

No. 24-1153

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IN THE  
**Supreme Court of the United States**

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COREY SCHIROD SMITH,

*Petitioner,*

*v.*

JOHN Q. HAMM, COMMISSIONER,  
ALABAMA DEPARTMENT OF CORRECTIONS,

*Respondent.*

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ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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**REPLY BRIEF**

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JERRY KRISTAL  
*Counsel of Record*  
WEITZ & LUXENBERG, P.C.  
700 Broadway  
New York, NY 10003  
(212) 558-5500  
jkristal@weitzlux.com

*Counsel for Petitioner*



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**REPLY**

Petitioner, Corey Schirod Smith, submits this Reply Brief to address respondent's misunderstanding of his Petition for Writ of Certiorari argument.

A writ of certiorari should be granted because the Eleventh Circuit in conducting its *Strickland v. Washington*, 466 U.S. 668 (1984), prejudice analysis and applying all AEDPA deference due pursuant to 28 U.S.C. § 2254, nonetheless misapplied *Strickland* by failing to follow well-established Supreme Court principle.

The principle that was not followed, first articulated over 40 years ago and reaffirmed last year, requires a reviewing court conducting a *Strickland* prejudice analysis to consider the totality of the mitigating and aggravating evidence. “To determine whether a prisoner satisfies [the *Strickland* prejudice] standard, a court *must* ‘consider the totality of the evidence before the judge or jury’—both mitigating and aggravating.” *Thornell v. Jones*, 602 U.S. 154, 164 (2024), quoting *Strickland* 466 U.S. at 695 (emphasis added).

In *Thornell*, this Court reversed the Ninth Circuit's decision in *Jones v. Ryan*, 1 F.4th 1179 (9th Cir. 2021) which had applied AEDPA (28 U.S.C. § 2254) to its review. In doing so, this Court held the Ninth Circuit misapplied *Strickland*. Specifically, this Court held that the Ninth Circuit departed from well-established Supreme Court rules because “it failed adequately to take into account the weighty aggravating circumstances in this case. As noted, the panel's initial opinion did not mention those circumstances at all. After the State petitioned for

rehearing and 10 judges voted to grant the petition, the panel issued an amended opinion that at least mentioned the aggravating circumstances, but it failed to give them the weight that they would almost certainly be accorded by an Arizona sentencing judge.” 602 U.S. at 164.

This is precisely the case here. The Eleventh Circuit failed to consider the totality of the evidence when it did not take into account the weighty lay mitigating circumstances presented postconviction in this case. The Eleventh Circuit did not consider, nor did it mention in its opinion, the Alabama Rule 32 hearing testimony of petitioner’s brother, Reginald Smith or the numerous statements of eyewitness family members and friends detailing petitioner’s lifelong physical and emotional abuse and drug abuse. *See*, Petition for Writ of Certiorari at 15-18.

Respondent does not dispute these failures. Respondent does not dispute that Reginald Smith’s Rule 32 testimony was not substantively considered by the Eleventh Circuit.

Respondent concedes the statements of 13 lay witnesses made to and summarized by one of petitioner’s experts were admitted, substantively, into evidence at the Alabama Rule 32 hearing.

Respondent does not dispute the substance of those 13 witnesses’ statements, detailed in the Petition for Writ of Certiorari at 16-18, which establish and corroborate the extensive physical and emotional abuse perpetrated on petitioner and his virtual lifelong abuse of numerous mind-altering drugs.

Respondent also does not dispute this evidence was neither presented to nor heard by the jury or trial judge. While respondent details, at length, the testimony of the lay witnesses who testified at sentencing, conspicuously absent from respondent's recitation is any mention that Corey Smith was brutally physically and emotionally abused by his mother and brother. No such evidence was presented at sentencing due to counsels' deficient performance in failing to investigate. Conspicuously absent from respondent's lengthy recitation of the testimony of the lay witnesses at sentencing is any mention that Corey Smith began abusing drugs at a very early age and continued to do so throughout his life prior to the offense. No such evidence was presented at sentencing due to counsels' deficient performance in failing to investigate.<sup>1</sup>

Respondent does not dispute the Eleventh Circuit did not consider, nor did it mention in its opinion, this lay witness significantly mitigating evidence presented at the Alabama Rule 32 hearings.

This Court, for decades, has required review and consideration of the *totality* of the mitigating evidence presented postconviction in determining whether petitioner met his burden under *Strickland*. The Eleventh Circuit failed to follow this well-established principle by neither considering nor mentioning the extensive

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1. While respondent points out that the Rule 32 court did not find *Strickland* deficient performance, neither the reviewing state court nor the district court or Eleventh Circuit made any deficient performance finding. *See, Smith v. State Ala.*, 122 So. 3d 224, 237 (Ala. Crim. App. 2011); *Smith v. Hamm*, 2023 WL 171772 (U.S.D.C. M.D. Ala. 2023) at 13; *Smith v. Commissioner, Alabama Department of Corrections*, 2024 WL 5075281 (11th Cir. 2024).

eyewitness lay evidence of brutal physical and emotional abuse and drug abuse presented postconviction.

By failing to do so, the Eleventh Circuit misapplied *Strickland* in its prejudice analysis. The Eleventh Circuit, thereby, failed to adhere to well-established Supreme Court principle.

### CONCLUSION

For the foregoing reasons, Petitioner Corey Schirod Smith prays this Court grant a writ of certiorari to the United States Court of Appeals for the Eleventh Circuit.

Respectfully submitted,

JERRY KRISTAL

*Counsel of Record*

WEITZ & LUXENBERG, P.C.

700 Broadway

New York, NY 10003

(212) 558-5500

jkristal@weitzlux.com

*Counsel for Petitioner*

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