

No. 23-7499

IN THE
SUPREME COURT OF THE UNITED STATES

RUSSELL WILLIAM TUCKER,

Petitioner,

v.

NORTH CAROLINA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE NORTH CAROLINA
SUPREME COURT

BRIEF IN OPPOSITION

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CAPITAL CASE

QUESTION PRESENTED

Did the North Carolina Supreme Court err when it determined that (1) Petitioner's claims under *Batson v. Kentucky* were subject to a mandatory procedural bar under state law and (2) Petitioner failed to establish any statutory exception to the procedural bar?

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INTRODUCTION

Respondent respectfully asks this Court to deny the petition for a writ of certiorari. In 1996, Petitioner was convicted by a jury of first-degree murder and sentenced to death in North Carolina state court after he shot at four people, killing one of them and injuring two responding police officers. During jury selection, Petitioner objected without success under *Batson v. Kentucky*, 476 U.S. 79 (1986), to the prosecution's peremptory strikes of three prospective jurors. Petitioner did not reassert his *Batson* claims either on direct appeal or in multiple post-conviction motions for appropriate relief filed in state court. Thereafter, on appeal from the denial of a successive motion filed in 2017, the North Carolina Supreme Court declined to reach the merits of Petitioner's now-reasserted *Batson* claims, concluding that North Carolina's post-conviction statutes imposed a mandatory procedural bar and Petitioner failed to establish any exception to the procedural bar.

The North Carolina Supreme Court's decision does not warrant further review. The court's conclusion that Petitioner's *Batson* claims were procedurally barred under state law constitutes an independent and adequate state-law ground for denying Petitioner's claims; this Court does not review claims decided on such grounds. Moreover, Petitioner demonstrates no violation of this Court's precedents and no conflict of authorities arising from the North Carolina Supreme Court's decision. The North Carolina Supreme Court correctly applied North Carolina's statutory procedural bar, and Petitioner's fact-bound *Batson* claims are meritless. Further review is unwarranted.

STATEMENT OF THE CASE

A. The Crime

In 1994, Petitioner fatally shot 23-year-old Maurice Travone Williams while Williams was working his first day on the job as a K-Mart security guard. Williams, together with a K-Mart loss-prevention specialist, William Maki, and another K-Mart employee, Travis Church, approached Petitioner outside of a Super K-Mart in Winston-Salem, North Carolina after Petitioner exited the store with approximately ninety dollars' worth of clothing for which he did not pay. *North Carolina v. Tucker*, 490 S.E.2d 559, 561 (N.C. 1997). When Maki asked Petitioner for his receipt, Petitioner pulled out a semiautomatic pistol and fired it at Maki, barely missing him but leaving gunpowder burns on Maki's face. *Id.* Williams and Church attempted to retreat, running back towards the store, but Petitioner shot Williams as he ran away, striking him in the torso and penetrating his aorta and both lungs. *Id.* Petitioner then ran several hundred feet to a different area of the K-Mart parking lot, where he was approached by a marked police vehicle driven by Winston-Salem Police Officer S.E. Spencer with Officer H.M. Bryant in the passenger seat. *Id.* As the police vehicle approached, Petitioner slowed to a walk, turned, and fired five bullets into the vehicle, striking and injuring both Officers Spencer and Bryant. *Id.*

B. Trial and Jury Selection

Petitioner was indicted for the first-degree murder of Williams and two counts of assault with a deadly weapon with intent to kill inflicting serious injury as to Officers Spencer and Bryant. App. 1. In 1996, Petitioner was tried by a jury and found

guilty of first-degree murder. App. 1. Following a sentencing hearing, and upon the jury's unanimous recommendation, the trial court sentenced Petitioner to death for the first-degree murder conviction. App. 1.

During jury selection, Petitioner lodged *Batson* objections to the prosecution's peremptory strikes of three Black prospective jurors: Debra Banner, Thomas Smalls, and Wayne Mills. App. 1. Under *Batson*'s three-step inquiry, a defendant must make a prima facie showing that the prosecutor exercised a peremptory challenge on the basis of race; if the trial court finds the defendant made a prima facie showing, the State must then articulate its race-neutral reasons for the strike; finally, the trial court must determine whether the State's proffered reasons are pretextual and whether the defendant carried the burden of proving purposeful discrimination. *Batson*, 476 U.S. at 79. Before the trial court ruled on Petitioner's *Batson* objections, the State and Petitioner stipulated that both Petitioner and Williams were Black; of the two officers involved, one was Black and one was white; and race "ha[d] not been an issue" in the case. App. 43-45.

