No. 22-5476

IN THE
SUPREME COURT OF THE UNTED 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 A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF OF RESPONDENTS

ALAN WILSON
Attorney General of South Carolina

DONALD J. ZELENKA
Deputy Attorney General

*MELODY J. BROWN
Senior Assistant Deputy Attorney General

P.O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

**counsel of record* *Counsel for Respondents*

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Constitutional Provisions

Statutes:

CAPITAL CASE

PETITIONER'S QUESTIONS PRESENTED

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 what 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,* [138 S.Ct. 1188, 1192 (2018)]?

(Petition at i.).

STATEMENT OF RELATED PROCEEDINGS

Pursuant to Supreme Court Rule 15(2), Respondents identify the following related proceedings:

Wood v. Stirling, 27 F.4th 269 (4th Cir. 2022)

[2254 action, appeal from district court, D.S.C.]

Wood v. Stirling, No. 0:12-CV-3532-DCN, 2019 WL 4257167, at *1 (D.S.C. Sept. 9, 2019), *aff'd,* 27 F.4th 269 (4th Cir. 2022)

[2254 action, order granting summary judgment to Respondents and denying habeas petition]

Wood v. Byars, No. CA 0:12-3532-DCN-PJG, 2013 WL 5744779, at *1 (D.S.C. Oct. 23, 2013)

[2254 action, report and recommendation]

Wood v. State of South Carolina, Appellate Case No. 2009-118466, Supreme Court of South Carolina, October 31, 2012 Order denying petition for writ of certiorari to review the post-conviction relief order of dismissal

[post-conviction relief action appeal]

Wood v. State of South Carolina, C/A No. 2005-CP-04737, SC Court of Common Pleas, Order of Dismissal with Prejudice, filed December 19, 2007

[post-conviction relief action]

Wood v. South Carolina, 545 U.S. 1132 (2005)

[direct appeal, denial of petition for writ of certiorari]

State v. Wood, 607 S.E.2d 57 (S.C. 2004)

[direct appeal, affirming convictions and sentence]

CAPITAL CASE
BRIEF IN OPPOSITION

INTRODUCTION

Petitioner, John R. Wood, is under a death-sentence in South Carolina for the murder of State Trooper Eric Nicholson. A jury of Wood's peers determined both his guilt and his sentence. After denial of relief in direct appeal, and in state collateral proceedings, Wood turned to the federal courts. The district court and the Fourth Circuit Court of Appeals, applying the 28 U.S.C. § 2254 deference due state adjudications, denied relief. Wood now petitions this Court for further review, but his complaints to this Court lack support both in fact and law.

First, in arguing that his trial counsel's failure to object to evidence in the sentencing phase was prejudicial, Wood simply does not address the facts of record showing a defense decision to allow, and even present, the very conditions of confinement evidence that he seeks to contest. The State court denied relief in light of the evidence record, including that which Wood avoids. While Wood disagrees with the state court's result, and the federal courts' affirmance of the state adjudication, that does not show an unreasonable application of law or determination of fact.

Second, Wood's complaint the Fourth Circuit erred by looking outside the adjudication under review lacks merit primarily because the Fourth Circuit did not look outside the adjudication to review the holding. Wood's argument that *under circuit* precedent, the Fourth Circuit Court of Appeals was bound to consider jury deliberation timing and report of an impasse in assessing *Strickland* prejudice lacks

relevance to a 28 U.S.C. § 2254(d) review. Since a state court could not have violated clearly established law *from this Court* by not applying *circuit precedent*, there could be no violation of 28 U.S.C. § 2254 (d)(1). The petition is without merit, and should be dismissed.

CITATIONS TO OPINIONS BELOW

The District Court of South Carolina's September 9, 2019 order denying habeas relief is unreported, but available at 2019 WL 42571677 (D.S.C. Sept. 9, 2019). The March 2, 2022 published opinion of the Fourth Circuit affirming the district court's denial of habeas corpus relief, is reported at 27 F.4th 269 (4th Cir. 2022).

JURISDICTION

The Fourth Circuit issued its opinion on March 2, 2022. Wood filed a timely petition for rehearing en banc that the Fourth Circuit denied on March 30, 2022. Wood invokes this Court's jurisdiction pursuant to 28 U.S.C. § 1254. (Petition at 1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Sixth Amendment to the United States Constitution, which provides: "In all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defence." U.S. Const. amend. VI.

This case also involves the following portion of 28 U.S.C. § 2254:

> **(d)** 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

After Wood's conviction and death sentence having been determined by a jury of his peers in **February 2002**, Wood has been nearly constantly in litigation – direct appeal and state and federal collateral actions and appeals. The following history well-demonstrates that Wood has been granted fair opportunity, several times, to litigate his case but has failed to demonstrate he is entitled any relief.

A. Facts of the Crime.

At the time of his murder, Trooper Nicholson was a two-year veteran of the State Highway Patrol with a young wife, Misty. (J.A. 392). Around noon on December 5, 2000, Wood was on a moped near the Greenville area in the upstate of South Carolina when Trooper Nicholson saw him. The Supreme Court of South Carolina generally summarized the facts of the ensuing crimes in the direct appeal opinion:

> Trooper Eric Nicholson, while patrolling I-85 in the Greenville area, called to inform the dispatcher that he was going to stop a moped. After Nicholson activated his lights and siren, appellant, who was riding the moped, did not immediately stop. Two other troopers subsequently heard Nicholson scream on the radio and they rushed to the scene whereupon they found Nicholson had been shot five times. The driver's side window of Nicholson's car was completely shattered. Both of his pistols were secured in their holsters. Eight shell casings were found at the scene.
>
> There were several eyewitnesses to Nicholson's murder. Witnesses recalled seeing a moped being followed by a trooper with activated lights and siren. The moped took the off-ramp to leave I-85 and then took a right down a frontage road. As the two vehicles got on the frontage road, the trooper sped up to get beside the moped and then veered to the left

> to stop at an angle against a raised median in order to block the moped's progress. The moped came to a stop close to the driver's side window.
>
> Immediately upon stopping, appellant stood up over the moped and raised his arm towards the driver's side window of Trooper Nicholson's car. Some witnesses saw a weapon in appellant's hand and heard gunshots. After firing several shots in the driver's side window of Nicholson's car, appellant backed the moped up, turned it around, and fled at a high rate of speed.
>
> After the shooting, some concerned citizens (the Wheelers) chased appellant. Appellant entered a parking lot and then jumped into the passenger's seat of a Jeep, driven by a woman. The Wheelers subsequently called in the tag number to police.
>
> Once law enforcement officers began chasing the Jeep, appellant opened fire on the pursuing officers. One officer was struck in the face by a bullet fragment. He survived the injury. After subsequently hijacking a truck, appellant was eventually stopped and taken into custody.

