

No. 25-_____

IN THE SUPREME COURT OF THE UNITED STATES

WILLIAM MICHAEL DENNIS,

Petitioner,

v.

CHANCE ANDES, Warden,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

JAMES S. THOMSON*
California SBN 79658
Attorney & Counselor at Law
732 Addison Street, Suite A
Berkeley, California 94710
Telephone: (510) 525-9123

Attorney for Petitioner
William Michael Dennis

*Attorney of Record

QUESTION PRESENTED FOR REVIEW

1. Whether the Court of Appeals decided an important federal question in a way that conflicts with relevant decisions of this Court by finding trial counsel effective when he failed to present a mental state and insanity defense. *See e.g. Strickland v. Washington*, 466 U.S. 668 (1984).

PARTIES TO THE PROCEEDING

The parties to the proceeding before the United States Court of Appeals for the Ninth Circuit were William Michael Dennis (appellant below), and the Warden of San Quentin State Prison, Chance Andes (appellee below).

LIST OF RELATED CASES

People v. William Michael Dennis, Case No. 97196, Santa Clara Superior Court. Judgment entered September 6, 1988.

People v. William Michael Dennis, Case No. S007210, California Supreme Court. Judgment entered on February 19, 1998.

In re William Michael Dennis, Case No. S055380, California Supreme Court. Judgment entered on November 4, 1998.

In re William Michael Dennis, Case No. S099587, California Supreme Court. Judgment entered on November 26, 2002.

In re William Michael Dennis, Case No. S201330, California Supreme Court. Judgment entered on February 26, 2014.

Dennis v. Chappell, Case No. 4:98-cv-21027-JST, United States District Court for the Northern District of California. Judgment entered on December 29, 2008, December 19, 2017, August 17, 2018, and June 17, 2019.

Dennis v. Broomfield, Case No. 18-99008, United States Court of Appeals for the Ninth Circuit. Judgment entered on May 28, 2024.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, WILLIAM MICHAEL DENNIS, respectfully prays that a writ of certiorari issue to review the judgment of the Court of Appeals for the Ninth Circuit denying his federal habeas corpus petition. *Dennis v. Broomfield*, Ninth Circuit Case Number 18-99008.

OPINIONS BELOW

On May 28, 2024, the Court of Appeals for the Ninth Circuit affirmed the district court's denial of the petition for writ of habeas corpus. Appendix A. On August 12, 2024, petitioner filed a petition for rehearing and rehearing en banc.

The Court denied rehearing on September 11, 2024. Appendix C.

On December 10, 2024, Justice Elena Kagan granted an extension of time to file the petition for writ of certiorari to and including February 8, 2025. William Michael Dennis v. Chance Andes, Application No. 24A565.

JURISDICTION

The district court had jurisdiction under 28 U.S.C. §2254. The Court of Appeals had jurisdiction under 28 U.S.C. §1291 and §2253(a). This Court has jurisdiction under 28 U.S.C. §1254(1).

PROVISIONS OF LAW INVOLVED

The Fifth Amendment to the United States Constitution, provides, in pertinent part, that no person “shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law.” U.S. Con., Amend V.

The Sixth Amendment to the United States Constitution reads: “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.” U.S. Con., Amend VI.

The Fourteenth Amendment to the United States Constitution, Section 1 provides, in pertinent part: “[No State] shall . . . deprive any person of life, liberty,

or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” U.S. Con., Amend XIV, § 1.

The federal habeas corpus statute, 28 U.S.C. §2254 (d)(1) & (2) provides:

An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

STATEMENT OF THE CASE

Trial

On August 16, 1988, Mr. Dennis was found guilty of first-degree and second-degree murder, both occurring on October 31, 1984. The multiple-murder special circumstance was found true. *People v. Dennis*, Santa Clara County Case No. 97196.

On August 25, 1988, following two days of deliberation, the jury returned a verdict of death. On September 6, 1988, the trial court sentenced Mr. Dennis to death.

California Supreme Court Proceedings

On February 19, 1998, the convictions and sentence were affirmed. *People v. Dennis*, 17 Cal. 4th 468 (1998). On October 5, 1998, this Court denied certiorari. *Dennis v. California*, 525 U.S. 912 (1998).

On November 4, 1998, the California Supreme Court denied a petition for writ of habeas corpus. *In re Dennis*, Cal. Case No. S055380; Appendix D. On November 26, 2002, the State court denied a second petition. *In re Dennis*, Cal. Case No. S099587; Appendix E. On February 26, 2014, the State court denied a third petition. *In re Dennis*, Cal. Case No. S201330; Appendix F.

Federal Habeas Proceedings

On May, 2, 2001, Mr. Dennis filed a petition for writ of habeas corpus in district court. DC-Doc #59. On August 3, 2001, he filed a first amended petition. DC-Doc #70. On February 11, 2003, he filed a second amended petition. DC-Doc #154.

On December 29, 2008, the court dismissed Claims 1, 2, 5, 6, 7, 10, 12, 16, 18.B.1–6, 18.C.1–2, 21, and 24. DC-Doc #240.

