No. 17-6819

In the
Supreme Court of the United States

Michael Ledford,
Petitioner,

v.

Eric Sellers,
Respondent.

On Petition for a Writ of Certiorari
to the Supreme Court of Georgia

BRIEF IN OPPOSITION

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CAPITAL CASE
QUESTION PRESENTED

Strickland holds that "strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable," 466 U.S. at 690-91, but the courts must still review whether "counsel's representation fell below an objective standard of reasonableness." *Id.* at 688. When a court concludes counsel conducted a thorough investigation and made a strategic decision regarding which evidence was to be presented during the sentencing phase, does a court violate *Strickland* by holding this strategic choice was reasonable when the presentation by trial cousnel included aggravating evidence?

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

OPINIONS BELOW

The decision of the Georgia Supreme Court in the criminal direct appeal is published at 289 Ga. 70 (2011). The decision of the state habeas court is not published, but is included in Petitioner's Appendix B. The decision of the Georgia Supreme Court denying Ledford's application for certificate of probable cause to appeal is not published, but is included in Petitioner's Appendix A.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1257(a) to review the decision of the Georgia Supreme Court denying state habeas relief. The petition for certiorari was timely filed.

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment of the United States Constitution provides in relevant part:

> In all criminal prosecutions, the accused shall . . . have the Assistance of Counsel for his defense.

The Fourteenth Amendment, Section I, of the United States Constitution provides in relevant part:

> No State . . . shall 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.

INTRODUCTION

Petitioner requests that this Court grant certiorari review to make factbound error corrections, and, more importantly, to expand the range of presumptively prejudicial acts by trial counsel under this Court's precedent which would entitle him to relief on his ineffective-assistance claim. Neither presents an issue worthy of this Court's review.

The facts of Petitioner Michael Ledford's crimes directly inform the reasonableness of trial counsel's strategic decisions at trial. On July 25, 2006, Ledford sexually assaulted and stomped Jennifer Ewing to death. Unfortunately, Ms. Ewing was not Ledford's first victim. He preyed on women throughout his life both before and after the incident, and in light of these aggravating factors, trial counsel wanted to explain Ledford's action and continuing aberrant behavior. Trial counsel diligently investigated Ledford's background which led counsel to pursue extensive mental health evaluations. The mental health evaluations revealed evidence of frontal lobe brain injury, antisocial personality disorder, and psychopathy. Although the latter can be viewed as aggravating, trial counsel determined that presentation of mental health evidence, with the aid of experts was counsel's best strategy. In doing so, counsel made every effort to portray the diagnoses of antisocial personality disorder and psychopathy as mitigating.

Ledford now disagrees with trial counsel's reasonable strategic decision and requests that this Court craft a new *Strickland* standard—one where presentation of antisocial personality disorder and psychopathy is per se prejudicial. However, as that is not the standard, Ledford has failed to show that the Georgia Supreme Court's decision was not in accord with this

Court's precedent or that he is asking for anything more than this Court to apply the facts of his case to his *Strickland* claim in a different manner.

STATEMENT

1. *The Crimes.* On July 25, 2006, Petitioner skipped work, bought some beer, and then "drank it near the Silver Comet Trial, a recreational trail used for biking, running, and other activities." *See Ledford v. State*, 289 Ga. 70, 71 (2011). As the victim, Jennifer Ewing, rode past him on her bicycle, Ledford knocked her off the bike and dragged her off the trail deep into the woods. *See id*. He stripped Ms. Ewing of her clothing from the waist down. *Id*. He pulled up her shirt and exposed her breasts. *Id*. After a struggle, Ledford forced his penis into Ms. Ewing's mouth. *Id*. In self-defense, she bit Ledford's penis, severely wounding him. *See id*. "Enraged … Ledford unleashed a [grueling] attack" on Ms. Ewing—stomping on her face, larynx, and ribs. *Id*. "She suffered bruises throughout her body" and bled into her lungs, eventually choking to death. *Id*. The State charged Ledford with murder and sought the death penalty. *See id*. at 70.