State v. Wood, 607 S.E.2d 57, 58 (S.C. 2004).

The state court record, as would be expected, shows a great deal more.[1] Of the multiple shots Wood fired at Trooper Nicholson, the trooper was hit five times. One round cut a deep graze across the trooper's face from left to right. Another two went through his left upper arm. One of those bullets exited the arm and lodged itself in the front panel of the trooper's kevlar vest, while the other went into his side, where it passed through both lungs and the heart – the fatal gunshot wound. The fourth bullet entered the left upper back just below the shoulder, before it passed through

---

[1] The first issue in the petition involves the sentencing phase; however, all of these facts from the guilt phase were accepted into the sentencing phase. (J.A. 300-301). These details show the highly aggravated facts of the murder and a subsequent wild chase and other shootings relevant to a proper *Strickland* prejudice analysis. Petitioner utterly fails to acknowledge these important descriptions and details in his statement of trial proceedings, and incorrectly narrows the "case for death," as he terms it, (*see* Petition at 5-7), which makes this presentation necessary. *See* Rule 15(2) (a respondent should address perceived misstatements of law and fact in the brief in opposition).

the left lung and severed Trooper Nicholson's spinal column. The final round struck him in the left mid back, and passed through the left lung before damaging the vertebral column – a shot that could have been fatal on its own. Further, his body also showed small dot abrasions most certainly caused by glass particles from the bullets passing through the Crown Victoria's driver side window. (J.A. 120 -131; 102 and 106). The gearshift lever in his cruiser was in neutral, probably indicating that he was shot before he could even finish putting the car in park. (J.A. 106-107; 115).

Wood was a federal probationer who had come up from Florida to upstate South Carolina with his girlfriend Karen McCall. (See J.A. 298-99; 303; 305; 420-22; 537). McCall testified at trial that she had been in a Jeep following Wood on 1-85 as they were going to Greenville for lunch. When the trooper got in between them and blue lighted the scooter, she thought that Wood would try to elude the police, because he had always said he could. She claimed she only thought Wood had escaped from the trooper, not that he had killed him. (J.A. 202-206). McCall described how Wood was in charge and directing her action throughout the subsequent chase. (See J.A. 206; 213-23). [2]

News of the shooting went out over law enforcement communications. Anderson Sheriff Deputies Robert Appell and Mike Jones reasoned Wood and McCall were heading to the Anderson address on the Jeep registration so they surmised a likely escape route and set up a watch in their respective cars. (J.A. 226-28; 235-36;

---

[2] Karen McCall was tried for multiple crimes associated with the shoot out and found guilty in Anderson County. She was sentenced to twenty-five years' imprisonment, appealed, and exhausted her federal remedies in 2013. *See McCall v. Kendall*, 506 F. App'x 199, 200 (4th Cir. 2013).

248-49). Around 2:00 to 2:15 that afternoon, Appell saw the jeep. He moved behind it with lights and siren activated. Deputy Jones joined the chase. (J.A. 228-30; 236). Suddenly, the rear window of the Jeep came down as the passenger twisted his body around to face the rear and then opened fire. (J.A. 230-31; 237). As Appell and Jones took evasive action, the Jeep was slowed by a tractor-trailer carrying a bulldozer, but Jones's car hit Appell's car. (J.A. 231-33; 237-38).

Another deputy, Mike Grant, took over as the lead car. The gunman continued to fire, and suddenly Grant's car veered to the right as the back window shattered. Appell and Jones could see Grant slumped over in the driver's seat. Appell stopped to assist as Jones took over as lead car. Deputy Mike Grant was struck in the face by a bullet fragment, but survived. (J.A. 233-34; 238-40). The tractor-trailer went in another direction, the Jeep went on, and Wood continued to fire wildly at the officers, striking the windshield and hood of Jones's cruiser. (J.A. 239-42). Jones could see that the front right tire of the Jeep was flaming up, and the Jeep started trying to pull out in the opposite lane in a clear attempt to stop another vehicle. The Jeep ran a few cars off the road, and struck a van which was forced into a ditch. (J.A. 241).

Finally, the Jeep stopped at an angle in front of a Blue Ridge Electric service truck. The shooter got out of the passenger seat, and ran to the driver's side of the service truck and tried to get in, but his hand slipped off the handle. He then took a stance and fired off a number of rounds at the patrol cars. The shooter then got the door open, the employee got out, the shooter took the wheel of the truck, and the female driver of the Jeep got in on the passenger side. (J.A. 241-43). The truck then

took off south on Highway 187 at speeds of 100 mph or more with officers in pursuit. (J.A. 243; 252).

As the truck continued, it eventually came upon a roadblock the police had set up. Wood tried to avoid it, and turned finally going into a field being plowed by a farmer. The chase went through the field and to a dead end road. As Wood left the field, gunfire was exchanged between Wood and Anderson Chief Deputy Vick Wooten, who had tried to cut him off. (J.A. 244-45; 250-54).

The air unit involved advised Jones that the truck was headed down a dead end, and Jones came over a rise to see the truck making a three-point turn about a hundred yards ahead. Jones pulled to the side of the road, jumped out of his car with a shotgun, and stood in the middle of the road. (J.A. 245-46). The truck came at Deputy Jones, who fired seven blasts with the shotgun before diving into his patrol car and shutting the door. (J.A. 246-47). Sgt. Hamby had parked behind Jones and also fired at the truck. (J.A. 247). A little farther back, Wooten placed his vehicle at an angle across the road, got behind it, and fired at the truck as it bore down on him. Suddenly, the truck's speed slowed and it coasted to a stop before Wooten's car. Wooten could see that the driver had blood on his face. (J.A. 254-55). McCall testified that during this time she heard Wood inhale and slump over. (J.A. 223).

