EXHIBIT A

NOT FOR PUBLICATION

FILED

NOV 28 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAMES LYNN STYERS, Petitioner-Appellant, v. CHARLES L. RYAN, Warden, Respondent-Appellee.	No. 17-17356 D.C. No. 2:12-cv-02332-JAT District of Arizona, Phoenix ORDER

Before: FARRIS, W. FLETCHER, and BEA, Circuit Judges.

The motion for a certificate of appealability is denied. *See* 28 U.S.C. § 2253(c)(2). All pending motions, if any, are denied as moot.

EXHIBIT B

FILED

MAR 11 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAMES LYNN STYERS, Petitioner-Appellant, v. CHARLES L. RYAN, Respondent-Appellee.	No. 17-17356 D.C. No. 2:12-cv-02332-JAT District of Arizona, Phoenix ORDER

Before: FARRIS, W. FLETCHER, and BEA, Circuit Judges.

Petitioner-Appellant's motion for leave to file a reply to the response to the petition for panel rehearing and rehearing en banc is **GRANTED**. Petitioner-Appellant's reply is deemed filed on March 12, 2019.

The Order filed on November 28, 2019 is hereby amended as set out in the concurrently filed Amended Order.

With that amendment, the panel has unanimously voted to deny Petitioner-Appellant's petition for panel rehearing. Judge Fletcher has voted to deny Petitioner-Appellant's petition for rehearing en banc, and Judges Farris and Bea have so recommended. The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for panel rehearing and the petition for rehearing en banc are

therefore **DENIED**. No further petitions for rehearing will be accepted in this case.

EXHIBIT C

NOT FOR PUBLICATION

FILED

MAR 11 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAMES LYNN STYERS, Petitioner-Appellant, v. CHARLES L. RYAN, Warden, Respondent-Appellee.	No. 17-17356 D.C. No. 2:12-cv-02332-JAT District of Arizona, Phoenix AMENDED ORDER

Before: FARRIS, W. FLETCHER, and BEA, Circuit Judges.

James Lynn Styers appeals the district court's dismissal of his most recent habeas petition. This is Styers's third habeas appeal before this court, and his fifth overall appeal of his conviction and death sentence. Such an appeal may not be taken unless the habeas petitioner has made a substantial showing of the denial of a constitutional right, and a certificate of appealability ("COA") is issued. *See* 28 U.S.C. § 2253(c)(1), (2). To obtain a COA, the petitioner must demonstrate that "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner [by the district court]," or that the issues are "adequate to deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). The district court denied Styers's request for a COA, reasoning that no reasonable jurist could disagree that Styers's eight claims

were mooted by this court's ruling in *Styers v. Ryan*, 811 F.3d 292, No. 12-16952 (9th Cir. 2015) ("*Styers IV*"); constituted improper second or successive claims, pursuant to 28 U.S.C. § 2244(b); or were meritless. We agree.

In Claim 1, Styers alleges penalty-phase ineffective assistance of counsel ("IAC")—specifically, that his trial counsel performed ineffectively by failing to investigate, develop, and present available mitigating evidence related to his mental impairments at sentencing. This same claim was previously raised in Styers's first habeas petition, and the district court therefore dismissed it as improperly second or successive under 28 U.S.C § 2244(b)(1). Styers argues that Claim 1 is not improperly second or successive, because further investigation could yield *new evidence* of his mental impairments that would fundamentally alter his IAC claim, rendering it an *entirely new claim* for purposes of the "second or successive" analysis under § 2244(b)(1). But "a claim is successive if the *basic thrust or gravamen* of the legal claim is the same, regardless of whether the basic claim is supported by new . . . [or] different factual allegations." *Gulbrandson v. Ryan*, 738 F.3d 976, 997 (9th Cir. 2013) (emphasis added). The "basic thrust or gravamen" of Claim 1 (as set out in both his first and second habeas petitions) is that Styers's trial counsel was ineffective at the penalty phase for failing to conduct an adequate mitigation investigation. The discovery of "new" mitigation evidence related to Styers's mental impairments (which could have been discovered previously by the exercise of

reasonable diligence) could not change the basic thrust or gravamen of his IAC claim, and therefore no reasonable jurist could debate whether Claim 1 was properly dismissed as second or successive.