2. *Trial*. Ledford was represented at trial by experienced criminal defense counsel, Thomas West and Jimmy Berry. Pet. App. B at 14-15. Trial counsel understood that the evidence in the State's case-in-chief was overwhelming and aggravating. *See id*. at 22, 26, 62-63. Ledford's crime was supported by physical and circumstantial evidence. *See id*. at 22.

Notably, the State's presentation included the significant testimony regarding Ledford's improper sexual behavior towards women and children. In 1980, Ledford kidnapped Teresa Curry and stole her car at gunpoint. *See id.* at 26. In 1985, during the middle of the night, Ledford, while claiming to

be a police officer, banged on Francis Hornsby's door and demanded that she let him in. *See id*. In 2002, he broke into the home of Laura McAlister, pinned her against a wall in her kitchen, and threatened to harm her children, who were also in the home, if she resisted. *See id*. In 2006, Ledford's then-girlfriend's daughter, Chassity Rogers, found him inside her mother's home masturbating while holding a pair of Ms. Rogers's underwear and photograph. *See id*. That same year, Ledford attempted to open the bedroom window of his 14-year-old niece, but she refused to let him in because he was not allowed in the home when her mother was not there. *See id.* at 31. On April 29, 2009, he sexually harassed a visibly-pregnant guard at the jail when she delivered food to his cell. *See id.* at 26.

The State also played for the jury recordings of four telephone calls made by Ledford from the jail in which he suggested that he would make money from the murder; stated that it was defense strategy to be on suicide-watch; denied his guilt; and asked his 14-year-old niece and her teenaged friend for photos of them in bikinis while discussing his penis. *See id.* at 26.

The jury found Ledford guilty of malice murder. *See id.* at 1-2.

For the penalty phase, trial counsel had conducted an exhaustive investigation of Ledford's background. They interviewed friends and family who revealed Ledford's childhood in abject poverty, a history of being physically and sexually abused, and his drug and alcohol abuse. *See id*. at 15-18. Most importantly, trial counsel learned about a change in Ledford's personality after an incident during childhood when he fell from a tree. *Id*. at 18. Thus, trial counsel's sentencing phase strategy focused on employing mental health experts-—Drs. Thomas Sachy, Robert Shaffer, Larry Morris, and William Morton—to explain Ledford's deviant behavior by showing that

he suffered from mental illness and brain damage as a result of his traumatic childhood and self-medication with alcohol. *See id*. at 22, 24-25. Trial counsel testified that they were of the opinion that evidence of Ledford's dysfunctional upbringing and poverty alone would "not carry the day." *See id.* at 63.

In support of their mitigation strategy, during sentencing, trial counsel presented 15 witnesses, including seven family members and the four mental health experts listed above. *See id.* at 26-27. Together their testimony showed that Ledford grew up in an unstable home without a father, and where drug, alcohol, physical, and sexual abuse were prevalent; suffered a head injury as a child when he fell out of a tree; and was an alcoholic whose drinking was connected to his brain damage, which caused him to be impulsive and inhibited both his moral judgment and his ability to think through the consequences of his actions. *See id*. at 26-56. The mental health experts' testimony also acknowledged Ledford's diagnoses of antisocial personality disorder and psychopathy, although this was not the focus of their testimony, in an effort to provide their own explanation for Ledford's behavior before the State presented evidence of the same in rebuttal. *See id.* at 61.

In rebuttal, the State presented its own mental health experts who had diagnosed Ledford with psychopathy and antisocial personality disorder. *Id*. at 57-58. But, defense counsel used their experts to "give a different slant on [these diagnoses]" by presenting evidence to show that Ledford "had done things that were not his active volition"—that Ledford's antisocial personality disorder occurred through no fault of his own. *Id*. at 24-25, 61 (citations omitted).

At the conclusion of the penalty phase, the jury sentenced Ledford to death. *Ledford*, 289 Ga. at 70. The Georgia Supreme Court affirmed the convictions and sentence. *Id*. at 70-71. Ledford then filed a petition for writ of certiorari in this Court, which was denied on November 7, 2011. *Ledford v. Georgia*, 565 U.S. 1017 (2011).