Regarding Petitioner's *Batson* objection as to Banner, the trial court ruled that Petitioner failed to establish a prima facie case of purposeful racial discrimination under *Batson*'s first step. App. 45-46. When a defendant fails to establish a prima facie case of purposeful racial discrimination under *Batson*'s first step, the inquiry need not proceed further. However, the trial court here after ruling directed the State to give its reasons on the record for the peremptory strike of Banner. App. 45-46. The

State offered multiple race-neutral reasons for the strike, including that Banner's profession as a nurse made it unlikely she would vote to impose the death penalty; her night-shift work made it difficult for her to stay awake during the proceedings and she in fact fell asleep during the selection and questioning of other jury members; and Banner expressed early on that she preferred not to serve on the jury. App. 47. The trial court stated that these were "racially neutral reasons" and "apt and appropriate explanations for the challenged strikes." App. 54.

As for Smalls, the trial court ruled that Petitioner failed to establish a prima facie case of purposeful racial discrimination under *Batson's* first step. App. 45-46. After ruling, the trial court again directed the State to give its reasons on the record for the peremptory strike of Smalls. App. 45-46. Among its reasons, the State explained that Smalls indicated he would only commit to being able to impose the death penalty if he "had to" do so, and overall, his responses to questions about his ability to impose the death penalty were not strong. App. 46-47.

Lastly, as for Mills, the trial court ruled that Petitioner failed to establish a prima facie case of purposeful racial discrimination under *Batson's* first step. App. 73-75. In so ruling, the trial court detailed the number and proportion of juror strikes by race at that point in the proceedings, finding there was not a disproportionate number of peremptory strikes of Black prosecutive jurors. App. 73. The court also detailed the demographics of the witnesses and investigators in the case and found that "basically this is a case in which race has not been an issue and at this stage of

the proceeding continues not to be an issue that has been raised” in either public opinion surrounding the case or by the parties. App. 73. Finally, the court observed that the prosecution’s questioning of prospective jurors did not “tend to support an inference of discrimination” because the questioning was “typically the same for each juror without regard to race.” App. 73.

Specifically noting that the burden had not shifted to the State under *Batson*’s second step, the trial court then directed the State to give its reasons on the record for the peremptory strike of Mills. App. 75-76. The prosecution stated in response that Mills was not only hesitant about his ability to impose the death penalty, but he had also been untruthful about his criminal record. App. 76-77. The trial court stated that the State’s articulated reasons constituted a “race neutral explanation for this challenged strike.” App. 78.

C. Petitioner’s Direct Appeal and 1998 and 2001 Post-Conviction Motions for Appropriate Relief

Petitioner appealed his conviction and death sentence in the North Carolina Supreme Court but did not reassert his previously unsuccessful *Batson* challenges on direct appeal. The North Carolina Supreme Court affirmed Petitioner’s convictions and sentence, finding no error in the trial court proceedings below. *Tucker*, 490 S.E.2d at 561-65. This Court denied Petitioner’s petition for a writ of certiorari. *Tucker v. North Carolina*, 523 U.S. 1061 (1998).

Petitioner thereafter filed his first post-conviction motion for appropriate relief in state court in 1998, which he amended in 2000. App. 5. Like on direct appeal,

Petitioner did not reassert any of his previously unsuccessful *Batson* challenges. App. 5. The trial court denied Petitioner's post-conviction motion and the amendment thereto; however, the North Carolina Supreme Court later vacated the trial court's order and remanded the case for the appointment of new post-conviction counsel. *North Carolina v. Tucker*, 545 S.E.2d 742 (N.C. 2000). Petitioner's new counsel filed a second amended post-conviction motion for appropriate relief in 2001, again raising no *Batson* claims. App. 5. Following evidentiary hearings in 2004 and 2006, the trial court denied Petitioner's motion. App. 5. The North Carolina Supreme Court denied certiorari review. *North Carolina v. Tucker*, 651 S.E.2d 560 (N.C. 2007).

