

IN THE
Supreme Court of the United States

VINCENT MCFADDEN,
Petitioner,

v.

STATE OF MISSOURI,
Respondent.

On Petition for Writ of Certiorari
To the Supreme Court of Missouri

BRIEF IN OPPOSITION

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CAPITAL CASE
QUESTION PRESENTED

1. Whether the Missouri Supreme Court's application of the *Strickland* test for ineffective assistance of counsel warrants this Court's discretionary review.

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INTRODUCTION

In affirming the denial of Petitioner’s claims for postconviction relief, the Supreme Court of Missouri applied the proper standard for ineffective-assistance claims as established by this Court in *Strickland v. Washington*, 466 U.S. 668 (1984), and as reaffirmed by its progeny. As to the performance prong, the Court properly assessed counsel’s decisions for reasonableness. As to the prejudice prong, the Court properly considered whether there was a reasonable probability that, but for counsel’s alleged errors, the result of the proceeding would have been different. Because the Court did not decide an important federal question in a way that conflicts with the relevant decisions of this Court, the petition for certiorari should be denied.

STATEMENT OF THE CASE

Todd Franklin (“Victim”) and his friend, Mark Silas, were walking in Pine Lawn when they encountered Petitioner and Michael Douglas (“Co-Defendant”). Pet. App. 2. Petitioner and Co-Defendant asked Victim if he had a gun, and Victim responded that he did not. *Id.* Co-Defendant then pulled out a gun and fired a shot, and Victim and Silas ran across the street to Victim’s neighbor’s yard. *Id.* Petitioner and Co-Defendant followed. *Id.*

Co-Defendant shot Victim twice, and Victim fell to the ground. *Id.* Petitioner took the gun from Co-Defendant, walked toward Victim, kicked him, and uttered derogatory phrases. *Id.* Petitioner then shot Victim three times. *Id.* Petitioner and Co-Defendant ran away, and the neighbor called 911. *Id.* Victim was alive during each of the five shots, but he died at the scene from the wounds. *Id.*

During the ensuing investigation, a cigar with Petitioner's thumbprint was found in the driveway near Victim's body. *Id.* Silas identified Petitioner as the second shooter during an interview shortly after the shooting. *Id.* The neighbor, as well as other individuals who were at the neighbor's house at the time of the shooting, also identified Petitioner from photographic lineups as the second shooter. *Id.*

The defense called Co-Defendant, who testified that he had previously stated that he and his brother—and not Petitioner—had shot and killed Victim. *Id.* Co-Defendant also testified that those prior statements were lies and that Petitioner was the second shooter. *Id.*

The jury found Petitioner guilty of first-degree murder and armed criminal action. *Id.*

During the penalty phase, the State presented evidence that: Petitioner had prior convictions, including two for first-degree assault and two for armed criminal action; he killed his girlfriend's sister; he attempted to prevent his girlfriend from identifying him as her sister's murderer; and he was in possession of 17 bags of crack cocaine at the time of his arrest. Pet. App. 2, 9.

In mitigation, the defense presented five members of Petitioner's family, Petitioner's friend, and a St. Louis juvenile officer, who testified about Petitioner's childhood and the environment in which he grew up. Pet. App. 2. Additionally, the defense called Dr. Wanda Draper, a human development expert, who testified that Petitioner had a “severe disorganized attachment” disorder due to the absence of a

reliable parental figure during his childhood. *Id.* Dr. Draper also testified that Petitioner's environment contributed to producing his violent behavior. *Id.*

The jury found five statutory aggravators—four serious assaultive convictions and depravity of mind—and it recommended a sentence of death. *Id.* The circuit court sentenced Petitioner accordingly, imposing the death penalty for first-degree murder and life imprisonment for armed criminal action. *Id.* The Supreme Court of Missouri affirmed the convictions and sentences on direct appeal. *Id.* See *State v. McFadden*, 369 S.W.3d 727, 755 (Mo. 2012).

Petitioner filed a motion for postconviction relief, asserting 16 grounds for relief. Pet. App. 22. After an evidentiary hearing, the circuit court entered judgment denying Petitioner's claims. Pet. App. 2.