Wooten and other officers ordered the female out of the passenger side and onto the ground behind the truck. Wooten ordered the shooter to raise his hands, but he only motioned a little bit. After a SWAT team arrived, Wood finally raised his hands and was taken into custody. (J.A. 255-56). During his subsequent hospital stay,

Wood volunteered his opinion to his guard that being shot was "the coolest feeling in the world. It's like being turned off like a light." (J.A. 373).

In the utility truck, police found a Glock 9mm pistol, loaded and ready to fire, an empty magazine, and seven 9mm casings. (J.A. 269-70). The weapon was matched to casings and projectiles found at the frontage road scene, scenes during the subsequent chase, and in Trooper Nicholson's kevlar vest by comparison testing. (J.A. 274-282).

B. General Procedural History for Direct Appeal and State Collateral Actions

Trial

After indicting Wood for murder and the possession of the weapon during the commission of a violent crime, the State gave notice of intent to seek the death penalty. Public Defender John I. Mauldin, with James Bannister, Esq., and Rodney Richey, Esq., represented Wood. A jury trial began on February 4, 2002. On February 11, 2002, the jury returned a verdict of guilty as charged. The penalty phase began on February 13, 2002. (J.A. 284).

Defense counsel told the jury in his opening statement that "people say that life without parole is perhaps a more punishing penalty," and also that Wood would be harshly punished. (*See* J. A. 297 and 300). The State noted in its opening that the jury would consider not only what had been submitted to them in the first phase, perhaps with new or additional fact, but also evidence regarding Wood's criminal history, mental functioning and character. (J.A. 289). The State also stated that the jury would hear victim impact evidence, and advised that the jury would decide

"which sentence is appropriate, which sentence fits the moral culpability of this defendant…." (J.A. 289-91). The State thereafter moved to have all the guilt phase evidence incorporated and made a part of the sentencing phase as allowed by statute.[3] (J.A. 300). The judge accepted and admitted the evidence in the sentencing phase. (J.A. 301). The State then began to present its additional evidence.

As part of the presentation, the State offered evidence of Wood's past criminal history: shoplifting, three convictions for grand theft, two convictions for obtaining controlled substances by fraud, possession of cannabis over 20 grams, burglary, dealing in stolen property, and conspiracy to use fraudulent identification in connection with making and uttering counterfeit securities. (J.A. 305). The State also presented witnesses to testify further about the crimes, chase and aftermath, particularly, one officer testified to the agony of trying, but not being able to help, Trooper Nicholson, (J.A. 307-309); another about being shot in the face by Wood, (J.A. 385-87); another about Wood's lack of remorse, (J.A. 373); and, from another victim during the chase, that Wood forced him from his truck at gunpoint, (J.A. 377-78). The State called Misty Nicholson, Trooper Nicholson's widow, to tell the jury just a portion of her grief having lost a person she had grown up with, married and planned to have children with, and how she now had to live without him. (J.A. 392-98).

The State also called Jimmy Sligh, then Acting Director of Classification and Inmate Records for the South Carolina Department of Corrections. Outside the

---

[3] *See* S.C. Code Ann. § 16-3-20 (sentencing allows jury to "hear additional evidence in extenuation, mitigation, or aggravation of the punishment").

presence of the jury, the State, noting the defense opening, advised the trial court that it intended to show "what life means" in context of a life without parole sentence. (J.A. 317). The defense responded after consultation:

> Mr. Mauldin: (Off Record with Co-counsel) If our understanding of the summary proffer is that a Department of Corrections personnel will testify as to conditions of life without parole, if that's what this really is being offered as, then we're not going to enter an objection at this point to that witness.

(J.A. 318). The judge found the evidence relevant, but allowed the defense to make objections at the appropriate time if so inclined. (J.A. 318). The defense never objected.

After completion of the presentation of evidence and argument, the jury began its deliberations on February 14, 2002 at 5:45 PM. (J.A. 639). Deliberations were suspended for the evening shortly after 8:00 pm then resumed the next day, February 15th at 8:57 AM. (J.A. 639-43). Just before 2:00 PM, the court received a request to hear certain mental health evidence, and arranged for tapes of the actual trial testimony to be played. (J.A. 643-47). After 6:00 PM, and after the jury informed the court of an impasse but requested questions on disposition of the case if no agreement is reached, (J.A. 648-49), the trial court instructed on several matters in response. (*See* J.A. 651-53). The jury left the courtroom to deliberate from 6:11 PM to 7:10 PM then returned to "request having one more time in the morning to resolve. We have made progress." (J.A. 654). Deliberations were suspended and resumed the next morning at 9:45 AM. (J.A. 656). The jury advised they reached a verdict and returned to the courtroom at 10:55 AM. (J.A. 660-61).

The jury returned a "unanimous finding … beyond a reasonable doubt" of the "statutory aggravating circumstance: the murder of a federal, state or local law enforcement officer, peace officer or former peace officer, corrections employee or former corrections employee, or fireman or former fireman during or because of the performance of his official duties." (J.A. 662).[4] The jury also returned a sentence of death, (J.A. 663-64), which the judge imposed. (J.A. 667). Wood appealed.

Direct Appeal

Wood, through appellate counsel, filed a brief in the Supreme Court of South Carolina raising four issues not related to the instant appeal. After argument, the conviction and sentence were affirmed, *State v. Wood*, 607 S.E.2d 57 (S.C. 2004), and this Court subsequently denied Wood's petition for writ of certiorari, *Wood v. South Carolina*, 545 U.S. 1132 (2005). Wood next turned to post-conviction relief proceedings.

Post-Conviction Relief Proceedings

The Supreme Court of South Carolina appointed the Honorable Larry R. Patterson to hear Wood's PCR action. Judge Patterson appointed James A. Brown, Esq., and Symmes Culbertson, Esq., to represent Wood in the action. Mr. Culbertson was subsequently replaced by Bill Godfrey, Esquire. PCR counsel filed a final

---

[4] Under South Carolina law, the sentencer need find only one statutory aggravating circumstance to allow consideration of a death sentence; after that, the evidence is considered collectively without a strict "weighing" structure. *See State v. Plath*, 313 S.E.2d 619, 629 (S.C. 1984); *State v. Bellamy*, 359 S.E.2d 63 (S.C. 1987); *State v. Elkins*, 436 S.E.2d 178, 180 (S.C. 1993). See also *Simmons v. South Carolina,* 512 U.S. 154, 162 (1994) ("Although South Carolina statutes do not mandate consideration of the defendant's future dangerousness in capital sentencing, the State's evidence in aggravation is not limited to evidence relating to statutory aggravating circumstances.").

amended application on January 8, 2007 – the day the hearing on the application was originally to be held; however, that hearing was not held because Wood requested to drop his appeals. The proceedings were suspended for a competency evaluation, but eventually, Wood changed his mind and the collateral action continued (though the evaluation was still completed with no mental issues noted). (See J.A. 1141).

