No. 20-6929

IN THE
SUPREME COURT OF THE UNITED STATES

STEPHEN HUGUELEY,
Petitioner,

v.

TONY MAYS,
Respondent.

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

RESPONDENT'S BRIEF IN OPPOSITION

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CAPITAL CASE

RESTATEMENT OF THE QUESTIONS PRESENTED

I. Whether the Sixth Circuit Court of Appeals correctly determined that Hugueley caused the procedural default of his claims by withdrawing his petition for post-conviction relief.

II. Whether, even if *Martinez v. Ryan*, 566 U.S. 1 (2012), applied here, it would excuse Hugueley's default since he failed to demonstrate that his ineffective-assistance-of-trial-counsel claim was substantial.

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The order of the United States Court of Appeals for the Sixth Circuit denying Hugueley's petition for rehearing en banc is not reported. *See* Pet. App. B at 18a. The opinion of the Sixth Circuit affirming the denial of habeas relief is published. *Hugueley v. Mays*, 964 F.3d 489 (6th Cir. 2020); Pet. App. A at 1a. The memorandum opinion of the United States District Court for the Eastern District of Tennessee denying habeas relief is not reported. *Hugueley v. Mays*, No. 1:09-cv-01181, 2017 WL 3325008 (W.D. Tenn. Aug. 3, 2017); Pet. App. C at 20a.

The order denying Hugueley's petition for writ of certiorari regarding the withdrawal of his petition for post-conviction relief is reported. *Hugueley v. Tennessee*, 568 U.S. 1051 (2012). The orders of the Tennessee Supreme Court denying Hugueley's petition to rehear the denial of his application for permission to appeal and denying his application for permission to appeal are not reported. *Hugueley v. State*, No. W2009-00271-SC-R11-PD (Tenn. Jan. 11, 2012); *Hugueley v. State*, No. W2009-00271-SC-R11-PD (Tenn. Dec. 13, 2011). The order of the Tennessee Court of Criminal Appeals denying Hugueley's petition to rehear is not reported. *Hugueley v. State*, No. W2009-00271-CCA-R3-PD (Tenn. Crim. App. July 27, 2011). The opinion of the Tennessee Court of Criminal Appeals affirming Hugueley's competency to withdraw his post-conviction petition is not reported. *Hugueley v. State*, No. W2009-00271-CCA-R3-PD, 2011 WL 2361824 (Tenn. Crim. App. June 8, 2011).

The opinion of the Tennessee Supreme Court affirming Hugueley's conviction and sentence is reported. *State v. Hugueley*, 185 S.W.3d 356 (Tenn. 2006). The opinion of the Tennessee Court of Criminal Appeals affirming Hugueley's conviction and sentence is not reported. *State v. Hugueley*, No. W2004-00057-CCA-R3-CD, 2005 WL 645179 (Tenn. Crim. App. Mar. 17, 2005).

JURISDICTIONAL STATEMENT

The Sixth Circuit affirmed the denial of habeas relief on July 1, 2020. *Hugueley v. Mays*, 964 F.3d 489 (6th Cir. 2020); Pet. App. A at 1a. The court denied Hugueley's petition for rehearing en banc on August 20, 2020. Pet. App. B at 18a. Hugueley filed his petition for writ of certiorari on January 19, 2021. He invokes this Court's jurisdiction under 28 U.S.C. § 1254(1). Pet. 1.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1254 provides:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

28 U.S.C. §§ 2241 provides in relevant part:

> (a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.
>
> . . . .
>
> (c) The writ of habeas corpus shall not extend to a prisoner unless—
>
> > . . . .
> >
> > (3) He is in custody in violation of the Constitution or laws or treaties of the United States.

28 U.S.C. §§ 2253 provides in relevant part:

> (c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

. . .

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

28 U.S.C. §§ 2254 provides in relevant part:

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

(b)(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that—

(A) the applicant has exhausted the remedies available in the courts of the State; or

(B)(i) there is an absence of available State corrective process; or

(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

(2) An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.

