No. 22-7877

In the

Supreme Court of the United States

Corey Coggins,

Petitioner,

v.

Murray Tatum, Warden,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Georgia

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the state habeas court erred in holding both that Petitioner Corey Coggins waived his claim that trial counsel was ineffective in pursuing a joint defense agreement and that there was not ineffective assistance because the decisions were strategic in nature.

2. Whether the state habeas court erred in rejecting Coggins's claims (again on the merits and because they were waived) that either the prosecution or his own counsel should have put on additional evidence regarding a co-defendant's admissions of wrongdoing.

3. Whether the state habeas court committed clear error when it found that the prosecution did not have an undisclosed, implied agreement with a testifying witness.

4. Whether the supposed delay in the resolution of Coggins's appeals violates his Fourteenth Amendment guarantee of due process.

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RELATED CASES

Coggins v. State, 293 Ga. 864 (2013), *cert denied*, 572 U.S. 1119 (2014) (direct criminal appeal).

State v. Coggins, No. 2005CR0630 (Columbia Cnty., Ga., Super. Ct.) (underlying criminal proceedings).

INTRODUCTION

Petitioner Corey Coggins's scattershot filing does not warrant review by this Court. His various complaints are, even charitably interpreted, limited to fact-based claims of error. As the state habeas court found, most of these claims are simply without an evidentiary basis and almost all of them are waived. Even if there were some sort of arguable error (and there is not), there are no splits of authority, no important legal questions, and in any event Coggins has the opportunity to file a federal habeas petition to address his claims. This Court should deny review.

STATEMENT

A. Background

On August 18, 2001, Coggins and two of his friends engaged in a fight with Mack Smith, based on their belief that Smith was a police informant. *Coggins v. State*, 293 Ga. 864, 864 (2013). In the melee, Coggins stabbed Smith twice and killed him. *Id.* The next morning, Coggins admitted to a friend that he been involved in the killing. *Id.* And a few days later, Coggins "admitted to another friend that he had recently stabbed and killed

someone." *Id.* While he was in detention, "[h]e also admitted to two inmates … that he had stabbed and killed Smith." *Id.* at 864–65.

B. Proceedings Below

Coggins and another of the friends involved in the attack, Barry Keith Tabor, were charged with the stabbing and murder of Mack Smith. Pet.App.9. The prosecution eventually withdrew its case against Tabor. *Id.* A few days later, the jury convicted Coggins of malice murder. *Id.* The court sentenced Coggins to life in prison. *Id.*

After Coggins's trial counsel filed a motion for a new trial (which the court denied), Coggins obtained new counsel, who moved for an appeal out of time (which the court granted). *Id.* On direct appeal, the Georgia Supreme Court affirmed Coggins's conviction while noting the "overwhelming evidence" against him. *Coggins*, 293 Ga. at 865.

Coggins then filed a state habeas petition, where he raised dozens of claims regarding supposed due-process errors, ineffective assistance of counsel, and prosecutorial misconduct. Pet.App.8–43. The state habeas court rejected all of Coggins's claims, and the Georgia Supreme Court denied his application for a certificate of probable cause to appeal. Pet.App.6.

REASONS FOR DENYING THE PETITION

It is at times difficult to understand the contours of Coggins's arguments, but none of his claims warrant review. The questions presented are the definition of fact-bound, and he does not establish that there is a split

of authority or any other reason to grant review, outside of his own particular disagreement with the state habeas court's resolution of his case. On top of that, most of these claims were waived or not raised at all in state court. And, of course, Coggins has the opportunity to challenge any supposed errors via a federal habeas petition, a far more appropriate posture than immediate, plenary review in this Court.

I. Coggins's "joint defense agreement" claim does not merit review.

Coggins asserts that trial counsel entered into a joint defense agreement with Tabor, and that this agreement somehow affected trial counsel's decisions not to call a particular deputy to the stand to discuss Tabor's statements. Pet. at 20. Although it is unclear, he seems to argue that both the decision to enter into the agreement and the effect it had on other trial counsel decisions constituted ineffective assistance of counsel. But however construed, nothing here warrants review.

To start, in Georgia, a defendant must raise ineffective assistance of counsel at the earliest opportunity—appellate counsel on direct appeal, for instance, are required to raise ineffective assistance of trial counsel. *White v. Kelso*, 261 Ga. 32, 32 (1991). Coggins did not raise any version of this theory on direct appeal. Pet.App.18–19. So he would have to provide some reason for his waiver, and the only reason he provided was ineffectiveness of *appellate* counsel. Pet.App.19. As the state habeas court correctly explained, Coggins

needed to establish not only that his trial counsel was ineffective but that his appellate counsel was ineffective for not raising the claim on appeal, too. *Id.*

Coggins cannot come close to doing so. The decisions Coggins dislikes were reasonable strategic decisions. *See Strickland v. Washington*, 466 U.S. 668, 690–91 (1984). The deputy could have testified that Tabor admitted to "hurting the victim and 'putting him into the cement' on the night of the stabbing." Pet.App.20. Coggins adds that Tabor also asserted self-defense. Pet. at 6–7. Of course, none of this is necessarily helpful to Coggins, and it is hard to see how it could ever be ineffective assistance not to call the deputy to the stand.