D. Petitioner's 2017 Successive Motion for Appropriate Relief

More than ten years later, in 2017, Petitioner filed a successive post-conviction motion for appropriate relief, which he amended in 2019 and 2020. App. 6. In his successive motion, Petitioner raised for the first time post-trial his *Batson* challenges regarding Banner, Smalls, and Mills, contending now that he had newly discovered evidence to support his claims. App. 6. Specifically, Petitioner asserted that a one-page continuing legal education (CLE) handout, which "list[ed] ten legally acceptable justifications for the use of peremptory challenges," App. 6, and a statistical study on jury selection in North Carolina, conducted by two law professors at Michigan State University College of Law (the MSU study), constituted newly discovered evidence that allowed him to overcome the state procedural bar in N.C. Gen. Stat. § 15A-1419(a) (2017).

The trial court denied Petitioner's 2017 successive motion for appropriate relief, along with the 2019 and 2020 amendments thereto, concluding that Petitioner's *Batson* claims were procedurally barred under state law. App. 6. The trial court found that Petitioner failed to raise his *Batson* claims on direct appeal or in his previous post-conviction motions, despite that "the trial court identified the *Batson* issue as a possible issue on appeal and said so in the presence of the parties." App. 6. Further, the trial court found that Petitioner "failed to show good cause, actual prejudice, or a fundamental miscarriage of justice" to overcome the procedural bar set forth in N.C. Gen. Stat. § 15A-1419(a). App. 6.

E. The North Carolina Supreme Court's Opinion

The North Carolina Supreme Court affirmed the trial court and held that Petitioner's *Batson* challenges were procedurally barred under state law. The court first agreed with the trial court that Petitioner could bring his *Batson* challenges through a successive post-conviction motion for appropriate relief only if he could establish a statutory exception to the mandatory procedural bar set forth in N.C. Gen. Stat. § 15A-1419(a). App. 11. Petitioner argued that he could show both "good cause" and "actual prejudice" to satisfy the statutory exception in N.C. Gen. Stat. § 15A-1419(b)(1). The "good cause" exception is satisfied when, as relevant here, a movant supports a procedurally barred claim with "newly discovered evidence," the factual predicate of which "could not have been discovered through the exercise of reasonable diligence in time to present the claim on a previous State . . . postconviction review."

N.C. Gen. Stat. § 15A-1419(b)(1), (c)(3). Petitioner asserted that the CLE handout and the MSU study constituted “newly discovered evidence” that proved the State’s proffered reasons for striking Banner, Smalls, and Mills were pretextual. App. 11.

The North Carolina Supreme Court first observed that Petitioner’s argument focused on the wrong inquiry; the trial court ruled that Petitioner failed to establish a *prima facie* showing of purposeful racial discrimination under *Batson*’s first step, while Petitioner’s alleged newly discovered evidence was relevant to the inquiry under *Batson*’s third step: “Because defendant offers the CLE handout and the MSU study as ‘newly discovered evidence’ of purposeful discrimination and pretextual reasons proffered by the State in striking [Banner, Smalls, and Mills], [the] purported ‘newly discovered’ evidence does not address his failure to establish a *prima facie* case at step one.” App. 11.

Next, addressing the CLE handout, the court explained that the one-page handout provided by Petitioner “restate[d], in a list format, the established caselaw reviewing legally permissible reasons to exercise a peremptory challenge of a potential juror.” App. 13. Because the handout merely summarized existing caselaw, the court explained, it failed to support any claim of racial animus: “[M]ere knowledge of the state of the law under *Batson* does not raise any inference of discriminatory intent.” App. 13. The court reasoned that, taken to its logical end, Petitioner’s argument would allow a *prima facie* case of purposeful discrimination to be shown

“simply by alleging that an attorney researched the law on *Batson*, or that he or she had a section in a trial notebook on defenses to *Batson* objections.” App. 14.

The court further concluded that Petitioner could not demonstrate “good cause” under N.C. Gen. Stat. § 15A-1419(c)(3) because the material in the CLE handout was not new and was not evidence: “[D]efendant could have conducted legal research and arrived at a proper understanding of the legally recognized justifications set forth in the CLE handout on his own[.]” App. 14. Consequently, the court ruled that the CLE handout “is not only not newly discovered . . . it is not ‘evidence’ that raises an inference of impermissible race-based peremptory challenges at step one.” App. 14.

Addressing the MSU study, the court first explained that the MSU study was created to assist capital defendants, including Petitioner, with filing post-conviction motions under North Carolina’s Racial Justice Act, N.C. Gen. Stat. § 15A-2010 *et seq.* (enacted 2009, amended 2012, repealed 2013). App. 15. The court then determined that the “the [trial] court correctly concluded the study was ‘not newly discovered’ but ‘newly created’ ” evidence. App. 15. On this point, the court observed that the case data analyzed in the MSU study were available and could have been analyzed by Petitioner’s counsel at an earlier time: “That gathering such information may have been difficult or time consuming does not change its character.” App. 15.