3. *State habeas proceedings*. Ledford—represented by new counsel—filed a state habeas corpus petition. Pet. App. B at 2. He alleged, among other claims, that trial counsel were ineffective during the sentencing phase of his trial in violation of *Strickland*. *Id*. at 11. Specifically, Ledford claimed that his trial counsel were ineffective for presenting evidence of his mental health, including testimony regarding his antisocial personality and psychopathy, which then allowed the State to present its own evidence of Ledford's mental health in rebuttal. *Id*. at 59-60.

During the two-day evidentiary hearing, Ledford presented the testimony of a single witness, social worker Mary McLaughlin. *Id.* at 60. He also submitted affidavits written by two capital litigation consultants, Pamela Leonard and Sean O' Brien. HT 3:298-317. The Warden presented the testimony of Ledford's trial attorneys, Mr. West and Mr. Berry. HT 1:122-195; 2:216-263.

Ms. McLaughlin testified about the impoverished and unstable living conditions of Ledford and his family. Pet. App. B at 60. She also discussed his family's history with sexual and substance abuse, and explained the impact of poor parenting in his household which consisted of a father who was an abusive alcoholic. *Id*. at 60-61. Ms. Leonard and Mr. O'Brien stated in their affidavits that at the time of Ledford's trial, they provided training and consultation to attorneys representing capital defendants. HT 3:298,

307. They both opined that evidence of antisocial personality disorder or psychopathy would be prejudicial and aggravating. *Id*. at 301, 313.

Mr. West testified that he was contacted by the Office of the Capital Defender to represent Ledford. *See* HT 1:125-26. The Office of the Capital Defender is the same organization for which Ms. Leonard worked at the time of Ledford's trial. *See* HT 3:299; 1:174-75. Mr. West was a solo practitioner in Atlanta, Georgia, whose practice consisted of 60 to 70 percent criminal defense. Prior to Ledford's case, he handled 15 to 20 death penalty cases—six of which went to trial and none of which resulted in the death penalty. *See* Pet. App. B at 14-15. Mr. Berry testified that his practice was exclusively criminal defense and explained that he "tried a lot of cases in Paulding County," which made him "pretty familiar with . . . the makeup of the juries over there." *See id*. Mr. Berry was counsel in 50 death penalty cases—approximately half of which went to trial. *See id*. [1]

Trial counsel testified in the state habeas proceedings that they were thinking about the sentencing phase from the beginning of the case. *See id*. at 15. Mr. Berry testified that "the State had a strong guilt/innocence case." HT 2:235. He also testified that they were aware of harmful similar-transaction evidence regarding Ledford's numerous attacks against women and recorded telephone calls from the jail, including Ledford's sexual fantasies about his teenaged niece that were played for the jury. *See id.* at 225-26. Mr. West testified that the defense team investigated Ledford's

[1] Although Mr. West served as lead counsel, there was no formal delineation of responsibilities between trial counsel. Pet. App. B at 15. Both Mr. West and Mr. Berry played an active role during the investigation and presentation of Ledford's case at trial. *Id*.

background to provide the jury with an explanation why Ledford committed the heinous acts against Ms. Ewing. HT 1:163.

During their investigation, trial counsel learned that Ledford fell about 50 feet from a tree during childhood. Pet. App. B at 18. Based upon their interviews with family members, they suspected that Ledford hit his head during the fall and may have suffered brain damage. *Id*. Trial counsel obtained mental health experts whose testing supported this theory. *Id*. at 18-19. As for Ledford's diagnosis of antisocial personality disorder, Mr. West testified that although antisocial personality disorder could be viewed as aggravating, they also highlighted at trial the mitigating factor that Ledford developed antisocial personality disorder through his upbringing. HT 1:157. Mr. Berry testified that trial counsel wanted to show that Ledford had psychiatric issues that were based on his upbringing and substance abuse. HT 2:241-42. They wanted to "counter the State's expert's testimony by presenting the worst of the diagnoses themselves." Pet. App. B at 63.

