

**\*\*THIS IS A CAPITAL CASE\*\***  
**\*\*EXECUTION SET FOR DECEMBER 3, 2024, AT 6:00 PM CENTRAL\*\***

No. 24A391

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**IN THE  
SUPREME COURT OF THE UNITED STATES**

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Christopher Collings, Petitioner,

v.

David Vandergriff,  
Warden, Potosi Correctional Center, Respondent.

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On Petition for Writ of Certiorari  
to the Supreme Court of Missouri

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**REPLY IN SUPPORT OF  
APPLICATION FOR STAY OF EXECUTION**

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## REASONS FOR GRANTING THE STAY

The State makes no attempt to distinguish the pending case of *Glossip v. Oklahoma*, 144 S. Ct. 691 (2024), from this case. Rather, the State's response highlights yet another similarity between this case and *Glossip*. Due to the similarities between the two cases, Mr. Collings has shown a reasonable probability that at least four members of this Court would consider the underlying case worthy of a certiorari grant. Similarly, as in *Glossip*, because the lower court's opinion conflicts with this Court's controlling precedent, Collings has shown a reasonable probability of success on the merits.

Collings has not been dilatory in bringing the claims pending before this Court. Absent a stay, Collings will suffer irreparable harm: death. In contrast, a stay will not substantially harm the State, and any purported harm or delay of which the State now complains is the fault of the State, not Collings. Had the State disclosed during Collings's trial proceedings the impeachment evidence regarding the State's star witness, as the State admits it did not do, the grounds for the claims pending before this Court would not even exist.

As in *Glossip*, the balance of these factors weighs in favor of a stay. This Court should grant the application for a stay.

### **A. Collings is likely to succeed on the merits.**

A reasonable probability exists that at least four members of this Court would consider the underlying case worthy of a certiorari grant. As explained in Collings's application for stay, the questions presented in *Glossip*, on which at least

four members of this Court deemed worthy of this Court's review, are the same as those presented in this case.

The State makes no attempt to distinguish *Glossip*. Instead, the State's response highlights yet another similarity between this case and *Glossip*. The State contends that the principal question before this Court is whether the Missouri Supreme Court's decision applied Missouri's procedural default rule as an adequate and independent state law ground for the denial of Collings's *Brady* claims. BIO at 2. But *Glossip* presents a substantially similar question: whether the Oklahoma Court of Criminal Appeals' decision holding that the Oklahoma Post-Conviction Procedure Act precluded post-conviction relief is an adequate and independent state-law ground for the judgment denying *Glossip*'s *Brady* claims (and other claims). *Glossip*, 144 S. Ct. at 692. Due to the similarities with *Glossip*, a reasonable probability exists that at least four members of this Court likewise would find that the questions presented in this case warrant this Court's review.

Furthermore, Collings has shown a reasonable probability of success on the merits of this question. In *Coleman v. Thompson*, this Court reiterated that:

this Court on direct review of state court judgments[] will presume that there is no independent and adequate state ground for a state court decision when the decision "fairly appears to rest primarily on federal law, or to be interwoven with the federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion."

501 U.S. 722, 734-35 (1991) (quoting *Michigan v. Long*, 463 U.S. 1032, 1040-41 (1983)).

It is unconverted that Collings's *Brady* claim is a federal claim. Both this Court and the lower court have recognized that, in the context of a *Brady* claim, the merits of the claim necessarily are interwoven with the application of the "cause and prejudice" procedural default rule. *Strickler v. Greene*, 527 U.S. 263, 282 (1999); *Banks v. Dretke*, 540 U.S. 668, 691 (2004); *State ex rel. Engel v. Dormire*, 304 S.W.3d 120, 125-27 (Mo. banc 2010); *Woodworth v. Denney*, 396 S.W.3d 330, 338 (Mo. banc 2013), *as modified* (Jan. 29, 2013).

Because the merits and procedural questions are so interwoven, the adequacy and independence of any possible state law ground is not clear from the face of the lower court opinion. In addition, the lower court opinion does not clearly state that it rested its decision on an adequate and independent state law ground. *Long*, 463 U.S. at 1044 (finding that "the absence of a plain statement that the decision below rested on an adequate and independent state ground" showed that the adequacy and independence of any possible state law ground was not clear from the face of the opinion). The lower court also recently has determined that its summary denials constitute merits rulings. *See Prosecuting Att'y, 21st Jud. Cir., ex rel. Williams v. State*, 696 S.W.3d 853, 859 (Mo. banc 2024) (finding that the result of its Rule 91 state habeas summary denials was that the court heard and rejected all the petitioner's actual innocence claims based on DNA evidence).<sup>1</sup> Thus, a reasonable probability exists that this Court would find, under *Coleman* and *Long*, that the

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<sup>1</sup> The cases including the unexplained summary denials include *State ex rel. Williams v. Steele*, No. SC94720 (Mo. banc Jan. 31, 2017) and *State ex rel. Williams v. Larkin*, No. SC96625 (Mo. banc Aug. 15, 2017).

presumption of a merits ruling applies, and this Court has jurisdiction to review the state-court decision denying Collings's *Brady* claims.