On July 27, 2009, the court granted an evidentiary hearing as to “Claims 3, 11, and 17, Subclaim 18.B.7, and Claim 25 (including the component of Claim 25 described in Subclaim 18.B.1).” DC-Doc #250 at 2. On June 24, 2010, the court ordered the evidentiary hearing bifurcated. DC-Doc #254. On April 21 through 23, 2014, the first phase was held. DC-Docs ##379, 380, 381.

On December 19, 2017, the court denied Claims 3, 11, and 17 on their merits. Circuit Doc 17-1 at 57. On April 3, 2018, the court denied Mr. Dennis's motion for reconsideration of the order.

On August 17, 2018, the court denied Claims 5.C.1, 18.B.7, 23, and 25 and the petition in whole. DC-Doc #431, #432. A certificate of appealability was granted as to Claims 17, 18.B.1, and 25. *Id.* On June 17, 2019, the court issued an amended order and judgment denying the petition and expanding the certificate of appealability to include Claim 18.B.7. Appendix B.

On June 18, 2019, the amended notice of appeal was filed. DC-Doc #452.

Court of Appeals Proceedings

On January 22, 2024, the case was argued and submitted. Circuit Doc #64. On May 28, 2024, the Court issued its memorandum affirming the denial of the petition. Appendix A.

On August 12, 2024, Mr. Dennis filed a petition for rehearing and petition for rehearing en banc. Circuit Doc #70. On September 11, 2024, the Ninth Circuit denied the petitions. Appendix C.

Superior Court Resentencing

On June 20, 2024, the Santa Clara County District Attorney filed a Petition Requesting Recall of William Michael Dennis' Death Sentence and Hearing to Resentence Defendant to Life Without the Possibility of Parole; and Memorandum of Points and Authorities (Penal Code § 1172.1). On September 10, 2024, the District Attorney filed a Supplement to the Petition. On September 19, 2024, Mr.

Dennis filed a Response to Petition Requesting Recall of Death Sentence and Resentencing To Life Without the Possibility of Parole.

On October 1, 2024, a hearing on the petition was held. The superior court granted the petition, vacated Mr. Dennis's death sentence and re-sentenced him to life without the possibility of parole. DC-Doc #456.

REASONS FOR GRANTING THE WRIT

I. CERTIORARI SHOULD BE GRANTED TO SETTLE THE IMPORTANT QUESTION OF WHETHER THE COURT APPEALS ERRED IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT.

The impetus for the crimes in this case is rare. They weren't committed during a robbery or a burglary. They weren't part of a serial killing spree. They weren't motivated by the sale of drugs. They weren't the result of a sexual attack. They weren't brought on by greed or extortion. They occurred because Mr. Dennis's three year old son, Paul, tragically drowned in Doreen's (the victim) pool—when she ran to the neighbor's house rather than jump in the pool to save Paul. And, after Mr. Dennis had earlier warned her that the fence around the pool needed to be repaired.

After Paul died, Mr. Dennis broke. His delusional and paranoid thinking would not allow him to accept that Paul's death was an accident. As his untreated illnesses and grief grew out of control, he came to believe that Doreen had intentionally killed Paul. This belief was born of psychosis, not of reality. As a result, Mr. Dennis was driven to kill Doreen—an act completely out of character.

Mr. Dennis's delusion drove him to believe that the morally right thing to do was to kill Doreen. He did so, killing her unborn child in the process, not knowing she was pregnant.

Mr. Dennis had no felony convictions. He had no misdemeanor convictions. He had no juvenile adjudications. He had no unadjudicated conduct. He had no violence in his past. He had never been arrested. He was a model inmate while in jail and has remained disciplinary free in prison over a 37 year period.

At oral argument, Senior Circuit Judge Richard Clifton noted the uniqueness of the case and Mr. Dennis. "I've now dealt what seems to me surprising number of cases from this side and the facts here don't fit the patterns of most of the cases I've dealt with before." January 22, 2024 Oral Argument Recording - 48:41-50:29. As to Mr. Dennis, he commented: "[T]his is not somebody who has a record of being in trouble. It's not somebody who's subnormal in any intellectual fashion, not a drug deal or some other criminal action gone bad, I mean its just and so you look at this and you try to figure out well how do you put the pieces of this together? And the part that's made me wonder from the first time I read about the fact of this case is just, it's hard to escape the sense that, this guy is, or was for that particular episode, nuts. Not in control of himself. Now that's not from any studied or legal definition and I understand that the law doesn't put that out there. But it's what has given me trouble trying to figure out even as I sympathize with trial counsel, trying to figure out how to deal with the facts of this case." *Id.*

The Court of Appeals "has decided an important federal question in a way

that conflicts with relevant decisions of this Court.” Rule 10(c). This Court has held: “[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.”

Kimmelman v. Morrison, 477 U.S. 365, 384 (1986). Counsel must “conduct a prompt investigation of the circumstances of the case and to explore all avenues leading to facts relevant to the merits of the case” 1979 American Bar Association Guideline 4-4.1; Commentary (cited in *Williams v. Taylor*, 529 U.S. 362, 398 (2000); *Wiggins v. Smith*, 539 U.S. 510, 524 (2003)). Trial counsel did not do so here.

Trial counsel failed to provide experts with needed materials; abandoned a mental state defense at the guilt phase; failed to conduct an adequate investigation; failed to fully investigate Mr. Dennis’s social history and mental health; failed to secure psychological testing; and failed to present plentiful and readily-available mental health evidence. Trial counsel should and could have presented a wealth of information raising a mental state defense at the guilt phase and presented an insanity defense.

