No. 17-________

IN THE SUPREME COURT OF THE UNITED STATES

KEITH THARPE,

Petitioner,

-v-

ERIC SELLERS, Warden,
Georgia Diagnostic and Classification Prison,

Respondent.

MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

THIS IS A CAPITAL CASE

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TO THE HONORABLE CLARENCE THOMAS, Associate Justice of the Supreme Court of the United States, and Circuit Justice for the United States Court of Appeals for the Eleventh Circuit:

COMES NOW the Petitioner, KEITH THARPE, by and through undersigned counsel, and pursuant to 28 U.S.C. §§ 1257 and 2101(c) and Supreme Court Rule 13.5, respectfully requests an extension of time of sixty (60) days within which to file his Petition for Writ of Certiorari to the Supreme Court of Georgia. The decision he seeks to have reviewed is the decision of the Supreme Court of Georgia (Case No. S18W0242) which was entered on September 26, 2017 (*see* Attachment A), affirming the state habeas court's denial of relief, issued the same date, of Mr.

Tharpe's state habeas corpus petition (*see* Attachment B). Reconsideration in the Georgia Supreme Court was denied on November 1, 2017. *See* Attachment C. Petitioner's time to petition for a Writ of Certiorari in this Court expires January 30, 2018.[1] This request is made more than ten (10) days before the petition would be due without an extension of time, and therefore Mr. Tharpe shows the following good cause in support of this request (*see* 28 U.S.C. § 2101(c) and Supreme Court Rules 13.5 and 30.2):

1. Petitioner, Keith Tharpe originally submitted to this Court a Petition for Writ of Certiorari to the Georgia Supreme Court in this case on September 26, 2017, the day of Mr. Tharpe's previously scheduled execution. A case number of 17-6130 was assigned at that time.

2. Mr. Tharpe had submitted a parallel certiorari petition off federal habeas action in the Eleventh Circuit three days prior, on September 23, 2017, along with a Motion for Stay of Execution. *See Tharpe v. Sellers*, Case No. 17-6075. A stay was entered by this Court on September 26, 2017. *See* Case No. 17A330, Order of September 26, 2017.

3. Similar to the petition in Case No. 17-6075, the petition in Case No. 17-6130 dealt with the state courts' resolution of the claim that a racist juror had deprived Mr. Tharpe of a fair and reliable sentencing proceeding guaranteed under the Eighth Amendment.

4. On September 29, 2017, Case No. 17-6130, by stipulation of the parties, was withdrawn without prejudice so that Mr. Tharpe could request reconsideration in the Georgia Supreme Court of the denial of the Certificate of Probable Cause to Appeal (CPC), which had been the subject of the certiorari petition filed under an active execution warrant. The stay of execution

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[1] Mr. Tharpe initially filed a petition for certiorari review of the Georgia Supreme Court's CPC denial on September 26, 2017, the same day this Court issued a stay of execution in a parallel petition for a writ

entered by this Court in Case No. 17-6075 provided space for Mr. Tharpe to proceed further in the Georgia Supreme Court.

5. Mr. Tharpe requested reconsideration of the denial of CPC in the Georgia Supreme Court on October 6, 2017 and it was denied on November 1, 2017. A Petition for Writ of Certiorari is therefore currently due on January 30, 2018.

6. On January 8, 2018, this Court granted the petition in Case No. 17-6075 and remanded to the Eleventh Circuit for further proceedings. *See* Attachment D.

7. On the basis of this Court's action in Case No. 17-6075, Mr. Tharpe has invoked Georgia Supreme Court procedures for requesting a second reconsideration of the denial of CPC. *See* Attachment E.

8. Mr. Tharpe thus anticipates possible further action in the Georgia Supreme Court as well as the lower state court regarding this claim which may also be impacted by proceedings on remand in the federal courts. In light of this activity, Mr. Tharpe requests a sixty (60) day extension of time in which to submit the Petition for Writ of Certiorari in this case.

WHEREFORE, undersigned counsel respectfully requests an extension of time of sixty (60) days within which to file the Petition for Writ of Certiorari, up to and including Monday, April 2, 2018.

This 18th day of January, 2018.

Respectfully submitted,

____

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COUNSEL FOR PETITIONER

Attachment A

SUPREME COURT OF GEORGIA
Case No. S18W0242

Atlanta September 26, 2017

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

KEITH THARPE v. ERIC SELLERS, WARDEN

After a careful review of Tharpes's application for a certificate of probable cause to appeal the dismissal of his second state habeas petition, the Warden's response, Tharpe's reply to the response, and the record in this case, the application is hereby denied as lacking arguable merit because the claims presented in the petition are res judicata or otherwise procedurally barred. See Supreme Court Rule 36.

Tharpe's motion for a stay of execution is also denied.

Hines, C. J., Blackwell, Boggs, Peterson, Grant, JJ., and Judge Charles J. Bethel concur. Melton, P. J., Benham, and Hunstein, JJ., dissent. Nahmias, J., not participating.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk 's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

[signature], Clerk

Attachment B

IN THE SUPERIOR COURT OF BUTTS COUNTY
STATE OF GEORGIA

KEITH THARPE,	*	
	*	**CIVIL ACTION NO.**
Petitioner,	*	**2017-HC-13**
	*	
v.	*	**HABEAS CORPUS**
	*	
ERIC SELLERS, Warden,	*	
Georgia Diagnostic and	*	
Classification Center,	*	
	*	
Respondent.	*	

FILED BUTTS
SUPERIOR COURT
2017 SEP 26 AM 9: 15
BY [signature]
RHONDA SMITH, CLERK

ORDER

This is Petitioner's second state habeas petition. Petitioner again argues the same juror racial bias claim previously raised and found to be procedurally defaulted by this Court and again claims he is intellectually disabled, which assertion has already been reviewed and rejected on the merits by this Court. This Court finds Petitioner's claim of juror racial bias is barred as res judicata, and, in the alternative, is still procedurally defaulted. Additionally, Petitioner's claims attendant to his allegation of intellectual disability are barred as res judicata. Accordingly, Petitioner's second state habeas petition is DISMISSED.

Standard of Review for Res Judicata

Bedrock principles of law establish that:

> Res judicata thus "prevents the re-litigation of all claims which have already been adjudicated, or which could have been adjudicated, between identical parties or their privies in identical causes of action."

