No. 18-1495

In the Supreme Court of the United States

BRYAN P. STIRLING, Director, South Carolina Department of Corrections; WILLIE D. DAVIS, Warden of Kirkland Correctional Institution,
Petitioners,

v.

CHARLES CHRISTOPHER WILLIAMS,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

REPLY BRIEF FOR PETITIONERS

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This case presents a question concerning the deference due a state court decision under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"). Williams does not dispute AEDPA restrictions control in this matter. That lack of contest is critical because Petitioners only ask for this Court to consider whether the Fourth Circuit applied the restrictions correctly. Williams urges this Court to deny the petition on a variety of suggestions about the individual case, but none of his arguments are persuasive in light of the narrowly drawn question presented. This Court should grant certiorari and decide the scope of AEDPA deference when a federal court resolves the evidence supporting reversal of a state court decision is double-edged. Here, the Fourth Circuit found the particular evidence that underpins its grant of a new capital sentencing proceeding need not be used in future proceedings as it may be too dangerous to a case for life. (App. 297). Can it be unreasonable for the State to have denied relief? The petition presents a case that allows this Court to instruct the lower federal courts on the mandated deference Congress set out in AEDPA in a clearly defined circumstance. The Brief in Opposition does not show otherwise.

1. Williams' brief does little more than quote from the Fourth Circuit's opinion. This reiteration of the court's reasoning does not illuminate, discuss or apply the particular AEDPA deference question at issue for plain reason – the Fourth Circuit failed to apply it. In

a similar vein, Williams argues the "issue is not squarely presented by this case, as the Court of Appeals neither addressed nor decided this question." (BIO at 2 and 13). Yet, the Court of Appeals would not be asked to decide that issue in the appeal from the district court unless it arose from the district court. The district court did not resolve the evidence was "double-edged," the Fourth Circuit did. Williams' suggestion the case is not a good vehicle for that reason is not persuasive.

2. Williams' argument there is no split among the circuits for the Court to address also misses the point. Williams argues *determining* whether evidence is double-edged in context of a particular case is fact-specific, thus, there is no actual split in the circuits, and the petition requests nothing more than case-specific error correction. (BIO at 14). Yet, as the State has already explained, (Petition at 15), the narrow question here involves AEDPA deference to state judgments *after* a federal court determines evidence is double-edged in context of a specific case. There is no challenge to that particular finding in this case. The State has not challenged the finding. Williams does not even argue the Fourth Circuit was wrong in its finding. This presents an excellent, narrow context for the Court to refine its jurisprudence and instruct the lower federal courts on the contours of AEDPA deference.

3. Williams fails to address the key distinction between the statements in *Trevino v. Davis*, 138 S. Ct. 1793 (2018), and *Peede v. Jones*, 138 S. Ct. 2360 (2018). Petitioner pointed to the statements in these cases and

noted the one critical difference – the restraint imposed on the federal courts by AEDPA. (Petition at 17-18). In his brief, Williams concedes both reflect "similarly critical" comments concerning the evaluation of double-edged evidence, and also concedes the statement respecting the denial of certiorari in *Peede* indicates the agreement the case "did not warrant this Court's review." (BIO at 15). The reason for the differing treatment sharply focuses on AEDPA deference – the Court's "review is constrained by the Antiterrorism and Effective Death Penalty Act of 1996…." 138 S. Ct. at 2361. Williams does not address that critical difference.

4. Williams also argues that the facts of the case warrant relief. (BIO at 16). The State of South Carolina, after a full evidentiary hearing and argument, disagreed. But the underlying facts of counsel's investigation and strategic decisions need not be revisited by this Court to analyze the question presented. The question presented goes to Congressional restraint on federal courts when federal courts are in disagreement with a state court decision. Where a state resolved a question under *Strickland v. Washington*, 466 U.S. 668 (1984), as it did here, great deference must be afforded the state decision: "…'because the *Strickland* standard is a general standard, a state court has even more latitude to reasonably determine that a defendant has not satisfied that standard.'" *Sexton v. Beaudreaux,* 138 S. Ct. 2555, 2560 (2018) (quoting *Knowles v. Mirzayance,* 556 U.S. 111, 123 (2009)). It is this high deference at issue. At bottom, *Strickland* does not control application of AEDPA deference, and AEDPA restrains a federal court's ability to grant relief:

> The pivotal question is whether the state court's application of the *Strickland* standard was unreasonable. This is different from asking whether defense counsel's performance fell below *Strickland*'s standard. Were that the inquiry, the analysis would be no different than if, for example, this Court were adjudicating a *Strickland* claim on direct review of a criminal conviction in a United States district court. Under AEDPA, though, it is a necessary premise that the two questions are different. For purposes of § 2254(d)(1), "an *unreasonable* application of federal law is different from an *incorrect* application of federal law." *Williams, supra,* at 410, 120 S.Ct. 1495. A state court must be granted a deference and latitude that are not in operation when the case involves review under the *Strickland* standard itself.