(3) A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement.

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

> (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

U.S. Const. amend VI provides in relevant part:

> In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence.

STATEMENT OF THE CASE

A. State Court Proceedings

On January 17, 2002, Hugueley stabbed the victim, correctional counselor Delbert Steed, to death at Tennessee's Hardeman County Correctional Facility, where Hugueley was incarcerated. *State v. Hugueley*, 185 F.3d 356, 364 (Tenn. 2006). Once Hugueley was indicted for first-degree murder, his attorney engaged in an extensive consultation with mental health experts regarding Hugueley's competency to stand trial. *Hugueley v. Westbrooks*, No. 09-cv-01181, 2017 WL 3325008, at *67 (W.D. Tenn. Aug. 3, 2017). Dr. Pamela Auble, a clinical neuropsychologist, and Dr. Keith Caruso, a psychologist, both evaluated Hugueley. *Hugueley v. State*, No. W2009-00271-CCA-R3-PD, 2011 WL 2361824, at *11, 13 (Tenn. Crim. App. June 8, 2011). Neither doctor found Hugueley incompetent to stand trial, and Dr. Caruso specifically concluded that Hugueley was competent to stand trial. *Id*. at *11, 16.

Both experts suggested further medical testing, which trial counsel obtained. *Id*. at *13. A CT Scan of Hugueley's brain showed normal CT of the brain and did not discover any abnormality in Hugueley's brain. *Hugueley*, 964 F.3d at 494.

The case proceeded to trial, where the proof showed that Hugueley stabbed the victim thirty-six times with a homemade weapon, stopping only when the handle of his weapon snapped. *Hugueley*, 185 F.3d at 364. Hugueley said that he attacked the victim because the victim "had a smart ass mouth," and Hugueley admitted that he would have continued to stab the victim if his weapon had not broken. *Id*. at 366. He said he intended to drive the weapon "plumb through and hit the concrete below" the victim. *Id*. at 365.

The jury convicted Hugueley of first-degree murder. *Id*. at 366. Although trial counsel had performed an extensive mitigation investigation, Hugueley elected to waive the presentation

of mitigation evidence. *Hugueley*, 2017 WL 3325008, at *1; *Hugueley*, 185 S.W.3d at 367. The jury sentenced Hugueley to death, finding four enhancement factors: (1) Hugueley was previously convicted of one or more violent felonies, other than the present charge, whose statutory elements involve the use of violence to the person[1]; (2) the murder was especially heinous, atrocious, or cruel in that it involved torture or serious physical abuse beyond that necessary to produce death; (3) Hugueley committed the murder while he was in lawful custody or a place of lawful confinement; and (4) the murder was committed against a corrections employee who was engaged in the performance of official duties. *Hugueley*, 185 S.W. 3d. at 367 (citing Tenn. Code Ann. § 39-13-204(i)(2), (5), (8), (9)).

After sentencing, Hugueley indicated that he did not wish to appeal his conviction. But because Tennessee law requires an automatic appeal from a death sentence, the Tennessee Court of Criminal Appeals and Tennessee Supreme Court both heard his appeal and affirmed his conviction and sentence. *State v. Hugueley*, No. W2004-00057-CCA-R3-CD, 2005 WL 645179 (Tenn. Crim. App. Mar. 17, 2005); *Hugueley*, 185 S.W.3d at 387.

Hugueley subsequently filed a *pro se* petition for post-conviction relief, which he later admitted that he filed purely to "stall" for time to settle an issue regarding visitation. *Hugueley*, 2011 WL 2361824, at *5. Once the issue was resolved, Hugueley notified the trial court that he wished to withdraw his petition. *Id*.

In January 2007, post-conviction counsel filed an amended petition for post-conviction relief. *Id*. at *3. The petition included claims that trial counsel was ineffective by failing to present evidence of Hugueley's diminished capacity, brain damage, mental illness, and lifelong trauma.

