No. 22-5476

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

---

PETITIONER'S REPLY TO RESPONDENTS' BRIEF IN OPPOSITION

EMILY C. PAAVOLA
Counsel of Record
LINDSEY S. VANN
JUSTICE 360
900 Elmwood Avenue, Suite 200
Columbia, SC 29201
(803) 765-1044
Emily@justice360sc.org

Counsel for Petitioner

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES **Page(s)**

STATUTES **Page(s)**

As discussed in the Petition for Writ of Certiorari, the Fourth Circuit departed from this Court's instructions in *Wilson v. Sellers* by failing to confine its analysis to "the specific reasons given by the state court" in support of the state post-conviction (PCR) court's conclusion that no prejudice resulted from Petitioner's trial counsel's deficient failure to object to inadmissible prison-conditions evidence. 138 S. Ct. 1188, 1192 (2018). Respondents assert there was no *Wilson* error "because the Fourth Circuit was properly guided by the PCR court's order and the state court record." Br. of Respondents 31. But neither the PCR court's order nor the state court record supports the Fourth Circuit's conclusion that the sentencing jury came to a deadlock because "the mental health evidence led to the impasse." *Wood v. Stirling*, 27 F.4th 269, 280 (4th Cir. 2022). As *Wilson* instructed, federal courts must not "substitute for silence the federal court's [own] thought as to more supportive reasoning," *id.* at 1197, but should instead focus on the "specific reasons given by the state court and defer[] to those reasons if they are reasonable." *Id.* at 1192. Moreover, a careful review of the specific reasons given by the PCR court demonstrates that its decision involved an unreasonable application of clearly established federal law. 28 U.S.C. § 2254(d)(1).

I. TRIAL COUNSEL'S DEFICIENT PERFORMANCE RESULTED IN PREJUDICE.

Respondents cannot seriously dispute that the heart of the State's penalty-phase case turned on James Sligh's inadmissible prison-conditions testimony. *Wood*, 27 F.4th at 272 ("As for its witnesses, the State spent the bulk of its time examining Jimmy Sligh"); *id.* at 278 ("the prison-conditions evidence made up a disproportionate share of the new evidence offered by the State during the penalty phase"). Further,

Respondents concede that trial counsel performed deficiently by failing to object to Sligh's testimony. *Id.* at 277 ("[The state postconviction court] found (and the State concedes) that defense counsel was deficient for not objecting to the prison-conditions evidence"). Nevertheless, Respondents claim Petitioner errs in his observation that a proper objection by trial counsel would have resulted in "the exclusion of the bulk of the State's case for death." Petition at 22. This is so, they say, because the State also advised the jury it could consider all evidence from the guilt phase at sentencing, which is incorporated into the sentencing phase of every capital case in South Carolina. The fact that the jury is permitted to consider evidence of guilt does not insulate all penalty-phase errors from prejudice findings, as Respondents seem to suggest. As this Court's precedents demonstrate, even highly aggravated crime facts do not preclude a finding of prejudice under *Strickland v. Washington*, 466 U.S. 668 (1984). *See, e.g.*, *Williams v. Taylor*, 529 U.S. 362, 368-69 (2000); *Rompilla v. Beard*, 545 U.S. 374, 377-78 (2005).

More importantly, Respondents ignore that *despite* the jurors' consideration of the guilt-phase evidence, along with extensive and inadmissible prison-conditions evidence, they were initially deadlocked and only reached a sentencing verdict after additional instructions and three days of deliberation. If the jury viewed the case as presented in such equipoise that it took three days to reach a unanimous death verdict, it logically follows that there must be, *at a minimum*, a reasonable probability

that the jury would have reached a different result had the prison-conditions evidence been properly excluded.[1]

Respondent makes much of the fact that the evidentiary issue underlying the *Strickland* error in this case turns on a matter of state law. Br. of Respondents 19, 23. But there is nothing unseemly about that. Trial counsel may perform deficiently, causing prejudice, by failing to know and follow whatever law applies to the question at issue—whether that failure turns on a matter of state law, federal law or both makes no difference. *See, e.g.*, *Hinton v. Alabama*, 571 U.S. 263, 267 (2014) (holding trial counsel ineffectively failed to seek additional funding "because he was himself unaware that Alabama law no longer imposed a specific limit and instead allowed reimbursement for 'any expenses reasonably incurred.'"). What matters is that Petitioner's Sixth Amendment right to the effective assistance of counsel has been violated. *Strickland*, 466 U.S. at 687-688.

