

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

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Willie James Pye,  
*Petitioner,*

v.

Warden, Georgia Diagnostic and Classification Prison,  
*Respondent.*

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On Petition for Writ of Certiorari to the  
Georgia Supreme Court

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**BRIEF IN OPPOSITION TO THE PETITION AND THE  
REQUEST FOR A STAY OF EXECUTION**

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## **CAPITAL CASE**

### **QUESTIONS PRESENTED**

Whether this Court should grant certiorari to review a state court's decision that was based solely upon adequate and independent state law grounds.

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## INTRODUCTION

In his second state habeas petition, Petitioner Willie James Pye reasserted claims from his first petition—that he is intellectually disabled and Georgia’s beyond a reasonable doubt standard as to those claims is unconstitutional. Pye argued that the habeas court should have determined that *Moore v. Texas*, 581 U.S. 1 (2017) and *Hall v. Florida*, 572 U.S. 701 (2014) require reassessment of his claims on the merits and granted relief. The state court, applying Georgia procedural law, found that Pye’s claims were barred from its review. As the denial of these claims was based solely on Georgia procedural law, the petition present no claim worthy of the certiorari review of this Court.

### A. Petitioner’s Crimes

On appeal, the Georgia Supreme Court found the evidence at trial supporting the following:

[Defendant Willie James] Pye had been in a sporadic romantic relationship with the victim, Alicia Lynn Yarbrough, but, at the time of her murder, Ms. Yarbrough was living with another man, Charles Puckett. Pye and two companions, Chester Adams and Anthony Freeman, planned to rob Puckett because Pye had heard that Puckett had just collected money from the settlement of a lawsuit. Pye was also angry because Puckett had signed the birth certificate of a child whom Pye claimed as his own.

The three men drove to Griffin in Adams’ car and, in a street transaction, Pye bought a large, distinctive .22 pistol. They then went to a party where a witness observed Pye in possession of the large .22. Just before midnight, the three left the party and drove toward Puckett’s house. As they were

leaving, a witness heard Pye say, "it's time, let's do it." All of the men put on the ski masks which Pye had brought with him, and Pye and Adams also put on gloves.

They approached Puckett's house on foot and observed that only Ms. Yarbrough and her baby were home. Pye tried to open a window and Ms. Yarbrough saw him and screamed. Pye ran around to the front door, kicked it in, and held Ms. Yarbrough at gunpoint. After determining that there was no money in the house, they took a ring and a necklace from Ms. Yarbrough and abducted her, leaving the infant in the house. The men drove to a nearby motel where Pye rented a room using an alias. In the motel room, the three men took turns raping Ms. Yarbrough at gunpoint. Pye was angry with Ms. Yarbrough and said, "You let Puckett sign my baby's birth certificate."

After attempting to eliminate their fingerprints from the motel room, the three men and Ms. Yarbrough left in Adams' car. Pye whispered in Adams' ear and Adams turned off onto a dirt road. Pye then ordered Ms. Yarbrough out of the car, made her lie face down, and shot her three times, killing her. As they were driving away, Pye tossed the gloves, masks, and the large .22 from the car. The police later recovered these items and found the victim's body only a few hours after she was killed. A hair found on one of the masks was consistent with the victim's hair, and a ballistics expert determined that there was a 90 percent probability that a bullet found in the victim's body had been fired by the .22. Semen was found in the victim's body and DNA taken from the semen matched Pye's DNA. When Pye talked to the police later that day, he stated that he had not seen the victim in at least two weeks. However, Freeman confessed and later testified for the State.

The evidence was sufficient to enable a rational trier of fact to find proof of Pye's guilt of malice murder, kidnapping with bodily injury, armed robbery, rape, and burglary beyond a reasonable doubt. [¶] The evidence was also sufficient to authorize the jury to find that Pye's commission of kidnapping with bodily injury, armed robbery, rape, and

burglary were aggravating circumstances which supported his death sentence for the murder.

Freeman's inculpatory testimony was corroborated by other evidence that Pye was seen with the murder weapon shortly before the victim was killed, that Pye lied to the police when first questioned about the victim's death, and that Pye had previously threatened the victim's life. This evidence was sufficient to corroborate the testimony of an accomplice as required by O.C.G.A. § 24-4-8. *Castell v. State*, 250 Ga. 776, 780 (1) (c) (301 S.E.2d 234) (1983).

