**No. 23-7465**

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**In the**

**SUPREME COURT OF THE UNITED STATES**

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**TREMANE WOOD,**

***Petitioner*,**

**-vs-**

**CHRISTE QUICK, Warden,**
**Oklahoma State Penitentiary**

***Respondent.***

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**On Petition for Writ of Certiorari to the**
**United States Court of Appeals for the Tenth Circuit**

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# BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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**CAPITAL CASE**
**QUESTION PRESENTED**

The Tenth Circuit, like the Western District of Oklahoma before it, determined that when Wood filed a motion in the federal district court seeking relief from judgment pursuant to Federal Rule of Civil Procedure 60(b)(6), the filing was actually an unauthorized second or successive habeas petition. Wood had originally sought habeas relief in the federal district court in 2011, claiming—among other things—he was denied the effective assistance of trial counsel for failing to investigate and present certain mitigation evidence. In making that claim, Wood—in no uncertain terms—directed the court to the specific ineffective assistance claim he raised in his 2005 direct appeal, arguing the Oklahoma Court of Criminal Appeals's ("OCCA") rejection of *that* claim in 2007 was both contrary to, and an unreasonable application of, clearly established federal law.

In his 2023 motion, Wood argued the federal district court's decision was defective because it failed to assess the 2007 OCCA's rejection of his direct appeal ineffective assistance claim against the OCCA's decision denying a *separate* claim of ineffective assistance raised by Wood in his first application for post-conviction relief.

The question presented is:

> **Does the Tenth Circuit's denial of Petitioner's request to remand his unauthorized second or successive habeas petition, in which he raised a new legal challenge to his sentence, present a compelling question for this Court's review?**

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

### FEDERAL CASES

**STATE CASES**



**FEDERAL STATUTES**



**STATE STATUTES**



**RULES**

## INTRODUCTION

Wood faults the Tenth Circuit, and the federal district court before it, for characterizing his claim of ineffective assistance of trial counsel contained within his original 2011 habeas petition exactly as he presented it—as raising the same claim he had raised in his 2005 direct appeal. Wood's claim in the original petition asserted the OCCA's 2007 direct appeal decision—rendered after a full evidentiary hearing on Wood's ineffective assistance claim—violated the Antiterrorism and Effective Death Penalty Act ("AEDPA") by rejecting his claim that trial counsel was ineffective for failing to investigate and present certain mitigating evidence ("Mitigation IAC Claim"). *See* Pet. Appx. at 015a.

In 2010, the OCCA denied Wood's first application for post-conviction relief, in which Wood raised a *new* ineffective assistance of counsel claim. That application alleged Wood's trial attorney suffered from substance abuse issues which caused him to perform ineffectively during the second stage of Wood's trial ("Substance Abuse IAC Claim"). The OCCA denied the claim, holding that Wood had presented no evidence that his trial attorney's substance abuse problems arose before or during Wood's trial.[1] *Wood v. State*, No. PCD-2005-143 (Okla. Crim. App. June 30, 2010) (unpublished); Pet. Appx. at 015a-016a.

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[1] Whether the OCCA denied this claim based solely on Wood's failure to satisfy *United States v. Cronic*, 466 U.S. 648 (1984), is immaterial. *See* Petition at 22. Wood did not raise this ineffective assistance of counsel claim—under *Cronic* or *Strickland*—in his habeas petition.

In his 2010 habeas petition, Wood "presented the same arguments that had been presented on direct appeal" with some allusions to substance abuse but "did not directly allege ineffective assistance of counsel due to substance abuse or addiction." Pet. Appx. at 016a-017a. In other words, Wood raised his Mitigation IAC Claim. Wood's AEDPA arguments referred exclusively to the OCCA's 2007 direct appeal decision. *Wood v. Workman*, No. CIV-10-0289, *Petition for a Writ of Habeas Corpus by a Person in State Custody Pursuant to 28 U.S.C. § 2254* (W.D. Okla. June 30, 2011) (Doc. 35) at 23-81[2] ("Habeas Petition"). The district court and the Tenth Circuit fulfilled their duties to review the claims Wood chose to raise. *Wood v. Carpenter*, 907 F.3d 1279, 1290-94 (10th Cir. 2018); *Wood v. Trammell*, No. CIV-10-0829-HE, 2015 WL 6621397 at *4-16 (W.D. Okla. Oct. 30, 2015) (unpublished); *see United States v. Sineneng-Smith*, 590 U.S. 371, 375-80 (2020) (holding the lower court violated the party presentation principle when it advanced a basis for relief not presented by the parties); *Harrington v. Richter*, 562 U.S. 86, 98 (2011) (placing the burden of satisfying AEDPA on the habeas petitioner).

In 2022, Wood filed another application for state post-conviction relief in which he argued his trial attorney was rendered ineffective by substance abuse. This time, Wood sought to present evidence that trial counsel's problems with substances were extant during Wood's trial. *See* Pet. Appx. at 005a-006a.

[2] References to page numbers within documents filed in the federal district court will be to the ECF page number as opposed to any internal page numbering within the document.

