DOCKET NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2020

RONALD KNIGHT,
Petitioner,

vs.

SECRETARY,
Florida Department of Corrections, et al.,

Respondents.

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

LINDA McDERMOTT
Fla. Bar No. 0102857
Chief Assistant – Capital Habeas Unit
Office of the Federal Defender
Northern District of Florida
227 N. Bronough St.
Tallahassee, FL 32301
(850) 322-2172
linda_mcdermott@fd.org

COUNSEL FOR PETITIONER

QUESTIONS PRESENTED

1. Whether trial counsel has an obligation to conduct a comprehensive mitigation investigation when clear red flags suggest compelling mitigation, including physical, sexual, and emotional abuse, neglect, addiction, and mental health problems?

2. Whether a capital petitioner must demonstrate *new* mitigating factors in postconviction proceedings in order to establish prejudice under *Strickland v. Washington*, 466 U.S. 668 (1984), or can compelling statutory and non-statutory mitigating evidence that strengthens, corroborates and confirms evidence presented at a capital penalty phase and impacts the sentencing calculus establish prejudice?

3. Whether the strengthening of mental health evidence due to increased precision of a diagnosis in postconviction that decreases the weight of the aggravating circumstances while increasing the weight of mitigating factors must be considered in the *Strickland* prejudice analysis?

4. Whether the Eleventh Circuit misapplied the standard for a certificate of appealability by disregarding judicial disagreement on the retroactivity of *Hurst v. Florida*, 136 S.Ct. 616 (2016), and/or by addressing the substance of the claim?

NOTICE OF RELATED CASES

Per Supreme Court Rule 14.1 (b)(iii), the following cases relate to this petition:

Underlying Trial:
Circuit Court of Palm Beach County, Florida
State of Florida v. Ronald Knight, Case No. 97-5175CF A02
Judgement Entered May 29, 1998

Appellate Proceedings:
Florida Supreme Court (Case No. 93,473)
Knight v. State, 770 So. 2d 663 (Fla. 2000)
Conviction and Sentence Affirmed: November 2, 2000

Petition for Writ of Certiorari:
United States Supreme Court
Knight v. Florida, 532 U.S. 1011 (2001)
Certiorari Denied: April 30, 2001

Initial Postconviction Proceedings:
Circuit Court of Palm Beach County, Florida
State of Florida v. Ronald Knight, Case No. 97-5175CF A02
Judgement Entered February 5, 2013 (denying motion)

Appellate Proceedings:
Florida Supreme Court (Case No. SC13-820)
Knight v. State, 211 So. 3d 663 (Fla. 2016)
Affirmed: December 15, 2016

Petition for Writ of Habeas Corpus:
Florida Supreme Court (Case No. SC14-567)
Knight v. State, 211 So. 3d 663 (Fla. 2016)
Denied: December 15, 2016

Successive Petition for Writ of Habeas Corpus:
Florida Supreme Court (Case No. SC17-2021)
Knight v. Jones, 2018 WL 580765 (Fla.)
Denied January 29, 2018

Appellate Proceedings:
Eleventh Circuit Court of Appeals (Case. No. 18-12488-P)
Knight v. Sec'y, Fla. Dept. of Corrs., 958 F. 3d 1035 (11th 2020)
Affirmed May 1, 2020

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Petitioner, **Ronald Knight** is a condemned prisoner in the State of Florida. Petitioner urges this Honorable Court to issue its writ of certiorari to review the decision of the Eleventh Circuit Court of Appeals.

CITATION TO OPINIONS BELOW

The Eleventh Circuit's decision appears as *Knight v. Sec'y, Fla. Dept. of Corrs.*, 958 F. 3d 1035 (11th Cir. 2020), and is Attachment A. The Eleventh Circuit's order denying panel and en banc rehearing is Attachment B, and the order on Knight's application for a certificate of appealability is Attachment C. The district court's order denying relief is Attachment D. The Florida Supreme Court's opinion affirming the denial of postconviction relief is attachment E.

STATEMENT OF JURISDICTION

Petitioner invokes this Court's jurisdiction to grant the Petition for Writ of Certiorari to the Eleventh Circuit Court of Appeals on the basis of 28 U.S.C. § 1254(1). The Eleventh Circuit entered its opinion on May 1, 2020. Rehearing was denied on August 20, 2020.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the Constitution of the United States provides in relevant part:

> No persons … shall … be deprived of life, liberty or property, without due process of law.

The Sixth Amendment to the Constitution of the United States provides in relevant part:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district . . . and to have the assistance of counsel for his defence.

PROCEDURAL HISTORY[1]

In 1994, Ronald Knight was charged with second-degree murder for the death of Richard Kunkel; however, the charge was nolle prossed on January 3, 1995. PCR 2304.

In a separate case, Knight was convicted for the murder of Brendan Meehan and sentenced to life in prison in 1995. R 427.

The charge for Kunkel's murder was re-filed, and a grand jury indicted Knight on May 7, 1998 for first-degree murder, armed robbery, burglary, and grand theft auto. R 2–4. Ann Perry was appointed as lead counsel and Jose Sosa as second chair. R 53, 73. Both attorneys were later discharged and Knight proceeded pro se. R 28–30. However, Sosa remained as standby counsel for the guilt phase, R 28–30, and returned as counsel during the sentencing phase. T 378. Knight purportedly waived his right to a jury for the guilt and penalty phases. R. 338, T 369–70.

Knight was found guilty on March 16, 1998. T 366–67. On May 29, 1998, he was sentenced to death. T 577–88. The Florida Supreme Court affirmed the convictions and death sentence on November 2, 2000, *Knight v. State*, 770 So. 2d 663 (Fla. 2000), and this Court denied his petition for certiorari. *Knight v. Florida*, 532 U.S. 1011 (2001).

Knight filed a motion for postconviction relief on September 27, 2001. SPCR 1–25. After an evidentiary hearing, the circuit court denied relief on February 5, 2013. PCR 3084–3445. The Florida Supreme Court affirmed on December 15, 2016. *Knight v. State*, 211 So. 3d 1 (Fla. 2016). Knight's state habeas petition was denied in the same opinion. *Id.*

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[1] Citations in this petition are as follows: References to the record on direct appeal are designated as "R __." References to the trial transcript are designated as "T __." References to the postconviction record on appeal are designated as "PCR __." References to the supplemental postconviction record on appeal are designated as "SPCR __." References to transcripts of the postconviction proceedings are designated as "PCRT __." All other references are self-explanatory or otherwise explained.

On October 16, 2017, Knight filed a federal habeas petition before the United States District Court, Southern District of Florida. The district court denied Knight's petition on April 6, 2018. Knight filed a notice of appeal. On March 20, 2019, the Eleventh Circuit granted a certificate of appealability (COA), as to Knight's ineffective assistance of counsel claim but denied the COA as to all other issues, including the retroactive application of *Hurst v. Florida*, 136 S. Ct. 616 (2016) to Knight's case. After briefing and oral argument, the Eleventh Circuit affirmed. *Knight v. Sec'y, Fla. Dep't Corrs.*, 958 F.3d 1035 (11th Cir. 2020). Knight filed a petition for rehearing, which was subsequently denied on August 20, 2020.

FACTS RELEVANT TO THE QUESTIONS PRESENTED

I. Penalty Phase Proceedings

Following his conviction on March 16, 1998, Knight indicated his intention to waive his right to a jury for the penalty phase and to proceed pro se with Jose Sosa serving as standby counsel. T 369–70. When the sentencing hearing commenced approximately one month later on April 15, 1998, Sosa informed the court that, after further discussion, he and Knight agreed Sosa would represent Knight at sentencing. T 376-77. Rather than ask for a continuance, Sosa agreed to move forward with the sentencing hearing on the same day. T 377. Sosa explained to the court:

> We were before the Court three weeks ago or so. Mr. Knight informed the Court that he was going to do Phase II. We discussed it and he agreed that I can do it. I came in, he said fine. Since that, I've had a couple of experts appointed and basically prepared. We are ready to proceed.
>
> What I would like is, I was handed a couple of cases by the State and a couple of preliminary things that I'd like to review, five or ten minutes at the most, so that I can at least argue them and dispose of them; otherwise, we are ready to go.

T 377. When asked if there were any additional formalities to address, Sosa replied: "No, other than my request for five or ten minutes to put the case together." T 380.

After brief opening statements, the State called Detective John Van Houten, who provided testimony regarding Knight's prior conviction for the first-degree murder of Brendan Meehan. T 389–404. The State rested, and Sosa presented the testimony of Knight's mother, Karen Gerheiser. T 405.

Gerheiser testified that Knight has three brothers and sisters, with whom he got along well. T 406, 408. Knight was approximately eight years old when his mother and father separated. T 409. Knight was "devastated" when the separation became permanent and Knight's father took Knight's older brother to live with him, leaving Knight with his mother. T 412–15.