Odom v. Odom, 291 Ga. 811, 812 (1) (2012); *see also Bruce v. State*, 274 Ga. 432, 434 (2) (2001) ("Without a change in the facts or the law, a habeas court will not review an issue decided on direct appeal."); *Hall v. Lance*, 286 Ga. 365, 687 (2010).

Standard of Review for Procedural Default

Under the procedural default doctrine set forth in *Black v. Hardin*, 255 Ga. 239 (1985) and *Valenzuela v. Newsome*, 253 Ga. 793 (1985) and codified at O.C.G.A. § 9-14-48(d), issues which were not raised at trial or on appeal may not be litigated in a habeas corpus proceeding absent a showing of cause and actual prejudice or of a miscarriage of justice. O.C.G.A. § 9-14-48(d); *Black v. Hardin*, *supra*; *Valenzuela v. Newsome*, *supra*; *Hance v. Kemp*, *supra*; *White v. Kelso*, 261 Ga. 32 (1991).

Juror Misconduct Claim

Petitioner's exact claim of juror racial bias was presented in Petitioner's original state habeas petition. This Court previously found the claim to be procedurally defaulted. Petitioner has presented no new facts to overcome this

procedural bar. Instead, Petitioner alleges the United States Supreme Court's recent decision in *Peña-Rodriguez v. Colorado*, __U.S.__, 137 S. Ct. 855 (2017), is new law that requires the re-examination of his juror bias claim. At issue in *Peña-Rodriguez* was a Sixth Amendment challenge to the Colorado evidentiary rule that did not allow impeachment of jury verdicts based upon the internal deliberations of jurors. The Court rejected the continued constitutionality of this evidentiary rule by holding:

> [W]here a juror makes a clear statement that indicates he or she relied on racial stereotypes or animus to convict a criminal defendant, the Sixth Amendment requires that the no-impeachment rule give way in order to permit the trial court to consider the evidence of the juror's statement and any resulting denial of the jury trial guarantee.

Peña-Rodriguez, 137 S. Ct. at 869.

First, the Court finds that Petitioner has failed to show that *Peña-Rodriguez* is retroactive to his collateral proceeding. Second, the Court notes that while the Court previously found Petitioner's juror testimony evidence was inadmissible under the no-impeachment rule of evidence, the Court also assumed that even if Petitioner's evidence were admissible he had still failed overcome the procedural default of his claim. Specifically, the Court found that Petitioner had failed to show that the juror in question, Barney Gattie, had relied upon any alleged racial bias in sentencing Petitioner to death. (Final Order, December 1, 2008, pp. 102-103). Therefore, even if *Peña-Rodriguez* were retroactive, it does not present new

law or facts to overcome the res judicata bar as this Court already reviewed Petitioner's evidence and found it did not show that racial animus was relied upon to sentence Petitioner.

Accordingly, the Court FINDS Petitioner's juror racial bias claim is barred from review under res judicata and is DISMISSED.

In the alternative, assuming *Peña-Rodriguez* is retroactive, Petitioner's claim is still procedurally defaulted. Petitioner has failed to show cause with any evidence or persuasive authority. Additionally, Petitioner has failed to show prejudice.

While there was evidence that one of Petitioner's jurors, Mr. Gattie, used a racially derogatory term associated with Petitioner's race, when read as a whole, the record does not show that racial animus was relied upon by the jury to convict or sentence Petitioner. The Court specifically credits Mr. Gattie's live deposition testimony, Mr. Gattie's second affidavit presented by Respondent, which Mr. Gattie swore was the truth, and the testimony from the remaining jurors. The Court finds the affidavit from Mr. Gattie presented by Petitioner's counsel to be less than credible given the circumstances under which Mr. Gattie testified it was obtained, specifically his testimony that he did not swear to the truth of the information in the affidavit. Consequently, Petitioner has failed to show prejudice

as he has failed to show a reasonable probability of a different outcome at his motion for new trial or on appeal under the *Peña-Rodriguez* standard.

Consequently, the Court FINDS Petitioner has failed to show cause and prejudice, or a miscarriage of justice to overcome the procedural default of his juror bias claim. Petitioner's juror bias claim is, in the alternative, DISMISSED as procedurally defaulted.

Petitioner's Challenge to Georgia's Burden of Proof for Intellectual Disability Claims.

Petitioner's allegation that Georgia's burden of proof for claims of intellectual disability is unconstitutional is barred from this Court's review as res judicata. This claim was raised and rejected in Petitioner's first state habeas corpus petition before this Court. He has presented no new law or facts to overcome this bar. Petitioner argues that *Moore v. Texas,* 137 S. Ct. 1039 (2017), is new law that allows this Court to review this claim a second time. In *Moore*, the Supreme Court held that diagnostic standards should be consulted in assessing claims of intellectual disability. *Moore* does not dictate burdens of proof and is not new law that overcomes the procedural bar. Accordingly, this Court FINDS this claim is barred by res judicata and the claim is DISMISSED.

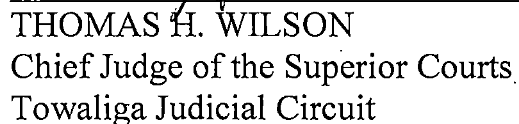
Petitioner's Claim that He is Intellectually Disabled

Petitioner's claim that he is intellectually disabled is also barred from this Court's review as res judicata. Petitioner presented extensive evidence on this

claim in his first state habeas proceedings. This Court previously reviewed those claims using the current clinical diagnostic standards. *Moore* does not provide new law and Petitioner has asserted no new facts to overcome that bar. Therefore, this Court FINDS this claim is barred by res judicata and is DISMISSED.

As the Court is able to determine from the face of the pleadings that the claims are barred under res judicata, the DISMISSES the petition without a hearing. *See Collier v. State*, 290 Ga. 456 (2012). Petitioner's request for a stay of execution is DENIED.

SO ORDERED, this the 25 day of September, 2017.



THOMAS H. WILSON
Chief Judge of the Superior Courts
Towaliga Judicial Circuit

Prepared by:
Sabrina D. Graham
Senior Assistant Attorney General

Attachment C

SUPREME COURT OF GEORGIA
Case No. S18W0242

Atlanta November 2, 2017

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

KEITH THARPE v. ERIC SELLERS, WARDEN

Upon consideration of Tharpe's motion for reconsideration and the included motion to hold this case in abeyance, they are both denied.

