No. 20-8333

IN THE SUPREME COURT OF THE UNITED STATES

CARMAN DECK,

Petitioner,

v.

PAUL BLAIR, Warden, and ERIC S. SCHMITT, Attorney General,

Respondents.

Brief in Opposition to Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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CAPITAL CASE

QUESTIONS PRESENTED

1. Does this Court's Sixth, Eighth, and Fourteenth Amendment precedent prohibit holding a resentencing due to the passage of time when a defendant is able to present all evidence presented at the initial sentencing?
2. Does this Court's standard for ineffective assistance of counsel from *Strickland v. Washington*, 466 U.S. 668 (1984), still govern all claims of ineffective assistance of post-conviction counsel to excuse a procedural default?
3. Is an evidentiary hearing required if a court can determine that a habeas claim is not substantial from its face?

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STATUTE INVOLVED

28 U.S.C. § 2254

(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.

(e) (1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.

> (2) If the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that—
>
> > (A) the claim relies on—

(i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and

(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(f) If the applicant challenges the sufficiency of the evidence adduced in such State court proceeding to support the State court's determination of a factual issue made therein, the applicant, if able, shall produce that part of the record pertinent to a determination of the sufficiency of the evidence to support such determination. If the applicant, because of indigency or other reason is unable to produce such part of the record, then the State shall produce such part of the record and the Federal court shall direct the State to do so by order directed to an appropriate State official. If the State cannot provide such pertinent part of the record, then the court shall determine under the existing facts and circumstances what weight shall be given to the State court's factual determination.

(g) A copy of the official records of the State court, duly certified by the clerk of such court to be a true and correct copy of a finding, judicial opinion, or other reliable

written indicia showing such a factual determination by the State court shall be admissible in the Federal court proceeding.

(h) Except as provided in section 408 of the Controlled Substances Act, in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel for an applicant who is or becomes financially unable to afford counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

(i) The ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254.

STATEMENT OF THE CASE

In July 1996, Carman Deck and his sister, Tonia Cummings, knocked on the door of an elderly couple, James and Zelma Long, asking for directions. App'x 204a. When the couple invited them in, Deck ordered the Longs to turn over their valuables and lie face down on their bed. App'x 204a–205a. They complied. For ten minutes, the Longs begged for their lives while Deck stood at the foot of their bed contemplating his next move. App'x 205a. When Cummings entered and told him time was running out, Deck shot each of the Longs twice in the back of the head. App'x 205a. Deck was convicted of the murders and related crimes and received two death sentences. App'x 204a. Deck's case has included one guilt-phase trial[1] and three sentencings, in each

[1] App'x 185a.

of which a jury has unanimously recommended the imposition of two death sentences.[2]

Deck filed a federal habeas corpus petition in 2013, raising 32 grounds of error. App'x 18a–23a. The district court granted that petition in part and denied that petition in part on April 13, 2017. App'x 14a–184a. The district court granted Deck relief on two claims: 1) that the time between his guilt-phase trial and last sentencing deprived him of his constitutional right to present mitigation evidence, App'x 157a; and 2) that trial counsel was ineffective for failing to bring this claim in state court. App'x 158a. It denied relief on 30 other grounds and denied Deck a certificate of appealability twice. App'x 183a; Doc. 106.[3]

Respondents appealed the district court's grant of the writ of habeas corpus. App'x 1a. The Eighth Circuit reversed the district court's grant of habeas corpus and remanded for the entry of judgment denying Deck's habeas petition in full. App'x 12a. The Eighth Circuit found that both the trial court error claim regarding the timing of the sentencing and the corresponding ineffective assistance of trial counsel claim were both procedurally defaulted. App'x 8a. It then evaluated whether *Martinez v. Ryan,* 566 U.S. 1 (2012), might serve to excuse that default, either directly or in conjunction with *Edwards v. Carpenter*, 529 U.S. 446 (2000). App'x 8a. The Eighth Circuit found that the trial court error claim was not "substantial" enough continue

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[2] App'x 185a, 249a, 300a. Deck's first sentencing was reversed by the Missouri Supreme Court on an ineffective assistance of counsel issue. App'x 237a. Deck's second sentencing was reversed by this Court on a visible shackling issue. App'x 272a.

