No. 18-9438

In the Supreme Court of the United States

NATHANIEL WOODS,
Petitioner,
v.
CYNTHIA STEWART, WARDEN,
HOLMAN CORRECTIONAL FACILITY, ET AL.,
Respondents.

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

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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CAPITAL CASE

QUESTION PRESENTED

(Restated)

Did the Eleventh Circuit Court of Appeals err in denying a certificate of appealability where the district court correctly dismissed a habeas claim unsupported by facts in the record?

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INTRODUCTION

This petition concerns a fact-bound claim with no apparent basis in fact.

Nathaniel Woods contended on habeas review that his state postconviction counsel were ineffective for failing to raise a claim of ineffective assistance of trial counsel because trial counsel did not inform him of the risks of rejecting the State's plea offer. This claim suffers from two fatal defects, however: (1) there is absolutely no proof in the record, nor in any of Woods's filings, that such a plea offer was ever made, and (2) Woods failed to plead facts showing that effective postconviction counsel would have been able to divine the existence of this supposed plea offer from the silent record and then raise an ineffective-assistance claim.

The district court and the Eleventh Circuit denied a certificate of appealability (COA) as to this issue on different grounds. The district court faulted Woods for failing to plead facts sufficient to invoke the *Martinez v. Ryan*[1] exception to procedural default—i.e., to provide evidence of the plea offer's existence. The Eleventh Circuit held that the district court's resolution of the matter was not debatable because Woods failed to plead facts establishing that postconviction counsel were ineffective, much less that they even knew or should have known about the plea offer. Both courts offered

1. 566 U.S. 1 (2012).

legitimate reasons to deny a COA, and Woods has alleged nothing warranting a grant of certiorari.

STATEMENT OF THE CASE

A. Woods's capital conviction

On June 17, 2004, drug dealers Nathaniel Woods and Kerry Spencer shot four Birmingham police officers in the line of duty, murdering Officers Carlos Owen, Harley A. Chisolm III, and Charles R. Bennett, and wounding Officer Michael Collins.[2] Woods was found guilty of four counts of capital murder and one count of attempted murder, and the jury recommended 10–2 that he be sentenced to death on the capital counts.[3] The trial court accepted that recommendation on December 9, 2005.[4]

B. Direct appeal

The Alabama Court of Criminal Appeals affirmed his convictions on August 31, 2007, and affirmed his sentence on December 21 after the trial court

2. The Alabama Court of Criminal Appeals provided a detailed summary of the facts on direct appeal. *Woods v. State*, 13 So. 3d 1, 5–18 (Ala. Crim. App. 2007).
3. *Id.* at 4–5.
4. *Id.* at 5; *see* Vol. 1 at C. 87–105 (sentencing order). Volume numbers refer to the habeas record filed in Woods v. Stewart, 2:16-cv-01758-LSC (N.D. Ala.).

amended the sentencing order.[5] The certificate of judgment issued in January 2008, and Woods's counsel moved to withdraw.

On April 29, represented by new counsel, Woods moved for an out-of-time appeal in the Alabama Supreme Court, alleging that his prior appellate counsel never discussed further proceedings with him and that he had been prejudiced because he was too late to file a motion for reconsideration in the Court of Criminal Appeals or a petition for certiorari.[6] The Alabama Supreme Court put the matter on hold until the Court of Criminal Appeals could consider the issue,[7] and on May 9, Woods filed a motion to withdraw the certificate of judgment to permit filing of an application for rehearing in the lower court.[8] The Court of Criminal Appeals denied the motion on October 14.[9] Once again, Woods pursued an out-of-time appeal in the Supreme Court,[10] but the court denied his motion on August 24, 2009, noting that Woods's Rule 32 postconviction petition was then pending in the circuit court.[11] This Court denied certiorari on February 22, 2010.[12]

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5. *Woods*, 13 So. 3d at 40, 43.
6. Vol. 24, Tab #R-48.
7. Vol. 24, Tab #R-49.
8. Vol. 24, Tab #R-40.
9. Vol. 24, Tab #R-44.
10. Vol. 24, Tab #R-50.
11. Vol. 24, Tab #R-53.
12. *Woods v. Alabama*, 559 U.S. 942 (2010) (mem.).