[1] Hugueley had two prior convictions for first-degree murder: the 1986 murder of his mother and the 1992 murder of fellow inmate James Shelton. Hugueley also had a prior conviction for attempted first-degree murder for stabbing fellow inmate Timerall Nelson. *Hugueley v. Mays*, 964 F.3d 489, 492 (6th Cir. 2020).

Hugueley, 2017 WL 3325008, at *59. Post-conviction counsel also argued that trial counsel was ineffective by failing to move for a hearing on his competency to stand trial and his competency to waive presentation of mitigation evidence, asserting that Hugueley suffered brain damage and mental illness that affected his competency. *Id.*

In a June 22, 2007 letter to the court, Hugueley again asked to withdraw his post-conviction petition. *Hugueley*, 964 F.3d at 492. In an August 2007 hearing, post-conviction counsel asserted that Hugueley was incompetent to waive post-conviction review, and she submitted a notebook detailing Hugueley's history of mental illness and a mitigation and social history report that had been prepared for trial but was not introduced, at Hugueley's request. *Id.* She also submitted affidavits from Dr. Caruso and Dr. Auble, who asserted that further review of Hugueley's competency was warranted. *Id.* Additionally, post-conviction counsel filed motions for expert assistance, requesting funds for a neuropsychological expert, a psychopharmacology expert, a psychiatrist, and funding for a variety of brain-imaging scans. *Id.* at 492-93. The post-conviction court denied these requests. *Id.* at 493.

The post-conviction court concluded that there was a genuine issue as to Hugueley's competency and directed post-conviction counsel and the State to submit a list of mental-health experts who could evaluate Hugueley. *Id.* The court subsequently appointed Dr. John Hutson, the State's suggested expert, and Dr. Peter Brown, Hugueley's suggested expert, for the evaluation of Hugueley. *Id.* The court set a deadline of March 6, 2008, for the experts to submit their evaluations. *Id.*

In a July 24, 2008 order, the court observed that, despite receiving several extensions, Dr. Brown had not yet evaluated Hugueley. *Id.* The court also observed that Dr. Hutson had been mistakenly paid with funds from the Tennessee District Attorney General's Conference instead of

court funds. *Id*. Finding that it could not consider the report of Dr. Hutson and that it could not trust Dr. Brown to complete an expeditious evaluation of Hugueley, the post-conviction court directed the parties to submit a second list of experts for the evaluation. *Id*.

Both the State and post-conviction counsel submitted new lists of experts, but post-conviction counsel noted that none of her suggested experts would be able to complete the evaluation within the court's proposed timeframe. *Id*. She asked for additional time and funding to continue the search, or an extension of the timeframe for the evaluation. *Id*. Concerned with avoiding further delay, the post-conviction court appointed one of the State's suggested experts, Dr. Bruce Seidner, to evaluate Hugueley. *Id*.

Following his evaluation, Dr. Seidner concluded that Hugueley was competent to waive post-conviction review. *Id*. Two weeks prior to a competency hearing, post-conviction counsel filed a renewed motion for expert assistance. *Id*. She again requested funding for brain-imaging scans and expert evaluations from three doctors. *Id*. The post-conviction court denied the motion. *Id*.

Dr. Seidner testified at an evidentiary hearing on the issue of Hugueley's competency, where post-conviction counsel cross-examined him and "vigorously challenged" his conclusions and credentials. *Id*. at 493, 497. The post-conviction court afforded Hugueley the opportunity to present additional evidence regarding his competency after the hearing, and post-conviction counsel supplemented the record with a report questioning the adequacy and reliability of Dr. Seidner's evaluation. *Id*. at 493. The post-conviction court subsequently determined that Hugueley was competent and granted his request to withdraw his post-conviction petition. *Id*.

Despite the voluntary withdrawal of the petition, Hugueley's counsel still appealed the post-conviction court's decision to the Tennessee Court of Criminal Appeals. *Hugueley*, 2011 WL

2361824, at *1. While the appeal was pending, Hugueley "wrote a letter to the State threatening that the State's failure to provide him with 'daily' telephone contact with his attorneys would result in his 'attempt to proceed with post-conviction appeals.'" *Id*. at *17. He "further asserted that he would throw a 'monkey wrench' into the process if his request was not honored." *Id*. The Court of Criminal Appeals denied his motion for such telephone access. *Id*.