---

[1] Petitioner does not ask this Court to consider the jury's protracted deliberations because of Fourth Circuit precedent. Br. of Respondents 31. Rather, he asks this Court to consider the jury's struggle because it is relevant to *Strickland's* "reasonable probability" test. A proper prejudice assessment considers *how the balance of evidence appeared at trial* compared to how that balance would have been altered absent trial counsel's error. *See, e.g.*, *Porter v. McCollum*, 558 U.S. 30, 41 (2009); *Williams v. Taylor*, 529 U.S. at 397-98; *see also Strickland*, 466 U.S. at 696 (stating "[a] conclusion only weakly supported by the record is more likely to have been affected by errors than one with overwhelming record support."). The jury's struggle to reach a death verdict is objective evidence of how the balance appeared at trial, and this Court itself has considered a jury deadlock in the context of applying this same reasonable probability standard. *Kyles v. Whitley*, 514 U.S. 419, 429, 454 (1995); *see also United States v. Bagley*, 473 U.S. 667, 682 (1985) (adopting the *Strickland* prejudice standard as the test for materiality under *Brady v. Maryland*, 373 U.S. 83 (1963)).

It is therefore odd that Respondent accuses Petitioner of "consistently attempt[ing] to leverage a reversal in an unrelated state capital direct appeal case"—namely, *State v. Burkhart*, 640 S.E.2d 450, 453 (S.C. 2007). *Burkhart* is not at all "unrelated" to the issue in this case. In *Burkhart* the State offered *virtually identical* testimony from the same witness—James Sligh—that it offered in Petitioner's case. The facts of Burkhart's case were aggravated; he was convicted of murdering three people by shooting them at close range in the head and then stomping on two of their bodies on the ground. 640 S.E.2d at 451. The only meaningful difference between *Burkhart* and Petitioner's case is that Burkhart's trial counsel properly objected to Sligh's testimony. Although the standard of review on direct appeal is different from the *Strickland* prejudice inquiry (and Petitioner does not argue otherwise), it would be senseless to completely ignore the South Carolina Supreme Court's discussion of both why prison-conditions evidence is inadmissible in South Carolina and its analysis of how that error impacted Burkhart's penalty phase. 640 S.E.2d at 453 (stating prison-conditions evidence is inadmissible under "our longstanding rule that evidence in the sentencing phase of a capital trial must be relevant to the character of the defendant or the circumstances of the crime"); *id.* ("Although appellant attempted to counter the testimony of the State's witness with evidence regarding the harshness of prison life, this entire subject matter injected an arbitrary factor into the jury's sentencing considerations."). This Court certainly did not ignore the Alabama state courts' pronouncements when it concluded that Hinton's trial counsel was ineffective due to his failure to properly understand and act upon matters

dictated by Alabama law. 571 U.S. at 267 (citing *Dubose v. State*, 662 So.2d 1156, 1177, n.5 (Ala. Crim. App. 1993) and Ala. Code § 15-12-21(d) (1984)).

II. THE STATE COURT'S ERRONEOUS CONFLATION OF PRISON-CONDITIONS AND ADAPTABILITY EVIDENCE LED TO ITS UNREASONABLE APPLICATION OF CLEARLY ESTABLISHED FEDERAL LAW.

Respondents claim the distinction between prison-conditions and adaptability evidence "is of no moment here" because that discrepancy only relates to deficient performance. Br. of Respondents 21. Respondents are wrong. The state PCR court unreasonably applied *Strickland*'s prejudice prong, satisfying 28 U.S.C. § 2254(d)(1), by conflating evidence of adaptability (which is admissible) with prison conditions evidence (which is not admissible), leading the state court to the erroneous conclusion that Petitioner suffered no prejudice because "[a]s to the conditions of confinement evidence itself, . . . [b]oth sides fully joined the issue and both sides were able to make headway." JA 1226. From this same conflation, the PCR court determined the State's closing argument was not prejudicial—"[s]ince evidence from both sides came before the jury, argument on the subject was proper." JA 1226-27.[2] Thus, the state court's prejudice analysis is premised on its erroneous conclusion that both sides presented "relatively equal" evidence of prison conditions. JA 1226. Respondents repeat this

[2] Respondents claim the State's closing argument "focused, as it should, on which punishment, life or death, was appropriate for Wood given his character and the circumstances of the crime." Br. of Respondents 24. In truth, the State's argument focused on how a death sentence was the appropriate punishment *because* life in prison would be too easy. *See e.g.*, JA 598 (arguing the "appropriate punishment" is "not what is the *easiest* and shortcut way to solve the problem"); JA 599 ("putting him in prison isn't going to make him suffer"); JA 600 ("prison is just about going to be a change of address and nothing more").

error by continually asserting that Petitioner presented prison-conditions evidence and argument at trial. That is not what happened.

After Sligh testified on direct about how life in prison would be, in his view, filled with privileges and benefits—"kind of like a mini city," JA 323, the defense attempted to undermine some of his claims during cross examination. Respondents now point to that cross examination as evidence that "the defense wanted to, and did, present conditions evidence." Br. of Respondents 27. For example, Respondents note "[t]he defense pointed out [Petitioner] would not be allowed to work outside the facility, and that he would always be classified at the highest level of security." *Id.* at 25. What Respondents fail to acknowledge is that the defense did so because Sligh's direct testimony included the following exchange:

> Q: When you say work release, does that mean where, you know, a van drops them off at a factory or does that mean the people we see picking stuff up on the side of the road?
>
> A: It's actually both programs. All of our—we call them pre-release centers. But all of them have both labor crew programs that supply inmates to counties or do the road details and work release programs where the inmate actually has the opportunity to go out and work in the community.