Hines, C. J., Blackwell, Boggs, Peterson, Grant, JJ., and Judge Charles J. Bethel concur. Melton, P. J., Benham, and Hunstein, JJ., dissent. Nahmias, J., not participating.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk 's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

[signature], Clerk

Attachment D

SUPREME COURT OF THE UNITED STATES

KEITH THARPE *v.* ERIC SELLERS, WARDEN

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 17–6075. Decided January 8, 2018

PER CURIAM.

Petitioner Keith Tharpe moved to reopen his federal habeas corpus proceedings regarding his claim that the Georgia jury that convicted him of murder included a white juror, Barney Gattie, who was biased against Tharpe because he is black. See Fed. Rule Civ. Proc. 60(b)(6). The District Court denied the motion on the ground that, among other things, Tharpe's claim was procedurally defaulted in state court. The District Court also noted that Tharpe could not overcome that procedural default because he had failed to produce any clear and convincing evidence contradicting the state court's determination that Gattie's presence on the jury did not prejudice him. See *Tharpe* v. *Warden*, No. 5:10–cv–433 (MD Ga., Sept. 5, 2017), App. B to Pet. for Cert. 19.

Tharpe sought a certificate of appealability (COA). The Eleventh Circuit denied his COA application after deciding that jurists of reason could not dispute that the District Court's procedural ruling was correct. See *Tharpe* v. *Warden*, 2017 WL 4250413, *3 (Sept. 21, 2017). The Eleventh Circuit's decision, as we read it, was based solely on its conclusion, rooted in the state court's factfinding, that Tharpe had failed to show prejudice in connection with his procedurally defaulted claim, *i.e.*, that Tharpe had "failed to demonstrate that Barney Gattie's behavior 'had substantial and injurious effect or influence in determining the jury's verdict.' " *Ibid.* (quoting *Brecht* v. *Abrahamson*, 507 U. S. 619, 637 (1993)).

Our review of the record compels a different conclusion. The state court's prejudice determination rested on its finding that Gattie's vote to impose the death penalty was not based on Tharpe's race. See *Tharpe* v. *Warden*, No. 93–cv–144 (Super. Ct. Butts Cty., Ga., Dec. 1, 2008), App. F to Pet. for Cert. 102. And that factual determination is binding on federal courts, including this Court, in the absence of clear and convincing evidence to the contrary. See 28 U. S. C. §2254(e)(1). Here, however, Tharpe produced a sworn affidavit, signed by Gattie, indicating Gattie's view that "there are two types of black people: 1. Black folks and 2. Niggers"; that Tharpe, "who wasn't in the 'good' black folks category in my book, should get the electric chair for what he did"; that "[s]ome of the jurors voted for death because they felt Tharpe should be an example to other blacks who kill blacks, but that wasn't my reason"; and that, "[a]fter studying the Bible, I have wondered if black people even have souls." App. B to Pet. for Cert. 15–16 (internal quotation marks omitted). Gattie's remarkable affidavit—which he never retracted—presents a strong factual basis for the argument that Tharpe's race affected Gattie's vote for a death verdict. At the very least, jurists of reason could debate whether Tharpe has shown by clear and convincing evidence that the state court's factual determination was wrong. The Eleventh Circuit erred when it concluded otherwise.

The question of prejudice—the ground on which the Eleventh Circuit chose to dispose of Tharpe's application—is not the only question relevant to the broader inquiry whether Tharpe should receive a COA. The District Court denied Tharpe's Rule 60(b) motion on several grounds not addressed by the Eleventh Circuit. We express no view of those issues here. In light of the standard for relief from judgment under Rule 60(b)(6), which is available only in " 'extraordinary circumstances,' " *Gonzalez* v. *Crosby*, 545 U. S. 524, 536 (2005), Tharpe faces a high bar in showing

that jurists of reason could disagree whether the District Court abused its discretion in denying his motion. It may be that, at the end of the day, Tharpe should not receive a COA. And review of the denial of a COA is certainly not limited to grounds expressly addressed by the court whose decision is under review. But on the unusual facts of this case, the Court of Appeals' review should not have rested on the ground that it was indisputable among reasonable jurists that Gattie's service on the jury did not prejudice Tharpe.

We therefore grant Tharpe's motion to proceed *in forma pauperis*, grant the petition for certiorari, vacate the judgment of the Court of Appeals, and remand the case for further consideration of the question whether Tharpe is entitled to a COA.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

KEITH THARPE *v.* ERIC SELLERS, WARDEN

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 17–6075. Decided January 8, 2018

JUSTICE THOMAS, with whom JUSTICE ALITO and JUSTICE GORSUCH join, dissenting.

If bad facts make bad law, then "unusual facts" inspire unusual decisions. *Ante*, at 3. In its brief *per curiam* opinion, the Court misreads a lower court's opinion to find an error that is not there, and then refuses to entertain alternative grounds for affirmance. The Court does this to accomplish little more than a do-over in the Court of Appeals: As it concedes, petitioner Keith Tharpe faces a "high bar" on remand to obtain even a certificate of appealability (COA). *Ante*, at 2.

One might wonder why the Court engages in this pointless exercise. The only possible explanation is its concern with the "unusual facts" of this case, specifically a juror affidavit that expresses racist opinions about blacks. The opinions in the affidavit are certainly odious. But their odiousness does not excuse us from doing our job correctly, or allow us to pretend that the lower courts have not done theirs.

The responsibility of courts is to decide cases, both usual and unusual, by neutrally applying the law. The law reflects society's considered judgments about the balance of competing interests, and we must respect those judgments. In bending the rules here to show its concern for a black capital inmate, the Court must think it is showing its concern for racial justice. It is not. Its summary vacatur will not stop Tharpe's execution or erase the "unusual fac[t]" of the affidavit. It will only delay justice for Jaquelin Freeman, who was also black, who is ignored by the

majority, and who was murdered by Tharpe 27 years ago. I respectfully dissent.

I

The Court's terse opinion tells the reader that this case involves a petitioner, a juror, an affidavit, and a prejudice determination. But it involves much more than that. This case also has a victim, a second affidavit, numerous depositions, factfinding by a state court, and several decisions from federal judges that provide multiple grounds for denying a COA. I will briefly provide this omitted context.