Prior to the divorce, Knight got good grades in school and had near perfect attendance. T 407, 419. Within a couple of years of the divorce, his academic performance "start[ed] deteriorating drastically,". T 417–18. Knight began getting into trouble as well and was sent to a residential boot camp, Sabal Palm, where his grades improved somewhat. T 421–22. After Sabal Palm, Knight lived with his father for a few months before his father said there was "too much damage for him to reverse" and sent him back to his mother. T 425.

Around that time, Knight became involved in drugs, for which he briefly entered a treatment program. T 433–34. He also received HRS referrals for skipping school and robbing houses. T 426–27. Knight's mother testified that she had very little control of him. T 428. By the time Knight was fourteen years old, he was rarely staying at his mother's home. T 428–29. He would be gone for weeks at a time, instead "staying in the woods" or with friends. T 428–29.

Knight was next sent to Eckerd Youth Development Center in Okeechobee. T 430. Gerheiser testified that Knight seemed to do well at Eckerd. T 431. She also testified that he underwent emergency surgery for a groin injury that occurred at Eckerd. T 432.

Theresa Scott, Knight's older sister, testified to their generally happy childhood. T 449. She explained that the siblings got along well, and while their parents could have been more affectionate, they did not neglect her or Knight. T 455. Scott confirmed that Knight began running away from home in his early teenaged years. T 453. She explained that their mother did her best while their "father couldn't cope with Ronnie." T 454.

A licensed mental health counselor, Susan Lafehr-Hession, testified that she was initially hired by attorney Greg Lerman in 1995 to administer diagnostic tests to Knight in preparation for the Meehan case. T 468. Sosa first contacted her for the present case about three weeks prior to her testimony. T 473.

Pursuant to the diagnostic tests she administered in 1995, Lafehr-Hession testified that Knight was a "disturbed paranoid person." T 474. She described his condition as "a very pervasive all-inclusive mental illness, very severe, very debilitating, does not change, does not get better except when the person is in a highly structured setting." T 475. She explained that his psychological condition existed separate from his purportedly stable childhood. T 477–78. In her opinion, as a result of his paranoid disorder, it would have been difficult for Knight to conform his actions to the requirements of the law. T 479. She also believed Knight's mental health had improved within the structured environment of prison but that there is no treatment. T 483.

On cross examination, Lafehr-Hession testified that he did not meet the criteria for legal insanity and had the capacity to carefully plan a crime. T 480. However, she also testified that he likely would not have had the capacity to make free, willful choices. T 480. She also conjectured that homosexuals were the focus of Knight's paranoid delusions, possibly related to the incident at Eckerd because of which Knight's testicle was amputated as a teenager. T 491, 486.

Dr. Abbey Strauss, a board-certified psychologist, also provided testimony based on his 1995 assessment prepared for the Meehan case. Strauss was contacted by Sosa to testify in the sentencing hearing just "a week and a half [prior], maybe two weeks [prior] at most." T 496. Given the timeframe, Strauss did not interview any of Knight's family or friends or witnesses in the case. T 507–08. He also testified that he did not review Knight's prison records to prepare his findings, but "perhaps if [they] had weeks and weeks to really prepare, [he] would have attempted to do that." T 519.

Strauss testified that, in 1995, he "had a very strong suspicion that there was an undercurrent of a paranoid disorder." T 497. In his opinion, Knight was suffering from a mental or emotional disturbance at the time of the offense. T 499, 508. Similarly, Strauss noted that Knight was very distrustful and had limited ability to understand the consequences of his actions. T 501. Strauss testified that Knight was a troubled child, had received a "slap in the face" from his family, and had experienced a number of events as an adolescent that negatively impacted him. T 503, 506.

After closing arguments, Knight's older brother, Michael Knight, testified that they had a normal childhood. He also testified that his brother rarely started confrontations. T 565–68, 571.

During his closing argument, Sosa emphasized Knight's parents' divorce and its subsequent effect on Knight. T 536–37, 542–43. He argued for the application of three statutory mitigating factors: victim participation, lack of capacity to appreciate the criminality of his actions or to conform his conduct to the requirements of the law, and extreme mental or emotional disturbance. T 540–41, 545–46. Sosa also presented a handful of non-statutory mitigating factors, including Knight's broken home and unstable childhood, the support and love of his family, the

disparate treatment of his co-defendants, and his ability to conduct himself properly in a structure environment like prison. T 547–51. Sosa challenged the aggravating factors of pecuniary gain, arguing it was not proven solely by the fact that there was also a robbery committed, and the cold, calculated, and premeditated aggravator because there was no heightened premeditation involved to support it. T 539, 551–52.

The trial judge sentenced Knight to death on May 29, 1998. T 588. Regarding statutory aggravating factors, the court found that Knight had been previously convicted of another capital felony – the Meehan homicide, that the crime was committed for pecuniary gain, and that the crime was committed in a cold, calculated, and premeditated manner. T 579–83. Despite finding that there was no evidence that Knight was under the influence of stress or emotional disturbance at the time of the offense, the court gave that mitigating factor "considerable weight." T 583–84. The court also found that Knight's capacity to appreciate the criminality of his conduct and conform his actions to the requirements of the law was only "somewhat impaired." T 584–85. The non-statutory mitigating factors were each given little weight. T 585–87.

II. Postconviction Proceedings

The mitigation presented during the postconviction evidentiary hearing was quantitatively and qualitatively different than the mitigation Sosa presented at trial.

Strauss was called to elaborate on his previous testimony in 1998. He explained that he was not able to diagnose Knight when he testified originally because he lacked sufficient information to form a diagnosis:

> Well, I really felt that I didn't have enough information. Clearly there was a strong sense of paranoia. . . . People tend to drop the personality disorder diagnoses far too freely, and it needs really to be looked at in great depth. So had I had more opportunity back then to speak to his mother, his sister, his girlfriends, people at

> Eckerd, and a whole bunch of other people, I may have had enough data to come to it.

PCRT 811–12. In preparation for the postconviction proceedings, Strauss was provided with background materials, including the probable cause affidavit, a sworn statement of co-defendant Dain Brennalt dated June 1, 1995, the transcript of Brennalt's guilt phase testimony, the medical examiner's report, the probable cause affidavit and other documents from the Meehan case, a social history by Gregory Otto, documents from the Department of Children's and Family Services, and prior penalty phase testimony. PCRT 783–87. He also reviewed and considered the affidavit of Keith Williams. PCRT 789. Additionally, he spoke with Drs. Lipman and Harvey, postconviction experts, and reviewed their depositions. PCRT 796, 804.

Strauss' review of these materials not only confirmed but also strengthened his original assessment that Knight exhibited "an undercurrent of a paranoid disorder." PCRT 802, 809. In fact, he testified that there was no question that Knight "had a major mental disorder." PCRT 847. He also posited that Knight may have been suffering from post-traumatic stress due to past violence. PCRT 845. Strauss further testified that if Knight was suffering from a substance abuse problem, as suggested by Lipman, that fact would "add[] to the diagnostic certainty, and certainly increases the strength or the credibility of the hypothesis that [he] proposed back then, that there's some paranoia, and the drug use could add to it." PCRT 810–11.

Elaborating further on the effects of paranoid disorder, Strauss testified that Knight's behavior demonstrated grandiose thinking or "the inability to think about the real ramifications of one's behavior." PCRT 813. Individuals suffering from paranoid disorder also often act impulsively when "challenged or attacked." PCRT 817. Additionally, individuals suffering from a paranoid disorder tend to be very distrustful and suspicious of others. These individuals "can act

socially properly a lot of times in what appears to be in an okay way, until they're under a particular stress, or there's something that actually triggers them, and then they lose control." PCRT 814.

Regarding Knight's ability to conform his conduct to the requirements of the law, Strauss testified that Knight "has suffered from all sorts of psychiatric, psychological problems for years", and was "clearly" impaired. PCRT 816. Furthermore, Strauss testified that if Knight was using drugs at the time of the crimes, "then that can be a very serious – what's the word to use – mitigator in controlling his behavior." PCRT 817.

One of the materials reviewed by Strauss was a social history prepared by Gregory Otto for the Meehan case. The report described Knight's drug use, beginning with marijuana around eight years old and crack cocaine at seventeen. PCR Vol 20 252-56. The social history also mentioned that Knight sometimes slept in the woods as a child. *Id.* In reviewing Knight's academic and residential history, the report also focused on Knight's time at Eckerd Youth Camp, where Knight was placed from ages fifteen to seventeen. *Id.* According to Knight, his life began to change dramatically at Eckerd and he often had to fight to protect himself. *Id.* Knight stated that "[y]ou had to watch yourself or they'd take you in the broom closet." *Id.* The report also mentioned that Knight made two friends at Eckerd: Wendell Cox and Keith Williams. *Id.*

During the postconviction hearing, collateral counsel proffered an affidavit written and signed by Keith Williams, one of Knight's friends at Eckerd. PCRT 902–04.[2] The affidavit stated:

[2] Although Strauss relied on Williams' affidavit in forming his opinion and described it as consistent with other evidence, the court sustained the State's hearsay objection to the affidavit's admission into evidence (PCRT. 828–29). In addition to proffering the contents of the affidavit, counsel proffered the testimony of Katt McNish, collateral counsel's investigator, describing that she obtained the affidavit from Keith Williams while he was incarcerated. PCRT 1642–45.

