

**ARIZONA SUPREME COURT**

STATE OF ARIZONA,

Respondent,

vs.

LARRY DEAN ANDERSON,

Petitioner.

No. CR-23-008-PR

Court of Appeals

Division Two

No. 2 CA-CR-22-0121-PR

Pima County Superior Court

No. CR 062244-001

**AMICUS CURIAE BRIEF OF THE  
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## **QUESTIONS PRESENTED FOR REVIEW**

1. Is Anderson's ineffective-assistance-of-counsel ("IAC") claim based on erroneous advice regarding the availability of parole precluded and untimely considering the extent of confusion in Arizona about the availability of parole after it was abolished?
2. If not, is erroneous advice about the availability of parole objectively unreasonable in light of the extent of confusion in Arizona surrounding the availability of parole?

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## INTRODUCTION AND INTEREST OF AMICUS CURIAE

A 1998 Pima County jury found Anderson guilty of conspiring to commit first-degree murder, and the Pima County Superior Court sentenced him to life imprisonment without the possibility of release for 25 years. The issue before this Court is whether Anderson is entitled to post-conviction relief (“PCR”) based on his IAC claim that his trial counsel’s professional lapse—specifically, misadvising Anderson that he would receive a parole-eligible sentence if convicted at trial—convinced him to decline a favorable plea offer.

Any parole-eligibility misadvice Anderson’s trial counsel gave did not occur in a vacuum. Long after Arizona’s 1993 elimination of parole, misstatements about parole availability were commonplace in criminal-law practice. *See Jessup v. Shinn*, 31 F.4th 1262, 1266 (9th Cir. 2022) (noting “the misunderstanding [about parole availability] by the sentencing judge and everyone else involved in Petitioner’s case was apparently common. The Arizona reporter is full of cases in which the sentencing judge mistakenly thought that he or she had discretion to allow parole.”); Michael Kiefer, *Hundreds of People were Sentenced to Life with Chance of Parole. Just One Problem: It Doesn’t Exist*, The Arizona Republic (March 19, 2017, at 6:02 a.m.), <https://www.azcentral.com/story/news/local/arizona-investigations/2017/03/19/myth-life-sentence-with-parole-arizona-clemency/99316310/> (reviewing more than 500 minute entries describing the imposition of life sentences

between January 1, 1994, and January 30, 2016, and finding that 248 of those sentences included the possibility of parole). The confusion is well-documented in plea agreements between the prosecution and defendants that trial courts accepted, leading in turn to sentences with illegal parole terms, as well as in the decisions of reviewing courts. *Id.* (observing that 90 of the 248 improper parole-eligible sentences imposed after January 1, 1994, were the result of plea agreements);<sup>1</sup> *see Chaparro v. Shinn*, 248 Ariz. 138, 140–43, ¶¶ 7–22 (2020) (discussing the enforceability of a parole-eligible sentence more than 26 years after the 1993 amendments); *compare State v. Wagner*, 194 Ariz. 310, 313 (1999) (“Arizona’s statute, however, states with clarity that the punishment for committing first-degree

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<sup>1</sup> *See e.g., State v. Blakley*, 204 Ariz. 429, 432, ¶¶ 1, 69 (2003) (affirming life sentences without the possibility of parole for 35 years for sexual-assault offenses committed in 1998); *State v. Carlson*, 202 Ariz. 570, 586, ¶ 64 (2002) (noting defendant convicted of a 1996 offense was “sentenced in accordance with the law applicable to [conspiracy to commit first-degree murder]: life imprisonment without the possibility of parole for twenty-five years”); *State v. Jones*, 203 Ariz. 1, 3, 12 ¶¶ 2, 42 (2002) (observing that, given Supreme Court’s decision in *Ring v. Arizona*, 536 U.S. 584 (2002), “this defendant and all others on direct appeal must either be resentenced or their death sentence reduced to life with or without parole,” for offense committed in 1996); *State v. Fell*, 209 Ariz. 77, 79, ¶ 3 (App. 2004) (stating that available sentences for first-degree murder committed in 2000 were either natural life or “a life term with the possibility of parole after twenty-five years”); *State v. Nichols*, 201 Ariz. 234, 235, ¶ 1 (App. 2001) (characterizing serious-drug-offender statute as authorizing a sentence “to life imprisonment with no possibility of parole for twenty-five years,” despite the absence of statutory language permitting parole).