But there is more to it: Coggins's counsel explained that he had entered into a joint defense agreement with Tabor, and he was planning to allow Tabor's counsel to address this testimony. Pet.App.21. A "joint defense agreement" is a "strategic decision," *Bangiyev v. United States*, No. 1:14-CR-206, 2017 WL 3599640, at *4 (E.D. Va. Aug. 18, 2017), and there is no reason to second-guess that arrangement via hindsight. Of course, Tabor was eventually dismissed as a defendant, but at that point Coggins's counsel thought it would be difficult to "change horses midstream, so to speak." Pet.App.21. Again, these are reasonable strategic decisions. Right or wrong, they are not *objectively* beneath the standard of competent counsel.

And even if any of the above were debatable, Coggins provides no basis for why it was ineffective assistance for his *appellate* counsel to decline to

raise this argument. There is no evidence that it was "objectively unreasonable" for appellate counsel to focus on other arguments, and the "strong presumption" is that appellate counsel adequately performed his duties. Pet.App.19. Appellate counsel's decision not to raise the issue means that these claims were waived.

Finally, as with all of Coggins's claims, at most he seeks fact-bound error correction. This type of issue would never be a strong candidate for this Court's review, and here, where federal habeas review is the ordinary means for testing state detention, plenary review in this Court would be especially inappropriate.

II. Coggins's claim of prosecutorial misconduct does not merit review.

Coggins appears to assert that the prosecution somehow "misrepresent[ed]" facts to the trial court, but even in Coggins's own estimation, this "misrepresentation[]" was nothing of the sort. Pet. at 25. Coggins argues that the prosecution should have "disclos[ed] to the trial judge all of the material evidence that tied Tabor to the stabbing." *Id.* That evidence included Tabor's claims that he "put Smith on the concrete" and that he supposedly told his girlfriend he stabbed Smith in self defense. *Id.*

Coggins provides no authority for the notion that there is a general duty on the part of the prosecution to disclose all facts to the *court*—Coggins and his counsel were aware of the facts tying Tabor to the melee and made

strategic decisions regarding what evidence to put on. Coggins seems to acknowledge that his real complaint here is with his own counsel; this claim transmutes into an ineffectiveness claim, as Coggins asserts that his counsel should have introduced these facts about Tabor. Pet. at 26.

Again, there is no issue worth reviewing here. These facts are not even obviously exculpatory—it was well understood that multiple people attacked Smith, so Tabor's acknowledgement that he was involved in the attack does not undercut the "overwhelming" evidence of Coggins's guilt (and it might even confirm it). *Coggins*, 293 Ga. at 865. It was at least a viable strategic decision. *Strickland*, 466 U.S. at 690–91. Moreover, Coggins did not raise this claim on direct appeal, *Coggins*, 293 Ga. at 864, nor does he have any argument for why the decision not to do so would have been ineffective assistance of appellate counsel sufficient to overcome waiver.

And again, on top of everything else, this is a fact-bound dispute, with no split of authority or anything tantamount.

III. Coggins's claim that the prosecution failed to disclose an implied agreement with a witness does not merit review.

Coggins asserts that the prosecution had an "implied agreement" with a witness that it failed to disclose. Pet. at 26. The primary problem here is that, as the state habeas court found, there is no evidence of such an agreement at the time of the witness's testimony and instead significant evidence affirming there was no such agreement. Pet.App.15–17.

Coggins provides no reason to reject the state habeas court's finding, and again, even if he did have some meaningful argument on this score, this Court's review is not warranted for basic factual disputes.

IV. Coggins's claim of appellate delay does not merit review.

Coggins asserts a due process violation on the basis of a supposed delay in handling his appeal. Pet. at 30. Again, the state habeas court correctly rejected this claim, and again it raises no important legal questions. Even assuming that the seven-year period between conviction and appellate decision was somehow too long, he has to show prejudice, and he cannot. In his petition, he does not even appear to provide an argument as to how he was prejudiced. And the state habeas court rejected his argument that it was difficult for him to obtain certain evidence, because he had access to that evidence for the entire length of the appellate proceeding and years after. Pet.App.12–13. Not to mention that even if he did lack access to that evidence, it would have done little, if anything, to help him. *Id.*

Coggins also suggests that supposed delays in his habeas appeal are somehow problematic. Pet. at 33. Of course, there is no reasoned opinion on that point, and so Coggins necessarily asks this Court to address it in the first instance. It should go without saying that this Court is "a court of final

review and not first view." *Zivotofsky v. Clinton*, 566 U.S. 189, 201 (2012) (quotation omitted). And, here too, Coggins can file a federal habeas petition.[1]

Finally, as with all his arguments, Coggins has done nothing to explain why, even assuming there were some merit to his contentions (and there is not), it would warrant review by this Court. At worst, he has disagreements about the application of well-settled law to particular facts.[2]

[1] Coggins also appears to assert that Georgia's habeas procedures, requiring an application of probable cause for appeal, are somehow a denial of procedural and substantive due process. Pet. at ii, 31. Setting aside that no one has addressed that argument in this case, it is a frivolous claim. Georgia's system largely mirrors the federal government's system (which requires a certificate of appealability with respect to federal habeas appeals) and does not violate any due-process guarantee.

[2] Coggins includes a question presented about various issues on which he provides no apparent argument. *See* Pet. at ii (asking, for instance, whether appellate counsel should have withdrawn from representation to act as a witness to impeach another witness). It is hard to decipher what the exact claims might be here, but the state habeas court adequately addressed any relevant claims that were in fact raised.

CONCLUSION

The Court should deny Coggins's petition for certiorari.

Respectfully submitted,
August 17, 2023

/s/ *Stephen J. Petrany*

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