A

Keith Tharpe's wife, Migrisus, left him in 1990. Despite a no-contact order, Tharpe called her and told her that if she wanted to "'play dirty'" he would show her "'what dirty was.'" *Tharpe* v. *Warden*, 834 F. 3d 1323, 1325 (CA11 2016). The next morning, Tharpe ambushed his wife and her sister, Jaquelin Freeman, as they drove to work, pulling his truck in front of their car and forcing them to stop. Tharpe aimed a shotgun at the car and ordered his wife to get into his truck. He then told Freeman that he was going to "'f— [her] up'" and took her to the rear of his truck. *Ibid.* Tharpe shot Freeman, rolled her body into a ditch, reloaded, and shot her again, killing her. After murdering Freeman, Tharpe kidnaped and raped his wife, leaving Freeman's body lying in the ditch. Freeman's husband found her a short time later, while driving their children to school.

A jury convicted Tharpe of malice murder and two counts of aggravated kidnaping. After hearing the evidence, the jury needed less than two hours to return a unanimous sentence of death. As aggravating factors, the jury found that Tharpe murdered Freeman while committing two other capital felonies—the aggravated kidnapings of his wife and Freeman—and that the murder was outra-

geously or wantonly vile, horrible, or inhuman.

B

More than seven years after his trial, Tharpe's lawyers interviewed one of his jurors, Barney Gattie. The resulting affidavit stated that Gattie knew Freeman, and that her family was "what [he] would call a nice [b]lack family." *Tharpe* v. *Warden*, No. 5:10–cv–433 (MD Ga., Sept. 5, 2017), App. B to Pet. for Cert. 15. The affidavit continued that, in Gattie's view, "there are two types of black people: 1. Black folks and 2. Niggers." *Ibid.* Tharpe "wasn't in the 'good' black folks category," according to the affidavit, and if Freeman had been "the type Tharpe is, then picking between life and death for Tharpe wouldn't have mattered so much." *Id.*, at 16. But because Freeman and her family were "good black folks," the affidavit continued, Gattie thought Tharpe "should get the electric chair for what he did." *Ibid.* Gattie's affidavit went on to explain that "[a]fter studying the Bible," he had "wondered if black people even have souls." *Ibid.* The affidavit also noted that some of the other jurors "wanted blacks to know they weren't going to get away with killing each other." *Ibid.*

A couple of days later, the State obtained another affidavit from Gattie. In that second affidavit, Gattie stated that he "did not vote to impose the death penalty because [Tharpe] was a black man," but instead because the evidence presented at trial justified it and because Tharpe showed no remorse. Record in No. 5:10–cv–433 (MD Ga., June 21, 2017) (Record), Doc. 77–3, p. 2. The affidavit explained that Gattie had consumed "seven or more beers" on the afternoon he signed the first affidavit. *Ibid.* Although he had signed it, he "never swore to [it] nor was [he] ever asked if [the] statement was true and accurate." *Id.,* at 3. He also attested that many of the statements in the first affidavit "were taken out of context and simply not accurate." *Ibid.* And he felt that the lawyers who took it

"were deceiving and misrepresented what they stood for." *Id.,* at 5.

A state postconviction court presided over Gattie's deposition. Gattie again testified that, although he signed the affidavit, he did not swear to its contents. Gattie also testified that when he signed the affidavit he had consumed "[m]aybe a 12 pack, [and] a few drinks of whiskey, over the period of the day." *Id.*, Doc. 15–8, p. 80. Tharpe's lawyers did not question Gattie about the contents of his first affidavit at the deposition. They instead spent much of the deposition asking Gattie unrelated questions about race, which the state court ruled irrelevant—like whether he was familiar with Uncle Tom's Cabin or whether his granddaughter would play with a black doll. The lawyers' failure to address the contents of Gattie's first affidavit troubled the state court. Just before it permitted Gattie to leave, the court advised Tharpe's lawyers that it might "totally discoun[t]" Gattie's first affidavit, and it again invited them to ask Gattie questions about its contents. *Id.*, at 105. Tharpe's lawyers declined the opportunity.

The state court also heard deposition testimony from ten of Tharpe's other jurors and received an affidavit from the eleventh. None of the jurors, two of whom were black, corroborated the statements in Gattie's first affidavit about how some of the jurors had considered race. The ten jurors who testified all said that race played no role in the jury's deliberations. The eleventh juror did not mention any consideration of race either.

C

Tharpe sought state postconviction relief. One of his claims was that "improper racial animus . . . infected the deliberations of the jury." *Tharpe* v. *Warden*, 2017 WL 4250413, *1 (CA11, Sept. 21, 2017).

The state court rejected this claim for two reasons. First, Tharpe could not prove juror misconduct because

Georgia law did not allow parties to impeach a jury verdict with post-trial testimony from jurors. *Tharpe* v. *Warden*, No. 93–cv–144 (Super. Ct. Butts Cty., Ga., Dec. 1, 2008), App. F to Pet. for Cert. 99–101. Second, Tharpe had procedurally defaulted his claim because he had failed to raise it on direct appeal, and he could not establish cause and prejudice to overcome that default. *Id.*, at 102. Tharpe's allegation of ineffective assistance of counsel was insufficient to establish cause because he had "failed to establish the requisite deficiency or prejudice." *Ibid.* And Tharpe failed to establish prejudice because the state court credited Gattie's testimony that he had not relied on race when voting to sentence Tharpe. *Id.,* at 102–103.

D

Tharpe then raised his juror-bias claim in a federal petition for a writ of habeas corpus. The United States District Court for the Middle District of Georgia denied his claim as procedurally defaulted. The District Court acknowledged that ineffective assistance of counsel can provide cause to overcome a procedural default, but it explained that Tharpe "fail[ed] to provide any details regarding this allegation." 2017 WL 4250413, *2. The District Court concluded that Tharpe "ha[d] not established that his counsels' ineffectiveness constituted cause to overcome the procedural defaul[t]" and that he "failed to show actual prejudice." *Ibid.*

Tharpe did not seek a COA on his juror-bias claim. The United States Court of Appeals for the Eleventh Circuit affirmed the District Court's decision, *Tharpe*, 834 F. 3d 1323, and this Court denied certiorari, *Tharpe* v. *Sellers*, 582 U. S. ___ (2017).