Armed with this "new evidence," Wood returned to the federal district court in 2023, eight years after the district court rendered its habeas decision.[3] He argued, under the guise of a motion pursuant to Federal Rule of Civil Procedure 60(b), that the district court's decision in response to his original habeas filing was plagued by a defect—the failure to assess the ineffective assistance claim he raised on direct appeal and in his habeas petition (the Mitigation IAC Claim) in light of the OCCA's denial of a different claim he raised in his first post-conviction application (the Substance Abuse IAC Claim). The district court and the Tenth Circuit found Wood's motion to be an unauthorized second or successive habeas petition. Pet. Appx. at 001-020a. This is the second petition for certiorari Wood has filed in connection with his Rule 60(b)

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[3] Wood's denial that he raised any new ground for relief from his sentence in his Rule 60(b) motion is provably false. As shown, the motion was filed almost eight years after the federal district court's allegedly flawed decision, but less than one year after the OCCA denied the 2022 post-conviction application. And Wood argued in the motion that the OCCA's application of procedural rules to the claim raised in the 2022 application provided an exception to the statutory exhaustion requirement of 28 U.S.C. § 2254(b), and "*demonstrate[d] the unreasonableness under 28 U.S.C. § 2254(d)(2) of the OCCA's 2010 postconviction*" opinion. Rule 60(b) Motion at 5 (emphasis added). Indeed, the argument portion of the motion began with a discussion of an alleged deficiency in the OCCA's procedures in light of the 2022 post-conviction application. Rule 60(b) Motion at 13-16. Wood further argued that the OCCA's 2010 post-conviction opinion contravened 28 U.S.C. § 2254(d)(2) because the OCCA did not order an evidentiary hearing. Rule 60(b) Motion at 18-19. The OCCA did order an evidentiary hearing for Wood's direct appeal ineffectiveness claim, *i.e.*, the Mitigation IAC Claim. Thus, Wood's § 2254(d)(2) challenge to the OCCA's post-conviction opinion cannot be construed as anything other than a new challenge to his death sentence. Wood's attempt to frame this argument as somehow pertaining to the OCCA's direct appeal decision is disingenuous.

Relatedly, the State *did not* agree at any point that Wood was entitled to an evidentiary hearing in his initial (or any other) post-conviction proceedings. *See* Petion at 5.

Motion. This Court denied the writ in *Wood v. Quick*, No. 23-7066, on May 28, 2024. *Wood v. Quick*, 2024 WL 2709456 (May 28, 2024).

This Court grants certiorari "only for compelling reasons," Sup. Ct. R. 10, and Wood presents no compelling reason why this Court should take up his case. Wood seeks mere error-correction. His Petition should be denied for that reason alone. However, the circuit court's decision was legally correct and aligns with every other circuit. Moreover, the reading of *Ylst v. Nunnemaker*, 501 U.S. 797 (1991), advocated by Wood would, if followed to its logical end would have incredibly broad detrimental effects in habeas practice. This Court should, therefore, deny the petition for writ of certiorari to review the decision of the United States Court of Appeals for the Tenth Circuit.

## STATEMENT OF THE CASE

Wood was convicted of first-degree felony murder and sentenced to death for stabbing and killing Ronnie Wipf in an attempted robbery at an Oklahoma City motel in the early morning hours of New Year's Day 2001.[4] Contrary to Wood's assertion, he—and not his brother—stabbed Mr. Wipf. *See Wood*, 2015 WL 6621397 at *22 (finding Wood's claim that his brother was the actual killer to be meritless). The OCCA upheld Wood's convictions and sentences following his direct appeal, *see Wood*

[4] Wood was also convicted of Robbery with a Firearm (Count 2) and Conspiracy (Count 3), both after former conviction of a felony; he was sentenced to life on each count. *Wood v. State*, 158 P.3d 467, 470 (Okla. Crim. App. 2007 (citing OKLA. STAT. tit. 21, §§ 421, 801)).

*v. State*, 158 P.3d 467 (Okla. Crim. App. 2007),[5] and then later following his first application for post-conviction relief. *Wood v. State*, No. PCD-2005-143 (Okla. Crim. App. June 30, 2010) (unpublished).[6] Wood then completed one full round of federal habeas review, obtaining no relief. *Wood*, 2015 WL 6621397, *aff'd sub nom. Wood v. Carpenter*, 899 F.3d 867 (10th Cir. 2018), *opinion modified and superseded on reh'g*, 907 F.3d 1279 (10th Cir. 2018), and *aff'd sub nom. Wood v. Carpenter*, 907 F.3d 1279 (10th Cir. 2018), *cert. denied Wood v. Carpenter*, 139 S. Ct. 2748 (2019).

In 2011, while his habeas petition was pending, Wood filed a second application for post-conviction relief which the OCCA denied on procedural grounds. *Wood v. State*, No. PCD-2011-590 (Okla. Crim. App. Sept. 30, 2011) (unpublished). None of the grounds raised therein are relevant to Wood's current petition.

In 2022, Wood again sought post-conviction relief based on alleged new evidence of trial counsel's alleged substance abuse problems; a claim the OCCA denied for procedural reasons. *Wood v. State*, No. PCD-2022-550 (Okla. Crim. App. Aug. 18, 2022) (unpublished).[7]

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[5] Wood originally sought a direct appeal in 2004, but procedural shortcomings meant he was forced to seek an appeal out of time at a later date. *See Wood v. State*, No. D-2004-550 (Okla. Crim. App. Feb. 10, 2005) (unpublished) (dismissing appeal and granting a direct appeal out of time).

[6] Wood's post-conviction application also alleged a claim of ineffective assistance of trial counsel but relied on new evidence and a new theory of relief.

