No. 21-7542

IN THE SUPREME COURT OF THE UNITED STATES

CARMAN DECK,

Petitioner,

v.

PAUL BLAIR, Warden,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Missouri

BRIEF IN OPPOSITION

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CAPITAL CASE

QUESTION PRESENTED

Should this Court grant a writ of certiorari to review a state habeas claim of allegedly excessive pre-sentencing delay that was denied as procedurally defaulted under state law, presents no conflict with this Court's or any other court's precedents, and is belied by a record which demonstrates that petitioner was able to present all the mitigation evidence he wished?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

JURISDICTIONAL STATEMENT

This Court lacks jurisdiction to review Deck's petition for certiorari because the state court decision below denying Deck's state habeas petition was based on an independent and adequate state law ground. *Michigan v. Long*, 463 U.S. 1032, 1041–1042 (1983); *Byrd v. Delo*, 942 F.2d 1226, 1231 (1991).

STATEMENT OF THE CASE

In July 1996, James and Zelma Long, an elderly Missouri couple, answered a knock on their door. App'x 6a. Carman Deck and his sister, Tonia Cummings, tricked the Longs into inviting them inside by asking the couple for directions. App'x 6a. When the couple invited them in, Deck ordered the Longs to turn over their valuables and lie face down on their bed. App'x 6a–7a. The couple complied with Deck's commands. App'x 6a. For ten minutes, the Longs begged for their lives while Deck stood at the foot of their bed contemplating his next move. App'x 7a. When Cummings entered and told him time was running out, Deck shot each of the Longs twice in the back of the head, killing them both. App'x 7a. Deck was convicted of the murders and related crimes and received two death sentences. App'x 6a. By the end of his direct appeals and post-conviction review, Deck received one guilt-phase trial[1] and three sentencing hearings,[2] and every time, a jury unanimously recommended the imposition of two death sentences.

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[1] App'x 2a.

[2] App'x 2a, 36a, 69a. Deck's first sentencing was reversed by the Supreme Court of Missouri on an ineffective assistance of counsel issue. App'x 21a. Deck's second sentencing was reversed by this Court on a visible shackling issue. App'x 46a.

Deck filed a federal habeas corpus petition in 2013, raising 32 grounds of error. App'x 151a. The district court granted that petition in part and denied that petition in part on April 13, 2017. App'x 127a, 222a–223a. Specifically, the district court granted Deck relief on two claims: *first,* that the time between his guilt-phase trial and last sentencing deprived him of his constitutional right to present mitigation evidence, App'x 212a–218a; and *second,* that trial counsel was ineffective for failing to bring this claim in state court. App'x 218a–221a. It denied relief on 30 other grounds and denied Deck a certificate of appealability twice. App'x 222a; Doc. 106.[3]

The warden appealed the district court's grant of the writ of habeas corpus. The United States Court of Appeals for the Eighth Circuit reversed the district court's grant of habeas corpus and remanded the case to the district court for the entry of judgment denying Deck's habeas petition in full. *Deck v. Jennings, et al.,* 978 F.3d 578, 585 (8th Cir. 2020).[4] The Eighth Circuit found that both claims were both procedurally defaulted. *Id.* at 581. 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). *Id.* at 582. The Eighth Circuit found that both claims were not "substantial" enough continue 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. *Id.* at 582–83. It reversed and remanded with instructions to the

[3] The warden cites documents filed in the district court but not included in Deck's Appendix by their district court document number.

[4] Deck included the district court's opinion granting relief, but not the Eighth Circuit's opinion reversing it, in his Appendix. Therefore, the warden uses the reporter citation for that opinion.

district court to deny Deck's petition in its entirety. *Id*. at 585. The Eighth Circuit denied Deck's petition for rehearing or rehearing en banc. App'x 224a. This Court denied certiorari on October 4, 2021. *Deck v. Blair, et al.*, No. 20-8333 (Cert. denied October 4, 2021).