> I met Ronald Knight at Eckerd, in Lee Cottage, where we lived together. We lived with at least 80 boys and only one staff member watched us. We were juniors. I first met Knight in Lee Cottage when he was being raped in the bathroom. Knight was being forced to give oral sex to another boy in a stall. There were two other boys watching him. Knight was smaller than all the rest of the kids. The bigger boys would muscle him around, all of his shoes, cigarettes and commissary. Knight would get beat up all the time, at least once a day. Sometimes the counselors would make him fight others on the basketball court one on one. When the staff wasn't around three or four boys would gang up on him. Knight stayed with black eyes, busted nose, and busted lips all the time.
>
> I remember that Knight would get raped at least twice a week, and beat up just about every day by the counselor or the other boys. The counselors would say they were toughening us up, and would call Knight a punk, sissy, and faggot.
>
> The shower was one of the most popular places to rape Knight because the staff never went in there. When eight or ten boys were showering, the boys would get him, and force themselves on him. Knight would sometimes try to fight back, but he couldn't, and he would cry.
>
> One night. Three or four boys took him into a closet in the sleep area, and shoved a broom or mop handle up his butt. Knight bled, and the infirmary came to get him…Juan, a well-known rapist who was a big gay guy on the sevens side, got Knight. Someone tricked Knight to go to the pool bathroom, and the guy made Knight do him, and made Knight let him do Knight.
>
> Knight would get sent to the unit, (solitary confinement) where he would stay 30 days or more. I would see him when he came out in his cage, and I would sneak him cigarettes. Knight would cry because the counsellors hit him, or wet him all up and his bedding [].
>
> I was his friend, and got beat [up] sometimes myself for Knight, because I was helping him. I was always helping and trying to protect him. I used to teach Knight how to box so he could defend himself.

PCRT 902–04. Prior to the hearing, Strauss considered the social history from Otto and the affidavit from Williams, which supported his opinions regarding Knight's psychological state at the time of the offense. PCRT 822, 828–29.

Zebedee Fennell, a former employee at the Florida School for Boys and the Eckerd Youth Development Center, testified to conditions of overcrowding at Eckerd. PCRT 925–26. On proffer, he further testified that the Florida School for Boys came under the control of Eckerd following the *Bobby M.* lawsuit in 1982. PCRT 936. That lawsuit found overcrowding, a low staff-to-student

ratio, and incidents of violence—including allegations that kids were beaten and hogtied in the adjustment unit. PCRT 937–38, 944. He described the adjustment unit as similar to a jail, with cells, blocks, a commode, and a steel door with a flap for food. PCRT 944. The Williams affidavit suggested that Knight spent thirty or more days in this unit. PCRT 904. According to Fennell, the transition away from the conditions of the *Bobby M.* lawsuit began in 1982 but took between seven and ten years to complete. PCRT 938–39, 941.

Knight's sister, Theresa Scott Fowler, testified in the postconviction hearing to add context to her 1998 testimony. PCRT 979. Fowler explained that their parents provided little attention or structure for the children after the divorce. PCRT 952. Their mother continued to date and remarried twice. PCRT 954. At least one of the men, their mother's third husband, acted inappropriately with Knight's younger sister. PCRT 954. When Knight was about eleven or twelve years old, his mother moved in with her boyfriend Dennis, but Knight was not allowed to live with them. PCRT 956–57. Dennis had threatened to beat Knight if he was caught inside their home. PCRT 959. Effectively forced out of his own home, Knight lived in tree houses or with friends during this time. PCRT 956. Fowler testified that her mother cared more about living with Dennis than for her children: "There was no love, there was no respect, there was no parenting skills at all." PCRT 959. Their father was similarly uninvolved in Knight's life. PCRT 960.

Knight's childhood friend and a co-defendant in the case, Timothy Pearson, provided testimony about his and Knight's extensive drug use. PCRT 986–90.[3] They first tried marijuana at age nine. PCRT 987. As teenagers, they began drinking as well as using cocaine, acid, and

[3] Although Pearson was a co-defendant, he accepted a plea agreement before the sentencing hearing for Knight's case began. PCRT 1004–05. Since Pearson had yet to be sentenced, his attorney advised him not to discuss the facts of the crime but did not indicate that Pearson should decline to testify about Knight's drug or alcohol use. PCRT 1008.

mushrooms. PCRT 989. Knight used both powder and crack cocaine. PCRT 989. Even as a teenager, Knight would sometimes use powder cocaine on a daily basis. PCRT 990. When Knight returned from Eckerd, he and Pearson smoked anywhere from two joints to an ounce of marijuana daily. PCRT 991. In their later teenaged years, they would binge anywhere from an eight ball to a half ounce of cocaine over several days. PCRT 992.

Pearson added that he and Knight were using drugs, including marijuana and cocaine, on a daily basis in the week before the offense. PCRT 992–93. They also "drank to get messed up," often consuming "five cases of beer and two gallons [of] liquor for one night." PCRT 992–93.

On proffer, Pearson also explained that Okeechobee Boys School[4] had a reputation for being a "gladiator school" where children were beaten and raped. PCRT 1008-09. Pearson was aware that Knight was in several fights and suffered a ruptured testicle while there but that Knight would not have admitted to anyone that he had been sexually molested. PCRT 1009–10.

Dain Brennalt testified that Knight was his friend as well as his mother's boyfriend in 1993. PCRT 1026. Knight moved in with the Brennalts about one year prior to the offense. PCRT 1031. During that time, Brennalt, Pearson, and Knight used marijuana, cocaine, and alcohol together regularly. PCRT 1032. They smoked marijuana daily and used powder cocaine between seven to twenty days out of a month. PCRT 1033. Brennalt testified that they used cocaine in the days immediately before the crime. PCRT 1038–39. On the day of the crime, they smoked marijuana and Knight and Pearson possibly had a beer or two. PCRT 1046.

Dr. Johnathan Lipman, a neuropharmacologist, testified regarding Knight's drug use prior to and during the crime. PCRT 1222, 1226. Lipman interviewed Knight in both 2006 and

[4] Okeechobee is also known as Eckerd Youth Development Center.

2012 to learn more about Knight's drug habits and the effect that drugs had on Knight. PCRT 1226, 1230. Lipman also spoke with Pearson in order to gain a fuller picture of Knight's drug use. PCRT 1230. Drug abusers are not always fully aware of the effects of the drugs on themselves, so collateral witnesses provide important details to more accurately assess drug use. PCRT 1230–31. Lipman testified that Knight's account and Pearson's account of Knight's drug use were consistent in some respects, but Knight had minimized the intensity and effects of his drug use in other respects. PCRT 1232. According to Pearson, Knight had been on a four-day-and-night binge at the time of the offense. PCRT 1254. Pearson also indicated that Knight experienced more symptoms resulting from the psychotoxicity of cocaine—such as illusions, hallucinations, delusional nuances, and punding—than Knight had been willing to admit. PCRT 1254.

During his interview with Knight, Lipman learned that Knight began abusing drugs around twelve or thirteen years old. PCRT 1249. He also ascertained that "snorted cocaine gave [Knight] the energy and the drive to go out and rob drug dealers" and that cocaine would keep him awake all night. PCRT 1242. These are common symptoms of cocaine use. PCRT 1242. Cocaine can also cause a range of paranoid symptoms, such as fear, grandiosity, and invulnerability. PCRT 1242–43.

Ultimately, Lipman concluded that Knight was "profoundly under the influence of cocaine plus alcohol at the time of the offense and leading up to up to it." PCRT 1255. When asked about Knight's ability to confirm his conduct to the requirements of the law, he replied that impulsivity can affect this ability, and "[c]ocaine plus alcohol rather massively increases impulsivity." PCRT 1257. Furthermore, Lipman explained:

> When [one] is more impulsive, when one's frontal lobe functions are inhibited by drugs…then the forces which prevent behavior, which conform us to social

> conventions, which prevents us from walking naked in the street, from doing things that we wouldn't ordinarily do, those forces can be eroded. That's called disinhibition and it tends towards the provocation of impulsivity.

PCRT 1260. Lipman further testified that, according to Pearson, Knight characteristically acted invulnerable when he was under the influence of cocaine, describing Knight "as reckless, without regard to consequences." PCRT 1250–59. This behavior falls on "the grandiosity end of the paranoid spectrum." PCRT 1259. And:

> . . . in this state, which includes psychotoxicity of the paranoid type, fearfulness that cocaine causes, and individuals who have an underlying paranoid diathesis such as has been diagnosed in him by a mental health counsellor, by the psychiatrist and others, those people are much more vulnerable than this rest of us to experiencing the adverse psychotoxic effects of cocaine.