Trial counsel failed to effectively investigate and raise a plea of not guilty by reason of insanity. Based on the complete investigation conducted by post-conviction counsel, Dr. George Woods opined that Mr. Dennis’s psychotic delusion led him to believe that killing Doreen was the morally right thing to do. Had counsel effectively investigated Mr. Dennis’s mental condition, he could have presented this evidence in support of an insanity defense. Had he done so, it is

reasonably likely that Mr. Dennis would have been found not guilty by reason of insanity.

Trial counsel failed to present evidence at the guilt phase regarding Mr. Dennis's mental state at the time of the crime. This evidence included the diagnosis of Mr. Dennis's psychotic delusional disorder. It included Dr. Alan Garton's findings that Mr. Dennis was paranoid and delusional. It included the results of Dr. Alfred French's and Dr. Garton's MMPIs, and Dr. Alex Caldwell's interpretation of the results. It included Dr. John Stephenson's findings about Mr. Dennis's grief. And it included the neuropsychological results showing damage in Mr. Dennis's temporal lobe. Had the jury been presented with a complete picture of Mr. Dennis's mental state at the guilt phase, it would have found that his mental state negated malice as to the fetus, thereby precluding a multiple-murder special circumstance.

In the end, Mr. Dennis's jury was deprived of hearing critical mental state evidence at guilt and was denied the opportunity to decide sanity. Had counsel effectively investigated and presented evidence of Mr. Dennis's social history, mental health, and mental state, there is far more than a reasonable probability that the outcome of the case would have been different. The State court's determination that Mr. Dennis received what the Constitution requires was both contrary to and an unreasonable application of *Strickland v. Washington*, 466 U.S. 668 (1984); 28 U.S.C. §2254(d). The Court of Appeals affirmance ran afoul of relevant decisions of this Court.

II. IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT, THE COURTS BELOW DETERMINED THAT TRIAL COUNSEL DID NOT ERR IN FAILING TO PRESENT AN INSANITY DEFENSE.

A. Introduction

Dr. Woods opined that Mr. Dennis’s “Delusional Disorder resulted in psychosis at the time of the crime.” Circuit Doc #17-5 at 18. The disorder “impaired his insight and judgment.” *Id.* Dr. Woods found that Mr. Dennis “believed, and continues to believe that his actions were morally right, and that he was acting correctly” by avenging the death of his son. *Id.* Dr. Woods found that Mr. Dennis’s “mental disease would have impeded his ability to appreciate his actions at the time of the crime.” Circuit Doc #17-5 at 19. The “Delusional Disorder was the product of environmental facts that defined his childhood and adolescence and specific events, namely the death of his son.” Circuit Doc #17-5 at 17.

At trial, Dr. Samuel Benson was “not asked to determine whether Mr. Dennis[] suffered from a mental illness that could negate a finding that he killed his ex-wife with malice[; or] whether Mr. Dennis was insane at the time of his crime and trial.” Circuit Doc #17-5 at 156. Dr. Benson was not asked to pursue a diagnosis of Mr. Dennis or to pursue it “to the point of whether or not they involved insanity.” Circuit Doc #17-3 at 576. After reviewing materials prepared post-trial, Dr. Benson “agree[d] with Dr. Woods’ diagnosis” that “Mr. Dennis suffered from a Delusional Disorder, prosecutory type, that manifested in psychotic ideation at the time of the crime and today.” Circuit Doc #17-5 at 159.

Reasonably effective counsel would have presented evidence that Mr. Dennis’

delusions and paranoia rendered him insane at the time of the crime and prevented him from forming the requisite mental state to commit first and second-degree murder. Circuit Doc #17-5 at 83-85. Someone is insane if, at the time of the offense, he or she was “incapable” of (1) “knowing or understanding the nature and quality of his or her act” or (2) “distinguishing right from wrong” Cal. Pen. Code §25(b). Either prong suffices to establish insanity. *People v. Skinner*, 39 Cal.3d 765, 768 (1985). The burden of proving insanity is low—a preponderance of evidence. Cal. Pen. Code §25(b). “[A] defendant who is incapable of understanding that his act is morally wrong is not criminally liable merely because he knows the act is unlawful.” *Id.* at 783. A delusional disorder may establish a claim of insanity. *People v. Elmore*, 59 Cal. 4th 121, 140 (2014) (“a belief . . . that is purely delusional is a paradigmatic example of legal insanity”).

Trial counsel failed to investigate an insanity defense despite Mr. Dennis’s delusional belief system. None of the experts made findings as to sanity. An insanity plea should have been pursued.

Given the breadth of available mental health evidence indicating that Mr. Dennis was insane at the time of the crime, there is far more than a reasonable probability that, had trial counsel presented evidence of the delusional disorder, the jury would have found him not guilty by reason of insanity.

B. The State Court's Summary Denial Was Contrary to Clearly Established Law and Was Based on an Unreasonable Determination of Fact.

