No. 24-7010

In the
Supreme Court of the United States

KENNETH HARTLEY,

Petitioner,

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE ELEVENTH CIRCUIT

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QUESTION PRESENTED

Kenneth Hartley, a state prisoner, seeks certiorari review of an unpublished order from the Eleventh Circuit Court of Appeals denying his motion for a certificate of appealability (COA) after the district court provided a comprehensive analysis of Hartley's claims on their merits and ultimately decided that none of the issues presented in the initial habeas petition warranted a COA. *See* 28 U.S.C. § 2253(c). The questions raised in the Petition, reframed for clarity, are as follows:

1. Whether 28 U.S.C. § 2253(c) requires a circuit court reviewing a district court's detailed written opinion to write their own individualized findings for denying Hartley's motion to grant a COA when the district court already explained why Hartley's claims were meritless and why a COA would not be granted.

2. Whether statistics about the number of COA denials in United States District Court for the Middle District of Florida are sufficient to determine whether the Middle District is applying the correct standard for denying COAs.

3. Whether the district court made the correct factual findings and correctly applied the properly stated rule of law to determine that it was not debatable among reasonable jurists that Hartley failed to make a substantial showing that he was denied a constitutional right.

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Hartley seeks certiorari review of the Eleventh Circuit's order denying his motion for a COA, which appears as *Hartley v. Sec'y, Florida Dep't of Corr.*, No. 22-13006-P, 2024 WL 5651470, at 1 (11th Cir. May 20, 2024), *recons. denied*, Dec. 9, 2024. Hartley sought a COA from the Eleventh Circuit because the district court denied his petition for a writ of habeas corpus and determined a COA would not be appropriate for any of the issues presented. The district court opinion appears as *Hartley v. Sec'y, Florida Dep't of Corr.*, No. 3:08-CV-962-MMH-LLL, 2022 WL 3099256, at *1 (M.D. Fla. Aug. 4, 2022).

STATEMENT OF JURISDICTION

Hartley seeks to invoke this Court's jurisdiction under 28 U.S.C. § 1254. The Secretary agrees that this Court has the authority to grant review under that statute but denies that this is an appropriate case for the exercise of this Court's discretionary jurisdiction, as the Eleventh Circuit's order does not conflict with any decision by this Court, nor does it decide any important or unsettled question of federal law. *See* Sup. Ct. R. 10(a), (c).

STATEMENT OF THE CASE AND FACTS

Kenneth Hartley and his two accomplices, Ronnie Ferrell and Sylvester Johnson, were all convicted for the first-degree murder, robbery, and kidnapping of seventeen-year-old Gino Mayhew. *Hartley v. State*, 686 So. 2d 1316, 1318–19 (Fla. 1996). Testimony established that Hartley was the triggerman. He was sentenced to death.

Facts of the Crime

On April 22, 1991, an eyewitness saw Hartley and his two co-defendants, surrounding seventeen-year-old Gino Mayhew's vehicle. *Id.* at 1318. Hartley was observed holding a gun to Mayhew's head. *Id.* Hartley and Ferrell were then observed getting into the victim's vehicle before Mayhew drove out of the parking lot at a high rate of speed with Johnson following in a pickup truck. *Id.* The following day, law enforcement found Mayhew's vehicle in a field. *Id.* Mayhew's lifeless body was slumped over in the driver's seat with one non-fatal gunshot wound in his forehead, three fatal gunshot wounds in the back of his head, and one non-fatal gunshot wound in his shoulder. *Id.* The trajectory of the bullets and wounds were consistent with someone shooting Mayhew while sitting in the rear driver-side seat. *Id.* Multiple witnesses testified that Hartley admitted, on multiple occasions, that he was the shooter. *Id.* at 1318–19.

Conviction and Death Sentence

The guilt-phase jury trial commenced with jury selection on August 23, 1993.

