(CAPITAL CASE)
NO. _____

IN THE
Supreme Court of the United States

JOHN R. WOOD,

Petitioner,

v.

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

Respondents.

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

PETITION FOR WRIT OF CERTIORARI
(CAPITAL CASE)

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Capital Case

QUESTION PRESENTED

At the penalty phase of Petitioner's capital trial, the crux of the State's case for death rested on "prison conditions" evidence from a single Department of Corrections employee who suggested that due to the many amenities and privileges provided to inmates, sentencing Petitioner to life in prison would have little retributive value. Trial counsel raised no objection. Based on this evidence, the State argued that jurors should sentence Petitioner to death because "putting him in prison isn't going to make him suffer," "[g]oing to prison is like being in a big city," and "prison is just about going to be a change of address and nothing more." Again, trial counsel did not object.

It is undisputed that prison conditions evidence was inadmissible as a matter of South Carolina law. Despite the State's heavy reliance on this inadmissible evidence, and a powerful (and improper) closing argument crafted upon it, Petitioner's jury was deadlocked and struggled over the course of three days before reaching a unanimous verdict for death.

The state postconviction relief (PCR) court found (and the State conceded below) that Petitioner's counsel performed deficiently by failing to object to the prison conditions evidence, but the PCR court concluded there was no prejudice. The Fourth Circuit Court of Appeals sanctioned this outcome by inventing reasons to justify the state court's decision that were never discussed or endorsed by the state court, contrary to this Court's instruction that when a state court gives a reasoned explanation for its decision, "a federal habeas court simply reviews the specific reasons given by the state court and defers to those reasons if they are reasonable." *Wilson v. Sellers*, 138 S. Ct. 1188, 1192 (2018).

The questions presented are:

1. Whether the state court unreasonably applied *Strickland v. Washington*, 466 U.S. 668 (1984), when it concluded that Petitioner suffered no prejudice because the defense had "fully joined" the prison conditions issue by presenting evidence to show that Petitioner was adaptable to confinement?

2. Whether the Fourth Circuit's § 2254(d)(1) analysis, which is based on factually unsupported reasons not found in the state court decision, contravenes this Court's decision in *Wilson v. Sellers*, *supra*?

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John Richard Wood respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The opinion of the court of appeals (App. 1-21) is reported at 27 F.4th 269. The order of the court of appeals denying rehearing (App. 163) is unreported. The district court opinion (App. 22-68) is unreported but available at 2019 WL 4257167. The state court order denying post-conviction relief (App.69-162) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on March 2, 2022, and a timely petition for rehearing *en banc* was denied on March 30, 2022. Chief Justice Roberts granted an extension of time to file the instant petition to and including August 27, 2022. This petition is timely filed. Jurisdiction is invoked pursuant to 28 U.S.C. § 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides, in pertinent part:

> In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense.

28 U.S.C. § 2254(d) provides:

> An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

STATEMENT OF THE CASE

I. Introduction.

The issues in this case arise out of the distinction between evidence of prison conditions and evidence of a capital defendant's adaptability to confinement. Regarding the latter, it is well established that an individual's good behavior in prison is relevant and admissible evidence in a capital sentencing proceeding. *Skipper v. South Carolina*, 476 U.S. 1, 5 (1986). The same is true of a criminal defendant's poor adjustment to confinement because, as this Court has explained, "[c]onsideration of a defendant's past conduct as indicative of his probable future behavior is an inevitable and not undesirable element of criminal sentencing." *Id*. This Court has therefore held that evidence of future dangerousness may be considered aggravating and, likewise, a defendant's positive adjustment to prison must be considered potentially mitigating. South Carolina has long understood this principle. *See State v. Tucker*, 478 S.E.2d 260, 270 (S.C. 1996) (holding a criminal defendant's prior record of violence and attempted escapes were admissible at sentencing because they were relevant to the defendant's "adaptability to prison").