[7] Respondent did not concede that Wood's claim has merit, or that his case was indistinguishable from other cases in which his trial attorney was found ineffective. *See* Petition at 14-15. Rather, the State told the OCCA: "Given the seriousness of the issue [Wood's *allegation* that trial counsel abused substances during his trial] and

Thereafter, on April 19, 2023, Wood filed a motion for relief from judgment pursuant to Federal Rule of Civil Procedure 60(b)(6) in the federal district court. *Wood v. Quick*, No. CIV-10-0829-HE, *Petitioner Tremane Wood's Motion for Relief from Judgment Pursuant to Federal Rule of Civil Procedure 60(b)(6)* (W.D. Okla. April 19, 2023) (Doc. 127) ("Rule 60(b) Motion"). Wood's motion alleged, among other things,[8] that the Western District of Oklahoma had failed to review the OCCA's "last-reasoned decision," *i.e.*, that the district court failed to *sua sponte* adjudicate the claim Wood presented in his first post-conviction application but neglected to include in his habeas petition. Rule 60(b) Motion at 18-30.[9]

The district court construed the filing to be a second or successive petition instead of a Rule 60(b) motion because it was, in truth, just an effort to raise issues not previously presented, *i.e.*, the ineffective assistance claims raised in Wood's 2005 and 2022 post-conviction applications. Pet. Appx. at 006a-009a. As a result, the district court was faced with the decision "whether to dismiss the petition for lack of

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the fact that its *implications* warranted death sentence relief in two other cases [citations omitted], Petitioner's delayed presentation [of the "new" evidence to support his substance abuse ineffective assistance claim] is inexcusable." *Wood v. State*, No. PCD-2022-550, *Response to Petitioner's Fourth Application for Post-Conviction Relief from Oklahoma County District Court case No. CF-2022-46* (Okla. Crim. App. June 29, 2022).

[8] Wood also argued that this Court's recent decision in *Cruz v. Arizona*, 598 U.S. 17 (2023), revealed how the OCCA and its rules had placed him an untenable position, making review of certain claims of ineffective assistance impossible to obtain despite his alleged diligence in the matter. Rule 60(b) Motion at 19-20.

[9] At no point did the State concede that the OCCA's 2010 post-conviction decision was the "last reasoned decision" on the ineffective assistance of counsel claim Wood raised on direct appeal and as Claim One in his habeas petition. *See* Petition at 5, 22.

jurisdiction or transfer [the matter] to the Tenth Circuit Court of Appeals." Pet. Appx. at 009a. The district court chose the latter option and transferred the matter in accord with 28 U.S.C. § 1631. Pet. Appx. at 009a.

The Tenth Circuit docketed the transferred matter as *In re Wood*, Case No. 23-6129, on September 13, 2023. In a letter to Wood's counsel the following day, the Tenth Circuit ordered Wood to either file a Motion for Authorization to file a second or successive § 2254 application, or, in the event Wood felt the district court should not have construed the filing as it did, a Motion for Remand to the district court. Letter at 1-2, *In re Wood*, No. 23-6129 (10th Cir. Sept. 14, 2023).[10]

As the letter instructed him, Wood filed a Motion to Remand that argued the district court had misconstrued the true nature of his motion. Pet. Appx. at 043a-066a. Within the filing, Wood alternatively contended his filing should be construed as a "second in time but not second-or-successive habeas petition."[11] Pet. Appx. at 062a-063a.

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[10] One day later, Wood separately attempted to appeal the district court's decision. *See Wood v. Quick*, Tenth Circuit Case No. 23-6134. The Tenth Circuit subsequently dismissed the appeal on the basis that it "lack[ed] jurisdiction to review, via this appeal, the district court's conclusion that Wood's Rule 60 motion was an unauthorized second or successive § 2254 petition." *Wood v. Quick*, 2023 WL 10479488 at *1, Case No. 23-6134 (10th Cir. Nov. 6, 2023). As previously mentioned, this Court declined to review this decision.

[11] Wood never filed a motion for authorization to file a second or successive habeas petition before the Tenth Circuit; his alternative argument before the Tenth Circuit was that his claim fell outside the prohibitions of 28 U.S.C. § 2244(b). *See* Pet. Appx. at 062a-063a. Thus, he is mistaken when he claims that the Tenth Circuit in *In re Wood* found that he "fail[ed] to satisfy § 2244(b)'s requirements[.]" Petition at 18; *see* Pet. Appx. at 077a-078a.

On January 8, 2024, a panel of the Tenth Circuit denied Wood's motion to remand as well as his alternative ground for relief. Pet. Appx. at 001a-012a. In its ruling, the court recounted the relevant filings and claims Wood made in both the state court (his direct appeal, initial post-conviction filing, and 2022 post-conviction filing) and federal court (his initial federal habeas filing and subsequent alleged Rule 60(b) Motion). Pet. Appx. at 001a-009a. In its analysis, the panel noted that Wood had conceded the district court did not fail to analyze any claim he had previously asserted (*i.e.*, in his original habeas petition). Pet. Appx. at 009a. Instead, Wood was seeking to assert a claim that he "admittedly overlooked" in raising his claim of ineffective assistance in Claim One of his habeas petition. Pet. Appx. at 009a. Circuit precedent identified such a situation as one in which the alleged Rule 60(b) motion should be treated as an unauthorized second or successive habeas petition. Pet. Appx. at 009a (citing *Spitznas v. Boone*, 464 F.3d 1213, 1216 (10th Cir. 2006)). Moreover, the circuit court rejected Wood's attempt to bypass that precedent through the "last-reasoned-decision" presumption. Pet. Appx. at 009a-0101a (citing *Ylst v. Nunnemaker*, 501 U.S. 797, 803 (1991) (holding that "[w]here there has been on reasoned state judgment rejecting a federal claim," the federal court should presume "later unexplained orders upholding that judgment or rejecting the same claim rest upon the same ground")). According to the Tenth Circuit, the *Ylst* decision "ha[d] nothing to do with the present situation [because] there [we]re no unexplained state-court orders at issue." Pet. Appx. at 010a. And the circuit court was otherwise unconvinced that any federal district court "has an independent duty to search the

last reasoned state-court decision for habeas claims that the petitioner has not raised." Pet. Appx. at 010a.[12] The Tenth Circuit also denied Wood's request for alternative relief, which argued that—if his claims pertaining to his Rule 60(b) Motion were rejected—his filing should be construed as a second in time but not a second-or-successive habeas petition and remanded to the district court as such. Pet. Appx. at 011a-012a. The court noted that, were his filing truly a second in time petition, there would be no need to remand the issue—Wood could simply file in the district court—and questioned why he had not done so if that were the case. Pet. Appx. at 011a-012a.

