No. 21-7186

IN THE
SUPREME COURT OF THE UNITED STATES

JON HALL,

Petitioner,

vs.

TONY MAYS, WARDEN,

Respondent.

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

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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CAPITAL CASE

RESTATEMENT OF THE QUESTIONS PRESENTED FOR REVIEW

The petitioner claims that the State unlawfully suppressed impeachment evidence—mental-health records in the correction file of an incarcerated trial witness—in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). These mental-health records were not in the possession of or known to the prosecution team, but the petitioner claims that knowledge of them should have been imputed because state prison officials possessed them at the time of the trial. But the petitioner did not squarely raise this imputed-knowledge theory in the district court, which found that there was no connection between the prosecution team and the relevant prison officials. The questions presented for review are:

I

Whether the district court's finding that the petitioner did not allege or prove any connection between the prosecution team and the relevant prison officials forecloses his belated imputed-knowledge claim.

II

Whether these mental-health records are immaterial under *Brady* because they were merely cumulative of other impeachment evidence and the State's proof against the petitioner was, as the Sixth Circuit's recognized, overwhelming even without this witness's testimony.

LIST OF DIRECTLY RELATED PROCEEDINGS

Pursuant to Supreme Court Rule 15.2, the respondent supplements the list of proceedings provided by the petitioner under Supreme Court Rule 14.1(b)(iii) with the following matters:

State v. Hall, Henderson County Circuit Court No. 94-342 (underlying criminal case prior to change of venue).

State v. Hall, Madison County Circuit Court No. 96-589 (underlying criminal case after change of venue).

Hall v. State, Madison County Circuit Court No. C-00-422 (petition for post-conviction relief).

Hall v. State, Davidson County Circuit Court No. 03-C-2887 (first state-court habeas corpus petition).

Hall v. State, No. M2005-00572-CCA-R3-HC, 2006 WL 2000502 (Tenn. Crim. App. July 19, 2006), *perm. app. denied* (Tenn. Nov. 27, 2006) (appeal on first state-court habeas corpus petition).

Hall v. State, No. W2006-02620-CCA-R28-PC (Tenn. Crim. App. Feb. 2, 2007), *rehearing denied* (Tenn. Crim. App. Feb. 28, 2007), *perm. app. denied* (Tenn. Jun. 25, 2007) (appeal from denial of first motion to reopen post-conviction petition).

Hall v. State, Madison County Circuit Court No. C-07-354 (petition for writ of error coram nobis).

Hall v. State, No. W2007-02565-CCA-R3-PD, 2009 WL 1579243 (Tenn. Crim. App. Jun. 5, 2009), *rehearing denied* (Tenn. Crim. App. Jul. 7, 2009), *perm. app. denied* (Tenn. Nov. 23, 2009) (appeal on petition for writ of error coram nobis).

Hall v. Bell, Davidson County Circuit Court No. 10-C-2789 (second state-court habeas corpus petition).

Hall v. Bell, No. M2011-00858-CCA-R3-HC, 2012 WL 1366612 (Tenn. Crim. App. Mar. 16, 2012), *rehearing denied* (Tenn. Crim. App. May 17, 2012), *perm. app. denied* (Tenn. Sept. 21, 2012), *rehearing denied* (Tenn. Oct. 11, 2012) (appeal on second state-court habeas corpus petition).

Hall v. Colson, 569 U.S. 928 (2013) (denial of certiorari in appeal on second state-court habeas corpus petition).

Hall v. Westbrooks, 137 S. Ct. 1375 (2017) (denial of certiorari on Sixth Circuit order granting certificate of appealability).

TABLE OF CONTENTS

TABLE OF CITED AUTHORITIES

Cases

Statutes

Rules

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit affirming the district court's judgment is published. *Hall v. Mays*, 7 F.4th 433 (6th Cir. 2021); (Pet. Appx. 6-25.) The district court's initial order denying the petition for a writ of habeas corpus is unpublished. (Pet. Appx. 29-162.) The district court's subsequent order on remand denying the petition for a writ of habeas corpus is unpublished. *Hall v. Carpenter*, No. 1:05-cv-01199, 2015 WL 1464017 (W.D. Tenn. Mar. 30, 2015); (Pet. Appx. 163-217.)