The category of prison conditions evidence, however, has never been admissible under South Carolina law. In *State v. Plath*, the South Carolina

Supreme Court held that testimony about prison conditions offered by a regular prison visitor, who discussed whether a defendant's quality of living would be better or worse if he received a life sentence, was "highly improper, for it invites the jury to intrude upon the strictly legislative function of determining the nature of crime and punishment under our Constitution." 313 S.E.2d 619, 627 (S.C. 1984). The court explained its reasoning as follows:

> In the sentencing phase of a capital case, the function of the jury is not to legislate a plan of punishment but to make the 'either/or' selection called for by the language of 16-3-20(A), Code, which in pertinent part provides: 'A person who is convicted of or pleads guilty to murder shall be punished by death or by imprisonment for life . . . .' Such determinations as the time, place, manner and conditions of execution or incarceration, as well as the matter of parole are reserved by statute and our cases to agencies other than the jury. As we have repeatedly stated, the sole function of the jury in a capital sentencing trial is the individualized selection of one or the other penalty, based upon the circumstances of the crime and characteristics of the individual defendant.

Id.; *see also State v. Johnson*, 360 S.E.2d 317, 327 (S.C. 1987) ("In the sentencing phase of a capital case, the jury's sole function is to make a selection of life imprisonment or the death penalty, based upon the circumstances of the crime and the characteristics of the defendant, and not to legislate a plan of punishment."); *State v. Burkhart*, 640 S.E.2d 450, 453 (S.C. 2007) (reversing a death sentence based on improper admission of prison conditions evidence, which was contrary to South Carolina's "long-standing rule that evidence in the sentencing phase of a capital trial must be relevant to the character of the defendant or circumstances of the crime.").

II. Trial Proceedings.

During a traffic stop near Greenville, South Carolina, Petitioner shot Trooper Eric Nicholson five times, killing him instantly. He then fled the scene and got into the passenger seat of a Jeep driven by his girlfriend. A chase ensued. Petitioner fired on pursuing officers, striking one (nonfatally) with a bullet fragment. Attempting to continue his escape, Petitioner hijacked a truck, but was stopped shortly thereafter when officers shot him in the face and arrested him. Petitioner was convicted of murder and possession of a weapon during a violent crime. *State v. Wood,* 607 S.E.2d 57 (S.C. 2004), cert. denied (June 20, 2005).

a. The State's Case for Death.

In the penalty phase, the State's central theme was that easy prison conditions would make life imprisonment nothing more than a "change of address" for Petitioner. Solicitor Robert Ariail announced that the State would call James Sligh, an employee of the South Carolina Department of Corrections, "to have a discussion as to the difference between life in prison without parole versus the punishment of death." JA317.[1] Trial counsel raised no objection. Sligh told the jury that if they sentenced Petitioner to life, he would live in an environment "kind of like a mini city," where he would be allowed to move freely about his wing, participate in recreational activities with other inmates, and enjoy educational opportunities and visitation with family where "children can come around and sit in laps and things like that." JA323, 329, 332. He described the nature of work-

[1] JA citations refer to the Joint Appendix filed before the Fourth Circuit Court of Appeals.

release programs in which inmates do road detail and others "where the inmate actually has the opportunity to go out and work in the community." JA326.

By contrast, Sligh testified that on death row "you remain in your cell all day," and the inmates do not have access to TV, work opportunities, canteen, recreation with other inmates, or contact visits with family and friends. JA333–39. He stated that, compared to death row, there are more opportunities for violence in general population "because of the nature of the interaction between the inmates especially." JA340. Sligh explained that the officers in the prisons are not armed because it "creates a risk that an inmate would get a gun," but stressed that a death row inmate would have much less opportunity for violence because, unlike in general population, "[y]ou are restrained any time you come out of your cell, both in leg irons and handcuffs and belly chain. And generally you have two security personnel escorting you." JA340–42.