murder is either death, natural life, or life in prison *with the possibility of parole.*”) (emphasis added), *with State v. Rosario*, 195 Ariz. 264, 268, ¶ 26 (App. 1999) (noting elimination of parole). Indeed, the confusion was so prevalent that it ultimately prompted the legislature to enact Senate Bill 1211, which was designed to remedy the situation, in part, by creating a system to honor plea agreements with parole-eligible life sentences. *See* 2018 Ariz. Sess. Laws, ch. 269, § 1 (2nd Reg. Sess.); A.R.S. § 13-718; Governor’s Letter to Sec’y of State (Apr. 30, 2018), <https://www.azleg.gov/govlettr/53leg/2r/sb1211.pdf> (discussing the need for SB1211 because “for reasons unknown, prosecutors continued to offer parole in plea agreements and judges continued to accept such plea offers as well as impose sentences of life with the chance of parole”). That context must inform the examination of parole-misadvice IAC claims such as the one Anderson has raised here.

The Maricopa County Attorney’s Office (“MCAO”) is the largest prosecuting agency in Arizona, representing the State in the prosecution of felony charges in Maricopa County Superior Court and misdemeanor offenses in the County’s justice courts. MCAO has a strong interest in maintaining those convictions, ensuring PCR law is correctly applied, and facilitating justice for crime victims in PCR matters. Because the resolution of this case affects sentences imposed on first-degree-murder trial convictions, MCAO submits this amicus brief pursuant to Arizona Rule of

Criminal Procedure (“Rule”) 31.15(b)(1)(B) and this Court’s August 22, 2023, order.

## **ARGUMENT**

Answering this Court’s first question, the Court of Appeals correctly barred Anderson’s IAC claim as untimely and precluded. On the second question, because confusion over parole availability was pervasive when trial counsel misadvised Anderson—and lasted long thereafter—counsel’s error fell short of constitutionally intolerable performance.

### **A. Anderson has not established that the State made a plea offer.**

Anderson’s IAC claim is predicated upon his assertion that the prosecution tendered, and he rebuffed, a plea offer requiring him to serve a prison sentence of 18-22 years. (Anderson’s Supp. Brief at 1, 3; Anderson’s App’x. 012-013.) The superior court rejected that factual premise, however, finding he failed to present “sufficient evidence to support his claim that he had, at any time, a plea offer available to him in this case.” (Anderson’s App’x. 213.) The Court of Appeals, for its part, dismissed Anderson’s IAC claim as untimely and precluded, further explaining the superior court should not have even reached the claim’s substantive merits. *State v. Anderson*, No. 2 CA-CR 2022-0121, 2022 WL 17494588, at \*1, ¶ 6 (Ariz. App. Dec. 8, 2022) (mem. decision). Consequently, the Court of Appeals

declined to address whether the superior court had properly determined that his IAC claim lacked substantive merit. *Id.*

Absent a showing that the prosecution tendered a plea offer, Anderson's IAC claim necessarily fails. *See Lafler v. Cooper*, 566 U.S. 156, 168 (2012) (explaining IAC claims based on asserted deficient performance in plea negotiations require an initial showing that a plea offer was made); *State v. Jackson*, 209 Ariz. 13, 17, ¶ 10 (App. 2004) (“[I]t is neither possible nor appropriate for a trial court to divine the terms of a previously unoffered plea agreement in order to determine the merits of a speculative claim of [IAC] in the plea bargaining process.”). Here, the only court that has ever considered whether the State made a plea offer in this case firmly rejected Anderson's contention that he received one.<sup>2</sup> Were this Court to disagree with the Court of Appeals' timeliness and preclusion findings, this Court should nonetheless affirm the dismissal of Anderson's PCR petition for failing to establish

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<sup>2</sup> The PCR court's finding that Anderson failed to present “sufficient evidence to support his claim that he had, at any time, a plea offer available to him in this case” is entitled to deference. *Gen. Elec. Capital Corp. v. Osterkamp*, 172 Ariz. 185, 188 (App. 1992) (“If a court's decision is based upon ‘a determination of disputed questions of fact or credibility ... or any other basis to which we should give deference,’ we will not second-guess or substitute our judgment for that of the trial court.”) (quoting *City of Phoenix v. Geyley*, 144 Ariz. 323, 329 (1985)). (Anderson's App'x. 213.)

the plea offer's existence. *See State v. Carlson*, 237 Ariz. 381, 387, ¶ 7 (2015) (affirming the trial court's ruling for any legally correct reason).