Dr. Woods's diagnosis was consistent with the mental health evidence available to counsel at the time of trial. Circuit Doc #17-5 at 259-261. Referring to the evidence available to trial counsel, Dr. Woods concluded:

What we see is Mr. Dennis's inability to express emotions, blocking his affective expression and forcing so many of his emotions into his narrow, but deep vulnerability to psychosis. From the period following the civil trial, through the offense, to this day, Mr. Dennis suffered from this fixed, terrible, delusion that, on the day of the offense, overwhelmed Mr. Dennis, rendering him unable to distinguish moral right from wrong.

Circuit Doc #17-5 at 261. Dr. Woods summarized his findings: "Due to Mr. Dennis's psychotic delusion, he believed—and continues to believe—that his actions were morally right, and that he was acting correctly. This belief arises specifically from his Delusional Disorder and psychotic delusions." *Id.*

The allegations established a *prima facie* case of ineffective assistance. *Strickland*, 466 U.S. 668. No reasonable interpretation of the law could conclude otherwise. Nevertheless, the Court denied an evidentiary hearing and the petition. Given that Mr. Dennis's allegations presented a triable issue of fact, the State court could not reasonably deny Claim 3 without conducting an evidentiary hearing. *Hibbler v. Benedetti*, 693 F.3d 1140, 1147 (2012); *Winston v. Kelly*, 592 F.3d 535, 555–556 (2010); *Williams*, 859 F. Supp. 2d at 1160. Material factual questions remained regarding whether trial counsel made a strategic decision to abandon the insanity investigation and not to enter an insanity plea; and whether Mr. Dennis

was insane at the time of the crimes. The State court could not have reasonably denied Claim 3 based on the available evidence.

C. The District Court Erred in Denying the Claim.

The district court found that Mr. Dennis had not shown that counsel's investigation into an insanity defense was deficient. Circuit Doc #17-1 at 110. The court did not reach the issue of prejudice. *Id.*

The district court noted that trial counsel "sought guidance" from Dr. Benson, Dr. Stephenson, Dr. Garton, and "at least one additional expert as to whether an insanity plea would be appropriate." Circuit Doc #17-1 at 105. The court noted that counsel conducted legal research of his own. *Id.* at 106. The court concluded that "counsel reasonably could have chosen not to pursue an insanity defense." *Id.* The court's conclusion was erroneous.

As noted, none of the retained experts made findings about Mr. Dennis's sanity one way or the other. Indeed, Dr. Stephenson advised counsel to investigate Mr. Dennis's mental health further. Thus, while counsel arguably *began* investigating Mr. Dennis's sanity, he did not *complete* that investigation. His experts testified in federal court that they were given insufficient records from which to draw sound conclusions. Circuit Doc #17-5 at 64; 157, 157-158. The social history counsel prepared fell far short of the standard of care.

The district court said that "evidence tending to show insanity would open the door to a plethora of impeachment" Circuit Doc #17-1 at 110. The court attempted to underscore the potential danger of presenting an insanity defense by

noting that Dr. Benson was effectively cross-examined at the guilt phase. *Id.* The insanity defense would not have opened the door to any impeachment evidence not already opened by Dr. Benson's testimony, particularly because the sanity phase would have taken place only *after* the guilt phase. Cal. Pen. Code §1026 (1987)

In sum, an effective mental health investigation would have uncovered Mr. Dennis's delusional state and led effective counsel to enter an insanity plea. The plea would have succeeded. It would not have opened the door to harmful evidence. Counsel was ineffective for failing to properly investigate and present the insanity defense.

III. IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT, THE COURTS BELOW DETERMINED THAT TRIAL COUNSEL DID NOT ERR IN FAILING TO PRESENT MENTAL HEALTH EVIDENCE AT THE GUILT PHASE.

A. Background

Trial counsel did not present evidence that Mr. Dennis lacked malice (intent to kill) as to the fetus as a result of his delusional mental state with respect to Doreen. Expert testimony regarding Mr. Dennis's delusional disorder would have shown that Mr. Dennis did not intend to kill the fetus as required for a conviction of fetal murder because his delusion was focused on Doreen. This failure was particularly prejudicial because counsel conceded that Mr. Dennis had killed Doreen and the fetus. A mental health defense was the only available defense.

Counsel failed to fully investigate Mr. Dennis's social history and provide experts with all necessary materials to reach an informed diagnosis. Counsel failed

to develop Dr. Garton's and Dr. French's findings that Mr. Dennis exhibited paranoid and delusional thinking. Instead, counsel focused on using Dr. Benson to determine whether Mr. Dennis was telling the truth about the facts of the crime. Dr. Benson's testimony did not establish that Mr. Dennis lacked malice and therefore could not be guilty of murder. And of course, his testimony included nothing about Dr. Woods's diagnosis of a psychotic delusional mental state because counsel's deficient investigation had prevented Dr. Benson from reaching that diagnosis.

Relying on records gathered by post-conviction counsel, which were available to counsel at the time of trial, Dr. Woods diagnosed Mr. Dennis as suffering from a psychotic delusional disorder. Circuit Doc #17-5 at 253. Dr. Benson testified in federal court that Dr. Woods's diagnosis was consistent with his findings prior to Mr. Dennis's trial. Circuit Doc #17-5 at 159. Effective counsel would have presented expert testimony that Mr. Dennis suffered from a delusional disorder of psychotic proportions, caused by a pathologically paranoid personality.