Among Petitioner's claims was that counsel was ineffective for calling Co-Defendant to testify during the guilt phase because his testimony that he and Petitioner shot Victim was harmful to the defense. Pet. App. 3. Petitioner also claimed that counsel was ineffective for not impeaching Co-Defendant with his own postconviction motion, in which Co-Defendant stated that he was not present when Victim was shot. *Id.* Petitioner further claimed that during the penalty phase, counsel should have presented evidence of Co-Defendant's affidavit stating that he and his brother—not Petitioner—had committed the assaults for which Petitioner had been previously convicted. Pet. App. 10.

The Supreme Court of Missouri found that “[a]lthough counsel were aware that Codefendant might testify [Petitioner] was the second shooter—testimony that would

be harmful to the defense's case—counsel recognized that Codefendant's testimony to that effect could be impeached with his prior inconsistent statements that Codefendant's brother—and not [Petitioner]—was the second shooter.” *Id.* The Court also found that, contrary to Petitioner's argument, other evidence presented at trial “did not establish that [Petitioner] did not shoot [V]ictim.” *Id.* The Court cited counsel's testimony at the postconviction hearing that “they believed calling Codefendant would aid [Petitioner's] case, as his testimony was the only way for the jury to hear the theory that Codefendant's brother may have been the second shooter.” *Id.* The Court also found that “counsel elicited other helpful statements from Codefendant” *Id.* The Court concluded, “As counsel made an informed, strategic decision to call Codefendant as a witness, the circuit court did not clearly err in finding counsel's decision reasonable.” *Id.*

As to the claim regarding counsel's failure to impeach Co-Defendant with his prior inconsistent statement that he was not present when Victim was shot, the Court noted that “[a]lthough the circuit court took judicial notice of Codefendant's [postconviction] motion, postconviction counsel failed to ask counsel for an explanation why they did not impeach Codefendant with the motion.” Pet. App. 3. The Court then stated, “It is presumed that counsel's decision not to impeach a witness is a matter of trial strategy.” *Id.* In the following paragraph, the Court stated, “Further, as the circuit court found, it was reasonable for counsel not to question Codefendant about the motion, as the motion's substance did not support the defense's strategy.” *Id.* The Court explained that “[t]he defense sought to prove

[Petitioner's] innocence through evidence that Codefendant and his brother killed Victim" and that "[a] statement by Codefendant that Codefendant was not involved in the shooting would be inconsistent with the defense's position." *Id.* The Court concluded, "Because [Petitioner] has failed to overcome the presumption that counsel's decision not to impeach Codefendant was reasonable trial strategy, the circuit court did not clearly err in denying this claim." Pet. App. 4.

As to the claim regarding counsel's failure to present evidence that Co-Defendant had previously stated that he and his brother—and not Petitioner—had committed the assaults for which Petitioner had been previously convicted, the Court noted that counsel testified at the postconviction hearing that "they were concerned the jury would view this evidence unfavorably, as the jury heard and rejected similar evidence during the guilt phase." Pet. App. 10. The Court also noted that "[c]ounsel testified that, as a matter of strategy, they wanted to limit evidence of the prior assault convictions, as the State could have put on even more prejudicial and inflammatory evidence to support the convictions." *Id.* The Court found that "[t]he circuit court did not clearly err in finding counsel used reasonable trial strategy in deciding not to present evidence of Codefendant's affidavit." *Id.*

Petitioner also claimed that counsel was ineffective for failing to call several witnesses, including Dr. Norman White, a sociologist, to testify in mitigation about how the cultural environment in which Petitioner grew up impacted his development. Pet. App. 6-7.

The Court noted that counsel testified at the postconviction hearing that “the defense’s mitigation theory was that [Petitioner] grew up in a bad neighborhood with a home environment that lacked guidance and support.” Pet. App. 7. The Court also noted that “[d]uring the penalty phase at trial, counsel called seven lay witnesses, each of whom emphasized the difficulties [Petitioner] experienced growing up in Pine Lawn,” including that it was a “violent,” “depressed,” and “difficult place” to live, that gunshots were often heard in the neighborhood, that Petitioner was “bullied” as a child, that he “often had bruises, black eyes, and scratches,” and that he was later “shot in the leg, which led to a decline of his mental health and wellbeing.” *Id.* The Court further noted that the defense also called Dr. Draper, “who testified regarding the effect of [Petitioner’s] home and community life on his development.” *Id.*