After the denial of the motion, Hugueley signed an affidavit stating that he wished to resume post-conviction proceedings. *Id*. The Court of Criminal Appeals declined to reinstate post-conviction proceedings, concluding that Hugueley made his request long after the thirty-day period permitted for a defendant to revoke a request to withdraw a post-conviction petition. *Id.* at *18-20. The court cited again to Hugueley's threat to throw "a monkey wrench" into the proceedings and to resume his post-conviction appeals if he was not granted his requested telephone access, and the court noted that Hugueley requested to reinstate his post-conviction petition shortly after his telephone demands were not met. *Id*. at *20.

The court also concluded that Hugueley was afforded a full and fair competency hearing and that he was competent to waive post-conviction review. *Id*. at *20-44. The court determined that the post-conviction court's procedures did not deny Hugueley due process, that Hugueley was competent to withdraw his post-conviction petition, and that he made his waiver knowingly, voluntarily, and intelligently. *Id*. The Tennessee Supreme Court declined discretionary review, and this Court denied Hugueley's petition for writ of certiorari. *Hugueley v. State*, No. W2009-00271-SC-R11-PD (Tenn. Dec. 13, 2011); *Hugueley v. Tennessee,* 568 U.S. 1051 (2012).

B. Federal Habeas Proceedings

In 2009, Hugueley filed a *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. *Hugueley*, 2017 WL 3325008, at *6. He alleged, *inter alia*, that trial counsel was ineffective for failing to fully investigate and litigate his competency to stand trial and that trial counsel was ineffective by failing to investigate his competency when he committed his prior murders, which were used as an aggravating factor to impose a capital sentence.[2] *Id*. at *56-57.

The district court denied the claims. *Id*. at *56-70. The court found that Hugueley was competent to withdraw his post-conviction petition and that the competency proceedings complied with due process. *Id*. at *62, 64-65. The court found that Hugueley raised his claim regarding the competency to stand trial in his post-conviction proceedings but defaulted the claim when he withdrew his post-conviction petition. *Id*. at *62. Because the default was not attributable to post-conviction counsel, the court found that *Martinez v. Ryan*, 566 U.S. 1 (2012), did not apply to excuse the default. *Id*. at *62-63. In an alternative-merits analysis of the claims, the district court further found that Hugueley failed to show that trial counsel were ineffective. *Id*. at *66-70.

The Sixth Circuit granted Hugueley a certificate of appealability ("COA") on his claim of ineffective assistance of trial counsel. *Hugueley*, 964 F.3d at 494. The court held that Hugueley's waiver of post-conviction review was a valid procedural default of his claims and that, even if the waiver were invalid, post-conviction counsel's ineffective assistance did not provide cause and prejudice to excuse the default. *Id*. at 495-501.

[2] While his federal habeas proceedings were ongoing, Hugueley filed a petition for writ of error coram nobis in state court, arguing that newly discovered evidence showed that he was incompetent to stand trial and to waive post-conviction review. The trial court rejected the petition as meritless, and the Tennessee Court of Criminal Appeals affirmed. *Hugueley v. State*, No. W2016-01428-CCA-R3-ECN, 2017 WL 2805204 (Tenn. Crim. App. June 28, 2017), *perm. app. denied* (Tenn. Nov. 17, 2017).

Regarding the waiver of post-conviction review, the court rejected Hugueley's argument that the competency proceedings violated his right to due process under *Panetti v. Quarterman*, 551 U.S. 930 (2007), and *Ford v. Wainwright*, 477 U.S. 399 (1986). *Hugueley*, 964 F.3d at 495-97. The court observed that the claims raised in *Ford* and *Panetti*—that an inmate was ineligible for execution based on his incompetency—had constitutional implications, but that a claim of incompetence to waive post-conviction review did not. *Id.* at 496. The court opined that because there is no constitutional right to post-conviction proceedings, "states are under no obligation to provide a petitioner with his preferred procedural framework when evaluating his competency to withdraw his post-conviction review." *Id.* at 496-97.