In June 2017, Tharpe moved to reopen his federal habeas proceedings under Federal Rule of Civil Procedure 60(b). He pointed to this Court's recent decisions in *Buck* v. *Davis*, 580 U. S. ___ (2017), and *Pena-Rodriguez* v.

Colorado, 580 U. S. ___ (2017), as extraordinary circumstances that entitled him to relief. According to Tharpe, *Buck* established that extraordinary circumstances are present when a defendant was sentenced due to his race and new law provides an opportunity to consider the merits of his previously defaulted, race-based sentencing claim. *Pena-Rodriguez* supplied that new law, Tharpe argued, because it held that a state no-impeachment rule must yield when there is a "clear statement that indicates [a juror] relied on racial stereotypes or animus to convict a criminal defendant." 580 U. S., at ___ (slip op., at 17).

The District Court denied Tharpe's motion. It first explained that *Pena-Rodriguez* announced a new procedural rule that does not apply retroactively on federal collateral review. App. B to Pet. for Cert. 6–14. It alternatively deferred to the state court's finding that Tharpe could not prove cause or prejudice to overcome his procedural default. *Id.*, at 18–21. After the depositions of Gattie and ten other jurors, the state court credited Gattie's testimony that he did not vote for death based on race. *Id.*, at 21. The District Court deferred to that credibility determination, and nothing in *Pena-Rodriguez* undermined that determination. App. B to Pet. for Cert. 19–21.

The Eleventh Circuit denied a COA. It explained that the District Court had concluded in its first decision that Tharpe failed to prove cause and prejudice. 2017 WL 4250413, *2. The District Court had later rejected Tharpe's Rule 60(b) motion both because *Pena-Rodriguez* was not retroactively applicable on federal collateral review and because it "presumed the correctness" of the state court's finding that Tharpe failed to "'establish cause and prejudice.'" 2017 WL 4250413, *2. The Eleventh Circuit then offered two reasons why Tharpe was not entitled to a COA. First, Tharpe had not "'made a substantial showing of the denial of a constitutional right.'"

Id., at *3 (quoting 28 U. S. C. §2253(c)(2)). "As the [state court] and the District Court found, Tharpe failed to demonstrate that Barney Gattie's behavior 'had substantial and injurious effect or influence in determining the jury's verdict.'" 2017 WL 4250413, *3 (quoting *Brecht* v. *Abrahamson*, 507 U. S. 619, 637 (1993)). "Nor," the Eleventh Circuit continued, "has Tharpe shown that 'jurists of reason would find it debatable whether the district court was correct in its procedural ruling.'" 2017 WL 4250413, *3 (quoting *Slack* v. *McDaniel*, 529 U. S. 473, 484 (2000)).[1]

Shortly before his execution, Tharpe filed a petition for a writ of certiorari and a stay application with this Court. We issued a stay.

II

To obtain a COA, Tharpe must show "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right" and "that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Id.*, at 484. The Court is not willing to say that Tharpe can satisfy this standard. See *ante*, at 3 ("It may be that, at the end of the day, Tharpe should not receive a COA"). Instead, its opinion makes two moves. First, it "read[s]" the decision below as resting "solely" on Tharpe's "fail[ure] to show prejudice" to overcome his procedural default. *Ante*, at 1. It does not read the decision as reaching cause, and it declines to consider that or any other alternative reason to affirm the Eleventh Circuit. See *ante*, at 1–2. Second, the Court holds, contrary to the Eleventh Circuit, that jurists of reason could debate whether Tharpe has proven prejudice. See *ante*, at 2. Neither of the Court's moves is justified.

---

[1] The Eleventh Circuit also held that Tharpe had not exhausted his *Pena-Rodriguez* claim in state court. 2017 WL 4250413, *4.

A

1

The majority misreads the decision below as resting "solely" on prejudice. See *ante,* at 1. The Eleventh Circuit addressed cause as well.

The Eleventh Circuit first held that Tharpe had failed to make a "'substantial showing of the denial of a constitutional right,'" explaining that he had "failed to demonstrate that . . . Gattie's behavior 'had substantial and injurious effect or influence in determining the jury's verdict.'" 2017 WL 4250413, *3 (quoting *Brecht*, *supra*, at 637). Then the Eleventh Circuit alternatively held that Tharpe had not "shown that 'jurists of reason would find it debatable whether the district court was correct in its procedural ruling.'" 2017 WL 4250413, *3 (quoting *Slack*, *supra*, at 484). The "procedural ruling" of the District Court rested on both cause and prejudice—as the Eleventh Circuit explained earlier in its opinion, quoting the District Court at length. See 2017 WL 4250413, *2. Indeed, neither party suggests that the Eleventh Circuit's decision did not reach cause, and both parties briefed the issue to this Court. See Brief in Opposition 16–17; Reply Brief 7–8. The Court's reading of the decision below is untenable.

Even if its reading were tenable, the Court does not explain why the strong medicine of a summary disposition is warranted here. Summary decisions are "rare" and "usually reserved by this Court for situations in which . . . the decision below is clearly in error." *Schweiker* v. *Hansen*, 450 U. S. 785, 791 (1981) (Marshall, J., dissenting). The majority's reading of the decision below is not the better one, much less the clearly correct one. By adopting the least charitable reading of the Eleventh Circuit's decision, the majority "disrespects the judges of the courts of appeals, who are appointed and confirmed as we are." *Wellons* v. *Hall*, 558 U. S. 220, 228 (2010) (Scalia, J., dissenting). This Court should not "vacate and send back

their authorized judgments for inconsequential imperfection of opinion—as though we were schoolmasters grading their homework." *Ibid.* In fact, "[a]n appropriately self-respecting response to today's summary vacatur would be summary reissuance of the same opinion," *ibid.,* with a sentence clarifying that the Eleventh Circuit agrees with the District Court's decision on cause.