On February 9, 2007, counsel filed a second amendment to the PCR application, adding two additional claims, and raised this issue relevant to the petition: that trial counsel was ineffective in failing to object to the State's presentation of prison conditions evidence, alleging it introduced an "arbitrary factor during the penalty phase" contrary to *Strickland* and state law. (J.A. 1237). PCR counsel specifically cited Sligh's testimony on prison privileges, and the State's use of the information in closing argument. (J.A. 1238).

The PCR judge held an evidentiary hearing on the claims from March 6th through March 8th, 2007. Following briefing from both sides, the judge filed an order denying relief on December 19, 2007. (J.A. 1135-1228).

In addressing the claim presented here, the PCR judge noted that defense counsel suggested in his opening statement that life sentence would be "perhaps a more punishing penalty" than death. (J.A. 1214). Ultimately, the judge, applying *Strickland v. Washington,* found counsel was deficient in not objecting to the conditions evidence, but found no prejudice. (J.A. 1215-27). After the judge denied his timely motion to reconsider, Wood appealed the denial of relief.

PCR Appeal

On November 5, 2010, appellate counsel filed a petition for certiorari in the Supreme Court of South Carolina, and relevant to this appeal, raised a claim that the PCR court erred in his disposition of the conditions-evidence-ineffective-assistance-of-counsel-claim. (J.A. 15). On October 31, 2012, the South Carolina Supreme Court denied the petition for writ of certiorari. (J.A. 74).

C. Filing of 28 U.S.C. 2254 Action and Stay

On September 19, 2013, Wood filed his Petition for Writ of Habeas Corpus and also moved to stay the habeas proceedings so that he could litigate a successive state post-conviction relief action. (ECF Nos. 85 and 86). On October 23, 2013, over opposition, the magistrate stayed the federal habeas proceedings. (ECF No. 93).

D. Successive State Post-Conviction Relief Action

Wood filed a successive PCR action on September 26, 2013. Wood alleged both that counsel was ineffective in failing to object to the State's closing argument premised on the prison conditions evidence as "inaccurate," and also, separately, that the comments in closing were "inaccurate." (J.A. 1329). The State moved to dismiss as improperly successive and time barred. The Honorable J. Mark Hayes, II, heard the State's motion to dismiss on January 13, 2016, then, on July 19, 2016, granted the motion, finding the action improperly successive and untimely. (J.A. 1327-1382).

E. 28 U.S.C. 2254 Action District Court Disposition and Appeal

On November 2, 2017, after the magistrate lifted the stay, Respondents moved for summary judgment. (J.A. 1383-1497). The magistrate issued a report on October

1, 2018, and recommended granting the motion for summary judgment. (J.A. 1579-1672). In relevant part, the magistrate agreed generally with the argument that "admission of an arbitrary factor, such as conditions of confinement, may invite prejudice" but found that "nothing in federal jurisprudence requires a finding that admission of" such requires a finding of prejudice. (J.A. 1613). The magistrate concluded the PCR court properly applied the *Strickland* prejudice standard. (J.A. 1613). The magistrate also rejected Wood's argument that the PCR court failed to consider the jury's extended deliberations, and concluded Wood failed to show disposition "contrary to federal law or based on any unreasonable factual findings." (J.A. 1615).

In relevant part, Wood objected to finding the application of *Strickland* was reasonable and argued that the time the jury deliberated should be considered; and, further objected for failure to consider the solicitor's "heavy" use of the evidence during closing in considering prejudice. (J.A. 1677-79).

On September 9, 2019, the Honorable David C. Norton, United States District Court Judge, issued an order adopting the magistrate's report and recommendation. Regarding the objections to Ground Three, (the ineffective assistance claim, prison conditions admissibility objection), the district court found the magistrate correctly reasoned there is nothing in federal law to support a presumption of prejudice for admission of conditions evidence. (J.A. 1720-21). The district court also resolved that *Strickland* controlled, noting that the state supreme court resolved the same when the question was presented (albeit after Wood's PCR). (J.A. 1721-22). The district

court found that "failure to consider the length of jury deliberations was not a clearly unreasonable application of" federal law as the controlling case, *Strickland*, does not mandate that consideration, and also noted there was no allegation that the conditions evidence caused the lengthy delay. (J.A. 1724-26). After denial of his motion to alter or amend, Wood appealed.

Fourth Circuit Appeal

After review of Wood's brief, the Fourth Circuit granted a certificate of appealability on April 16, 2021 for Wood's "Issue No.1," (COA4 Doc. 21), which read:

> Whether the district court erred in rejecting Wood's claim that he was prejudiced at this capital sentencing proceeding by his trial counsel's deficient failure to object to inadmissible prison conditions evidence, and the state court's decision to the contrary involved an unreasonable application of clearly established federal law or was based on unreasonable determinations of the facts in light of the evidence presented.

(Doc. 17 at 11).

A panel of the Fourth Circuit, after reviewing the PCR court's adjudication and the supporting record, affirmed the denial of relief. *Wood v. Stirling*, 27 F.4th 269 (4th Cir. 2022).

REASONS WHY CERTIORARI SHOULD BE DENIED

This Court should deny the petition because Wood has failed to show anything other than an ordinary application of the 28 U.S.C. § 2254(d) and *Strickland v. Washington*. Wood attempts to make the issue one of "the distinction between evidence of prison conditions and evidence of a capital defendant's adaptability to confinement," (Petition at 3), but it is not. This is a case of federal habeas review,

which Wood was afforded. He simply failed to convince the state court that relief was due, and he likewise failed to convince the federal courts that the disposition was unreasonable. Finality must be reached at some point. In the absence of a cert-worthy question, and after years of detailed litigation, as set out above, Wood fails to show a reason to grant additional review. This Court should deny the petition.