The court further concluded that, even if *Panetti* applied, Hugueley was not deprived of his right to due process. *Id.* at 497-98. The court indicated that Hugueley had a fair hearing on the matter and an opportunity to be heard, citing to the evidentiary hearing where he cross-examined Dr. Seidner and the additional evidence he was permitted to introduce in support of his claim of incompetency. *Id.* The court also noted that Hugueley had ample opportunity to obtain an evaluation from his preferred expert. *Id.* at 498. "Put simply, Hugueley was not subject to a process that was unfair to him in any material way." *Id.* The court therefore concluded that *Panetti* and *Ford* "cannot be a basis to invalidate Hugueley's withdrawal of his guilty plea." *Id.*

The court next turned to Hugueley's claim that the default of his ineffective-assistance-of-trial-counsel claim should be excused under *Martinez* because post-conviction counsel was ineffective in her presentation of the claims. *Hugueley*, 964 F.3d. at 498-501. The court held that *Martinez* did not apply because post-conviction counsel properly raised a claim of ineffective assistance of trial counsel and made a good-faith effort in presenting it. *Id.* at 499. The court noted that "the problem that *Martinez* identified (and hoped to remedy) was that 'it would be inequitable

to refuse to hear a defaulted claim of ineffective assistance of trial counsel . . . where the prisoner might lack the assistance of counsel *in raising it.*'" *Id*. (quoting *Davila v. Davis*, 137 S. Ct. 2058, 2068 (2017) (emphasis in *Hugueley*))).

The court opined that it was "undisputed" that post-conviction counsel "vigorously raised Hugueley's ineffective-assistance-of-trial-counsel claim, including how trial counsel failed to properly litigate his competency to stand trial or to waive the presentation of mitigating evidence." *Id*. at 500. The court explained that the equitable concern in *Martinez* was "not present in situations such as Hugueley's, where the claim is fully raised, but defaulted due to the petitioner's own choices." *Id*. at 501. The court opined that *Martinez* could not excuse the default of the claim because, despite post-conviction counsel's "efforts in raising and attempting to present Hugueley's ineffective-assistance-of-trial-counsel claim, the post-conviction court was prevented from evaluating the claim because Hugueley chose to withdraw his petition." *Id*.

In a footnote, the court also rejected Hugueley's claim regarding trial counsel's failure to challenge his competency at the time he was convicted of his prior violent felonies. *Id*. at 501 n.4. The court noted that *Martinez* did not excuse the default of this claim because even though post-conviction counsel did not raise this particular theory of relief, she unquestionably raised the vehicle through which Hugueley could obtain relief through the theory—his claim of ineffective assistance of trial counsel. *Id*.

REASONS FOR DENYING THE WRIT

This Court should deny the writ because Hugueley, and not post-conviction counsel, is responsible for the procedural default of his claims. Thus, *Martinez* does not apply to excuse the default of this claim. But even if the claim falls within the ambit of *Martinez*, the case does not provide an appropriate vehicle for resolving an alleged circuit split. Moreover, even if *Martinez* applies to the claim, Hugueley is not entitled to relief because, at the very least, he cannot show that his claims of ineffective assistance of trial counsel are substantial under *Martinez*.

A. Hugueley Has Not Shown That Post-Conviction Counsel Caused the Procedural Default of His Claims.

Hugueley argues that certiorari is warranted to ensure consistent application of *Martinez v. Ryan*, 566 U.S. 1 (2012), when post-conviction counsel's deficient representation resulted in a procedural default. Pet. 9-15. He also asks the Court to grant certiorari to ensure that federal courts employ consistent standards to determine whether claims raised in federal court differ from claims presented in state-court post-conviction proceedings. Pet. 27-29. In making this argument, Hugueley wholly ignores the Sixth Circuit's initial holding in the case: Hugueley's withdrawal of his post-conviction petition was a valid procedural default of his claims. Because the procedural default is attributable solely to Hugueley, and not to post-conviction counsel, this case does not present an appropriate vehicle for resolving an alleged circuit split regarding the application of *Martinez* when insufficient evidence is presented on collateral review to support a claim of ineffective assistance of trial counsel.