JURISDICTIONAL STATEMENT

The Sixth Circuit entered its judgment on August 3, 2021. (Pet. Appx. 26.) That court denied the petition for rehearing en banc on September 21, 2021. (Pet. Appx. 27.) The Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Under the Fourteenth Amendment to the United States Constitution, "[n]o state shall deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1.

STATEMENT OF THE CASE

Over twenty-five years ago, the petitioner, Jon Hall, was convicted of first-degree premeditated murder and sentenced to death for the gruesome assault, strangulation, and drowning of his wife, Billie Jo Hall. Below, he sought to vacate his conviction and sentence because, he claims, the prosecution should have obtained and disclosed mental-health records for one of the

State's witnesses, who testified that the petitioner confided in him about the murder. Although the prosecution team did not know about these records, the petitioner argued before the Sixth Circuit that knowledge of them should be imputed because state prison officials possessed the records at the time of the trial.

The Sixth Circuit held that the petitioner forfeited this imputed-knowledge claim because he did not raise it in the district court and, in any event, the district court conclusively found that the petitioner did not allege or prove any connection between the prison officials and the prosecution team. (Pet. Appx. 17.) Further, the court held that these records were not material because they merely provided cumulative impeachment evidence for this witness, and the proof against the petitioner was "overwhelming." (Pet. Appx. 20.)

Despite these holdings, the petitioner now urges the Court to take up the case and to consider his imputed-knowledge claim.

A. State Court Proceedings

On the night of the murder, the petitioner arrived at the victim's home and disconnected her telephone line at the junction box outside the house. *State v. Hall*, 8 S.W.3d 593, 596 n.2 (Tenn. 1999). Present in the house that night were the victim, her two older daughters from a prior relationship, and her two younger daughters she had with the petitioner. When the victim answered the door, the petitioner pushed his way inside and told the children to go to bed. When they did not immediately comply, he shoved over the chair in which their mother was sitting. *Id*. at 596.

The defendant and the victim went into her bedroom. From their own rooms, the children heard yelling and "[t]hings slamming around." *Id*. Although the door to their mother's bedroom was blocked, the three oldest children eventually got in, and their mother told them to go to a neighbor's house. But the petitioner warned that if they sought help, "he was going to kill Mama."

He told the victim—a college student at the time—that she would not live to graduate. *Id*. at 596, 600.

The second and third oldest daughters tried unsuccessfully to call for help by telephone. They went to a neighbor's house and called 911. The oldest daughter saw the petitioner and the victim leave the bedroom and go outside. She watched the petitioner drag her mother "kicking and screaming" to a small pool in the back yard. She then fled the house carrying the youngest daughter, who had cerebral palsy. *Id*. at 596-97.

When law enforcement officers arrived, they discovered the body of the victim floating face down in the pool, with clumps of grass ripped from the ground floating in the water and with her t-shirt lying beside the pool. *Id*. at 597. According to the forensic pathologist, the primary cause of death was asphyxia resulting from both manual strangulation and drowning. Before the victim died, the petitioner inflicted 83 separate wounds onto her, including wounds caused by blows to the head, a fractured nose, multiple lacerations, and bruises and abrasions to the chest, abdomen, genitals, arms, legs, and back. *Id*.

Inside the house, officers found bloodstains on the bed, on a countertop, and on a wedding dress. The telephones were off their hooks, and a $25 money order made out to the victim and dated that day was found inside. "A trail of drag marks and bloodstains led from the master bedroom, out the front door, over the driveway, past the sandbox, and down to the pool in the back yard." Outside the front door, the telephone junction box was open, and the phone line was disconnected. *Id*.

While awaiting trial, the petitioner was housed at a facility of the Tennessee Department of Correction (TDOC). At some point, the petitioner was in a cell next to Chris Dutton, with whom he discussed his crime. *Id*. at 597-98. Dutton testified at trial and recounted certain statements

made by the petitioner. The petitioner told Dutton that he arranged to meet the victim that day under the pretense of delivering a child support check, but he really wanted to persuade her to reconcile. If she was unwilling to do so, then he would "make her feel as he did. He wanted her to suffer as he did, feel the helplessness that he was feeling because she took his world away from him." *Id*. at 597, 600. The petitioner explained to Dutton that he disconnected the telephone line so that she could not call for help. During prior arguments, the victim had used the telephone to call the police. *Id*. at 598, 600.