*Pye v. State*, 269 Ga. 779, 782-783 (1998).

Following the presentation of evidence, on June 6, 1996, the jury found Pye guilty of malice murder, kidnapping with bodily injury, armed robbery, burglary, and rape. *Id.* at 780, n.1. Following the sentencing phase of trial, on June 7, 1996, the jury recommended a death sentence for the malice murder, "finding as four separate statutory aggravating circumstances that Pye had committed [the murder] while engaged in the commission of the offenses of kidnapping with bodily injury, rape, armed robbery, and burglary." *Pye*, 269 Ga. at 779-780, 780 n.1. The trial court ordered the death sentence for the malice murder. *Id.* at 780 n.1. For the remaining counts, it "imposed three additional life sentences plus twenty years" all to be served consecutively. *Id.* On July 3, 1996, Pye filed a motion for new trial, which was denied on August 22, 1997.

Pye did not raise a claim of intellectual disability at either phase of his trial.

## **B. Direct Appeal Proceedings**

On February 3, 1998, Pye appealed his convictions and sentences. He raised no claim of intellectual disability. *See generally Pye*, 269 Ga.



779. On September 21, 1998, the court affirmed all of Pye's convictions and sentences. *Pye*, 269 Ga. at 789, *cert denied*, 526 U.S. 1118 (1999).

### **C. State Habeas Proceedings**

Pye filed his first state habeas petition on February 4, 2000, which was amended on November 17, 2006. For the first time, Pye raised claims regarding his alleged intellectual disability. He raised no claims regarding Georgia's standard of proof for intellectual disability though he briefed these issues to the Court in his post-hearing brief. (PHB, pp. 83-88).

On January 30, 2012, following a three-day evidentiary hearing, arguments of counsel, post-hearing briefs, and proposed orders, the habeas court issued a 76-page order denying Pye's petition. (Pet. App. 2). Regarding his intellectual disability claim, the court properly recognized that pursuant to O.C.G.A. § 17-7-131 (a) (3), to be found intellectually disabled, Pye had to demonstrate: 1) significant subaverage intellectual functioning,<sup>1</sup> 2) resulting in or associated with impairments in adaptive behavior, 3) which manifest prior to the age of eighteen. (Pet. App. 2, p. 18). The court utilized this standard in evaluating Pye's claim. This standard complies with the medical community. *See In re Hill*, 777 F.3d at 1217 (noting that Georgia's definition of intellectual disability tracks the clinical definitions mentioned in *Atkins*).

In that proceeding, the habeas court found that the Warden's expert, Dr. Glen King, was qualified to assess Pye's intellectual

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<sup>1</sup> As correctly noted by the habeas court, significant subaverage intellectual functioning is generally defined as an IQ of 70 or below. (Pet. App. 2 at 18).

disability. Dr. King is a licensed psychologist who has conducted thousands of tests of intellectual functioning over the course of his career.<sup>2</sup> (HT at 359). At the time of his testimony before the habeas court in this first habeas petition, he had conducted approximately 20 evaluations per week, which included testing for intellectual disability. *Id.* Additionally, Dr. King had evaluated approximately 50 post-conviction habeas petitioners in both Alabama and Georgia prior to his evaluation of Pye. *Id.* at 363. On no less than five occasions, he found habeas petitioners intellectually disabled, resulting in either acknowledgment by the State of Alabama or his retention by the petitioner to testify on the petitioner's behalf. *Id.* Pye neither objected to nor chose to voir dire Dr. King regarding his qualifications prior to the habeas court's certification of him as an expert in clinical and forensic psychology. (HT at 366).

The habeas court, in denying relief, also assessed the testing instrument chosen by Dr. King—the Adaptive Behavior Assessment System Second Edition (“ABAS-II”)<sup>3</sup> which, according to its manual, “can be used by the clinician as part of a comprehensive assessment of adaptive skills” “to evaluate the extent to which an individual displays the skills necessary to meet environmental demands” and specifically notes that it may be used in prison settings. (HT at 1094). In accordance with the manual, Dr. King relied on Pye's self-report as “[r]espondents generally should have the following qualifications: (a)

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<sup>2</sup> Pye argues that Dr. King is not qualified because he has done no research or writing on intellectual disability, but Dr. King is a practitioner not a professor.