The North Carolina Supreme Court further concluded that, even assuming arguendo that data from some of the cases analyzed in the MSU study could not have been discovered through the exercise of reasonable diligence, Petitioner could not

show actual prejudice because the methodology relied upon in the MSU study was “fundamentally flawed.” App. 16-17. The court explained that, in many of the cases analyzed in the MSU study, and in each of the Forsyth County cases analyzed, the authors of the MSU study “inaptly imputed racial motives to peremptory strikes for cases in which *Batson* arguments had not been made or *Batson* violations had not been found.” App. 16. Because of its flawed methodology, the court concluded, the MSU study “lacks relevance” and “has no probative value” to support a claim of purposeful racial discrimination under *Batson* because the study purports to identify discrimination in jury selection by “utilizing cases in which *Batson* arguments were not made, *Batson* violations were not found, and/or appellate courts determined that *Batson* violations did not exist.” App. 17. Addressing the policy reasons against accepting a statistical analysis like the MSU study as “newly discovered evidence” under N.C. Gen. Stat. § 15A-1419(c)(3), the court reasoned that allowing defendants to wait indefinitely to assert their claims until third-parties favorably analyze pre-existing data would result in an endless cycle of post-conviction litigation: “The ‘factual predicate’ contemplated by section 15A-1419(c) is either available or unavailable to a defendant—it is not a matter of creative packaging.” App. 18.

In conclusion, the North Carolina Supreme Court held that Petitioner’s *Batson* claims were subject to the mandatory procedural bar in N.C. Gen. Stat. § 15A-1419(a)(1) and (a)(3) because Petitioner was “in a position to adequately raise his *Batson* claim[s] in his prior appeal and previous post-conviction proceeding and failed

to do so,” and Petitioner could not overcome the state procedural bar because he “failed to establish that he qualifies for a statutory exception[.]” App. 22.

REASONS FOR DENYING THE WRIT

I. The North Carolina Supreme Court denied Petitioner’s *Batson* claims on an independent and adequate state-law procedural ground, which precludes certiorari review.

This Court “will not review a question of federal law decided by a state court if the decision of that court rests on a state law ground that is independent of the federal question and adequate to support the judgment.” *Lambrix v. Singletary*, 520 U.S. 518, 522-23 (1997) (citing *Coleman v. Thompson*, 501 U.S. 722, 729 (1991)). *See also Harris v. Reed*, 489 U.S. 255, 262 (1989); *Michigan v. Long*, 463 U.S. 1032, 1042 (1983); *Herb v. Pitcairn*, 324 U.S. 117, 125-26 (1945). This rule applies whether the state law ground is substantive or procedural. *Coleman*, 501 U.S. at 729. “[W]hen a petitioner fails to raise his federal claims in compliance with relevant state procedural rules, the state court’s refusal to adjudicate the claim ordinarily qualifies as an independent and adequate state ground for denying federal review.” *Cone v. Bell*, 556 U.S. 449, 465 (2009) (citing *Coleman*, 501 U.S. at 731). State procedural bars count as adequate if they are “ ‘firmly established and regularly followed.’ ” *Jonhson v. Lee*, 578 U.S. 605, 606 (2016) (quoting *Walker v. Martin*, 562 U.S. 307, 316 (2011)).

Petitioner asks this Court to review the merits of his constitutional claims under *Batson*, and to address whether, under *Batson*’s three-part substantive inquiry, the North Carolina Supreme Court should have been required to accept his

evidence in the form of the CLE handout and the MSU study as proof of purposeful discrimination. PWC pp. 17-23. Petitioner, however, ignores that the North Carolina Supreme Court affirmed the state trial court's decision to deny his 2017 successive motion for appropriate relief, and its included *Batson* claims, not on the merits but because the claims were subject to a mandatory procedural bar under N.C. Gen. Stat. § 15A-1419(a)(1) and (a)(3) because Petitioner failed to raise his claims on direct appeal or in multiple prior post-conviction motions for appropriate relief. Petitioner also failed to establish "good cause" and "actual prejudice" under North Carolina's statutory procedural rules, N.C. Gen. Stat. § 15A-1419(b)(1) and (c)(3), to overcome the mandatory procedural bar.