PCRT 1255–56. Based on these conclusions, Lipman agreed that Knight suffered from a severe mental or emotional disturbance at the time of the offense. PCRT 1256.

Ann Perry testified that she was appointed as lead counsel for Knight's case on June 13, 1997. PCRT 1094. Jose Sosa was appointed as second chair and Perry directed him to handle Knight's penalty phase. PCRT 1133, 1177. Perry was discharged at Knight's request. PCRT 1104. Sosa remained on the case after her discharge.

Knight testified that he was unsatisfied with Sosa's representation. PCRT 1512, 1516–17. Prior to Knight's December 3, 1997 request that Sosa be discharged, Sosa indicated to Knight that Sosa no longer wanted to represent Knight and no longer could because of Sosa's other commitments. PCRT 1516-18. Upon Knight's request, Sosa was discharged, but remained as standby counsel. R 28–30. After Knight was convicted, Knight elected to bring Sosa back in as lead counsel to handle the sentencing phase, which began one month later. T 378.

REASONS FOR GRANTING THE WRIT

I. This Court Should Review Whether the Florida Supreme Court's Deficiency Analysis Is in Direct Conflict with the Precedent of This Court.

The Sixth Amendment of the Constitution guarantees criminal defendants the right to effective assistance of counsel. U.S. Const. amend. VI; see also *Strickland v. Washington*, 466 U.S. 668, 685–86 (1984). To demonstrate ineffectiveness, the petitioner must first "show that counsel's representation fell below an objective standard of reasonableness" measured under prevailing professional norms. *Id.* at 688. The Florida Supreme Court unreasonably applied this Court's clearly established law, as set forth in *Strickland* and its progeny, when it determined that Sosa's performance during the sentencing phase did not fall below the requirements of prevailing professional norms. *See* 28 U.S.C. § 2254(d)(1) (2018).

The American Bar Association (ABA) regularly publishes standards for capital defense representation, to which this Court has long "referred as 'guides to determining what is reasonable.'" *Wiggins v. Smith*, 539 U.S. 510, 524 (2003) (citing *Strickland*, 466 U.S. at 688; *Williams v. Taylor*, 529 U.S. 362, 396 (2000)). ABA Guideline 10.7(A) states that "[c]ounsel at every stage have an obligation to conduct thorough and independent investigations relating to the issues of both guilt and penalty." Am. Bar Ass'n, *Guidelines for the Appointment & Performance of Defense Counsel in Death Penalty Cases*, 31 Hofstra L. Rev. 913, 1015 (2003) [hereinafter *ABA Guidelines*].[5] The obligation remains even if the client has said mitigation

[5] Although Knight's sentencing hearing was held in 1998 and the ABA's *Guidelines* published in 2003, the Guidelines reflected norms already in place at the time of the sentencing proceeding. *See ABA Guidelines*, at 920 (clarifying that the *ABA Guidelines* "embody the current consensus about what is required to provide effective defense representation in capital cases" and do not reflect "aspirational" norms); *see also Wiggins v. Smith*, 539 U.S. at 524 (characterizing the 1989 *ABA Guidelines* as "well-defined norms" in a case tried that year). Thus, the *ABA Guidelines* codified existing norms in place before 2003. This is particularly true of Guideline 10.7, which is substantially similar to Guideline

evidence should not be collected or presented. *Id.*; *see also Porter v. McCollum*, 558 U.S. 30, 40 (2009) (client's lack of cooperation "does not obviate the need for defense counsel to conduct *some* sort of mitigation investigation.").

Here, Sosa failed to probe the most basic avenues of mitigation evidence. The barebones mitigating circumstances outlined during the sentencing phase indicate that Sosa had ample reason to investigate these circumstances further. From Knight's mother, Sosa knew that Knight had a drug abuse problem that began at a young age. T 433–34. Prevailing professional norms require practitioners to explore a capital defendant's drug and alcohol abuse, which was extensive in Knight's case. *ABA Guidelines*, at 1022; *Rompilla v. Beard*, 545 U.S. 374, 382 (2005) (potential history of alcohol dependence is a reasonable line of investigation); *Brownlee v. Haley*, 306 F. 3d 1043, 1070 (11th Cir. 2002) ("[W]e are compelled to conclude that counsel's failure to investigate, obtain, or present *any* mitigating evidence to the jury, let alone the powerful mitigating evidence of…drug and alcohol abuse, undermines our confidence in Brownlee's death sentence.")

Based on the testimony of Knight's mother, Sosa was also aware that, as a fourteen-year-old, Knight spent long periods of time living outside of the home, including living in the woods. T 428–29. Living alone in the woods should never be considered a normal aspect of one's childhood, and any reasonable capital defense attorney would have scrutinized this fact further. Had Sosa done so, he would have learned that Knight's mother's boyfriend told Knight he would be beat him if attempted to stay in the house while he was there. PCRT 956–59. The *ABA Guidelines* note that physical and emotional abuse are important mitigating factors to consider. *ABA*

11.4.1, published in 1989, nearly a decade before Knight's trial. *See 1989 Guideline 11.4.1*, Am. Bar Ass'n, https://www.americanbar.org/groups/committees/death_penalty_representation/resources/aba_guidelines/1989-guidelines/1989-guideline-11-4-1/ (last visited Jan. 4, 2021).

Guidelines, at 1022; *see also Wiggins,* 539 U.S. at 535, 537 (finding trial counsel ineffective for failing to investigate and present evidence of various types of abuse suffered by defendant).

From Knight's mother, his records, and the social history prepared by Gregory Otto for the Meehan case, Sosa knew that Knight had experienced routine violence and significant physical trauma during his time at Eckerd Youth Development Center, which resulted in the amputation of his testicle. T. 432; Vol. 20 252-56. Medical history, traumatic events, exposure to violence, and prior institutionalization are some of the most critical circumstances that must be investigated as part of capital defense work. *See ABA Guidelines*, at 1022, 1025; *Rompilla*, 545 U.S. at 382 (defendant's prior juvenile and adult incarcerations are reasonable lines of investigation); *Ferrell v. Hall*, 640 F. 3d 1199, 1233–34 (11th Cir. 2011) (trial counsel was ineffective for failing to investigate defendant's upbringing).

Based on the testimony of Susan Lafehr-Hession, a licensed mental health counselor, Sosa was aware that the traumatic loss of Knight's testicle could have played a role in his paranoid disorder and targeting of Kunkel, a gay man. T 486, 490-91. Had Sosa followed up on this information, it is probable that Sosa would have spoken with Keith Williams, whose affidavit was proffered during the postconviction proceeding, and learned that Knight was beaten and raped on a regular basis while at Eckerd. PCRT 902–04. This history of physical and sexual trauma inflicted against Knight by other men would have further supported Lafehr-Hession's hypothesis that Knight lashes out due to his treatment as a youth. *See* T 490-91. Prevailing professional norms demand that capital counsel thoroughly investigate issues of childhood trauma and mental health. *ABA Guidelines*, at 1025; *Andrus v. Texas*, 140 S. Ct. 1875, 1882

(2020) (per curiam) (finding trial counsel's performance deficient where counsel failed to investigate defendant's childhood or mental health).

Sosa "ignored pertinent avenues for investigation of which he should have been aware." *Porter*, 558 U.S. at 40. Based on the minimal mitigation investigation actually conducted, Sosa was at least aware of the above evidence, and "any reasonably competent attorney would have realized that pursuing these leads was necessary" to present the case. *Wiggins*, 539 U.S. at 525. Rather than conduct the additional investigation required by professional standards, "counsel abandoned their investigation after having acquired only rudimentary knowledge of [the defendant's] history from a narrow set of sources." *Id.* at 524.

Similarly, Sosa settled for sub-standard investigation of Knight's mental health. On multiple occasions, this Court has faulted trial counsel for failing to investigate the defendant's mental health history. *See, e.g., Andrus*, 140 S. Ct. at 1182–83; *Porter*, 558 U.S. at 40; *Williams*, 529 U.S. at 396; *see also ABA Guidelines*, at 1022. Despite the importance of mental health evidence, Sosa relied entirely on two mental health experts who had been originally hired by a different attorney for a different case. Lafehr-Hession and Strauss originally assessed Knight three years prior in preparation for the Meehan case (T. 465, 494–95). Both experts were retained mere weeks before their testimony in this case, and were not able to conduct significant additional testing to update their opinions in that time. T 473–74, 496. During the postconviction proceedings, Strauss even testified that he was unable to provide a diagnosis during the sentencing hearing because of the limited information that was available to him. PCRT 811–12.