<sup>3</sup> *Moore* does not address the ABAS-II.

frequent contact with the individual (e.g., almost every day); (b) contacts of long duration (e.g., several hours for each contact); (c) recent contact (e.g., during the past 1 to 2 months); and (d) opportunities to observe the variety of skills measured by the ABAS-II.” (HT at 1098). Dr. King then employed the standard method of administering questions to Pye—reading them literally versus a semi-structured interview. According to the authors of the ABAS-II, Thomas Oakland and Patti Harrison, this produces scoring based on a well-standardized norm group. (HT 1289).

Dr. King found that Pye’s testing data did not meet the criteria to score any of the areas of adaptive behavior as a three or below which would demonstrate a significant deficit. Dr. King’s administration of the ABAS-II found scaled scores of: 11 in communication; 8 in community use; 6 in functional academics; 8 in home living; 7 in health and safety; 6 in leisure; 7 in self-care; 7 in self-direction; and 5 in social. (HT at 10132). However, before reaching his conclusions regarding Pye’s adaptive functioning, as found by the habeas court, Dr. King also reviewed various independent sources in light of the “consensus among professionals” and the DSM guides. (R 112-13, HT 397, HT 1035). Dr. King also reviewed numerous documents including records generated during Pye’s time in the Georgia Department of Corrections; achievement test scores; school records of Pye; his work history; trial testimony; and affidavits from family, friends, teachers, co-defendants, classmates, and police officers proffered by Pye in the state habeas proceedings. (HT at 397-409). It was only after the consideration of this totality, in line with prevailing medical standards, that Dr. King

concluded that Pye did not have significant deficits in adaptive behavior.

The habeas court found that the ABAS-II was an appropriate testing tool. It found that the ABAS-II manual specifically states that the test is appropriate for use in prisons, (R 107), and there exists no medical consensus to the contrary. Even one of Pye's experts, Dr. Hyman Eisenstein, testified at the state habeas evidentiary hearing that the alternative standardized measure, the Vineland Test, which was employed by Dr. Swanson, was not appropriate to use given Pye's incarceration. Dr. Eisenstein explained that the Vineland Test "has serious limitations," which include that it is not normed for a prison population. (HT at 468-69).

Further, Dr. King did not rely on adaptive strengths *developed* by Pye in prison, as *Moore* cautions against, but rather on the skills he *displayed* in prison. *See* 137 S. Ct. at 1050. Such skills were evaluated as part of a life span, which included activities Pye was currently able to perform, at the time of the ABAS-II's administration, and those he was able to do in the past when given the opportunity. (HT at 383-84). Consistent with *Moore*, the behavior and skills displayed by Pye in prison served as corroborating measures to reflect his functioning outside of the prison setting. *See Moore*, 137 S. Ct. at 1050.

The habeas court did not credit Dr. Swanson's testimony as it concluded that her testing did not conform to prevailing medical standards. Specifically, the court found that Dr. Swanson improperly chose to retrospectively administer the ABAS-II and Vineland-II to Pye's mother, sister, and brother. (R 113). This form of administration produced unreliable scores regarding Pye's adaptive functioning. (R

113-14). The court also found that Dr. Swanson administered a semi-structured interview format of the ABAS-II to Pye's mother, which does not comport with the manual (R 115; HT 1106), and despite the manual's caution against the use of family members in a retrospective analysis since they "may be motivated to report deficits in adaptive behavior in hope that a diagnosis of [intellectual disability] will help their family member to avoid execution." (R 114; HT at 1294). The habeas court also found that Dr. Swanson's ABAS-II and Vineland-II administrations to Pye's mother, sister, and brother were beset with serious flaws rendering the results lacking in credibility. (R 121).

Reviewing all this evidence, the court credited that testimony of Dr. King and determined that, although Pye had shown that his "intellectual functions are in the low to borderline range," (Pet. App. 2, p. 18), he had failed to show significant deficits or impairments in adaptive functioning during the developmental period as required by *Stripling v. State*, 261 Ga. 1, 4 (1991). (Pet. App. 2, p. 19). It dismissed the claim as procedurally defaulted. (Pet. App. 2, pp. 17, 40)

On May 29, 2012, Pye applied for a certificate of probable cause ("CPC") to appeal the habeas court's order in the Georgia Supreme Court. He failed to include his claim regarding Georgia's standard of proof for intellectual disability.<sup>4</sup> On April 15, 2013, the Court summarily denied Pye's application.

