No. __-__

IN THE SUPREME COURT OF THE UNITED STATES

JOHN RICHARD WOOD,

Petitioner,

-v-

BRYAN P. STIRLING, Commissioner, South Carolina Department of Corrections; LYDELL CHESTNUT, Deputy Warden of Broad River Correctional Institution Secure Facility,

Respondents,

MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

THIS IS A CAPITAL CASE

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TO THE HONORABLE JOHN G. ROBERTS, Chief Justice of the Supreme Court of the United States, and Circuit Justice for the United States Court of Appeals for the Fourth Circuit:

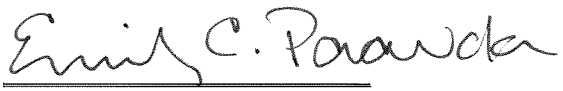
COMES NOW the Petitioner, John Richard Wood, an indigent defendant, by and through undersigned counsel, and pursuant to 28 U.S.C. § 1254(1) and Supreme Court Rule 13.5, respectfully requests an extension of time of sixty (60) days within which to file a Petition for Writ of Certiorari in this Court. Petitioner intends to seek review of a decision of the Fourth Circuit Court of Appeals denying his federal habeas petition. That decision became final on March 30, 2022. *Wood v. Stirling*, 27 F. 4th 269 (4th Cir. 2022) (attached as Appendix A), rehearing denied (March 30, 2022).

Mr. Wood's time to file a Petition for a Writ of Certiorari in this Court currently expires on June 28, 2022. This request for an extension of time to prepare and file the petition is made for the following reasons.

1. For the past three months, lead counsel in this matter has been working extensively on resolving a series of multi-jurisdictional death-eligible crimes in a federal prosecution in the District Court for the District of South Carolina, *United States v. Printz*, 6:22-cr-00494-DCC (filed under seal), on which she serves as Learned Counsel. Ms. Paavola also serves as Resource Counsel for the Habeas Assistance and Training Project – a program maintained by the Administrative Office of the U.S. Courts – and has had many ongoing duties related to that work, including planning and implementing multiple national training programs over the past few months.
2. In addition, both Ms. Paavola and co-counsel, Lindsey Vann, are involved in ongoing litigation in the South Carolina state courts regarding a challenge to South Carolina's recently amended execution method statute. *Owens v. Stirling*, 2021-CP-40-2306. They are preparing for a trial ordered by the South Carolina Supreme Court to be completed no later than August 3, 2022. Ms. Vann serves as lead counsel in that action, and she is also new to this matter having been appointed as substitute counsel for Mr. Wood on April 12, 2022. Ms. Vann therefore requires additional time to become familiar with the underlying record.
3. Senior Assistant Deputy Attorney General, Melody Brown, consents to this request for an extension of time to file the Petition for a Writ of Certiorari.

WHEREFORE, undersigned counsel respectfully requests an extension of time of sixty (60) days to prepare and file the Petition for Writ of Certiorari in this case, thus making the petition due on August 29, 2022.[1]

Respectfully submitted,



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Counsel for Petitioner-Appellant

[1] The sixty (60) days expire on August 27, 2022. However, since August 27 is a Saturday, the extension expires on the following weekday that is not a holiday pursuant to Supreme Court Rule 30(1).

Appendix A

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-11

JOHN R. WOOD,

Petitioner – Appellant,

v.

BRYAN P. STIRLING, Commissioner, South Carolina Department of Corrections; LYDELL CHESTNUT, Deputy Warden of Broad River Correctional Institution Secure Facility,

Respondents – Appellees.

Appeal from the United States District Court for the District of South Carolina, at Rock Hill. David C. Norton, District Judge. (0:12–cv–03532–DCN)

Argued: October 29, 2021 Decided: March 2, 2022

Before MOTZ, DIAZ, and RICHARDSON, Circuit Judges.

Affirmed by published opinion. Judge Diaz wrote the opinion, in which Judge Motz and Judge Richardson joined.

ARGUED: Elizabeth Anne Franklin-Best, ELIZABETH FRANKLIN-BEST, P.C., for Appellant. Melody Jane Brown, OFFICE OF THE ATTORNEY GENERAL OF SOUTH CAROLINA, Columbia, South Carolina, for Appellees. **ON BRIEF:** Emily C. Paavola, JUSTICE 360, Columbia, South Carolina, for Appellant. Alan Wilson, Attorney General, Donald J. Zelenka, Deputy Attorney General, OFFICE OF THE ATTORNEY GENERAL OF SOUTH CAROLINA, Columbia, South Carolina, for Appellees.