2

Putting aside its misreading of the decision below, the Court inexplicably declines to consider alternative grounds for affirmance. The Court acknowledges that our review "is certainly not limited to grounds expressly addressed by the court whose decision is under review." *Ante,* at 3. But the Court does not explain why it nonetheless limits itself to the question of prejudice. The Court's self-imposed limitation is inexcusable given that Tharpe's collateral challenges to his sentence have lasted 24 years, the Court's failure to consider alternative grounds has halted an imminent execution, the alternative grounds were reached below, several of them were briefed here, and many of them are obviously correct. In fact, the District Court identified two grounds for denying Tharpe relief that no reasonable jurist could debate.

First, no reasonable jurist could argue that *Pena-Rodriguez* applies retroactively on collateral review. *Pena-Rodriguez* established a new rule: The opinion states that it is answering a question "left open" by this Court's earlier precedents. 580 U. S., at ___ (slip op., at 13). A new rule does not apply retroactively unless it is substantive or a "watershed rul[e] of criminal procedure." *Teague* v. *Lane*, 489 U. S. 288, 311 (1989) (plurality opinion). Since *Pena-Rodriguez* permits a trial court "to consider [certain] evidence," 580 U. S., at ___ (slip op., at 17), and does not "alte[r] the range of conduct or the class of persons that the law punishes," *Schriro* v. *Summerlin*, 542 U. S. 348,

353 (2004), it cannot be a substantive rule.[2] And Tharpe does not even attempt to argue that *Pena-Rodriguez* established a watershed rule of criminal procedure—a class of rules that is so "narrow" that it is "'unlikely that any has yet to emerge.'" *Schriro*, *supra,* at 352 (quoting *Tyler* v. *Cain*, 533 U. S. 656, 667, n. 7 (2001); alterations omitted). Nor could he. Not even the right to have a jury decide a defendant's eligibility for death counts as a watershed rule of criminal procedure. *Schriro*, *supra*, at 355–358.[3]

Second, no reasonable jurist could argue that Tharpe demonstrated cause for his procedural default. The only cause that Tharpe raised in state court was ineffective assistance of counsel. The state court rejected this claim because Tharpe presented only a conclusory allegation to support it. No reasonable jurist could debate that decision. Nor could a reasonable jurist debate the cause argument that Tharpe raises here. In his reply brief in support of certiorari in this Court, Tharpe argues that he

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[2] Moreover, because the state court considered Tharpe's evidence of racial bias anyway, despite Georgia's no-impeachment rule, no reasonable jurist could argue that *Pena-Rodriguez* presents an extraordinary circumstance that entitles Tharpe to reopen his judgment under Rule 60(b). He has already received the benefit of the rule announced in *Pena-Rodriguez*.

[3] Even if Tharpe could show that *Pena-Rodriguez* is retroactive under *Teague* and could overcome his procedural default, no reasonable jurist could argue that he has stated a valid juror-bias claim on the merits. The state court concluded that his claim failed in the absence of any admissible evidence to support it. See *Tharpe* v. *Warden*, No. 93–cv–144 (Super. Ct. Butts Cty., Ga., Dec. 1, 2008), App. F to Pet. for Cert. 102. To obtain federal habeas relief, Tharpe must show that this merits decision "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U. S. C. §2254(d)(1). Since the state court issued its decision nearly a decade before *Pena-Rodriguez*, no reasonable jurist could argue that the state court's decision was contrary to clearly established law at "the time the state court render[ed] its decision." *Cullen* v. *Pinholster*, 563 U. S. 170, 182 (2011) (internal quotation marks omitted).

did not have to raise his claim of juror bias on direct appeal. Reply Brief 7–8. But Tharpe never raised this argument in state court, so the state court did not err in failing to accept it. Nor did the District Court abuse its discretion in failing to address it, since Tharpe merely mentioned it in a footnote in his reply brief where he was explaining the state court's decision. And even if Tharpe's description of Georgia law is correct and relevant in a federal habeas proceeding, he offers no explanation for why he waited seven years after his trial to obtain Gattie's affidavit. See *Fults* v. *GDCP Warden*, 764 F. 3d 1311, 1317 (CA11 2014). In short, Tharpe has not offered a viable argument on cause in any court.

B

On the one issue it does address—prejudice—the Court falters again. Its conclusion that reasonable jurists could debate prejudice plows through three levels of deference. First, it ignores the deference that appellate courts must give to trial courts' findings on questions of juror bias. See *Skilling* v. *United States*, 561 U. S. 358, 396 (2010) ("In reviewing claims [of juror bias], the deference due to district courts is at its pinnacle: 'A trial court's findings of juror impartiality may be overturned only for manifest error'" (quoting *Mu'Min* v. *Virginia*, 500 U. S. 415, 428 (1991))). Then, it ignores the deference that federal habeas courts must give to state courts' factual findings. See 28 U. S. C. §2254(e)(1). Finally, it ignores the deference that federal appellate courts must give to federal district courts' discretionary decisions under Rule 60(b). See *Browder* v. *Director, Dept. of Corrections of Ill.*, 434 U. S. 257, 263, n. 7 (1978).

With all this deference, no reasonable jurist could debate the question of prejudice. The state court's finding that Tharpe "failed to show that any alleged racial bias of Mr. Gattie's was the basis for sentencing" him, App. F to

Pet. for Cert. 102, was supported by ample evidence. Gattie testified in his second affidavit that he did not impose a death sentence because of Tharpe's race. He also denied having sworn to the first affidavit and explained that he had consumed a substantial amount of alcohol on the day he signed it. Gattie's testimony was consistent with the testimony of the other ten jurors deposed in front of the trial court, each of whom testified that they did not consider race and that race was not discussed during their deliberations. To be sure, there was some evidence cutting the other way—most notably, Gattie's first affidavit. But the state court heard all of the evidence, saw the witnesses' demeanor, and decided to credit Gattie's testimony that he did not vote for the death penalty because of Tharpe's race. Even if we were reviewing the state court directly, its finding would be entitled to substantial deference. See *Skilling*, *supra*, at 396.

But we are not reviewing the state court directly. Instead, the relevant question is whether a reasonable jurist could argue that the District Court abused its discretion by concluding that the state court's decision to credit Gattie's testimony has not been rebutted by clear and convincing evidence. Even if "[r]easonable minds reviewing the record might disagree about" the evidence, "on habeas review that does not suffice to supersede the [state] court's credibility determination." *Rice* v. *Collins*, 546 U. S. 333, 341–342 (2006). And even if we might have made a different call, abuse-of-discretion review means we cannot "substitute [our] judgment for that of the district court." *Horne* v. *Flores*, 557 U. S. 433, 493 (2009) (BREYER, J., dissenting). Under these standards, no reasonable jurist could argue that Tharpe rebutted the state court's decision by clear and convincing evidence, much less that the District Court's deference to the state court's credibility determination was an abuse of discretion.