[3] Respondents cite documents filed in the district court but not included in Petitioner's Appendix by their district court document number.

the analysis, as the law at the time of Deck's trial did not require trial counsel to raise a claim regarding the timing of the sentencing. App'x 11a. The Eighth Circuit denied Deck's petition for rehearing or rehearing en banc. App'x 396a.

SUMMARY OF THE ARGUMENT

Certiorari is unwarranted because Deck has not alleged that a lower court 1) has decided an unsettled question of federal law or 2) has acted in such a way that this Court's supervisory power is necessary, and he has not proven his allegations that a lower court has entered a decision in conflict with another court. *See* S. Ct. R. 10. Deck first argues that holding his last sentencing, given the length of time that had passed since his guilt-phase trial, conflicted with this Court's precedents. Pet. 11. But that question was not before the court below, as Deck procedurally defaulted his trial court error claim as well as its related ineffective assistance claim, so they were both unreviewable on the merits. *Coleman v. Thompson*, 501 U.S. 722, 750 (1991).

Deck next argues that the court below engaged in a circuit split when it applied the standard for ineffective assistance of appellate counsel to a claim of ineffective assistance of post-conviction counsel when other circuits have applied the standard for ineffective assistance of trial counsel to claims of ineffective assistance of post-conviction counsel. Pet. 20–24. But Deck only attempts to manufacture a circuit split where there is none. The standard the Eighth Circuit applied is the same standard *all circuits* apply to *all claims* of ineffective assistance of post-conviction counsel to excuse procedural default: the standard from this Court's decision in *Strickland v. Washington*, 466 U.S. 668 (1984).

Even if there were a conflict for this Court to resolve, this case is not the appropriate vehicle to decide the issues for two reasons. First, Deck did not lose any mitigation evidence due to the passage of time between his trials, so his last sentencing could not have run afoul of this Court's constitutional precedents. Second, even if Deck could show prejudice as a result of the time between his trials, he would not receive the retroactive benefit of any decision of this Court. *Teague v. Lane*, 489 U.S. 288, 316 (1989).

At various points throughout his petition, Deck argues that he should have had a hearing regarding the applicability of *Martinez v. Ryan,* 566 U.S. 1 (2012), to his ineffective assistance of trial counsel claim. Pet. 1, 24, 27. But a hearing was not necessary because the underlying claim was both plainly insubstantial and also based on a question of law. No evidence adduced at a hearing would have assisted the court. The Eighth Circuit correctly applied *Martinez.*

REASONS FOR DENYING THE PETITION

I. Certiorari is unwarranted because the holding of the court below did not conflict with the authority of this Court.

In his petition, Deck repeats his arguments regarding the merits of his claims about the time between his guilt-phase trial and last sentencing. Deck suggests this Court "should grant review and hold that its prior decisions that the ability to present mitigation evidence is essential to the constitutionality of the death penalty apply as fully to situations in which the failure to present such evidence is due to a delay in proceedings as they do when the failure to present evidence is due to other factors not attributable to the prisoner, such as state prohibitions on such evidence." Pet 11. By

phrasing his request for relief in this way, Deck makes it seem as though the Eighth Circuit decided an important federal question in a way that conflicts with relevant decisions of this Court. S. Ct. R. 10. But this is incorrect. The Eighth Circuit *made no merits decision* on the underlying claims regarding the constitutionality of the time between trials, either facially or as applied to Deck. The Eighth Circuit instead found that both the claim of trial court error and the claim of ineffective assistance of counsel were procedurally defaulted without excuse. App'x 8a, 11a.