C. State postconviction proceedings

With the assistance of counsel, Woods filed a Rule 32 petition in December 2008,[13] which was stayed while his direct appeal concluded. The circuit court summarily dismissed the petition almost two years later.[14] The Court of Criminal Appeals affirmed after oral argument in April 2016,[15] and the Alabama Supreme Court denied certiorari that September.[16]

D. Federal habeas proceedings

Turning then to the federal courts, Woods timely filed a 28 U.S.C. § 2254 petition in the Northern District of Alabama in October 2016, then made two amendments. In his second amended petition in 2017, Woods alleged that he was offered a plea deal for a non-capital charge after his codefendant was convicted and sentenced to death, but that he "did not accept this plea deal because he thought—with counsel's encouragement—that he would be acquitted of these charges because the evidence would prove that he was not the shooter that day."[17] Alleging ineffective assistance of trial counsel, he

13. Vols. 27–28, Tab #R-58.
14. Vol. 30, Tab #R-62.
15. *Woods v. State*, CR-10-0695, 2016 WL 1728750 (Ala. Crim. App. Apr. 29, 2016).
16. Vol. 32, Tab #R-70.
17. Doc. 23 ¶ 196. Document numbers refer to filings in Woods v. Stewart, 2:16-cv-01758-LSC (N.D. Ala.).

raised this claim pursuant to *Martinez v. Ryan*[18] and *Trevino v. Thaler*[19] because his Rule 32 counsel failed to address the matter.

The district court denied the petition and a COA on July 18, 2018.[20] Concerning the claim at issue, the court agreed with the State that Woods failed to plead facts supporting the existence of any such plea offer:

> The burden of proof is on the habeas petitioner "to establish his right to habeas relief and he must prove all facts necessary to show a constitutional violation." *Blankenship v. Hall*, 542 F.3d 1253, 1270 (11th Cir. 2008). With nothing but bare allegations, Woods cannot establish that the underlying ineffective-assistance-of-trial-counsel claim is a "substantial" one, as is required before a habeas petitioner may be able to have the procedural default of such a claim excused pursuant to *Martinez*. *See* 566 U.S. at 14, 132 S. Ct. at 1318.[21]

Woods then petitioned the Eleventh Circuit for a COA on four grounds. On February 22, 2019, the Honorable William H. Pryor, Jr., denied Woods's motion in a twenty-page order.[22] Addressing the plea offer claim, the court found it was "arguable" that Woods's claim concerning the existence of the offer was sufficiently pleaded.[23] However, the court held that the district court was

18. 566 U.S. 1 (2012).
19. 569 U.S. 413 (2013).
20. App'x B.
21. App'x B at 144 (citations omitted).
22. App'x A.
23. App'x A at 17.

due to be affirmed for a different reason:[24] Woods failed to plead facts showing that his postconviction counsel were ineffective.

> To excuse the default of a claim of ineffective assistance by postconviction counsel under *Martinez*, a petitioner must allege facts sufficient to establish that "appointed counsel in the initial-review collateral proceeding, where the claim should have been raised, was ineffective under the standards" of *Strickland v. Washington*, 466 U.S. 668 (1984). Under *Strickland*, a claimant must establish inter alia that his "counsel's performance was deficient," meaning that "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.* at 687.
>
> As the State argued below, "Woods failed to plead facts showing that postconviction counsel's failure to raise this claim was indeed ineffective." His petition merely asserts that "[p]ost-conviction counsel should have attacked trial counsel's failure to fully advise Mr. Woods about the dangers of rejecting the State's plea offer—a plea he would have accepted had he been fully informed about what was likely to happen at trial." Woods does not allege that his postconviction counsel even knew about the alleged plea offer. And although "minimally competent counsel" has a "duty to make reasonable investigations or to make a reasonable decision that makes said investigations unnecessary," *Blankenship v. Hall*, 542 F.3d 1253, 1273 (11th Cir. 2008), no reasonable jurist could argue that Woods's postconviction counsel breached this duty in the absence of an allegation that his attorneys had at least some reason to believe that such an offer was made. It follows that no reasonable jurist could dispute the district court's conclusion that Woods failed to plead facts sufficient to excuse the failure of his postconviction counsel to raise

24. As the court explained, "[T]he standard for granting a certificate of appealability asks whether the district court's "resolution" of the issue 'was debatable among jurists of reason,' *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003), not whether the district court's reasoning was flawless. *See Szuchon v. Lehman*, 273 F.3d 299, 318 n.8 (3d Cir. 2001) ('[W]e can deny a certificate of appealability on any ground with support in the record')." *Id.*

his claim about the plea offer, and Woods is not entitled to a certificate of appealability for this claim.[25]

The present petition for writ of certiorari followed.

REASONS THE PETITION SHOULD BE DENIED

Woods presents this Court with a purely fact-bound claim. Here, the district court and the Eleventh Circuit properly concluded that Woods's claim was precluded and that the procedural default was not excusable under *Martinez*. While Respondents posit that both courts' reasons for denying a COA are meritorious, either rationale is sufficient, and there is no need for this Court to grant certiorari.