North Carolina's state procedural bar in N.C. Gen. Stat. § 15A-1419(a) "is an independent and adequate state ground." *Williams v. French*, 146 F.3d 203, 209 (4th Cir. 1998), *cert. denied*, 525 U.S. 1155 (1999). *See also Ashe v. Styles*, 39 F.3d 80, 87-88 (4th Cir. 1994) (explaining that a federal habeas petition should have been denied on the basis of procedural default because the North Carolina court denied relief under N.C. Gen. Stat. § 15A-1419(a), which is "an adequate in independent state law ground of decision"); *O'Dell v. Netherland*, 95 F.3d 1214, 1241 (4th Cir. 1996) (en banc) (holding that unambiguous procedural rules derived from state statutes are necessarily "firmly established"), *aff'd*, 521 U.S. 151 (1997).

Petitioner does not deny in his certiorari petition that North Carolina's mandatory procedural bar in N.C. Gen. Stat. § 15A-1419(a) constitutes an

independent and adequate state law ground to resolve his claims. Accordingly, this Court lacks jurisdiction to review the state court's judgment below and Petitioner's procedurally barred *Batson* claims. *See Lambrix*, 520 U.S. at 523 ("We in fact lack jurisdiction to review such independently supported judgments . . . : Since the state-law determination is sufficient to sustain the decree, any opinion of this Court on the federal question would be purely advisory.") (citing *Herb*, 324 U.S. at 125-26).

II. Petitioner argues only that the North Carolina Supreme Court misapplied settled law, and he identifies no conflict of authorities arising from the state court's decision.

Petitioner first asserts that the North Carolina Supreme Court failed to heed this Court's well-settled rule that *Batson* requires courts to consider at step one of its inquiry "all relevant circumstances" bearing on the question of purposeful discrimination in jury selection. PWC pp. 17-19. *See, e.g., Batson*, 476 U.S. at 96; *Flowers v. Mississippi*, 588 U.S. 284, 304-05 (2019); *Miller-El v. Cockrell*, 537 U.S. 322, 346-47 (2003). A state court's misapplication of settled law, however, is not a reason to grant a petition for a writ of certiorari. *See* Supreme Court Rule 10(b) and (c). Moreover, the North Carolina Supreme Court did not refuse to apply this Court's clear precedents regarding the proper scope of the inquiry under *Batson*'s first step; rather, the court did not reach *Batson*'s first step because it concluded that Petitioner's claims were barred by North Carolina's mandatory procedural rules. App. 22. Petitioner identifies no conflict of authorities arising from the North Carolina Supreme Court's opinion.

Petitioner asserts that the manner in which the North Carolina Supreme Court addressed the MSU study in its opinion also “effectively resurrected” the improper burden of proof required under *Swain v. Alabama*, 380 U.S. 202, 226 (1965). PWC pp. 19-20. Petitioner is incorrect. In *Swain*, 380 U.S. at 203-04, this Court held that a “State’s purposeful or deliberate denial to [Black jurors] on account of race [the] participation . . . in the administration of justice violates the Equal Protection Clause.” However, to prove “purposeful discrimination” in the exercise of a prosecutor’s peremptory strikes under *Swain*, a defendant was *required* to provide evidence that the prosecutor engaged in a systematic pattern of strikes against Black jurors by providing statistical evidence outside of the defendant’s own case. *Id.* at 226.

Twenty-one years later in *Batson*, this Court created a new three-part test to assess the merits of claims of purposeful racial discrimination in jury selection. 476 U.S. at 96-99. In creating the new three-part test, *Batson* disposed of *Swain*’s onerous standard of proof and no longer required a defendant challenging the constitutionality of a prosecutor’s peremptory strikes to show that the strikes were part of a “systematic pattern” over years to exclude Black prospective jurors. *Id.* *Batson*, however, did not reject the use of statistics as a means to prove discrimination in the exercise of peremptory strikes under the Equal Protection Clause; rather, it rejected *Swain*’s requirement that statistics *must be used*, in favor of a holistic analysis that considered “all relevant circumstances.” *Id.* at 96.

Contrary to Petitioner's assertion, nothing in the North Carolina Supreme Court's opinion below resurrected the burden of proof from *Swain*. The North Carolina Supreme Court did not rule that Petitioner was required to provide statistics showing a "systematic pattern" of discrimination before he could prevail on his substantive equal-protection claims. Rather, when Petitioner offered a statistical study to assert that he satisfied an exception to the otherwise applicable mandatory state procedural bar, the court considered, and discredited due to a flawed methodology, the merits of the statistical conclusions Petitioner offered. Nothing in *Batson* or its progeny requires courts blindly to accept flawed statistical analyses.