The petitioner tried to talk about a reconciliation, but the victim was not interested in reconciliation and demanded that he leave. *Id.* at 597. At that point, "his temper got the best of him and he began to strike her." *Id*. The petitioner reported to Dutton that he hit the victim in the head until he panicked, threw her into the swimming pool, retrieved her keys from inside the house, and fled in the victim's minivan. *Id*. at 597-98.

After hearing this proof, the jury convicted the petitioner and, following a sentencing hearing, imposed a sentence of death. (D.E. 159-2, PageID# 4385.)[1] On direct appeal, both the Tennessee Court of Criminal Appeals and the Tennessee Supreme Court affirmed. *State v. Hall*, No. 02C01-9703-CC-00095, 1998 WL 208051 (Tenn. Crim. App. Par. 29, 1998); *State v. Hall*, 8 S.W.3d 593 (1999). This Court denied a writ of certiorari. *Hall v. Tennessee*, 531 U.S. 837 (2000).

On post-conviction review, the Tennessee Court of Criminal Appeals affirmed the denial of post-conviction relief, and the Tennessee Supreme Court denied discretionary review. *Hall v. State*, No. W2003-00669-CCA-R3-PD, 2005 WL 22951 (Tenn. Crim. App. Jan 5, 2005), *perm.*

[1]Docket entries referenced in this brief relate to the habeas corpus petition filed in the Western District of Tennessee under No. 1:05-cv-01199.

app. denied (Tenn. June 20, 2005).[2] The petitioner did not raise this *Brady* claim during his state-court collateral review proceedings.

B. Federal Court Proceedings

The petitioner filed a petition for writ of habeas corpus under 28 U.S.C. § 2254 in the United States District Court for the Western District of Tennessee. The petitioner argued for the first time that the State unlawfully suppressed exculpatory evidence about Chris Dutton, including mental health records in the possession of TDOC. The respondent argued that (1) the TDOC records were not within the knowledge and possession of the prosecution team and (2) the records were not material under *Brady*. The district court considered and rejected the claim on the merits due to the petitioner's failure to show that knowledge of Dutton's mental health records should be imputed to the prosecution team. "In this case, Petitioner does not allege there was any connection between the TDOC and the prosecution in the investigation of this case, and none is apparent from the record." Consequently, "there is no basis for imputing knowledge of the mental health information in Dutton's TDOC records to the prosecution." (Pet. Appx. 73-74.)

On appeal,[3] the Sixth Circuit rejected the *Brady* claim related to Dutton's TDOC mental health records. First, the court determined that the petitioner forfeited appellate review due to his

[2]The petitioner unsuccessfully sought habeas corpus relief in state court on at least two occasions. *See Hall v. Bell*, No. M2011-00858-CCA-R3-HC, 2012 WL 1366612 (Tenn. Crim. App. Mar. 16, 2012), *perm. app. denied* (Tenn. Sept. 21, 2012), *rehearing denied* (Tenn. Oct. 11, 2012), *cert. denied*, 569 U.S. 928 (2013); *Hall v. State*, `No. M2005-00572-CCA-R3-HC, 2006 WL 2000502 (Tenn. Crim. App. July 19, 2006), *perm. app. denied* (Tenn. Nov. 27, 2006). He also unsuccessfully sought a writ of error coram nobis. *Hall v. State*, No. W2007-02565-CCA-R3-PD, 2009 WL 1579243 (Tenn. Crim. App. Jun. 5, 2009), *rehearing denied* (Tenn. Crim. App. Jul. 7, 2009), *perm. app. denied* (Tenn. Nov. 23, 2009).

[3]The Sixth Circuit initially remanded for reconsideration of certain claims in light of this Court's then-recent decision in *Martinez v. Ryan*, 566 U.S. 1 (2012). Thereafter, the district court again denied habeas corpus relief.

change in position on appeal. In the district court, the petitioner had not claimed a connection between TDOC and the prosecution team sufficient to impute knowledge. Instead, he argued that Dutton's status as a trial witness and the prosecution's ability to request the TDOC records obligated it to discover and disclose them. (D.E. 100, PageID# 916-918.) By contrast, he argued to the Sixth Circuit that TDOC's knowledge of the records should be imputed to the prosecution because TDOC officials housed the petitioner, transported him to court settings, and conveyed Dutton's offer to testify to the prosecution, which, he argued, showed that TDOC and the prosecution worked in concert. (Pet. Appx. 17.)