Deck next filed a state habeas petition in the Supreme Court of Missouri on December 2, 2021, raising a single claim that his due process rights were violated by the alleged loss of mitigation evidence in the time between his guilt-phase trial and last sentencing. App'x 225a–256a. The warden argued: 1) the claim was procedurally defaulted; 2) even if it were not, Deck could not receive relief because there is no basis in the law for a constitutional violation where a defendant is able to present, and have the jury consider, his mitigation evidence; and 3) even if there were a legal basis supporting Deck's claim, Deck still would not be entitled to relief as he was not prejudiced by the length of time between his guilt-phase trial and last sentencing. Suggestions in Opposition to Petition for Habeas Corpus at 6, *Deck v. Blair*, No. SC99412 (Mo. S. Ct. Dec. 19, 2021). The Missouri Supreme Court denied the petition in a summary decision on January 31, 2022. App'x 1a. The same day, the Supreme Court of Missouri set Deck's execution for May 3, 2022. Warrant of Execution at 1, *State v. Deck*, No. SC89830 (Mo. S. Ct. Jan. 31, 2022).

SUMMARY OF THE ARGUMENT

While he does not cite this Court's Rule 10 anywhere in his petition, it appears Deck may be arguing that the Supreme Court of Missouri has decided an important question of federal law not yet settled by this Court. *Compare* Pet. 10 *with* S. Ct. R.

10. But the Supreme Court of Missouri issued a summary denial of Deck's habeas corpus claim based on the independent and adequate state-law ground of procedural default. This Court does not have jurisdiction to review such a decision. *Michigan v. Long*, 463 U.S. at 1041–1042.

Deck next suggests that there is a circuit split or other dissension among the lower courts regarding what standard to use to analyze due process claims of speedy sentencing. Pet. 15. But he only attempts to manufacture a split where there is none. The standards from *United States v. Lovasco*, 431 U.S. 783 (1977) and *Barker v. Wingo,* 407 U.S. 514 (1972) he discusses are not different from each other in any practical way, resulting in lower court decisions that are in harmony—not in conflict—with each other.

In any event, this case is not the appropriate vehicle to decide the issue for two reasons. *First,* Deck did not lose any mitigation evidence due to the passage of time between his trials. And *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).

REASONS FOR DENYING THE PETITION

I. The Supreme Court of Missouri denied habeas relief on an independent and adequate state law ground, and therefore this Court has no jurisdiction to review the decision.

Deck does not argue that a circuit court or state court of last resort has decided a question that conflicts with the precedents of this Court, any other circuit court or state court of last resort, or that calls for an exercise of this Court's supervisory power.

See S. Ct. R. 10. He merely hints that the Supreme Court of Missouri has decided an important question of federal law not yet settled by this Court. *Compare* Pet. 10 *with* S. Ct. R. 10. But the Missouri Supreme Court did not decide any federal question because it denied Deck's claim on an independent and adequate state procedural ground.

Deck procedurally defaulted, without excuse, his claim that his due process rights were violated by the passage of time between his guilt-phase trial and last sentencing. *Deck,* 978 F.3d at 581. Under Missouri law, such procedurally defaulted claims are not reviewable in habeas corpus. *State ex rel. Koster v. McElwain*, 340 S.W.3d 221, 243 (Mo. App. W.D. 2011). This rule is firmly established and regularly enforced. *See State ex rel. Nixon v. Jaynes*, 63 S.W.3d 210, 215 (Mo. 2001) (adopting the federal framework for analysis of procedurally defaulted claims over twenty years ago). The Supreme Court of Missouri therefore summarily denied Deck's habeas petition based on this independent and adequate state law ground. App'x 1a. It was not, contrary to Deck's assertion, a decision on the merits. Pet. 1, 10. This Court does not have jurisdiction to review a decision based on an independent and adequate state law ground. *Michigan v. Long*, 463 U.S. at 1041–1042.