I. Woods's petition is due to be denied because the district court and the Eleventh Circuit correctly determined that he was not entitled to a COA.

While the district court and Eleventh Circuit differed in their reasoning regarding the claim at issue, under either interpretation, Woods was correctly denied a COA.

Pursuant to 28 U.S.C. § 2253(c), a habeas petitioner may appeal the denial of his petition only if the district court or the court of appeals issues a certificate of appealability. To obtain a COA, a petitioner must make "a

25. App'x A 17–19.

substantial showing of the denial of a constitutional right."[26] This Court has explained that in deciding whether to issue a COA, the court of appeals "should limit its examination to a threshold inquiry into the underlying merit of [the petitioner's] claims," and that a petitioner will satisfy the § 2253(c) standard "by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further."[27] To that end, a circuit court must "look to the District Court's application of AEDPA to petitioner's constitutional claims and ask whether that resolution was debatable amongst jurists of reason."[28] While "a COA does not require a showing that the appeal will succeed,"[29] "[a] prisoner seeking a COA must prove something more than the absence of frivolity or the existence of mere good faith on his or her part."[30]

Turning then to the mechanics of Woods's claim, under AEDPA, a habeas petitioner convicted in state court must exhaust his claims in state proceedings

26. 28 U.S.C. § 2253(c)(2).
27. *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003) (citing *Slack v. McDaniel*, 529 U.S. 473, 481, 484 (2000)).
28. *Id.* at 336; *see Lott v. Att'y Gen., Fla.*, 594 F.3d 1296, 1301 (11th Cir. 2010).
29. *Miller-El*, 537 U.S. at 337.
30. *Id.* at 338 (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)) (quotation omitted).

before a federal court may address them.[31] *Martinez v. Ryan*, *Trevino v. Thayler*, and *Davila v. Davis*[32] provide the contours of a narrow exception to that general rule. Under *Martinez*, a petitioner's procedural default may be overlooked if state law "requires a prisoner to raise an ineffective-assistance-of-trial-counsel claim in a collateral proceeding."[33] As the Court reasoned:

> Allowing a federal habeas court to hear a claim of ineffective assistance of trial counsel when an attorney's errors (or the absence of an attorney) caused a procedural default in an initial-review collateral proceeding acknowledges, as an equitable matter, that the initial-review collateral proceeding, if undertaken without counsel or with ineffective counsel, may not have been sufficient to ensure that proper consideration was given to a substantial claim.[34]

In *Trevino*, the *Martinez* holding was extended to states in which the "procedural framework, by reason of its design and operation, makes it highly unlikely that in a typical case that a defendant will have a meaningful opportunity to raise a claim of ineffective assistance of trial counsel on direct appeal."[35] But as *Davila* made clear, the *Martinez–Trevino* exception is limited to claims of ineffective assistance of ***trial*** counsel. If a claim of ineffective

31. *Harrington v. Richter*, 562 U.S. 86, 103 (2011).
32. 137 S. Ct. 2058 (2017).
33. 566 U.S. at 14.
34. *Id.*
35. 569 U.S. at 429.

assistance of ***appellate*** counsel is defaulted, the petitioner may not use this exception to bring the claim before the federal courts.[36]

Thus, a petitioner like Woods proceeding under this exception must make two showings of ineffective assistance of counsel: (1) that trial counsel's performance was both deficient and prejudicial under *Strickland v. Washington*,[37] and (2) that postconviction counsel's performance was also both deficient and prejudicial because counsel failed to raise a meritorious claim of ineffective assistance of trial counsel in a postconviction petition. Ultimately, as the Eleventh Circuit has held, for a habeas petitioner to obtain relief, "he must prove all facts necessary to show a constitutional violation."[38]

Here, Woods's claim fails under *Strickland* at both levels. First, the district court was correct to deny a COA because Woods offered not one scintilla of evidence in support of his claim concerning a plea offer. Nothing in the thirty-two-volume habeas record supports the existence of this alleged offer. Woods attached nothing to his habeas petition (or to any habeas filing) suggesting that this offer existed. Even now, he presents this Court with nothing but the unfounded assertion that the State offered him a plea bargain after his codefendant was sentenced to death. Considering that Woods was

36. *See* 137 S. Ct. at 2063.
37. 466 U.S. 668, 687 (1984).
38. *Blankenship v. Hall*, 542 F.3d 1253, 1270 (11th Cir. 2008).

indicted on four counts of capital murder for the deaths of three police officers, the existence of such a plea bargain seems fantastical at best. As this Court has made clear, "[a] prisoner seeking a COA must prove something more than the absence of frivolity or the existence of mere good faith on his or her part."[39] Here, there is not even a showing that Woods's claim was made in good faith. Woods presented a bare allegation and nothing more.[40] Thus, the district court correctly concluded that Woods failed to make "a substantial showing of the denial of a constitutional right"[41] where he failed to offer the slightest proof of the plausibility of his claim.