**B. Anderson's trial counsel was not ineffective for giving erroneous parole advice.**

Citing *Strickland v. Washington*, 466 U.S. 668 (1984), Anderson proposes that whatever confusion existed within the legal community regarding the availability of parole at the time of his trial and during prior PCR proceedings, it is irrelevant to his IAC claim. (Anderson's Supp. Brief at 6-9.) Incorrect legal advice of any kind, according to Anderson, constitutes *per se* deficient performance. (Anderson's Supp. Brief at 6, 8.) Also relying on *Strickland*, the Pima County Attorney's Office ("PCAO") generally agrees, stating "an attorney's incorrect advice to a defendant on his parole eligibility is objectively unreasonable and constitutes deficient performance." (PCAO's Supp. Brief at 10-12.) But correctly understood, *Strickland* undermines their positions.

A rigid *per se* rule that incorrect legal advice necessarily amounts to deficient performance disregards *Strickland's* command to "consider[ ] all the circumstances" when assessing the reasonableness of counsel's advice and actions. *Id.* at 688. In articulating the deficient-performance prong, the Supreme Court expressly refused to craft "detailed guidelines for representation." *Id.* at 689. Instead, the Court recognized that "[n]o particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel

or the range of legitimate decisions regarding how best to represent a criminal defendant.” *Id.* at 688–89.

Because the *Strickland* test “of necessity requires a case-by-case examination of the evidence,” the Supreme Court has repeatedly refuted attempts to impose categorical rules for adjudicating IAC claims. *Williams v. Taylor*, 529, U.S. 362, 391 (2000) (quotation omitted); *see Roe v. Flores-Ortega*, 528 U.S. 470, 477–78 (2000) (overturning *per se* rule that failure to file a notice of appeal constitutes deficient performance as contrary to *Strickland*’s totality-of-the-circumstances approach); *see also Yarborough v. Gentry*, 540 U.S. 1, 8–9 (2003) (explaining even if counsel’s failure to make an argument was an inadvertent omission, rather than purposeful strategy, “relief is not automatic”); *Cullen v. Pinholster*, 563 U.S. 170, 195–97 (2011) (concluding Ninth Circuit misapplied *Strickland* by finding the failure to conduct in-depth mitigation investigation constituted *prima facie* IAC); *cf. also Dunn v. Reeves*, 141 S. Ct. 2405, 2412–13 (2021) (reversing Eleventh Circuit determination that the state court had improperly applied categorical rules in evaluating counsel’s performance, where the examination revealed that the state court had conducted a case-specific approach).

Numerous federal circuit and state courts have recognized this principle explicitly or applied it in practice, even in cases involving an attorney’s legal error. *See, e.g., Khan v. United States*, 928 F.3d 1264, 1272–74 (11th Cir. 2019) (“Supreme

Court precedent makes clear that the totality-of-the-circumstances approach mandated by *Strickland* precludes the development of subsidiary categorical rules to facilitate the application of the reasonable-performance standard.”); *Harrington v. Gillis*, 456 F.3d 118, 126 (3rd Cir. 2006) (“The Supreme Court has definitively rejected any per se rules for adjudicating claims of [IAC].”); *Bullock v. Carver*, 297 F.3d 1036, 1047–51 (10th Cir. 2002) (“By the same token, an attorney’s unawareness of relevant law at the time he made the challenged decision does not, in and of itself, render the attorney’s performance constitutionally deficient.”); *State v. Ray*, 469 P.3d 871, 876–77, ¶¶ 31–32 (Utah 2020) (finding that failure to object “to an error does not automatically render counsel’s performance deficient”); *State v. Sewell*, 314 So. 3d. 811, 812–15 (La. 2020) (refusing to find that the defense attorney’s failure to determine whether the defendant is a noncitizen constitutes “per se deficient performance”); *State v. McFarland*, 899 P.2d 1251, 1257 (Wash. 1995) (concluding lower court “stood the presumption of effective representation on its head” by presuming deficient representation from failure to move to suppress evidence).