In Missouri, a summary denial is presumed to be a denial for procedural reasons in cases such as this where the claim was not raised in the ordinary course of state review. *Byrd*, 942 F.2d at 1231. In *Ylst v. Nunnemaker*, 501 U.S. 797, 802 (1991) this Court wrote that the presumption that a state court denial of a federal claim indicates federal review is to be applied *only* after it has been determined that

the decision fairly appears to rest primarily on federal law or is interwoven with federal law. The Eighth Circuit, citing *Ylst* and this Court's decision in *Coleman v. Thompson*, 501 U.S. 722 (1991), explained that because it cannot be said that a summary denial fairly appears to rest primarily on federal law, or to be interwoven with the federal law, the presumption that federal law is the basis of a state court's summary decision is inapplicable. *Byrd,* 942 F.2d at 1231. With respect to Supreme Court of Missouri summary denials of Rule 91 habeas corpus petitions, "after *Coleman*, there is simply no reason to construe an unexplained Rule 91 denial as opening up the merits of a previously defaulted federal issue." *Id*. at 1232. The Eighth Circuit has consistently followed *Byrd*'s rule that an unexplained denial rests on the Missouri procedural rule that Rule 91 cannot be used to raise claims that could have been raised on direct appeal or in a timely motion for post-conviction relief. *Preston v. Delo,* 100 F.3d 596, 600 (1996). As the procedural requirements regarding Rule 91 state habeas petitions are firmly established and regularly followed, a violation of them is adequate to foreclose review. *See Lee v. Kemna*, 534 U.S. 362, 376 (2002).

Deck's assertion that *Harrington v. Richter*, 562 U.S. 86, 99 (2011) dictates that a summary denial be viewed as a merits decision is unavailing. *Harrington* stated, "When a federal claim has been presented to a state court and the state court has denied relief, it may be presumed that the state court adjudicated the claim on the merits *in the absence of any indication or state-law procedural principles to the contrary*" (emphasis added). Here, there are state-law procedural principles to the contrary.

This Court should deny certiorari review because the Supreme Court of Missouri denied Deck's state habeas petition on state procedural grounds, creating an independent and adequate state law reason for the denial of relief.

II. Certiorari is unwarranted because there is no circuit split regarding the standard to apply to due process claims of post-trial, pre-sentence delay.

Deck seems to allege that there is a circuit split or other conflict in the lower courts regarding the standard to apply to analyze claims of speedy sentencing. Pet. 15. Not so.

First, there is no established due process right to a speedy sentencing. Deck cites this Court's decision in *Betterman v. Montana,* 136 S.Ct. 1609 (2016), for the proposition that "the due process clause protects a defendant against inordinate delay in sentencing." Pet. 10–11. What *Betterman* actually said was, "for inordinate delay in sentencing, although the Speedy Trial Clause does not govern, a defendant *may* have other recourse, including, in appropriate circumstances, tailored relief under the Due Process Clauses of the Fifth and Fourteenth Amendments." *Id*. at 1612 (emphasis added). But this statement does not assist Deck for two reasons: it was written in dicta, as the petitioner in *Betterman* had not raised a due process claim; and *Betterman* was decided eight years after Deck's last sentencing.

Second, assuming *arguendo* there is a due process right to speedy sentencing, there is no conflict in the lower courts about how to evaluate that right to any degree that requires this Court's intervention. Deck argues there are two schools of thought about how to evaluate a due process speedy sentencing right: those that apply the

Lovasco test and those that apply the *Barker* test.[5] Pet. 15–16. *Barker* concerns the Sixth Amendment's Speedy Trial Clause and regards post-indictment, pre-trial delay. *Barker,* 407 U.S. at 515. *Lovasco* concerns the Due Process Clause and regards pre-indictment delay. *Lovasco*, 431 U.S. at 783. Neither case regards applying the Due Process Clause to post-trial, pre-sentencing delay. However, courts do turn to these cases by analogy in such circumstances.

The first problem with Deck's circuit split argument is that he does not cite any precedential opinions to support it. *United States v. Brown*, 709 Fed.Appx. 103 (2nd Cir. 2018), *United States v. James*, 712 Fed.Appx. 154 (3rd Cir. 2017), *United States v. Yupa Yupa*, 796 Fed.Appx. 297 (7th Cir. 2019), and *United States v. Cain*, 734 Fed.Appx. 21 (2nd Cir. 2018) are all unpublished. *State v. Lopez*, 410 P.3d 226, 232–33 (N.M. Ct. App. 2017) is from the New Mexico Court of Appeals. Rule 10 speaks of a conflict involving a "state court of last resort," which in New Mexico is the Supreme Court of New Mexico, not the New Mexico Court of Appeals. S. Ct. R. 10.

The next problem with Deck's argument is that *Lovasco* and *Barker* are not different tests, and even if they were different, they are not in conflict. Under the *Barker* balancing test, the court reviews the length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant. *Barker,* 407

[5] Deck mentions yet a third circumstance: that "other courts" "relied on their own circuit precedent in the absence of guidance from this Court." Pet. 16. He specifically represents that the Second Circuit relies on "their own two-part circuit test." *Id.* This is not so. The Second Circuit in *Cain*, 734 Fed.Appx. at 24 used the *Lovasco* test, not "their own two-part circuit test." Deck may have been confused because *Cain* did not cite *Lovasco* directly; it cited *United States v. Ray*, 578 F.3d 184 (2009), a Second Circuit case that adopted *Lovasco*.

U.S. at 530–32. Under the *Lovasco* test, courts review the reason for the delay and prejudice to the defendant. *Lovasco*, 431 U.S. at 790. Both *Lovasco* factors are contained within the *Barker* test. The two factors that *Lovasco* does not include, length of delay and defendant's assertion of his right, are inapplicable in the pre-indictment-delay context in which *Lovasco* was decided.[6]

Deck argues that *Lovasco* is somehow a different standard than *Barker* because it "has been interpreted as requiring the defendant to show bad faith by the government." Pet. 15. This is incorrect. *United States v. Sanders*, 452 F.3d 572, 581 (6th Cir. 2006), the Sixth Circuit case Deck cites, says no such thing. The *Sanders* court mentioned bad faith in the context of explaining what evidence it might consider in evaluating the first prong of *Lovasco*, reason for the delay. It did not somehow add a prong to *Lovasco*. The full context of the comment is: "We look first to the reasons for the delay. This court has emphasized that the government's motive for the delay plays an important role in determining whether a due process violation has occurred. … [A]ny evidence that the delay was purposeful or due to bad faith would provide strong evidence of a due process violation." *Sanders*, 452 F.3d at 581. In no way does *Lovasco* "require a showing of bad faith on the State's part." Pet. 15.

[6] One would not expect a defendant to assert his right to a speedy procedure before he was charged with anything. And evaluating the length of time of pre-indictment delay: 1) is unnecessary, as "statutes of limitations, which provide predictable, legislatively enacted limits on prosecutorial delay, provide the primary guarantee against bringing overly stale criminal charges," *United States v. Marion*, 404 U.S. 307, 322 (1971); and 2) creates an incentive to "subordinate the goal of 'orderly expedition' to that of 'mere speed.'" *Id.* at 313.

At bottom, regardless of whether courts use the *Barker* articulation or the *Lovasco* articulation, the test is the same and the result in Deck's case is the same. It comes down to whether a defendant can show that he was prejudiced. On that point, all courts are aligned. The New Mexico Court of Appeals' case that Deck cites for the alleged conflict between the lower courts sums it up nicely: "under any framework—*Barker*, *Lovasco*, or a totality of the circumstances test—the burden uniformly remains on the defendant to prove that the delay in sentencing was prejudicial." *Lopez*, 410 P.3d at 232–33. The unreported Seventh Circuit case Deck cites agrees: "But whether we use the four-factor *Barker* test or more general principles of due process, we come, in the end, to the same conclusion. General concepts of due process require that a defendant demonstrate prejudice from the delay." *Yupa Yupa*, 796 Fed.Appx. at 299. Deck himself acknowledges that the courts are aligned: "courts have fused the language in both *Barker* and *Lovasco* to address claims of prejudicial sentencing delay." Pet. 16. And because the ultimate question is whether a defendant was prejudiced by the delay, Deck would not succeed even if this Court provided the guidance he requests, as discussed below.