In *Martinez*, this Court created the equitable rule that "a procedural default will not bar a federal habeas court from hearing a substantial claim of ineffective assistance [of counsel] at trial if, in the initial-review collateral proceeding, there was no counsel or counsel was ineffective." *Martinez*, 566 U.S. at 17. But the Court did not intend the narrow exception of *Martinez* to apply

universally to any procedurally defaulted claim of ineffective assistance of trial counsel. Indeed, this Court specified that the holding "does not concern attorney errors in other kinds of proceedings, including appeals from initial-review collateral proceedings" and "does not extend to attorney errors in any proceeding beyond the first occasion the State allows a prisoner to raise a claim of ineffective assistance [of counsel] at trial, even though that initial-review collateral proceeding may be deficient for other reasons." The limited nature of the holding indicates that there are situations in which *Martinez* will not save a defaulted ineffective-assistance-of-trial-counsel claim. The Sixth Circuit properly identified Hugueley's case as one where the procedural default of the claim falls beyond the reach of *Martinez*.

The Sixth Circuit held that Hugueley's withdrawal of his post-conviction petition was a valid procedural default of his ineffective-assistance-of-trial-counsel claims. *Hugueley*, 496 F.3d at 496-98. The court first observed that States are not constitutionally obligated to provide collateral proceedings for post-conviction review. *Hugueley*, 964 F.3d at 496 (citing *Lackawanna Cty. Dist. Atty' v. Coss*, 532 U.S. 394, 402 (2001); *Murray v. Giarratano*, 492 U.S. 1, 10 (1989) (plurality opinion); *Pennsylvania v. Finley*, 481 U.S. 551, 557 (1987)). The court thus correctly determined that, because the waiver of post-conviction review did not implicate the constitutional concerns raised in *Panetti* and *Ford*, "states are under no obligation to provide a petitioner with his preferred procedural framework when evaluating his competency to withdraw his post-conviction review." *Hugueley*, 964 F.3d at 496-97 (footnote omitted).

The court also rightly stated that, even if there were a constitutional right to a procedure to determine competency to waive post-conviction review, the post-conviction court's procedures more than satisfied due process requirements. *Hugueley*, 964 F.3d at 497-98. "Put simply, Hugueley was not subject to a process that was unfair to him in any material way." *Id.* at 498.

The post-conviction court held a hearing where Hugueley was able to present evidence for the post-conviction court's consideration, and the post-conviction court provided Hugueley ample opportunity to obtain an evaluation from his preferred expert. *Id*. At the hearing, Hugueley was able to cross-examine Dr. Seidner extensively and later to introduce evidence challenging Dr. Seidner's findings. *Id*. at 497.

Since Hugueley's withdrawal of his post-conviction petition constituted a valid procedural default of his claims, his case is readily distinguishable from the cases he cites as evidence of a circuit split regarding the application of *Martinez*. Pet. 11-13. Each of those cases involved post-conviction petitions that were adjudicated by the initial-review collateral proceeding trial court. *See Moore v. Stirling*, 952 F.3d 174, 182 (4th Cir. 2020) ("Although Moore raised his physical-and-mitigation evidence claims in his state PCR proceedings, he argues that new evidence so 'fundamentally alters' these claims that they are new claims not presented to the state court by his PCR counsel."); *Thomas v. Payne*, 960 F.3d 465, 473 (8th Cir. 2020) (stating that the "specific ineffective-assistance-of-counsel-at-trial allegations were presented to the [state post-conviction court], . . . the court provided a determination on the merits," and the petitioner procedurally defaulted the claims on post-conviction appeal); *Carter v. Bigelow*, 787 F.3d 1269, 1290 n.19, 1275 (10th Cir. 2015) (noting that claims the petitioner asserted were procedurally defaulted "were rejected on the merits by the Utah Supreme Court" after the state trial court dismissed all of the claims raised in the post-conviction petition); *Hamm v. Cmm'r, Alabama Dep't of Corr.*, 620 F. App'x 752, 778 n.20 (11th Cir. 2015) (noting that claim the petitioner alleged was procedurally defaulted "was not defaulted and was considered on the merits in state court; accordingly, collateral counsel's ineffective assistance is irrelevant to the claim"); *see also Dickens v. Ryan*, 740 F.3d 1302, 1320, 1308, 1317 (9th Cir. 2014) (concluding that claim raised in federal habeas