On cross-examination, Petitioner's counsel noted that a murder conviction would render Petitioner ineligible for work-release programs and require a high security level classification, but Sligh insisted that people who are doing life in prison can still better themselves through school, religious opportunities, friendships, interaction with their family and counseling services available to them. JA355. Petitioner would "get the visits"; he would "get the hugs" and the "Coca-cola." He would "get all that," even if he was there for life. JA356–57. Sligh's

testimony spans forty-one pages of the trial transcript and comprises more than fifty-five percent of the testimony in the State's case in chief.[2] JA319–59.

b. The Defense's Case for Life.

The defense penalty phase presentation consisted of two parts. Part one focused on Petitioner's history of mental illness. A social worker described Petitioner's life history, discussed signs of a paranoid personality disorder, and stated Petitioner believes "God talks to him and tells him what to do and what not to do." JA423, 425. Dr. Donna Schwartz-Watts, a forensic psychiatrist, agreed with that assessment, diagnosing Petitioner with bipolar disorder and paranoid personality disorder. JA497. She testified that Petitioner "believes he has a very special relationship with God, and he's been chosen by God to do things such as building [a] housing development[] in Belize to help other people." JA502. He has had "hallucinations" and "[h]e also has a paranoid personality disorder." JA504–05 ("He is extremely fearful. He always expresses fears that he is being watched, he's being followed.").

The second element of the defense's penalty phase presentation focused on the theme that Petitioner was adaptable to confinement. Trial counsel called an employee of the Greenville County Detention Center to offer twenty-three video

[2] The remainder of the State's penalty phase evidence consisted of one witness who offered nine pages of victim impact testimony, JA391–99, four witnesses who discussed additional facts of the crime, JA306–11, 372–89, and a recitation of Petitioner's prior criminal history, without elaboration, which included no prior incidents of violence. Petitioner had prior charges of shoplifting, theft, burglary and fraud, several of which his mother orchestrated. JA420.

tapes documenting Petitioner's movements without incident during his stay in jail over the previous fourteen months. JA460–61. James Aiken, a former prison warden, was qualified without objection as an expert in "prison adaptability and risk assessment of prisoners." JA468–69. Aiken testified that Petitioner's institutional records showed he was "compliant to orders," and not a "predator" (meaning a person who is violent and disruptive). JA470, 474. Aiken explained that, in his experience, past institutional behavior is the best predictor of an inmate's adaptability to prison. And in Petitioner's case, Aiken found:

> no prior violence against persons. Also, I found no violence against persons while being confined. Also, I did not find where he is part of a security threat group, or where he has attacked staff, or where he has incited riot, where he has taken hostages. I have found nothing of that in his record as well as contained in the interview as well as the review of the videotapes.

JA471.

Defense counsel noted that there had been some testimony about "maximum security versus death row, a comparison," and asked for Aiken's opinion. Aiken responded that, because of Petitioner's murder conviction, he would be placed in maximum security and "that covers it all; he stays in maximum security." JA472. He stated it was "not necessarily" true that general population is safer than death row because in a single cell on death row you have "peace and quiet" and "a high degree of certainty." JA473. Aiken stated that Petitioner's older age, race and average size would make it more likely he would be vulnerable in prison rather than a threat to others. JA475–76. He concluded that Petitioner "can be housed in

the South Carolina Department of Corrections for the remainder of his life without causing undue risk of harm to the staff, community or other inmates." JA475. The State did not cross-examine Aiken. JA478.

c. Closing Arguments and Jury Deliberations.

In closing argument, Solicitor Ariail seized upon trial counsel's failure to object to Sligh's testimony by expanding upon the prison conditions evidence to argue that a life sentence would allow petitioner to escape without sufficient punishment. JA599 ("putting him in prison isn't going to make him suffer"). Ariail claimed that if the jury sentenced Petitioner to life it would be like he "got away" with it, and Wood would rise to the top of the prison hierarchy to become "a king" and "a leader" in prison. JA599. He catalogued a list of alleged ways in which Petitioner would be rewarded by a prison sentence, and he argued that life imprisonment would be an insignificant punishment—nothing more than a "change of address" for Petitioner. JA599–600. For example, Ariail argued:

