No. 23-31

IN THE
Supreme Court of the United States

WILLIE JAMES PYE,
Petitioner,

v.

SHAWN EMMONS, WARDEN,
GEORGIA DIAGNOSTIC AND CLASSIFICATION PRISON,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

REPLY BRIEF FOR PETITIONER

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In light of the State's obfuscations as to the holding below, Mr. Pye's position, and the approach of this Court and other circuits, it is worth clarifying what this case is—and is not—about.

This Court has repeatedly made clear that when a state court explains its reasons for denying a prisoner's claim, a federal court's task under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. No. 104-132, 110 Stat. 1214, is to "train its attention on the *particular reasons*—both legal and factual" for the state court's conclusion and "defer[] to *those reasons* if they are reasonable." *Wilson* v. *Sellers*, 138 S. Ct. 1188, 1191-1192 (2018) (emphasis added) (internal quotation marks omitted); see, *e.g.*, *Wetzel* v. *Lambert*, 565 U.S. 520, 524 (2012) (per curiam). The relevant "reasons" are the "arguments or theories [that] supported" the state court's decision. *Harrington* v. *Richter*, 562 U.S. 86, 102 (2011).

This approach does not require federal courts to "fly-speck" state-court opinions; nor does it permit habeas relief whenever a state court commits some minor error. Rather, AEDPA's bar on relief is lifted only when an error is so serious that it can fairly be said that the ultimate decision "involved an unreasonable application" of law or "was based on an unreasonable determination of the facts." 28 U.S.C. § 2254(d)(1)-(2).

In this case, the panel carefully analyzed the reasons provided by the state court for rejecting Mr. Pye's ineffective-assistance-of-counsel claim. As relevant, the panel concluded that each rationale the state court gave to support its conclusion that Mr. Pye failed to show *Strickland* prejudice was erroneous "beyond any possibility for

fairminded disagreement." *Richter*, 562 U.S. at 103; see *Strickland* v. *Washington*, 466 U.S. 668, 687 (1984).

The en banc Eleventh Circuit, however, denied relief, fashioning a novel approach to AEDPA that relies on the putative distinction between "reasons" and "justifications" for a state court's decision. In the court of appeals' view, all that matters are a state court's high-level conclusions—in an ineffective-assistance-of-counsel case, whether there was deficient performance and prejudice. The Eleventh Circuit dubbed those conclusions the "reasons" for a state court's denial of relief. But as for the specific arguments and theories the state court adopted in rejecting a claim—the so-called "justifications"—the Eleventh Circuit held that the unreasonableness of the state court's rationale is irrelevant. Instead, it held that AEDPA requires federal habeas courts to deny relief if there are *any* reasonable arguments or theories that could support the no-prejudice and no-deficient-performance conclusions.

This distinction between "reasons" and "justifications" has no basis in AEDPA's text or this Court's precedents; nor has any other circuit adopted it. The Eleventh Circuit's approach sharply conflicts with decisions of this Court and the Third and Ninth Circuits. And though the State labors to distinguish those decisions and to find support for the Eleventh Circuit's approach elsewhere, it is unable to identify any case relying on the reasons-versus-justifications distinction—which is unsurprising, as the two words mean the same thing. Nor can the State identify a case since *Wilson* deferring to an *unreasonable* state-court analysis just because the state court *could*

have adopted an alternative, reasonable-but-also-wrong analysis.

The State claims that this case is a poor vehicle for the questions presented because neither is dispositive. That is simply implausible: the Eleventh Circuit's resolution of the first question spanned *eight pages* of the Federal Reporter, not to mention *nine more* by the dissent's discussion. And the court resolved the second question sua sponte, over the objection of four judges. These are not the hallmarks of irrelevant issues.

This Court should grant review.

I. THE FIRST QUESTION PRESENTED WARRANTS REVIEW.

A. No Other Circuit Takes the Eleventh Circuit's Approach.

1. The decision below squarely conflicts with decisions of the Third and Ninth Circuits, and the State's efforts to deny the conflict are unconvincing.

In *Dennis* v. *Secretary, Pennsylvania Department of Corrections*, 834 F.3d 263, 283 (2016), the en banc Third Circuit expressly rejected the approach below. It held that when a state court unreasonably rejects a claim in a reasoned opinion, a federal habeas court may not "fill a non-existent 'gap' by coming up with its own theory or argument." *Id.* at 282. *Dennis* relied on this Court's holding in *Richter* that only when "a state court decision lacks reasoning" must a federal court "'determine what arguments or theories . . . *could have supported*'" the decision. *Ibid.* (quoting *Richter*, 562 U.S. at 102).