Counsel has an "overarching duty to advocate the defendant's cause." *Strickland*, 466 U.S. at 688. Counsel "must take all reasonable lawful means to attain the objectives of the client." *Nix v. Whiteside*, 475 U.S. 157, 166 (1986). "[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Kimmelman*, 477 U.S. at 384 (quoting *Strickland*, 466 U.S. at 691). Counsel cannot focus on one defense "to the exclusion of all other possible defenses." *United States v. Laureys*, 866 F.3d

432, 438 (D.C. Cir. 2017).

As Dr. Benson testified, the fact of Mr. Dennis's psychosis was "never fully developed" was because counsel's focus was on determining whether Mr. Dennis was being truthful about the facts of the crime. Circuit Doc #17-3 at 188. Limited as he was, Dr. Benson failed to diagnose Mr. Dennis's delusional disorder, and counsel failed to argue it as a defense. Counsel was left with major depression and personality disorders as the only basis for a mental state defense. Had counsel presented Mr. Dennis's delusional disorder, the mental state defense would have succeeded.

Counsel was further deficient in presenting the incomplete mental health evidence he had gathered. At no time did Dr. Benson testify about Mr. Dennis's paranoia. Trial counsel failed to introduce evidence of paranoia despite the prevalence of that diagnosis in the expert opinions he obtained. While the subjects of "psychosis" and "delusions" were discussed, the terms were not part of Dr. Benson's diagnosis, nor were they appropriately defined. Dr. Benson's testimony did not inform the jurors how psychosis, psychotic symptoms, or delusions would have affected Mr. Dennis's state of mind at the time of the crime so as to negate malice.

B. The State Court's Summary Denial Was Unreasonable.

These allegations were raised in State court. Circuit Doc #17-6 at 39-42. The allegations, in combination with Dr. Wood's declaration, established a *prima facie* case for relief. The State court's summary denial of the claim without granting an

evidentiary hearing was unreasonable. 28 U.S.C. §2254(d).

C. The District Court Erred in Denying the Claim.

The district court found that Mr. Dennis “failed to explain how any of the expert testimony he . . . elicited and submitted to th[e] [District] Court, or to the California Supreme Court, would negate malice such that Petitioner would have been entitled to a conviction of voluntary manslaughter.” Circuit Doc #17-1 at 112. The district court erred.

At the time of Mr. Dennis’s trial, evidence relating to his mental condition could “be considered in deciding whether there was malice as defined in [Penal Code] section 188.” *People v. Saille*, 54 Cal. 3d 1103, 1117 (1991). As defined at the time, malice “and an intent unlawfully to kill [we]re one and the same.” *Id.* at 1114. Thus, mental health evidence was admissible to show that Mr. Dennis did not, in fact, form the intent to kill. *Id.*

Mr. Dennis’s delusional state supported a finding that he did not intend to kill the fetus. Indeed, the jury found that Mr. Dennis had not premeditated the killing of the fetus. Circuit Doc #17-6 at 129 (verdict). Had defense counsel presented evidence of Mr. Dennis’s delusional mental state, the jury would have found that he had not intended to kill. Such a finding would have prevented a special circumstance finding.

Dr. Woods explained that “Mr. Dennis was suffering from a Delusional Disorder at the time of the offense.” Circuit Doc #17-5 at 253. This delusional disorder “resulted in psychosis at the time of the crime.” Circuit Doc #17-5 at 18.

The disorder “impaired his insight and judgment.” *Id.* Mr. Dennis’s was psychotically fixated on his belief that Doreen had intentionally killed Paul and that killing her was the morally right thing to do. Dr. Benson testified that Mr. Dennis was fixated on Doreen and her husband and nobody else: “His answers to me had always been, ‘I would not have hurt [Doreen’s daughter] because she was not old enough to have contributed to Paul’s death. She was innocent, but Chuck and Doreen were not.’” Circuit Doc #17-8 at 189.

But counsel never connected Mr. Dennis’s delusional thinking to a mental health diagnosis to show that it was a product of psychosis. Had he done so, he could have convincingly argued that Mr. Dennis’s delusional disorder did not involve the fetus. As Dr. Woods opined, that disorder prevented Mr. Dennis from “appreciat[ing] his actions at the time of the crime.” Circuit Doc #17-5 at 19. At least one juror believed that Mr. Dennis did not know Doreen was pregnant. First State Habeas Petition, Exhibit B. Mr. Dennis’s delusional disorder created the intent to kill Doreen. Focused as the delusion was on Doreen—and not the fetus—it could not have created an intent to kill the fetus.

There is far more than a reasonable likelihood that the jury would not have found Mr. Dennis guilty of fetal murder if counsel had raised a mental state defense. Without the fetal murder conviction, the multiple-murder special circumstance would not have been true. As such, Mr. Dennis could not have been sentenced to death or to life without parole. Pen. Code §190.2.

IV. IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT, THE COURT OF APPEALS ERRED IN DENYING THE CLAIMS.

A. Introduction

Mr. Dennis raised uncertified right to counsel claims focusing on counsel's failures to enter an insanity plea and to present additional guilt phase mental health evidence. The district court denied each claim. Doc #65-1 at 38. In doing so, the court concluded that the State court met "AEDPA's test for deferential review," and that even under *de novo* review, it "would reach the same conclusions." Doc #65-1 at 4. It affirmed "the district court's order denying the petition and den[ying] a COA as to [Mr.] Dennis's uncertified claims." *Id.* The court's decision conflicts with relevant decisions of this Court.

