No. 22-490

In the Supreme Court of the United States

LYDELL CHESTNUT, Deputy Warden of Broad River Road Correctional Secure Facility,
Petitioner,

v.

QUINCY J. ALLEN,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF

The Fourth Circuit majority's ruling reflects the essence of what a federal court is prohibited from doing in 28 U.S.C. § 2254 review – granting relief because it merely disagrees with the state court resolution. Here, the resolution at the heart of the disagreement is the sentence of death. However, the decision whether death is the correct sentence for a particular defendant is uniquely a decision that rests with the individual factfinder, and one not to be eagerly second-guessed years later. Allen tries to defend the majority opinion that does just that but fails. Simply, the facts and law are against him.

The state court record shows that the sentencing judge (the factfinder in this case) expressed many details of his thought process in arriving at his decision that a death sentence for Allen was appropriate. The judge expressly noted that he had, indeed, considered all the mental health evidence, and all the evidence on "upbringing so masterfully chronicled by" Allen's expert. (Pet. App. 209-211). Allen complained in a state post-conviction relief action that his counsel was ineffective in not objecting to the trial judge confusing the competency to stand trial standard with mitigation, but, looking at the entirety of the evidence, the state court found no limitation on the mental illness evidence. Rather, the state court resolved that the sentencing judge had thoroughly considered the evidence in arriving at the sentencing conclusion. (Pet. App. 301). The district court found the state court adjudication reasonable, crediting the sentencing judge's statements made at sentencing that he had

considered the evidence. (Pet. App. 127). But the Fourth Circuit majority resolved that the sentencing judge failed to consider all the evidence because he did not expressly mention an eating disorder. (Pet. App. 51-52; see also Pet. App. 82-84). Further, the majority seemed to embrace a belief that evidence offered in mitigation that is not disproven (whatever that would mean) must have a mitigating *effect* on the sentencer. But that could not be so where the discretion rests with the factfinder as to what is ultimately mitigating in effect. The dissent keenly focuses on this point, noting the character of the majority's logic shows "not a critic founded in law" but a telling "statement that the majority would have evaluated the evidence differently." (Pet. App.80). This it cannot do.

Considering the totality of the record, the majority's conclusion would reflect an untenable result on direct review, or even initial collateral review, but in federal court, under AEDPA review, it simply cannot stand. The Fourth Circuit majority overreached to the point that error correction is indeed necessary – as this Court has found in other circuits that have broken AEDPA restraints in death penalty cases. Allen has shown no cause to insulate the Fourth Circuit from reversal.

Allen's remaining arguments attempt to pick apart procedural and factual aspects of the case, but rather than show review is not called for, these items merely show the strained construction of the majority's opinion. Allen's patchwork position reflects no valid opposition at all.

Finally, Allen has no response to the error the majority committed in reviewing the potential prejudice from the purported error. He addresses, by footnote, that prejudice under *Strickland v. Washington,* 466 U.S. 668 (1984) is not warranted, (see BIO 28 n.4), but the petition posits an argument independent of that test and Allen can only summarily opine the majority's consideration was sufficient. As the petition squarely sets out, at the very least, a federal court should look at the context of the case – in particular, the massive amount of evidence in aggravation – to consider the impact of the purported error. (See Pet. 38-41). The Fourth Circuit majority failed to conduct a proper analysis and Allen does not defend it.

In sum, that the Fourth Circuit did not faithfully apply AEDPA in the published erroneous decision in this case is, most certainly, for all of these reasons, a circumstance worthy of this Court's review.

A. Allen is wrong that the petition arguments are not worthy of this Court's review as the arguments call only for mere error correction when that view fails to consider the Fourth Circuit majority's defiance of AEDPA restraint and its improper interference with a state death sentence.

Allen requests that this Court allow a misapplication of AEDPA to stand because it is only in this one case, and not worthy of this Court's

attention. (BIO 16-17). Specifically, Allen asserts error correction would have "no significance to anyone but the parties in this case." (BIO 16). This is wrong. Is there error in this case? Most certainly. But the significance of that error is far from the minimal impact Allen suggests. The Fourth Circuit majority here almost precisely followed the pattern of error from other cases this Court has reviewed and corrected. *See, e.g., Dunn v. Reeves*, 594 U. S. ___, 141 S.Ct. 2405 (2021) (*per curiam*); *Mayes v. Hines*, 141 S.Ct. 1145 (2021) (*per curiam*); *Shinn v. Kayer*, 592 U.S. ___, 141 S.Ct. 517 (2020) (*per curiam*); *White v. Woodall*, 572 U.S. 415 (2014). At bottom, though, even if the petition is granted for error correction, it is error correction with a greater purpose – to teach the lower federal courts to abide by the limitations Congress placed upon them. This Court has acknowledged that "the limitations of 28 U.S.C. § 2254(d)" are restraints that "some federal judges find too confining," but nonetheless has resolved the limitations are ones "that all federal judges must obey." *Woodall*, 572 U.S. at 417. The Fourth Circuit majority did not, and reversal is warranted.