The Court found that “[a]lthough Dr. White’s testimony would have further supported the defense’s mitigation theory, Dr. White was unable to opine how growing up in Pine Lawn actually impacted [Petitioner’s] decision to murder Victim.” *Id.* The Court further found that “[b]ecause the defense presented ample evidence of the Pine Lawn culture and its effects on [Petitioner’s] childhood and development—including testimony by another expert, Dr. Draper—additional expert testimony on this topic would have been of limited assistance.” *Id.* The Court concluded, “Because [Petitioner] failed to demonstrate that introduction of Dr. White’s findings into evidence . . . would have produced a viable defense, the circuit court did not clearly err in failing to find counsel ineffective for not introducing Dr. White’s findings into evidence.” Pet. App. 8. The Court had earlier explained that “[b]ecause [Petitioner] is

arguing counsel were ineffective in failing to call a witness during the penalty phase, ‘a ‘viable defense’ is one in which there is a reasonable probability that the additional mitigating evidence those witnesses would have provided would have outweighed the aggravating evidence presented by the prosecutor resulting in the jury voting against the death penalty.” Pet. App. 6 (quoting *Deck v. State*, 381 S.W.3d 339, 346 (Mo. 2012)).

On June 30, 2020, the Court overruled Petitioner’s Motion for Rehearing. Pet. App. 17. The petition to this Court followed.

REASONS FOR DENYING THE PETITION

I. The Supreme Court of Missouri did not fail to assess the reasonableness of counsel’s decisions in its determination regarding the performance prong under *Strickland*.

“[This Court] established the legal principles that govern claims of ineffective assistance of counsel in *Strickland v. Washington*, 466 U.S. 668 (1984).” *Wiggins v. Smith*, 539 U.S. 510, 521 (2003). “When a convicted defendant complains of the ineffectiveness of counsel’s assistance, the defendant must show that counsel’s representation fell below an objective standard of reasonableness.” *Strickland*, 466 U.S. at 687-88. “Judicial scrutiny of counsel’s performance must be highly deferential.” *Id.* at 689. “[A] court must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action ‘might be considered sound trial strategy.’” *Id.* (quoting *Michel v.*

Louisiana, 350 U.S. 91, 101 (1955)).

Here, the Supreme Court of Missouri properly applied the *Strickland* standard. Before addressing Petitioner’s individual claims, the Court’s opinion expressly stated, “To obtain postconviction relief on the basis of ineffective assistance of counsel, a movant must satisfy the two-prong *Strickland* standard[,]” and it included a citation to *Strickland*. Pet. App. 2. The opinion further stated that “[a] movant must first demonstrate that counsel’s performance was deficient” and that “[p]erformance is deficient if it fails to rise to the level of skill and diligence that would be demonstrated by a reasonably competent attorney under similar circumstances.” *Id.* The circuit court similarly identified *Strickland* as the controlling standard, and it expressly recognized that “[t]rial strategy decisions may . . . serve as a basis for ineffective counsel if they are unreasonable.” Pet. App. 26.

Petitioner nevertheless asserts that the Supreme Court of Missouri “applied an incorrect *Strickland* standard” “by deferring to counsel’s defense strategy without engaging in an inquiry into the reasonableness of each tactical decision.” Pet. 13. But contrary to Petitioner’s assertion, the Court’s opinion is entirely consistent with *Strickland*, and the Court did, in fact, assess the reasonableness of counsel’s decisions.

Petitioner primarily relies on the Court’s denial of the claim regarding trial counsel’s alleged failure to impeach Co-Defendant during the guilt phase with his own postconviction motion, in which he inconsistently claimed that he was not present when Victim was shot. Pet. 14. Petitioner cites the Court’s statement that

“[i]t is presumed that counsel’s decision not to impeach a witness is a matter of trial strategy” and argues that “[i]mplicit in this standard is the court’s over-deference to counsel’s deliberately made decisions without examining their reasonableness.” Pet. 14; Pet. App. 3.