Although Deck attempts to disguise it as a conflict in the lower courts, what Deck seeks is merely an advisory opinion on two questions from a Vanderbilt Law Review article. *See* Pet. i ("Questions Presented…What is the proper test for determining whether the inordinate delay prejudiced the defendant's ability to obtain a fundamentally fair capital sentencing proceeding and if the delay prejudiced the defendant, what is the proper remedy?"); Pet. 14 ("Sarah R. Grimsdale, *The Better*

way to Stop Delay: Analyzing Speedy Sentencing Claims in the Wake of Betterman v. Montana, 72 Vand. L. Rev. 1031, 1031 (2019) (noting that *Betterman* left open questions regarding '[w]hat analytical framework is appropriate to address due process claim of delay between conviction and sentencing? And if a court finds that sentencing was unduly delayed, what is the proper relief?'")). But this Court's long-standing rule is that it will not issue advisory opinions. *See, e.g., Flast v. Cohen*, 392 U.S. 83, 95–96 (1968). This Court should deny certiorari review.

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

Deck suggests that "[t]his Court should grant review, and hold that when sentencing delay prevents the presentation of mitigating evidence, the defendant's right under the Eighth and Fourteenth Amendments are violated." Pet 19. But even if this Court were to do just that, then Deck would still not benefit 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 does not, and cannot, argue that any evidence presented at his first sentencing was legally unavailable to him at his last sentencing. 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 first sentencing, and he was able to retain two *more* expert witnesses at his last sentencing than he did at his first sentencing. App'x 25a–26a, 113a. Trial counsel even 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).

Despite the fact that Deck was in no way barred, either by law or by circumstances, from presenting exactly the same evidence at the last sentencing as he did at the first, Deck cites a string of constitutional cases from this Court for the proposition that criminal defendants are entitled to present, and have considered by the jury, mitigation evidence. Pet. 18–19. This is of course true, but it has nothing to do with what happened in Deck's case.

In *Woodson v. North Carolina*, 428 U.S. 280 (1976), a state statute made the death penalty automatic for first-degree murder convicts. In *Lockett v. Ohio*, 438 U.S. 586 (1978), an Ohio statute required the sentencing court to consider only three articulated mitigating factors. In *Eddings v. Oklahoma*, 455 U.S. 104 (1982), the trial court refused to consider any mitigating evidence but the defendant's youth. In *McKoy v. North Carolina*, 494 U.S. 433 (1990), the North Carolina sentencing scheme required jurors to unanimously find mitigating factors before they could consider them. In *Tennard v. Dretke*, 542 U.S. 274 (2004) and *Penry v. Lynaugh*, 492 U.S. 302 (1989), the jury was not instructed that they could consider evidence of the defendants' mental retardation. In *Skipper v. South Carolina*, 476 U.S. 1 (1986), the trial court excluded, as irrelevant, evidence regarding defendant's time in jail. In

Wiggins v. Smith, 539 U.S. 510 (2003), trial counsel only investigated a single source of information about their client's background. In *Sears v. Upton,* 561 U.S. 945 (2010), trial counsel completely failed to present evidence of the defendant's severe mental deficiencies and difficult childhood. None of those circumstances, or anything analogous, occurred here.

Deck alleges only that the evidence that he was fully allowed to present, and have considered, was not in the form Deck now says he *prefers*, repeating over and over that the evidence was not "compelling" in the form it was presented. Pet. i, 4, 12, 18. Deck specifically refers to the lack of "live lay witnesses." Pet. i, 3, 4, 7, 13, 17, 18. To be clear, four family members and lay witnesses did testify at Deck's last sentencing. Michael Deck, Deck's brother, and Mary Banks, Deck's aunt, provided testimony via video deposition. App'x 113a. Major Puckett, Deck's foster father, and Beverly Dulinsky, Deck's aunt, provided testimony by written deposition that was read aloud into the record. App'x 113a. Deck does not provide any precedent that indicates that live testimony is superior to video-recorded testimony, reading from a transcript, or using an expert.