Second, despite the petitioner's forfeiture of this issue on appeal, the Sixth Circuit nevertheless considered the merits of the *Brady* claim and found no basis to impute knowledge of the records. The Sixth Circuit found no clear error in the district court's finding of no connection between the prosecution and TDOC sufficient to impute knowledge between the two. And the petitioner had offered no "Supreme Court or Sixth Circuit precedent holding that the relationship between the jailor and the prosecutor is analogous to that between the police and the prosecutor, . . . such that the jailor necessarily acts on the prosecutor's behalf by incarcerating the defendant during trial, conveying a message from an inmate, or transporting the defendant and inmate-witness to trial." (Pet. Appx. 17.)

Third, the Sixth Circuit further rejected the *Brady* claim because the records were not material. "While records of Dutton's mental illness would have impeached his general credibility, the jury was already aware that he was a criminal willing to trade testimony for favors—and was doing so in this case—and the mental-health records did not undermine his specific testimony." (Pet. Appx. 20.) Three of the victim's daughters testified at trial, and their testimony corroborated Dutton's. "More importantly, the evidence against Hall was overwhelming even without Dutton's

testimony—Hall disconnected the phone lines, told the daughters that he was 'going to kill mama,' and inflicted 83 separate wounds, including defensive wounds, target wounds, several blows to the head, a fractured nose, multiple lacerations, and bruises and abrasions to the chest, abdomen, genitals, arms, legs, and back." (Pet. Appx. 20.)[4]

Following the petitioner's unsuccessful petition for rehearing en banc in the Sixth Circuit, he filed this petition.

REASONS FOR DENYING THE WRIT

This Case Is a Poor Vehicle for Review of the Imputed-Knowledge Issue Because the Petitioner Did Not Raise It or Offer Proof to Support It in the District Court and, Regardless, the Allegedly Suppressed Evidence Was Not Material under *Brady*.

This case concerns the well-settled rule under *Brady v. Maryland*, 373 U.S. 83 (1963), that the prosecution must disclose favorable evidence known to the prosecution and that the failure to disclose material evidence violates due process. In *Kyles v. Whitley*, 514 U.S. 419, 437 (1995), the Court observed that knowledge of favorable evidence can in appropriate circumstances be imputed to the prosecution: "the individual prosecutor has a duty to learn of any favorable evidence known to others acting on the government's behalf in the case, including the police." This is because the *Brady* rule "encompasses evidence 'known only to police investigators and not to the prosecutor.'" *Strickler v. Greene*, 527 U.S. 263, 280-81 (1999) (quoting *Kyles*, 514 U.S. at 438). The petitioner seeks a writ of certiorari for the Court to define further what evidence is "known"

[4]Both the district court and the Sixth Circuit agreed that the *Brady* claim is procedurally defaulted due to the petitioner's failure to exhaust state-court remedies while they remained available to him. Each court nevertheless considered the merits of the claim so as to determine whether the petitioner could show cause and prejudice to excuse the default, under *Banks v. Dretke*, 540 U.S. 668, 691 (2004). (Pet. Appx. 16-20, 71-74, 79-80.)

by "the prosecution" when the evidence is in the possession of correction officials or other governmental actors who are not involved in the investigation and prosecution of the criminal case.

Despite the petitioner's lengthy argument to the contrary, this case is a poor vehicle for the Court to consider this issue. First, because of the petitioner's changing positions on this claim, any review by the Court would be severely constrained by the district court's factual finding—that there was no connection between TDOC officials and the prosecution. Relatedly, the petitioner has forfeited that portion of his argument not raised in the Sixth Circuit. Second, regardless of how the Court might resolve the issue upon review, habeas corpus relief would be unavailable to the petitioner because the purportedly suppressed impeachment evidence is not material under *Brady*. For these reasons, review by certiorari is not warranted and should be denied.

A. This court's review would be severely limited by the district court's factual findings and the petitioner's own forfeiture of the issue before this Court.

