No. 19-6685

THIS IS A CAPITAL CASE

IN THE SUPREME COURT OF THE UNITED STATES

SCOTT MCLAUGHLIN,

Petitioner,

v.

ANNE L. PRECYTHE,

Respondents.

Brief in Opposition to Petition for a
Writ of Certiorari to the Eighth Circuit Court of Appeals

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QUESTIONS PRESENTED

1. Is the United States Court of Appeals for the Eighth Circuit required to explain every denial of certificate of appealability with a detailed opinion in the absence of any statute, rule, or mandate from this Court to do so, even though this Court also summarily denies applications for certificates of appealability?

2. Should this Court grant certiorari to review whether the United States Court of Appeals for the Eighth Circuit made an error in determining not to grant a certificate of appealability on a particular claim challenging a ruling by a state court that was entitled to deference under 28 U.S.C. § 2254?

LIST OF ALL PARTIES TO THE PROCEEDING

Scott McLaughlin is the Petitioner in this case and is represented by Kent E. Gipson and Laurence E. Komp.

Anne L. Precythe, the Director of the Missouri Department of Corrections, the named Respondent, is represented by Missouri Attorney General Eric S. Schmitt, and Assistant Attorney General Michael J. Spillane.

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STATEMENT OF THE CASE

McLaughlin began a stormy relationship with the victim shortly after they met in 2002. App. 42–43. The couple lived together for several months, but that period was marked by break-ups and restraining orders. *Id.* at 43. In the spring of 2003, the two ended their amorous relationship but continued to see each other, and McLaughlin continued to call and visit the victim at her place of work. *Id.* On October 23, 2003, McLaughlin burglarized the victim's home and was arraigned for that crime on November 18, 2003. *Id.* The victim received a protective order because of the burglary. *Id.* On November, 20, 2003 McLaughin violated the protective order by waiting for the victim in a parking lot outside her office and approaching her as she walked to her truck after work. *Id.*

McLaughlin forced the victim to the ground in the parking lot, raped her, repeatedly stabbed her, placed her body in his car, and took the body to an area where he dumped it in thick underbrush near a river. *Id.* A jury convicted McLaughlin of first-degree murder, armed criminal action, and rape. *Id.* The trial court sentenced McLaughlin to death on the murder count. *Id.*

The Missouri Supreme Court rejected a claim that it was error during the penalty phase for the trial court to permit hearsay testimony about statements from the deceased victim concerning McLaughlin's harassing and threatening conduct toward the victim, under the forfeiture by wrongdoing doctrine. *Id.* at 50–51. The Missouri Supreme Court analyzed the claim under this Court's decisions in *Crawford v. Washington*, 541 U.S. 36 (2004) and *Giles v. California*, 554 U.S. 353 (2008). *Id.* at

50–51. The Missouri Supreme Court quoted this Court's language in *Giles* that discusses the applicability of the forfeiture by wrongdoing exception in a case where the victim of domestic violence is murdered, and the court noted that the trial court found by clear and convincing evidence that McLaughlin intended to make the victim unavailable as a witness in the burglary and abuse cases. *Id*. at 51.

The United States District Court for the Eastern District of Missouri found that the Missouri Supreme Court reasonably determined the facts and reasonably applied *Crawford* and *Giles* in finding the victim's statements about being threatened and harassed by McLaughlin were admissible. *Id*. at 28–29. The district court found that at least seven justices in *Giles* appeared to support the analysis used by the Missouri Supreme Court. *Id*. In denying a certificate of appealability the district court held "I find that reasonable jurist could not disagree on any of the claims I denied, so I will deny a Certificate of Appealability on those claims." *Id.* at 38.

The United States Court of Appeals for the Eighth Circuit also denied a certificate of appealability. *Id*. at 1. The Court noted that it denied the application after having carefully reviewed the file of the district court. *Id*.

SUMMARY OF THE ARGUMENT

McLaughlin asks this Court to grant certiorari to create a new requirement that court of appeals must deny certificates of appealability by detailed opinions. The way the court of appeals currently decide certificates of appealability does not impair the ability of this Court to review them. Therefore, McClaughlin requests a remedy for a non-existent problem. Additionally, this Court routinely denies certificates of appealability by summary order, and no precedent of this Court condemns the practice.