petition was a new claim that was distinct from the claim that the post-conviction court "rejected on the merits" and that the Arizona Supreme Court summarily denied); *Williams v. Filson*, 908 F.3d 546, 573 (9th Cir. 2018) (stating that the petitioner raised the substance of the ineffective-assistance-of-trial-counsel claims raised in the federal habeas petition in state petitions for post-conviction relief and that the state trial court denied relief on both claims).

Significantly, none of these cases includes claims that were procedurally defaulted based on a valid, affirmative waiver of post-conviction proceedings. Indeed, the only theory of cause of the procedural default advanced in each case was the alleged ineffective assistance of post-conviction counsel in raising a claim of ineffective assistance of trial counsel. By contrast, the Sixth Circuit initially concluded that Hugueley procedurally defaulted his claims by waiving post-conviction review before it even considered whether *Martinez* applied to the claims. Because the Sixth Circuit's conclusion that Hugueley had defaulted his claims did not hinge solely on an analysis of *Martinez*, this case does not present an appropriate vehicle for resolving an alleged circuit split regarding *Martinez*.

Even if Hugueley's case fell within the ambit of *Martinez*, it is still not an appropriate vehicle to address the supposed circuit split due to the unique factual circumstances of the case. The Sixth Circuit observed that "[t]he 'equitable judgment' animating *Martinez* was that a state could 'deliberately choos[e] to move trial-ineffectiveness claims outside of the direct appeal process, where counsel is constitutionally guaranteed,' into a proceeding where counsel was not guaranteed, thereby 'significantly diminish[ing] prisoners' ability to file such claims.'" *Hugueley*, 964 F.3d at 501 (quoting *Martinez*, 566 U.S. at 13) (alterations in *Hugueley*)). But "[s]uch a concern is not present in situations such as Hugueley's, where the claim is fully raised, but defaulted due to the petitioner's own choices." *Id*. Indeed, "[d]espite [post-conviction counsel's]

efforts in raising and attempting to present Hugueley's ineffective-assistance-of-trial claim, the post-conviction court was prevented from evaluating the claim because Hugueley chose to withdraw his petition." *Id.*

Unlike the Ninth Circuit's decisions in *Dickins* and *Williams*, the Sixth Circuit's conclusion that *Martinez* did not apply to Hugueley's claims was not based on the alleged failure of post-conviction counsel to present sufficient evidence in support of a claim of ineffective assistance of trial counsel. Instead, the Sixth Circuit rested its holding on the fact that Hugueley prevented post-conviction counsel from raising a claim of ineffective assistance of trial counsel by affirmatively withdrawing his post-conviction petition. Because the Sixth Circuit addressed a wholly different factual scenario than the Ninth Circuit—as well as the Fourth, Eighth, Tenth, and Eleventh Circuits—in concluding that *Martinez* did not apply to Hugueley's claims, the decision does not provide an appropriate vehicle to address Hugueley's alleged circuit split. Accordingly, this Court should deny the petition for writ of certiorari.

B. Hugueley Has Not Shown That His Procedurally Defaulted Claims Are Substantial Under *Martinez*.

Assuming that *Martinez* applies, Hugueley argues he has established cause and prejudice to excuse the default of his claims because the defaulted claims are "substantial" under *Martinez*. Pet. 22-25, 31-33. But even if the Court were to determine that *Martinez* applied to these claims, certiorari is not warranted because Hugueley has failed to show that his claims of ineffective assistance of trial counsel are substantial.