> Now, you and I may think going to prison for life is serious business. But that's not the issue. The issue is, is going to prison for life serious business for John Richard Wood? Are we really doing anything to John Richard Wood?
>
> Going to prison is like being in a big city – in a little city. You've got a restaurant. You've got a canteen. You've got a medical center. You've got a gymnasium. You've got fields to work out in. They give you clothing. You get contact visits with your family. You've got T.V. You play cards and games. You've got a social structure. You've got freedom of movement. It might be limited, but you've got freedom of movement. Thirty or forty acres to live in. Watch ball games on the T.V. You go to school. And you do all of those things that you want to. You may not have

> a car to drive around, and they may limit your travel. And your standards may not be as high as what you're used to. But based on what John Richard Wood was doing, prison is just about going to be a change of address and nothing more. He will see his baby every weekend, and that baby will sit on his lap.

J.A. 599-600. Defense counsel raised no objection to these arguments.

The jurors deliberated until approximately 8:00 p.m. the first day and then adjourned for the night.[3] JA639. They resumed their deliberations the following morning and later announced a deadlock. The foreperson sent a note to the trial judge stating:

> We appear to have an eleven to one hung jury. Please advise what and how we can resolve this situation and what this will do to the case in the future. Will Mr. Wood be retried? And what does this do to his chance of going free or will you now sentence him?

JA648. The trial court instructed the jurors to continue deliberating. They retired on the second day at 7:15 p.m. JA656. They reached a verdict of death on the third day of deliberations. JA660–61. Petitioner's conviction and sentence were affirmed on direct appeal.

[3] The trial judge submitted one statutory aggravating circumstance to the jury (the murder of a federal, state or local law enforcement officer) JA629, and four statutory mitigating circumstances: (1) "the defendant has no significant history of prior criminal conviction involving the use of violence against another person"; (2) "the murder was committed while the defendant was under the influence of mental or emotional disturbance"; (3) "the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was substantially impaired"; and, (4) "the age or mentality of the defendant at the time of the crime." JA631.

III. Post-Conviction Proceedings.

Petitioner sought post-conviction relief (PCR), raising, *inter alia*, a claim that trial counsel were ineffective for failing to object to Sligh's testimony regarding prison conditions evidence. Trial counsel testified that they had no strategic reason for failing to object to Sligh's testimony and noted that had they lodged an appropriate objection, the Solicitor's related closing argument likewise would not have been permitted.[4] In a written order, the PCR court discussed South Carolina's long-standing rule against evidence of prison conditions, including the South Carolina Supreme Court's decision in *Burkhart* reversing a death sentence on direct appeal based on its conclusion that the exact same testimony offered by James Sligh in Burkhart's case constituted an arbitrary factor that invited the jury to "speculate about irrelevant matters." 640 S.E.2d at 453. The PCR court then correctly held that trial counsel "were deficient for not objecting to the evidence," JA1225, a fact that Respondent concedes. *Wood v. Stirling*, 27 F.4th 269, 277 (4th Cir. 2022) (stating the state postconviction court "found (as the State concedes) that defense counsel were deficient for not objecting to the prison-conditions evidence.").

However, the PCR court held Petitioner could not show prejudice because the mitigation evidence included only "relatively mild mental health testimony without

[4] *E.g.*, JA913 ("I am absolutely convinced that I should have entered that objection and that objection would have been sustained, or if it had been overruled, it would have ended up being reversed."); JA993 ("I should have objected. The objection should have been sustained. Mr. Sligh's testimony should not have been allowed. The argument by Mr. Ariail in closing about the conditions of confinement, serving life in prison, got a child sitting in his lap, all of that stuff was just—what I right now will say constituted an arbitrary factor based upon a case that's not even a month old.").

findings of psychosis or delusion at the time of the offense" and, as to the conditions of confinement evidence, the defense had "fully joined" the issue by offering evidence of prison adaptability. JA1226. The PCR court also concluded there was nothing improper about the State's closing argument because it was based on inferences drawn from evidence admitted at trial. JA1226–27. The South Carolina Supreme Court summarily denied review.