Capital mental health evaluations should at least include: 1) "an accurate medical, developmental, psychological and social history;" 2) "a thorough physical and neurological

examination;" 3) "a complete psychiatric and mental status examination;" and 4) "diagnostic studies." Douglas S. Liebert & David V. Foster, *The Mental Health Evaluation in Capital Cases: Standards of Practice*, 15 Am. J. Forensic Psychiatry 43, 46 (1994). Rather than pursue thorough mental health evaluations, Sosa settled for two experts witnesses whose evaluations had been completed years prior and in the context of a completely distinct case. Unsurprisingly, these experts failed to demonstrate to the sentencing judge that Knight was suffering from a severe mental disturbance—paranoid disorder—at the time of the relevant offense. T 583. In contrast, the evidence presented during the postconviction proceeding more clearly connected Knight's paranoid behavior to the time of the offense. Any reasonable capital defense attorney would have maximized the effect of this mental health testimony by allowing sufficient time to conduct thorough and persuasive mental health assessments.

Furthermore, Sosa made little attempt to challenge the aggravating evidence presented by the State. In particular, Sosa presented no arguments in his closing argument to challenge the impact of Knight's prior conviction in the Meehan case, despite reasonably available evidence. Prevailing professional norms require counsel to "investigate prior convictions, adjudications, or unadjudicated offenses that could be used as aggravating circumstances" and to investigate for "extenuating circumstances that can be offered to lessen the weight of a conviction, adjudication, or unadjudicated offense." *ABA Guidelines*, at 1027. Sosa could have relied on evidence of Knight's paranoid disorder to challenge the allegation that Knight acted in a cold, calculated, and premeditated manner. Had Sosa investigated further, he would have learned that Knight's paranoid behavior was characterized by impulsivity and an inability to conform his actions to the law, which was likely amplified by his drug use. PCRT 816–817. Sosa not only failed to build an

adequate mitigating case, but he also failed to take the necessary steps to challenge the State's aggravating case.

The fact that Sosa was involved as standby counsel during the guilt phase does not relieve him of his constitutional duty to provide effective assistance. Once Sosa became lead counsel, prevailing professional standards of practice applied to his representation as they would in any other case.[6] Yet, after having had less than three weeks to prepare, Sosa proceeded with the sentencing phase, asking the court for just "five or ten minutes to put the case together." T 380. Additionally, Sosa should have been investigating mitigation evidence from the moment of his initial appointment. When Sosa was second chair counsel, he was tasked with developing mitigation evidence. PCRT 1133. Even once he was appointed as standby counsel, Sosa had to be prepared to advise Knight which requires adequate investigation and preparation. Furthermore, standby counsel is expected to have to take over at a moment's notice, once again requiring that standby counsel continue actively investigating the case.[7] In fact, this Court has previously held standby counsel, who had later been re-appointed, to the same rigorous standards of professional performance as any other attorney. *Porter*, 558 U.S. at 39 (finding that the performance of standby counsel who was appointed as lead counsel "a little over a month prior" to the penalty phase was constitutionally deficient). Thus, Sosa's role as standby counsel during the guilt phase does not negate his constitutional responsibilities to investigate and present mitigating evidence.

[6] Attorneys who are appointed as successor counsel or are appointed mid-trial are expected to meet the same obligations as attorneys appointed at the start of a case. *Cf. ABA Guidelines*, at 1059. By analogy, the requirements of standby counsel later re-appointed as lead counsel would be equivalent.
[7] Standby counsel is, in effect, "shadow counsel" and "must be as diligent as defense attorneys should be, investigating the case and exploring the legal issues as if in preparation for trial." Anne Bowen Poulin, *The Role of Standby Counsel in Criminal Cases: In the Twilight Zone of the Criminal Justice System*, 75 N.Y.U.L. Rev. 676, 679 (2000).

In determining that Sosa's performance during the sentencing phase was constitutionally sufficient, the Florida Supreme Court did not hold Sosa to the standards elaborated by this Court. Sosa failed to pursue reasonably pertinent and fruitful investigation regarding Knight's childhood, drug abuse, and severe trauma suffered at Eckerd Youth Development Center. Investigation into all of these topics would have uncovered extremely valuable mitigating evidence, depicting a young boy who was rejected by his parents, fell into a pattern of intense drug abuse, and endured repeated rapes and beatings for over a year. The quality of the evidence uncovered during postconviction proceedings alone demonstrates Sosa's deficiency in failing to adequately investigate and uncover this reasonably available evidence prior to sentencing.

The Florida Supreme Court further erred in disregarding valid and persuasive evidence of Sosa's deficiency. The court improperly dismissed the postconviction testimony of Strauss and Lipman in concluding that Sosa's treatment of this mitigation evidence was not deficient. *Knight v. State*, 211 So. 3d 1, 9 (Fla. 2016). Although Strauss did not provide an entirely new opinion during postconviction proceedings, he was able to confirm and strengthen his opinion that Knight displayed characteristics of a paranoid disorder once he was provided information he lacked in 1998. PCRT 802, 809. This additional information allowed Strauss to provide more detailed testimony regarding Knight's symptoms and their applicability to statutory mitigating factors. PCRT 810–14, 816–17, 845–47. His postconviction testimony significantly strengthened the argument that Knight was suffering from severe mental or emotional disturbance at the time of the offense and was unable to appreciate the criminality of his actions or conform his behavior to the requirements of the law. Additionally, Lipman's purpose as a neuropharamcologist was not to diagnose Knight but rather to provide expert testimony regarding the impact of severe drug

abuse on his mental health, impulsivity, ability to appreciate the criminality of his conduct, and ability to control his behavior. PCRT 1255–57, 1260. Thus, neither of these testimonies should have been disregarded as adding no new mitigating evidence.

Similarly, the Florida Supreme Court dismissed Pearson's evidence of Knight's extensive drug use and his sister's testimony about their childhood. *Knight*, 211 So. 3d at 10. The court found that Pearson, Knight's co-defendant, would have been *unavailable* to testify at Knight's sentencing hearing when, in fact, Pearson testified that he would have been *available*. PCRT 1005. Pearson had been instructed not to testify about the facts of the crime but would have been permitted to testify about Knight's drug use, as he did during the postconviction proceeding. PCRT 1008. The testimony of Theresa Scott Fowler, Knight's sister, was dismissed because of alleged inconsistencies between her sentencing and postconviction testimony. *Knight*, 211 So. 3d at 10. Sosa was already aware of Knight's troubled childhood; for instance, he was aware that Knight sometimes slept in the woods. Had he spent time preparing Fowler and probing into the circumstances of their childhood, there is a reasonable probability that he would have prompted similar reflections as those she presented during her postconviction testimony. As such, both Pearson's and Fowler's testimonies should have been considered as further evidence of Sosa's failure to prepare a proper mitigation case.

The Florida Supreme Court unreasonably dismissed powerful mitigating evidence presented during the postconviction evidentiary hearing and thus unreasonably found that Sosa's failure to investigate Knight's childhood, drug abuse, and mental health was not deficient. Without this compelling mitigating evidence, the judge at the "original sentencing heard almost nothing that would humanize [the defendant] or allow them to accurately gauge his moral

culpability." *Porter*, at 558 U.S. at 41. By neglecting his duties to investigate and present this evidence, Sosa's performance fell below objective standards of professional reasonableness as outlined in *Strickland* and its progeny. Thus, this Court should issue its writ to review the Florida Supreme Court's decision to the contrary.

II. This Court Should Grant Certiorari to Review Whether the Eleventh Circuit Court's Prejudice Determination Applied Too High a Standard in Direct Conflict with the Precedent of this Court.

Strickland held that once a defendant establishes that his or her counsel's performance was constitutionally deficient, the defendant can only succeed on their ineffective assistance of counsel claim if they can show that they were prejudiced by this deficiency. *Strickland*, 466 U.S. at 687. To show prejudice, the defendant "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result would have been different." *Id.* at 694. This Court views a reasonable probability as "a probability sufficient to undermine the confidence in the outcome." *Id.* For claims of ineffective counsel during the sentencing phase of a death penalty case, like the present case, the standard is "whether there is a reasonable probability that, absent the errors, the sentencer . . . would have concluded that the balance of aggravating and mitigating circumstances did not warrant death." *Id.* at 695.

In determining whether prejudice exists, courts must look to the totality of the evidence before them. *Strickland*, 466 U.S. at 694. The totality of the evidence before the judge includes all evidence adduced at trial and presented during the habeas proceeding. *Porter*, 558 U.S. at 41 (explaining that the only logical way to assess the probability of a different outcome, is for the courts "to consider the totality of the available mitigation evidence—both adduced at trial, and the evidence adduced in the habeas proceeding").

Strickland did not establish, and specifically instructed lower courts not to employ, mechanical rules and analysis for determining prejudice. 466 U.S. at 697. Instead, the inquiry into the prejudice prong of an ineffective assistance of counsel claim must be "probing and fact-specific[.]" *Sears v. Upton*, 561 U.S. 945, 955 (2010). The "ultimate focus" of a *Strickland* prejudice prong analysis "must be on the fundamental fairness of the proceeding whose result is being challenged." 466 U.S. at 696.