While AEDPA may "sharply limit[]" the Court's "review of claims adjudicated on the merits in state court" (Doc #65-1 at 3), it does not mandate the wholesale denial of claims. The claims compel reversal. Trial counsel's failures prejudiced Mr. Dennis at the guilt phase of trial. He also was prejudiced by counsel failing to pursue an insanity defense.

As *Strickland* expert Nolan testified: "Mr. Dennis' trial counsel . . . failed to provide representation that satisfied the prevailing standard of care in 1988." Circuit Doc #17-5 at 98. Mr. Nolan testified that "[r]easonably effective counsel would have cultivated evidence bearing on Mr. Dennis' past and current displays of delusional disorder, related life history, related family history and risk factors for mental illness." *Id.* Counsel did not do so, and the failure was prejudicial.

B. Trial Counsel Rendered Ineffective Assistance When He Failed to Present Mental Health Evidence.

Trial counsel's investigation into Mr. Dennis's mental state was wanting. Counsel abandoned the investigation and circumvented Dr. Benson's evaluation. Dr. Benson testified that counsel never conferred with him and discussed presenting a mental defense prior to trial. Circuit Doc #17-3 at 188. Evidence that should have been presented at trial, included significant expert testimony of several doctors.

Dr. Alexander Caldwell

Dr. Caldwell analyzed the results of a MMPI that Dr. Garton administered. Circuit Doc #17-5 at 143. He found that Mr. Dennis' MMPI "pattern most often has been associated with diagnoses reflecting paranoid trends and transitory paranoid states." Evidentiary Hearing Exhibit #28; DC-Doc #300-30 at 33. Dr. Caldwell opined that Mr. Dennis's MMPI "profile primarily indicated an elevated score on the paranoia scale." Circuit Doc #17-5 at 143. Mr. Dennis "likely entered into transitory paranoid states." *Id.* The results of the MMPI "indicated the potential for a long-term delusion." *Id.*

Dr. Caldwell noted that "the paranoid scale was virtually off of the graph" indicating "a florid psychosis." Circuit Doc #17-3 at 40. These results are seen "when somebody is psychotic." *Id.* at 41. He testified: "[W]hen you get a profile like this, and the highest scores on this paranoid scale, that that's – and it is elevated – that means that there are really substantial problems; psychological issues for this

– in this person.” *Id.* at 48.

Trial counsel did not present the results of this MMPI, or any other similar testing, to the jury. Counsel did not call Dr. Caldwell to testify at trial.

Dr. John Stephenson

Dr. Stephenson recommended that trial counsel “arrange for a further in-depth psychological interview of Mr. Dennis.” Circuit Doc #17-5 at 65. He opined that the “combination of stressors and [Mr. Dennis’s] personality rendered him unable to rationally respond to the events that occurred following the death of his son up to the night of the crimes.” *Id.* at 65-66.

Dr. Stephenson explained that Mr. Dennis’s “strong feelings of guilt over the accidental death of a child . . . would be even stronger because he saw the danger in the pool and tried to prevent the death by repeatedly requesting that his ex-wife build an adequate fence around the pool.” Circuit Doc #17-5 at 64. He recommended that trial counsel “arrange for further in-depth psychological interviews of Mr. Dennis; identify what masked Mr. Dennis’ rage towards his wife following the death of his son; determine Mr. Dennis’ state of mind following the civil suit and identify what the results of that suit meant to Mr. Dennis.” *Id.*

Dr. Stephenson opined that “Mr. Dennis was pretty much in a state of chronic grief -- he wasn’t moving on through the process -- and that he saw the civil suit as a way of placing the blame away from him, but placing it on his ex-wife.” Circuit Doc #17-3 at 95. Ultimately, Mr. Dennis “saw the [civil] trial as an opportunity for someone to tell him that it wasn’t his fault. He had done enough,

trying to get [the fence] built, [and] so on.” *Id.* at 96.

Dr. Stephenson “agree[d] with Dr. Woods’ finding that [Mr. Dennis] suffered from a Delusional Disorder, severe, at the time of the offense for which he has been convicted.” Circuit Doc #17-5 at 66 (quotation omitted). He “found Dr. Woods’ report to be more complete and professional than any materials [he] had reviewed at the time prior to Mr. Dennis’ trial.” DC Doc #375-6 at 2. He “was impressed by Dr. Woods’ use of a wide range of materials, including the MMPI and Rorschach test results and historical background information.” *Id.*

Dr. Allan Garton

Dr. Garton had diagnosed Mr. Dennis with “underlying paranoid trends” and “transitory paranoid state, as characterized by persistent delusional thinking, affect consistent with the delusional ideas, and preservation of intellectual functions, but in the absence of hallucinations.” Circuit Doc #17-5 at 242-243. He concluded that Mr. Dennis displayed underlying paranoid trends and suffered from a transitory paranoid state, characterized by persistent delusional thinking, with an affect consistent with delusional ideas. *Id.* Yet these conclusions were never presented to the jury. Dr. Benson did not reach that diagnosis because he was not given all the materials—including Dr. Garton’s report. Circuit Doc #17-8 at 154-155.