Following the evidentiary hearing, arguments of counsel, and post-hearing briefs, the state habeas court issued a 72-page order concluding that trial counsel were not ineffective and denied the habeas petition. *Id*. at 1, 69, 72. The state habeas court analyzed Ledford's claims under *Strickland's* two prongs of deficient performance and prejudice, and determined that neither prong was met. *Id*. at 12-14.

The state habeas court found that trial counsel did not render prejudicially deficient performance with their presentation of Ledford's mental health evidence. *Id*. at 59. The court reasoned that the presentation was the result of a thorough investigation of Ledford's background. *Id*. As for trial counsel's decision to elicit testimony from Ledford's mental health

experts that Ledford was antisocial and a psychopath before the State's mental health experts presented those same conclusions to the jury in rebuttal, the state habeas court concluded that it was a reasonably calculated risk to "preempt any effort by the prosecution to prove the same thing." *Id*. at 61 (citations omitted).

Importantly, the state habeas court found that the majority of Ms. McLaughlin's testimony was cumulative. *Id*. at 61, 66. She testified about Ledford's childhood poverty, familial incest and molestation, physical abuse, alcohol abuse, parental neglect, multigenerational mental illness, residential instability, and social isolation—evidence the jury had already heard. *Id*. at 66.

Moreover, the state habeas court noted that the information on which Ms. McLaughlin relied contained evidence of Ledford's antisocial personality. *Id*. at 67. Accordingly, the state habeas court considered and rejected Ledford's contention that trial counsel should have presented the testimony of a forensic social worker without the benefit of mental health experts, because the evidence Ledford relied on for mitigation included the same kind of evidence from trial. Without this mental health evidence, the state habeas court found that the jury would have been left more puzzled without an explanation for Ledford's attack on Ms. Ewing and his continued deviant behavior while awaiting trial. *Id*. at 66.

Ledford filed an application for a certificate of probable cause with the Georgia Supreme Court alleging that the state habeas court erred in denying his ineffective assistance of counsel claim. The Georgia Supreme Court summarily denied the application on August 14, 2017. Pet. App. A.

REASONS FOR DENYING THE PETITION

The Georgia Supreme Court's denial of Ledford's factbound *Strickland* claim does not warrant review.

A. Ledford's petition challenges application of well-settled law to the facts of his case.

The requirements for establishing a claim for ineffective assistance of trial counsel are well-settled: a defendant must show that counsel's performance was deficient and that the deficient performance prejudiced the defense. *Strickland*, 466 U.S. at 687. For deficiency, the defendant must demonstrate that counsel's performance fell below an objective standard of reasonableness. *Id.* at 688. As for prejudice, the defendant must show that there is a reasonable probability that, but for the alleged deficiency, the result of the proceeding would have been different. *Id.* at 694. "Unless a defendant makes both showings, it cannot be said that the [ ] death sentence resulted from a breakdown in the adversary process that renders the result unreliable." *Id*. at 687.

Ledford contends that the Georgia Supreme Court erred in rejecting his *Strickland* claim because counsel's strategic choices in presenting mitigation evidence in this case were unreasonable and prejudicial under *Strickland's* well-established standards. Pet. at 10-15. Ledford has failed to allege a split amongst any courts regarding his *Strickland* claim. Moreover, an argument that a state court erred in applying *Strickland* to the facts of a particular case is a paradigmatic plea for factbound error correction. Consequently, Ledford's *Strickland* claim presents no general question of law and does not warrant this Court's review.

B. The Georgia Supreme Court's decision was correct.

Even if Ledford's arguments were anything other than a request for splitless, factbound error correction, there is no error to correct. It was Ledford's burden to demonstrate that trial counsel's strategic choice to present mental health evidence in mitigation both fell below an objective standard of reasonableness and that, but for that choice, there was a reasonable probability that the jury would have concluded that a death sentence was not warranted. He failed to carry that heavy burden.

1. Ledford failed to demonstrate that trial counsel's strategic decision to present expert mental health evidence at sentencing fell below an objective standard of reasonableness.