The Eighth Circuit did evaluate whether *Martinez v. Ryan,* 566 U.S. 1 (2012), could serve to excuse the default of both claims. App'x 9a–11a. The Eighth Circuit began its *Martinez* analysis of Deck's ineffective assistance of trial counsel claim by determining whether the underlying claim was substantial enough to warrant further analysis. App'x 9a. It found that it was not, because the state of the law at the time of Deck's last sentencing and post-conviction proceedings did not clearly dictate such a claim be raised. App'x 10a. "When postconviction counsel filed Deck's petition in 2010, the law was far from settled that a 10-year delay between conviction and sentencing would give rise to a constitutional claim, much less that trial counsel was ineffective for failing to raise the argument two years earlier." App'x 10a.[4]

[4] Deck states "[o]n appeal, a panel of the Eighth Circuit held that no clearly established federal law established that Mr. Deck was entitled to relief because he was unable to present mitigating evidence at his last sentencing, and therefore 28 U.S.C. § 2254(d) precluded reversal." Pet. 10. This is not accurate. Section 28 U.S.C. 2254(d) regards claims that were adjudicated on the merits in State court proceedings. Deck's claims were both procedurally defaulted. Therefore, Section 2254(d) did not apply to Deck and the Eighth Circuit made no finding regarding it.

Deck claims that the Eighth Circuit's finding "ignores" a long line of Eighth Amendment cases from this Court regarding the right to present mitigation evidence. Pet. 10. But the Eighth Circuit acknowledged those cases. "There is no question, as Deck points out, that capital defendants have a constitutional right to present mitigating evidence." App'x 11a (citing *Eddings v. Oklahoma,* 455 U.S. 104 (1982), one of the cases Deck claims it "ignored"). It went on to say: "But none of the cases establishing this principle involved situations in which a long delay was allegedly responsible for a shortage of mitigating evidence." App'x 11a. "Examining the state of the law in 2010, Deck cannot identify any 'controlling authority' from either the Supreme Court of the United States or the Supreme Court of Missouri that had recognized a Due Process claim under these or similar circumstances." App'x 10a.

Deck claims that this finding contradicts this Court's precedent in *Barker v. Wingo,* 407 U.S. 514 (1972), and *United States v. $8,850,* 461 U.S. 555, 562–65 (1983). Pet. 19. But again, neither case addresses the issue here. *Barker* regards pretrial delay, not post-trial, pre-sentencing delay. 407 U.S. at 514. *United States v. $8,850* applied the *Barker* factors to a delay in instituting civil forfeiture proceedings. 461 U.S. at 556.

The Eighth Circuit was correct in its finding that, following Deck's logic, post-conviction counsel would have had to argue that trial counsel was ineffective for failing to extrapolate a new principle of law, something that counsel was not obligated to do. App'x 11a. The Eighth Circuit wrote. "[a]s we have explained, failing to make an argument that would 'require the resolution of unsettled legal questions' is

generally not 'outside the wide range of professionally competent assistance.'" App'x 10a. It was correct. *See Smith v. Murray*, 477 U.S. 527, 535–36 (1986) (even the most informed counsel will fail to anticipate a change in the law, and counsel's conduct must be evaluated from counsel's perspective at the time).

The underlying claim in Deck's case was not substantial enough to warrant further *Martinez* analysis, therefore this Court should decline to make the type of theoretical finding Deck urges in his petition for certiorari.

II. Certiorari is unwarranted because there is no circuit split regarding the standard to apply to ineffective assistance of post-conviction counsel.

Deck attempts to manufacture a circuit split on the standard for analyzing ineffective assistance of trial counsel, ineffective assistance of appellate counsel, and ineffective assistance of post-conviction counsel. No such split exists.

Deck's confusion stems from the Eighth Circuit's passing reference to this Court's opinion discussing the responsibilities of direct appeal counsel in *Davila v. Davis*, 137 S.Ct. 2058, 2067 (2017): "Moreover, "[d]eclining to raise a claim ... is not deficient performance unless that claim was plainly stronger than those actually presented." App'x 11a. The Eighth Circuit mentioned this quote to explain that Deck's post-conviction counsel did not simply fall asleep at the switch. Instead, post-conviction counsel raised many claims and those claims actually enjoyed a basis in the law. But it is clear that the Eighth Circuit used the appropriate standard to evaluate post-conviction counsel's performance: that from *Strickland v. Washington*, 466 U.S. 668, 690 (1984). App'x 11a.

