

IN THE SUPREME COURT OF THE UNITED STATES

WILLIE R. BURGESS, JR.,
Petitioner,

v.

STATE OF ALABAMA,
Respondent.

On Petition for Writ of Certiorari
to the Alabama Court of Criminal Appeals

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

I. The State’s brief obscures that Mr. Burgess seeks only an opportunity to prove his claim at an evidentiary hearing.

The State attempts to distract this Court from the narrow, but important, issue Mr. Burgess raises: his right to an evidentiary hearing under *Strickland*, having alleged all of the facts required to plead a facially meritorious claim. Pet’r’s Br. 10–11; *Strickland v. Washington*, 466 U.S. 668 (1984). The state court’s refusal to grant him a hearing under these circumstances highlights an important issue, namely Alabama’s pattern of summarily dismissing post-conviction petitions, on the merits, without taking any evidence. Pet’r’s Br. 10, 18; Appendix E.

Taken as true, Mr. Burgess’s factual allegations unequivocally establish both prongs of *Strickland*. Yet, Alabama courts dismissed his claims on the merits and denied him a hearing contrary to both *Strickland* and Alabama law. Pet’r’s Br. 10–11, 17; *Ex Parte Boatwright*, 471 So. 2d 1257, 1258 (Ala. 1985) (establishing post-conviction pleading standard). Because Alabama failed to fulfill its “duty to grant the relief that federal law requires,” Mr. Burgess’s petition requests this Court summarily reverse and allow him to prove his allegations at a hearing. Pet’r’s Br. 14; *Montgomery v. Louisiana*, 577 U.S. 190, 204–05 (2016) (quoting *Yates v. Aiken*, 484 U.S. 211, 218 (1988)).

According to the State, this Court should deny certiorari because even on remand, lower courts might deny Mr. Burgess relief. Specifically, the State contends that Mr. Burgess’s petition “poses only a hypothetical—if Burgess’s amendment were accepted, *would* his ‘allegations, taken as true, unequivocally

establish the elements of a *Strickland* violation?” Opp’n Br. 2; *see also* Opp’n Br. at 17. But this hypothetical is inherent in the pleading standard. In Alabama, as in most jurisdictions, a court must conduct an evidentiary hearing when a post-conviction petition “is meritorious on its face, *i.e.*, one which contains matters and allegations (such as ineffective assistance of counsel) which, *if true*, entitle the petitioner to relief.” *Ex Parte Boatwright*, 471 So. 2d at 1258 (emphasis added); *see, e.g., State v. Anderson*, 547 P.3d 345, 353 (Ariz. 2024) (“In [post-conviction] proceedings, a defendant states a colorable claim entitling him to an evidentiary hearing when ‘he has alleged facts which, if true, would probably have changed the verdict or sentence.’”) (internal quotations and original emphasis omitted); *Flubacher v. State*, 414 P.3d 161, 165 (Haw. 2018) (“[A] trial court should hold an evidentiary hearing on a . . . petition for post-conviction relief if the petition states a colorable claim for relief . . . alleg[ing] facts that, if taken as true, would change the verdict.”); *see also Padilla v. Kentucky*, 559 U.S. 356, 369 (2010) (“Accepting his allegations as true, Padilla has sufficiently alleged constitutional deficiency to satisfy the first prong of *Strickland*.”). That Mr. Burgess’s petition accurately reflects the well-established pleading standard does not make this case a poor vehicle for this Court’s review.

Mr. Burgess seeks only an evidentiary hearing. He is well aware that a court cannot grant him a new trial unless and until he proves the allegations in his petition. The fact that Mr. Burgess will not receive a new trial unless he prevails in the courts below on remand is not relevant to the merits of the question presented

to this Court. In both *Hinton* and *Padilla*, for example, this Court reversed on the important matters of law those cases presented—even though a remand was necessary in each case for the lower courts to assess the merits of each petitioner’s *Strickland* claim. See *Hinton v. Alabama*, 571 U.S. 263, 276 (2014); *Padilla*, 559 U.S. at 369.

The State obscures the straightforward issue presented here by claiming that Mr. Burgess’s *Strickland* claim failed “for multiple reasons unrelated to its merits.” Opp’n Br. 10. But the state court unequivocally held that “even with the facts as alleged in the proposed amendment,” he was not entitled to a hearing on his *Strickland* claim. *Burgess v. State*, 2023 WL 4146021, at *7 (Ala. Crim. App. June 23, 2023).¹ As they have done in well over half the capital post-conviction cases in the state, Alabama courts denied Mr. Burgess’s well-pleaded *Strickland* claim on the merits without giving him a day in court to prove his allegations. This important issue is ripe for the Court’s review, and Mr. Burgess’s case presents an ideal vehicle to address it.

II. The State all but ignores the troubling summary dismissal trend that Mr. Burgess’s case exemplifies.

The State devotes very little of its brief to the central issue Mr. Burgess raises: the troubling pattern of summary dismissals in Alabama post-conviction death penalty cases. Opp’n Br. 16–17, 21–22. To the extent that it does respond, it

¹ As Mr. Burgess explained in his petition, with respect to the claim regarding counsel’s failure to present the testimony of a firearms expert, his amendment alleged both the name of a firearms expert and that such an expert “would have testified” at trial to the specific facts alleged in the petition. Pet’r’s Br. at 8 n.3 (citing C. 1300).

erroneously asserts that the high number of post-conviction petitions dismissed without an evidentiary hearing in Alabama state courts is immaterial because meritorious claims represent “needles in the haystack.” Opp’n Br. 17.² Since post-conviction petitions raise “dozens of frivolous claims,” the State reasons, a high dismissal rate “makes perfect sense.” Opp’n Br. 15. Yet this allegation disregards the data Mr. Burgess presented in his petition. Pet’r’s Br. 18–19, Appendix E; Opp’n Br. 16–17.