IV. Federal Habeas Review.

Petitioner filed a federal habeas petition in the District of South Carolina. The district court granted summary judgment in Respondent's favor, dismissed the petition, and denied a certificate of appealability (COA). JA1695–1741. A panel of the Fourth Circuit Court of Appeals granted a COA "regarding Wood's ineffective assistance of counsel claim for his counsel's failures to object to the state's introduction of inadmissible prison conditions evidence and the state's subsequent use of that evidence during closing arguments." Doc. 21. Following briefing and oral argument, the panel denied relief, concluding that multiple reasons never discussed by the state PCR court supported its decision. The *en banc court* denied rehearing.

REASONS THE WRIT SHOULD BE GRANTED

I. The state court's decision involved an unreasonable application of *Strickland*'s prejudice standard.

To establish *Strickland* prejudice, a petitioner must show "'a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" *Porter v. McCollum*, 558 U.S. 30, 38–39 (2009) (quoting

Strickland, 466 U.S. at 694). This Court has "consistently explained" that this inquiry requires a "probing and fact-specific analysis," *Sears v. Upton*, 561 U.S. 945, 954 (2010)—one that carefully considers "'the totality of the available mitigation evidence—both that adduced at trial, and the evidence adduced in the habeas proceeding'—and 'reweig[hs] it against the evidence in aggravation.'" *Porter*, 558 U.S. at 41 (quoting *Williams v. Taylor*, 529 U.S. 362, 397–98 (2000)). The question is whether, absent the error by trial counsel, the jury's "appraisal of [a defendant's] culpability" might have been different. *Rompilla v. Beard*, 545 U.S. 374, 393 (2005). Although it correctly identified *Strickland* as the governing legal rule, the state PCR court "applie[d] it unreasonably to the facts of [this] case." *(Terry) Williams v. Taylor*, 529 U.S. 362, 407-08 (2000) (discussing 28 U.S.C. § 2254(d)(1)). The PCR court's analysis turns on two fundamental errors.

First, the PCR court unreasonably conflated prison conditions and adaptability evidence when it concluded that "[a]s to the conditions of confinement evidence itself, the defense was able to score as many points if not more as the prosecution," and asserted that both parties presented "relatively equal" evidence of prison conditions and "[b]oth sides fully joined the issue and both sides were able to make headway." JA1226. The court further concluded 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." *Id.* Finally, the PCR court determined that "[s]ince evidence from both sides came before the jury, argument on the subject was

proper as within the record, and the fact that both sides made argument on this issue does not change the calculation." JA1226–27.

These findings stem from the state court's unreasonable treatment of adaptability evidence (which is admissible) as equivalent to prison conditions evidence (which is not admissible). The defense did not offer its own affirmative evidence on the subject of prison conditions. Rather, *after* the State successfully offered Sligh's testimony, the defense made a brief attempt to counter the damage by asking Aiken "there has been some testimony about the maximum security versus death row, a comparison. Can you give us a comparison in your expert opinion on death row versus this high supervision?" JA472. This was an appropriate "invited response" after the State opened the door to this topic. *See Vaughn v. State*, 607 S.E.2d 72, 75 (S.C. 2004); *Ellenburg v. State*, 625 S.E.2d 224, 226 (S.C. 2006). The PCR court erroneously treated defense counsel's cross-examination of Sligh and questioning of Aiken on this topic as a *beneficial windfall*, rather than viewing them for what they truly were—feeble efforts to counter the shattering blow that the State had already unfairly struck. *See* JA916 (in trial counsel's assessment, Sligh's testimony "was pretty devastating to our case, I thought").

