No. 20-1084

In the Supreme Court of the United States

COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, *Petitioner*

v.

MATTHEW REEVES, *Respondent.*

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

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF

This case is about federal habeas courts shedding the restraints of AEDPA. By reading error into the opinion of the Alabama Court of Criminal Appeals, the Eleventh Circuit defied the will of Congress and the teaching of this Court.

Reeves's attempt to defend the Eleventh Circuit's action under AEDPA reduces to an astonishing proposition: *No fairminded jurist* could interpret the words "in this case" to limit the CCA's holding to "this case," because in the mind of *every fairminded jurist* these words "serve[] a more prosaic purpose" and promulgate an otherwise unannounced categorical rule. BIO.19. But this is precisely the sort of "readiness to attribute error" that this Court has long rejected as inconsistent with AEDPA. *Woodford v. Visciotti*, 537 U.S. 19, 24 (2002).

So how did we get here? The Eleventh Circuit's decision repeatedly misquotes the CCA, reading the state court's opinion to say what it never said and hold what it never held. The federal panel even went so far as to, in multiple places, *edit out* the very language showing that the CCA neither established nor applied any bright-line rule. Reeves goes further. Conceding he cannot surmount AEDPA if the CCA's block-quoted dicta is not a per se rule, Reeves invents legal rationales to support his preferred interpretation and then attributes them to portions of the state court opinion that do not support the proposition. So much for deference.

And where are we going? That depends. In its petition, the State warned that the Eleventh Circuit's decision provides a playbook for federal courts to circumvent AEDPA's constraints. As Reeves's BIO showcases, the playbook is open to litigants,

too. And Reeves's BIO showcases the mischief that will undoubtedly spread across federal courts across the country. The Court should summarily reverse the Eleventh Circuit to remind federal habeas courts—and litigants—that reading error into state-court opinions offers no path around AEDPA.

I. The Eleventh Circuit's Opinion Warrants Summary Reversal

"[T]he only question that matters" for federal habeas courts is whether "it is possible fairminded jurists could disagree" about theories that "supported" or "could have supported" the state court's decision. *Harrington v. Richter*, 562 U.S. 86, 102 (2011). The record rebuts Reeves's ineffective-assistance claims, which is no doubt why Alabama's Circuit Court and Court of Criminal Appeals rejected them. AEDPA deference makes this case all the more straightforward. But the Eleventh Circuit managed its way around AEDPA by bending the rules—and the state court's opinion—well past their breaking points. Because its "approach plainly violated Congress' prohibition on disturbing state-court judgments on federal habeas review absent an error that lies 'beyond any possibility for fairminded disagreement,'" the panel opinion warrants summary reversal. *Mays v. Hines*, 592 U.S. ___, No. 20-507 (Mar. 29, 2021) (*per curiam*) (slip op. at 1.); 28 U.S.C. § 2254(d).

A. The Eleventh Circuit Maneuvered Past AEDPA By Reading Error Into The State Court's Opinion. Reeves Attempts The Same.

The record before CCA strongly suggested (or, at the very least, *debatably* suggested, which is all that matters here) that Reeves's counsel declined to pursue an intellectual-disability mitigation strategy because they reasonably concluded Reeves

was not intellectually disabled. *See, e.g.*, Pet.App.94a (discussing records that "evidence that Reeves was denied special education services for intellectual disability"). Reeves offered no direct evidence or accounts to the contrary, leaving this favorable inference—and the legal presumption of reasonableness Pet.App.268a-269a—unrebutted. Thus, "*in this case,* Reeves's failure to call his attorneys to testify [was] fatal to his claims of ineffective assistance of counsel." Pet.App.272a (emphasis added).

The CCA's holding does not represent a "categorical rule." Pet.App.24a. Indeed, the CCA explained that "Reeves's argument fails to take into account the requirement that courts indulge a strong presumption that counsel acted reasonably, a presumption that must be overcome by *evidence* to the contrary." Pet.App.268a-269a (emphasis in original). Reeves failed not because he declined to elicit testimony from his counsel, but because he declined to provide sufficient evidence to rebut the record[1] and legal presumption favoring his counsel's reasonableness. Reeves notes (at 18) that a recent CCA opinion described Reeves as "fail[ing] to prove his claims of ineffective assistance … because he did not call his trial or appellate counsel to testify," *State v. M.D.D.*, CR-19-0652, 2020 WL 6110694, at *8 (Ala. Crim. App. Oct.16, 2020), but that description is accurate, unremarkable, and establishes no categorical rule. Reeves failed to show that his counsel's decision not to call Dr. Goff was unreasonable, in no small part, because Reeves failed to call his counsel to explain why they made