Deck argues that the circuits have split because some circuits, like the court below, reference appellate counsel when evaluating the effectiveness of post-conviction counsel, and some circuits reference trial counsel when evaluating post-conviction counsel. Deck is wrong for two reasons. First, there is no circuit split because the standard is the same for both instances. Second, even if there were a difference, post-conviction counsel in Missouri is more akin to appellate counsel than trial counsel.

First, there is no circuit split as to what standard should govern ineffective assistance of post-conviction counsel. Deck suggests that the Fifth, Ninth, and Eleventh circuits hold that post-conviction counsel should be evaluated under the same standard for trial counsel and that the Third, Seventh, and Eighth Circuits find that post-conviction counsel should be held to the same standard as appellate counsel. But the standard is always that of *Strickland*: whether "counsel's representation fell below an objective standard of reasonableness." *Strickland,* 466 U.S. at 668. In fact, every single one of the cases Deck cites for the proposition that there is a circuit split uses the exact same standard. *See Workman v. Superintendent Albion SCI*, 915 F.3d 928, 941 (3rd Cir. 2019); *Brown v. Brown*, 847 F.3d 502, 513 (7th Cir. 2017); *Sullivan v. Sec'y, Fla. Dept. of Corr.*, 837 F.3d 1195, 1204 (11th Cir. 2016); *Trevino v. Davis*, 829 F.3d 328, 348 (5th Cir. 2016); *Canales v. Stephens*, 765 F.3d 551, 569 (5th Cir. 2014); and *Detrich v. Ryan*, 740 F.3d 1237, 1245 (9th Cir. 2013).

A review of the cases Deck cites shows not that each circuit uses a different standard, but rather that courts are exploring what objective reasonableness looks

like when applied to defense counsels with different responsibilities. Deck argues specifically that post-conviction counsel should not be evaluated based on the relative strength of different claims, like appellate counsel. Pet. 27. But evaluating ineffectiveness nearly always regards evaluating a choice made by counsel. And one of the ways to evaluate the reasonableness of a choice made by counsel is to evaluate it compared to other choices made by counsel. That is merely what the courts were attempting to do in the examples Deck cites.

This Court in *Strickland*, likely for this very reason, declined to set out the standard for ineffective assistance of counsel with any more specificity than it already had. "More specific guidelines are not appropriate. The Sixth Amendment refers simply to 'counsel,' not specifying particular requirements of effective assistance. …The proper measure of attorney performance remains simply reasonableness under prevailing professional norms. … No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Any such set of rules would interfere with the constitutionally protected independence of counsel and restrict the wide latitude counsel must have in making tactical decisions." 466 U.S. at 688–89. Deck takes issue with every circuit's attempt to explain what reasonable representation looks like for different types of counsel, but at bottom, all courts continue to use the *Strickland* standard in evaluating all non-conflict-of-interest ineffective assistance of counsel claims. There is no circuit split here.

Second, not only is there no circuit split, the court below committed no error. In Missouri, post-conviction counsel is more akin to appellate counsel than trial counsel. Deck describes the obligations of post-conviction counsel as follows, "Missouri post-conviction counsel are required, as a matter of state law, to identify and investigate claims of trial counsel's ineffectiveness." Pet. 21. This is not entirely accurate. Under the Missouri Supreme Court Rule governing post-conviction proceedings, appointed counsel are instructed to do only two things: 1) determine whether the *pro se* motion already filed by the defendant alleges sufficient facts to support its claims; and 2) determine whether the defendant has included all claims known to him. Mo. S. Ct. R. 29.15. It does not require counsel to plead claims not known to the defendant, and certainly does not require counsel to plead claims unsupported by the law. This is more akin to the role of an appellate advocate than a trial advocate, and perhaps even requires *less* investigation into claims than an appellate advocate. The Eighth Circuit appropriately referenced this Court's *Davila* opinion regarding the role of appellate counsel.