I. Both the district court and the Fourth Circuit faithfully followed this Court's precedent and correctly applied the required AEDPA deference.

"A state court's determination that a claim lacks merit precludes federal habeas relief so long as 'fairminded jurists could disagree' on the correctness of the state court's decision." *Harrington v. Richter*, 562 U.S. 86, 101 (2011) (quoting *Yarborough v. Alvarado,* 541 U.S. 652, 664 (2004)). This Court has been clear that "[f]ederal habeas courts must defer to reasonable state-court decisions" in Section 2254(d) review. *Dunn v. Reeves*, 594 U.S. ___, ___, 141 S. Ct. 2405, 2407 (2021). The test: "whether the [*state*] *court*, notwithstanding its substantial 'latitude to reasonably determine that a defendant has not [shown prejudice],' still managed to blunder so badly that every fairminded jurist would disagree." *Mays v. Hines,* 592 U.S. ___, 141 S. Ct. 1145, 1149 (2021) (quoting *Knowles v. Mirzayance*, 556 U.S. 111, 123 (2009)). The record supports that there was no failure to apply this standard.

Both the district court and the Fourth Circuit cited and were properly guided by this Court's precedent in keeping true to proper habeas review. (J.A. at 1700-1702); *Wood v. Stirling*, 27 F.4th at 276. Indeed, the district court thoroughly reviewed *Richter* in its Order. (J.A. 1705-06). Further, both the district court and the Fourth

Circuit recognized the issue to be considered was controlled by *Strickland,* which requires "a petitioner show that (1) 'counsel's performance was deficient'; and (2) 'the deficient performance prejudiced the defense.'" 27 F.4th at 276 (quoting *Strickland,* 466 U.S. at 687); (J.A. 1703-04). That Wood disagrees with the results of the review does not show any infirmity in the review. However, Wood maintains the state PCR court erred in the resolution of his ineffective assistance claims. Wood is wrong. His argument is not supported in law and based on incorrect assertions of facts and omission of facts of record.

A. Wood incorrectly asserts that the PCR court and federal courts failed to understand a difference between general prison conditions evidence versus an individual's ability to adapt to prison life evidence, but the record shows that they did even though it matters not as the sole part of the *Strickland* test at issue was prejudice not deficient performance.

Wood admits, as he must, that a large portion of his claim rests on state evidentiary rules concerning prison conditions evidence. (Petition at 3-4). The PCR judge carefully reviewed the Supreme Court of South Carolina's case law on admissibility before turning to its *Strickland* analysis. (J.A. 1217-21). While not making specific findings on why, the PCR court found trial counsel was deficient in not lodging an objection to the evidence. (J.A. 1225). The district court and the Fourth Circuit similarly noted no specifics in the PCR judge's order on this point. (J.A. 1708; *Wood*, 27 F.4th at 274).

The PCR judge also found, as the Fourth Circuit recognized, that trial counsel Mauldin initially claimed surprise at the State's offer, but admitted, upon review of the transcript during his cross-examination, that some strategic decision was

obviously made not to object to conditions evidence. (J.A. 1215-17); *Wood*, 27 F.4th at 274. The transcript shows consultation among the attorneys and a decision not to object. (See J.A. 318). Mauldin admitted in his PCR testimony that it must have been a strategic decision: "it appears that I made a conscious decision, and that conscious decision was blatantly in error." (J.A. 979-80).[5] Though Mauldin appeared to conflate the evidence in his initial PCR testimony (several years after trial), (see J.A. 911), the trial record is clear. The trial record shows that it was Mauldin who stated in his sentencing phase opening that "people say that life without parole is

---

[5] Mauldin testified at the PCR hearing that he regretted not objecting because "the subsequent case law states that objection if overruled would have reversed the case." (J.A. 913). However, even that testimony was not entirely correct. The "reversal on appeal" concept was based on a concurrence in a case decided January 8, 2007, after the February 2002 trial but shortly before the March 2007 PCR hearing, *State v. Burkhart*, 640 S.E.2d 450, 453 (S.C. 2007). The Supreme Court of South Carolina, in *Bowman v. State*, 809 S.E.2d 232, 239 (S.C. 2018), clarified its ruling and dispelled several misapprehensions stemming from interpretations of its *Burkhart* decision based on that concurrence. *Bowman* resolved: (1) there is not a clean and clear division of adaptability evidence and "general" prison evidence; (2) the court "reaffirm[ed] the [state] rule forbidding evidence of general prison conditions" while also acknowledging "it is not without exception;" (3) that "the *Burkhart* concurrence has inexplicably been construed … as the Court's holding" indicated automatic reversal on direct appeal; however, "section 16-3-25(C)(1) requires reversal of a death sentence only when the death sentence is *influenced* by an arbitrary factor; not every irrelevant piece of evidence introduced during the course of a sentencing proceeding may be viewed as *influencing* the jury's decision;" and (4) that if the claim regarding prison conditions evidence is raised through an ineffective assistance of counsel claim, *Strickland v. Washington* controls. *Id.* *Bowman* also clarified that a strategy decision to admit prison conditions evidence is not *per se* ineffective, noting "the prison adaptability versus general prison condition distinction is a creation of state law and is not mandated by the Eighth Amendment or other constitutional provision," the Supreme Court of South Carolina affirmed a PCR court's finding that a strategic reason to admit the evidence did not constitute ineffective assistance. *Id.,* at 244 and n. 7.5.

perhaps a more punishing penalty," (J.A. 297), and, in closing, argued that Wood would be contained "behind bars and fences with guns on the corner regardless of how he acted," noting that prisons are restrictive and "contain violent, dangerous people for long periods of time," (J.A. 616). And, again, the State noticed the use of the evidence so there was no element of surprise or reasonable misunderstanding at trial. (J.A. 317). Moreover, though given the opportunity, the defense did not object at any time. (See J.A. 318).