The State attempts (Br. in Opp. 26) to dismiss *Dennis*, asserting that it "never held that a court cannot consider *all relevant arguments* and record evidence when analyzing whether a state court decision is reasonable." This is wrong: *Dennis*'s square holding is that the only "relevant" arguments are the ones *actually* present in the state-court opinion, and that deference is not owed just because *other* arguments or evidence not invoked by the state court *could have* provided support for its conclusion. As the Third Circuit explained, "when the state court pens a clear, reasoned opinion, federal habeas courts may not speculate as to theories that 'could have supported' the state court's decision." *Dennis*, 834 F.3d at 283.*

Similarly, the Ninth Circuit consistently reviews the specific arguments on which the state court relied—and, upon finding those arguments to be unreasonable, does not consider alternative, reasonable-yet-wrong arguments. See, *e.g.*, *Kipp* v. *Davis*, 971 F.3d 939, 954-955 (2020); *White* v. *Ryan*, 895 F.3d 641, 666-673 (2018). Indeed, the Eleventh Circuit admitted that its approach contrasts with the Ninth Circuit's. Pet. App. 29a n.9.

For its part, the State tries (Br. in Opp. 27) to deny that conflict, invoking a Ninth Circuit rule about when a state court's procedures render its factual findings

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* The State also suggests (Br. in Opp. 26) that *Dennis* turned on whether an argument was *presented* to the state court, but that too is incorrect. *Dennis* simply observed that a federal court's obligation to read a state-court opinion charitably does not require "buttressing [its] scant analysis with arguments not fairly presented to it." 834 F.3d at 281-282. And of course, as *Dennis* recognized, "federal habeas courts are empowered to engage in an alternate ground analysis—relying on any ground properly presented—but, in such a case, the federal court owes no deference to the state court." *Id.* at 283.

unreasonable under Section 2254(d)(2). But that is not the question presented here, which is about whether AEDPA demands deference based on legal or factual arguments not articulated by the state court. The Ninth Circuit has consistently answered that question in the negative. See, *e.g.*, *Kipp*, 971 F.3d at 952 n.10 ("[W]e may look only to the reasoning of the California Supreme Court." (citing *Wilson*, 138 S. Ct. at 1193-1194)). That there is a "different" AEDPA-related issue for which the Ninth Circuit has an "idiosyncratic rule," Br. in Opp. 27, is immaterial.

2. The State asserts (Br. in Opp. 21-25) that six circuits have "expressly adopted," *id.* at 22, the approach adopted below—and have done so since *Wilson*, no less. It claims (*id.* at 20-21) that these courts apply the same "fundamental principle" as the Eleventh Circuit even though they do not "use[] the same [reasons-versus-justifications] language."

The State's description of the landscape is far from accurate. Consideration of the actual *analysis* in the cited cases reveals that the near-uniform approach among the circuits is the one rejected below: these cases focus carefully on the state court's reasoning and ask only whether the rationale it gave, not some other "justification," is reasonable. See, *e.g.*, *Strickland* v. *Goguen*, 3 F.4th 45, 54-58 (1st Cir. 2021). That the State identifies (Br. in Opp. 22-25) isolated cases from some circuits whose rote recitations of the standard are lifted verbatim from pre-*Wilson* case law therefore proves little.

Moreover, several cited cases are not even facially supportive of the State's position. For instance, *Crockett* v. *Clarke*, 35 F.4th 231 (4th Cir. 2022), explained that it is only when "the state court offers a conclusion on the

'prejudice question *without articulating its reasoning supporting that conclusion*'" that "'we must determine what arguments or theories . . . could have supported the state court's [no-prejudice] determination.'" *Id.* at 244 (first alteration in original) (quoting *Shinn* v. *Kayer*, 141 S. Ct. 517, 524 (2020)). The Eleventh Circuit's novel approach, by contrast, identifies other arguments or theories supportive of the state court's no-prejudice conclusion even when it *has* articulated its reasoning.