On May 9, 2024, Wood's petition for writ of certiorari was placed on this Court's docket. Quick filed a motion to extend the time in which to file a response on May 31, 2024, which was granted by this Court, making the brief in opposition due on July 12, 2024.

## REASONS FOR DENYING THE PETITION

There is no compelling reason for this Court to grant certiorari to review the issues in Wood's case. *See* Sup. Ct. R. 10 (noting this Court grants certiorari "only for compelling reasons"). Wood has petitioned this Court now three times in quick succession, *see Wood v. Oklahoma*, No. 22-6538 (cert. denied April 3, 2023), *Wood v.*

[12] The Tenth Circuit also rejected Wood's argument, raised for the first time in his reply brief, that the district court's duty to identify the last-reasoned decision, and thereafter address its reasoning, was a jurisdictional matter. Pet. Appx. at 010a. "The last-reasoned-decision presumption has nothing to do with the district court's 'power or authority to hear and decided cases.'" Pet. Appx. at 010a (citing *Atlas Life Ins. Co. v. W.L.S., Inc.*, 306 U.S. 563, 568 (1939) (alteration accepted)).

*Quick*, No. 23-7066 (cert. denied May 28, 2024), seeking to rely on "new" evidence to further litigate the performance of his trial counsel. Now, in his most recent attempt, Wood fares no better mainly due to the fact his case is a poor vehicle for any change in this area of the law. In particular, Wood's Rule 60(b) Motion was destined to be denied even if it had been construed as a "true" Rule 60(b) motion instead of a second or successive habeas petitioner. Moreover, Wood seeks to utilize this Court's limited resources for the purpose of simple error correction. *See* Sup. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."). Making matters worse on this front, any relief granted by this Court would be limited to Wood's case alone, as he has failed to identify other similar cases suffering from the same alleged issues. Indeed, Wood's Petition is premised on an entirely novel—and incorrect—reading of *Ylst v. Nunnemaker*, 501 U.S. 797 (1991) (providing that later unexplained orders in the state court are deemed to rest upon the same grounds as those existing in earlier explained decisions).

*Ylst* simply held that, when a state appellate court does not provide any reasoning for its decision—and, thus, it is unclear whether the appellate court denied relief on the merits or on procedural grounds—a federal habeas court must presume the appellate court's decision rested on the same grounds as the last lower court's "reasoned" decision. 501 U.S. at 803.[13] Wood interprets the term "last reasoned

[13] The term "unexplained" was defined as "an order whose text or accompanying opinion does not disclose the reason for the judgment." 501 U.S. at 802. "The essence of unexplained orders," this Court noted, "is that they say nothing." 501 U.S. at 804.

decision" in ways never envisioned by the authors of the opinion in *Ylst* or any subsequent federal court since, to impose unjustified obligations upon federal habeas courts. Wood's interpretation of the holding in *Ylst* would not solve a problem—indeed, he has acknowledged below the failure to properly raise the issue in his original habeas petition was his own oversight—but create several new ones; habeas litigants would be incentivized to circumvent enshrined habeas principles (*i.e.*, briefing requirements, finality, second and successive petitions) to breathe deviant new life into claims years after the fact by simply omitting some aspect of the claim and blaming the district court for the omission. For these reasons, this Court should deny Wood's Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit.

## I. Certiorari should be denied because Wood's case is a poor vehicle for the question presented, and the question presented is not a compelling issue.

Certiorari review is unwarranted because Wood's case is a poor vehicle for the resolution of the question he presents pertaining to the alleged "defect" in the federal district court's habeas decision, which he cited as the basis for his Rule 60(b) Motion. Petition at i, 18-30. In other words, even if this Court granted certiorari review on this specific question presented, the outcome of the litigation below would remain the same. This is due in large part to the federal district court's revealing its hand when it first transferred Wood's case to the Tenth Circuit following his initial filing of the

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Thus, contrary to Wood's assertions, the Tenth Circuit did not announce a new rule that contravenes *Ylst*. *See* Petition at 1.

alleged Rule 60(b) Motion. In concluding Wood's filing was not a true Rule 60(b) Motion, but rather a second or successive habeas petition, the district court explained that it harbored "considerable doubt whether relief would be warranted even if [Wood]'s current motion was treated as a Rule 60 Motion." *Wood v. Trammell*, No. CIV-10-0829-HE, *Order* ("Transfer Order") (W.D. Okla. Sept. 13, 2023) (Doc. 131 at 7 n.1). As such, Wood appears to be angling toward a loss whether this Court grants certiorari or not. This Court has repeatedly expressed its distaste for such meaningless litigation. *See, e.g., Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011) ("Courts should think carefully before expending 'scarce judicial resources' to resolve difficult and novel questions of constitutional or statutory interpretation that will 'have no effect on the outcome of the case.'") (quoting *Pearson v. Callahan*, 555 U.S. 223, 236-37 (2009)); *Klehr v. A.O. Smith Corp.,* 521 U.S. 179, 192 (1997) (refusing to resolve a split among the circuit courts regarding discovery accrual rules because, *inter alia*, it would not affect the outcome of the case); *The Monrosa v. Carbon Black Exp., Inc.*, 359 U.S. 180, 184 (1959) (explaining this Court only decides "questions of public importance" in the "context of meaningful litigation," and when the challenged issue may not affect the ultimate judgment of the court below, that issue "can await a day when the issue is posed less abstractly").