McLaughlin also alleges that the court of appeals erred in not granting a certificate of appealability on a particular claim. He is wrong. But even if he were not, certiorari would be unwarranted because McLaughlin has not alleged a conflict between courts nor an important issue that this Court needs to resolve. He alleges only a misapplication of the well-settled standard for granting a certificate of appealability to a particular set of facts. This Court is not a court of error correction that reviews alleged errors in the application of well-established precedent to particular fact patterns.

REASONS FOR DENYING THE WRIT

I. This Court should not create a new requirement that a detailed opinion must accompany every denial of a certificate of appealability.

When faced with a summary denial of a certificate of appealability, this Court should assume that the court of appeals determined that, for each ground raised, the applicant failed to show "that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists of reason could conclude the issues presented are adequate to deserve encouragement to proceed further." *See Miller–El v. Cockrell,* 537 U.S. 322, 326 (2003). This Court then evaluates the propriety of that decision as it would any other legal conclusion by a lower court.

It does not appear from Mclaughlin's petition for certiorari, that the parties' ability to set forth their arguments have been affected by the Eighth Circuit's summary denial of McLaughlin's request for a certificate of appealability. Nor does 28 U.S.C. § 2253, the statute governing the issuance of certificates of appealability, require a detailed opinion. Thus, this Court should decline the invitation to implement a solution to a problem that does not exist.

The same standard of review under 28 U.S.C. §2253 applies to applications for certificates of appealability made to a circuit justice as to a circuit judge. This Court routinely denies such applications with a one sentence order *See e.g. Grayson v. Thomas*, 10A917 (August 15, 2011); *Milton v. Thaler*, 10A1246 (June 12, 2011) (denying application for certificate of appealability in a capital case); *Patrick v. United States*, 03A1020 (September 3, 2004). This Court is not required by 28 U.S.C.

§2253 to enter detailed opinions denying applications for a certificate of appealability, and neither are the circuit courts reviewing applications under the same statute. This Court's precedents do not support McLaughlin's novel view.

Barefoote v. Estelle, 463 U.S. 880 (1983) was a case in which a certificate of probable cause (the predecessor to a certificate of appealability) *was issued* in a capital case and the Fifth Circuit Court of Appeals used expedited procedures to attempt to complete the appeal before a scheduled execution date. This Court held that in a case in which a certificate has issued a circuit court of appeals must give a petitioner the opportunity to address the merits and must decide the merits and where necessary should issue a stay of execution to prevent the case becoming moot before the merits can be decided *Id*. at 893-894. *Barefoote* does not stand for the proposition that there must be a detailed opinion explaining the denial of a certificate.

In *Slack v. McDaniel*, 529 U.S. 473 (2000), this Court held that a certificate of appealability can issue on a claim denied on procedural grounds if both the procedural issue and the underlying constitutional claim have sufficient merit to be debatable by reasonable jurists. That is a claim denied on procedural grounds is not automatically unappealable only because the basis of the decision was procedural *Id*. at 483-485. *Slack* does not hold that the denial of a certificate of appealability must be supported by a detailed opinion.

In *Miller-El v. Cockrell*, 537 U.S. 322 (2003), this Court reversed the United States Court of Appeals for the Fifth Circuit because its decision to deny a certificate of appealability was wrong under the standard in 28 U.S.C. §2253 not because its

analysis was not sufficiently detailed. The underlying denial of a certificate in *Miller-El* is supported by a detailed opinion *See Miller-El v. Johnson*, 261 F.3d 445 (5th Cir. 2001). This court criticized the Fifth Circuit Court of Appeals for fully adjucating the claim on the merits, then working backwards to considering a certificate of appealability determination *Miller-El*, 537 U.S. at 336-337. This Court pointed out that certificates of probable cause were required starting in 1908 because of concern with growing numbers of frivolous appeals in capital cases, and that in 1996 congress confirmed the necessity and the requirement of "differential treatment for those appeals deserving of attention and those that plainly do not." *Id*. at 337. *Miller –El* does not stand for the proposition that the denial of a certificate must be explained in a detailed opinion.