The Eighth Circuit applied the appropriate standard, the same standard used by all circuits, in evaluating Deck's *Martinez* claim regarding post-conviction counsel.

III. This case is an inappropriate vehicle for this Court to use to decide the constitutionality of post-trial, pre-sentence delay.

Even if the Eighth Circuit's decision contradicted decisions of other courts, which it did not, Deck's case would still not be an appropriate case for certiorari because he was not actually prejudiced by the passage of time between his guilt-phase trial and last sentencing. Further, Deck would not be entitled to the benefit of any

new rule of criminal procedure because the application of that decision to Deck would be barred by *Teague v. Lane*, 489 U.S. 288, 316 (1989).

A. Deck presents no evidence that he, due to the time between his guilt-phase trial and last sentencing, was unable to present any mitigating evidence.

Deck argues that by the time of his last sentencing, "powerful mitigation evidence that was previously available was lost. Without Mr. Deck's trial attorneys being able to present this substantial mitigation evidence, the jury sentenced Mr. Deck to death." Pet. 8. This is incorrect.

No mitigation evidence was "lost" due to the passage of time. Deck's trial attorneys had available to them all of the evidence presented at the first sentencing and then some. In fact, Deck was able to provide testimony from one *more* witness at his last sentencing than he could at his initial sentencing and was able to retain two *more* expert witnesses at his last sentencing than he did at his initial sentencing. App'x 237a–238a, 377a. In fact, trial counsel testified at Deck's post-conviction hearing that he "absolutely believed that *everything* that [he] wanted to bring out came out at trial." Doc. 35, Ex. UU, p. 53 (emphasis added).

Deck writes "…while Mr. Deck was able to present testimony from four live witnesses [Michael Deck, Rita Deck, Major Puckett, and Beverly Dulinsky] at his first trial, *none* of these witnesses testified at his last trial." Pet. 12–13 (emphasis in original). This is not accurate. Michael Deck provided testimony via video deposition. App'x 377a. Major Puckett and Beverly Dulinsky provided testimony by written deposition that was read aloud into the record. App'x 377a. Rita Deck disobeyed her

subpoena to testify at Deck's last sentencing, App'x 382a, but her testimony was by no means "lost." She had given sworn testimony *two times*, at the initial sentencing and at the first resentencing. Doc. 35, Ex. UU, p. 118. If Deck had proven her unavailability at trial, he could have read her testimony into evidence. Mo. S. Ct. R. 25.13; *State v. Murphy*, 592 S.W.2d 727, 731 (Mo. 1979). But even if he had presented her testimony, it would have been of limited value. The Missouri Supreme Court found that Rita Deck's testimony was repetitive to the mitigation testimony heard by the jury from the expert witnesses and previous depositions presented. App'x 383a. Even though trial counsel did not present Rita Deck's testimony verbatim as he did the others, he did choose to elicit evidence about and from Rita Deck through the testimony of an expert. App'x 380a.

Deck did not lose any mitigation evidence due to the passage of time. It would not be useful for this Court to examine the constitutionality of post-trial, presentence passage of time in a case where the defendant was not prejudiced thereby.

B. Deck cannot receive the benefit of his requested ruling because its application to him would be barred by *Teague v. Lane*, 489 U.S. 288 (1989).

A new constitutional rule of criminal procedure is not applicable to a case that has become final before the new rule is announced.[5] *Teague v. Lane*, 489 U.S. 288,

[5] Previously, "watershed" rules of criminal procedure may have applied retroactively on collateral review, but this Court recently held, "[n]ew procedural rules do not apply retroactively on federal collateral review." *Edwards v. Vannoy*, 141 S.Ct. 1547, 1560 (2021).

316 (1989). So even if this Court finds that habeas petitioners may raise a similar claim, Deck is still not entitled to its retroactive application to him in this case.