III

The Court is cognizant of the weakness of Tharpe's claims. It openly anticipates that he will not be able to obtain a COA, which makes sense given the insurmountable barriers he faces on remand. Moreover, the Court's preliminary decision that reasonable jurists could debate prejudice says little about how a court of appeals could ever rule in Tharpe's favor on the merits of that question, given the multiple levels of deference that apply. At most, then, the Court's decision merely delays Tharpe's inevitable execution.

The Court tries to justify its decision "on the unusual facts of this case." *Ante,* at 3. But there is nothing unusual about deferring to a district court's decision to defer to a state court's credibility findings. This case involves a mine-run denial of a COA by a lower court on the eve of an execution, one that this Court routinely denies certiorari to address.

Today's decision can be explained only by the "unusual fac[t]" of Gattie's first affidavit. *Ibid.* The Court must be disturbed by the racist rhetoric in that affidavit, and must want to do something about it. But the Court's decision is no profile in moral courage. By remanding this case to the Court of Appeals for a useless do-over, the Court is not doing Tharpe any favors. And its unusual disposition of his case callously delays justice for Jaquelin Freeman, the black woman who was brutally murdered by Tharpe 27 years ago. Because this Court should not be in the business of ceremonial handwringing, I respectfully dissent.

Attachment E

IN THE SUPREME COURT OF GEORGIA

KEITH THARPE, Applicant, v. ERIC SELLERS, Warden, Georgia Diagnostic Prison, Respondent.	))))))))	 Habeas Corpus Case No. S18W0242 **CAPITAL CASE**

REQUEST FOR LEAVE TO FILE A SECOND MOTION FOR RECONSIDERATION

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KEITH THARPE, Applicant, v. ERIC SELLERS, Warden, Georgia Diagnostic Prison Respondent.	))))))))	 Habeas Corpus Case No. S18W0242 **CAPITAL CASE**

REQUEST FOR LEAVE TO FILE A SECOND MOTION FOR RECONSIDERATION

COMES NOW Applicant, KEITH THARPE, who through undersigned counsel and pursuant to Supreme Court Rule 27, submits this request for leave to file a Second Motion for Reconsideration of this Court's decision denying a Certificate of Probable Cause. On January 8, 2018, the United States Supreme Court issued an opinion granting, vacating, and remanding Mr. Tharpe's federal action for further proceedings in the Eleventh Circuit Court of Appeals regarding Mr. Tharpe's claim that a juror's racial animus unconstitutionally tainted his decision to sentence Mr. Tharpe to death. *See Tharpe v. Sellers*, No. 17-6075, 2018 U.S. LEXIS 616 at *1 (U.S. January 8, 2018). As set forth in Mr. Tharpe's proposed Second Motion for Reconsideration, filed herewith, the Supreme Court's ruling bears directly on this action and therefore Mr. Tharpe respectfully asks this Court to permit him to move a second time for reconsideration of its prior ruling.

Although there is no time requirement for requesting leave to submit a second motion for reconsideration, Mr. Tharpe has filed his request in a timely manner, within less than a week of the Supreme Court's decision.

This 12th day of January, 2018.

Respectfully submitted,

____

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IN THE SUPREME COURT OF GEORGIA

KEITH THARPE, Applicant,	)	Habeas Corpus Case No. S18W0242
v.	)	
ERIC SELLERS, Warden, Georgia Diagnostic Prison, Respondent.	)	**CAPITAL CASE**

SECOND MOTION FOR RECONSIDERATION

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IN THE SUPREME COURT OF GEORGIA

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Case No. S18W0242

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SECOND MOTION FOR RECONSIDERATION

COMES NOW Petitioner, KEITH THARPE, who through undersigned counsel and pursuant to Supreme Court Rule 27, submits this Motion for Reconsideration requesting that this Court reconsider its decision denying Mr. Tharpe's application for a certificate of probable cause in light of the Supreme Court's decision to grant, vacate, and remand Mr. Tharpe's case for further proceedings in the Eleventh Circuit Court of Appeals. *Tharpe v. Sellers*, No. 17-6075, 2018 U.S. LEXIS 616 at *1 (U.S. Jan. 8, 2018) (Attachment A). In light of the Supreme Court's ruling suggesting error in the fact findings of the state habeas court, Mr. Tharpe respectfully requests that this court grant a Certificate of Probable Cause and remand the case to the state habeas court for further review.

I. Recent Proceedings

On Tuesday, September 26, 2017, undersigned counsel filed an Application for a Certificate of Probable Cause ("CPC") to appeal the state habeas court's denial of his action in the Superior Court of Butts County raising claims of juror racial bias and intellectual disability. After the State responded and Mr. Tharpe filed a reply, this Court denied Mr. Tharpe's application the same day, stating that it was "lacking arguable merit" because the claims were procedurally barred. *See Tharpe v. Sellers,* No. S18W0242 (Order of September 26, 2017). Three justices dissented without comment. *See id.* The state habeas proceedings overlapped with a separate federal action, commenced in June 2017, addressing the juror racial bias claim.

Following this Court's denial of the CPC application, undersigned counsel filed a Petition for Writ of Certiorari in the United States Supreme Court seeking review of that decision, as well as a motion to stay the execution. *Tharpe v. Sellers*, Case No. 17-6130. Also pending before the United States Supreme Court at the same time was a petition for certiorari to review the Eleventh Circuit Court of Appeals denial of a certificate of appealability in the companion federal action, and an accompanying motion to stay the execution.

At approximately 10:30 pm that evening, the United States Supreme Court granted Mr. Tharpe's Application for a Stay of Execution in the federal action by a vote of six to three. *Tharpe v. Sellers*, 138 S. Ct. 53 (2017).