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the window. Having fatally wounded the officer, Wood fled and met up with his girlfriend, who had been following him in her Jeep.

When police caught up with the pair, a high-speed chase ensued. Wood's girlfriend drove while Wood fired at pursuing officers from the passenger seat. He shot one of the officers in the face, but the officer survived. As the chase continued, the Jeep ran several cars off the road, striking one. And when the Jeep stalled, Wood hijacked a truck at gunpoint—this time, he jumped into the driver's seat. Officers eventually cornered and arrested Wood.

B.

A South Carolina grand jury indicted Wood for Nicholson's murder and possession of a weapon during the commission of a violent crime. The State gave notice it would seek the death penalty, and Wood's capital trial began in February 2002. Attorneys John Mauldin, James Bannister, and Rodney Richey represented him. The jury returned a guilty verdict on both counts. The penalty phase began two days later.

The State began the penalty phase by reintroducing all the evidence from the guilt phase for the jury's consideration. The rest of its penalty case consisted of Wood's criminal record and six witnesses. The State read Wood's record to the jury, which included convictions for shoplifting, grand theft, burglary, obtaining controlled substances by fraud, and conspiring to use fraudulent identification in connection with counterfeit securities.

As for its witnesses, the State spent the bulk of its time examining Jimmy Sligh, a 20-year employee of the South Carolina Department of Corrections. Sligh testified on "the

The State concluded by calling Misty Nicholson, Trooper Nicholson's widow, who recounted their relationship and the lasting impact of Nicholson's death. Mrs. Nicholson told the jury about how they "grew up together" and married after five years of dating. J.A. 392. She described how they once "planned to have children" but now she "come[s] home to an empty house." J.A. 394–95. "Every aspect of [her] life ha[d] been changed." J.A. 394.

Mrs. Nicholson also related how Nicholson's death was "really difficult" for his parents. J.A. 393. She said Nicholson's father was "not in the best . . . health," and the death "put a real strain on h[im]." J.A. 394. Finally, she detailed the day Nicholson died and how she arrived at the hospital to find him gone. "From that point on [she] had to live with what happened." J.A. 398.

Wood then presented his mitigation case, focusing on his mental health issues (and their root causes) and his adaptability to confinement. He offered expert testimony from a social worker and a psychiatrist, who both examined Wood and agreed that he suffered from paranoid-personality disorder. Wood's psychiatrist went further, diagnosing him with bipolar disorder. And when considered with his hallucinations and delusions of grandiosity, the psychiatrist said Wood exhibited symptoms of psychosis.

The State called its own forensic psychiatrist in rebuttal, who had evaluated Wood and reviewed his medical records. Contrary to Wood's experts, the State's psychiatrist testified that Wood suffered only from an antisocial personality disorder and substance-abuse issues. As support, he noted Wood's psychiatric evaluation conducted at the jail just

inflicting violence upon him" in the general population. J.A. 475. A life sentence would be "very difficult for [Wood]," according to Aiken. J.A. 476.

At closing, the State featured the prison-conditions evidence. It argued that a life sentence wouldn't be "serious business for . . . Wood." J.A. 599. That's because "going to prison is like being in a big city – in a little city. You've got a restaurant. . . . You get contact visits with your family. . . . You've got a social structure. You've got freedom of movement. . . . Thirty or forty acres to live in. [You can w]atch ball games on the T.V." J.A. 599–600. The State told the jury that life in prison for Wood would be "a change of address and nothing more." J.A. 600.

Wood's counsel didn't object. Instead, counsel challenged Sligh's framing of prison as "soft." J.A. 614. And counsel referred to Aiken's testimony, explaining that "prisons contain violent, dangerous people for long periods of time." J.A. 616.

The case went to the jury. On the second day of deliberations, the jury asked to review the competing psychiatrists' testimony. After having this testimony played back, the jury informed the court of an eleven-to-one deadlock. The court gave the jury a modified *Allen*[2] charge, instructing them to continue deliberations. The next morning, the jury returned a verdict of death.

The Supreme Court of South Carolina affirmed Wood's convictions and sentence on direct appeal. *State v. Wood*, 607 S.E.2d 57, 62 (S.C. 2004), *cert. denied*, 545 U.S. 1132 (2005).

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[2] *Allen v. United States*, 164 U.S. 492 (1896).

Wood appealed, but the Supreme Court of South Carolina declined review.

D.

Wood then petitioned for federal habeas relief in the District of South Carolina.[4] He raised a host of issues, including his trial counsel's failure to object to the prison-conditions evidence. The State moved for summary judgment. A magistrate judge recommended granting the State's motion.