Ledford alleges that trial counsel's strategic decision to present evidence the full picture of his mental health, including his diagnoses of antisocial personality disorder and psychopathy, during the sentencing phase of his trial was unreasonable. In support, Ledford makes two complaints. First, he alleges trial counsel did not perform a thorough background investigation. Second, he alleges that trial counsel's decision to present what he has deemed "per se aggravating" evidence, falls within the narrow category of performance that renders trial counsel's presentation presumptively prejudicial. Both complaints fail.

Ledford's allegation that trial counsel's decision to provide a complete mental health presentation with expert assistance was made without a thorough investigation of his background was not made to the Georgia

Supreme Court. Rather, in his application for certificate of probable cause, Ledford conceded that his trial counsel performed "a thorough investigation into his life history." CPC at 5-6. Therefore, this argument is not properly before this Court for review. *See Adams v. Robertson*, 520 U.S. 83, 86 (1997); *see also Citizens United v. FEC*, 558 U.S. 310, 330 (2010).

Even if Ledford's first complaint had been presented, it has no traction as the real crux of Petitioner's argument is that antisocial personality disorder and psychopathy are per se aggravating evidence and, therefore, trial counsel's decision to present these diagnoses falls in that slim category of performance that is presumptively prejudicial. In support, Petitioner relies upon precedent from the Eleventh Circuit holding that a diagnosis of antisocial personality disorder is, "as a matter of law, evidence in aggravation of punishment." Pet. at 11. Although the Eleventh Circuit has stated that evidence of antisocial personality disorder is aggravating, it has "never ruled that a capital defense lawyer renders ineffective assistance as a matter of law when he introduces evidence of antisocial personality disorder for mitigation purposes." *Morton v. Sec'y, Fla. Dep't. of Corr.*, 684 F.3d 1157, 1167-68 (11th Cir. 2012). More to the point, the Eleventh Circuit's decisions are not under review in this proceeding and do not set the standard for ineffective assistance of counsel claims. This Court sets the standard and this Court has

not held that evidence of antisocial personality disorder or psychopathy is presumptively prejudicial. [2]

Ledford also relies upon *Buck v. Davis*, 137 S. Ct. 759 (2017), which is merely a red herring to divert this Court's attention. Ledford failed to argue to the Georgia Supreme Court how his case was contrary to this Court's decision in *Buck*, which was rendered on February 22, 2017. Ledford filed his application for certificate of probable cause on January 24, 2017. The Warden filed his response on March 31, 2017. The Georgia Supreme Court issued its summary denial on August 14, 2017 after which Ledford had ten days to file a motion for reconsideration. *See* Georgia Supreme Court Rule 27. Ledford filed no such motion. Therefore, his argument based on *Buck* is

[2] Even if the Eleventh Circuit's law was under review, the cases cited by Ledford do not support his assertion that antisocial personality disorder is per se aggravating. The bulk of those cases hold only that the petitioners failed to show prejudice for their counsel's non-presentation of mental health evidence because the presentation would have included evidence of their antisocial personalities, which some juries view as aggravating. *Weeks v. Jones*, 26 F.3d 1030, 1034-35, 1042 (11th Cir. 1994); *Reed v. Sec'y, Fla. Dep't of Corr.*, 593 F.3d 1217, 1245 (11th Cir. 2010); *Cummings v. Sec'y for the Dep't of Corr.*, 558 F.3d 1331, 1367 (11th Cir. 2009); *Evans v. Sec'y*, *Dep't of Corr.*, 703 F.3d 1316, 1332 (11th Cir. 2013); *Kokal v. Sec'y, Dep't of Corr.*, 623 F.3d 1331, 1349 (11th Cir. 2010); *Suggs v. McNeil*, 609 F.3d 1218, 1231 (11th Cir. 2010); *Gray v. Epps*, 616 F.3d 436, 449 (5th Cir. 2010). In *Daniels v. Woodford*, 428 F.3d 1181 (9th Cir. 2005), the final case cited by Ledford, the Ninth Circuit did find trial counsel ineffective for presenting an unqualified expert witness who suggested that the petitioner was a sociopath. *Id.* at 1204-05. However, unlike in this case, counsel's decision in *Daniels* was the result of deficient investigation and presentation. *Id.* at 1202.

not properly before this Court for review. *Adams*, 520 U.S. at 86; *Citizens United*, 558 U.S. at 330.