The record shows the state and federal courts also appreciated the difference between the two; however, that distinction is of no moment here where the state court found that counsel was deficient for failing to object. The relevant decision for federal habeas review was the one on *Strickland* prejudice which was thorough and clear and looked at the whole of the evidence before the sentencing jury:

> This Court finds counsel were deficient for not objecting to the evidence. This deficiency does not warrant reversal, however. In the sentencing phase, Applicant must show "there is a reasonable probability that, absent [counsel's] errors, the sentence - including an appellate court to the extent it independently reweighs the evidence - would have concluded that the balance of aggravating and mitigating circumstances did not warrant death." Jones, 332 S.C. at 333 (citing Strickland, 466 U.S. at 694).
>
> Here, we have as extremely aggravated a crime as there could be. It would be bad enough if Applicant had merely murdered Trooper Nicholson; however, Applicant's subsequent wild chase provides an incredible amount of further aggravation. Applicant wounded another officer with a gunshot to the face, ran civilians off the road, commandeered a Blue Ridge truck at gunpoint, and only by luck or grace was not a good enough shot to kill more police officers or innocent civilians with *his* repeated gunfire. Applicant had a prior record and had been in prison before, and the victim impact evidence in this case was particularly moving. Compared to this, there is limited mitigation, with no family members and relatively mild mental health testimony without

> findings of psychosis or delusion at the time of the offense. There was evidence in rebuttal that Applicant was anti-social.
>
> As to the conditions of confinement evidence itself, the defense was able to score as many points if not more as the prosecution. Counsel apparently believed they could score more points on the issue as they made the decision not to object. Through cross of Sligh and presentation of James Aiken, the defense elicited how tough prison is, how Applicant would be far more susceptible to danger in general population than on death row, and how Applicant would likely be at the mercy of predator groups inside the general population of prison given his small stature and older age. Both sides fully joined the issue and both sides were able to make headway.
>
> 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. Had 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. Given the overwhelming evidence in aggravation and the limited evidence in mitigation, admission of both the State's and defense's evidence of conditions of confinement does not establish Strickland prejudice. Since 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 the issue does not change the calculation.

(J.A. 1225-27).

It is beyond cavil that an ineffective assistance claim may be denied for lack of prejudice regardless of the resolution of deficiency. *Strickland*, 466 U.S. at 697. There is no error here. Wood has consistently attempted to leverage a reversal in an unrelated state capital direct appeal case, *State v. Burkhart*, 640 S.E.2d 450, 453 (S.C. 2007), to meet his burden of showing *Strickland* prejudice. This effort has been correctly thwarted because neither *Strickland* nor any other clearly established law from this Court, *see* 28 U.S.C. § 2254, requires a different test. *See generally Williams v. Taylor*, 529 U.S. 362, 391 (2000) ("*Strickland* test provides sufficient guidance for

resolving virtually all ineffective-assistance-of-counsel claims"); *accord Weaver v. Massachusetts*, 582 U.S. ___, ___, 137 S. Ct. 1899, 1913 (2017) (applying *Strickland* test with requirement of showing prejudice even where issue counsel failed to raise falls in the category of structural error which would have relieved him of showing prejudice if the issue was presented on direct appeal).

The question that matters, and the one answered in the district court and the Fourth Circuit, was whether the state court reasonably applied the *Strickland* prejudice prong. Wood's argument does not raise a valid challenge to the reasonableness determination. Though Wood spends a fair amount of his petition on the matter of state law, that would go to deficiency, not prejudice. The deficiency finding is independent of the prejudice finding, but defendant is not entitled to relief by showing one ***or*** the other; rather, a defendant must show both deficient performance and prejudice. *Strickland v. Washington,* 466 U.S. 668, 687 (1984). "[I]f a fairminded jurist could agree with *either*" the "deficiency or prejudice holding, the reasonableness of the other is 'beside the point.' " *Shinn v. Kayer*, 592 U.S. ___, 141 S. Ct. 517, 524 (2020) (quoting *Wetzel v. Lambert*, 565 U.S. 520, 525 (2012) (*per curiam*)) (emphasis added). Again, Wood's disagreement does not show error.

B. Wood's petition argument rests on factual assertions not supported by the record.

Pursuant to Supreme Court Rule 15(2), Respondents note these errors in Wood's petition regarding the presentation of conditions versus adaptability evidence. First, Wood asserts "[t]he defense did not offer its own affirmative evidence on the subject of prison conditions." (Petition at 14). The PCR court found otherwise,

(J. 1215-16), as did the Fourth Circuit, *Wood,* 27 F.4th at 273-74. The record supports the PCR court and the Fourth Circuit, not Wood.

To be clear, Wood was not prevented from offering adaptability evidence, he just offered prison conditions evidence, as well. Wood affirmatively did not object when the State offered conditions evidence, and further, offered his own expert who opined *both* on adaptability and general conditions. *Wood v. Stirling,* 27 F.4 th at 273 (outlining the difference in testimony Wood presented though his own witness).(See also J.A. 1215-16, noting the defense bringing out conditions testimony on cross-examination of State's witness, and in direct examination of the defense witnesses, and making arguments that prison was not "soft"). Indeed, the PCR judge narrowed his focus only on the conditions part of the testimony. (J.A. 1226, "As to the conditions of confinement evidence itself, the defense was able to score as many points if not more as the prosecution."). Wood's position is not factually sustainable.

Second, Wood additionally is incorrect in attempting to portray the evidence to be considered at sentencing. Wood offers his perception of "The State's Case for Death," and asserts the State's "central theme" rested on prison conditions. (Petition at 5-7). Not so. While the State offered the evidence, and argued conditions in closing, the State focused, as it should, on which punishment, life or death, was appropriate for Wood given his character and the circumstances of the crime. Even in opening, the State told the jury it would decide "which sentence is appropriate, which sentence fits the moral culpability of this defendant…." (J.A. 291). In closing, the State argued the facts of the cold and harsh shooting, including shooting at Trooper Nicholson eight

times with five bullets causing fatal damage. (*See* J.A. 593). The record shows that the State advised the jury it could consider all the evidence from the guilt phase. (J.A. 590). The State also argued that there was no question on adaptability, and if Wood did not adapt willingly, he could be made to "adapt" in prison. (J.A. 598). Wood attempts to place limits on the evidence and define a theme that simply does not exist.

