

In the  
**Supreme Court of the United States**

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STATE OF ALABAMA,

*Petitioner,*

v.

MARCUS BERNARD WILLIAMS,

*Respondent.*

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**MOTION TO EXPEDITE BRIEFING ON THE PETITION  
FOR A WRIT OF CERTIORARI AND FOR OTHER RELIEF**

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This case is a natural companion to *Thornell v. Jones*, No. 22-982 (cert. granted Dec. 13, 2023). Both cases ask whether it was error to find *Strickland* prejudice by ignoring aggravation evidence that would have been presented if the defendant had presented additional mitigation evidence. *Compare* Pet. at i, *Jones*, No. 22-982 with Pet. at ii, *Williams*, No. \_\_\_-\_\_\_ (filed Dec. 21, 2023). Whichever way *Jones* is resolved, the Court’s decision will undoubtedly implicate the proper disposition of *Williams* too. And *Williams* presents a more glaring exemplar of the errors that led ten judges to

dissent in *Jones* and led the State of Arizona to seek certiorari. Consideration of the two together this Term would aid the Court and prevent unnecessary delay.

Accordingly, the State of Alabama respectfully moves the Court to expedite briefing on its petition and, if granted, to expedite briefing on the merits or otherwise provide relief as necessary to have this case decided this Term with *Jones*.

1. This case and *Jones* should be heard together this Term. Both raise the question whether a court can properly find *Strickland* prejudice based on new mitigation evidence alone—*i.e.*, excluding the effect of any new aggravation evidence the prosecution would have offered. In *Jones*, the Ninth Circuit erred by failing to weigh new mitigation evidence against the original case in aggravation and by failing to weigh the State’s likely rebuttal evidence. *See* Pet. at 26-29, *Jones*, No. 22-982. In *Williams*, the Eleventh Circuit committed those same errors while also failing to consider how rebuttal evidence would have undermined the defendant’s original case in mitigation and exacerbated the original case in aggravation. *See* Pet. at 29-36, *Williams*, No. \_\_-\_\_.

2. As argued in the petition, *id.* at 33-36, consideration of *Williams* alongside *Jones* would give the Court a fuller picture of the problems plaguing the lower courts. First, *Williams* presents the same errors with a different type of rebuttal evidence—one that illustrates just how badly the exclusion of such evidence can warp the *Strickland* analysis. Whereas in *Jones*, the panel essentially ignored the testimony of three experts at the federal evidentiary hearing, Pet. at 28, No. 22-982, the court below ignored rebuttal evidence of a violent felony—that *Williams* had

attempted another rape just weeks after his first, Pet. at 30-33, *Williams*, No. \_\_-\_\_.

That is quintessential evidence in aggravation, which cannot be excluded when the question is how a jury would likely react to a proposed mitigation strategy. Second, the rebuttal evidence ignored in *Williams* would serve multiple functions—undermining both the new mitigation theory (“hypersexuality”) and the old ones (remorse and lack of criminal history) as well as proving the defendant’s future dangerousness. Because there are a great variety of *Strickland* claims involving sentencing, it would aid the Court to consider a case with a distinct type of rebuttal evidence that could play multiple roles in a proper *Strickland* inquiry.

3. The Court could expedite briefing and hear this case alongside *Jones* this Term without any prejudice to Respondent. Under this Court’s rules, Respondent’s mandatory brief in opposition is due 30 days from docketing—likely the week of January 22, 2024. *See* Sup. Ct. R. 15.1, 15.3. The next conference days are February 16 and February 23, 2024. The State would be willing to expedite its reply so the petition can be distributed for the February 16 conference. Respectfully, the State requests that the Court instruct Respondent to file a brief in opposition within the normal 30-day timeline and state that no extensions will be granted.

4. If the Court grants certiorari in this case and wishes to hear it alongside *Jones*, the Court would need to expedite merits briefing. Normally, the State would have 45 days from the order granting certiorari in which to file a brief on the merits. Sup. Ct. R. 25.1. But if the Court grants certiorari and expedites briefing, the State could file a brief on the merits by Friday, March 1, 2024. That date would make

Respondent’s brief due Monday, April 1, 2024, two weeks before the penultimate week of arguments (April 15-17, 2024) and three weeks before the final week of arguments (April 22-24, 2024) this Term. The State could prepare its reply brief in a matter of days to facilitate consideration alongside *Jones*.

5. Accordingly, if the Court grants certiorari, a possible briefing schedule in this case—preserving the full 30 days for the Respondent to respond to the petition and to brief the merits—could be the following:

- **Petition Filed:** December 21, 2023
- **Brief in Opposition Deadline:** Thursday, January 25, 2024
- **Reply Deadline:** Wednesday, January 31, 2024
- **Case Considered at Conference:** February 16, 2024
- **Petitioner’s Merits Brief Deadline:** Friday, March 1, 2024
- **Respondent’s Merits Brief Deadline:** Monday, April 1, 2024
- **Petitioner’s Reply Brief Deadline:** Monday, April 8, 2024
- **Possible Argument Days:** April 22, 23, or 24, 2024

6. The State’s proposal is one of many possibilities. If the Court further expedites the timeline or permits a reply brief within the 14-day period before argument, then it would be possible to hear argument in this case as early as April 15, 16, or 17, 2024.

7. Alternatively, if the Court grants the petition for a writ of certiorari limited to Question 2 presented by the petition (the *Strickland* issue) and no merits-briefing schedule is feasible, the State respectfully suggests that the Court construe its certiorari petition as a brief on the merits. Doing so could accelerate the merits-briefing timeline by multiple weeks.

8. Absent extensions or early filings, the briefing schedule in *Jones* is:

- **Petitioner’s Merits Brief Deadline:** Monday, January 29, 2024

- **Respondent’s Merits Brief Deadline:** Wednesday, February 28, 2024
- **Petitioner’s Reply Brief Deadline:** Friday, March 29, 2024

The State’s proposal above would have merits briefing completed in *Williams* just ten days after that of *Jones*.

9. By deciding *Williams* this Term, this Court can provide clearer guidance to lower courts on how to apply *Strickland*’s prejudice prong and help ensure justice for the victims in this case—Melanie Rowell and her family. They have waited almost three decades to see the State carry out its lawful sentence. It would be a great injustice if justice is further delayed because another State filed first.

Respectfully submitted,

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