[1] In fact, the CCA expressly took judicial notice of the records "in this case," Pet.App.199a n.1, and emphasized the reliability of the circuit court's decision by explaining that "in this case … the circuit judge who ruled on the petition was the same judge who had presided over Reeves's trial," *id.* 207a n.5.

that decision. But the court's statement does not mean Reeves had no possible path to victory without counsel's testimony. After all, one might recall a sports team losing to another "because" the team failed to play aggressive defense, but such a statement hardly announces a maxim that aggressive defense is required to prevail against *every* team in *every* game.

As the State's Petition shows, the Eleventh Circuit evaded AEDPA by sowing the CCA's opinion with error. Pet.17-22. Despite being required to give the CCA "the benefit of the doubt," *Visciotti*, 537 U.S. at 24, the federal court omitted key portions of the CCA opinion (and record) inconvenient to its assertion that the CCA adopted a categorical rule. *Compare* Pet.App.272a ("*In this case*, Reeves's failure to call his attorneys to testify is fatal to his claims") (emphasis added) *with* Pet.App.24a ("[CCA] concluded, based on this categorical rule, that Mr. Reeves' 'failure to call his attorneys to testify [was] *fatal* to his claims") (emphasis from Eleventh Circuit).

Reeves takes the Eleventh Circuit's approach several steps further. For example, the CCA explained that "[i]n its order, the circuit court found that Reeves had failed to prove his claims of ineffective assistance of trial and appellate counsel, *in part*, because he had failed to call Goggans and Wiggins to testify at the evidentiary hearing." Pet.App.268a (emphasis added). "[I]n part" clearly demonstrates Reeves's failure to prove his claim was not *solely* attributable to his failure to elicit testimony. But here's how Reeves quotes the CCA's opinion to this Court: "Because 'Reeves did not call McLeod, Goggans, or Wiggins to testify,' CCA explained that the 'circuit court found that Reeves had failed to prove his claims of ineffective assistance of trial []

counsel." BIO.12. Including "in part" would undermine the notion that the CCA created a "categorical rule," so Reeves cuts it out.

In this same vein, Reeves asserts that the CCA held that "the record is silent unless trial counsel has testified." BIO.17. That Reeves offers no direct quotation is telling; nothing in the cited pages (Pet.App.269a-270a, 277a) supports the *legally necessary* precondition Reeves claims the court imposed. Nor did the CCA ever, as Reeves contends, "reject[] the argument that trial counsel testimony is not required to prevail on an ineffective-assistance claim." BIO.19. That argument was non-sequitur; as the CCA explained, Reeves had to come up with sufficient "*evidence* to the contrary," Pet.App.268a-269a (emphasis in original), and he failed to do so.

To save the Eleventh Circuit's opinion, Reeves also struggles to cast the words "in this case"—which precede the portion of CCA's opinion the Eleventh Circuit deemed a "categorical rule" applicable to *every* case—as nugatory. BIO.19. Reeves insists that "the phrase 'in this case'" cannot mean the CCA intended to limit its holding to the facts of "this case" because the words "serve[] a more prosaic purpose." BIO.19. But judging the relative prosaicness of a state court opinion is, of course, miles away from "the only question that matters" to a federal habeas court. *Richter*, 562 U.S. at 102. And, even engaging in this exercise, Reeves fails to make his point without question-begging: "The relevant law includes *more than* the rule requiring trial counsel testimony," Reeves writes, *presuming such a rule exists in the first place*, "so CCA used the phrase 'in this case' to indicate the particular reason why Reeves's claim was being rejected. And that reason is … because CCA requires trial-counsel

testimony to prevail on an ineffective-assistance claim." BIO.19-20 (emphasis in original). Reeves simply declares the "rule" exists and that CCA applied it. But no such rule can be found in CCA's opinion, and repeating the refrain does not make it so.[2]

As a general matter, Reeves's arguments betray a fundamental misunderstanding of habeas law. Reeves insists, for example, that the State somehow "waived" theories demonstrating the reasonableness of counsel's decision not to contact Dr. Goff. BIO.25. But unlike *Teague* arguments (at issue in the case cited), theories supporting a state court's reasonability are not waivable; indeed, AEDPA *requires* a federal court to assess "what arguments or theories supported or, as here, *could have supported*, the state court's decision." *Richter*, 562 U.S. at 102 (emphasis added). More fundamentally, Reeves's view of waiver inverts the burden of proof; the burden was never on the State to prove counsel acted reasonably, but rather rested solely on Reeves to prove the opposite. Pett.App.268a. Reeves's confusion on this point perhaps explains why he failed to provide *any* direct evidence addressing why trial counsel settled on their chosen strategy.