Mitigation evidence is a critical component of the analysis of potential prejudice flowing from counsel's deficient performance during the sentencing phase. *See, e.g., Sears*, 561 U.S. 945 (2010); *Porter*, 558 U.S. 30; *Wiggins*, 539 U.S. 510; *Williams*, 529 U.S. 362. As explained by this Court in *Lockett v. Ohio*, mitigation evidence is "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." 438 U.S. 586, 604 (1978). In other words, any information regarding the defendant's history or background, his or her characteristics, and circumstances surrounding the crime must be considered for mitigation as part of the court's determination of the prejudice prong. *See, e.g., Tennard v. Dretke*, 124 S. Ct. 2562, 2571 (2004). Additionally, mitigating evidence uncovered during the habeas proceeding can have an effect on the sentencer even if it does not specifically challenge or rebut any of the aggravating factors. *See Williams*, 529 U.S. at 398 (explaining that "[m]itigating evidence unrelated to [an existing aggravating factor] may alter the jury's selection of penalty, even if it does not undermine or rebut the prosecution's death-eligibility case."). Similarly, mitigating evidence can affect the sentencer's decision even when it does not explicitly establish a new statutory mitigating factor. *See Eddings v. Oklahoma*, 455 U.S. 104, 116–18 (1982). The fact that counsel during the sentencing phase of a capital case may have

presented "some mitigation evidence" does not foreclose "an inquiry into whether a facially deficient mitigation investigation might have prejudiced the defendant." *Sears*, 561 U.S. at 955. Thus, counsel's presentation of some mitigating evidence at the sentencing phase certainly does not preclude the defendant from being prejudiced by counsel's deficient performance in failing to present the full and compelling amount of mitigating evidence available. *See, e.g., id.*; *Williams*, 529 U.S. at 397–98.

A. The Eleventh Circuit's Finding That Knight Was Not Prejudiced Was Based on A Requirement That Is Contrary to Clearly Established Federal Law.

In reviewing Knight's case, the Eleventh Circuit applied a mechanical standard in their determination of the prejudice prong of Knight's ineffective assistance of counsel claim, despite *Strickland*'s clear instruction against this type of analysis. Contrary to well-established federal law, the Eleventh Circuit required Knight, in the postconviction proceeding, to show new mitigating factors while challenging the existing aggravating circumstances in order to prevail on the prejudice side of his ineffective assistance of counsel claim. The Eleventh Circuit stated that "Knight's new evidence [from the postconviction proceedings] . . . does not . . . reveal *any new mitigating factors*. Against this, the aggravating factors found by the sentencing court remain *unchallenged and unaltered*." *Knight*, 958 F.3d at 1037 (emphasis added). "Knight's postconviction evidence confirms the mitigation evidence that Sosa originally presented, but it does not support *any new mitigating factors*. *Id.* at 1047 (emphasis added). None of Knight's postconviction evidence establishes *any new mitigating factors*. *Id.* (emphasis added). "Fowler's postconviction testimony added detail and texture, but *nothing fundamentally new*." *Id.* at 1048–49 (emphasis added). "At the end of this exhaustive review of Knight's postconviction evidence, we are left *with the same mitigating factors* that the sentencing court credited." *Id.* at 1049

(emphasis added). "Knight's postconviction hearing evinced *no new mitigating factors*[.]" *Id.* at 1050 (emphasis added). *Strickland* and its progeny have never required defendants to establish a completely new mitigating factor in order to prove they were prejudiced by counsel's deficient conduct. Additionally, *Strickland* and its progeny do not require the defendant, during the postconviction proceeding, to specifically disprove any aggravating factors in order to be succeed in proving they were prejudiced by trial counsel's performance. *See Williams v. Taylor*, 529 U.S. at 398. The Eleventh Circuit's standard for prejudice in this case is simply not in line with the clearly established federal law for claims of ineffective assistance of counsel.

Contrary to the Eleventh Circuit's mechanistic approach of requiring defendants to establish new mitigating factors while eliminating aggravating factors to succeed on the issue of prejudice, this Court has repeatedly held that lower courts analyzing the prejudice prong of ineffective assistance of counsel claims must look to the totality of the evidence to come to a conclusion on the issue of prejudice. *See Sears*, 561 U.S. at 955–56; *Porter*, 558 U.S. at 41; *Wiggins*, 539 U.S. at 535; *Williams*, 529 U.S. at 397–98. This Court has rejected a mechanical approach in favor of one that looks to all the contextual and fact-specific evidence before the court because the nature of ineffective assistance of counsel claims. *See Strickland*, 466 U.S. at 696. Just as there are "countless ways to provide effective assistance" of counsel, there are also countless "acts or omissions of counsel . . . that [are] outside the wide range of professionally competent assistance[,]" which can cause counsel's overall conduct to be constitutionally deficient. *See id.* at 690. Thus, proper analysis into whether counsel's deficient conduct prejudiced the defendant must take into account the entirety of the evidence before the court and the context of counsel's professional behavior.

B. Under a Proper *Strickland* Analysis, Knight was Prejudiced by Counsel's Deficient Performance.

The Eleventh Circuit failed to apply the correct standards for analyzing the prejudice prong of ineffective assistance of counsel claims. The court did not consider or properly weigh much of the mitigation evidence brought forward by Knight at the postconviction proceedings, including testimony from mental health experts that provided more insight into Knight's severe paranoia, information about Knight's drug use, testimony about the extreme trauma he experienced at the Okeechobee School for Boys, and additional details about his difficult upbringing. The Eleventh Circuit admits that the new mitigating evidence set forth by Knight at the postconviction proceedings "strengthens—corroborates, confirms—the mitigating circumstances that Sosa presented at sentencing." *Knight*, 958 F.3d at 1049. The evidence shown at the postconviction proceedings dramatically strengthened the statutory mitigating factors that Knight suffered from extreme mental or emotional distress and that he had an impaired ability to conform his conduct to the requirements of law. The evidence also strengthened the non-statutory factor regarding his troubled childhood. Additionally, the more extensive evidence regarding his severe mental health condition, his difficult upbringing, and his extreme abuse and resulting trauma from his time at Eckerd would have influenced the sentencer's appraisal of Knight's culpability to be different causing a reasonable likelihood of a different result.

The postconviction testimony of Strauss was markedly different from his testimony during the sentencing phase of Knight's trial. Strauss testified that he did not intend his testimony at trial to be a diagnosis of paranoid personality disorder because, at that point in time, he had not been provided with sufficient information to make such a diagnosis (PCRT. 811). Having been presented with a much more extensive picture of Knight's background relating to

his childhood, sexual abuse, and drug use through the information uncovered at the postconviction proceeding, Strauss was able to provide more definitive testimony regarding Knight's severe paranoia. He stated that the postconviction evidence "certainly increase[d] the strength or the credibility of the hypothesis that [he] proposed back then, that there's some paranoia, and the drug use could add to it." (PCRT. 811).

The Eleventh Circuit also ignored the substantial weight of the affidavit of Keith Williams regarding the repeated sexual abuse Knight suffered while at Eckerd that was submitted at the postconviction hearing. The court quoted Strauss's view of the affidavit as being "merely 'consistent with some of the suspicions that [experts] had [in 1998][.]'" *Knight*, 958 F.3d at 1048. However, this framing of the information contained in the affidavit is severely flawed. Sosa knew or should have been aware of the abuse Knight suffered while at Eckerd because of the suspicions of Strauss during the sentencing phase. However, Sosa failed to present any evidence of this sexual abuse besides the mere suspicions of the two experts who testified at the sentencing phase. There is a marked difference between experts testifying that they believe sexual abuse may have occurred and an affidavit detailing the repeated and violent sexual abuse suffered by Knight. This undiscovered mitigating evidence would have clearly influenced the sentencer's decision because it provides much greater insight into the relationship between Knight's past traumas and his severe paranoia. The affidavit was also influential in helping the experts who testified at the postconviction hearing by providing more information about Knight's background in order to formulate stronger expert opinions on the matter. Dr. Harvey explained that the events detailed in the affidavit should be characterized as extremely substantial traumatic experiences and could be prerequisites for post-traumatic stress disorder. PCRT 866, 870–71. Strauss stated that the

affidavit confirmed his suspicions and strongly supported his opinion that Knight suffered from severe paranoia. PCRT 819–30. The evidence in the affidavit was then further corroborated by the testimony of Zebedee Fennell. Although Fennel lacked a correct memory of Knight, his testimony regarding the conditions at the Eckerd adds credibility to the details of Williams' affidavit. This new evidence would have provided more substantial weight to both the statutory mitigating factors—Knight suffered from extreme mental or emotional distress and he had an impaired ability to conform his conduct to the requirements of the law. It also would have provided the sentencer with a more complete picture of Knight and the circumstances surrounding the crime, which would lessen the weight of cold, calculated, premeditated aggravating factor.