Buck is also inapposite. In *Buck*, the petitioner was prejudiced during his sentencing phase when his trial counsel presented evidence of future dangerousness[3] on the basis of race—a constitutionally immutable characteristic. *Buck*, 137 S. Ct. at 777-78. This Court pointed out it would be "patently unconstitutional" for the State to introduce such "potent evidence" against the defendant on "the central question at sentencing" which "coincided precisely with a particularly noxious strain of racial prejudice." *Id.* at 776-77. This "unusual confluence of factors" led the Court to deem counsel's performance deficient for having elicited the testimony and that error prejudicial. *Id.* at 777. In simplest terms, trial counsel unconstitutionally made Buck's race a factor for consideration by the jury.

Here, Ledford fails to show how the subjective diagnoses of antisocial personality disorder and psychopathy are constitutionally immutable characteristics that were improper for a jury to consider during sentencing. His argument by analogy of race to mental state falls short of rational

[3] In order to impose a death sentence in Texas, a jury must first determine that a defendant is a future danger. *Buck*, 137 S. Ct. at 775. In Georgia, *during the sentencing phase*, evidence regarding a defendant's mental health is merely a factor for the jury's consideration—i.e. the jury does not have to make determination regarding a defendant's mental health *at that stage* to make a defendant death eligible.

persuasion. *Buck* neither controls this case nor conflicts with the decision below.

Neither *Buck* nor the Eleventh Circuit precedent relied upon by Ledford, sets the standard for determining whether a presumptively prejudicial event has occurred with regard to an ineffective-assistance claim. In *Smith v. Robbins*, 528 U.S. 259 (2000), this Court reiterated the category of cases delineated in *Strickland* in which prejudice is presumed. Those categories are: a "denial of counsel"; "various kinds of state interference with counsel's assistance"; and "an actual conflict of interest." *Id.* at 287 (citing *Strickland*, 466 U.S. at 692); *see also Penson v. Ohio*, 488 U.S. 75 (1988); *United States v. Cronic*, 466 U.S. 648 (1984). Ledford's case does not fall within this very narrow exception of presumed prejudice.

Instead, Ledford's claim that trial counsel did not make a reasonable strategic decision in deciding what evidence to present during the sentencing phase, is a standard ineffective-assistance claim governed by *Strickland*. As such, Ledford has failed to show state court's decision was not in accord with this Court's precedent. In support of the Georgia Supreme Court's denial of Ledford's certificate of probable cause, the state habeas court correctly found that trial counsel's presentation of evidence in mitigation was reasonable given their exhaustive investigation of Ledford's background. Pet. App. B at 59. Trial counsel interviewed Ledford, his family, and his friends who shared an incident where he fell 50 feet from a tree during childhood that may have

caused brain damage. *Id.* at 15-18. Trial counsel also uncovered evidence of abject poverty; physical, sexual, and alcohol abuse; parental neglect; familial mental illness; residential instability; and social isolation. *See id.* at 66. The totality of the environment in Ledford's life presented a mental health issue for trial counsel to explore.

As a result, trial counsel employed four experienced mental health experts, Drs. Sachy, Shaffer, Morris, and Morton to assist with the development of this mitigation theory. *Id.* at 19-22. They interviewed Ledford about the crime, his development, his medical history, and his history of abuse. *Id.* 19-21. Dr. Morris also spoke with Ledford's mother, stepfather, and siblings. *Id.* at 20. Dr. Sachy performed a neuropsychiatric forensic evaluation, which included the administration of an MRI on Ledford. *Id.* at 19. Dr. Shaffer also performed a complete neuropsychological evaluation of Ledford to include the administration of a battery of tests to assess impairment in the brain. *Id.* at 50-54. Together, the evaluations and testing of Drs. Sachy and Shaffer corroborated trial counsel's mental health strategy by showing damage to the frontal lobe of Ledford's brain. *Id.* at 19-20, 42-45.