DAR:1488.[1] During *voir dire*, the State asked Ms. Theresa Stanford her thoughts about the death penalty; she stated that she was "against it" because she thought "a person can be rehabilitated in some other form." DAR:1543. The State asked her if she would be able to recommend a death sentence, but she demurred saying she needed to see the evidence first. DAR:1663-66. When the State asked if she thought there could be some cases where she could recommend a death sentence, she responded "possibly." DAR:1666. The State did not move to strike Ms. Stanford for cause. When both parties began exercising their preemptory challenges, five of the twelve proposed panelists were black. DAR:1887. The State skipped over the first two black panelists and moved to strike Ms. Stanford. *Id.* The State offered two race neutral reasons for the strike: (1) she was "personally opposed" to the death penalty even though she said she could set that feeling aside, and (2) she was a psychotherapist so the State was concerned she would be "too forgiving because of her line of work." *Id.* Hartley's counsel asserted that those reasons were not an appropriate "basis for excusing" Ms. Stanford. DAR:1888. The trial court found that there was no indication the State's reasons were pretextual because the State had not moved to strike the other four black panelists. *Id.* The State offered no more preemptory challenges to the remaining four black panelists, but Hartley struck two of them. DAR:1889, 1894. The two remaining black panelists sat as jurors; the State

[1] Citations to the record will be as follows: Hartley's direct appeal will be cited as DAR:[Page Number]; the initial postconviction record (SC04-1387) will be cited as PCR04:[Page Number]; the relevant successive postconviction record (SC13-1470) will be cited as PCR13:[Page Number].

only used six of its ten preemptory challenges. DAR:1895, 1899.

At the conclusion of the guilt-phase, the jury found Hartley guilty of first-degree murder, robbery, and kidnapping. *Id.* at 1318. As part of his mitigation presentation during the penalty-phase, Hartley presented testimony from the Reverend Coley Williams, who had known Hartley since 1980. DAR:2526. Williams testified extensively about Hartley's background and good character. DAR:2530–43. After deliberation, the jury recommended a death sentence. DAR:458. The trial court imposed a death sentence finding six aggravators[2] and two mitigators[3] applied but the aggravation far outweighed the mitigation. DAR:489–97.

State Postconviction Proceedings

Prior to the guilt-phase trial, Hartley claimed that Hank Evans had confessed to the murder. Ronald Wright, an associate and fellow inmate with Evans, claimed that Evans had confessed that he had killed the victim then later sent Wright a letter referencing that confession. DAR1315–16.[4] After holding multiple hearings, the state

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[2] Prior violent felony conviction (great weight); murder committed during the course of a kidnapping (great weight), murder committed to prevent lawful arrest (great weight); murder committed for pecuniary gain (great weight); the murder was especially heinous, atrocious, or cruel (great weight); and the murder was committed in a cold, calculated, and premeditated manner (great weight).

[3] Age of Hartley (slight weight), and Hartley's good character as testified to by Reverend Coley Williams (slight weight).

[4] The reference to the "confession" in the letter was derived from a single sentence that read, "I've made money with you, you was my home boy and I never told you a thing about that Blazer Sherwood tip until we got to Butler and the [expletive] had done cleared up." DAR:1316. During an evidentiary hearing, Evans denied that line was referencing a confession, and instead it referred to the fact that he did not share any information about rumors he had heard with "the authorities" until after he was

trial court excluded Wright's hearsay testimony from the trial because (1) Evans denied ever telling Wright that he had killed the victim, (2) the letter from Evans to Wright was "too vague and oblique" to support Wright's testimony, (3) Wright's version of Evan's confession contradicted the forensic evidence related to how the victim died, and (4) three witnesses[5] testified that Wright and Hartley met several times to "create[e] a false confession." DAR:363–69. The Florida Supreme Court affirmed this exclusion, agreeing that the hearsay testimony was unreliable. *Hartley*, 686 So. 2d at 1320–21.

In his initial postconviction proceedings, Hartley argued his trial counsel was ineffective for failing to present additional mitigation testimony from seven friends and family members. PCR04:116, 139–47, 273–74. At an evidentiary hearing, Hartley's trial counsel explained he attempted to secure the testimony of family members, but they were either unwilling to testify or were unavailable. PCR04:2523, 2532, 2544–45. The state trial court found trial counsel's testimony more credible than Hartley's suggestion that these witnesses would have testified during the penalty phase. PCR04:1860–62, 1866–72. The state trial court also found that Hartley failed to demonstrate he was prejudiced because the testimony of the seven witnesses would have been, at best, cumulative. *Id.* The Florida Supreme Court affirmed the trial court's findings. *Hartley v. State*, 990 So. 2d 1008, 1013–14 (Fla.

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sentenced. DAR:1387.

[5] Elijah Blackshear, Kareem Johnson, and James Brown.

2008).

Hartley's co-defendant, Ronnie Ferrell, was initially tried, convicted, and sentenced to death. *Ferrell v. State*, 686 So. 2d 1324, 1326–1327 (Fla. 1996). During Ferrell's initial sentencing hearing, the trial court made a comment that because Ferrell had betrayed the trust of the victim, who was Ferrell's close friend, "his culpability equals that of Hartley." PCR13:1791–92. Ferrell's death sentence was later vacated. *Ferrell v. State*, 29 So. 3d 959 (Fla. 2010). On remand, the State entered an agreement with Ferrell that, in exchange for Ferrell's sworn testimony that he did not shoot the victim, they would waive the death penalty. PCR13:1837, 1839. Pursuant to this agreement, Ferrell was sentenced to life in prison on December 9, 2010. PCR13:10:1841. Hartley then filed another postconviction challenge arguing his death sentence was no longer proportional. *Hartley v. State*, 175 So. 3d 757, 760 (Fla. 2015). The trial court denied the motion and the Florida Supreme Court found Hartley's death sentence was appropriate because Hartley was "the triggerman and dominant actor" in the crime. *Id.* at 761.

The District Court's Denial of Federal Habeas Relief

On October 7, 2008, Hartley filed his initial federal habeas petition but, after a series of administrative stays, amended the petition on January 28, 2019. *Hartley v. Sec'y, Florida Dep't of Corr.*, No. 3:08-CV-962-MMH-LLL, 2022 WL 3099256, at *1 (M.D. Fla. Aug. 4, 2022). The original amended petition stated eight grounds for

relief, but Hartley only raises four of them before this Court.[6] The surviving claims are as follows:

- Ground One: Hartley's trial counsel was ineffective for failing to call the seven mitigation witnesses, Amd. Pet. at 23–35;
- Ground Three: Hartley's due process rights were violated because he was not permitted to present hearsay evidence from Ronald Wright about Hank Evans' alleged confession, Amd. Pet. at 41–54;
- Ground Five: the state court improperly denied his *Batson*[7] challenge to striking Ms. Stanford, Amd. Pet. at 23–35;
- Ground Seven: the state court violated his Eighth and Fourteenth Amendment rights by not resentencing him once Ferrell received a life sentence, Amd. Pet. at 66–71.

The district court evaluated Grounds One, Three, Five, and Seven on their merits and concluded that the state court's decisions were entitled to Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) deference because they did not contradict or misapply well established federal law. *Hartley*, 2022 WL 3099256, at *8, 17, 22, 28.[8] Furthermore, the district court found that, even if the state court's

[6] For the sake of consistency, the Secretary refers to each of these grounds throughout this brief according to the numbering in the amended petition.

[7] *Batson v. Kentucky*, 476 U.S. 79 (1986).

[8] As to Ground Five, the district court also found it was unexhausted because Hartley only referenced federal constitutional rights in his title heading, but, in his argument "he relied solely on Florida case law that interpreted the Florida Constitution." *Id.* at *23.

decisions were not entitled to deference, Hartley's claims were meritless. *Id.* at *10–11, 17–18, 24, 29. For Grounds One and Three, the district court also noted that Hartley failed to present any clear and convincing evidence that the state court's factual findings were incorrect because he merely repeated testimony that he found favorable but failed to explain how the state court erred in its assessment of that testimony. *Id.* at *11, 16–19, 29.

The district court then described the standards for a certificate of appealability and how the standards differ from merits analysis. *Id.* at *34. After considering the entire record, the district court found that none of the issues warranted a certificate of appealability. *Id.*

The Eleventh Circuit's Denial of a Certificate of Appealability

Hartley applied for a COA with the Eleventh Circuit, but that motion was denied on May 20, 2024. *Hartley v. Sec'y, Florida Dep't of Corr.*, No. 22-13006-P, 2024 WL 5651470, at 1 (11th Cir. May 20, 2024). Hartley then moved for reconsideration. A three-judge panel, consisting of the Honorable Robin Rosenbaum, Robert Luck, and Barbara Lagoa, denied reconsideration. Order, *Hartley v. Sec'y, Florida Dep't of Corr.*, No. 22-13006-P (11th Cir. Dec. 9, 2024).

REASONS FOR DENYING THE PETITION

I. The Eleventh Circuit's Summary Denial of Hartley's Certificate of Appealability Does Not Warrant Review.

Hartley failed to raise any arguments about the first two questions presented in the court below. His quarrel with the Eleventh Circuit also does not address any meaningful conflict with a decision of this Court or any federal court of appeals.

Therefore, certiorari should be denied.

A. Hartley Failed to Raise his First Two Questions Presented Below.

The first two questions that Hartley presents here were never raised in the lower court. Hartley never even provided a perfunctory reference to any concerns about "non-individualized, blanket denials" of a COA to the Eleventh Circuit even though he moved for reconsideration. Mtn. for Reconsideration, *Hartley v. Sec'y, Florida Dep't of Corr.*, No. 22-13006-P (11th Cir. June 10, 2024). Nor did Hartley mention anything about the Middle District of Florida's "disproportionately high denial rate" of COAs in either his motion for reconsideration or his initial application to the Eleventh Circuit for a COA. *See Id.*; Application for Cert. of Appealability, *Hartley v. Sec'y, Florida Dep't of Corr.,* No. 22-13006-P (11th Cir. Nov. 28, 2022). His petition also presents no compelling reason why this Court should abandon its tradition of declining to decide questions not pressed or passed upon below. This Court should deny certiorari.

B. The Eleventh Circuit's Denial of a COA Does Not Conflict with Any Other Circuits on Important Matters.

In the present case, the district court denied a COA as to all issues raised by Hartley because it had already analyzed all his claims on the merits and did not believe reasonable jurists would find its assessment of Hartley's constitutional claims debatable or wrong. *Hartley*, 2022 WL 3099256, at *34. The Eleventh Circuit also denied a certificate of appealability. *Hartley v. Sec'y, Florida Dep't of Corr.*, No. 22-13006-P, at *1 (11th Cir. Dec. 9, 2024). Hartley takes issue with this because, in his

view, both the circuit and district court did not "provide any reasoned explanation or analysis of its denial of a COA." Pet. at 11. Hartley attempts to make this seem momentous by pointing to a multi-decade old circuit split where he believes a minority of two circuits have decided that any denial of a COA must present individualized findings. Pet. at 11–12. He makes no argument that 28 U.S.C. § 2253 or this Court's precedent requires the adoption of this minority position. Upon closer inspection, however, it becomes clear that the importance of the supposed circuit split is ephemeral.

The Tenth Circuit does not require that district courts articulate individualized findings for *denials* of a COA. Rather, the Tenth Circuit has stated it is improper for a district court to provide a blanket *grant* of a COA because that contravenes the narrowing function of 28 U.S.C. § 2253(c). *Thomas v. Gibson*, 218 F.3d 1213, 1219 n. 1 (10th Cir. 2000) (disapproving of a district court's "order granting [defendant] a certificate of appealability ('COA') as to all issues raised in the petition"); *Davis v. Allbaugh*, 794 Fed. Appx. 683, 685 (10th Cir. 2019) (same). In contrast, the Tenth Circuit has determined blanket denials of COAs are permitted if the district court has appropriately analyzed the individual claims. *LaFevers v. Gibson*, 182 F.3d 705, 710 (10th Cir. 1999) ("It is equally important, however, that district courts do not proceed to the other end of the jurisdictional spectrum and make a blanket denial of a certificate of appealability *unless the court is convinced there is nothing in the petition that is of debatable constitutional magnitude*.") (emphasis added). Consequently, the Tenth Circuit does not support Hartley's side of this

ostensible circuit split.

It is true that almost a quarter-century ago the Sixth Circuit decried the practice of district courts providing blanket grants and blanket denials of COAs absent any rationale for their decisions. *Porterfield v. Bell*, 258 F.3d 484, 487 (6th Cir. 2001). More recently, the Sixth Circuit has also recognized it is appropriate for a district court to justify its denial of a COA by referring to its analysis of the merits of a claim. *Layne v. Stewart*, No. 17-1389, 2017 WL 4857574, at *2 (6th Cir. Sept. 13, 2017) (finding a district court's opinion that stated a COA was not warranted for "the reasons stated in this opinion" was appropriate because it "provided sufficient analysis in its opinion to indicate that it had made an individual determination of Layne's claims."); *Hawkins v. Rivard*, No. 16-1406, 2016 WL 6775952, at *2 (6th Cir. Nov. 10, 2016) (finding that "because the court had already reviewed and analyzed the claims through the adoption of the magistrate judge's report and recommendation, it was not necessary for the court to reassess each claim prior to denying a COA."). Indeed, conclusory statements about whether the district court will issue a COA are now standard practice for district courts across the Sixth Circuit.[9]

[9] *See e.g. Marshall v. Tasson*, No. 2:25-CV-118, 2025 WL 1762194, at *6 (W.D. Mich. June 26, 2025); *Montez v. Bauman*, No. 2:24-CV-171, 2025 WL 1671282, at *28 (W.D. Mich. June 13, 2025); *United States v. Bell*, No. 23-20471, 2025 WL 1638808, at *2 (E.D. Mich. June 9, 2025); *Maxwell v. Shoop*, No. 1:21-CV-318, 2025 WL 886198, at *83 (N.D. Ohio Mar. 21, 2025); *Montejo v. United States*, No. 3:22-CV-00219, 2025 WL 818182, at *6 (M.D. Tenn. Mar. 13, 2025); *Brooks v. United States*, No. 3:21-CV-00939, 2025 WL 611068, at *13 (M.D. Tenn. Feb. 25, 2025); *Harris v. Green*, No. 2:22-CV-131-REW-MAS, 2024 WL 4491637 (E.D. Ky. Oct. 15, 2024); *Mosley v. United States*, No. 2:21-CR-00004-DCLC-CRW, 2024 WL 3246706, at *5 (E.D. Tenn. June 28, 2024).

The district court's analysis in this present case would therefore fall well within the parameters laid out by the Sixth Circuit. *See Hartley*, 2022 WL 3099256, at *34. Therefore, the district court's denial of a COA complied with the Sixth Circuit's prohibition against "*pro forma*" denials.

Hartley may retort that, while the *district court* denial of a COA might pass the Sixth Circuit's muster, this would not excuse the *Eleventh Circuit's* "*pro forma*" denial of a COA. *See* Pet at 10. Even if that distinction was a question worthy of this Court's consideration, Hartley cannot demonstrate that compelling the Eleventh Circuit to make individualized findings would yield a different outcome. Indeed, the most plausible inference from the Eleventh Circuit's summary denial of Hartley's request for a COA is that, after reviewing Hartley's motion for a COA and the district court's opinion, the circuit judge agreed with the district court that no reasonable jurist could debate the district court's conclusions about Hartley's claims. If this Court were to remand this case on the first two questions presented, the likely outcome would be that the Eleventh Circuit would issue a written opinion repeating the analysis of the district court. This would be the ultimate exercise in futility and is not an important question which warrants this Court's review.

C. The Eleventh Circuit Did Not Decide Any Important Question of Federal Law That Conflicts with the Decisions of This Court.

Nothing in the text of 28 U.S.C. § 2253(c) nor in this Court's precedent requires that a circuit court provide separate individualized findings before denying a COA. Section 2253(c)(3) merely requires that, if a COA is issued, it specifies which issues

are appealable. Hartley points to language in *Miller-El v. Cockrell,* 537 U.S. 322 at 336–37 (2003), to suggest COAs should be easily attainable because the COA determination rests on a "general assessment" of Hartley's claims and whether those claims are debatable among reasonable jurists. Yet nothing in *Miller-El* even suggests that a circuit court should be compelled to provide written findings whenever they deny a COA. If anything, *Miller-El* would require the opposite because "[s]tatutes such as AEDPA have placed more, rather than fewer, restrictions on the power of federal courts to grant writs of habeas corpus to state prisoners. . . It follows that *issuance* of a COA must not be *pro forma* or a matter of course." *Miller-El*, 537 U.S. at 337 (emphasis added). Because the Eleventh Circuit's practice contradicts neither the statute nor this Court's precedent, the first two questions presented state no conflict worthy of this Court's attention.

II. The District Court's Denial of Hartley's Certificate of Appealability Does Not Warrant Review.

Hartley's central argument is that the district court either contradicted or misapplied this Court's precedent or made erroneous factual findings. Pet. at 11, 14. This case comes before the Court under an AEDPA deference posture with numerous claims where Hartley failed to make the requisite evidentiary showing in the court below. It would be an extremely poor vehicle for resolving any of the issues raised.

A. The District Court Correctly Applied and Properly Stated the Rule of Law in Deciding Whether to Grant a Certificate of Appealability.

The district court found that the standard for reviewing the denial of a COA when that claim was decided on the merits is whether "reasonable jurists would find

the district court's assessment of the constitutional claims debatable or wrong." *Hartley*, 2022 WL 3099256, at *34 (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). For a claim denied on procedural grounds, the district court said the standard is whether "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Id.* (*quoting Slack*, 529 U.S. at 484). These are the same standards Hartley would have this Court apply. Pet. at 1, 10, 14. Therefore, both sides agree that the district court used the correct standard for evaluating whether to grant a COA. The dispute is merely over the application of that standard. Hartley ventures no sound reason why this case should be an exception to this Court's practice of passing on such disputes.

B. This Case Would Be a Poor Vehicle to Consider the Merits of Any of Hartley's Underlying Constitutional Claims.

This is the fourth time Hartley has appeared before this Court hoping to overturn his lawful sentence.[10] This Court has already decided the issues Hartley now raises in Ground One and Ground Seven were not worthy of certiorari review on appeal from the state court's final decision. The procedural posture for his present petition is even less favorable because now he has the added difficulty of overcoming

[10] *Hartley v. Florida*, 586 U.S. 863 (2018) (denying writ of certiorari to review state court decision on *Hurst v. Florida*, 577 U.S. 92 (2016), issues); *Hartley v. Florida*, 577 U.S. 1195 (2016) (denying writ of certiorari to review state court decision on sentencing difference); *Hartley v. Florida*, 568 U.S. 1049 (2012) (denying writ of certiorari to review state court decision on claim of ineffective assistance of counsel for mitigation presentation); *Hartley v. Florida*, 522 U.S. 825 (1997) (denying writ of certiorari to review state court decision on jury instruction for aggravators).

the heavy burden of AEDPA deference. Even if he were to succeed in obtaining relief with this Petition related to any latent issues with a COA, the likelihood that he would prevail on any of the underlying constitutional claims is remote.

To complicate matters further, the district court pointed out that Hartley never presented clear and convincing evidence that the state court's factual findings were incorrect. 28 U.S.C. § 2254(e)(1). *See infra* III.B. Hartley almost entirely ignored this issue in his application for a certificate of appealability to the Eleventh Circuit. *See* Application for Cert. of Appealability, *Hartley v. Sec'y, Florida Dep't of Corr.,* No. 22-13006-P (11th Cir. Nov. 28, 2022). Even if Hartley could now point to parts of the record which he believes rebuts the state court's factual findings, those arguments were not litigated in either the district court or in the Eleventh Circuit below. Hartley does not get to avail himself of relief from this Court when he has failed to meet his burden in the federal courts below.

Because all the claims now before this Court amount to nothing more than complaints that the district court below misapplied a properly stated rule of law or made erroneous factual findings, this Court should treat this petition the same as Hartley's previous ones and deny certiorari.

III. Hartley's Certificate of Appealability Was Correctly Denied.

The district court properly denied Hartley a certificate of appealability because it evaluated the merits of each ground for relief and, not only did the claims plainly lack any merit, it was apparent that no reasonable jurist could debate whether the

state court's decision was so egregiously wrong that no fairminded jurist would agree with the state court assessment of Hartley's constitutional claims. While Hartley raises some creative interpretations of the district court's legal analysis, they are not sufficient to create a debatable point about clearly established federal law. Similarly, Hartley failed to present clear and convincing evidence that the state court's factual determinations were incorrect, choosing instead to merely repeat testimony he found favorable.

A. The District Court's Assessment That a Fairminded Jurist Would Not Find the State Court Contradicted or Unreasonably Applied Clearly Established Federal Law is Not Debatable. (Grounds One, Three, Five, and Seven).

Under AEDPA, whenever a state court resolves a constitutional claim on the merits, habeas relief is only proper where the state court "blundered in a manner so 'well understood and comprehended in existing law' and 'was so lacking in justification' that 'there is no possibility fairminded jurists could disagree.'" *Tharpe v. Warden*, 834 F.3d 1323, 1338 (11th Cir. 2016) (quoting *Harrington v. Richter*, 562 U.S. 86, 102–03 (2011)). To justify a COA, therefore, Hartley must show a reasonable jurist could debate whether the state court's blunder was so egregious that it violated well understood federal law such that no fairminded jurist would agree with the state court. In this case, the district court examined each of Hartley's grounds for relief on their merits and found that the state court had not contradicted or unreasonably applied any well-established federal law. *Hartley*, 2022 WL 3099256, at *8, 17, 22, 28.. Each of Hartley's attempts to create a conflict with well-established federal law

are unavailing.

For Ground One, Hartley's sole criticism of the district court's legal conclusions is that the district court supposedly fashioned a new rule "requiring only extra-record evidence may be considered in the [28 USC §2554)] (e)(1) analysis." Pet. at 16. Hartley's misconception arises from the following sentence in the district court's order, "Hartley has not rebutted the postconviction court's credibility determination by clear and convincing evidence, relying instead on facts that [the state court] already considered in its credibility analysis." *Hartley*, 2022 WL 3099256, at *10.. A more reasonable reading of this sentence in the context of the district court's analysis reveals the district court was pointing out that Hartley's argument was flawed because he merely cited the testimony that Hartley liked without accounting for the fact that the state court did not find that testimony credible. *See Id*. at *10–12. Indeed, he repeats this same error in his petition to this Court. Therefore, Hartley has no credible argument that any reasonable jurist would debate the district court's conclusion that the state courts did not contradict or unreasonably apply well established federal law related to Ground One.

As to the merits of Hartley's Ground Five, Hartley points to two supposed legal errors in the district court's decision. First, he faults the district court for citing *Bowles v. Sec'y, Fla. Dep't of Corr.*, 608 F.3d 1313 (11th Cir. 2010), because *Bowles* was not deciding a race-based *Batson* claim. Pet. at 27–28. But this criticism misunderstands the district court's purpose in citing *Bowles*. The district court noted there was "a rational basis" for the State to conclude that if a juror opposed to the

death penalty, that opposition "would undermine its position in the case." *Hartley*, 2022 WL 3099256, at *24. No reasonable jurist would find the district court's general citation to *Bowles* undermined its analysis that the state court was correct to find that opposing the death penalty and being too lenient due to a professional occupation were legitimate, race neutral reasons for excluding a juror.

Second, Hartley claims that the Florida Supreme Court and the district court failed to engage in "a totality-of-the-circumstances analysis" when evaluating the proffered race neutral reason yet presents no evidence in his Petition of what other circumstance the state courts failed to consider. Pet at 28–29. Hartley's argument inverts the burden he bore at trial under the third step of *Batson*: it is *his* burden to prove purposeful discrimination occurred. *Hernandez v. New York*, 500 U.S. 352, 359 (1991). His argument also inverts his burden under the AEDPA framework: it is *his* burden to present clear and convincing evidence that the state court's analysis was erroneous. 28 U.S.C. § 2254(e)(1); *see also Miller-El v. Dretke*, 545 U.S. 231, 240 (2005). Hartley primarily attempts to establish there was evidence of pretext because Ms. Stanford claimed that she could set aside her personal opposition to the death penalty. Pet at 3, 28–29. While this explains why the panelist was not stricken for cause, it does nothing to explain why this should be considered evidence of pretextual racial discrimination nor does it undermine the district court's conclusions about the state court's assessment. Hartley's argument is wholly insufficient to satisfy his burden under both *Batson* and AEDPA. His failure to do so illustrates why no reasonable jurist would debate the district court's analysis of Hartley's claim.

Finally, regarding Ground Seven, Hartley's complaints fail to contend with the operative factual distinctions between his and his co-defendant's culpability.[11] Whereas Ferrell was merely an accomplice to the murder, Hartley murdered the victim by pulling the trigger on his gun five times. *Hartley*, 686 So. 2d at 1318. No reasonable jurist would debate that it is constitutionally acceptable to impose a different sentence for the triggerman compared to a co-defendant accomplice who received a negotiated plea agreement with the State. *See e.g. Enmund v. Florida*, 458 U.S. 782, 801 (1982) (overturning a death sentence because the entire death sentencing scheme did not meaningfully distinguish between those who intended the killing and those who were mere accomplices to the killing); *see also Blake v. State*, 972 So. 2d 839, 849 (Fla. 2007) (collecting cases where relative culpability arguments were rejected because the death-sentenced defendants were the triggermen). Hartley's myopic insistence that this Court rely exclusively on a comment from the sentencing judge in Ferrell's initial–since vacated and, therefore, of no legal significance–sentencing hearing is unwarranted. *Compare* Pet at 30–32 *with Hartley*,

[11] Hartley also claims the district court made a legal error in evaluating his claim under *Pulley v. Harris*, 465 U.S. 37, 43–44 (1984), because, according to Hartley, he is not making a proportionality review claim, but arguing his sentence was arbitrary and capricious because his co-defendant was equally culpable. Pet. at 31. In the very next paragraph, he then claims that relative culpability review *is* required. Pet. at 31–32. Hartley's contradictory position illustrates he is making a distinction without a practical difference. *See e.g. Bush v. Singletary*, 99 F.3d 373, 375 (11th Cir. 1996) (holding that a defendant could not argue his sentence was disproportionate under federal law after his co-defendant was sentenced to life); *Sanchez-Torres v. State*, 365 So. 3d 1134, 1136 (Fla. 2023) (explaining that relative culpability analysis is a subcomponent of proportionality review).

175 So. 3d at 761. Therefore, Hartley's claim does not merit any review from this Court.

B. The District Court's Finding That Hartley Failed to Present Any Clear and Convincing Evidence That the State Court's Factual Determinations Were Incorrect is Not Debatable (Ground One and Three).

This Court has consistently explained that fact finding, particularly when it involves credibility determinations of two separate courts, is best left to the lower courts. *See e.g. Exxon Co., U.S.A. v. Sofec, Inc.*, 517 U.S. 830, 841 (1996) (collecting cases). Nevertheless, for two of the four grounds Hartley raises here, he would have this Court override the fact finding of two courts because he believes there is evidence in the record that could support his version of the facts. Pet. at 6–7, 19, 22–24, 27–28, 30–31. His version of the facts, however, is contradicted by other parts of the record, missing crucial context, or insufficient to rebut the deference due to the state court's credibility assessments.

For Ground One, Hartley points to favorable testimony of his family members. Pet. at 6–7, 19–20. The state court found that, after weighing the family's testimony with that of trial counsel's, the family members were either not cooperative at trial or unavailable. PCR04:1860–62, 1866–72. The district court found no error in that assessment. *Hartley,* 2022 WL 3099256, at *10. Hartley simply reasserts that the family members said they would have testified yet provides no reasons why the state court erred in discrediting their testimony. Pet at 17. Hartley also lodges a complaint about the district court's footnote about deference to trial counsel's decisions. Pet at

17. Neither argument explains why the state court's findings are without justification.

Hartley also never refuted the state court's finding that, even if his family members had testified, there was no reasonable probability that the testimony would have resulted in a life sentence. Hartley asserts his family members could "genuinely speak to Hartley's background, struggles, and redeeming qualities." Pet. at 21. The record, however, demonstrates that the testimony of his family was vague, conclusory, and otherwise not substantively different than what Reverend Coley Williams testified to during the penalty phase. *Compare* PCR04:2560–61, 2615–16, 2632 *with* DAR:2527, 2530–31, 2535, 2539–41. Hartley also entirely ignores the district court's analysis that, had trial counsel presented the testimony of his successful, professional-football-playing brother, it would have likely backfired. *See Hartley,* 2022 WL 3099256, at *11. Given these issues, it is readily apparent that all his other arguments regarding Ground One are meritless.

On Ground Three, Hartley attacks the state court's factual findings by questioning the timeline of various conversations and pointing out that he also had jailhouse witnesses who would testify that the State's three witnesses were really the ones making things up. Pet. 5–6, 23–24. Even if Hartley's factual assertions were correct, they fail to rebut the initial findings of the state trial judge that the hearsay statements were unreliable because: (1) Evans himself denied ever confessing to the murder, (2) the letter which supposedly showed Evans confessed was vague and indeterminant, and (3) the details that Wright relayed about Evan's supposed

confession contradicted evidence of how the defendant died. DAR:365–66. Hartley ignores the first two issues and simply mentions the third without explaining why the state court's finding was incorrect. Pet at 6, 22–24. Instead, he points to superficial similarities between his claim and the facts of *Chambers v. Mississippi,* 410 U.S. 284 (1973). Pet at 22–23. No reasonable jurist would debate that the district court correctly determined that Hartley failed to present clear and convincing evidence that the state court's factual findings were erroneous.

CONCLUSION

Based on the foregoing reasons, Respondent respectfully requests that this honorable Court deny the petition for a writ of certiorari.

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