Dr. Dale Watson

Dr. Watson administered a battery of neuropsychological tests to Mr. Dennis. Circuit Doc #17-5 at 47. The results demonstrated numerous abnormalities that may be explained by a left temporal lobe lesion or defect. Circuit Doc #17-3 at 63-

77. The results showed “someone with neurological impairment.” *Id.* at 63.

Dr. Watson’s testing “raises the possibility of dysfunction in [Mr. Dennis’s] left temporal lobe.” Circuit Doc #17-5 at 49. The “left temporal lobe [] controls auditory memory.” *Id.* Thus, this finding “raise[s] a significant question as to whether there is damage within [petitioner’s] left temporal lobe.” Circuit Doc #17-3 at 78. “[P]roblems in the temporal lobe can manifest in many different ways. There is an association with schizophrenia with damage in the left temporal lobe, in particular.” *Id.* at 79.

Dr. Watson testified that “the temporal lobes are often seen to be dysfunctional in a variety of psychiatric illnesses.” Circuit Doc #17-3 at 508. Furthermore, Dr. Watson concluded that “both the left and the right temporal lobes are known to be associated with delusional thinking processes.” *Id.*

Dr. Samuel Benson

At the evidentiary hearing, Dr. Benson testified that trial counsel’s “strategy in presenting [his] testimony was to explain Mr. Dennis’ grief concerning the loss of his son and the facts of the crime as explained by Mr. Dennis during his sodium amytal evaluation.” Circuit Doc #17-5 at 154. At trial, Dr. Benson’s role was “to determine whether . . . Mr. Dennis was truthful about – about some issues regarding the killing of Doreen.” Circuit Doc #17-3 at 142; 146. Trial counsel wanted Dr. Benson to determine “whether or not Mr. Dennis knew that Doreen was pregnant at the time.” *Id.* at 152. Counsel focused “on Mr. Dennis’ responses to questions concerning the facts of the crime, as opposed to questions designed to

elicit his mental condition.” *Id.* Dr. Benson testified that “[t]he sodium amytal test was not necessary to diagnose Mr. Dennis’ mental illness.” Circuit Doc #17-5 at 157.

At trial, Dr. Benson “determined that Mr. Dennis suffered from Major Depressive Disorder and Dependent Personality Disorders.” Circuit Doc #17-5 at 157-158; RT 3550-3552. Ultimately, he was “not asked to determine whether Mr. Dennis[] suffered from a mental illness that could negate a finding that he killed his ex-wife with malice[; or] whether Mr. Dennis was insane at the time of his crime and trial.” Circuit Doc #17-5 at 156. Dr. Benson was not asked to pursue a diagnosis of Mr. Dennis “and pursue those to the point of whether or not they involved insanity.” Circuit Doc #17-3 at 147. Dr. Benson opined that “the whole process of – of [petitioner’s] psychosis was never fully developed” prior to trial.” *Id.* at 188.

Dr. Benson “agree[d] with Dr. Woods’ diagnosis” that “Mr. Dennis suffered from a Delusional Disorder, persecutory type, that manifested in psychotic ideation at the time of the crime and today.” Circuit Doc #17-5 at 159. He agreed that “Mr. Dennis’ insight and judgment were impaired by his delusions.” *Id.*

Dr. Benson found that the new materials were more informative than those produced at trial. Circuit Doc #17-3 at 190; Circuit Doc #17-5 at 157. The new material provided “more evidence to support conclusions [he] had reached previously.” Circuit Doc #17-3 at 193. In 1988, Dr. Benson “noted that Mr. Dennis[] was paranoid.” Circuit Doc #17-5 at 160. However, “[a]t the time of trial,

[Dr. Benson] was not aware of the depth of Mr. Dennis' delusions and paranoia due to the limited materials [he] was provided to review." *Id.* Dr. Benson "recognize[d] that the psychotic symptoms Mr. Dennis exhibited at the time of the crime, during [his] examinations and at trial were manifestations of his delusions concerning the death of his son." *Id.*

Dr. George Woods

Dr. Woods conducted a psychiatric evaluation of Mr. Dennis. Circuit Doc #17-5 at 18. *Id.* He found that Mr. Dennis "suffered from a Delusional Disorder, persecutory type, at the time of the crime and [his] evaluation." *Id.* He opined that "death of his son" that led to his delusional disorder. *Id.*

Dr. Woods opined that Mr. Dennis "remains fixated on the death of his son." Circuit Doc #17-5 at 18. The "Delusional Disorder resulted in psychosis at the time of the crime." *Id.* at 19. It "impaired his insight and judgment." *Id.* He found that Mr. Dennis "believed, and continues to believe that his actions were morally right, and that he was acting correctly" by avenging the death of his son. *Id.* Mr. Dennis's "mental disease would have impeded his ability to appreciate his actions at the time of the crime." *Id.* at 18. Dr. Woods testified that Mr. Dennis's belief that the jury's finding that Doreen was not negligent meant that she murdered their son relied on "psychotic thinking." Circuit Doc #17-2 at 155.

In the end, each of these professionals should have testified at trial. Their testimony would have answered the question trial counsel posed to the jury as a promise to prove - "why this happened." RT 4088-4089.