Additionally, Sosa failed to bring forward evidence of Knight's history of drug abuse and potential drug use on the day of the crime. Timothy Pearson testified, showing that Knight's drug abuse was much more extensive than what was shown at trial, which was confirmed by Dain Brennalt's testimony. Pearson testified that Knight began using cocaine heavily around the age of eighteen in conjunction with occasional use of other drugs. PCRT 991. Pearson then recounted that he and Knight were on one of these binges in the days leading up to the crime, where they were using up to an ounce of marijuana, up to a half-ounce of cocaine, and two gallons of alcohol. PCRT 992-93.

Lipman's testimony provided insight into how Knight's drug abuse affected his severe paranoia. He testified that, based on all the information he reviewed, Knight was profoundly under the influence of cocaine and alcohol at the time of the offense. PCRT 1255. He stated that people with diagnosed paranoid disorders are "much more vulnerable than [the] rest of us to

experiencing the adverse psychotoxic effects of cocaine." PCRT 1255–56. He also explained that "[i]mpulsive behavior is that what you do without thinking. Cocaine plus alcohol rather massively increases impulsivity." PCRT 1257. Thus, Lipman's postconviction testimony further strengthens the mitigating factors that Knight experienced severe mental or emotional disturbance and lacked the ability to conform is conduct to the requirements of law. Lipman's testimony also calls into question the aggravating factors that the crime was committed "for pecuniary gain" and was "cold, calculated, and premeditated." The massive increase in Knight's impulsivity due to the combination of his drug binging and paranoid disorder strongly militates against the findings that he committed this crime in a premeditated manner and for monetary gain. Rather, Knight's condition suggests that the crime was committed as part of an uncontrollable impulse.

Lastly, Knight's sister, Theresa Scott Fowler, provided testimony at the postconviction hearings. The Eleventh Circuit admits that her postconviction testimony regarding Knight's childhood exhibited "more extensive childhood neglect than she previously described" and adds "detail and texture" to the evidence of Knight's difficult childhood. *Knight*, 958 F.3d at 1048–49. Unlike her testimony at the sentencing phase, which explained that Fowler and Knight's mother did her best in raising her kids, Fowler's postconviction testimony told an entirely different story. She explained that in her mother's upbringing of Fowler and Knight "[t]here was no love, there was no respect, there was no parenting skills at all." PCRT 959. Fowler's postconviction testimony would have provided the sentencer with a more substantial understanding of the circumstances in which Knight was raised. The new information would have provided much stronger weight to the non-statutory mitigating factor regarding Knight's troubled childhood.

The Eleventh Circuit's analysis of the prejudice prong of the ineffective assistance of counsel claim is contrary to *Strickland* and its progeny. Sosa's deficient performance as counsel during the sentencing phase of Knight's trial resulted in an omission of the wealth of evidence uncovered at the postconviction proceedings detailing Knight's difficult upbringing, traumatic sexual abuse, drug abuse, severe mental health condition, and how these aspects affected the circumstances surrounding Knight's commission of the instant offense. With this evidence unseen and unaccounted, the sentencer had to assess Knight's culpability, determine the weight of the mitigating and aggravating factors, and ultimately decide the proper sentence to impose without all of the relevant mitigating evidence. Had this information been discovered and presented to the sentencer by Sosa, there is a "reasonable probability that . . . the sentencer . . . would have concluded that the balance of aggravating and mitigating circumstances did not warrant death." *Wiggins*, 539 U.S. at 534.

III. The Prevailing Understanding of *Strickland* Does Not Adequately Address Severe Mental Health Conditions in the Analysis of Whether the Defendant was Prejudiced During the Sentencing Phase of capital Case.

This Court should refine the *Strickland* standard for assessing prejudice during the penalty phase to require a more nuanced approach to severe mental health conditions to ensure that the weight and importance of these conditions are reflected in lower courts' analysis of prejudice in ineffective assistance of counsel claims. Severe mental health conditions are critical to the analysis of prejudice because they are very likely to influence at least one if not all of the mitigating and some of the aggravating circumstances that are present in a capital case. In addition, severe mental health conditions can affect a sentencer's appraisal of the defendant's culpability. In recent years, this Court has generally understood *Strickland* as requiring courts to

engage with the varied substance of new mitigating evidence in deciding whether counsel's deficiency, during a capital case, prejudiced the defendant. *See, e.g., Sears v. Upton*, 561 U.S. 945; *Porter*, 558 U.S. 30; *Rompilla*, 545 U.S. 374; *Wiggins*, 539 U.S. 510; *Williams*, 529 U.S. 362. This Court should extend this nuanced approached to include an increased focus on evidence brought forward in habeas proceedings that reveals severe mental health conditions.

In *Atkins v. Virginia*, this Court held that the death penalty is not an appropriate punishment for defendants who are intellectually disabled. 563 U.S. 304 (2002). Although intellectual disability and severe mental health conditions are very different from a medical point of view, much of the reasoning used in *Atkins* to show why the death penalty should not be applied to intellectually disabled defendants similarly demonstrates why evidence of a defendant's severe mental health condition should be given increased weight for ineffective assistance of counsel claims in death penalty cases.

Similar to the execution of intellectually disabled individuals, it is questionable whether sentencing defendants with severe mental health conditions to death accomplishes the "two principal social purposes" of the death penalty: "retribution and deterrence of capital crimes by prospective offenders." *Gregg v. Georgia*, 428 U.S. 153, 183 (1976). Individuals with severe mental health conditions, such as paranoid disorder, are more likely to find themselves in a state of extreme mental or emotional distress, which calls into question what level of retribution is appropriate. Additionally, those with severe mental health conditions are prone to impulsive action. Deterrence is less likely to have an effect where the crime itself was based on involuntary urges.

Defendants with severe mental health conditions are also similar to intellectually disabled defendants in that they "may be less able to give meaningful assistance to their counsel[.]" *Atkins*, 563 U.S. at 320. In Knight's case, his decision to waive counsel during the guilt phase of his trial may have been more of a reflection of his distrust of other people than an informed decision to waive counsel, as analyzed by Strauss. PCRT 815 ("if his … inability to trust people was so acute, so deeply rooted, then that may have - - then his choosing to waive counsel, to use that term, may have been more of a product of his psychopathology than anything else"). Knight's paranoia impacted his ability to effectively assist his counsel during the sentencing phase.

This Court should issue its writ to provide guidance to lower courts to properly account for severe mental health conditions in their *Strickland* analyses of death penalty cases.

IV. This Court Should Grant Certiorari Because Reasonable Jurists Could Debate Whether *Hurst v. Florida* Must Be Applied Retroactively to Knight's Death Sentence.

This Court has consistently classified the Certificate of Appealability (COA) standard under 28 U.S.C. § 2253(c) as a low "threshold inquiry" designed to preserve legal issues worthy of continued judicial debate. *Miller-El v. Cockrell,* 537 U.S. 322, 327 (2003); *see also Buck v. Davis*, 137 S.Ct. 759, 773 (2017); *Slack v. McDaniel*, 529 U.S. 473, 481 (2000). A COA applicant need only present a "substantial showing" of the denial of a constitutional right. *Miller-El*, 537 U.S. at 327**.** This low threshold is satisfied when reasonable jurists might conclude that the issues are sufficiently debatable "to deserve encouragement to proceed further." *Id.* at 336. Thus, the COA standard is exclusively focused on "the debatability of the underlying constitutional claim, not the resolution of that debate." *Id.* at 325. A court deciding whether to grant a COA is foreclosed from engaging in "full consideration of the factual or legal bases adduced in support of the claims," and

must focus instead on the range of possible opinions about the issue. *Id.* at 336. Indeed, a claim could be debatable and a COA should issue "even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail." *Id.* at 338.

Judge Newsom of the Eleventh Circuit misapplied this Court's well-established COA standard when he summarily rejected Knight's request to appeal the District Court's decision denying his retroactivity claim under *Hurst v. Florida*, 136 S. Ct. 616 (2016). First, Judge Newsom found that "a jurist of reason could not disagree" despite *noting in his decision* that his colleagues had voiced vehement disagreement with the Eleventh Circuit's approach to retroactive application of *Hurst,* and while failing to acknowledge disagreement at the Florida Supreme Court and within this Court about the retroactive application of new capital sentencing rules. *Knight v. Florida*, Case No. 18-12488, at 17–18 (11th Cir. Mar. 20, 2019). As these dissenters argue, the Florida Supreme Court's practice of applying *Hurst* retroactively to some capital cases on collateral review but not to others is inconsistent with this Court's retroactivity doctrine and entirely arbitrary. Second, Judge Newsom improperly delved into the merits of Knight's retroactivity claim and failed to recognize potential debate about the issue when he summarily asserted that Knight had waived the claim. This Court should grant certiorari to ensure that its well-established COA standard is applied correctly, in a way that fosters reasoned judicial debate, and to prevent the State of Florida from executing Knight in an unreliable and arbitrary manner.