Nor does *Hinton v. Alabama*, 571 U.S. 263, 274 (2014), suggest otherwise, as Anderson contends. (Anderson’s Supp. Brief at 8-9.) There, the Supreme Court employed a “straightforward application of [its IAC] precedents” and engaged in a fact-specific analysis to conclude (1) counsel’s ignorance of the law concerning expert funding, coupled with (2) “his failure to make even the cursory investigation

of the state statute providing for defense funding,” and (3) the fundamental importance of expert evidence, established deficient performance. *Id.* at 272–75.

Equally unavailing is Anderson’s invocation of the ABA Guidelines, given that the Supreme Court and this Court have recognized that such guidelines are merely that: guidelines. (Anderson’s Supp. Brief at 9.) The Guidelines may elucidate what constitutes reasonable conduct in particular factual situations, but they do not establish constitutional duties for defense counsel. *See, e.g., Bobby v. Van Hook*, 558 U.S. 4, 7–9 (2009); Ariz. R. Crim. P. 6.8 cmt. (“A deviation from the [ABA guidelines concerning the appointment and representation of defendants facing the death penalty] is not per se ineffective assistance of counsel. The standard for evaluating counsel’s performance continues to be that set forth in *Strickland v. Washington*, 466 U.S. 668 (1984).”). Thus, an asserted violation of the ABA Guidelines does not establish a colorable claim of deficient performance.

Anderson’s and PCAO’s assertions that incorrect advice regarding a defendant’s parole eligibility should alone establish deficient performance further ignore that courts look only at the circumstances existing *when the advice was given* to determine its reasonableness and without the benefit of hindsight. *Strickland*, 466 U.S. at 689. To this end, the deficient-performance inquiry must “focus[] on ‘the practice and expectations of the legal community’” *at the time* counsel was allegedly ineffective in deciding “whether counsel’s performance was reasonable under

prevailing professional norms.” *State v. Pandeli*, 242 Ariz. 175, 180, ¶ 5 (2017) (quotation omitted). Adopting a rule that parole misinformation is *per se* deficient performance would thus run afoul of *Strickland’s* prohibition against hindsight-based evaluation. *See Schumacher v. Hopkins*, 83 F.3d 1034, 1036-37 (8th Cir. 1996) (“In considering [*Strickland’s*] first prong, we must defer to counsel’s strategic decisions and must not succumb to the temptation to be Monday morning quarterbacks.”).

That said, this Court has made clear that “lawyers can be constitutionally deficient for making errors commonly made by others.” *State v. Miller*, 251 Ariz. 99, 103, ¶ 14 (2021). The scope of confusion over parole was more than simply that, however, and extended to judicial decisions endorsing the availability of parole after 1994. A hypothetical helps show why courts must consider the prevalent, enduring confusion concerning parole availability to decide parole-misadvice IAC claims.

Suppose an attorney advised a defendant that parole was, or could be, available after that attorney had witnessed courts accept plea agreements containing parole-eligible sentences on convictions for post-1994 offenses or had encountered cases like *Blakely*, *Wagner*, or *Fell* signifying parole’s ongoing availability. That scenario would stand in stark contrast to one where an attorney failed to identify or inquire into whether any potential parole-eligibility issue existed in the first place. *Compare Cullen*, 563 U.S. at 196 (contrasting counsel’s performance, which was

consistent with tactics used by defense bar in California in 1984, with counsel in *Wiggins v. Smith*, 539 U.S. 510 (2003), who acknowledged his actions were inconsistent with standard practice for cases in Maryland); *Miller*, 251 Ariz. at 103, ¶¶ 12–16 (failing to object to language within RAJI was not deficient performance, in part, because defendant “did not present any affidavits or other evidence suggesting that the criminal defense attorney community had questioned the RAJI at the time of [his] trial and appeal”); *Clark v. Arnold*, 769 F.3d 711, 726–27 (9th Cir. 2014) (refusing to find counsel ineffective for failing to preserve evidentiary issue given the lack of and ambiguities within case law at the time); *Sharp v. Johnson*, 107 F.3d 282, 289 (5th Cir. 1997) (same, where “Texas law addressing the issue at bar at least was conceptually amorphous and unsettled at the time of [the defendant’s] conviction and appeal”), with *Hinton*, 571 U.S. at 273 (attorney’s failure to secure additional expert assistance was deficient when he “failed to make even the cursory investigation of the state statute providing for defense funding for indigent defendants”); *Wade v. Brockamp*, 342 P.3d 142, 151–52 (Ct. App. Or. 2015) (attorney’s failure to object to erroneous jury instruction was deficient performance when evidence indicated the defense bar was aware of case law attacking the instruction and “had questioned [its] continued viability”); see also Eve Brensike Primus, *Disaggregating Ineffective Assistance of Counsel Doctrine: Four Forms of Constitutional Ineffectiveness*, 72 Stan. L. Rev. 1581, 1641–42 (June 2020) (arguing

