ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY

NARANJO v. HON. SUKENIC, STATE OF ARIZONA
REAL PARTY IN INTEREST
CR-22-0076-PR

PARTIES:

Petitioner: Israel Joseph Naranjo

Respondent: The State of Arizona

Amici curiae: Arizona Attorneys for Criminal Justice

FACTS:

Naranjo was convicted of two counts of first degree murder and sentenced to death by a jury. After this Court affirmed his convictions and sentences on appeal, he filed his first petition for post-conviction relief. Naranjo raised 22 claims, including a claim that his trial counsel was ineffective in investigating and presenting mitigation generally, as well as a claim that counsel was ineffective in the investigation and presentation of his alleged intellectual disability. In support of the latter claim, Naranjo relied on a report by a new expert who considered declarations of witnesses that were not previously interviewed to conclude that he in fact had an intellectual disability.

The trial court found only Naranjo's ineffective assistance claim related to his intellectual disability colorable. It therefore sent an evidentiary hearing "limited" to that issue. However, it also took two additional claims "under advisement," including the claim that the mitigation investigation was generally deficient. The trial court found that this claim was "inextricably intertwined with" the colorable ineffective assistance claim concerning Naranjo's alleged intellectual disability and ordered that it would address it "in its final ruling . . . following the evidentiary hearing." It further ordered that "the focus of the hearing" should still be on "the investigation, preparation, and presentation of defendant's alleged intellectual disability, both pretrial and in the penalty phase."

After the trial court's ruling, the State moved for disclosure of trial counsel's "complete files . . . in total." Naranjo objected, claiming the information was protected and arguing that *Waitkus v. Mauet*, 157 Ariz. 339 (App. 1988), required the court to hold a hearing where trial counsel is examined before any materials from the file are disclosed. He also argued the State failed to show good cause for total disclosure of the file. The trial court ultimately ordered Naranjo to disclose only those materials from the file that "pertain[]" to the colorable claim concerning his alleged intellectual disability and the under-advisement claim related to the investigation and presentation of mitigation, finding any privilege or confidentiality had been waived as to those claims. The court also issued a protective order, permitted Naranjo to create a "privilege log" for any materials he believed should be withheld, and set a *Waitkus* hearing to "confirm[] all relevant materials have been disclosed and that otherwise privileged material

is protected."

In advance of the *Waitkus* hearing, Naranjo disclosed the portions of the file he identified as responsive to the colorable and under-advisement claims, and the parties interviewed Naranjo's former trial counsel. During the interview, the State asked about interviews and correspondence with three of Naranjo's family members in prison who were not called at trial, which were noted in disclosed billing entries. Naranjo's counsel objected to any inquiry into the contents of the interviews and correspondence. The State did not ask trial counsel about whether correspondence with the family members affected the mitigation or intellectual disability investigation.

On the date of the *Waitkus* hearing, the parties indicated that the hearing may be unnecessary given ongoing discovery cooperation. However, the State noted the dispute concerning the three family members and orally moved for disclosure all material associated with them because it was relevant to a "global picture of what defense did in relation to mitigation, what they discovered, and the reasons that they did not call these witnesses." Naranjo objected, arguing the materials were not relevant to his specific ineffective assistance claim concerning intellectual disability, particularly considering that the court did not find the general mitigation claim colorable. He also argued the State made no showing that the materials associated with the family members affected his attorney's failure to locate the additional individuals the new expert relied on to find he had an intellectual disability.

The trial court disagreed, reasoning that the materials were relevant to an "illustration" of whether "there's a defective performance, and not just around the avenues that I have recognized as being ripe and colorful, but overall, I need to get a really good picture of [Naranjo's trial counsel] and his performance in this case." The trial court permitted Naranjo to redact anything "particularly harmful . . . or embarrassing" but ruled the State was entitled to materials related "to the decision-making process . . . on [the] part of [Naranjo's trial counsel] as to why he didn't [call the family members]. Because what [the State's] trying to show me is that [trial counsel is] operating on all cylinders in his representation."

Naranjo filed two motions to reconsider, which the trial court denied. He then filed a petition for special action in this Court, but the Court declined jurisdiction "without prejudice to Petitioner seeking relief in the first instance from the Court of Appeals." Naranjo sought special action relief, but the court of appeals declined jurisdiction. Naranjo again petitioned the Court, which grant review as to the following rephrased issue:

ISSUE:

> After finding that petitioner had raised a colorable claim for ineffective assistance
> of trial counsel, did the PCR court err by ordering petitioner to disclose materials
> from his trial files concerning three potential mitigation witnesses who did not
> testify during the penalty phase?