Harrington v. Richter, 562 U.S. 86, 101 (2011) (quoting *Williams v. Taylor,* 529 U.S. 362, 410 (2000) (emphasis in original)). *See also Schriro v. Landrigan,* 550 U.S. 465, 473 (2007) ("The question under AEDPA is not whether a federal court believes the state court's determination was incorrect but whether that determination was unreasonable—*a substantially higher threshold*.") (emphasis added).

5. At any rate, Williams simply perpetuates the errors in the Fourth Circuit opinion. In particular, the Fourth Circuit incorrectly viewed South Carolina as a weighing state, which it is not, as previously pointed out by Petitioners. (Petition at p. 13 n. 3). South Carolina has found that a jury must not be instructed

to "weigh" the circumstances. *Id.* The Fourth Circuit considered only the *statutory aggravating circumstance* (kidnapping of the victim), as "the solitary aggravating evidence" in the case to consider. (See App. 298). Williams, relying on the incorrect analysis, echoes the Fourth Circuit's assertion "the aggravating evidence was minimal" in this case. (BIO at 11). How very wrong.

a. Williams entered a grocery store during its morning hours of operation with a twelve gauge shotgun. He kidnapped and held Maranda over the course of approximately two hours as law enforcement attempted to diffuse the situation and negotiate her release. When she tried to escape, he shot her. He hunted her down and shot her again and again. He shot her a total of five times. She begged for her life. The jury saw store video and heard detailed descriptions of the events, along with Williams' own statements. In one statement, he admitted not feeling sorry for her as she pleaded for her life. (See Petition at 2-3). The jury also heard evidence on the impact of Maranda's death on family, (Trial Tr. at 2198-99 and 2202-2203), and the trauma experienced by a co-worker who testified she is "always afraid" and at work, still "look[s] around to see if somebody's coming in with a gun." (Trial Tr. at 2190). The jury heard Williams deprived Maranda's small child of a mother. (Trial Tr. at 2195 and 2199). To suggest the "aggravating evidence was minimal" is undeniably wrong, factually and legally. It ignores the jury was tasked with considering all the evidence and to consider "the full moral force of [the State's] evidence…." *Payne v. Tennessee,* 501 U.S. 808, 825 (1991). The jury would

have considered all these facts in arriving at a sentencing decision. A statutory aggravating circumstance proven does not equate with the only evidence in aggravation to consider.

b. In South Carolina, an aggravating circumstance must be proven beyond a reasonable doubt to authorize the jury to return a death sentence. See S.C. Code Ann. § 16-3-20 (C) ("Where a statutory aggravating circumstance is found and a recommendation of death is made, the trial judge shall sentence the defendant to death."). By statute, in the separate sentencing proceeding after conviction, the jury hears "additional evidence in extenuation, mitigation, *or aggravation of the punishment*." S.C. Code Ann. § 16-3-20 (B) (emphasis added). The Fourth Circuit had in the past correctly considered the whole of the evidence. *See, for example, Plath v. Moore,* 130 F.3d 595, 602 (4th Cir. 1997) ("weighing the omitted evidence against that actually used to convict and sentence Plath, the mitigating evidence seems insufficient to shift the balance in Plath's favor"). It did not do so here. However, Williams is not entitled to rely on the Fourth Circuit's error to urge this Court to deny review. Simply because the Fourth Circuit's error went to his benefit does not make it right.

c. Lastly, though Williams seizes on the state court's survey of other cases where the type of evidence omitted in Williams trial did not result in a life sentence as reasoning error, (BIO 17), he fails to consider the very core of the federal court inquiry is the state court decision, not merely selected parts. The primary reason for the denial of relief was the first set

out in the state court opinion – that counsel was not deficient in mental health and background investigation and the additional mental health evidence would have simply resulted in a "fancier case" in mitigation. (App. at 62). The state court opinion reflects the "survey of jury verdicts" was "also note[d]" by the court. (App. at 62). This Court has explained that "[o]pinion-writing practices in state courts are influenced by considerations other than avoiding scrutiny by collateral attack in federal court." *Harrington v. Richter,* 562 U.S. at 99. Grading the construction of the order is not part of a federal court's review. Moreover, Williams invited the survey response by his collateral counsel's argument to the state court that the "jury gave this fellow the death penalty after … hearing of a mental defect" so "to prevail" in the collateral proceedings, he needed to show evidence that was different and dispositive. (App. at 620-21). But again, the Court need not delve into the fact-specific arguments because the critical question is the finding made by the Fourth Circuit that, in this case, the evidence omitted was so double-edged that it need not be presented in the new state proceeding granted by its opinion. Granting relief in light of such finding offends the restraints dictated by AEDPA.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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