courts should look to a “host of primary and secondary sources” to determine what prevailing norms of practice were at the time of trial and discussing those sources). Applying a rule that erroneous parole advice constitutes *per se* deficient performance to these hypothetical scenarios would yield a flawed result: it would treat the theoretical attorneys’ objectively distinguishable conduct as equally neglectful—when it is not—and thus deficient.

By permitting consideration of the pertinent circumstances, adherence to *Strickland’s* principles encounters no such flaw. Here, Anderson’s trial counsel explained in his affidavit that he advised Anderson a parole-eligible sentence would be imposed upon conviction because the “Arizona legislature did not remove references to ‘parole’ in . . . first-degree murder sentencing statutes. . . . [N]o criminal defense or judge at that time had foreseen the [parole-eligibility] problem.” (Anderson’s App’x. at 037.) Accepting his statements as true, his conduct generally aligns with the former scenario described above. Therefore, under the totality of the circumstances and given the reasonableness of his explanation, the fact that he misinformed Anderson about the availability of parole should not automatically render his misadvice ineffective.

**C. The confusion about parole availability does not alone excuse the extent of Anderson’s delay.**

Because Anderson’s IAC claim unquestionably violated Rule 32.4(b)(3)(A)’s

deadline, he must prove he is without fault for his delay. Ariz. R. Crim. P. 32.4(b)(3)(D). He urges his untimeliness should be forgiven because he only recently discovered that he is not parole-eligible, that his misunderstanding was reasonable because of trial counsel's erroneous advice, and that Arizona case law regarding the distinction between parole and release lacked clarity. (Anderson's Supp. Brief at 12-13, 16-17.) These contentions do not merit relief.

Numerous years' worth of Anderson's delay is certainly justifiable based on the overall confusion about parole. But any confusion that persisted would have disappeared with the 2018 enactment of § 13-718. To the extent that this Court seeks to identify a point beyond which defendants who had been improvidently expecting eventual parole eligibility could no longer reasonably claim they lacked notice of its potential unavailability, this Court should draw that line at § 13-718's passage. Said differently, the PCR clock for parole-misadvice IAC claims should start, at the latest, when § 13-718 was enacted.

Under MCAO's theory, Anderson was on notice that he could pursue such an IAC claim several years before he filed the instant PCR notice in February 2022. (Anderson's App'x. 003.) In his PCR notice, Anderson explained his tardiness was partially caused by negotiations with PCAO about ways to resolve the parole issue. (Anderson's App'x. 006.) However, according to Anderson, the discussions with PCAO did not begin until October 2021 at the earliest, still a few years after

Anderson should have initiated his parole-misadvice IAC claim. (Anderson’s App’x. 85-86.) He makes no effort to explain why that delay is unattributable to him. And Anderson’s personal assurance that he pursued his parole-misadvice IAC claim as soon as he became aware of its viability is insufficient to overturn the Court of Appeals’ timeliness ruling, when the parole issue and its corresponding PCR claims were readily discoverable for years before he began this PCR proceeding. *See Georgia v. Public.Resource.Org, Inc.*, 140 S. Ct. 1498, 1507 (2020) (presuming citizens know the law); *Cheek v. United States*, 498 U.S. 192, 199-200 (1991) (same, explaining the “deeply rooted” knowledge-of-the-law presumption is premised on the notion that “the law is definite and knowable”). Because Anderson should at minimum be charged with several years of inexcusable delay, this Court should affirm the Court of Appeals’ timeliness ruling.

If this Court disagrees, however, and concludes the Court of Appeals erred in dismissing Anderson’s claim as untimely, the Court of Appeals’ preclusion ruling should likewise be vacated. Typically, the failure to raise Rule 32.1(a) claims in prior PCR petitions—as occurred here—renders them subject to Rule 32.2(a)(3) preclusion via waiver. Further, nonpleading defendants are generally barred from raising IAC claims in successive PCR proceedings, *State v. Spreitz*, 202 Ariz. 1, 2, ¶ 4 (2002), unless those claims identify a right of sufficient constitutional magnitude requiring their personal, knowing, and voluntary waiver. *State v. Swoopes*, 216 Ariz.