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<sup>4</sup> In a two-sentence argument relegated to a footnote in his application, Pye generally incorporated the claim by reference to his post-hearing brief. (PHB, p. 35, n.21).

#### **D. Federal Habeas Proceedings**

Pye filed his federal habeas petition on July 24, 2013, which was amended on November 12, 2013. In his petition, Pye alleged that the habeas court's finding that he had failed to show that he was intellectual disabled was unreasonable. He also made the same arguments that he made to the state habeas court—that *Moore v. Texas*, 581 U.S. 1 (2017) and *Hall v. Florida*, 572 U.S. 701 (2014) require reassessment of his intellectual disability claim and demand relief. *See, e.g., Pye v. Chatman*, 2018 U.S. Dist. LEXIS 240421, \*101-02 (2018).

The district court found that because the Warden's expert, Dr. Glen King, "is a board certified clinical and forensic psychologist who has conducted thousands of tests of intellectual functioning and who has been qualified as an expert witness assessing intellectual disability more than a few times," the habeas court's crediting his testimony was not unreasonable. *Id.* at 103. The district court further found that the habeas court's questioning of "the reliability of Dr. Swanson's assessments using family members with obvious biases" was also reasonable. *Id.* The court noted "Petitioner's aged, ailing mother was not necessarily a reliable witness regarding thirty-seven-year-old events, and [], there were clear discrepancies between what Petitioner's brother and sister told Dr. Swanson and their trial testimony." *Id.* Additionally, the district court found that "there is certainly sufficient evidence in the record to support the state court's finding that Dr. King's [testing] methods were proper," including the ABAS manual itself. *Id.* at 103-04. In addressing *Moore*, the district court did not

find Pye’s argument persuasive and denied relief on January 22, 2018. *Id.* at 107-08.

Pye then appealed to the Eleventh Circuit Court of Appeals. Although a panel of that court initially reversed the district court and granted relief, the court sitting en banc reversed the panel and reinstated Pye’s convictions and sentences. *Pye v. Warden*, 2021 U.S. App. LEXIS 26535 (11th Cir. Ga., Sept. 1, 2021), *cert denied*, 2023 U.S. LEXIS 4368.

### **E. Second State Habeas**

On March 18, 2024, two days before his scheduled execution and over 30 years after his crimes, Pye filed a second state habeas petition which included the affidavit of additional expert to again assert that he is intellectually disabled and to challenge Georgia’s burden of proof as to intellectual disability claims. Pye claimed that *Moore* and *Hall* provide new law for reassessing his claims. The state habeas court found neither case was new intervening law and that both claims were barred from its review based on Georgia procedural law.

Specifically, the court found the intellectual disability claim was res judicata as it had previously reviewed in Pye’s first state habeas petition and found to be procedurally defaulted. (Order at 2-3). As noted by the habeas court, in the first habeas proceeding “[b]oth parties presented considerable evidence on this claim.” (Order at 2). The court also noted that, in the prior proceeding, the court “extensively and thoroughly assessed the evidence,” “including the experts’ qualifications, their methodology of testing, and their credibility.” *Id.* the habeas court considered that, after a twenty-three page review of

the evidence, the court had previously found Pye had failed to establish his claim of intellectual disability and therefore failed to establish a miscarriage of justice to overcome his procedural default of the claim. (Pet. App. 2 at 17-40).

The habeas court reviewed the new affidavit testimony and found that the court “remain[ed] firm in its previous assessments of Dr. Swanson’s and Dr. King’s qualification, evaluations, diagnoses, and credibility.” (Order at 2). The court also found that “the methodology used by Dr. King and the legal analysis utilized by this Court ere consent with *Hall* and *Moore* as they were informed by the medial community framework.” (Order at 2). The court concluded that Pye had not established new law, new facts, or a miscarriage of justice to overcome the procedural bar as to this claim. *Id.*

As to the burden of proof claim, the habeas court found that the claim was implicitly raised and rejected during Pye’s first state habeas proceedings and there was no new law, no new facts, or a miscarriage of justice to overcome the procedural bar of res judicata. (Order at 3-4). The court also found, in the alternative, if the claim was not raised based on Pye’s failure to present and argue it until his post-hearing brief, the claim was barred as successive under Georgia . (Order, p. 3).

