

No. 20-_____

**In The
Supreme Court of the United States**

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JOE NATHAN JAMES,

Petitioner,

v.

WARDEN, HOLMAN CORRECTIONAL FACILITY,
ATTORNEY GENERAL, STATE OF ALABAMA,
COMMISSIONER, ALABAMA DEPARTMENT
OF CORRECTIONS,

Respondents.

—◆—
**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit**

—◆—
PETITION FOR A WRIT OF CERTIORARI

—◆—
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November 2020

**CAPITAL CASE
QUESTIONS PRESENTED**

1. Whether the Court of Appeals failed to follow the review requirements of 28 U.S.C. § 2254(d) and the case law produced surrounding *Strickland v. Washington*, 466 U.S. 668 (1984), by ignoring case law regarding investigating mitigation evidence and instead focused on James' alleged behavior at the time of trial.
2. Whether this Court should consider the decision of the District Court to not hold an evidentiary hearing despite serious concerns about Jones' mental health brought up in his Rule 32 petition undermines the ability to properly determine whether the Alabama Court of Criminal Appeals decision was reasonable.

LIST OF PARTIES

The Petitioner is Joe Nathan James, an inmate sentenced to death who is currently incarcerated at the Holman Correctional Facility on death row.

The Respondents are the Warden of Holman Correctional Facility, The Attorney General of the State of Alabama, and the Commissioner of the Alabama Department of Corrections.

RELATED CASES

- State v. James, 01-CC-1995-4747.00, Jefferson County, Alabama Circuit Court. Judgment entered November 4, 1996.
- James v. State, CR-96-0405, Court of Criminal Appeals of Alabama. Judgment entered May 8, 1998.
- James v. State, 1971709, Supreme Court of Alabama. Judgment entered October 30, 1998.
- State v. James, 01-CC-1995-4747.80, Jefferson County, Alabama Circuit Court. Judgment entered July 9, 1999.
- James v. State, CR-98-2417, Court of Criminal Appeals of Alabama. Judgment entered April 28, 2000.
- James v. State, CR-98-2417, Court of Criminal Appeals of Alabama. Judgment entered June 23, 2000.
- James v. State, 00-9007, Supreme Court of Alabama. Judgment entered May 21, 2001.

RELATED CASES – Continued

- James v. Alabama, Supreme Court of the United States. Judgment issued May 21, 2001.
- James v. State, 01-CC-1994-4747.60, Jefferson County, Alabama Circuit Court. Judgment entered January 3, 2003.
- James v. State, CR-04-0395, Court of Criminal Appeals of Alabama. Judgment entered April 28, 2006.
- James v. State, CR-04-0395, Court of Criminal Appeals of Alabama. Judgment entered August 25, 2006.
- Ex parte James, 1051693, Supreme Court of Alabama. Judgment entered November 6, 2009.
- James v. State, CR-04-0395, Court of Criminal Appeals of Alabama. Judgment entered March 26, 2010.
- James v. Culliver, CV-10-S-2929-S, United States District Court for the Northern District of Alabama, Southern Division. Judgment entered September 30, 2014.
- James v. Warden, 17-11855, United States Court of Appeals for the Eleventh Circuit. Judgment entered June 8, 2018.
- James v. Warden, 17-11855, United States Court of Appeals for the Eleventh Circuit. Judgment entered June 8, 2018.

RELATED CASES – Continued

- James v. Warden, 17-11855, United States Court of Appeals for the Eleventh Circuit. Judgment entered April 28, 2020.
- James v. Warden, 17-11855, United States Court of Appeals for the Eleventh Circuit. Judgment entered June 25, 2018.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Joe Nathan James respectfully petitions this Court for a writ of certiorari to review the judgment of the Eleventh Circuit Federal Court of Appeals.

**OPINIONS BELOW**

The opinion of the Eleventh Circuit is reported at 957 F.3d 1184 and is reproduced in the Appendix at App. 1.

The opinion of the District Court for the Northern District of Alabama is available at 2014 U.S. Dist. LEXIS 139696 and reproduced in the Appendix at App. B. The certificate of appealability is available at 2018 U.S. App. LEXIS 15652 and reproduced in the Appendix at App. C.

The opinion of the Alabama Court of Criminal Appeals affirming the denial of the Petitioner's Ala. R. Crim. P. 32 petition is available at 61 So.3d 357 and reproduced in the Appendix at App. D.

**JURISDICTIONAL STATEMENT**

The Eleventh Circuit entered its judgment on April 28, 2020. App. 1-App. 6. A petition for rehearing *en banc* was denied on August 23, 2020. App. 7. This

Court has jurisdiction pursuant to 28 U.S.C. Section 1254(1).