In continuing his misunderstanding of the record, Wood in describing "The Defense's Case for Life," cabins the defense focus to mental illness evidence and adaptability to prison. (Petition at 7-9). He omits the inescapable fact that the defense made reference to the "harsh punishment" that a life sentence would be, and places little emphasis on the testimony he presented *in addition to adaptability,* that the conditions in prison were dangerous and he would be vulnerable in general population. On cross, the defense elicited from the State's witness, Sligh, that if sentenced to life, Wood would be in a high security environment, with other inmates convicted of violent crimes. The defense pointed out he would not be allowed to work outside the facility, and that he would always be classified at the highest level of security. (J.A. 346-347). The defense asked if the department would "have the resources … to control this man," and Sligh indicated in "limited circumstances." (J.A. 347). The defense asked about dangerous gangs in prison. (J.A. 349). The defense asked about being confined with "other murders, rapist" and confined to a small cell, which Sligh confirmed was possible. (J.A. 351). The defense asked if prison was a "tough place" filled with "tough people" and "not a day at the beach" and Sligh agreed. (J.A. 351). The defense asked whether there was any assurance one would

wake up in the morning when in prison with those tough people, and Sligh generally agreed, (J.A. 351). Further, the defense asked if prison officials are authorized to use deadly force on inmates, and Sligh confirmed they can be. (J.A. 351-52). These items are not facts showing personal adaptability or anything tied to Wood's character. See*, e.g., Lockett v. Ohio,* 438 U.S. 586, 604 (1978) (plurality opinion)(protecting the right to offer "any aspect of *a defendant's character* or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death); *Skipper v. South Carolina*, 476 U.S. 1 (1986) (error to exclude evidence of the defendant's good behavior in jail prior to trial).[6] But the presentation of conditions did not stop there.

In their case, the defense called former Warden James Aiken to testify he had no concerns about Wood and told the jury Wood was not likely to be a predator in prison, but Aiken also answered questions indicating that death row was a far more preferable and safer place to be than general population, because a death row inmate has his own cell and does not have to worry about security threats from other inmates. He noted there were a lot of "predator groups" in general population, that prison was a very dangerous place, and theorized Wood would be more likely to be subjected to violence in prison from predators given his smaller size and older age. (J.A. 465-77). In fact, as the Fourth Circuit correctly observed: "Most of Aiken's testimony... compared life in general population … versus death row – i.e., prison conditions." 27

---

[6] The district court was correct in its observation that Wood could show no federal precedent that "requires a finding that admission of evidence of conditions of confinement prejudiced the defendant." (J.A. 1720). Wood still does not do so.

F.4th at 273. Further, defense counsel argued in closing that prison was not "soft;" that Wood would die in prison after spending the rest of his life in a small cell under the highest security classification, and reminded the jury that prisons contain violent, dangerous people. (J.A. 613-14 and 616). The record supports that the defense wanted to, and did, present conditions evidence.

Second, Wood simply continues to ignore the wealth of evidence in aggravation that was properly before the Court. He asserts that if objected to, the evidence would have been excluded, thus barring the "bulk" of the State's case for death. (Petition p. 22). To make this assertion, Wood has asked this Court to exclude the great evidence of aggravation shown *throughout the trial.*

Moreover, to the extent Wood complains the conditions evidence was used in argument, again, both sides did so. The pages are replete with argument – from both sides – as to the correctness, appropriateness, and sufficiency of the punishment *for Wood and his crime.* (See J.A. 593-602 and 619-23). The evidence at issue, *i.e.,* prison conditions evidence, constituted a balanced presentation and challenge to descriptions of the life without parole sentence being considered. Even so, Wood is still bound to show *Strickland* prejudice. The PCR court reasonably found, on facts fully supported by the record, that Wood did not. Habeas relief was not warranted.

C. Wood fails to show an unreasonable evaluation for *Strickland* prejudice in alleging the PCR judge "unreasonably discounted" because his argument essentially asks only that the evidence to be given more weight – an improper question on review.

A reviewing court has the responsibility to re-weigh the evidence in considering *Strickland* prejudice. *Porter v. McCollum*, 558 U.S. 30, 41 (2009) ("Porter must show

that but for his counsel's deficiency, there is a reasonable probability he would have received a different sentence."). Wood complains that the PCR court "unreasonably discounted" mitigating evidence offered at trial, particularly in failing to acknowledge Wood's "criminal history contained no charges involving violence," and evidence of mental status, thus, (presumably) making the prejudice ruling unreasonable. (Petition at 16). Neither assertion can prevail.

First, Wood appears to argue that the PCR court's disposition is unreasonable because the judge did not include a specific statement that Wood's "criminal history contained no charges involving violence." (Petition at 16). Wood asks too much. "This Court has long stressed that 'the language of an opinion is not always to be parsed as though we were dealing with [the] language of a statute.'" *Brown v. Davenport*, 596 U.S. ___, 142 S.Ct. 1510 (2022) (*quoting Reitner v. Sonotone Corp*., 442 U.S. 330, 341 (1979); see also *Meders v. Warden, Georgia Diagnostic Prison,* 911 F.3d 1335, 1349 (11th Cir. 2019) (habeas review does not demand a federal court "flyspeck the state court order or grade" the state court order). The PCR judge did reference that Wood had a prior record, (J.A. 1226), which is a clear indication he considered the category of evidence, but, again, the weight to assign was for the judge. And as the Fourth Circuit found "that the court wasn't persuaded by this evidence is understandable when considered in context. After all, it assessed Wood's criminal history just after recounting the violent facts of his murder conviction." *Wood*, 27 F.4th at 279.

Second, Wood argues that the PCR court "dismissed" his "evidence of mental illness as 'relatively mild' because it did not contain 'findings of psychosis or delusion

at the time of the offense.'" (Petition at 16). He argues the PCR court was improperly requiring the evidence to show impairment at the time. (Petition p. 16). Wood is right that a nexus is not required for *admissibility*, but this was for weight, a very different analysis. Wood is guaranteed to have offered mitigation considered, but he is not afforded a right to have *any* weight assigned to such evidence by the fact-finder. *See, e.g., Eddings v. Oklahoma,* 455 U.S. 104, 114-15 (1981). The term the PCR court used to describe the mental health evidence was "relatively mild" which could easily be read to be unconvincing. If considered as unconvincing in part due to the fact there was no "finding of psychosis or delusion at the time of the offense," (J.A. 1226), that is not error and it was supported by the record. As the Fourth Circuit reasoned, the record shows the State's witness did not find evidence or psychosis or delusion while "Wood's expert psychiatrist attested that he suffered from symptoms of psychosis—even at the time of the offense" so, given the facts of record, the PCR court was well-within the appropriate review structure to credit one over the other. *Wood*, 27 F.4th at 279. The Fourth Circuit correctly reasoned that because the PCR court was expressly considering weight, not admissibility, there was no "unreasonable discounting." *Id.,* at n. 6.