Applying 28 U.S.C. § 2254(d)'s review standard to Wood's *Strickland* claim on the prison-conditions evidence, the magistrate judge agreed that "admission of an arbitrary factor, such as conditions of confinement, may invite prejudice." *Wood v. Stirling*, No. 12-cv-3532, 2018 WL 4701388, at *21 (D.S.C. Oct. 1, 2018). Still, she found that "nothing in federal jurisprudence requires a finding that admission of evidence of conditions of confinement prejudiced [Wood]." *Id.*

The magistrate judge determined the state postconviction court had properly applied *Strickland* when it weighed the prison-conditions evidence's impact on the verdict. Wood had also questioned the state court's reliance on the aggravated facts of his crime while ignoring the jury's long deliberations. But the magistrate judge found no evidence tying the jury's deadlock to the admission of prison-conditions evidence or to mitigating evidence that the state court didn't consider.

[4] The federal proceedings were stayed while Wood pursued a second postconviction petition in state court. The state court granted summary judgment against Wood on his second petition, finding it improperly successive and untimely.

A.

Under AEDPA, we may grant habeas relief on a claim that a state postconviction court rejected on the merits only when the decision: (1) "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court," 28 U.S.C. § 2254(d)(1); or (2) "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding," *id.* § 2254(d)(2).

Under § 2254(d)(1), a state court's application of Supreme Court precedent is unreasonable "when the court identifies the correct governing legal rule from the Supreme Court's cases but unreasonably applies it to the facts of the particular state prisoner's case." *Owens*, 967 F.3d at 411 (cleaned up). "[A]n *unreasonable* application of federal law is different from an *incorrect* or *erroneous* application of federal law." *Williams v. Taylor*, 529 U.S. 362, 412 (2000). In other words, we may not grant relief if "it is possible fairminded jurists could disagree" that the state court's decision conflicts with Supreme Court precedent. *Harrington v. Richter*, 562 U.S. 86, 102 (2011).

Under § 2254(d)(2), a state court's decision is based on an unreasonable determination of the facts when there "is not merely an incorrect determination, but one 'sufficiently against the weight of the evidence that it is objectively unreasonable.'" *Gray v. Zook*, 806 F.3d 783, 790 (4th Cir. 2015) (quoting *Winston v. Kelly*, 592 F.3d 535, 554 (4th Cir. 2010)). We presume the state court's factual findings are sound unless the petitioner "rebuts the 'presumption of correctness by clear and convincing evidence.'" *Miller-El v. Dretke*, 545 U.S. 231, 240 (2005) (quoting 28 U.S.C. § 2254(e)(1)).

B.

1.

The state postconviction court correctly identified *Strickland* as the appropriate framework to address Wood's claim. It found (as the State concedes) that defense counsel were deficient for not objecting to the prison-conditions evidence. *See Bowman v. State*, 809 S.E.2d 232, 241 (S.C. 2018); *State v. Plath*, 313 S.E.2d 619, 627 (S.C. 1984). But the state court also determined Wood couldn't show prejudice from this deficiency.

Wood argues that the state court's application of *Strickland*'s prejudice test either was objectively unreasonable or resulted in a decision based on an unreasonable determination of the facts. We disagree.

2.

To assess *Strickland* prejudice in capital sentencing, "the question is whether there is a reasonable probability that, absent the errors, the sentencer . . . would have concluded that the balance of aggravating and mitigating circumstances did not warrant death." *Strickland*, 466 U.S. at 695. Wood framed that question for the state court in terms of his counsel's failure to object to the prison-conditions evidence. Thus, put differently, Wood would have been "entitled to relief only if he [could] show that had the [prison-conditions evidence] not been admitted, there is a reasonable probability that at least one juror would have struck a different balance." *Powell v. Kelly*, 562 F.3d 656, 668 (4th Cir. 2009) (cleaned up).

The state court held that Wood hadn't shown "a reasonable probability of a different result." J.A. 1226. It compared the "extremely aggravated" facts of the case against

3.

We recently examined a state court's application of *Strickland* to the evidentiary issue before us. In *Sigmon v. Stirling*, we denied habeas relief where a state court found no reasonable probability that, but for defense counsel's failure to object to prison-conditions evidence at the penalty phase, the jury wouldn't have imposed a death sentence. 956 F.3d 183, 193 (4th Cir. 2020), *cert. denied*, 141 S. Ct. 1094 (2021).