[2] To the extent Reeves's citations to CCA's other uses of "in this case" have any significance, they undercut the point Reeves tries to make. In each instance Reeves cites, the CCA uses this language to discuss the law's impact on the case's facts. *See* Pet.App.251a ("In this case, Reeves had full-scale IQ scores of 68, 71, and 73."); *id.* at 255a ("In this case, the evidence regarding Reeves's adaptive functioning was conflicting."); *id.* at 287a ("In this case, Reeves failed to identify in his petition the juror he believed committed the misconduct."). So when the CCA stated that "[i]n this case, Reeves's failure to call his attorneys to testify is fatal to his claims," *id.* at 272a, the court was again invoking the context of the record. And, on this point, the record was insufficient to undermine the presumption of Reeves's counsel's reasonableness.

The CCA's opinion was well reasoned. Reeves's ineffective-assistance argument failed because he did not and could not rebut either the presumption of his counsel's competence or the record reaffirming the same. At a minimum, "it is possible fairminded jurists could disagree" about whether the CCA got it right, *Richter*, 562 U.S. at 102, particularly when its decision is properly "given the benefit of the doubt." *Woodford*, 537 U.S. at 24. Under AEDPA, this is where the Eleventh Circuit's opinion should have ended.

B. Reeves's Claim Also Fails Under De Novo Review.

Even reviewing Reeves's claims de novo, the record amply suggests Reeves's counsel's decision not to further pursue an intellectual-disability investigation "'might be considered sound strategy.'" *Strickland v. Washington*, 466 U.S. 668, 689 (1984); *see also* Pet.22-29. Reeves's counsel possessed documents showing Reeves *was* intellectually borderline but *was not* disabled, *see, e.g.*, DE23-13:61 ("Mr. Reeves obtained a Verbal IQ of 75, a Performance IQ of 74, and a Full Scale IQ of 73, all of which fell within the Borderline range."), and further discovery confirmed this by showing, among other things, that Reeves was in fact *denied* special education for intellectual disability, Pet.App.94a.[3] The record suggests Reeves's attorneys therefore may have "reasonably believed [intellectual disability] was a claim doomed to fail" and moved on. *Knowles v. Mirzayance*, 556 U.S. 111, 124 (2009). The Eleventh Circuit

[3] Reeves argues his counsel should have further investigated his alleged intellectual disability because they knew he spent time in "special education classes." BIO 5. But Reeves was enrolled in special education classes for Emotional Conflict ("EC"), *not* for intellectual disability. DE23-2:190; *accord* Pet.App.94a.

would require counsel to pursue an intellectual-disability defense any time counsel finds evidence of sub-average intelligence—even where evidence simultaneously demonstrates an absence of intellectual disability. This sounds a lot like a "categorical rule," and, in any event, is "flatly inconsistent with *Strickland*'s recognition that '[t]here are countless ways to provide effective assistance in any given case.' There comes a point where a defense attorney will reasonably decide that another strategy is in order, thus 'mak[ing] particular investigations unnecessary.'" *Pinholster*, 563 U.S. at 197 (cleaned up).

Reeves turns to conjecture in an attempt to downplay the documents his counsel received in discovery. BIO.27. "The Taylor Hardin records," Reeves insists, "provided trial counsel with no new information. The records were summarized in Dr. Ronan's report about Reeves." *Id.* Thus, Reeves's argument goes, "[c]ounsel never learned anything that would have made refusing even to contact Dr. Goff reasonable." BIO.28. But even if it were conceivable that hundreds of Reeves's medical documents did not contain information beyond Dr. Ronan's nine-page summary, DE23-13:59-68, Reeves conspicuously ignores the educational files his counsel discovered at the same time. Among other things, those files showed that Reeves's predominant educational problems stemmed from emotional—not intellectual—conflicts, and that Reeves was "*denied* special education services for intellectual disability," Pet.App.94a (emphasis added). Dr. Ronan's nine-page summary left ambiguity over whether Reeves had received special education for intellectual disability. DE23-13:61 ("Reeves was placed in the Emotionally Conflicted Program at school and *perhaps* in special education as

well.") (emphasis added). Reeves's educational records resolved that question. The record directly contradicts Reeves's conjecture. BIO.28.

Like the Eleventh Circuit, Reeves also pretends that working with Dr. Goff was a cost-free proposition just because the court had granted his counsel funding to do so. BIO.28. But all attorneys suffer constraints on their time; once Reeves's counsel had analyzed hundreds of documents and found none showing Reeves was intellectually disabled—and many showing he was not—they could reasonably have opted not to sink further time into an unpromising strategy. *Mirzayance*, 556 U.S. at 124. Moreover, Reeves's attorneys may have been loath to spend resources on a strategy unlikely to succeed. Indeed, the record shows the "reason [the State prosecutor] challenged" counsel's funding request was because it would "wast[e] everybody's time," which he alleged was "what we did last time." DE23-3:94. Potentially "wasting" time and money on a fruitless investigation would redouble the prosecutor's grievance, thus further heightening the burden placed on Reeves's counsel for any future requests germane to Reeves's defense.

Reeves's prejudice analysis is further off the mark. He recites the Eleventh Circuit's statement that the evidence Dr. Goff would have presented "was powerful," BIO.15, but avoids engaging with the State's assertion that the "'new' evidence largely duplicated" what Reeves's mother and Dr. Ronan presented at trial, Pet.27. Instead, Reeves contends that Dr. Goff's testimony would have rendered a "'substantial,' not just conceivable, likelihood of a different result," *Pinholster*, 563 U.S. at 189,

because "Alabama treats only intellectual disability, not low intelligence, as a statutory mitigating factor." BIO.29. But the law Reeves cites bears no such distinction. *See* Ala. Code. § 13A-5-51(6) ("Mitigating circumstances shall include, but not be limited to, the following: … The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired"). And, what is more, the judge expressly instructed the jury to consider evidence of Reeves's borderline intelligence a mitigating factor. DE23-8:197.

Nor does Reeves dispute that the Eleventh Circuit failed to explain why more evidence of low intelligence would, in the jury's eyes, outweigh the heinousness of Reeves's crimes. Instead, he responds that "there was, of course, no need for the Eleventh Circuit to do so because state and federal law make clear that intellectual disability limits an offender's culpability, even for the most heinous crimes." BIO.30. This is confused. The test for prejudice is whether the sentencer "would have concluded that the *balance* of aggravating and mitigating circumstances did not warrant death." *Strickland*, 466 U.S. at 695 (emphasis added); *see also, e.g.*, *Pinholster*, 563 U.S. at 198. So, to assure itself that Reeves had shown prejudice, the Eleventh Circuit was obligated to "balance" the presumed effects of Dr. Goff's testimony against that which the sentencer had already heard. The court—and Reeves—failed to do so. For that reason as well, this Court should reverse.

C. Comity, Finality, and Federalism Further Demand Summary Reversal.

Federal habeas review necessarily threatens federalism. It "entails significant costs . . . and intrudes on state sovereignty to a degree matched by few exercises of federal judicial authority." *Davila v. Davis*, 137 S.Ct. 2058, 2070 (2017).

The Eleventh Circuit's hostile approach to state-court opinions threatens "the basic structure of federal habeas jurisdiction," which is "designed to confirm that state courts are the principal forum for asserting constitutional challenges to state convictions." *Richter*, 562 U.S. at 103. The Eleventh Circuit's opinion "serves as a blueprint for subjecting every state court opinion to de novo review in federal court, thus placing federal courts in the tutelary relation to the state courts that AEDPA was designed to end." Br. for Amici Curiae 2 (cleaned up). As the thirteen State amici in this case make clear, these concerns are not "fake federalism." BIO.23.

To "ensure observance of Congress's abridgment of [federal courts'] habeas power," *Cash v. Maxwell*, 565 U.S. 1138, 132 S. Ct. 611, 616 (2012) (Scalia, J., dissenting), this Court should, as it has already done twice this term in less egregious cases, summarily reverse the Court of Appeals' erroneous decision. *See Shinn v. Kayer*, 592 U.S. ___, No. 19-1302 (Dec. 14, 2020) (*per curiam*); *Mays v. Hines*, 592 U.S. ___, No. 20-507 (Mar. 29, 2021) (*per curiam*).

CONCLUSION

This Court should grant the petition for writ of certiorari and summarily reverse.

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Respectfully submitted,

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