Even allowing for alternative terminology, the State musters no case from another court applying AEDPA as the Eleventh Circuit did below—considering a state court's no-prejudice conclusion but not the specific rationale it provided in support. At most, the State demonstrates that some other circuits have (before *Wilson*) ignored the reasoned state-court opinion altogether. As explained in the petition (at 28-31), that approach is flatly inconsistent with *Wilson*, which is why courts have retreated from it. Compare, *e.g.*, *Holland* v. *Rivard*, 800 F.3d 224, 236 (6th Cir. 2015), with *Thompson* v. *Skipper*, 981 F.3d 476, 480 (6th Cir. 2020). And in any event, it is not the Eleventh Circuit's reasons-versus-justifications approach.

B. The Eleventh Circuit's Approach Is Wrong.

The State's efforts to salvage the decision below on the merits are unavailing.

1. The State's lone textual argument (Br. in Opp. 30) is that "Section 2254 looks to the *decision* of the state court, not its *opinion*." True, Section 2254(d) does not contain the word "opinion," but it tasks federal courts with determining whether the state court's "decision" either "involved" an unreasonable application of federal law or

"was based" on unreasonable factfinding. 28 U.S.C. § 2254(d)(1)-(2). The statute thus contemplates that the state court's opinion is how the federal court *determines* whether the "decision" was reasonable. And even the Eleventh Circuit's approach requires looking to the state court's opinion to determine the "reasons" for its conclusion.

2. The State has no real response to the petition's discussion of this Court's precedent. It does not try to rehabilitate the Eleventh Circuit's mangling of *Richter*'s language and logic, Pet. 27-29, or rebut the plain fact that its approach renders *Wilson* meaningless, Pet. 29-31.

Instead, the State invokes (Br. in Opp. 21) cases from this Court that purportedly "relied upon additional justifications not provided by state courts in their opinions to affirm the denial of relief." Those cases do no such thing. In each, this Court simply applied its longstanding instruction that AEDPA mandates deference to a state court's stated, reasonable rationale. This Court has never suggested that AEDPA bars relief even when the state court acted *unreasonably* just because it *could have* reached the same result through different reasoning.

For instance, in *Dunn* v. *Reeves*, 141 S. Ct. 2405 (2021) (per curiam), the court of appeals granted habeas relief after concluding that the state court unreasonably applied a per se rule that ineffective-assistance-of-counsel claims fail when trial counsel does not testify. *Id.* at 2410. This Court reversed, deferring to the "commonsense analysis" the state court explicitly provided and finding that the court of appeals erred in attributing to the state court an unreasonable ruling it never made. *Id.* at 2412 (internal quotation marks omitted); see *ibid.* ("[T]he Alabama court

reasonably concluded that the incomplete evidentiary record . . . doomed Reeves' belated efforts to second-guess his attorneys." (emphasis added)).

The State's other cases are similarly unsupportive. In each, this Court credited the very explanation provided by the state court and held that the Sixth Circuit was wrong to conclude that the state court's analysis was unreasonable. See *Woods* v. *Etherton*, 578 U.S. 113, 116-119 (2016) (per curiam); *White* v. *Wheeler*, 577 U.S. 73, 76-80 (2015) (per curiam); *Burt* v. *Titlow*, 571 U.S. 12, 16-23 (2013). In fact, this Court has consistently declined to defer to state-court opinions it deems unreasonable, without considering alternative, reasonable rationales. See *Wilson*, 138 S. Ct. at 1192 (citing *Porter* v. *McCollum*, 558 U.S. 30, 39-44 (2009) (per curiam); *Rompilla* v. *Beard*, 545 U.S. 374, 388-392 (2005); and *Wiggins* v. *Smith*, 539 U.S. 510, 523-538 (2003)).

The State also repeatedly invokes (Br. in Opp. 4, 20, 30) *Mays* v. *Hines*, 141 S. Ct. 1145 (2021) (per curiam), but it is unclear why. *Hines* explained that a federal court "must carefully consider all the reasons and evidence supporting the state court's decision," but it referred to "all of [the state court's] justifications," not all *conceivable* justifications. *Id.* at 1149. In holding that deference was appropriate, *Hines* analyzed the state court's "straightforward, commonsense analysis"—not just its top-line no-prejudice conclusion. *Id.* at 1149-1150.

3. The State complains about the practical import of following AEDPA's text and this Court's decisions. These consequentialist arguments fall flat.

For instance, the State worries (Br. in Opp. 5) that on Mr. Pye's view, AEDPA would "demand state court

decisions that are hundreds of pages long." That is precisely backward: as this Court observed in *Richter*, the less rationale a state court provides, the more likely AEDPA will require deference. See 562 U.S. at 99.