Making matters worse for Wood, he also presents an uncompelling issue. His Petition fails to indicate how any decision in his favor—while unlikely to result in a favorable ultimate outcome for himself, as shown above—would be of any benefit to similarly situated petitioners beyond his own case. Nor has Wood identified any other

circuit courts struggling to deal with the precise legal issues here (apart from his claim that the Tenth Circuit rendered an erroneous decision in his specific case) to show why this Court should take up his case. *See Golden v. Zwickler*, 394 U.S. 103, 108 (1969) (this Court does not issue advisory opinions, but rather decides "'concrete legal issues presented in actual cases, not abstractions'" (quoting *United Public Works of American (C.I.O.) v. Mitchell*, 330 U.S. 75, 89 (1947))); *cf. The Monrosa*, 359 U.S. at 184. In reality, as will be shown below, there is no festering federal habeas disharmony surrounding this issue which would serve as an incentive for this Court to utilize its limited resources to take up Wood's misguided claim.

## II. The Tenth Circuit correctly dispelled Wood's mistaken understanding of the "last reasoned decision" doctrine established in *Ylst* to reject his Rule 60(b) Motion.

In the circuit court, Wood argued the federal district court's transfer of his claim as an unauthorized second or successive habeas petition was erroneous. Pet. Appx. at 10-16. According to Wood, his habeas case warranted reopening because the federal district court had failed "to apply § 2254(d) to the OCCA's last-reasoned 2010 denial of [his] penalty-phase IAC claim." Pet. Appx. at 11. This reopening, Wood claimed, was warranted because his motion was not an attack on "the substance of the federal court's resolution of a claim on the merits, but [rather] some defect in the integrity of the federal habeas proceedings." Pet. Appx. at 12 (citing *Gonzalez v. Crosby*, 545 U.S. 524, 532 (2005)). But the Tenth Circuit correctly rejected Wood's flawed understanding of the "last-reasoned-decision presumption" in its termination order. Pet. Appx. at 009a-011a.

Under AEDPA, a federal court *must* apply 28 U.S.C. § 2254(d) to "the last state-court adjudication on the merits of petitioner's claim." *Brown v. Davenport*, 596 U.S. 118, 141 (2022) (quoting *Greene v. Fisher*, 565 U.S. 34, 40 (2011)). If, as in *Ylst*, it is unclear whether the state's highest court's decision was procedural or substantive, the federal court will presume the higher court denied relief on the same ground as the last lower court to give reasons for its decision. And if the decision of the highest state court was based on a finding that the claim lacked constitutional merit (for instance, when no procedural impediments to the claim exist), but the court did not explain its reasoning, a federal court must apply § 2254(d) to the decision of the last lower court to explain its reasoning. *Wilson v. Sellers*, 584 U.S. 122, 129-34 (2018). In both instances, (1) the decision of the highest state court provides no indication of that court's reasoning, and (2) the federal court looks to a *prior* opinion addressing *the same claim*.

Wood's misapprehension of this "look through" doctrine and his attempt to circumvent the restrictions on second or successive habeas petitions (28 U.S.C. § 2244(b)) by arguing the federal district court was required to ignore the OCCA's *reasoned* denial of one claim in favor of its *subsequent* denial of a *different* claim is unaligned with this Court's precedent. Petition at 18-32. The Tenth Circuit recognized Wood's flawed reasoning, stating that the "look-through" doctrine "has nothing to do with the present situation [because] there are no unexplained state court orders at issue." That is still true in this case. The OCCA's adjudication of Wood's ineffective assistance of trial counsel claim on direct appeal (*i.e.*, his

Mitigation IAC claim) was a full merits decision. *Wood v. State*, 158 P.3d 467 (Okla. Crim. App. 2007). The OCCA's subsequent adjudication of Wood's first post-conviction claim that counsel was ineffective due to alleged substance abuse during his trial (*i.e.*, his Substance Abuse IAC claim) was also a merits decision. The fact that the two proceedings both involved claims of ineffective assistance of trial counsel is of no import to the application of the *Ylst* doctrine. *Cf. Piccard v. Connor*, 404 U.S. 270, 277 (1971) (a claim is not exhausted in state court unless the petitioner has given the state court the opportunity to apply controlling law "to the facts bearing upon [his] constitutional claim.").

Wood's approach to the "look through" doctrine finds no support in this Court's case law or that of any circuit court. Wood admits in his Petition to this Court that his original habeas petition did not point out for the federal district court that the 2010 decision was supposedly the last-reasoned state court decision on the merits of his Claim One *Strickland* claim. Petition at 29. His admission on this point, given the assistance of counsel, should prove fatal to any claim attributing this supposed defect to the district court. *See Sineneng-Smith*, 590 U.S. at 375-76 ("as a general rule, our system 'is designed around the premise that [parties represented by competent counsel] know what is best for them, and are responsible for advancing the facts and argument entitling them to relief.'" (quoting *Castro v. United States*, 540 U.S. 375, 386 (2003) (Scalia, J., concurring in part and concurring in judgment)) (alteration adopted); *Reedy v. Werholtz*, 660 F.3d 1270, 1274 (10th Cir. 2011) ("If Plaintiffs were pro se, we would construe their pleadings liberally…. But they are represented by

counsel, and we expect attorneys appearing before this court to state the issues on appeal expressly and clearly, with theories adequately identified and supported with proper argument."); *Frey v. Schuetzle*, 78 F.3d 359, 361 (8th Cir. 1996) ("[F]ederal courts should not grant habeas relief to a petitioner based upon a legal theory that involves an entirely different analysis and legal standards than the theory actually alleged by the petitioner. This is especially true when the habeas petition … was prepared by counsel." (internal citations omitted)).