Claims 2 and 4 also involve IAC. In Claim 2, Styers argues that his trial counsel was ineffective at the guilt phase for failing to investigate properly evidence that could have demonstrated a lack of premeditation. In Claim 4, Styers argues that his appellate counsel was ineffective for failing to challenge the Arizona Supreme Court's application of the "heinous, cruel, or depraved," aggravating factor on direct appeal in *State v. Styers*, 865 P.2d 765, 769 (Ariz. 1993) ("*Styers I*"). Neither of these claims were raised in his prior state post-conviction proceedings, or in his first habeas petition, although Styers admits that they were ripe for assertion at the time of his first habeas petition. Because the "new" factual predicate for these claims could have been discovered previously through the exercise of due diligence, no reasonable jurist could debate whether Claims 2 and 4 were properly dismissed as second or successive.

In Claim 3, Styers alleges that the Arizona Supreme Court conducted a constitutionally insufficient review of his sentence in *State v. Styers*, 227 Ariz. 186, 254 (2011) (en banc) ("*Styers III*"), by applying an improper causal nexus requirement to his mitigation evidence, and by failing to consider additional mitigating information beyond the evidence of Styers's Post-Traumatic Stress

Disorder. But in *Styers IV* we rejected these same arguments with respect to the constitutional sufficiency of the Arizona Supreme Court's review of his sentence in *Styers III*. *See Styers IV*, 811 F.3d at 298–99. Accordingly, no reasonable jurist could debate whether Claim 3 was properly dismissed pursuant to our ruling in *Styers IV*.

In Claims 5 and 7, Styers argues that the Arizona Supreme Court's failure to remand for a new sentencing hearing before a jury violated his right under the Sixth Amendment to a jury determination of aggravating factors (as set out in *Ring v. Arizona*, 536 U.S. 584 (2002)), as well as his rights under the Eighth and Fourteenth Amendments. But we rejected these arguments in *Styers IV*, holding that because his conviction and sentence were final before *Ring* was decided, Styers was not entitled to a new sentencing hearing before a jury. *Id.* at 297–98. The Supreme Court's intervening opinion in *Hurst v. Florida*, 136 S. Ct. 616 (2016), does not compel a different result. *McKinney v. Arizona*, No. 18-1109, 2020 WL 889190 at *4 (U.S. Feb. 25, 2020). Styers's remaining arguments in Claims 5 and 7 unrelated to *Ring* or *Hurst* were disposed of by our holding in *Styers IV* that the Arizona Supreme Court corrected the errors regarding its consideration of the relevant mitigation evidence in *Styers III*. *Styers IV*, 811 F.3d at 297–99. Accordingly, no reasonable jurist could debate whether Claims 5 and 7 were properly dismissed pursuant to our ruling in *Styers IV*.

In Claim 6, Styers alleges that the length of his incarceration on death row violates the Eighth Amendment—a so-called "*Lackey* claim," named after Justice Stevens' memorandum respecting the Supreme Court's denial of certiorari in *Lackey v. Texas*, 514 U.S. 1045 (1995). But Styers could have raised this claim at some point during the proceedings on his first habeas petition from 1998 to 2015—when he had been on death row for nearly twenty-five years. Therefore, no reasonable jurist could debate whether Claim 6 was properly dismissed as second or successive.

In Claim 8, Styers alleges that the Arizona Supreme Court erred by not providing him with additional state post-conviction proceedings after its independent review of his death sentence in *Styers III*. But "[s]tate collateral proceedings are not constitutionally required as an adjunct to the state criminal proceedings," *Murray v. Giarratano*, 492 U.S. 1, 10 (1989), and "a petition alleging errors in the state post-conviction review process is not addressable through habeas corpus proceedings." *Franzen v. Brinkman*, 877 F.2d 26, 26 (9th Cir. 1989). Because habeas relief is unavailable for Claim 8, no reasonable jurist could debate whether Claim 8 was properly dismissed.

The motion for a certificate of appealability is therefore **DENIED**. *See* 28 U.S.C. § 2253(c)(2). All pending motions, if any, are denied as moot.

EXHIBIT D

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

James Lynn Styers,

Petitioner,

v.

Charles L. Ryan, et al.,

Respondents.

No. CV-12-02332-PHX-JAT

ORDER

DEATH PENALTY CASE

Before the Court is Styers's Motion to Alter or Amend Judgment. (Doc. 34.) Pursuant to Rule 59(e) of the Federal Rules of Civil Procedure, Styers asks the Court to alter or amend its order and judgment denying his habeas petition. (Docs. 32, 33.) Also before the Court is Styers's motion for a certificate of appealability. (Doc. 35.) For the reasons set forth below, the motions are denied.