Insofar as McLaughlin argues that the lack of a detailed opinion shows that, the United States Court of Appeals failed to conduct a reasoned analysis of his application, that argument is contrary to the teaching of this Court. *See Harrington v. Richter*, 131 S.Ct. 770, 784 (2011) (rejecting the idea that the denial of a federal claim by a state court requires an opinion, holding that the petitioner still has the burden to show that the decision is wrong and noting that the issuance of summary decisions in case making collateral attacks on convictions allows courts to concentrate their resources where they are most needed.) *See also Wood v. Visciotti*, 537 U.S. 19 (2002) (noting the presumption that courts know and follow the law in their decisions).

II. In complaining about the denial of a certificate of appealability on a particular claim, McLaughlin invites this Court to correct an alleged error in the application of well-established law to particular facts, which is not the role of this Court, and there is no error to correct anyway.

McLaughlin does not really argue that the Eighth Circuit entered a decision in conflict with the decision of another court of appeals; decided an important federal question in a way that conflicts with a decision of a state court of last resort; 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 this Court's supervisory power; decided an important question of federal law that has not been, but should be, settled by this Court; or decided an important federal question in a way that conflicts with relevant decisions of this Court. Sup. Ct. R. 10.

McLaughlin only really argues a certificate of appealability set forth in 28 S.C. § 2253 should have issued on a particular claim in his case. This Court rarely grants petitions for writs of certiorari when the asserted error consists of erroneous factual findings or the misapplication of a properly-stated rule of law. Sup. Ct. R. 10. As McLaughlin only argues that the district court and circuit court misapplied well-established law. This Court should deny his petition.

A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). A petitioner satisfies this standard by showing "that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists of reason could conclude the issues presented are adequate to deserve encouragement to

proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 326 (2003) . This standard is not whether reasonable jurists could disagree on the merits of a petitioner's claims when reviewing the claims *de novo*, but whether reasonable jurists could disagree with the district court's denial of the writ under AEDPA's highly-deferential standard. *Id.* at 336.

The ground McLaughlin discusses here was previously denied in a reasonable state court decision. Reasonable jurists could not disagree with the district court's application of the highly deferential standard of 28 U.S.C. § 2254(d) to the state court decision in this matter. But it is not really necessary to reach that question, as McLaughlin is really on asking for the correction in a perceived error in the application of well-established law to a particular fact pattern.

The Missouri Supreme Court rejected a claim that it was error during the penalty phase for the trial court to permit hearsay testimony about statements from the deceased victim concerning McLaughlin's harassing and threatening conduct toward the victim, under the forfeiture by wrongdoing doctrine. *Id*. at 50–51. The Missouri Supreme Court analyzed the claim under this Court's decisions in *Crawford v. Washington*, 541 U.S. 36 (2004) and *Giles v. California*, 554 U.S. 353 (2008). *Id*. at 50–51. The Missouri Supreme Court quoted this Court's language in *Giles* that discusses the applicability of the forfeiture by wrongdoing exception in a case where the victim of domestic violence is murdered, and the court noted that the trial court found by clear and convincing evidence that McLaughlin intended to make the victim unavailable as a witness in the burglary and abuse cases. *Id*. at 51.

The United States District Court for the Eastern District of Missouri found that the Missouri Supreme Court reasonably determined the facts and reasonably applied *Crawford* and *Giles* in finding the victim's statements about being threatened and harassed by McLaughlin were admissible. *Id.* at 28–29. The district court found that at least seven justices in *Giles* appeared to support the analysis used by the Missouri Supreme Court. *Id.* In denying a certificate of appealability, the district court held "I find that reasonable jurists could not disagree on any of the claims I denied, so I will deny a Certificate of Appealability on those claims." *Id.* at 38.

Although this Court need not address the correctness of the denial of a certificate of appealability do deny certiorari here, the decision was correct.

CONCLUSION

This Court should deny the petition for writ of certiorari.

Respectfully submitted,

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