The habeas court dismissed the petition on March 20, 2024 and denied Pye’s motion for stay of execution. (Order, p. 4). The Georgia Supreme Court summarily denied the application on the same day.



## REASONS FOR DENYING THE PETITION

**Certiorari review should be denied as the state court's finding of the procedural bar rests on an independent and adequate state law ground.**

With his execution imminent, Petitioner filed a second habeas petition alleging for a second time that he is intellectually disabled and challenging Georgia's burden of proof as to intellectual disability claims. The habeas court found these claims were barred based on state law. (Order at 2-3). The Georgia Supreme Court, summarily denying Petitioner's application to appeal, affirmed the findings of state procedural bars.

**A. The state courts correctly found that Pye's intellectual disability claim is barred based on state procedural law.**

In this second petition, the habeas court found Pye's intellectual disability claim was res judicata as it had been raised and ruled upon in in his first petition. (Order at 1-2 (quoting *Odom v. Odom*, 291 Ga. 811, 812 (2012); *Bruce v. State*, 271 Ga. 432, 434 (2001); *Hall v. Lance*, 286 Ga. 365 (2010)). Although there was a determination of procedural default in the original habeas proceeding, the habeas did a complete merits analysis of Pye's intellectual disability claim. The habeas court in the first state habeas proceeding made a specific finding that Pye had failed to establish his intellectual disability beyond a reasonable doubt as part of the miscarriage of justice analysis. (Pet. App. 2 at 17). Specifically, in the first state habeas proceeding, the court found "*Petitioner has failed to prove [intellectual disability] beyond a reasonable doubt*, and therefore, he did not prove cause and prejudice

or a miscarriage of justice to overcome the default. (Pet. App. 2 at 17) (emphasis added). Immediately thereafter, the habeas court set forth the standard for assessing intellectual disability claims, (Pet. App. 2 at 18), and then concluded “[b]ased on this standard and the record before this Court, this Court finds that Petitioner is not [intellectually disabled].” *Id.* Thus, although there was a finding of procedural default in the first state habeas proceeding, the record shows that the court conducted a complete merit analysis of Pye’s intellectual disability claim. (Pet. App. 2 at 17-40). Based on these findings, the habeas court concluded that Pye’s claim was barred from it review based on res judicata.

Further, if not res judicata, the claim remains procedurally defaulted. Georgia law is clear:

[A] failure to make timely objection to *any* alleged error or deficiency or to pursue the same on appeal ordinarily will preclude review by writ of habeas corpus. However, an otherwise valid procedural bar will not preclude a habeas corpus court from considering alleged constitutional errors or deficiencies if there shall be a showing of adequate cause for failure to object or pursue on appeal *and* a showing of actual prejudice to the accused. Even absent such a showing of cause and prejudice, the relief of the writ will remain available to avoid a miscarriage of justice where there has been a substantial denial of constitutional rights.

*Black v. Hardin*, 255 Ga. 239, 240 (1985); *see also Chatman v. Mancill*, 278 Ga. 488, 489 (2004); O.C.G.A. § 9-14-48(d).

The habeas court addressed both prejudice and miscarriage of justice. (Order at 2). The Court noted that “[b]oth parties presented considerable evidence on this claim in Pye’s first state habeas

proceeding” and that Pye had submitted a newly obtained affidavit in the instant proceedings. (Pet. App. 2 at 17-40). The habeas court reviewed that evidence along with its prior findings and held “the Court remains firm in its previous assessments of Dr. Swanson’s and Dr. King’s qualifications, evaluations, diagnoses, and credibility.” (Order at 2). The court also found that “the methodology used by Dr. King and the legal analysis utilized by this Court were and are consistent with *Hall* and *Moore* as they were informed by the medical community’s framework.” The conclusion of the court was that Pye had failed “to overcome the procedural bar in this case.” (Order at 2).