Trial counsel's two-part penalty phase strategy—focusing on prison adaptability and Petitioner's mental illness—would *not* have been impacted in any way by a proper objection to Sligh's testimony. The defense disclosed James Aiken as an expert witness, prior to trial, for the purpose of offering evidence "about John

Wood's prison adaptability and the ability of the Department of Corrections to manage John Wood." JA827. Aiken's testimony was clearly admissible under *Skipper* regardless of any evidence presented by the State. 476 U.S. 1. Indeed, the State made no objection to Aiken's testimony prior to trial; it did not object when Aiken was offered and qualified as an expert in "future prison adaptability and risk assessment of prisoners," JA468–69; and the State asked no cross-examination questions of Aiken. JA478. By contrast, Sligh was called as a lay witness during the State's case-in-chief (before the jury even heard of Aiken) to offer "a discussion as to the difference between life in prison without parole versus the punishment of death." JA317. Contrary to the PCR court's conclusion, trial counsel would not have been barred from offering Aiken's testimony had they raised a proper objection to Sligh's testimony, and it would have been clear reversible error had the trial court done so.

From this same conflation, the PCR court held that the State's discussion of prison conditions in closing argument was "proper as within the record," because "evidence from both sides came before the jury." JA1226–27. The PCR court saw no need to independently assess the prejudicial impact of Solicitor Ariail's closing argument because it erroneously considered Sligh's and Aiken's testimony as equally focused on the topic of prison conditions. As a result, the PCR court failed to examine the fact that the State's argument should never have been permitted in the first place because it was based on clearly inadmissible evidence, despite trial counsel's clear explanation that if he had properly objected, "then this stuff that Mr.

Ariail argues about how it would be nothing more than a change of address . . . would never have been able to be made, [because] it wouldn't be in the record." JA13. The PCR court failed to appreciate the distinction between prison conditions and adaptability evidence, and this error produced an objectively unreasonable application of the *Strickland* prejudice standard.

Second, the PCR court unreasonably discounted Petitioner's mitigating evidence. The PCR court noted, as aggravating factors, that Petitioner "had a prior record and had been in prison before," JA1226, but failed to address the fact that Petitioner's criminal history contained no charges involving violence, nor did he engage in any violence or threat of violence during his prior incarceration—two factors that Petitioner's adaptability expert, James Aiken, testified are the best predictors of future adaptability. JA471.

The PCR court dismissed Petitioner's evidence of mental illness as "relatively mild" because it did not contain "findings of psychosis or delusion at the time of the offense." JA1226. This conclusion unreasonably discounted Petitioner's mental health evidence and the mitigating effect it might have had on the jury. *See* JA504–05 (describing Petitioner's bipolar disorder and history of hallucinations and extreme paranoid ideation); JA423–25 (testimony regarding Petitioner's paranoid personality disorder and his belief that God talks to and issues instructions to him). The PCR court's emphasis on the fact that the mental health evidence did not explicitly relate to "the offense" violated this Court's pronouncement that mitigating evidence is not required to bear "a nexus to the crime" and any rule suggesting

otherwise "has no foundation in the decisions of this Court." *Tennard v. Dretke*, 542 U.S. 274, 284 (2004); *see also Williams v. Taylor*, 529 U.S. 362, 398 (2000) ("Mitigating evidence unrelated to dangerousness [(a prerequisite to death-eligibility under Virginia law)] may alter the jury's selection of penalty, even if it does not undermine or rebut the prosecution's death-eligibility case. The Virginia Supreme Court did not entertain that possibility. It thus failed to accord appropriate weight to the body of mitigation evidence available to trial counsel.").

The PCR court did not acknowledge, or apparently consider, that even with the evidence of prison conditions improperly on the aggravating side of the scale, the jury had great difficulty reaching a decision, resulting in a deadlocked jury and protracted deliberations over the course of three days. Thus, even a tiny fraction less on the aggravating side of the scale could have made a difference—and there is certainly a reasonable likelihood of a different outcome had an appropriate objection from trial counsel functioned to remove the very heart of the State's penalty-phase case.