But deferring to counsel’s decisions and presuming that counsel’s conduct constituted sound trial strategy is precisely what this Court prescribed in *Strickland*. “Judicial scrutiny of counsel’s performance must be highly deferential.” *Strickland*, 466 U.S. at 689. “Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action “might be considered sound trial strategy.” *Id.* The Missouri Supreme Court’s opinion is exactly in line with these principles.

Moreover, Petitioner ignores the next paragraph of the Missouri Supreme Court’s opinion, in which the Court examined the reasonableness of counsel’s presumptively strategic decision. Pet. App. 3. The opinion expressly stated, “Further, as the circuit court found, it was *reasonable* for counsel not to question Codefendant about the motion, as the motion’s substance did not support the defense’s strategy.” *Id.* (emphasis added). The opinion explained that “[t]he defense sought to prove [Petitioner’s] innocence through evidence that Codefendant and his brother killed Victim” and that presenting Co-Defendant’s statement that he was not present when Victim was shot “would be inconsistent with the defense’s position.” *Id.* This followed

the Court's earlier finding that it was "reasonable" for counsel to decide to call Co-Defendant as a witness in order to elicit his statements that his brother—and not Petitioner—was the second shooter, as well as "other helpful statements." *Id.* The Court concluded that "[b]ecause [Petitioner] has failed to overcome the presumption that counsel's decision not to impeach Codefendant was *reasonable* trial strategy, the circuit court did not clearly err in denying this claim." Pet. App. 4 (emphasis added).

Similarly, as to the other claim cited by Petitioner, the Court found that "[t]he circuit court did not clearly err in finding counsel used *reasonable* trial strategy in deciding not to present evidence [during the penalty phase] of Codefendant's affidavit[,"] in which Co-Defendant indicated that he and his brother—and not Petitioner—had committed the assaults for which Petitioner had been previously convicted. Pet. 14; Pet. App. 10 (emphasis added). In support, the Court cited counsel's concern that "the jury would view this evidence unfavorably, as the jury heard and rejected similar evidence during the guilt phase" and that it might provoke the State into presenting "even more prejudicial and inflammatory evidence to support the [prior assault] convictions." Pet. App. 10.

By identifying *Strickland* as the controlling standard, examining the specific reasons underlying counsel's decisions within the context of the proceedings, and expressly finding that counsel's decisions were reasonable, the Supreme Court of Missouri demonstrated in its opinion that it did not simply defer to counsel's decisions because they were strategic, but rather that it properly assessed the reasonableness of counsel's performance. Therefore, the Supreme Court of Missouri did not decide an

important federal question in a way that conflicts with the relevant decisions of this Court, and this Court should deny the petition for review.

II. The Supreme Court of Missouri properly considered whether there was a reasonable probability that the result of the proceeding would have been different in its determination of prejudice under *Strickland*.

“The defendant must show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Strickland*, 466 U.S. at 694; *see also Andrus v. Texas*, 140 S.Ct. 1875, 1881 (2020). Accordingly, for a claim of ineffective assistance of counsel during the penalty phase, “[the defendant] must show that but for his counsel’s deficiency, there is a reasonable probability he would have received a different sentence.” *Porter v. McCollum*, 558 U.S. 30, 41 (2009); *see also Wiggins*, 539 U.S. at 536 (holding that “had the jury been confronted with this considerable mitigating evidence, there is a reasonable probability that it would have returned with a different sentence”); *Andrus*, 140 S.Ct. 1885-86 (“Here, prejudice exists if there is a reasonable probability that, but for his counsel’s ineffectiveness, the jury would have made a different judgment about whether [the defendant] deserved the death penalty as opposed to a lesser sentence.”). “In assessing prejudice, we reweigh the evidence in aggravation against the totality of available mitigating evidence.” *Wiggins*, 539 U.S. at 534.

Again, contrary to Petitioner’s claim, the Supreme Court of Missouri clearly applied the proper standard under *Strickland* in determining whether Petitioner was prejudiced by counsel’s alleged ineffective assistance. Before addressing Petitioner’s

individual claims, the Court observed that “[t]o obtain postconviction relief on the basis of ineffective assistance of counsel, a movant must satisfy the two-prong *Strickland* standard,” and it included a citation to *Strickland*. Pet. App. 2. After outlining the performance prong, the Court stated that “[a] movant must then prove he was prejudiced by counsel’s deficient performance.” *Id.* The Court then defined “prejudice” using language identical to *Strickland*’s: “Prejudice occurs when ‘there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.’” *Id.* (internal citation omitted). *See Strickland*, 466 U.S. at 694. Finally, the Court stated, “In death penalty cases, ‘a defendant must show with reasonable probability that the jury, balancing all the circumstances, would not have awarded the death penalty.’” Pet. App. 2 (internal citation omitted). This language is consistent with the proper standard as recently restated by this Court in *Andrus*. *See Andrus*, 140 S.Ct. at 1885-86.