Second, the Eleventh Circuit correctly denied a COA because Woods failed to plead facts showing that his postconviction counsel were ineffective. At the outset, Woods had the assistance of experienced counsel during his postconviction proceedings. His 124-page Rule 32 petition was filed by the Equal Justice Initiative.[42] When EJI withdrew in 2010, Woods was then

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39. *Miller-El*, 537 U.S. at 338 (quoting *Barefoot*, 463 U.S. at 893 n.4) (quotation omitted).
40. Indeed, had Woods brought this ineffective assistance claim during Rule 32 postconviction proceedings, it would likely have been dismissed under Alabama's strict pleading rules. *See* ALA. R. CRIM. P. 32.6(b) ("Each claim in the petition must contain a clear and specific statement of the grounds upon which relief is sought, including full disclosure of the factual basis of those grounds. A bare allegation that a constitutional right has been violated and mere conclusions of law shall not be sufficient to warrant any further proceedings.").
41. 28 U.S.C. § 2253(c)(2).
42. *See* Vol. 28, Tab #R-58, at C. 458.

represented by LaJuana Davis and John Carroll. Ms. Davis has worked for EJI and the Federal Defenders for the Middle District of Alabama, and now teaches at Cumberland School of Law. Judge Carroll has served as a United States Magistrate Judge, the legal director of the Southern Poverty Law Center, and the dean of Cumberland School of Law. Clearly, Woods's case was not left in the hands of inexperienced attorneys. Had there been an error as glaring as Woods suggests, surely one of Woods's postconviction counsel would have noticed and pursued the claim.

But as the Eleventh Circuit noted, "Woods does not allege that his postconviction counsel even knew about the alleged plea offer."[43] Indeed, how could they have known, as no proof of the supposed plea offer exists in the record? Nor does Woods allege that he conveyed this information to his counsel or that he gave them the slightest hint that there might have been a plea offer on the table. While Woods disagrees,[44] it is entirely relevant to the ineffective-assistance analysis whether postconviction counsel knew or should have known of the supposed plea offer. After all, counsel cannot be held ineffective for failing to raise a claim that competent counsel would not have known to raise. Thus, the Eleventh Circuit correctly concluded:

> [A]lthough "minimally competent counsel" has a "duty to make reasonable investigations or to make a reasonable decision that

43. App'x A at 18.
44. Pet. 15.

> makes said investigations unnecessary," *Blankenship v. Hall*, 542 F.3d 1253, 1273 (11th Cir. 2008), no reasonable jurist could argue that Woods's postconviction counsel breached this duty in the absence of an allegation that his attorneys had at least some reason to believe that such an offer was made. It follows that no reasonable jurist could dispute the district court's conclusion that Woods failed to plead facts sufficient to excuse the failure of his postconviction counsel to raise his claim about the plea offer, and Woods is not entitled to a certificate of appealability for this claim.[45]

There is no reason for this Court to grant certiorari when both the district court and the Eleventh Circuit provided valid reasons to deny Woods a COA. Therefore, Woods's petition is due to be denied.

II. Woods's petition is due to be denied because it fails to offer a compelling reason for a grant of certiorari.

This Court should also deny Woods's petition for certiorari because it fails to offer a compelling reason for the writ to issue.

Supreme Court Rule 10 lists three categories of cases the Court might consider in granting certiorari. Two are of relevance here:

> (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

45. *Id.* at 18–19.

> (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Woods's petition satisfies neither of these categories. As set forth in section I, *supra*, the district court and Eleventh Circuit offered valid reasons for denying a COA, and Woods has directed this Court to no authority holding otherwise. Again, this is a case in which Woods has offered no facts supporting the existence of a plea offer (the basis for his ineffective-assistance-of-trial-counsel claim) and no facts showing that his postconviction counsel were ineffective for failing to locate a nonexistent reference to a nonexistent plea offer in the record (the basis of his ineffective-assistance-of-postconviction-counsel claim). Thus, it cannot be said that the Eleventh Circuit "decided an important federal question in a way that conflicts with relevant decisions of this Court."[46] Moreover, Woods has not shown a circuit split on this issue.[47] While the criteria provided in Rule 10 are "neither controlling nor fully measuring the Court's discretion," they "indicate the character of reasons the Court considers,"[48] and Woods has presented nothing worthy of certiorari review.

46. SUP. CT. R. 10(c).
47. SUP. CT. R. 10(a).
48. SUP. CT. R. 10.

CONCLUSION

The Court should deny certiorari.

Respectfully submitted,

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