II. The Fourth Circuit's § 2254(d)(1) analysis contravenes this Court's decision in *Sellers*.

As this Court has repeatedly explained, "[d]eciding whether a state court's decision 'involved' an unreasonable application of federal law . . . requires the federal habeas court to 'train its attention on the particular reasons—both legal and factual—why state courts rejected a state prisoner's federal claims,' and to give appropriate deference to that decision." *Sellers*, 138 S. Ct. at 1191 (cleaned up); *see also Cullen v. Pinholster*, 563 U.S. 170, 182 (2011) ("Our cases emphasize that

review under § 2254(d)(1) focuses on what a state court knew and did."). When, as here, "the last state court to decide a prisoner's federal claim explains its decision on the merits in a reasoned opinion," the federal court conducts a "straightforward inquiry" in which it "simply reviews the specific reasons given by the state court and defers to those reasons if they are reasonable." *Id*. at 1192. In cases in which the last state court decision is unexplained, this Court instructed federal courts to "look through" to any previously explained opinion because "this approach is more likely to respect what the state court actually did, and easier to apply in practice, than to ask the federal court to substitute for silence the federal court's thoughts as to more supportive reasoning." *Id*. at 1197.

The Fourth Circuit's decision in this case does not comport with *Sellers* because it does not focus on "what the state court actually did," and instead relies on the Fourth Circuit's own reasons to support a conclusion that Petitioner suffered no prejudice. The Fourth Circuit acknowledged the jury's struggle to reach a sentencing verdict, but transparently offered its own unsupported reasoning to justify the state court's outcome. Pointing to its prior reliance on a jury's initial deadlock to support a grant of habeas relief under § 2254(d)(1), the Fourth Circuit stated:

> Indeed, we've held that the significance of evidence can be 'further heightened' when considering the reasonableness of a *Strickland* application if a jury is 'initially deadlocked on whether to impose the death penalty.' *Williams v. Stirling*, 914 F.3d 302, 319 (4th Cir. 2019). Wood's reliance on *Williams* thus seems apt on its face.
> . . .

> Yet there's good reason why the jury's deadlock is not as telling as Wood suggests. Just before the jurors informed the court that they were deadlocked, they asked to rehear the testimony of the expert psychiatrists. This request suggests that the mental health evidence led to the impasse, not the prison-conditions evidence. Given that there's another reasonable explanation for the jury's indecision having nothing to do with counsel's effectiveness, we won't fault the state court for not expressly considering the jury's deadlock in its prejudice analysis.

Wood, 27 F.4th at 280. There is absolutely no evidence in the record indicating that the state PCR court considered the jury's request to rehear certain testimony as somehow neutralizing the effect of the deadlock in its prejudice analysis. Indeed, as the Fourth Circuit conceded, the PCR court did not expressly consider the jury's deadlock at all. *Id*. The *Strickland* prejudice test requires a reviewing court to engage in a probabilistic assessment based on the objective record evidence. It does not permit the court to indulge in pure speculation. Here, the only objective record evidence available indicates the jury struggled to reach a sentencing verdict. It does not indicate *why* the jury struggled to reach a conclusion; it only indicates that the jurors did not view death as such an overwhelmingly supported choice that it was a quick and easy decision. The jury's initial reluctance to vote for death weighs in favor of prejudice, and that is consistent with this Court's instruction that a "conclusion only weakly supported by the record is more likely to have been affected by errors than one with overwhelming record support." *Strickland*, 466 U.S. at 696. *Strickland* certainly does not support the Fourth Circuit's decision to ascribe a specific reason for the jury deadlock where the record is silent, and *Sellers* plainly

condemns it. 138 S. Ct. at 1197 (stating a federal court should not "substitute for silence the federal court's [own] thought as to more supportive reasoning").