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STATUTORY PROVISIONS INVOLVED

28 U.S.C. §2254(d)(1)

(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.

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STATEMENT OF THE CASE

A. Procedural History

Joe Nathan James was convicted and sentenced to death by the Tenth Judicial Circuit Court in Jefferson County, Birmingham, Alabama. James was convicted of capital murder on June 17, 1999 and was sentenced to death on July 19, 1999. Appellant timely appealed and the Court of Criminal Appeals affirmed the judgment on April 28, 2000. *James v. State*, 532 U.S. 1040 (2001). Upon a writ of certiorari to the Alabama Supreme Court, that court also affirmed the judgment in

all respects on April 28, 2000. *James v. State*, 788 So.2d 185 (2000).

On May 7, 2002, Appellant filed a state petition for post-conviction relief under Ala. R. Crim. P. 32, thereby tolling the running of the one-year federal statute of limitations with 14 days remaining, pursuant to 28 U.S.C. §2244(d)(1)(A). On December 5, 2003, the court granted an evidentiary hearing on some of Appellant's claims, primarily claims of ineffective assistance of counsel. On June 6, 2004, an evidentiary hearing was held. The evidence showed that trial counsel conducted virtually no investigation into either the guilt or sentencing phases of the case and that had they done so substantial evidence could have been discovered and presented. Mr. James also sought funding from the court to retain three experts to assist in the evidentiary hearing and presented declarations signed under penalty of perjury from three potential expert witnesses. Dr. Pablo Stewart, a psychiatrist, and Dr. Karen Froming, a neuropsychologist, both explained in their declarations that Mr. James had been born to parents who were mentally ill, and that testing needed to be conducted to determine whether Appellant suffered from mental illness himself.

A third expert, Russell Stetler, a mitigation specialist, explained how a mitigation investigation is conducted, how the investigation conducted by the defense had fallen woefully short of the standard of care applicable to capital defense counsel, and what steps would have been taken by competent counsel to investigate

appellant's background. The Circuit Court denied appellant's request for expert assistance.

On October 28, 2004, the Circuit Court dismissed all of James' claims by signing, without alteration, a 103-page proposed final order prepared by the State of Alabama. James' state appeals of the habeas petition denial were all ultimately denied on October 15, 2010, when the Alabama Supreme Court denied certiorari.

On October 29, 2010, Appellant filed a timely habeas corpus petition in the District Court for the Northern District of Alabama, seeking relief pursuant to 28 U.S.C. §2254. The district court denied relief in a final judgment entered on September 30, 2014. The district court also denied a certificate of appealability (COA). On March 30, 2017, the district court denied James' motion to alter or amend the judgment.

James timely filed his notice of appeal to the Eleventh Circuit Court of Appeals on April 28, 2017, seeking a certificate of appealability with respect to his claims of ineffective assistance of counsel in both the guilt and penalty phases. On June 8, 2018, the Eleventh Circuit denied a COA regarding the claim of ineffective assistance in the guilt phase but granted a COA as to James' penalty phase ineffective assistance claim. *James v. Warden*, 2018 U.S. App. LEXIS 15652 (2020).

On April 28, 2020, the United States Court of Appeals for the Eleventh Circuit issued an opinion affirming the denial of an evidentiary hearing by the District Court. *James v. Warden*, 957 F.3d 1184 (11th Cir. 2020). James timely filed a petition for a rehearing *en banc*,

but the Eleventh Circuit denied the application on June 23, 2020.

B. Factual Summary

James filed for state habeas relief under Ala. R. Crim. P. 32. *James*, 957 F.3d at 1188. The Circuit Court granted an evidentiary hearing with respect to some of Appellant's claims, including the claim of ineffective assistance of counsel in the sentencing phase. *Id.* at 1188-89. James was represented by attorneys Virginia Vinson and Gordon Warren during his capital murder trial. *Id.* at 1887. James presented the testimony of his maternal aunt, his sister, one of his younger brothers, and his father's former employer to testify, as well as Vinson and Warren. *Id.*

Vinson was lead counsel for the case. *Id.* Warren did not prepare for the sentencing phase or pursue possible mitigation evidence, but he was the primary person who argued in the penalty phase on James' behalf. *Id.* The information obtained by the court during the evidentiary hearing indicated that Vinson did not attempt to obtain mitigation evidence prior to trial. *Id.* Vinson testified that she spoke with James' grandmother on the telephone, but the grandmother was not able to provide any useful information. *Id.* Vinson also spoke with James' mother before trial, but she did not want to get involved in the case. *Id.* No other family was contacted before trial, not even those who were identified in the Defense counsel's materials. *Id.*