But Wood's admission is only one part of the truth as to who bears the blame for this supposed defect; the district court was guided to its understanding of the "last reasoned decision" by Wood himself. A full review of his Claim One contained within his habeas petition shows Wood pointed the federal district court exclusively to the OCCA's direct appeal decision; his summary of the argument to the district court cited that decision as "both contrary to and an unreasonable application of clearly established federal law…." Habeas Petition at 23. As he proceeded through his arguments in Claim One, Wood repeatedly referred the district court to the OCCA's direct appeal opinion and never referred the district court to the 2010 post-conviction decision. *See* Habeas Petition at 23, 28-30, 36-37, 39-43, 48-53. Moreover, Wood expressed at one point in his Claim One a firm understanding of the "look through" doctrine, one entirely consistent with this Court's prior rulings in cases like *Ylst* and its progeny and inconsistent with his current approach. In relation to a specific sub-claim of ineffective assistance concerning trial counsel's alleged failure to investigate and present testimony from a social worker who would have discussed Wood's

upbringing and development, Wood noted that, while the state district court made a record of its ruling excluding the social worker's testimony, the OCCA direct appeal decision did not discuss the lower court's ruling on the issue. Habeas Petition at 40 n.27. As such, Wood contended—in conjunction with a citation to *Ylst* no less—the "last reasoned decision on this issue" was that of the state district court. Habeas Petition at 40 n.27. And, if this were not enough, Wood appeared entirely capable of directing the federal district court to the OCCA's 2010 denial of his first application for post-conviction relief when he believed it to be the relevant last reasoned decision; he did so at least four times in his original habeas petitionas to other grounds for relief. *See, e.g.,* Habeas Petition at 85 (explaining the OCCA denied relief on a claim of prosecutorial misconduct by finding it was procedurally barred), 92 (challenging the OCCA's determination on a claim of ineffective assistance of appellate counsel), 99 (noting the OCCA disposed of an ineffective assistance issue—not the one presented in this Petition—on lack-of-prejudice grounds), 100 (arguing the OCCA failed to conduct a cumulative error analysis). So, contrary to Wood's contention in his Petition, this was much more than an alleged oversight or neglect on his part.

But Wood posits that his failure was not one for which he should be held to account. Petition at 29. Instead, Wood would have this Court interpret the term "look through" in an entirely novel way, one which would require federal district courts not simply to analyze a specific claim as it worked its way through a line of appeal from lower state court to higher state courts, but to comb through *all* state court decisions involving the habeas petitioner—even those specifically omitted by a petitioner as the

case is here—to see if any *subsequent* state court decision might conceivably touch upon the claim. But the "look through" doctrine is not a prospective doctrine, as Wood makes it out to be; as its name implies, it generally "looks through" the latter decision into the past to determine the basis of a state court denial of relief.

If there were any defect in the organization, presentation, or resolution of his Claim One, the fault lies with Wood and not any lower federal court. Had Wood truly believed the district court's review of his Claim One focused on the wrong state court decision, one would expect him to have raised the issue on appeal to the Tenth Circuit several years ago. Instead, signaling his belief that no such defect plagued the federal district court decision, Wood made no such claim. *See Wood v. Carpenter*, 907 F.3d 1279 (10th Cir. 2018); *cf Jones v. Ryan*, 733 F.3d 825, 834-37 (9th Cir. 2013) (determining that an attack based on habeas counsel's omissions in the petition generally does not go to the integrity of the proceedings, but, rather is a disguised second or successive habeas petition masquerading as a motion for relief from judgment).

Wood's suggested understanding of the doctrine would have significant detrimental effects upon habeas litigation, affecting established principles such as the party presentation principle. *See Sineneng-Smith*, 590 U.S. at 375-80; *Harper v. Lumpkin*, 64 F.4th 684, 692 (5th Cir. 2023) (en banc) (stating that "[i]t is beyond debate" that claims cannot be hidden within the crevices of voluminous records and transcripts); *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991) ("Judges are not like pigs hunting for truffles buried in the briefs"); *Adams v. Armontrout*, 897

F.2d 332, 333 (8th Cir. 1990) ("We join the numerous federal courts which have repeatedly expressed their unwillingness to sift through voluminous documents filed by habeas corpus petitioners in order to divine the grounds or facts which allegedly warrant relief."); *Adv. Comm. Notes to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts* ("'[N]otice' pleading is not sufficient, for the petition is expected to state facts that point to a 'real possibility of constitutional error.'" (quoting *Aubut v. State of Maine*, 431 F.2d 688, 689 (1st Cir. 1970))). Without any assurances as to which state court decision was in question, habeas respondents would be saddled with the truly unattainable burden of defending against those claims a habeas petitioner presented as well as those which were not presented. This uncertainty would undoubtedly spill over and have similar harmful impacts to concepts such as finality, *see Calderon v. Thompson*, 523 U.S. 538 555, 557 (1989) ("Finality is essential to both the retributive and deterrent functions of criminal law," and "the State's interests in finality [of its convictions and sentences] are all but parament."); *Coleman v. Thompson*, 501 U.S. 722, 747 (1991) (noting the importance of finality to states' criminal litigation), as there would potentially be no end to a petitioner's ability point to yet another state court decision as one which should have been assessed for the purposes of AEDPA—even, as in this case, a decision from a post-conviction application filed eleven years after the habeas petition. All established principles concerning the rule against second or successive habeas petitions would be in jeopardy as well, *see* 28 U.S.C. § 2244; *Graham v. Johnson*, 168 F.3d 762, 782-89 (5th Cir. 1999) (discussing the requirements that a litigant seek