Finally, Petitioner asserts that the North Carolina Supreme Court violated this Court's opinion in *Hernandez v. New York*, 500 U.S. 352 (1991) (plurality opinion) when the state court limited the scope of its analysis for "actual prejudice" under N.C. Gen. Stat. § 15A-1419(b)(1) to whether Petitioner's submitted materials, if indeed constituting "newly discovered evidence," might produce a different outcome under *Batson*'s first step. In *Hernandez*, a plurality of this Court stated that "[o]nce a prosecutor has offered a race-neutral explanation for the peremptory challenges and the trial court has ruled on the ultimate question of intentional discrimination, the preliminary issue of whether the defendant has made a prima facie showing becomes moot." 500 U.S. at 359. This language from *Hernandez*, however, is from a plurality opinion that is not binding. And *Hernandez* is easily distinguishable. The prosecutor in *Hernandez* "defended his use of peremptory strikes without any prompting or

inquiry from the trial court. As a result, the trial court had no occasion to rule that [the defendant] had or had not made a prima facie showing of intentional discrimination.” 500 U.S. at 359. In this case, by contrast, the trial court expressly ruled that Petitioner failed to make a prima facie showing of purposeful racial discrimination regarding each of his three *Batson* objections. Only after issuing its rulings did the trial court then direct the State to give its reasons on the record for its peremptory strikes. App. 45-46. The North Carolina Supreme Court did not violate any binding decision of this Court when it limited its analysis of “actual prejudice” to the outcome of the inquiry under *Batson*’s first step.

III. The North Carolina Supreme Court correctly applied its state procedural law, and Petitioner’s fact-bound *Batson* claims are meritless.

The North Carolina Supreme Court correctly concluded that Petitioner’s *Batson* claims were procedurally barred under N.C. Gen. Stat. § 15A-1419(a)(1) and (a)(3) because he failed to raise the claims, despite an adequate opportunity to do so, on direct appeal or in his 1997 and 2001 post-conviction motions for appropriate relief. *See* N.C. Gen. Stat. § 15A-1419(a)(1) (a claim is procedurally barred if upon a previous motion for appropriate relief “the defendant was in a position to adequately raise the ground or issue underlying the present motion but did not do so”), (a)(3) (a claim is procedurally barred if upon a previous appeal “the defendant was in a position to adequately raise the ground or issue underlying the present motion but did not do so”). To overcome this procedural bar, Petitioner needed to demonstrate both “good

cause” and “actual prejudice,” *see* N.C. Gen. Stat. § 15A-1419(b)(1). Relevant here, to demonstrate “good cause,” Petitioner needed to show that his claim was based on a “factual predicate that could not have been discovered through the exercise of due diligence in time to present the claim on a previous State or federal postconviction review.” N.C. Gen. Stat. § 15A-1419(c)(3). And to demonstrate “actual prejudice,” he needed to “establish by a preponderance of the evidence” that an error in the trial proceedings worked to his disadvantage, “raising a reasonable probability . . . that a different result would have occurred but for the error.” N.C. Gen. Stat. § 15A-1419(d).

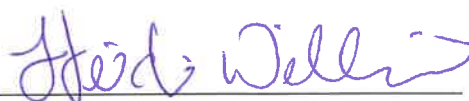
The North Carolina Supreme Court reasonably and correctly determined that the CLE handout and the MSU study were not “newly discovered evidence” because they only organized or analyzed materials already in existence and that were previously available to Petitioner. App. 16-19. The court’s additional conclusion that Petitioner failed to establish “actual prejudice” was also reasonable and correct, App. 19-21; Petitioner cannot show with any reasonable probability that the one-page CLE handout, which merely “restate[d] . . . existing caselaw,” App. 13, and a statistical study that relied on a flawed methodology would have changed the result of his *Batson* challenges. This is particularly true where the trial court record supports numerous race-neutral reasons for the prosecution’s peremptory strikes of Banner, Smalls, and Mills. *See supra* pp. 3-5. Petitioner identifies no compelling reason for this Court to interfere with the North Carolina Supreme Court’s interpretation and application of its own state procedural rules.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted, this the 15th day of August, 2024.

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