1. Motion to Alter/Amend

A Rule 59(e) motion is an "extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." *Wood v. Ryan*, 759 F.3d 1117, 1121 (9th Cir. 2014) (quoting *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000)). A motion brought under Rule 59(e) should be granted only in "highly unusual circumstances." *Kona*, 229 F.3d at 890. It may not be used to raise arguments or present evidence for the first time that reasonably could have been raised earlier, *id.*, nor is it the time "to ask the court to rethink what it has already thought through—rightly or wrongly," *United States v. Rezzonico*, 32 F. Supp.2d 1112, 1116 (D.

Ariz. 1998) (quotation omitted). A district court may grant a Rule 59(e) motion if it "'is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law.'" *McDowell v. Calderon*, 197 F.3d 1253, 1255 (9th Cir. 1999) (en banc) (quoting *389 Orange St. Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999)).

The Court found that Claims 3, 5, 7, and 8 of Styers's habeas petition were rendered moot by the Ninth Circuit's decision in *Styers v. Ryan*, 811 F.3d 292 (9th Cir. 2015) (*"Styers IV"*). Styers now contends that the Ninth Circuit did not consider the Eighth Amendment aspects of his allegation that the Arizona Supreme Court, in its second independent review of his death sentence, *State v. Styers*, 227 Ariz. 186, 254 P.3d 1132 (2011) (*"Styers III"*), failed to consider all of his mitigation evidence, including "non-PTSD" evidence. (Doc. 34 at 4.) This argument remains unpersuasive.

The Ninth Circuit remanded the case and ordered this Court to grant a conditional writ on the grounds that the state courts did not consider and give effect to Styers's PTSD as mitigating evidence. *Styers v. Schriro*, 547 F.3d 1026, 1035 (9th Cir. 2008) ("*Styers II")*. The appellate court did not "express []or imply any opinion as to the appropriate sentence in this case," explaining that the proper sentence "is a matter for the state courts, so long as the constitutional obligations under *Eddings* and *Clemons* are honored." *Id.* at 1036. This Court granted the conditional writ. In response, the Arizona Supreme Court conducted a new independent sentencing review and reaffirmed the trial court's original capital sentence. *Styers III*, 227 Ariz. 186, 254 P.3d 1132.

In *Styers IV*, the Ninth Circuit upheld the Arizona Supreme Court's determination that a jury resentencing was not required under *Ring* and found that the state supreme court corrected its *Eddings* error by properly considering the mitigating evidence that Styers suffers from PTSD. 811 F.3d at 297–99. Contrary to Styers's principal argument, the Arizona Supreme Court "consider[ed] whether Styers's PTSD, *in combination with the other mitigating evidence*, provides mitigation sufficiently substantial to warrant leniency." *Styers III*, 227 Ariz. at 189, 254 P.3d at 1135 (emphasis added). Additionally, in finding that the Arizona Supreme Court had corrected the *Eddings* error, *Styers IV*, 811

F.3d at 298–99, the Ninth Circuit necessarily rejected Styers's Eighth Amendment claims.

This Court did not err in finding Claims 3, 5, 7, and 8 without merit. Styers's Motion to Alter or Amend is denied.

2. Certificate of Appealability

Styers seeks a certificate of appealability with respect to the Court's rulings on each of his habeas claims. Rule 11(a) of the Rules Governing Section 2254 Cases provides that the district judge must either issue or deny a certificate of appealability when it enters a final order adverse to the applicant. If a certificate is issued, the court must state the specific issue or issues that satisfy 28 U.S.C. § 2253(c)(2). Under § 2253(c)(2), a certificate of appealability may issue only when the petitioner "has made a substantial showing of the denial of a constitutional right." This showing can be established by demonstrating that "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner" or that the issues were "adequate to deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 & n. 4 (1983)).

For the reasons already discussed, with respect to Claims 3, 5, 7, and 8, no reasonable jurist could disagree that the claims are moot based on the Ninth Circuit's ruling in *Styers IV*. This Court previously found that Claims 1, 2, 4, and 6 constituted a second or successive petition. (Doc. 19 at 6–7.) Styers's counterargument is that a full mitigation investigation would reveal additional evidence to support the claims. The Court has already rejected this argument. (Doc. 32 at 5–7.) An assertion that additional evidence exists does not change the fact that the claims themselves were or could have been raised in Styers's first petition. Reasonable jurists could not disagree that the claims must be dismissed under 28 U.S.C. § 2244(b).

Accordingly,

IT IS ORDERED denying Styers's Motion to Alter or Amend Judgment. (Doc. 34.)

IT IS FURTHER ORDERED denying Styers's Motion for a Certificate of Appealability (Doc. 35.)

Dated this 24th day of October, 2017.

James A. Teilborg
Senior United States District Judge