In addition to those four lay witnesses, Deck also presented testimony from two experts. Deck may feel that expert testimony is somehow less "compelling" than lay witness testimony, but it was done here for a strategic reason related to Deck's family's behavior, and not due to the passage of time. The Supreme Court of Missouri found that presenting the testimony through experts was strategically superior to live lay testimony. App'x 119a. Many of the witnesses that Deck now complains did

not testify were family members who would have lesser credibility than an expert, and they would have only presented a piecemeal picture of his childhood. App'x 119a. When asked if he believed live family witnesses would have been useful to Deck, trial counsel explained that "with this family, I could very easily see Pete Deck, Kathy whatever her last name is now, Carman's mother, and these other people actually telling the jury, Carman's childhood wasn't really that bad in order to make themselves look better in their own twisted way." Resp. Ex. M at 144. Additionally, members of Deck's family were hard to obtain, not due to the passage of time, but because "this family was so fond of playing hide and seek." Resp. Ex. M at 126. Thus, their absence in court was due primarily to their lack of interest in helping Deck, not the passage of time.

Trial counsel explained that, given Deck's family's indifference, "[i]n this case it was absolutely a benefit to have an expert talk about certain things as opposed to a family member." Resp. Ex. M at 185. He stated that in Deck's case, something he had to address was "why aren't these people here?" *Id.* He explained:

> This is the defendant's mother, the defendant's father, sure you can explain Tonia Cummings isn't here, who is his sister, because she is incarcerated. Sure you can explain that. Letisha Deck, you can understand because, you know, she is mentally retarded. She is not able to verbalize, but you know, siblings, uncles, aunts, nobody is coming in. The jury's got to wonder. And an expert, actually both of our experts, explained why, with the facts of, well he has been neglected his whole life, this is another example of this guy being neglected. You know, his life is on the line and they are still not willing to cross the street and help him out.

Id. Trial counsel used the lack of the family's cooperation to support his trial strategy. He testified that the family's "absence in court reinforced the notion that [he was] presenting to the jury, that they were terrible people and terrible parents." *Id.*

To summarize, it is true that trial counsel testified that he "absolutely" would have wanted live testimony from "at least one person, one person from Carman's family [to] come in, look at the jury, and say please spare his life. He is of value to me." Resp. Ex. M at 143. But while trial counsel would have *wanted* such testimony, it simply *did not exist*, because of the family itself and not because of the passage of time. Given that limitation, trial counsel presented his mitigation case another way, and "absolutely believed that *everything* that [he] wanted to bring out came out at trial." Resp. Ex. M at 185.

Deck outlines no specific mitigation evidence that he was unable to present (not just unable to present in its desired form), that was lost due to the passage of time (not due to witnesses' overall indifference to him), and that was so important that the lack of it was prejudicial (not evidence cumulative to what he did present). Deck cannot demonstrate that he was prejudiced by the passage of time, because the result of Deck's last sentencing in 2008 was exactly the same as it was in Deck's first sentencing in 1998: a sentence of death. App'x 2a; App'x 70a. Deck did not lose any mitigation evidence due to the passage of time. The specifics of this fact-bound case make it an exceptionally poor vehicle to consider Deck's questions presented.

Further, while Deck's claims are premised entirely on the claim 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. The trial court record shows that in all but one round of litigation, Deck delayed the proceedings as long as or even longer than 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. The warden took one three-week extension. In the Eighth Circuit, Deck sought two stays, delaying the litigation fourteen months so he could raise meritless claims. When briefing finally resumed, Deck requested and received another three extensions of time, delaying the appeal another month and a half. On top of all of this, Deck's claim is procedurally defaulted because he did not raise his claim soon enough. In other words, this claim is borne from Deck's delay and his post-trial litigation strategy has been to seek delay. This case is not an appropriate vehicle to decide how to evaluate the constitutional implications of delay when the defendant himself has a pattern of delay.

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.[7] *Teague v. Lane*, 489 U.S. 288, 316 (1989). So even if this Court finds that habeas petitioners may raise a due process claim regarding speedy sentencing, and announces the appropriate standard to use

[7] 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).

in evaluating such a claim, then Deck is still not entitled to its retroactive application to him in this case. As a result, this Court's certiorari review is not warranted.

CONCLUSION

Twenty-five years ago, Deck murdered an elderly couple as they laid face down on their beds begging for mercy. For twenty-five years, the Long family has waited for justice. Three Missouri juries—thirty-six citizens—have sentenced Deck to death. The warden has a duty to carry out the lawful sentence imposed by the People of the State of Missouri 14 years ago. 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 any further. This Court should deny the petition for writ of certiorari.

Respectfully submitted,

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