During the trial, James' mother and sister showed up for the second day of the trial and Vinson spoke with both of them. *Id.* at 1188. James' mother again stated that she did not want to testify, and Vinson decided against calling the sister due to violent incidents committed by James that she recounted to Vinson. *Id.* After Vinson mentioned interviewing his sister, she stated James became angry that he had spoken to her. *Id.* On the day of the penalty phase, James allegedly stated that he did not want anyone to testify during his mitigation phase. *Id.* No testimony or evidence was put on by James in support of his mitigation during the trial. *Id.* Warren argued that James should not be given the death penalty due to his age, lack of emotional maturity, and strong emotions at the time of the trial. *Id.* The jury unanimously recommended James be sentenced to death. *Id.*

During the Rule 32 hearing, James' aunt testified to several mitigation issues present in his life that could have been discovered if any investigation had been done. James' mother and father were together until he was around two years old, and during that time his father was very abusive towards his mother in front of James. *Id.* at 1189. After his mother left his father, he was regularly moving and he lived in eighteen (18) different addresses when he was growing up. *Id.* His sister indicated that James was often left to raise his younger siblings and that his mother had even left for several years to pursue a boyfriend. *Id.*

Significantly, James introduced evidence that he argued should have led counsel to conduct additional

mitigation investigation. While James was incarcerated after his first trial and before his second, evidence was presented showing that James had been evaluated and found to exhibit “schizoid characteristics” as well as possibly having a thought disorder. *Id.*

The trial court signed off on the State’s proposed order denying James’ claims. The Alabama Court of Criminal Appeals affirmed the denial of James’ claims. See *James v. State*, 61 So.3d 357 (Ala. Crim. App. 2010). James challenged the findings of the trial court and Alabama Court of Criminal Appeals in his habeas petition, but it was denied without a hearing. *James v. Culliver*, 2014 U.S. Dist. LEXIS 139696 (N.D. Ala. Sep. 30, 2014).



REASONS FOR GRANTING THE PETITION

James’ challenge to his conviction based upon the failure to show that his counsel was ineffective under *Strickland v. Washington*, 466 U.S. 668 (1984). The opinion issued by the Eleventh Circuit relies upon an alleged failure of James to show that he would have changed his mind about presenting evidence at the time of the penalty phase of his second trial and the failure of that evidence to change the result of that phase of the trial. The Eleventh Circuit decision does so without actually showing that there was no possibility James could have changed his mind given evidence put on in an evidentiary hearing. The Court also ignores a significant factor in this case, that an actual

investigation of the mitigating factors in this case would likely have led to a question of whether he could knowingly have waived his right to put on evidence in mitigation.

1. The Evidence Presented By James Does Not Foreclose The Possibility That He Did Not Intend To Waive All Mitigation Evidence.

Under *Strickland*, a petitioner claiming that he received ineffective assistance of counsel in violation of the Sixth Amendment must show both that his attorney’s performance was objectively unreasonable “under prevailing professional norms” and that counsel’s poor showing prejudiced his defense. *Strickland*, 466 U.S. at 687-88. The petitioner bears the burden of proving his ineffective assistance claim, and he must meet his burden on both prongs to succeed. *Williams v. Allen*, 598 F.3d 778, 789 (11th Cir. 2010). The analysis under *Strickland* should not be considered a “mechanical” one. *Strickland*, 466 U.S. at 696.

A petitioner alleging that his counsel was ineffective for failing to discover and present mitigating evidence during the penalty phase of his capital murder trial must show that, absent counsel’s errors, the sentencer “would have concluded that the balance of aggravating and mitigating circumstances did not warrant death.” *Id.* at 695. This requires a preliminary showing that the jury would actually have heard helpful evidence during the penalty phase if his attorneys had discovered it—if the petitioner would not have

allowed his counsel to present mitigating evidence at sentencing, then he “was not prejudiced by anything that trial counsel did.” *Gilreath v. Head*, 234 F.3d 547, 551 fn.12 (11th Cir. 2000).

If James did knowingly tell his counsel at the time that he wanted to be sentenced to death, James “must [also] show a reasonable probability that, if he had been more fully advised about the mitigating evidence and its significance, he would have permitted trial counsel to present the evidence at sentencing.” *Pope v. Sec’y, Florida Dep’t of Corr.*, 752 F.3d 1254, 1266 (11th Cir. 2014). If he makes this showing, he must then establish a reasonable probability that if the jury had heard his proffered mitigating evidence, it would have recommended life instead of death. *Pope*, 752 F.3d at 1266.