Wood also asserts generally that the PCR court failed to consider the jury's lengthy deliberations as part of the prejudice analysis in light of his evidence offered in mitigation. (Petition at 17). *Strickland* sets out that in determining prejudice, one looks at the whole of the evidence. 466 U.S. at 695 (directing consideration of "the totality of the evidence"). Wood's criticism that the PCR court did not consider

evidence of the jury's actions was not considered along with the evidence lacks support in *Strickland* jurisprudence. At any rate, the premise for the argument appears to be his next assertion, which is that only "a tiny fraction less on the aggravating side of the scale could have made a difference" to the jury's determination. (Petition at 17). Though Wood next attempts to convert "a tiny fraction" to a "reasonable probability of a different result," in his following phrase, the argument is not only at odds with *Strickland* and its progeny, it also merely goes to a suggestion for the re-weighing court, not a requirement. Wood still has not shown error, much less a cert-worthy issue.

II. The Fourth Circuit's analysis of Wood's argument on consideration of the lengthy of the jury's deliberations does not offend *Wilson v. Sellers* as the PCR court did not consider the argument that Wood advanced.

In *Wilson v. Sellers*, 584 U.S. ___, ___,138 S. Ct. 1188, 1192 (2018), this Court set out that if the last decision of a state court is summary in nature, the federal habeas court should "look through" that summary adjudication and review "the last related state-court decision that does provide a relevant rationale." Wood argues the Fourth Circuit logic regarding the jury deliberations and *Strickland* prejudice offends "*Sellers* because it does not focus on 'what the state court actually did'" but relied upon the panel's own review of the record and reasoning therefrom to agree that there was no *Strickland* prejudice. (Petition at 18). Wood shows no error in the analysis for two reasons.

First, he complains the PCR court erred *by not considering the jury deliberations*. (Petition at 19). This is a good reason to find the Fourth Circuit did not stray from the treatment of the jury deliberations in the state court order.

Second, Wood asked the Fourth Circuit, and now asks this Court, to consider the deliberations argument because in *Fourth Circuit precedent* the Court of Appeals had previously analyzed jury deliberations length and a report of deadlock in considering *Strickland* prejudice. (Petition at 18-19); *Wood*, 27 F.4th at 280. The Fourth Circuit recognized that type of record fact may "heighten[]" the "significance" of evidence at issue in a prejudice analysis, but rejected error finding "good reason why the jury's deadlock is not as telling as Wood suggests," and noting the jurors had asked to rehear certain mental health evidence. *Id.* The Court of Appeals concluded that the request to rehear that particular evidence "suggests that the mental health evidence led to the impasse, not the prison-conditions evidence." *Id.* The Fourth Circuit concluded that because the record shows "another reasonable explanation for the jury's indecision having nothing to do with counsel's effectiveness," the Court would not assess error to the state court "for not expressly considering the jury's deadlock in its prejudice analysis." *Id.* These facts show neither a *Strickland* error nor a *Wilson v. Sellers* error.

Wood also makes several other claims that *Wilson v. Sellers* was not followed, but these claims fail because the Fourth Circuit was properly guided by the PCR court's order and the state court record. For instance, Wood claims error because the Fourth Circuit found the defense had an "objective" to admit prison conditions, and

equally participated in presenting such evidence to the jury. (Petition at 20). That is not error because the facts of record, *as found by the PCR judge*, support that not only had defense counsel intentionally declined to object to the State's presentation, the defense also elicited and argued conditions evidence. (See J.A. 1215-17). Next, Wood again returns to the suggestion that there was confusion in what constituted conditions evidence and adaptability evidence to argue the Fourth Circuit erred in not finding the PCR court conflated the two. (Petition at 21). But again, the record does not support Wood's argument. The Fourth Circuit turned expressly to the order and the record to resolve the issue of purported error. Specifically, the Fourth Circuit noted that before the PCR court ruled on the *Strickland* claim, the judge first considered the "problematic" nature of the evidence by reviewing state law. *Wood*, 27 F.4th at 278. Indeed, a review of that passage shows the PCR court devoted several pages to state precedent that grappled with the distinction and admissibility issues. (J.A. 1217-21). It would not be logical to find the PCR court did not appreciate the distinction. It was, however, very reasonable to find that the defense wished to venture into the realm of prison conditions in their presentation because they did so. (See J.A. 1215-16). The relative "equal" treatment was reasonable to consider because there was no unanswered point that may have nudged the weight of the evidence in the PCR court's consideration. Even so, there is no *Wilson v. Sellers* error on this point.

Wood has failed to show any *Wilson v. Sellers* error at all.

III. Wood's request for additional habeas review "aggravate[s] the harm to federalism that federal habeas review necessarily causes,"[7] and frustrates the important need for finality.

"[T]he principle of finality ... is essential to the operation of our criminal justice system" because "[w]ithout finality, the criminal law is deprived of much of its deterrent effect." *Teague v. Lane*, 489 U.S. 288, 309 (1989). See also *Mackey v. United States*, 401 U.S. 667, 691 (1971) (Harlan, J., concurring in judgments in part and dissenting in part) ("Finality in the criminal law is an end which must always be kept in plain view."); *Ryan v. Schad*, 570 U.S. 521, 525 (2013) (recognizing again a state's interest in finality of its criminal convictions). Wood has been in litigation over two decades and no court has granted relief because he is not entitled to relief. Wood's latest petition to this Court, which could not support relief for the reasons cited, should be denied not only because his position is not viable, but also because finality should attach at this point without further delay.

CONCLUSION

For the foregoing reasons, this Court should deny certiorari.

Respectfully Submitted,

ALAN WILSON
Attorney General of South Carolina

DONALD J. ZELENKA
Deputy Attorney General

*MELODY J. BROWN
Senior Assistant Deputy Attorney General

---

[7] *Davila v. Davis*, 582 U.S. ___, 137 S. Ct. 2058, 2069–70 (2017).

s/Melody J. Brown
By:_____

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

Attorneys for Respondents

September 29, 2022
**counsel of record*