A. The Eleventh Circuit Misapplied the COA Standard by Disregarding Disagreement at All Levels of the Judicial Hierarchy Regarding the Retroactivity of *Hurst v. Florida* to Knight and Similarly Situated Defendants.

In *Hurst v. Florida*, this Court held that Florida's capital sentencing scheme violated the Sixth Amendment because it vested in a judge rather than a unanimous jury the ultimate authority to impose the death penalty. 136 S. Ct. at 624. In 2017, Florida amended its capital sentencing statute. However, the previous statute under which Knight was sentenced required that only a majority of the jury agree that aggravating factors existed in order to recommend a non-binding death sentence to a judge; the aggravators are sufficient to warrant a sentence of death; and the aggravators outweigh the mitigators, FLA. STAT. § 921.141 (1997) (repealed 2017). The Florida Supreme Court retroactively applied *Hurst* to death sentences that became final after this Court's decision in *Ring v. Arizona*, 536 U.S. 584 (2002), which struck down Arizona's capital sentencing scheme, but has declined to apply *Hurst* retroactively to cases that became final before *Ring*. *See Asay v. State*, 210 So.3d 1, 22 (Fla. 2016). Knight argued in his federal habeas petition that *Hurst* should be applied retroactively to vacate his judge-imposed, non-unanimous death sentence, which became final shortly before *Ring* in 2001. *See Knight*, 532 U.S. 1011 (denying certiorari on direct appeal, rendering sentence final).

In denying a COA on the *Hurst* retroactivity claim, Judge Newsom of the Eleventh Circuit held that "Florida's approach to retroactivity here is permissible" and a "jurist of reason could not disagree." *Knight*, Case No. 18-12488, at 17–18. Yet it is clear that jurists of reason could disagree with Judge Newsom's determination because several jurists have already voiced disagreement.

First, as Judge Newsom himself acknowledged, Judge Martin of the Eleventh Circuit has called Florida's retroactive application of *Hurst* to some but not all prior death sentences "arbitrary in the extreme." *Hannon v. Sec'y, Fla. Dep't of Corr.*, 716 F. App'x 843, 846 (11th Cir. 2017) (Martin, J., concurring); *see also Griffith v. Kentucky*, 479 U.S. 314, 323 (1987) ("[S]elective

application of new rules violates the principle of treating similarly situated defendants the same."). Yet instead of engaging with this argument, Judge Newsom merely relied on a previous Eleventh Circuit decision that endorsed the Florida Supreme Court's retroactivity approach in a footnote with practically no additional reasoning. *See Lambrix v. Sec'y, Fla. Dep't of Corr.*, 851 F.3d 1158, 1165 n.2 (11th Cir. 2017).

Second, there has been significant disagreement within the Florida Supreme Court about its arbitrary retroactive application of *Hurst* only to cases that became final after *Ring* was decided in 2002. Dissenting in *Asay*, Justices Pariente and Perry argued that, given the particularly high stakes of capital cases, *Hurst* must be applied retroactively to *all* Florida death row inmates improperly sentenced under the previous unconstitutional scheme. *See Asay*, 210 So.3d at 32 (Pariente, J., concurring in part and dissenting in part) ("This Court has always recognized that 'death is different,' so we must be extraordinarily vigilant in ensuring that the death penalty is not arbitrarily imposed"); *id.* at 37 (Perry, J., dissenting) ("I would find that *Hurst v. Florida* applies retroactively, period."). Instead of analyzing *Asay*'s reasoning in light of the dissenting opinions, Judge Newsom merely deferred to the Eleventh Circuit's previous endorsement of *Asay*.

Despite reasonable disagreement within the Eleventh Circuit and Florida Supreme Court regarding retroactive application of *Hurst* and similar cases, Judge Newsom of the Eleventh Circuit unilaterally foreclosed continued debate about the issue by denying Knight's COA request. If a single judge is permitted to block an appeal from being presented to a larger panel based solely on his own interpretation of governing law with which several of his colleagues have disagreed, the COA standard turns from a threshold inquiry into an unreasonably high barrier

to due process. *See Miller-El*, 537 U.S. at 337 ("[The COA standard] would mean very little if appellate review were denied because the prisoner did not convince a judge . . . that he or she would prevail."). This Court should issue its writ to correct the Eleventh Circuit's improper application of the COA standard.

B. The Eleventh Circuit Misapplied the COA Standard by Finding That Knight's Alleged Waiver of Jury Sentencing Barred Him from Raising His Retroactivity Claim.

Before cursorily discussing the substance of Knight's retroactivity claim, Judge Newsom noted that "Knight's decision to waive his right to a jury at the penalty phase of his trial places him outside the scope of Florida's revised sentencing statute." *Knight*, Case No. 18-12488, at 17. This finding departs from the COA standard by improperly delving into the merits of Knight's claim and failing to recognize that reasonable jurists might debate the issue.

A court misapplies the COA standard when it "first decid[es] the merits of an appeal, and then justif[ies] its denial of a COA based on its adjudication of the actual merits." *Miller-El*, 537 U.S. at 336-337. Judge Newsom did exactly that. His decision accepts without question the state court's finding that Knight waived his right to jury sentencing and concludes that this perceived waiver bars Knight from making a retroactivity claim on appeal. A court cannot "make a definitive inquiry" into a petitioner's claim at the COA stage because "deciding the substance of an appeal in what should only be a threshold inquiry undermines the concept of a COA." *Id.* at 342.

Judge Newsom's finding also ignored that reasonable jurists might debate whether Knight meaningfully waived his right to jury sentencing. Jurists of reason might conclude that this alleged waiver was not knowing, intelligent, and voluntary. *See Lamadline v. State,* 303

So.2d 17, 20 (Fla. 1974) (applying plea agreement knowing and intelligent standard from *Boykin v. Alabama,* 395 U.S. 238 (1969) to waiver of jury sentencing). The trial judge did not inform Knight of the consequences of waiving jury sentencing, (T. 369), did not provide Knight with a written waiver, (T. 370), and did not follow up with Knight about his decision to waive the penalty phase jury when Knight changed his mind about waiving penalty phase counsel (T. 376–78); *see also Griffin v. State*, 820 So. 2d 913 n.9 (Fla. 2002) (noting that trial court must "conduct a colloquy which apprises the defendant of all the rights relinquished through a waiver (i.e. presentation of mitigation, advisory nature of jury, etc.)").[8]

Even if jurists of reason were to conclude that Knight meaningfully waived his right to jury sentencing, they might debate whether such a waiver forecloses him from pursuing a *Hurst* retroactivity claim. According to Judge Newsom, Knight cannot argue that he should retroactively receive the benefit of jury sentencing when Knight himself chose to be sentenced by a judge. *Knight*, Case No. 18-12488, at 17. Yet under the Florida capital sentencing system as it existed at the time, Knight would have needed at least six jurors to recommend a life sentence in lieu of death, and even then, the judge could have overruled that decision and imposed a death sentence. *See* § 921.141(2)-(3) (1997) (repealed 2017); *see also Knight v. Jones*, Case No. 9:17-cv-81159-WPD, at 16 (S.D. Fla. April 6, 2018) (noting that "six (6) jurors only meant a recommendation of life when Knight was tried"). If Knight had the option of a 12-person jury for which unanimity was required to impose a death sentence, he very likely would have chosen that option over being sentenced unilaterally by a judge. In any case, if this Court rules that Knight's

[8] Knight also suffers from a severe paranoid disorder that seriously diminishes his ability to make rational decisions and trust the people advising him (T. 474–79; PCRT. 815). Illustrating Knight's lack of understanding and the lack of information provided to him, Knight testified he was unaware he could have opted for a penalty phase jury after having waived the guilt phase jury (PCRT. 1605–10).

sentencing procedure was retroactively unconstitutional, it would be up to the Florida courts, not the Eleventh Circuit, to decide whether or not the error was harmless. *See Hurst*, 136 S. Ct. at 624 ("This Court normally leaves it to state courts to consider whether an error is harmless . . . ."). This Court should issue its writ to prevent the Eleventh Circuit from making premature findings on the merits that cut off continued judicial debate at the COA stage.

CONCLUSION

Based on the foregoing, Petitioner submits that certiorari review is warranted to review the decision of the Eleventh Circuit Court of Appeals in this cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing petition has been furnished by electronic service to Leslie Campbell, Office of the Attorney General, 1515 N. Flagler Drive, Suite 900, West Palm Beach, FL 33401, on this 6th day of January, 2021.

/s/. Linda McDermott
LINDA McDERMOTT
Florida Bar No. 0102857
Chief Assistant-Capital Habeas Unit
Office of the Federal Public Defender
227 N. Bronough St.
Tallahassee, FL 32301
Telephone: (850) 322-2172
Fax: (850) 942-8809
linda_mcdermott@fd.org

Counsel for Mr. Knight