In addition, the Fourth Circuit recognized that "the prison-conditions evidence made up a disproportionate share" of the State's penalty phase presentation but concluded this was of little concern because "the state court could reasonably conclude that *the defense met its objective* and scored enough points on the prison-conditions evidence to nullify the State's presentation." 27 F.4th at 278. Yet, the record does not support the panel's claim that the defense objective was to focus on prison conditions. Trial counsel explained that the defense's penalty phase objective was to focus on Petitioner's mental health problems and to demonstrate that he was adaptable to confinement. JA814, 826–27. Consistent with this objective, trial counsel's presentation of evidence and closing arguments centered around these two issues. JA602–23. The Fourth Circuit ignored this Court's clear instruction to "review the specific reasons given by the state court," *Sellers*, 138 S. Ct. at 1192, and instead invented reasons the court felt would justify the state court's denial of Petitioner's claim.

Similarly, the Fourth Circuit's conclusion that the PCR court did not unreasonably conflate adaptability with prison conditions evidence is unsupported by the record. The Fourth Circuit reasoned:

> [t]here'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." . . .

> In short, we find no evidence that the state court conflated Aiken's testimony in the manner Wood suggests.

27 F.4th at 280. This is an unreasonably strained and inaccurate reading of the record. The state court explicitly found that there was no prejudice because both parties "fully joined the issue" of prison conditions, thereby conflating adaptability with prison conditions evidence. It never acknowledged a distinction between the two. Specifically, the state court reasoned:

> *[a]s to the conditions of confinement evidence itself*, the defense was able to score as many points if not more as the prosecution. . . . Given the relative equality of presentation by both sides *on the issue of conditions of confinement*, it cannot be said there is a reasonable probability of a different result.

J.A. 1226 (emphasis added). There is no reasonable way to read this statement other than that the state court viewed the parties' presentations as factually and legally equivalent *on the same issue*. *See also id.* ("Both sides fully joined the issue and both sides were able to make headway."). That the PCR court never discussed the mitigating value of Aiken's testimony apart from its stated belief that both side's presentations were "equal" further supports this conclusion. The Fourth Circuit acknowledged this fact but misunderstood its relevance. *See Wood,* 27 F.4th at 279. ("It's true, as Wood argues, that the court didn't mention the nonviolent nature of his past crimes or his good behavior while in prison.").

Both the state court and the Fourth Circuit misapplied the *Strickland* prejudice standard. The question is not whether a reviewing court views the overall trial presentation, in hindsight, as "a wash." The question is whether there is a

reasonable probability of a different outcome absent trial counsel's deficient performance. If trial counsel had raised an appropriate objection, the result would have been the exclusion of the bulk of the State's case for death and no counter points or arguments would have been necessary.[5] In that event, the State's penalty-phase case would have been far different and significantly weaker, consisting of four witnesses who discussed additional facts of the crime; brief, narrowly tailored victim impact evidence from a single witness; and a list of Petitioner's relatively unremarkable, non-violent criminal charges (most of which were committed at his own mother's behest).[6] Under these circumstances, where the jury's protracted deliberations indicated that the State's case for death was not overwhelming even with the improperly admitted prison conditions evidence and argument, there is at least "a reasonable probability" of a different sentencing outcome. *Strickland*, 466 U.S. at 694. The Fourth Circuit's opinion contravenes this Court's instructions in *Sellers* and sanctions an unreasonable application of *Strickland*.

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[5] Alternatively, if the trial court had overruled the objection and allowed the evidence to come in, this error would have been reversed on direct appeal. This fact is evident from the South Carolina Supreme Court's decision holding the same testimony from Sligh offered over trial counsel's objection constituted reversable error in *Burkhart*, 640 S.E.2d at 453. Thus, if trial counsel had objected to this evidence, there were only two potential outcomes, and both demonstrate prejudice.

[6] The Fourth Circuit made no effort to address the prejudicial impact of the closing argument and did not acknowledge that the State's closing argument was improperly based on inadmissible evidence. This oversight conflicts with the court's own order granting a certificate of appealability on the issue of Petitioner's "ineffective assistance of counsel claim for his counsel's failures to object to the state's introduction of inadmissible prison conditions evidence *and the state's subsequent use of that evidence during closing arguments*." Doc. 21.

CONCLUSION

For the reasons stated above, this Court should grant the Petition for Writ of Certiorari.

Respectfully submitted,

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