

## APPENDIX "A"

In the  
United States Court of Appeals  
For the Eleventh Circuit

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No. 22-13768

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KEVIN E. CHACE,

Petitioner-Appellant,

*versus*

ATTORNEY GENERAL, STATE OF FLORIDA,  
SECRETARY, DEPARTMENT OF CORRECTIONS,

Respondents-Appellees.

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Appeal from the United States District Court  
for the Middle District of Florida  
D.C. Docket No. 6:22-cv-00092-CEM-DAB

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ORDER:

apartment complex after neighbors reported hearing a woman screaming. After determining that the noises came from Chace's apartment, police arrested him and took Kelson to the hospital, where she died eight days later. Before her death, Kelson told officers that Chace had been punching her in the face and head and hitting her with a cooking pot before their arrival. She also reported that Chace repeatedly choked her until she lost consciousness and threatened to kill her.

Kelson's autopsy declared the cause of death was "delayed complications of hypoxic encephalopathy" due to "strangulation and blunt force head injuries." On June 15, 2017, defense counsel deposed Dr. Krzysztof Podjaski, the medical examiner who conducted Kelson's autopsy. Podjaski conceded that he found no direct evidence of strangulation during his autopsy. He noted, however, that a CT scan of Kelson's brain conducted while she was still alive revealed a type of brain injury that could only occur as a result of oxygen deprivation, such as strangulation. Podjaski conceded that ultimately, however, he "couldn't put [his] finger" on "what really killed" Kelson. Chace asserted that this admission, as well as the fact that Podjaski detected no physical evidence of strangulation, conclusively exonerates him.

Here, reasonable jurists would not debate that Chace's § 2254 petition was time-barred. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (holding that to obtain a COA, a petitioner must show that reasonable jurists would debate the district court's ruling). His conviction was affirmed on December 4, 2018, and became final

Kevin Chace is a Florida prisoner serving 20 years in prison after pleading *nolo contendere* to second-degree murder by strangulation and by blunt force trauma to the head. On February 24, 2022, he filed a *pro se* 28 U.S.C. § 2254 petition, which the district court dismissed as untimely under the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”). In dismissing Chace’s petition, the court also found that he did not put forward evidence of actual innocence sufficient to overcome the time-bar. Chace now moves for a certificate of appealability (“COA”).

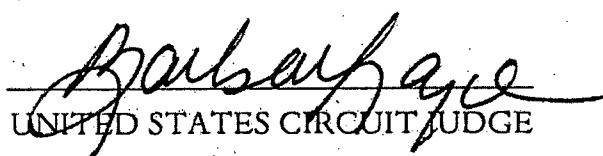
Under the AEDPA, § 2254 petitions are governed by a one-year statute of limitations that begins to run on the latest of four triggering events, including “the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review.” 28 U.S.C. § 2244(d)(1)(A). A state prisoner’s conviction becomes final when the time for seeking review in the Supreme Court expires, which is 90 days after the court of last resort at the state level issues its judgment. *See Chavers v. Sec’y, Fla. Dep’t of Corr.*, 468 F.3d 1273, 1275 (11th Cir. 2006). A petitioner may overcome the expiration of the limitations period and present an untimely claim if he makes “a convincing showing of actual innocence.” *McQuiggin v. Perkins*, 569 U.S. 383, 386 (2013). To demonstrate actual innocence, a petitioner must show that, in light of new evidence, it is more likely than not that no reasonable juror could have found him guilty beyond a reasonable doubt. *Id.*

As relevant background, Chace was convicted of killing his then-girlfriend Cheryl Kelson. Police reported to Chace’s

when the time for seeking review in the Supreme Court expired, on March 4, 2019. The limitations period was tolled while Chace's Rule 3.800 motion was pending. *See* 28 U.S.C. § 2244(d)(2); *Ford v. Moore*, 296 F.3d 1035, 1040 (11th Cir. 2002). The motion was denied on March 7, 2019. Therefore, Chace's limitations period expired on March 9, 2020. *See Dolphy*, 823 F.3d at 1344; Sup. Ct. R. 30(1) (establishing that when a deadline falls on a weekend or holiday, the deadline falls on the next weekday that is not a holiday). Chace filed his petition on February 24, 2022—nearly two years after the expiration of AEDPA's statute of limitations.

Reasonable jurists would also not debate that Chace failed to put forward evidence of actual innocence such that no reasonable juror could have found him guilty beyond a reasonable doubt. *McQuiggan*, 569 U.S. at 386. All of Chace's evidence about Kelson's cause of death was available at the time of his plea, and thus is not newly discovered within the meaning of AEDPA. *Id.* Moreover, given the evidence against him—including Kelson's description of events—a juror could still have found Chace guilty of murdering Kelson by strangulation or blunt force trauma. Finally, Podjaski's testimony was not exculpatory because he maintained that Kelson suffered oxygen deprivation based on evidence of brain injury found during her CT.

Accordingly, Chace's motion for a COA is DENIED.

  
UNITED STATES CIRCUIT JUDGE

**APPENDIX "B"**

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No. 22-13768

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Before WILSON AND LAGOA, Circuit Judges.

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Order of the Court

22-13768

## BY THE COURT:

Kevin Chace has filed a motion for reconsideration of this Court's order denying his motion for a certificate of appealability in his appeal of the dismissal of his 28 U.S.C. § 2254 petition as time barred. Upon review, Chace's motion for reconsideration is DENIED because he does not present any new evidence or arguments of merits.