The State’s argument that Mr. Burgess fails to demonstrate a systemic issue is unsupported and circular. Opp’n Br. 22. The Alabama courts’ denial of a hearing in at least 62% of cases during the most recent ten-year period is merely proof that the state court chose to deny the claims, not that all claims within those petitions lack merit. Pet’r’s Br. 18–19. *Daniel v. Commissioner, Ala. Dep’t of Corr.*, 822 F.3d 1248 (11th Cir. 2016) is illustrative. Finding that the petitioner had failed to “sufficiently and specifically plead his claims under Alabama Rule of Criminal Procedure 32.6(b) and 32.7(a),” Alabama courts denied relief. *Daniel v. State*, 86 So. 3d 405, 441 (Ala. Crim. App. 2011). The Eleventh Circuit, however, held petitioner had “pleaded more than sufficient specific facts” to show deficient performance and prejudice under *Strickland*. 822 F.3d at 1257–58, 1263. While most of the cases identified in Appendix E are still pending in the federal courts, cases like *Daniel*

² Additionally, the State mischaracterizes Mr. Burgess’s emphasis on Alabama’s summary dismissal trend as a challenge to Alabama’s post-conviction pleading standards. Opp’n Br. 14–17. This is incorrect. Mr. Burgess does not question Alabama’s ability to adopt pleading standards; rather, he presents more than two dozen cases in which petitioners like him have been denied a meaningful opportunity to obtain relief. Pet’r’s Br. 18–19; Appendix E.

demonstrate that a state court’s summary denial on the merits cannot be taken as evidence that the petitioner would not be able to prove the claim if given the opportunity.

III. *Hinton* and *Padilla* are illustrative of the relief Mr. Burgess is due.

Contrary to the State’s suggestion that *Hinton v. Alabama* is distinguishable, the Court’s ruling in that case explains why Mr. Burgess’s petition merits an evidentiary hearing. Opp’n Br. 20. In *Hinton*, the Court ruled that counsel acted deficiently by knowingly hiring an “incompetent and unqualified” expert witness. 571 U.S. at 270, 274. During a post-conviction hearing, Mr. Hinton presented three expert witnesses who testified that the bullets found at various crime scenes could not be linked to a firearm at his residence. *Id.* at 270. Upon review of the state courts’ denial of the Rule 32 petition, this Court held that Alabama courts had misapplied *Strickland*, emphasizing that “counsel has a duty to make reasonable investigations.” *Id.* at 264, 276 (quoting *Strickland*, 466 U.S. at 691). Like the petitioner in *Hinton*, Mr. Burgess has sufficiently pleaded deficient performance and now seeks the same opportunity to present the expert firearms testimony his counsel should have offered at trial. Pet’r’s Br. 7–8, 13–14.

The State also claims it is “wholly unclear” how *Padilla v. Kentucky* is relevant. Opp’n Br. 21. In fact, the Court establishes in *Padilla* that so long as a petitioner’s allegations, if taken as true, sufficiently allege a claim of deficient performance, the petitioner satisfies *Strickland*’s first prong. 559 U.S. at 369. As informed by *Padilla* and the Rule 32 pleading standard, Mr. Burgess alleged facts

that, if taken as true, established counsel acted below the reasonable standard of care. Pet'r's Br. 6–7. In other words, Mr. Burgess does not argue—as the State claims—that a bare allegation of unreasonableness is enough to grant relief, but rather that sufficiently pleaded facts detailing counsel's deficient performance entitles him to a hearing. Pet'r's Br. 5–7, 17; *Padilla*, 559 U.S. at 369.

While the State correctly asserts that “[c]ounsel is not ineffective for failing to pursue a losing strategy,” *Strickland* dictates that counsel *is* ineffective for failing to pursue a strategy that a reasonably competent attorney in similar circumstances at the time would have pursued. *Strickland*, 466 U.S. at 687, 690. The latter point is exactly what Mr. Burgess alleges: trial counsel acted deficiently by failing to present expert witnesses to testify in support of an unintentional shooting theory that was the heart of his defense at a time when expert testimony was common practice in capital cases. Pet'r's Br. 6–7.

Finally, the State posits that trial counsel's failure to retain forensic experts who could show how the physical evidence supported Mr. Burgess's unintentional shooting defense was inconsequential because the State's evidence against Mr. Burgess did not turn on forensic expert testimony. Opp'n Br. 20. The central question at trial, however, was not whether Mr. Burgess's actions led to the death of Mrs. Crow, but whether Mr. Burgess intended to kill her. Pet'r's Br. 3–4. The answer to this question did indeed depend on forensic expert testimony (and the lack thereof), and the dispute over intent directly affected Mr. Burgess's eligibility for a death sentence. Despite what the State asserts, trial counsel's decision to

ignore this essential aspect of Mr. Burgess’s defense was an “inexcusable mistake.”
Hinton, 571 U.S. at 275.

CONCLUSION

For the foregoing reasons, this Court should grant certiorari, summarily vacate the judgment of the Alabama Court of Criminal Appeals, and remand the case for an evidentiary hearing.

Respectfully submitted,

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