This Court should deny review because its ability to consider the petitioner's imputed-knowledge issue would be severely limited by the petitioner's shifting litigation strategy. Because the petitioner did not allege or prove in the district court *any* connection between TDOC officials and the prosecution team, the Court would be hamstrung in assessing what nexus between corrections officials and the prosecution is necessary before knowledge of corrections records will be imputed to the prosecution. And to the extent that he might rely on the argument advanced in the district court but abandoned in the Sixth Circuit, that argument is now forfeited.

Consider first that the petitioner's argument on this issue evolved in the lower courts. When the case was pending in the district court, the respondent argued—in both his response to the amended habeas corpus petition and his motion for judgment on the pleadings—that Dutton's TDOC records (1) were not within the knowledge and possession of the prosecution team and should not be imputed to the State and (2) were not material under *Brady*. (D.E. 69, PageID# 615-

618; D.E. 90-1, PageID# 793-797.) The petitioner never countered that knowledge of these mental-health records should be "imputed" to the prosecution team. Instead, he argued that the State had an obligation to discover and disclose the records because (1) Dutton was the "star witness" and a "professional jailhouse witness" for the State, (2) Dutton was incarcerated, (3) the State knew that TDOC maintained records on prisoners, and (4) the State had the ability to collect Dutton's corrections records. According to the petitioner, "[g]iven these circumstances, the prosecution was required to review Dutton's prison file and turn over to the defense the impeaching information it contained. It is absurd for the State to suggest otherwise." (D.E. 100, PageID# 916-918.)

The petitioner's theory in the district court drove the district court's analysis. When rejecting the petitioner's claim, the district court agreed that *Brady* compels the prosecution team to disclose favorable evidence known by the team and within its possession. (Pet. Appx. 72-73.) However, "[a]n unlimited duty to inquire of other government offices with potentially exculpatory information is not imposed on a prosecutor," and "knowledge of information in the possession of one government entity is not automatically imputed to the prosecution." (Pet. Appx. 73-74.) Instead, "[a]n analysis of the connection between the pertinent agencies is required." (Pet. Appx. 73.) Here, the petitioner did not allege in the district court that there was any connection between TDOC and the prosecution team, "and none [wa]s apparent from the record." (Pet. Appx. 74.) Thus, the court concluded that there was no basis to impute knowledge of Dutton's TDOC mental health records onto the prosecution team. (Pet. Appx. 74.)

But on appeal, the petitioner advanced a different position to the Sixth Circuit. Instead of arguing that the State had an independent obligation to discover and disclose correction records of the incarcerated "star" witness, the petitioner argued for the first time that knowledge of the TDOC

records should be *imputed* to the prosecution team. More precisely, he argued that TDOC was actually part of the prosecution team because (1) TDOC housed both the petitioner and Dutton, (2) it relayed messages between Dutton and the prosecution, and (3) it transported the petitioner and Dutton to court appearances.

The Sixth Circuit concluded that the petitioner forfeited this new legal theory by failing to advance it in the district court. The court further noted that the claim failed on the merits because the district court's factual finding of no connection between TDOC and the prosecution team was not clearly erroneous and was therefore binding on appeal. (Pet. Apx. 17.)

Now consider his position before this Court. The petitioner presents an argument that seemingly melds his differing positions. He suggests that his own evolving litigation choices are evidence that the lower courts are confused about how precisely to define the prosecution's obligations under *Brady* for the discovery and disclosure of favorable evidence possessed by government agencies that are, at most, tangential to the prosecution, including correction entities. To that end, he alleges various splits of authority that he concedes largely do not bear directly on the issue presented in this case but that he suggests are proof of some larger doctrinal conflict in need of resolution.

Whatever the merits of this alleged conflict, the petitioner's differing positions in this case severely limit the Court's ability to consider it. On the one hand, if the Court, upon review by certiorari, were to determine that some kind of nexus between the prosecution and correction officials is a necessary predicate for relief in this context, then the petitioner's claim would fail because there was no connection here, as found by the district court. Indeed, after two rounds of discovery, the petitioner failed even to allege—much less to prove—a connection between TDOC and the prosecution. Thus, the district court understandably found, as a matter of fact, that there

was no connection, and that finding was not clearly erroneous under the record. *See* Fed. R. Civ. P. 52(a)(6). This factual finding alone undermines the petitioner's characterization of this case as an "ideal" one to consider the proffered issue.