The Georgia Supreme Court affirmed the denial of habeas relief on state procedural grounds in a summary order. Therefore, as the state courts denied Pye’s intellectual disability claim on procedural state grounds, “[t]his Court lacks jurisdiction to entertain a federal claim on review of a state court judgment ‘if that judgment rests on a state law ground that is both independent of the merits of the federal claim and an adequate basis for the court’s decision.’” *Foster v. Chatman*, 578 U.S. 488, 497 (2016), quoting *Harris v. Reed*, 489 U.S. 255, 260 (1989). Certiorari review should be denied.

**B. The state court’s properly found that Pye’s burden of proof claim is barred based on state procedural law.**

Pye also alleged that Georgia’s beyond a reasonable doubt burden of proof is unconstitutional. The habeas court found that “[t]his claim was implicitly raised and rejected in Pye’s first state habeas corpus petition” and was therefore barred as *res judicata*. (Order at 3 (citing PHB at 83-88; R 101, 159 (utilizing standard and denying all claims))).

Again, Pye argues that *Moore* and *Hall* provide new law for the courts to reassess his claim. And again, the habeas court found that these cases did not establish new law, (see *Young v. State*, 312 Ga. 71 (2021); *Caldwell v. Edenfield*, 316 Ga. 751, 796 (2023)), and Pye had also failed to show new facts or a miscarriage of justice to overcome this bar. See *Valenzuela*, *supra*.

In his first state habeas petition, Pye did not raise a claim challenging Georgia’s standard of proof for intellectual disability or present evidence on the issue at the evidentiary hearing. Pye simply argued the claim in his post hearing brief to the habeas court. See Order a 3 (citing PHB at 83-88). However, in finding that Pye had not shown a miscarriage of justice to overcome the procedural default of his intellectual disability claim in the first petition, the habeas court utilized the beyond a reasonable doubt standard. (Pet. App. at 18). Also, in denying the claims, the habeas court put in a catch-all at the end of its order holding that it had considered “all of Petitioner’s allegations made in the habeas corpus petition and at the habeas corpus hearing and all the evidence and argument presented to this Court,” and concluded Pye had failed to demonstrate the denial of any of his constitutional rights. (Pet. App. at 76). Based on these references in the first final order, the habeas court in this current case found that Pye’s burden of proof claim was, at least, implicitly, denied. (Order at 3). Accordingly, the court concluded that the claim was res judicata and barred from its review. *Id.*

In the alternative, the court also held, “[i]nsofar as the claim was not raised, as it was not included in the petition, but raised only in the

post-hearing brief, it is barred as successive.” (Order at 3). As noted by the habeas court O.C.G.A. § 9-14-51 provides that:

All grounds for relief claimed by a petitioner for a writ of habeas corpus shall be raised by a petitioner in his original or amended petition. Any grounds not so raised are waived unless the Constitution of the United States or of this state otherwise requires or unless any judge to whom the petition is assigned, on considering a subsequent petition, finds grounds for relief asserted therein which could not reasonably have been raised in the original or amended petition.

(Order at 3 (citing *Bruce v. Smith*, 274 Ga. 432, 433(1) (2001); *Smith v. Zant*, 250 Ga. 645 (1983)).

The court did note that a petitioner could bring a new claim in a second or subsequent petition if that claim “could not reasonably have been raised in the original case, such as when there is a change in the facts or an intervening change in the applicable law since the prior habeas case was decided.” (Order at 3-4 (*Bruce*, 274 Ga. at 433; *see also Watkins v. Ballinger*, 308 Ga. 387, 389 (2020)). The court found that the “claim clearly could have been raised in his prior petition as Pye argued it in his post-hearing brief and there has been no change in the law. Therefore, if it is not res judicata, it is barred as successive.” (Order at 3-4). Based on those findings, the court dismissed the claim.

These findings based on state procedural law provide no basis for the granting of certiorari review by this Court. The petition and the motion for stay of execution should be denied.

## CONCLUSION

As the state court denied Pye's claims on adequate and independent state law bars, this Court should deny the petition and request for stay of execution.

Respectfully submitted.

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## **CERTIFICATE OF SERVICE**

I do hereby certify that I have this day served the within and foregoing Pleading, prior to filing the same, by emailing, properly addressed nathan\_potek@fd.org.

This 20th day of March 2024..

*s/Beth Burton*

Beth Burton

Deputy Attorney General