C. The Court Reached its Opinion In A Way that Conflicts With Relevant Decisions of This Court.

In reaching its opinion, the court made several determinations which fall short. For example, the district court found that Dr. French, “who had performed psychological testing and determined that Dennis tested within normal limits.” Doc #65-1 at 7. Not so.

Dr. French found “an extraordinary disparity between the personality characteristics presented here, the presentation on interview and the behaviors in question.” Circuit Doc #17-5 at 245. He found that the results of the MMPI showed “the Paranoia and Schizophrenia scales are elevated at 2.3 and 2.1 standard deviations respectively.” *Id.* at 248. Dr. French noted that Mr. Dennis’s “profile was elevated despite his attempts to make a favorable impression and, therefore, suggests that he may be more disturbed than he is willing to admit.” *Id.* The interpretation showed that Mr. Dennis “is ‘apt to suffer from paranoid ideation of psychotic proportions.’” *Id.*

In similar fashion, Dr. Garton reported to trial counsel that Mr. Dennis exhibited: “Transitory paranoid state, as characterized by persistent delusional thinking, affect consistent with the delusional ideas, and preservation of intellectual functions, but in the absence of hallucinations.” Circuit Doc #17-5 at 243. Then, Dr. Stephenson recommended that Mr. Dennis’s statement that he was “‘going crazy’ for a few months” following the civil trial “should be examined more closely in a psychological interview, to determine Mr. Dennis’ state of mind

following the civil suit, and what the outcome of that suit meant to him.” Circuit Doc #17-5 at 237. Dr. Stephenson further recommended that “a case may be best built for Mr. Dennis having been in an impaired state of mind on the night of the killing by building a case which begins with his grief and subsequent guilt following the death of his son.” *Id.* at 238.

As another example, the Court found that “entering an NGI plea would have opened the door to the prosecution presenting evidence that Dennis was not mentally ill, but instead had an antisocial (or sociopathic) personality disorder.” Circuit Doc #65-1 at 30. Not so. Mr. Dennis could not be diagnosed as having such a disorder. The diagnostic criteria for anti-social personality disorder require “evidence of conduct disorder with onset before age 15 years.” American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, (DSM-5) (2013) section 301.7 at 659. “For this diagnoses to be given, the individual . . . must have had a history of some symptoms of conduct disorder before age 15 years (Criterion C).” *Id.* Mr. Dennis had no such history.

In the same way, it was not for trial counsel “who had known [Mr.] Dennis for more than a year prior to his trial and interviewed him multiple times, had reason to doubt that Dennis was unable to distinguish moral right from wrong or that he was motivated by bringing an alleged murderer (Doreen) to justice.” Circuit Doc #65-1 at 32. It wasn’t for trial counsel to draw “his own conclusions about Dennis’s sanity and his ability to understand that his actions were wrong.” *Id.* Mental health professionals, who were trained to diagnose insanity and mental

state, were the individuals that should have made that determination, not counsel. And, the doctors in this case did so.

Finally, as earlier noted, the heart of the case—the reason for the tragic killings —stem from the death of Mr. Dennis’s son, Paul. Yet, the court addressed it in a curt one sentence footnote: “Dennis and Doreen’s son Paul tragically drowned in a pool at Doreen’s house, and Dennis sued Doreen over Paul’s death.” Doc #65-1 at 8. The court overlooked or misunderstood the significance of this fact. Had the case been tried effectively, this fact would have been introduced, been woven throughout, and ended the defense case.

Mr. Nolan made clear that “Mr. Dennis’ trial counsel . . . failed to provide representation that satisfied the prevailing standard of care in 1988.” Circuit Doc #17-5 at 98. He testified that “[r]easonably effective counsel would have cultivated evidence bearing on Mr. Dennis’ past and current displays of delusional disorder, related life history, related family history and risk factors for mental illness.” *Id.* Trial counsel should “have followed the advice of retained experts who recommended further investigation into Mr. Dennis’ paranoia and delusions.” *Id.* at 99. Counsel should “have introduced all evidence concerning Mr. Dennis’ background.” *Id.* Mr. Nolan found that counsel should have done further investigation because “this crime cries out, in my opinion, for mental illness You look at his background, and that’s not something you would see from the crime and from his justification.” Circuit Doc #17-2 at 126.

This presentation demonstrated that trial counsel was ineffective under *Strickland* and its progeny. Yet, the Court held otherwise. In doing so, it rendered an opinion that conflicts with the relevant ineffective assistance of counsel decisions of this Court.


CONCLUSION

The Court of Appeals denied Mr. Dennis's challenge to the unconstitutional conviction imposed in his case. The Court "decided an important federal question in a way that is in conflict with relevant decisions of this Court." Rule 10(c).

For the foregoing reasons, the petition for writ of certiorari should be granted, and the judgment of the Court of Appeals should be reversed.

Dated: February 5, 2025

Respectfully submitted,

By: 
JAMES S. THOMSON*

Attorney for Petitioner
WILLIAM MICHAEL DENNIS

*Attorney of Record

**CERTIFICATE OF COMPLIANCE
PURSUANT TO USSC RULE 33**

Case No. 25-_____

I certify that the foregoing petitioner's petition for writ of certiorari is:

X Proportionally spaced, has a typeface of 12 points, is in Century font, is double-spaced, and has 7,085 words.



JAMES S. THOMSON