IV. This Court need not hold this case in abeyance pending *Shinn v. Ramirez*, No. 20-1009, 2021 WL 1951793 (Cert. granted May 17, 2021), because Deck is not entitled to a *Martinez* hearing.

Deck continues to argue that the district court should have given him an evidentiary hearing to develop his *Martinez* claim. He asserts that "[h]ad that hearing been held, Mr. Deck could have disputed the Eighth Circuit's claim that post-conviction counsel strategically omitted these claims." Pet. 1. He is incorrect for several reasons.

First, the Eighth Circuit made no finding as to what post-conviction counsel's strategy was; it merely stated that if counsel had considered the claim at all, he could have reasonably chosen to exclude it in light of his other claims. App'x 10a–11a. Second, the questions of whether: 1) post-conviction counsel even considered such a claim; and 2) if he did consider it, his reasons for not raising it, are both irrelevant. The question is instead whether counsel was obligated to raise such a claim based on the state of the law at the time. This is a question of law, not of fact. An evidentiary hearing would do nothing to assist the court in making that determination.

Deck asserts that this Court should hold his case in abeyance, as it will soon decide in *Shinn v. Ramirez*, No. 20-1009, 2021 WL 1951793 (Cert. granted May 17, 2021), whether a district court has authority to hold an evidentiary hearing on the merits of a claim in cases where procedural default is excused under *Martinez v. Ryan*, given 28 U.S.C. §2254(e)(2)'s limitation on the presentation of new facts for the

first time in federal court. Pet. 1. But *Shinn* presents a different issue from that raised here.

The underlying claim in *Shinn* is about whether trial counsel was ineffective for failing to call certain witnesses at a mitigation hearing. The Ninth Circuit found that the district should have held a hearing to learn what evidence the potential witnesses would have presented and question trial counsel on her reasoning for not calling those witnesses. *Id.* at *1248. In this case, the question is not whether post-conviction counsel should have presented certain *facts*; the question is whether post-conviction counsel should have argued that trial counsel should have raised a legal claim with no support in the *law*. In other words, whether Deck's claim regarding the passage of time between his guilt-phase trial and last sentencing had any legal support at the time of trial is a question of law, not of fact. *Shinn* is not on point.

Additionally, while Deck's claims are premised entirely on the concept that he has been harmed by delays in litigation, he now asks this Court to engage in yet more delay. Taking contradictory positions is not new for Deck. Deck argues that his last sentencing was held ten years after his guilt-phase trial "through no fault of his own." Pet. 7. This is simply not so. A review of the trial court record, described in depth by Respondents in their brief to the Eighth Circuit, shows that in all but one round of litigation, Deck delayed the proceedings longer than or the same as the State. In his federal habeas litigation, his pattern of causing delay worsened. In the district court, Deck requested and received eight extensions of time, delaying the case for nine months. Respondents took one three-week extension. In the Eighth Circuit, Deck

stayed the appeal twice, delaying the litigation fourteen months. When briefing finally resumed, Deck requested and received three extensions of time, delaying the appeal another month and a half.

Respondents have a duty to carry out the lawful sentence imposed by the people of the State of Missouri 13 years ago. The victims of Deck's 1996 murders have now been waiting 25 years for justice. Congress has conferred on crime victims—in this case the descendants of the Longs—the right "to proceedings free from unreasonable delay." 18 U.S.C. § 3771(a)(7). As part of the comity between the federal government and the States, Congress has expressly extended the right "to proceedings free from unreasonable delay" to federal habeas review of a state court conviction. 18 U.S.C. § 3771(b)(2)(A). This Court has recently written that "[b]oth the State and the victims of crime have an important interest in the timely enforcement of a sentence." *Bucklew v. Precythe*, 139 S.Ct. 1112, 1133–34 (2019) ("The people of Missouri, the surviving victims of Mr. Bucklew's crimes, and others like them deserve better."). This Court should not delay Deck's case further awaiting the resolution of a case that has no bearing on this litigation.

CONCLUSION

This Court should deny the petition for writ of certiorari.

Respectfully submitted,

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