A. Viable Defense

Petitioner nevertheless claims that “[t]he Missouri Supreme Court’s interpretation of the prejudice prong in this case conflicts with the objective reasonable-probability test mandated by” this Court’s precedents. Pet. 17-18. Specifically, Petitioner finds fault with the Court’s reference to the requirement of a “viable defense.” Pet. 18. Petitioner claims that “[t]he Missouri Supreme Court’s ‘viable defense’ requirement first misrepresents *Strickland* by unduly disregarding potentially mitigating evidence” and “its effect on the entirety of the evidence.” Pet. 18-19.

The Supreme Court of Missouri used the term “viable defense” in its analysis of ineffective-assistance claims for failure to call a witness. Pet. App. 6. *See Deck*, 381 S.W.3d at 346 (“To prevail on a claim of ineffective assistance of counsel for failure to call a witness, a defendant must show that: (1) counsel knew or should have known of the existence of the witness; (2) the witness could be located through reasonable investigation; (3) the witness would testify; and (4) the witness’s testimony would have produced a viable defense.”). In finding that Petitioner had failed to demonstrate prejudice for such claims, the Court defined a “viable defense” as “one in which there is a reasonable probability that the additional mitigating evidence those witnesses would have provided would have outweighed the aggravating evidence presented by the prosecutor resulting in the jury voting against the death penalty.” Pet. App. 6 (citing *Deck*, 381 S.W.3d at 346). Consistently, in finding that Petitioner had failed to establish that a particular witness’s testimony would have produced a viable defense, the Court also explicitly stated that “the circuit court did not clearly err in determining there was not a reasonable probability that [Petitioner] would not have received a death sentence had she testified.” Pet. App. 6. Thus, despite the Court’s use of the term “viable defense,” it did not utilize a materially different standard of prejudice than the one mandated under *Strickland*.

B. Refusal to Speculate

Nor did the Supreme Court of Missouri simply refuse to “speculate” on the potential impact of the additional mitigating testimony, such as Dr. White’s, as Petitioner claims. Pet. 20-21. In *Sears v. Upton*, 561 U.S. 945, 946 (2010), this Court

vacated and remanded for further proceedings because the state postconviction court improperly determined that “it could not speculate as to what the effect of additional evidence would have been” before denying postconviction relief. Petitioner identifies no such determination by the Missouri Court here. Pet. 20-21. Indeed, in finding that Petitioner had failed to demonstrate that Dr. White’s evidence would have produced a viable defense, the Court found that “Dr. White’s testimony would have further supported the defense’s mitigation theory,” but that “[b]ecause the defense presented ample evidence of the Pine Lawn culture and its effects on [Petitioner’s] childhood and development—including testimony by another expert, Dr. Draper—additional expert testimony on this topic would have been of limited assistance.” Pet App. 7-8. Thus, the Court did not abdicate its responsibility to determine whether Petitioner was prejudiced, but in fact weighed the impact of the additional mitigating evidence and determined that it “would have been of limited assistance” in achieving a different result, in light of the “ample evidence” of a similar nature presented at trial. Pet App. 7.