JA 326. As Respondents are well aware, no person sentenced to life without parole would be permitted to participate in a work-release program in South Carolina. The only purpose of this direct testimony was to lure the jurors into falsely believing that if they sentenced Petitioner to life, he might be allowed out on a work release program. That the defense tried to clarify this on cross (resulting in, at best, a

question in the jurors' minds about whether life in prison would allow work-release) does not mean the defense "fully joined" in the topic of prison conditions.

In its own case, the defense offered testimony from James Aiken—an expert qualified in "future prison adaptability." JA 468. After explaining his background in prison classifications, Aiken moved on to his assessment that Petitioner was "compliant to orders," not "a predator" and "does not fit the concerns that a prison administrator would have" in terms of future dangerousness. JA 470. Aiken was asked, "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?" JA 472. He provided a brief answer, largely focused on safety concerns, before returning to a discussion of his opinion that Petitioner was not "a predator" and could therefore be safely housed in a prison setting. JA 473-75. Near the conclusion of his testimony, trial counsel asked Aiken whether life in prison was "going to be a breeze or a walk in the park." JA 476. Aiken confirmed that "prisons are very dangerous places," but again quickly turned back to his point that Petitioner could adapt well to prison because "[t]here is no indication that he has inflicted violence upon other inmates, staff, as well as community during his confinement in a prison setting." JA 477.

Aiken's testimony was not on the topic of prison conditions. It certainly was not equivalent to Sligh's—the stated purpose of which was to violate South Carolina's restriction on prison-conditions evidence. JA 317. The defense's brief attempts at rebuttal cannot reasonably be compared to evidence from which the State was later

permitted to argue that a life sentence would reward Petitioner with "freedom of movement" and "[t]hirty or forty acres to live in," allowing him to "watch ball games on T.V.," "do all the things [he] want[s] to," and hold a baby on his lap "every weekend." JA 600. The PCR court's conflation is therefore obvious from its claim that both sides offered a "relatively equal" presentation on prison conditions. It is further evident from the state court's failure to discuss Aiken's opinions on adaptability and the state court's incorrect assertion that had trial counsel objected to Sligh's testimony, it would not have been permitted to offer Aiken's testimony. JA 1226.

III. THE STATE COURT "EITHER DID NOT CONSIDER OR UNREASONABLY DISCOUNTED" PETITIONER'S MITIGATION EVIDENCE.

In *Porter v. McCollum*, this Court held the Florida Supreme Court's prejudice analysis was unreasonable, within the meaning of section 2254(d)(1), because the state court "either did not consider or unreasonably discounted" Porter's mitigating evidence. 558 U.S. 30, 42 (2009). The state court in this case unreasonably discounted Petitioner's mental health evidence by determining it had little value because it did not relate to "the time of the offense." JA 1225. This was contrary to this Court's pronouncement that mitigating evidence is not required to bear "a nexus to the crime." *Tennard v. Dretke*, 542 U.S. 274, 284 (2004). In addition, the state court did not consider the mitigating value of petitioner's adaptability evidence because, again, it erroneously considered it as equivalent to prison-conditions evidence. The state court's only discussion of Aiken's testimony occurred in the context of its stated belief that defense counsel would not have been permitted to offer it had they objected to Sligh's testimony. Likewise, the PCR court assessed Petitioner's prior incarceration

as aggravating but never examined the mitigating value of that history as supporting his adaptability claim. Relying on *Eddings v. Oklahoma*, 455 U.S. 104, 114-15 (1981), Respondents claim that Petitioner is "not afforded a right to have *any* weight assigned to such evidence by the fact-finder." Br. of Respondents 29. That is precisely the opposite of *Eddings*' holding, in which this Court stated the fact-finder must consider "'*as a mitigating factor*, any aspect of the defendant's character or record . . . that the defendant proffers as a basis for a sentence less than death.'" *id*. at 110 (quoting *Lockett v. Ohio*, 438 U.S. 586, 604 (1978) (emphasis in original), and the sentencer must assign some weight to that evidence. *Id*. at 115 ("they may not give it *no weight* by excluding such evidence from their consideration") (emphasis added). The state court's prejudice conclusion involved an unreasonable application of clearly established federal law, and the Fourth Circuit erred by concluding otherwise.

CONCLUSION

For the reasons above, and those articulated in the Petition, this Court should grant certiorari and reverse the Fourth Circuit's decision below.

Respectfully submitted,

/s/*Emily C. Paavola*

Emily C. Paavola
Counsel of Record
Lindsey S. Vann
Justice 360
900 Elmwood Ave., Suite 200
Columbia, SC 29201
(803) 765-1044
Emily@justice360sc.org