On the other hand, in the face of a daunting factual finding, the petitioner may not reassert the argument that he made to the district court: that proof of a connection is irrelevant and that the State must discover and disclose correction records of its incarcerated witnesses, so long as the State has the ability to access those records, which he claimed that the State could have done here. That theory no longer remains for the petitioner because he abandoned it on appeal in the Sixth Circuit, when he instead argued that there *was* a connection between TDOC and the prosecution team, due to TDOC's housing, transporting, and facilitating communications for its detainees, including the petitioner and Dutton. That argument is itself now forfeited for the petitioner's failure to advance it on appeal. "[O]rdinarily, this Court does not decide questions not raised or resolved in the lower courts." *Taylor v. Freeland & Kronz*, 503 U.S. 638, 646 (1992) (citation omitted); *see also McDaniel v Brown*, 558 U.S. 120, 135 (2010) ("[Habeas corpus petitioner] has forfeited this claim, which he makes for the very first time in his brief on the merits in this Court.").

Either way, the petitioner's inability to stake out a consistent position on his federal claim has significantly limited the Court's ability to decide, under these facts, how much of a connection between the prosecution and other government entities is necessary to impute knowledge to the prosecution team. It is certainly any habeas corpus petitioner's prerogative to advance whatever federal claims he wishes—and to present supporting facts and legal arguments of his choosing. But the petitioner's varying litigation decisions in this case severely limit the Court's ability to assess the claim, and they undermine any purported need for this Court's review. For that reason alone, the Court should deny the petition for writ of certiorari.

B. Review is not warranted because the purportedly suppressed impeachment evidence is not material.

In any event, review by certiorari is unnecessary because, as the Sixth Circuit correctly determined, Dutton's TDOC mental health records are not material under *Brady*. (Pet. Appx. 19-20.) And because the records were not material, the petitioner would not be entitled to relief regardless of how the Court decided this imputed-knowledge issue.

"[E]vidence is 'material' within the meaning of *Brady* when there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different." *Cone v. Bell*, 556 U.S. 449, 469-70 (2009) (citing *United States v. Bagley*, 473 U.S. 667, 682 (1985)). A reasonable probability of a different result is one in which the suppressed evidence "undermines confidence in the outcome." *Kyles*, 514 U.S. at 434 (quoting *Bagley*, 473 U.S. at 678).

Any impeachment evidence located in Dutton's TDOC mental-health records does not undermine confidence in the outcome of this case. Dutton's credibility was already challenged at trial with regard to his criminal history, his motivation for testifying, and the district attorney general's agreement to inform parole officials of his testimony. He acknowledged his own prior testimony as an informant in another, unrelated case. (D.E. 159-4, PageID# 4665-4667, 4673-4676.) The jury had a full opportunity to view the witness's demeanor while testifying and to consider the overall veracity of his testimony. And as the Sixth Circuit noted, the mental health records did not undermine the substance of Dutton's testimony or his recounting the petitioner's statements to him, even if they may have provided some additional basis for challenging Dutton's general credibility. (Pet. Appx. 20.) Indeed, there is no basis to suspect that Dutton's cross-examination would have varied greatly had the records been disclosed.

In any event, there is certainly no reasonable probability of a different result in view of the clear evidence of the petitioner's guilt. The victim's three oldest daughters testified about the petitioner's violent murder of their mother, including his statements to them that the victim would never live to graduate from college and that he would kill the victim if the children went for help. One of the daughters even testified that she saw the petitioner dragging her mother "kicking and screaming" to the pool where the victim's body was later found. The medical examiner testified about the extent of the injuries that the petitioner inflicted upon her. An officer on the scene testified that the victim's telephone was disconnected at the junction box outside the house. When one daughter was asked at trial what was wrong with the victim's telephone that night, she responded, "Jon had it where we couldn't use it." (D.E. 159-4, PageID# 4688.)

In sum, there is no reasonable probability that, if Dutton's TDOC mental-health records were disclosed to the defense prior to trial and if information within them were presented to the jury through competent testimony so as to impeach Dutton further, then "the result of the proceedings would have been different," particularly in light of the other, overwhelming evidence of the petitioner's guilt. *Kyles*, 514 U.S. at 433. Certiorari review is unnecessary because it could provide no actual relief to the petitioner.

CONCLUSION

For the reasons stated, the petition for writ of certiorari should be denied.

Respectfully submitted,

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