There, defense counsel first elicited the improper evidence from its own expert. *Id.* Concluding the petitioner hadn't established prejudice, we found that "overwhelming and uncontested evidence of aggravating circumstances" outweighed any potential harm from the prison-conditions evidence. *Id.* Exclusion of such evidence "would have also excluded parts of Sigmon's mitigation case" since the petitioner opened the door on the topic through his expert. *Id.*

The *Sigmon* prejudice analysis informs our decision here. The state postconviction court identified the "extremely aggravated" facts of Wood's crime, along with his criminal history and the "moving" victim-impact evidence, and then weighed the effect of the prison-conditions evidence presented to the jury. J.A. 1226. Though Wood offered a mitigation case based on his mental health, we don't think it was unreasonable for the state court to have found that the substantial aggravating evidence overcame that case. *See, e.g.*, *Morva v. Zook*, 821 F.3d 517, 532 (4th Cir. 2016) ("Even the most sympathetic evidence in the record about [the petitioner's] troubled childhood and mental health does not outweigh the aggravating evidence presented at trial." (cleaned up)).

could reasonably conclude that the defense met its objective and scored enough points on the prison-conditions evidence to nullify the State's presentation.

Though the state court didn't reach Wood's desired result, we can't say it unreasonably applied *Strickland* when it weighed the prison-conditions evidence and found its effect on the verdict inconsequential.[5] At bottom, it's precisely this type of inquiry the Supreme Court asks habeas courts to engage in when assessing *Strickland* prejudice. *See Sears v. Upton*, 561 U.S. 945, 955–56 (2010) (explaining that the prejudice inquiry should be "probing and fact-specific" and will "necessarily require a court to 'speculate'" on the consequences of counsel's errors).

Wood's challenges to the state court's consideration of his mitigation evidence are also unavailing. Wood argues the court "unreasonably substituted its own judgment discounting [his] mitigation evidence" when considering his criminal history and mental health evidence. Appellant's Br. at 29. He also asserts that the court "unreasonably

[5] Wood claims the state court's weighing of the prison-conditions evidence can't be reconciled with the result in *State v. Burkhart*, 640 S.E.2d 450 (S.C. 2007), but that argument misses the mark. In *Burkhart*, South Carolina's high court, without conducting a prejudice analysis, reversed a death sentence on direct review where the State had introduced general prison-conditions evidence over the defendant's timely objection. *See id.* at 488. Though the defendant "attempted to counter" the State's prison-conditions evidence with his own, the court found the "entire subject matter injected an arbitrary factor into the jury's sentencing considerations" in violation of a state statute. *Id.* Even so, South Carolina's treatment of such evidence on direct review can't control Wood's collateral *Strickland* claim, which requires him to establish prejudice. *See Bowman*, 809 S.E.2d at 246 ("*Burkhart* provides no support for Petitioner's claims in this matter, as this is a [postconviction relief] claim, which is evaluated under the two-pronged approach of *Strickland*[.]").

434, 444 (4th Cir. 2021) ("We defer to the state court's credibility finding [when] we perceive no stark and clear error with it." (cleaned up)).

Nor do we think the state court unreasonably conflated Aiken's adaptability and prison-conditions testimony. Wood points to the court's statement that "[h]ad counsel objected to the State's evidence on the issue, it would not have been allowed to make its own points along these lines as well." J.A. 1226. Wood claims the court treated Aiken's adaptability testimony (which is admissible[7]) as equivalent to the prison-conditions evidence (which isn't).

There's no dispute that Wood would have been able to present evidence on his adaptability to prison, regardless of the introduction of prison-conditions evidence. But the state court never said otherwise. It said only that Wood wouldn't have been able to make his points "on the *issue*"—the "issue" being "conditions of confinement." *Id.* (emphasis added). And other portions of the court's order show that it understood Aiken testified on Wood's "mentality" and that he'd be "adaptable to prison." *See* J.A. 1162, 1178. In short, we find no indication that the state court conflated Aiken's testimony in the manner Wood suggests, much less that it did so unreasonably.[8]

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disregard Wood's mental health evidence by finding it "relatively mild." *See* J.A. 1226. Rather, the court's finding informs the weight it gave to Wood's evidence when tempered by the State's rebuttal expert.

[7] *See Skipper v. South Carolina*, 476 U.S. 1, 7 (1986).

[8] Having found the state court reasonably considered the mitigation and prison-conditions evidence, we conclude Wood's claims that the court unreasonably focused on the facts of his crime and the victim-impact evidence are of no moment.

AFFIRMED.

FILED: March 30, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-11
(0:12-cv-03532-DCN)

JOHN R. WOOD

Petitioner - Appellant

v.

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Respondents - Appellees

O R D E R

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk