude there are no statutory and no substantial, nonstatutory mitigating factors. Taken in isolation, Defendant's substance abuse and alleged impulsive personality are not sufficiently substantial to call for leniency. The trial court correctly concluded the aggravating circumstances outweigh the mitigating circumstances.

Id. at 1177.

The record demonstrates that the state court faithfully complied with *Eddings* by considering all of Wood’s proffered mitigation. *Eddings v. Oklahoma*, 455 U.S. 104, 113–14 (1982) (sentencer may not “refuse to consider, as a matter of law, any relevant mitigating evidence”). The court acknowledged its duty to consider all relevant, proffered

mitigation, addressed each of Wood’s proffered mitigating circumstances, assessed whether he proved those mitigating circumstances by a preponderance of the evidence,² and if so, determined how much weight those mitigating circumstance carried. Under these circumstances, this Court did not violate *Eddings* by giving any of Wood’s mitigation evidence “no weight by *excluding* such evidence from their consideration.” *See id.* at 114–15 (emphasis added).

Moreover, the Arizona Supreme Court did not use a causal nexus test to preclude the consideration of any of Wood’s proffered mitigation. *See Tennard*, 542 U.S. at 287 (sentencer cannot be prevented from giving effect to mitigating evidence solely because the evidence has no causal “nexus” to a defendant’s crimes). For example, the Arizona Supreme Court’s assessment of Wood’s assertion that he was raised in a dysfunctional family was proper because the record is clear that the court *considered* this proffered mitigating factor. The court’s primary reason for failing to find this factor mitigating was that the evidence simply failed to “substantiate[]” the claim. This conclusion was consistent with Arizona law, which requires a defendant to prove the

² States may require a defendant to prove the existence of mitigating circumstances. *See Walton v. Arizona*, 497 U.S. 639, 650–51 (1990).

existence of mitigating circumstances by a preponderance of the evidence. *See State v. Bible*, 858 P.2d 1152, 1208 (Ariz. 1993); *see also Walton*, 497 U.S. 650–51 (constitution does not prohibit states from requiring capital defendants to prove existence of mitigating circumstance). Having concluded that Wood failed to meet this burden, the court declined to find Wood’s assertion of a dysfunctional childhood mitigating. *Wood*, 881 P.2d at 1177. The court’s alternative observation that Wood failed to demonstrate how his allegedly poor upbringing related to the crimes simply acknowledged that even if established, this mitigating factor carried little weight. *See Harris v. Alabama*, 513 U.S. 504, 512 (1995) (the “Constitution does not require a State to ascribe any specific weight to particular factors”).

Nor did the state court violate *Tennard* when it stated that “[t]aken in isolation, Defendant’s substance abuse and alleged impulsive personality are not sufficiently substantial to call for leniency.” *Wood*, 881 P.2d at 1177. The clear language shows that this Court considered Wood’s proffered mitigation, but, as was its prerogative, failed to find that it called for a life sentence.

The record is clear that the Arizona Supreme Court fulfilled its constitutional obligations by giving consideration to all of Wood’s

proffered mitigating evidence. The court noted the requirement to consider the statutory mitigating factors “as well as any aspect of the defendant’s background or the offense relevant to determining whether the death penalty is appropriate,” and addressed each of Wood’s proffered mitigating circumstances. *Id.* at 1175. In addition, the court went beyond Wood’s proffered mitigation to scour the record for any other mitigating information: “Despite close scrutiny, the record discloses no other nonstatutory mitigating circumstances.” *Id.* at 1176. The court did not violate *Eddings* by giving Wood’s mitigation evidence “no weight by excluding such evidence from their consideration.” 455 U.S. at 115. Rather, the court fulfilled its constitutional obligation by considering Wood’s childhood, mental condition, and substance abuse issues as mitigating evidence. “*Eddings* requires nothing more.” *Clabourne v. Ryan*, 745 F.3d 362, 373 (9th Cir. 2014).

That the Arizona Supreme Court, after full consideration, did not find any particular piece of the proffered mitigation proven, weighty, or sufficient to call for a life sentence does not establish a constitutional violation. *See Harris*, 513 U.S. at 512. Because the court fully considered all of Wood’s proffered mitigation and did not impose an unconstitutional causal nexus test to preclude considering any

mitigation, Wood has failed to present any reason, much less a compelling one, for this Court to grant certiorari.

CONCLUSION

Based on the foregoing authorities and arguments, Respondent respectfully requests this Court to deny Joseph Wood's petition for writ of certiorari.

Respectfully submitted,

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