authorization before filing a second or successive habeas petition), because a litigant could simply recast their second or successive claim—similar to what Wood has done here—as a Rule 60(b) Motion and bypass the established requirement of circuit court authorization. Seen in this way, a grant of certiorari would not only be contrary to the facts, circumstances, and existing legal principles at issue in Wood's specific case, but would also generate all new problems for this and other federal courts to remedy as the effects of any decision favorable to Wood permeated the habeas universe. Habeas petitioners would be allowed to sidestep established habeas principles simply by omitting any discussion of a specific state court decision and alleging the federal district court's decision contained a "defect" by not analyzing the uncited state court decision.

But the Tenth Circuit avoided those pitfalls by determining that Wood's motion was an unauthorized second or successive habeas petition. Pet. Appx. at 009a-011a. When presented with a Rule 60(b) Motion in a habeas context, a court must "first determine … whether the motion is a true Rule 60(b) Motion or a second or successive petitioner," or a "mixed" motion. *Spitznas v. Boone*, 464 F.3d 1213, 1216 (10th Cir. 2006). In *Spitznas*, the Tenth Circuit expounded on the differences between "true" Rule 60(b) motions and second or successive habeas petitions. *Id*. "[A] [Rule] 60(b) motion filed in a habeas proceeding is a second or successive petition if it in substance or effect asserts or reasserts a federal basis for relief from the petitioner's underlying conviction." *Id*. at 1215. Among the examples *Spitznas* cited as those properly defined as second or successive petitions were those "seeking to present a claim of

constitutional error omitted from the movant's initial habeas petition" or "seeking leave to present newly discovered evidence in order to advance the merits of a claim previously denied." *Id*. at 1216.

The Tenth Circuit relied on *Spitznas*' language to expose Wood's filing as the second or successive petition it truly is. *See id*. The Tenth Circuit noted Wood's concession that the district court did not fail to consider any claim that he had raised. Pet. Appx. at 009a. Instead, the Tenth Circuit concluded, Wood was seeking to assert a claim that he had overlooked. Pet. Appx. at 009a. That conclusion was correct. As shown above, at no point did Wood argue in Claim One—or any other claim—of his original habeas petition that the OCCA's 2010 denial of post-conviction relief was contrary to or an unreasonable application of this Court's clearly established law concerning the effective assistance of counsel.

Wood criticizes the Tenth Circuit's characterization of his argument as a "claim," and contends that his argument merely called out the "defect" in the federal district court's decision. Petition at 25-30. But this Court's holding in *Gonzalez v. Crosby*, 545 U.S. 524, 530 (2005) (emphasis added), dictates "that a 'claim' as used in § 2244(b) is an asserted federal basis for relief *from a state court's judgment of conviction*." Wood obviously presented a new "claim," as the Tenth Circuit recognized because he argued the OCCA's 2010 and 2022 decisions contravened § 2254(d). Rule 60(b) Motion at 5, 13-16, 18-19. *See Sheppard v. Robinson*, 807 F.3d 815, 819-22 (6th Cir. 2015) (finding the movant's motion for relief from judgment was actually a second or successive petition with regard to his claims of ineffective assistance of counsel

because the cited claims were not set forth in his first habeas petition). Moreover, the legal and factual bases of his claim shifted, another fact that did not escape the Tenth Circuit's scrutiny; whereas in his direct appeal, Wood argued his counsel "failed to investigate his background, present mitigating evidence, and impeach a witness," Pet. Appx. at 002a, his first application for post-conviction relief argued that his trial counsel's substance abuse issues rendered his representation "so deficient as to give rise to prejudice *per se* under *United States v. Cronic*, 466 U.S. 648, 658-61 (1984)," Pet. Appx. at 004a. In light of these discrepancies, it is worth repeating again, Wood *never* attacked the OCCA's 2010 post-conviction decision in Claim One of his original habeas petition. While he posits that he is simply pointing out a "defect" in the federal district court's decision, in actuality, his Rule 60(b) Motion presented an entirely new claim.[14] This Court should deny certiorari as the Tenth Circuit appropriately denied Wood's motion to remand.

## III. There is no circuit split on the application of *Ylst*'s "look through" doctrine to discover the "last reasoned decision" in the habeas context.

[14] Given the disparity between the claims presented in Wood's direct appeal and his first application for post-conviction relief, one might wonder how any court would even begin to analyze the claims in his Claim One (those mirroring his direct appeal claims, which relied on specific pieces of evidence not presented at his trial to demonstrate deficient performance and prejudice) against the OCCA's 2010 post-conviction application denial (which analyzed trial counsel's alleged substance abuse broadly under *Cronic*). Wood fails to spell out how any such analysis would proceed under § 2254(d), much less how he could hope to be successful in such an endeavor. Instead, Wood spends a great deal of his time discussing the content of his 2022 post-conviction application, which was denied certiorari review by this Court last year. *See Wood v. State*, No. PCD-2022-550 (Okla. Crim. App. Aug. 18, 2022) (unpublished), *cert. denied Wood v. Oklahoma*, 143 S. Ct. 1098 (2023).