Ledford, however, contends that trial counsel never considered any other options besides presenting mental health evidence. The record belies this contention. Trial counsel's consideration of other options is evidenced by their additional presentation of lay and fact witness testimony about

Ledford's social history and his history of physical, emotional, sexual, and substance abuse. *Id.* at 26-36, 41-42, 45, 55-56. What Ledford is actually advocating is that trial counsel should have rejected the decision to present the whole picture of his mental health through experts, but should have instead made the choice, as he did in state habeas, to present a fractured picture that offered an incomplete explanation for his behavior. No doubt that if that had occurred, Ledford would now be arguing before this Court that trial counsel was ineffective for making that choice.

Under *Strickland*, the strategic decisions of trial counsel are only as reasonable as their investigations. *See Strickland*, 466 U.S. at 691-92. Here, trial counsel performed a substantially thorough investigation leaving no stone unturned. Their investigation supported their suspicions about Ledford's mental health and it was reasonable for trial counsel to present as such to the jury. "There are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way." *See id.* at 690. Petitioner has failed to show that the state court's rejection of his allegation that trial counsel did not make a reasonable strategic choice in their decision to present the whole picture of Ledford's mental health, after a thorough investigation, was not in accord with this Court's precedent.

2. Ledford failed to demonstrate that trial counsel's decision to present mental health evidence at sentencing prejudiced him.

When assessing prejudice in a case challenging a death sentence, "the question is whether there is a reasonable probability that, absent the errors, the sentencer … would have concluded that the balance of the aggravating and mitigating circumstances did not warrant death." *Strickland*, 466 U.S. at 695. "[A] verdict or conclusion with overwhelming record support is less likely to have been affected by errors." *Williams v. Taylor*, 529 U.S. 362, 397-98 (2000). Reviewing the entirety of the record, the altered mitigating evidence offered by Ms. McLaughlin without evidence of Ledford's mental health during the state habeas proceedings would not have created a reasonable probability of a different outcome.

During the sentencing phase, trial counsel presented ample evidence of Ledford's background through his family. Pet. App. B at 26-56. Ledford seeks the benefit of every nugget of mitigating evidence together with a total disregard for all of the aggravating evidence. His allegation that Ms. McLaughlin could have single-handedly re-routed the sentencing picture is unavailing. The record shows that the testimony from Ms. McLaughlin presented during the state habeas proceedings was largely cumulative, weak, and aggravating of that presented at trial. *Id.* at 66-67; *see Pinholster*, 563 U.S. 170, 199-201 (2011) (holding that it is reasonable for a state court to find no prejudice when the evidence is either weak or cumulative of the testimony presented at trial); *see also Wong v. Belmontes*, 558 U.S. 15, 22-24 (2009) (same).

Had trial counsel forgone the mental health evidence during Ledford's sentencing phase as Ledford now suggests, the jury would not have heard

any plausible explanation for Ledford's crimes or his perverse actions while awaiting trial in the jail. Without Dr. Morton's testimony about Ledford's alcohol abuse, Dr. Morris's testimony about Ledford's sexual abuse, and the testimony of Drs. Sachy and Shaffer about Ledford's brain damage, the jury would have been left bewildered. Weighing the totality of all of the evidence presented in mitigation against the evidence in aggravation, Ledford failed to show a reasonable probability of a different outcome. *See Strickland*, 466 U.S. at 694.

Accordingly, the Georgia Supreme Court's denial of Ledford's ineffective-assistance claim was consistent with this Court's precedent. For this reason too, review is not warranted.

CONCLUSION

For the reasons above, this Court should deny the petition for certiorari.

Respectfully submitted.

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CERTIFICATE OF SERVICE

I do hereby certify that I have this day, January 17, 2018, served the within and foregoing pleading, prior to filing the same, post-prepaid and properly addressed upon:

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