

No. 20-708

In The
Supreme Court of the United States

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JOE NATHAN JAMES,

Petitioner,

v.

TERRY RAYBON, WARDEN, ET AL.,

Respondents.

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

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**REPLY IN SUPPORT OF
PETITION FOR A WRIT OF CERTIORARI**

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REPLY BRIEF

The basic protections that this Court laid out in *Strickland v. Washington*, 466 U.S. 668 (1984), as well as the decisions that this Court has made regarding individuals who have mental health issues, would be undermined by the refusal to grant Certiorari in this case. The evidence in this case reveals there is a serious psychological issue with James that was not addressed by the Alabama Court of Criminal Appeals or the Eleventh Circuit Court of Appeals in their *Strickland* analysis. This Court should grant Certiorari and remand the case for psychological evaluations to be performed so that a finding on James' mental health can be determined.

ARGUMENT

1. The Alabama Court of Criminal Appeals and the Eleventh Circuit erred in their analysis of the case.

The State relies upon illusory differences between this case and previous cases in an attempt to show that the essentially nonexistent mitigation investigation in this case was Constitutionally sufficient under *Strickland*. This Court should grant Certiorari to review the failure of the trial counsel to look into any reasonable mitigation evidence and reverse the decision of the Eleventh Circuit finding that the investigation was sufficient given the facts of the case.

In their brief, the State largely relies upon *Cullen v. Pinholster*, 563 U.S. 170 (2011) to support the contention that James’ claim that he was provided ineffective assistance of counsel under *Strickland* is without merit. In *Cullen*, this Court reversed the decision of the Ninth Circuit, which found that it was “prima facie ineffective” for counsel to only acquire minimal information about the background of their client. *Id.* at 195. The State argues that James is making that same argument in this case. However, the State ignores that James presented several significant facts regarding his mental health and trial counsel’s failure to investigate in his Ala. R. Crim. P. 32 hearing to show that they were ineffective. These facts were similarly ignored by the Alabama Court of Criminal Appeals and the Eleventh Circuit. James’ mental health was such a significant issue that he had already undergone a psychological evaluation several years before in the previous trial under his previous counsel. *James v. State*, 61 So. 3d 357, 376 (Ala. Crim. App. 2010). The issue of his competency should have been more of an issue for the new trial counsel, given that while James was incarcerated after his first trial and before his second, evidence was presented showing that he had been evaluated and found to exhibit “schizoid characteristics” and possibly have a thought disorder. *James v. State*, 957 F.3d 1184, 1187 (11th Cir. 2020).

Trial counsel had access to these records but refused or simply did not attempt to review them. This Court has recognized that, “[e]ven when a defendant is competent at the commencement of his trial, a trial

court must always be alert to circumstances suggesting a change that would render the accused unable to meet the standards of competence to stand trial.” *Drope v. Missouri*, 420 U.S. 162, 181 (1975). The trial counsel in this case did not attempt to ensure that James was competent, despite evidence that he was not competent being available for them to review. James is not asking that this Court find that a minimal investigation is “per se” ineffective assistance of counsel like the State is arguing. Instead, James is arguing that the decisions of the Eleventh Circuit and Alabama Court of Criminal Appeals that did not address the significant mental health problems that he suffers from prove that the trial counsel failed to properly investigate the case against him and should have been investigated by his trial counsel.

The State correctly points out that the investigation during a capital murder or any criminal trial depends critically upon what the defendant instructs the trial counsel to do. *Cummings v. Sec’y for Dep’t of Corr.*, 588 F.3d 1331, 1357 (11th Cir. 2009). However, the arguments in this case are certainly distinguishable from those in *Cullen*, and the trial counsel’s duty to investigate should not be found to be limited in the way the Eleventh Circuit held in *Cummings*. James is not arguing against a blanket ban against the waiver of any mitigation evidence, as that would not be consistent with previous decisions of this Court and other appellate courts. Instead, he is attempting to argue that the waiver of the right to put on mitigation evidence when there is a serious issue regarding the

Defendant's competency should require counsel to do more investigation than simply having a few minutes of conversation with his family. Another psychological analysis would have been available to his trial counsel at the time of his capital murder trial but was not conducted. The Alabama Court of Criminal Appeals and the Eleventh Circuit both failed to consider James' competency to waive the right to put on mitigation evidence at the second trial. 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, given the evidence from his time in prison. *James*, 957 F.3d at 1187. The Eleventh Circuit and the Alabama Court of Criminal Appeals both failed to consider the expert affidavits pointing towards a serious mental health issue at the time of James' second capital murder trial, as well as the evidence produced at the time of James' Ala. R. Crim. P. 32 hearing showing his mental health issues. This failure should require that James undergo a mental evaluation and a determination be made regarding his ability to waive the right to put on mitigation evidence.

The State lastly argues that Rule 32 counsel's failure to put James on the stand prevents him from proving that he was prejudiced, even if we assume that trial counsel should have investigated these matters. The State relies upon *Schriro v. Landrigan*, 550 U.S. 465, 475 (2007) to support their claim that no prejudice could be found in James' case. This case is once again distinguishable from James' due to the lack of mental

health concerns underlying the actual findings by this Court. The concern regarding James' mental health is an active and unresolved issue in this case and no mental health evaluation had been conducted at the time of his second trial or at the time that the Ala. R. Crim. P. 32 proceedings occurred. James' attorneys did not have an evaluation conducted, despite one being available and evidence pointing towards mental health disorders also being available. However, no mitigation investigation had been conducted beyond a few minutes of talking to James' family members.

This Court should grant Certiorari in this case and remand for the District Court to conduct a hearing to determine whether the finding of the Rule 32 trial court was reasonable after consideration of a full evaluation of James' mental health and determination of whether his mental health could have affected his ability to determine whether he could waive his right to put on mitigation evidence.



CONCLUSION

This Court should grant the Petition for Certiorari and reverse.

Respectfully submitted,

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