It is important to note that the decision to tell his counsel not to present any evidence in the mitigation phase of the trial was based entirely upon a non-existent pre-trial investigation of his mitigation issues during his case. The only individuals available at the time that could have testified were family members that had not prepped for testifying. *James*, 957 F.3d at 1188. At a minimum, competent penalty phase performance requires that counsel must conduct an investigation into the history and background of the defendant “to discover all reasonably available mitigating evidence and evidence to rebut any aggravating evidence that may be introduced by the prosecutor.” *Wiggins v. Smith*, 539 U.S. 510, 524 (2003); *Rompilla v. Beard*, 545 U.S. 374, 387, fn.7 (2005); see also, ABA Guidelines

10.4, 10.7. Counsel must conduct this investigation well in advance of trial and cannot wait until as late as a week before the trial to begin preparing for the penalty phase of the trial, like what happened in this case. See ABA Guideline 10.7, Comment; *Brownlee v. Haley*, 306 F.3d 1043 (11th Cir. 2002).

The information presented by James in the Rule 32 hearing showed that there was mitigation evidence that could potentially have changed his mind if the trial counsel had done their job in properly investigating the case to begin with. James offered affidavit testimony in his case that medical “records and James’ family history indicated a need for additional psychological testing, and from a ‘mitigation specialist,’ criticizing counsel’s mitigation investigation. Because these affidavits were not submitted until the evidentiary hearing and the state was unable to respond or prepare counter-affidavits, the state circuit court declined to consider them.” *James*, 957 F.3d at 1189 fn.2. These experts, if this case had been provided an evidentiary hearing in the District Court, would have been able to show evidence that proved James would have changed his mind and the important information left out of the case due to a complete lack of a pre-trial investigation into mitigation evidence.

The Eleventh Circuit opinion affirming the District Court’s decision not to have an evidentiary hearing or provide relief relies upon the supposed decision of James at the time to not put on any mitigation. This reads into James’ motives beyond what the evidence shows, despite him offering this evidence to show that

these were issues that he did not know were significant in mitigation during capital murder trials. *Strickland* requires that “when a court is evaluating an ineffective-assistance claim, the ultimate inquiry must concentrate on ‘the fundamental fairness of the proceeding.’” *Weaver v. Massachusetts*, 137 S. Ct. 1899, 1911 (2017). That did not happen in this case and requires a writ be issued in this case.

2. The Eleventh Circuit Decision Ignores Significant Questions Regarding James’ Mental Health And Ability To Knowingly Waive His Right To Put On Mitigation Evidence.

The Eleventh Circuit decision ignores the question presented in this case about an inmate’s ability to “waive” the right to put on mitigation evidence. While the trial counsel relied upon the initial competency exam conducted before his first case, this does not answer the question of whether James’ decision in the second trial to waive any argument in the mitigation phase was knowingly done given that the evidence presented to the trial court in the State post-conviction habeas proceedings pointed to a possible schizophrenia spectrum or other psychotic disorder and learning difficulties that were never examined properly by the trial court and could have been investigated in an evidentiary hearing in the Federal district court.

In the landmark case *Godinez v. Moran*, 509 U.S. 389 (1993), this Court held that the competence to plead guilty or waive the right to counsel is the same

as competence to stand trial. While James was incarcerated after his first trial and before his second, evidence available to counsel showed that James had been evaluated and found to exhibit “schizoid characteristics” as well as possibly having a thought disorder. *James*, 957 F.3d at 1189. These are serious mental health issues that counsel failed to investigate to determine whether James was competent in this case. Additionally, though the trial counsel believes that the report that was prepared to determine James’ competency at the time of the first trial might have been conducted by a competent and fair expert witness, it had been several years since James had been evaluated and the preliminary evaluations conducted while he was incarcerated on death row before his second trial indicated that there was a significant mental health issue in the case.

If the trial counsel had done their duty under *Strickland*, there is a reasonable probability that the competency or psychological evaluation of James might have shown he was unable to waive his mitigation phase of his trial. This was something that could not have been done without expert analysis available to him at the time of his capital murder trial but not conducted by his trial counsel. Additionally, the lack of proper medication for James at the time of his trial could have had a significant impact on his decision-making at the time. The failure of the Eleventh Circuit to consider the expert affidavits pointing towards a serious mental health issue at the time of James’ second

capital murder trial violated the proper analysis under 28 U.S.C. §2254(d).

The Eleventh Circuit failed to address the issue of James' competency to waive his right to put on mitigation evidence in his trial. This failure undermines the premise of their opinion, that James waived the mitigation and therefore cannot meet the burden under *Strickland*. This failure requires that this Court reverse the refusal to allow for an evidentiary hearing in the district court to explore this issue.



CONCLUSION

This Court should grant the Petition for Certiorari and reverse.

Respectfully Submitted,

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