Because of the expedited nature of this Court's review of Mr. Tharpe's CPC application during an active execution warrant and the likelihood that the result of proceedings in the United States Supreme Court might bear on the state proceedings, counsel requested on September 29, 2017, that the certiorari petition in Case No. 17-6130 be withdrawn so that Mr. Tharpe could request reconsideration in this Court. The United States Supreme Court dismissed the petition on October 2, 2017. On October 6, 2017, Mr. Tharpe filed a Motion for Reconsideration, which this Court denied over three dissents. *Tharpe v. Sellers*, No. S18W0242 (Order of November 1, 2017).

On January 8, 2018, the United States Supreme Court granted the petition for writ of certiorari in the federal action, vacated the Eleventh Circuit's judgment and remanded the case to that court for further proceedings. *Tharpe v. Sellers*, No. 17-6076, 2018 U.S. LEXIS 616 (U.S. Jan. 8, 2018).

II. This Court Should Reconsider Mr. Tharpe's Claim That Racial Bias Infected His Capital Trial Based On The Supreme Court's Grant Of Certiorari And Remand To The Eleventh Circuit.

In its decision granting certiorari, vacating the Eleventh Circuit's judgment, and remanding Mr. Tharpe's case, the Supreme Court questioned the validity of the state habeas court's finding that no prejudice resulted from the virulent racial bias clearly displayed by juror Barney Gattie in his initial affidavit:

> The Eleventh Circuit's decision, as we read it, was based solely on its conclusion, rooted in the state court's factfinding, that Tharpe had failed to show prejudice in connection with his procedurally defaulted claim....
>
> Our review of the record compels a different conclusion. The state court's prejudice determination rested on its finding that Gattie's vote to impose the death penalty was not based on Tharpe's race. *See Tharpe v. Warden*, No. 93–cv–144 (Super. Ct. Butts Cty., Ga., Dec. 1, 2008), App. F to Pet. for Cert. 102.... Here, however, Tharpe produced a sworn affidavit, signed by Gattie, indicating Gattie's view that "there are two types of black people: 1. Black folks and 2. Niggers"; that Tharpe, "who wasn't in the 'good' black folks category in my book, should get the electric chair for what he did"; that "[s]ome of the jurors voted for death because they felt Tharpe should be an example to other blacks who kill blacks, but that wasn't my reason"; and that, "[a]fter studying the Bible, I have wondered if black people even have souls." App. B to Pet. for Cert. 15–16 (internal quotation marks omitted). Gattie's remarkable affidavit—which he never retracted— presents a strong factual basis for the argument that Tharpe's race affected Gattie's vote for a death verdict.

Tharpe, 2018 U.S. LEXIS 616 at *2-3.

Although the Eleventh Circuit Court of Appeal will now consider whether Mr. Tharpe has otherwise satisfied the standard for obtaining an appeal to review the district court's denial of his motion under F.R.C.P. 60(b)(6), the Supreme Court's ruling also raises questions regarding the propriety of the state habeas court's prejudice finding in Mr. Tharpe's first habeas proceeding and its conclusion that his second habeas petition was procedurally barred as *res judicata* despite the Supreme Court's intervening decision in *Pena-Rodriguez v. Colorado*, 137 S. Ct. 855 (2017), which overruled *Spencer v. State*, 260 Ga. 640 (1990), a critical foundation of the state habeas court's original denial of relief. Because the Supreme Court's findings would likely alter the analysis of this claim, this Court should allow Mr. Tharpe to proceed on his successive petition. Moreover, the Supreme Court's remand of this claim strongly suggests that *Pena-Rodriguez* is retroactive, contrary to the state habeas court's decision dismissing Mr. Tharpe's successive petition.[1]

Because of the Supreme Court's strong suggestion of error in the adjudication of this claim by the state habeas court, Mr. Tharpe respectfully

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[1] The fact that the juror bias claim is also being litigated in federal proceedings does not negate the authority and obligation of Georgia courts to address the claim as well. Indeed, the statutes governing state habeas procedure were enacted to strengthen "state courts as instruments for the vindication of constitutional rights," O.C.G.A. § 9-14-40(a)(2), and this Motion is filed in recognition of the important role Georgia's courts play in the enforcement of those rights.

requests that this Court reconsider the denial of CPC, grant the Certificate, and remand the case to the lower court with instructions to consider the merits of this claim, take evidence, and make appropriate fact and credibility findings.

III. This Court Should Also Reconsider Mr. Tharpe's Intellectual Disability Claim.

With regard to Mr. Tharpe's intellectual disability claim, the state habeas court improperly dismissed the claim based on its conclusion that *Moore v. Texas*, 137 S. Ct. 1039 (2017), did not apply retroactively and was insufficient to overcome the bar of *res judicata.* However, this conclusion is undermined by the numerous, and continuing, remands the United States Supreme Court has issued for reconsideration of intellectual disability claims in light of *Moore*, in cases arising both in jurisdictions other than Texas and in habeas corpus proceedings brought under 28 U.S.C. § 2254. These rulings make it increasingly clear both that the Supreme Court considers *Moore* to apply retroactively and that its holding is not limited to condemning Texas's particular approach to intellectual disability. Since the filing of Mr. Tharpe's previous Motion for Reconsideration, the Supreme Court has remanded a Florida case and has remanded yet another Texas case in a federal habeas corpus posture. *See Wright v. Florida*, 138 S. Ct. 360 (October 16, 2017); *Weathers v. Davis*, 138 S. Ct. 315 (October 10, 2017). Since Georgia's

beyond a reasonable doubt standard fails to protect "all" individuals in the intellectually disabled class, it violates *Moore* and this Court should reconsider its ruling and grant a Certificate of Probable Cause on this claim as well.

CONCLUSION

Wherefore, Mr. Tharpe respectfully requests this Court reconsider Mr. Tharpe's claims in light of the Supreme Court's recent decision in *Tharpe v. Sellers* and recent remand actions based on *Moore v. Texas*.

This 12th day of January, 2018.

Respectfully submitted,

____

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No. 17-________

IN THE SUPREME COURT OF THE UNITED STATES

KEITH THARPE,

Petitioner,

-v-

ERIC SELLERS, Warden,
Georgia Diagnostic and Classification Prison,

Respondent.

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing document this day by hand delivery and/or electronic mail on counsel for Respondent at the following addresses:

Sabrina Graham, Esq.
Senior Assistant Attorney General
sgraham@law.ga.gov

This 18th day of January, 2018.

____
Attorney