Moreover, a common theme in the reversal of inappropriate federal intrusion is that it is always "years later" that the federal courts decide that state courts were wrong. *See id.* It is no different here. And that delay places a significant onus on the state to attempt to bring its case against the defendant once again.

Here, Allen pled guilty and was sentenced to death in March 2005. (Pet. 6). As noted in the petition, the resources and evidence were then

marshalled, and sentencing was heavily litigated over ten days. (Pet. at 6). If this Court does not review the erroneous decision, additional proceedings will need to take place in 2023 (or even later). Resentencing is currently in a holding pattern following an extension from the district court to allow time for this Court to consider the State's petition. But in anticipation of possible proceedings, the State has determined that the original sentencing judge, Judge Cooper, has retired (having met mandatory retirement age) and is now in non-active status, meaning he cannot revive his role as sentencing judge. Had the case returned to him, Judge Cooper could have definitively rejected the purported error, and affirmed the sentence, but now a new judge must review transcripts from that sentencing, and the parties must prepare for new proceedings. That is completely unnecessary given the majority's errors and its meritless grant of relief and that should indeed weigh heavily in consideration of the grant of review.

Without doubt, the delay and lack of deference to the state court judgment in this matter is directly at odds with the expressed purposes of AEDPA:

> Congress enacted AEDPA "to reduce delays in the execution of state and federal criminal sentences, particularly in capital cases," *Woodford v. Garceau*, 538 U.S. 202, 206, 123 S.Ct. 1398, 155 L.Ed.2d 363 (2003), and to advance "the principles of comity, finality, and federalism," *Williams v. Taylor*, 529 U.S. 420, 436, 120 S.Ct.

> 1479, 146 L.Ed.2d 435 (2000) (*Michael Williams*). It furthered those goals "in large measure [by] revising the standards used for evaluating the merits of a habeas application." *Garceau*, 538 U.S. at 206, 123 S.Ct. 1398.

Shoop v. Twyford, 596 U.S. ___, 142 S. Ct. 2037, 2043 (2022).

The Fourth Circuit majority failed to obey AEPDA's limiting provisions and its grant of relief in this state matter is improper, unwarranted and should not stand.

Allen continues to miss the point in this context, though, by complaining that error correction is not *generally* perceived to be a sufficient basis to grant certiorari review. (BIO 17). Citing for support Justice Alito's statement respecting the denial of a petition for writ of certiorari *in a non-habeas matter* – one challenging "a highly unusual practice by one District Court Judge in assessing the adequacy of counsel in class action" – Allen apparently missed the warning that if the "practice continues … future review may be warranted." *Martin v. Blessing*, 571 U.S. 1040, 1045 (2013). That undermines Allen's point. This Court has found the "practice continues" in federal habeas in that federal courts do not correctly apply AEDPA. This Court has granted petitions to address that very disobedience. More relevant to consider here is Justice Scalia's dissent from the denial of the petition for writ of certiorari in *Cash v. Maxwell*:

> It is a regrettable reality that some federal judges *like* to second-guess state courts. The only way this Court can ensure observance of Congress's abridgment of their habeas power is to perform the unaccustomed task of reviewing utterly fact-bound decisions that present no disputed issues of law.

565 U.S. 1138, 132 S.Ct. 611, 616 (2012) (Scalia, J., dissenting from denial of certiorari).

In other words, the "error correction" at issue is correction of the federal court of appeals in its improper intrusion into the state sentence in defiance of federal law; it is not merely deciding the case differently. This distinction is lost on Allen, but it is a powerful one.

B. Allen's argument that the State has not shown an error of law clashes with even cursory consideration of the Fourth Circuit majority's opinion compared with the record and established precedent.

Allen's declaration that the State has identified "no misstatement of law made by the Fourth Circuit," or "legal error," (BIO 16, 20), lacks credible support. Allen dots his opposition with verbiage suggesting the petition is "misleading and flawed," based on a "false premise," and contains argument "so trivial as to be frivolous." (BIO 19, 26). But strong rhetoric cannot mask the error in the majority's opinion, error that is thoroughly set out and explained in the well-reasoned dissent. While the

majority cited federal cases on preserving the right to present relevant mitigation, (Pet.App. 47-48), it failed to understand that not all evidence *offered* in mitigation will actually secure a mitigating *effect, i.e.,* will actually mitigate to result in a life sentence. Allen seeks in his opposition to perpetuate the majority's error that the dissent so aptly explained. (See Pet. App. 80).

Essentially, to give "effect" to mitigation is susceptible to different meanings. (Pet.App. 80-81). Here, however, it makes little sense to assign a meaning that a sentencer must accept and credit any evidence offered in mitigation – it is a factfinder's prerogative to determine if evidence is credible and to determine the weight it should be assigned. To put a fine point on it, a category of evidence may be deemed "mitigating" in general terms, but the evidence offered at sentencing may be rejected by the factfinder as not credible. Further, the factfinder could, based on the quality of the evidence offered or simply considering the evidence within the context of the remainder of the case, may find that the offered evidence established a fact, but that fact did not "mitigate" such that a life sentence was warranted. (Pet. App. 81; see also Pet. 33, assigning weight is for the factfinder). The Fourth Circuit majority interpreted this Court's precedent regarding mitigation as compelling a result of some kind once evidence offered in mitigation is admitted. That is not only wrong under this Court's precedent, but it also diminishes the longstanding role of the factfinder.