To show cause to excuse a default under *Martinez*, a petitioner must "demonstrate that the underlying ineffective-assistance-of-trial-counsel claim is a substantial one." *Martinez*, 566 U.S. at 14. That is, a petitioner "must demonstrate that the claim has some merit." *Id.* (citing *Miller-El v. Cockrell*, 537 U.S. 322 (2003). And to show that trial counsel was ineffective under

Strickland v. Washington, 466 U.S. 668 (1984), a petitioner must satisfy a two-prong test. First, a petitioner must show that trial counsel performed deficiently, which means "that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the [petitioner] by the Sixth Amendment." *Id*. at 687. Second, a petitioner "must show that the deficient performance prejudiced the defense," which "requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." *Id*. Here, Hugueley falls well short of meeting this burden.

Regarding the claim that trial counsel was ineffective by failing to challenge Hugueley's competence to stand trial, the record shows that trial counsel recognized competency as a potential issue and thoroughly investigated it. Trial counsel obtained two experts, Dr. Auble and Dr. Caruso, to evaluate Hugueley. 2011 WL 2361824, at *11, 13. Neither doctor found Hugueley incompetent to stand trial, and Dr. Caruso specifically concluded that Hugueley was competent to stand trial. *Id*. at *11, 16.

After receiving these evaluations, trial counsel followed the experts' recommendation to seek additional brain scans. Trial counsel obtained funding for medical testing, and Hugueley was given a CT Scan. The scan discovered no abnormalities in Hugueley's brain, and the impression was a normal CT of the brain pre and post-contrast. *Hugueley*, 964 F.3d at 494.

Having thoroughly investigated the issue of Hugueley's competency, trial counsel was not deficient for relying on the expert conclusion that Hugueley was competent to stand trial. *See Hinton v. Alabama*, 571 U.S. 263, 274-75 (2014) (emphasizing that finding of deficient performance by trial counsel did "not consist of hiring an expert who, though qualified, was not qualified enough" and explaining that "[t]he selection of an expert witness is a paradigmatic example of the type of 'strategic choic[e]' that, when made 'after thorough investigation of [the]

law and facts' is 'virtually unchallengable'"). And the fact that the experts did not reach Hugueley's desired conclusion does not render trial counsel's performance objectively unreasonable. *See id*. at 275 ("We do not today launch federal courts into examination of the relative qualifications of experts hired and experts that might have been hired.") Accordingly, Hugueley cannot show that trial counsel's performance was deficient, and he cannot show that the claim is substantial under *Martinez*.

Hugueley's claim regarding the failure to investigate his competency at the time of his prior convictions is similarly not substantial under *Martinez*. Hugueley was found competent to stand trial for the murder of the victim, and he had been deemed competent to stand trial in his three prior murder cases. Therefore, trial counsel had no reasonable basis for attempting to collaterally attack Hugueley's prior convictions, and his performance in this regard was not deficient. Additionally, Hugueley cannot show any prejudice based on trial counsel's failure to challenge his prior convictions.

Hugueley introduced the reports of Dr. George Woods and Dr. Siddhartha Nadkarni in support of his incompetency claims. *Hugueley*, 964 F.3d at 494. But neither report makes any mention of Hugueley's competency at the time of his prior convictions. *Hugueley*, 2017 WL 3325008, at *63-64. The reports do not specifically address Hugueley's mental state at the time of his prior convictions, let alone conclude that he was incompetent to stand trial at the time of those convictions. *Id*. Because Hugueley has failed to show any evidence that he was incompetent at the time of his prior convictions, he cannot demonstrate any prejudice based on trial counsel's failure to collaterally attack his prior convictions. Hugueley therefore cannot show that this claim is substantial under *Martinez*.

CONCLUSION

This Court should deny the petition for writ of certiorari.

Respectfully submitted,

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