390, 399, ¶ 28 (App. 2007). Even then, those claims must still be timely. *State v. Lopez*, 234 Ariz. 513, 514-15, ¶¶ 4-9 (App. 2014).

These principles notwithstanding, it would be inequitable to apply Rule 32.2(a)(3)'s preclusion bar to Anderson's parole-misadvice IAC claim where the late discovery of the claim's basis would have been excused. Thus, the resolution of the timeliness inquiry should dispose of the preclusion issue, irrespective of its outcome.

**D. Even were Anderson to prevail on his IAC claim, he should not receive reinstatement of the asserted plea offer's terms.**

Although Anderson initially notes that he seeks to prove his IAC claim at an evidentiary hearing, he goes on to assert that he is entitled to the "benefit of the plea bargain." (Anderson's Supp. Brief at 6.) Insofar as this Court addresses what relief Anderson should be granted upon proving his claim, a review of *Lafler* demonstrates his desired remedy is ill-conceived.

In *Lafler*, the United States Supreme Court addressed a situation where trial counsel deficiently advised the defendant to reject a favorable plea offer based on perceived flaws in the prosecution's case. 566 U.S. at 160-61, 174. Finding the defendant had satisfied the *Strickland* prongs, the Supreme Court ordered the prosecution to "reoffer the plea agreement" but further explained that the trial court was free to "exercise its discretion in determining whether to vacate the convictions and resentence [the defendant] pursuant to the plea agreement, to vacate only some of the convictions and resentence [the defendant] accordingly, or to leave the

convictions and sentence from trial undisturbed.” *Id.* at 174-75. The Court provided, “Sixth Amendment remedies should be tailored to the injury suffered from the constitutional violation and should not unnecessarily infringe on competing interests.” *Id.* at 170 (quotation and quotation marks omitted). Though the passage of time may “make[ ] it difficult to restore the defendant and the prosecution to the precise positions they occupied prior to the rejection of the plea offer,” those “baseline[s] . . . can be consulted in finding a remedy that does not require the prosecution to incur the expense of conducting a new trial.” *Id.* at 172. Further, a remedy must “neutralize the taint of a constitutional violation” without providing “a windfall to the defendant or needlessly squander[ing] the considerable resources the State properly invested in the criminal prosecution.” *Id.* at 170 (quotation and quotation marks omitted).

*Lafler* thus teaches that trial courts are afforded nearly unfettered discretion in fashioning remedies for *Lafler*-qualifying IAC violations, including the option to grant *no remedy at all*. With *Lafler*’s guidance in mind, the most suitable remedy to ameliorate the prejudice of any constitutional foul here would take the form of granting Anderson a constitutionally protected interest in parole eligibility entitling him to a parole hearing or a limited resentencing hearing. Such a remedy would squarely address his avowal that he chose to stand trial “because his attorney told him that if he lost at trial, he would still be eligible for parole after serving 25 years.

With the calculation for statutory good time, the plea offer of 18-2[2] years was not much better than if he went to [trial] and lost.” (Anderson’s App’x. 012, 055.) *Cf. Stewart v. Ariz. Bd. of Pardons and Paroles*, 156 Ariz. 538, 542–43 (App. 1988) (finding that the mandatory language of the parole-eligibility statute creates a constitutionally protected liberty interest in parole release); *cf. also State v. Gatlin*, 171 Ariz. 418, 420 (App. 1992) (stating defendant had a liberty interest in the trial court’s authority to impose length of sentence). Because that remedy would fulfill Anderson’s purpose for going to trial, it would restore him to the “precise position[ that he] occupied” when he allegedly rejected the plea offer. *Lafler*, 566 U.S. at 172. Conversely, awarding Anderson the alleged terms of the yet-unproven plea offer would give him the windfall that *Lafler* condemns.

### **CONCLUSION**

The general confusion about the availability of parole, which lasted for decades after its abolishment, militates against a finding that erroneous parole-eligibility advice categorically satisfies *Strickland’s* deficient-performance prong. Although courts should consider that confusion as a factor in deciding whether to reject parole-misadvice IAC claims as untimely or precluded, such claims should nonetheless remain subject to PCR procedural bars.

RESPECTFULLY SUBMITTED this 26th day of September 2023.

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