Allen's sentencing judge plainly considered the mental health evidence but did not give the evidence the impact and weight Allen hoped for, which is exactly what the state post-conviction relief judge found. (See Pet.App. 301; see also Pet. 12). Additionally, the background evidence offered, that the Fourth Circuit majority also tacked onto the analysis, (see App. 91, 70), similarly was without doubt considered as shown from even cursory review of the sentencing judge's comments as he referenced the "masterfully chronicled" presentation. (Pet.App. 209). The state court record supports that there was no error.

It is certainly not unreasonable to determine the accepted evidence was considered, as the sentencing judge said, but none of the evidence offered actually had the effect of convincing the judge that a life sentence was more appropriate than death. Stated differently, when properly reviewed under the standard mandated by AEDPA, there could be no grant of relief. The dissent's acknowledgment that the majority's logic shows "not a critic founded in law" but "merely a statement that the majority would have evaluated the evidence differently," (Pet.App.80), is especially highlighted and confirmed in this question posed by the majority, "*Why* did the trial court give Allen's evidence … no weight." (Pet. App. 61). It is echoed again in the majority's assertion that "Allen did not merely *claim* to have mitigating circumstances" his "mitigators existed just as much as the aggravators did." (Pet.App. 55). Again, that a federal court may disagree with the

factfinder is not a basis to upset the state court judgment. *See, e.g., Shinn v. Kayer, supra.*

The majority's reference to "mitigators" reveals further error in its understanding of state law. Notably, Allen repeats this term in his opposition, (see BIO 18), but that term doesn't mean anything in context of the state's capital system where formal findings are not required to be reported, nor compared with other findings in a formal structure. (See Pet. 34-35).

Further still, Allen apparently has no answer at all to the point made in the petition that the majority erred in considering whether its purported error was non-prejudicial or otherwise harmless. (See Pet. 38-41). The majority did not consider the massive amount of aggravation[1] and did not place the purported error in any context to make a determination of prejudice. This omission by Allen is certainly indicative of the fact that proper consideration of the purported error in context of this particular record would reasonably lead to resolving that no relief was due. (See Pet. 38-41).

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[1] Again, Allen murdered two individuals in South Carolina, two in North Carolina, and shot a homeless man for target practice in his plan to murder more people. (See Pet. 3-4).

C. Allen's attempt to suggest complexity in the posture of the case simply further reveals a mistake-laden approach in the Fourth Circuit's drive to reverse.

Allen argues the State is incorrect to suggest that the claim arose as a claim of ineffective assistance of counsel. (BIO 26-27). True, Allen did not present his case in the way the Fourth Circuit ultimately decided it – a freestanding Eighth Amendment claim – but that does not help Allen insulate the wrong result from this Court's review. The mitigation argument was part of the ineffective assistance of counsel claim. Allen simply underscores more error.

To be sure, this issue arose as an ineffective assistance of counsel claim through the state litigation. (Pet. 12-13). And, the district court decided the state court did not misapply federal law in resolving the issue. (Pet. at 15). Similarly, the dissent also found no error in the PCR court's fact-finding, or resolution, or, for that matter, the district court's resolution. (Pet. 20). The Eighth Amendment part of the claim was an argument *within* the deficient performance allegation. It seems exceedingly odd that Allen now takes the position that, from the time of district court proceedings at least, the claim was a freestanding Eighth Amendment claim, (see BIO 27), when Allen argued in his own Fourth Circuit brief that counsel was deficient, (Pet. 38). But, at the end of the day, Allen's desire to show a complexity in the procedural history is a non-issue for the petition argument but it is detrimental to his position in this

way: That the Fourth Circuit further loosened restraint to reach its decision is more reason to grant review, not deny it.

The Fourth Circuit's treatment of Allen's offered mitigation shows that it not only threw off AEDPA restraint, but it also misinterpreted *this Court's precedent* on mitigation evidence. For decades, this Court has reviewed capital cases based on mitigation arguments – it is a fertile area in capital litigation to argue missteps either by the court or counsel. After all, it is a universe of evidence difficult to define, and one often expanded or contracted by the creativity and strategy of counsel. But the Fourth Circuit extended the basic guarantee guarding *the ability* to present and have considered, certain evidence to some *guarantee of assured weight* to be assigned by the factfinder. That does not exist in state or federal precedent.

All these errors are part and parcel of how the Fourth Circuit in this case, as the dissent describes, "reimagin[ed]" the case in a drive to reverse. (See Pet. App. 80). This eagerness to reverse is, itself, forbidden by this Court's precedent. *Dunn v. Reeves*, 141 S.Ct. at 2407 (circuit court of appeals "went astray in its 'readiness to attribute error'" to the state court) (citing *Woodford v. Visciotti*, 537 U.S. 19, 24 (2002) (*per curiam*)).

CONCLUSION

This Court should grant the petition.

Respectfully submitted,

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