The State also suggests (Br. in Opp. 32) that "limiting a federal court's review to only the justifications given by the state court" would grant federal courts "free[dom] to ignore any other justifications in support of the state court's reasons for denying relief." But that is obviously wrong: if those "other justifications" are valid, the federal court will invoke them to deny relief on de novo review. It is simply that the federal court is not required to defer to reasonable but *erroneous* justifications not given by the state court.

The State further opines (Br. in Opp. 32) that under the approach mandated by *Wilson*, "a state court would have to provide every justification it could think of to support its reasons[;] otherwise the federal court could claim it ignored some portion of the record." But no one suggests that the state court has an obligation to address the entirety of the record or to respond to every argument raised. The question presented arises only when the state court *unreasonably* responds to the arguments it does choose to address.

Nor is anyone arguing that AEDPA requires "fly-speck[ing]" or "creat[ing] a grading system for state-court opinion writing." Br. in Opp. 24 (internal quotation marks omitted)). This Court held the opposite in *Johnson* v. *Williams*, 568 U.S. 289, 300 (2013). And AEDPA's bar on relief is not lifted whenever a state court's analysis contains some minor error. See Pet. App. 85a (J. Pryor, J., dissenting). Rather, AEDPA deference gives way only

where a state court's reasoning is so wrongheaded as to reveal an "extreme malfunction[] in the state criminal justice system[]." *Richter*, 562 U.S. at 102 (internal quotation marks omitted). That was the case here. See Pet. App. 163a-167a.

C. The State's Vehicle Arguments Lack Merit.

The State argues (Br. in Opp. 27-30) that this case is a poor vehicle for reviewing the first question presented. The State is incorrect.

The State asserts (Br. in Opp. 27) that "this is a fact-bound dispute where it is unclear what effect, if any," the answer to the first question presented has. This is a downright bizarre suggestion—the en banc majority's novel approach to AEDPA was the principal point of disagreement with the dissent, and the two opinions spent dozens of pages debating it. The State apparently sees this as so much spilled ink, but that is unlikely. And the question presented is a pure question of law; answering it would not require this Court to delve into the facts.

The State further suggests (Br. in Opp. 29-30) that resolving the first question presented "would be fruitless because even under *de novo* review, Pye loses." *Id.* at 29. But the initial panel unanimously disagreed with that assessment. Pet. App. 167a-174a. And if it were so cut-and-dried that Mr. Pye's claims fail on de novo review, it is hard to see why the en banc majority did not simply say so, rather than rely on two novel and controversial Section 2254(d) holdings.

The State additionally argues (Br. in Opp. 28-29) that even if the Georgia *trial court* unreasonably rejected Mr. Pye's claim, this Court must assume that the Georgia

Supreme Court's summary denial of leave to appeal was reasonable. But *Wilson* established a presumption that such a summary denial rests on the lower court's reasoning, and though "the unreasonableness of the lower court's decision itself provides *some* evidence" that the state supreme court relied on different reasoning, more is necessary to rebut that presumption. 138 S. Ct. at 1196 (emphasis added). Otherwise *Wilson*'s rule is truly meaningless.

II. THE SECOND QUESTION PRESENTED WARRANTS REVIEW.

The State concedes (Br. in Opp. 34-35) the existence of an entrenched circuit split on the second question presented. See Pet. 33. Instead, the State's principal argument against review is that it is "an unimportant question" with "no perceivable effect on this case." Br. in Opp. 33. Not so.

That this Court has previously granted certiorari to resolve the second question presented speaks volumes for its importance. And the State is similarly wrong to argue that the question is irrelevant here. In deferring to what it deemed the state court's factual determinations, the Eleventh Circuit invoked Section 2254(e)(1) or its purported "clear and convincing error" standard no fewer than 20 times. See Pet. App. 33a-59a. It blinks reality to think that the court resolved an important question of first impression that had not been briefed—and then invoked its answer to the question 20 times—if the issue's resolution was unnecessary for resolving the case.

Nor does the State justify its assertion (Br. in Opp. 35) that the resolution of the question below without notice or briefing militates against certiorari. Mr. Pye is now

facing execution because of a decision that relied heavily on the resolution of a legal issue he was never asked to address. Surely there is no better vehicle for this Court to resolve this question once and for all.

CONCLUSION

For the foregoing reasons and those stated in the petition for a writ of certiorari, the petition should be granted.

Respectfully submitted.

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