Wood contends that the Tenth Circuit's decision "improperly limited the application of *Ylst*'s last-reasoned-decision rule" because it rejected the imposition of an "independent duty" upon the federal habeas courts to search out unrelated state court decisions and consider their holdings for purposes of AEDPA review. Petition at 32. Wood argues that this holding was in clear contravention to "every other federal court of appeals interpreting and applying" the *Ylst* decision. Petition at 32. As support, Wood cites multiple circuit court cases. Petition at 30-32. But none of those decisions involved a situation where a federal habeas court felt independently compelled to analyze a subsequent state court decision regarding a separate claim in an entirely separate case for AEDPA purposes after being exclusively directed by the petitioner to an earlier state court decision as the last reasoned state court decision. *See Allen v. Stephan*, 42 F.4th 223, 244, 247 (4th Cir. 2022) (analyzing the *earlier* decision of the lower circuit court judge given that the Supreme Court of South Carolina denied relief in an unexplained order); *McCray v. Capra*, 45 F.4th 634, 639-40 (2d Cir. 2022) (evaluating the decision of the New York Court of Appeals which rendered the last decision in the process of McCray's direct appeal); *Lucio v. Lumpkin*, 987 F.3d 451, 466-67 (5th Cir. 2021) (noting that different Texas state court proceedings, direct appeal and then state habeas, adjudicated Lucio's different claims at various points in relation to how she raised those claims and, as such, the respective decisions would be evaluated in accordance with how they were raised); *Jordan v. Hepp*, 831 F.3d 837, 843 (7th Cir. 2016) (reviewing the decision of the Wisconsin Court of Appeals as well as the district court's *preceding* order in light of

the fact that the appellate court "explicitly adopted" the lower court's order); *Lee v. Corsini*, 777 F.3d 46, 54 (1st Cir. 2015) (reviewing the decision of a single judge of the Massachusetts Supreme Judicial Court when it was clear the decision represented the last reasoned opinion); *Amado v. Gonzalez*, 758 F.3d 1119, 1130 (9th Cir. 2014) ("But, where (as in this case) a lower state court issues a decision that the state appellate court does not agree with, we review the state appellate court's decision only and do not consider the lower state court's opinion."); *Loza v. Mitchell*, 766 F.3d 466, 473-500 (6th Cir. 2014) (reviewing at times the decision of the Ohio Supreme Court and at others the decision of the Ohio Court of Appeals depending upon where the petitioner argued the claim was raised); *McGahee v. Alabama Dep't of Corr.*, 560 F.3d 1252, 1261 n.12 (11th Cir. 2009) (reviewing the petitioner's federal habeas jury selection claim in light of the merits decision of the Alabama Court of Criminal Appeals as opposed to the summary denial by the Alabama Supreme Court); *Bond v. Beard*, 539 F.3d 256, 289-90 (3d Cir. 2008) (reviewing the decision of a lower court denying post-conviction relief, instead of the decision of the Pennsylvania Supreme Court that followed, because the lower court's decision "represent[ed] the state courts' last reasoned opinion" on the specific claims the petitioner was raising and because it "had not been supplemented in a meaningful way by the higher state court"); *Mark v. Ault*, 498 F.3d 775, 782-83 (8th Cir. 2007) (analyzing the decision of the lower Iowa Court of Appeals as the last reasoned decision for AEDPA purposes as opposed to the ruling of the Iowa Supreme Court which denied discretionary review of the case); *Church v. Sullivan*, 942 F.2d 1501, 1505-08, (10th Cir. 1991) (analyzing the

petitioner's six claims which were raised in his last round of litigation in the New Mexico habeas court (and which were repeated in his federal habeas petition) where the state habeas court constituted the last reasoned decision). Indeed, in each, the decision as to which decision constituted the "last reasoned decision" was a straightforward issue that was uncontested. As such, Wood's cited authority reveals no circuit split and provides no compelling reason as to why certiorari should be granted in his case.

## IV. Respondent does not contest this Court's jurisdiction to review the Tenth Circuit's order denying Wood's motion to remand.

Wood's second question presented and associated briefing, which contends that this Court possesses jurisdiction to review the circuit court's denial of his motion to remand, *see* Petition at 32-36, takes aim at an issue that does not appear to be in dispute by the decisions of this Court. Respondent does not contest this Court's jurisdiction to address the Tenth Circuit's decision below as the AEDPA does not appear to restrict the application of certain federal rules such as Rule 60(b). The Tenth Circuit recognized as much in its disposal of Wood's associated case below. *See Wood v. Quick*, 2023 WL 10479488 (10th Cir. Nov. 6, 2023) ("We are not persuaded by Wood's suggestion that the district court's decision will evade full review in [this case currently before this Court now] because 28 U.S.C. § 2244(b)(3)(E) prohibits petitions for rehearing and certiorari.") (citing *Castro v. United States*, 540 U.S. 375, 380 (2003) (noting that § 2244(b)(3)(E)'s prohibition on further appeals only applies where the subject of a petition for further review is the denial of authorization to file a second or successive habeas petition); *In re Clark*, 837 F.3d 1080, 1082 (10th Cir.

2016) (holding that § 2244(b)(3)(E) did not bar a petition for rehearing as to a procedural matter apart from the denial of authorization to file a second or successive habeas petition)).

In *Gonzalez v. Crosby*, this Court stated that "AEDPA did not expressly circumscribe the operation of Rule 60(b)," and noted that "[i]f neither the [Rule 60(b)] motion itself nor the federal judgment from which it seeks relief substantively addresses federal grounds for setting aside the movant's state conviction, allowing the motion to proceed as denominated creates no inconsistency with the habeas statute or rules." 545 U.S. 524, 529, 533 (2005). Given that Wood is still pursuing his claim as the denial of a proper Rule 60(b) motion, there does not appear to be any impediment to this Court's jurisdiction.

## CONCLUSION

The Petition for Certiorari should be denied.

Respectfully submitted,

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