C. One Juror

Petitioner also claims that the Court’s alleged “requirement of the entire jury as opposed to ‘at least one juror’ overburdens a defendant’s task.” Pet. 19. *See Wiggins*, 539 U.S. at 537 (holding that “there is a reasonable probability that at least one juror would have struck a different balance”). But the Court’s reference in this case to “the jury” rather than “at least one juror” did not demonstrate that it failed to apply the proper prejudice standard under *Strickland*. This Court has regularly referred

generally to “the jury” in its analyses of prejudice. *See Williams v. Taylor*, 529 U.S. 362, 398 (2000); *Rompilla v. Beard*, 545 U.S. 374, 393 (2005); *Andrus*, 140 S.Ct. at 1885-86. Indeed, even in *Wiggins*, on which Petitioner relies, this Court held that “had *the jury* been confronted with this considerable mitigating evidence, there is a reasonable probability that *it* would have returned with a different sentence[,]”—a standard materially indistinguishable from that stated here by the Missouri Court. Pet. 19; Pet. App. 6. *Wiggins*, 539 U.S. at 536 (emphasis added). Moreover, in Missouri, unlike in *Wiggins*, had only one juror weighed the evidence differently and the jury been unable to agree upon the punishment, it would have been for the trial court to determine the appropriate punishment, which may or may not have resulted in a different outcome. *See Mo. Rev. Stat. § 565.030.4; State v. Wood*, 580 S.W.3d 566, 582-88 (Mo. 2019), *cert. denied*, 140 S.Ct. 2670 (2020); *Wiggins*, 539 U.S. at 537. In considering whether there was a reasonable probability of “the jury voting against the death penalty,” the Supreme Court of Missouri focused on the outcome of the proceeding, as required under the “proper prejudice standard.” Pet. App. 6. *Sears*, 561 U.S. at 952 n.8; *see also Porter*, 558 U.S. at 40-42; *Strickland*, 466 U.S. at 694.

D. Nexus Requirement

“[T]he Eighth and Fourteenth Amendments require that the sentencer, in all but the rarest kind of capital case, not be precluded from considering, *as a mitigating factor*, any aspect of a defendant’s character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death.” *Lockett v. Ohio*, 438 U.S. 586, 604 (1978) (emphasis in original); *see also Eddings v.*

Oklahoma, 455 U.S. 104, 112 (1982) (“[T]he sentencer in capital cases must be permitted to consider any relevant mitigating factor . . .”). Further, “it is not enough simply to allow the defendant to present mitigating evidence to the sentencer. The sentencer must also be able to consider and give effect to that evidence in imposing sentence.” *Tennard v. Dretke*, 542 U.S. 274, 278 (2004) (quoting *Penry v. Lynaugh*, 492 U.S. 302, 319 (1989)). Accordingly, the sentencer and the appellate court on review “may not give [relevant mitigating evidence] no weight by excluding such evidence from their consideration.” *Eddings*, 455 U.S. at 115. But “[they] may determine the weight to be given,” and “[i]n some cases, such evidence properly may be given little weight.” *Id.* at 114-15. “[This Court] do[es] not weigh the evidence for them.” *Id.* at 117.

Petitioner claims that the Supreme Court of Missouri “create[d] an unconstitutional nexus requirement by which mitigation evidence must be directly related to the charged crime before its exclusion by trial counsel could be considered [ineffective assistance of counsel].” Pet. 22-23. But the Court did not categorically refuse to give any weight to the additional mitigation evidence on the basis of an alleged nexus requirement. Indeed, the Court explicitly found that “Dr. White’s testimony would have further supported the defense’s mitigation theory.” Pet. App. 7. While the Court noted that “Dr. White was unable to opine how growing up in Pine Lawn actually impacted [Petitioner’s] decision to murder [the victim],” this was merely a proper exercise of the Court’s duty to evaluate the relative weight of the evidence. *See Eddings*, 455 U.S. 114-15; *Sears*, 561 U.S. at 956 (holding that the court

is “necessarily require[d] . . . to ‘speculate’ as to the effect of the new evidence”). The Court did not state, as Petitioner argues, that a nexus between the mitigation evidence and the crime committed was required in order for it to find a reasonable probability that the result would have been different. Pet. 21; Pet. App. 7. Instead, the Court ultimately determined that Dr. White’s testimony “would have been of limited assistance” because “ample evidence of the Pine Lawn culture and its effects on [Petitioner’s] childhood and development” was already presented during the penalty phase. Pet. App. 7. The Court therefore properly considered the potential weight of the additional mitigating evidence in determining whether Petitioner was prejudiced. Because the Supreme Court of Missouri did not decide an important federal question in a way that conflicts with relevant decisions of this Court, the petition for review should be denied.

CONCLUSION

The Court should deny the petition for writ of certiorari.

Respectfully submitted,

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