Collings also has shown a significant likelihood of reversal of the lower court's decision. The State admits that it never provided Clark's impeachment material during Collings's trial proceedings, BIO at 8, 10, and there is no question this Court has ruled that such information qualifies as evidence favorable to the defense under *Brady* and the State has a duty to provide it. *Strickler*, 527 U.S. at 280 (finding that the prosecution's duty to disclose encompasses impeachment evidence); *Kyles v. Whitley*, 514 U.S. 419, 437 (1995) (finding that "the individual prosecutor," not the defendant, has the "duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police.").

The fact that Clark's convictions occurred prior to his involvement in Collings's case does not render them irrelevant to this credibility. Courts assessing prejudice must consider the entirety of the suppressed evidence. *Kyles*, 514 U.S. at 441. Any conviction used for impeachment purposes necessarily would have occurred prior to the witness' involvement in the present case. The plain language of R.S.Mo. § 491.050 provides that "any *prior* criminal convictions may be proved to affect [a witness'] credibility in a civil or criminal case and, further, any prior pleas of guilty, pleas of nolo contendere, and findings of guilty may be proved to affect his credibility in a criminal case." (emphasis added). This statute "places no limit on the age of convictions used for impeachment[.]" *State v. Givens*, 851 S.W.2d 754, 759

(Mo. App. E.D. 1993), and Missouri litigants have an absolute right to use a witness' prior convictions to impeach that witness' credibility. *State v. Baker*, 636 S.W.2d 902, 906-07 (Mo. banc 1982). Thus, the fact that that Clark's convictions occurred decades prior to his conduct in Collings's case does not render them irrelevant to Clark's credibility. *See Kyles*, 514 U.S. at 441; *Strickler*, 527 U.S. at 281-82.

Suppressed impeachment evidence of a law enforcement witness particularly undermines confidence in a defendant's conviction or sentence when the State's case was "built on the jury crediting [the State's witness's] account rather than [the defense account.]" *Wearry v. Cain*, 577 U.S. 385, 392-93 (2016). Especially due to the lack of physical evidence implicating Collings, the State's case was built on the court and the jury crediting Clark's testimony. For example, although the *only* evidence suggesting that Clark provided *Miranda* warnings to Collings prior to his interrogation came from Clark's testimony; all the other available evidence regarding the timing of the *Miranda* warnings contradicted Clark's testimony.

Similarly, at sentencing, the case for death hinged on the jury believing that Clark's tactics in obtaining Collings's initial statement was reliable. One of the principal defense arguments was residual doubt. Although counsel did not present Spears's confession to raping and killing R.F., counsel did present evidence of Spears's suspicious actions, the cadaver dog evidence implicating Spears, and the statements of law enforcement officers providing to Collings evidence of Spears's involvement. But if Spears was the sole person who committed the fatal act, then Collings's confession—obtained by Clark—could not have been true.

The lower court’s merits decision conflicts with this Court’s precedent on both the suppression and prejudice components of the *Brady* analysis. The State’s attempt to use the district court’s opinion as an end-run around the errors of the state-court ruling is not reasonable. The decision on review in this Court is the state-court decision, not the federal district court’s ruling. Moreover, even if the district court’s opinion were relevant, it is not a reliable indicator of the merits of Collings’s state-court claims. The district court did not even consider Collings’s sentencing-phase *Brady* claim, and for the guilt-phase *Brady* claim, the court applied a higher prejudice standard than this Court applies to *Brady* claims. *Contrast United States v. Bagley*, 473 U.S. 667, 682 (1985) (equating the *Brady* materiality standard with the reasonable probability standard of *Strickland v. Washington*, 466 U.S. 668 (1984)) with *Collings*, 2022 WL 4677562 at \*8 (finding that “the standard of prejudice is *higher* than that required to establish ineffective assistance of counsel under *Strickland*.”) (citing *Charron v. Gammon*, 69 F.3d 851,858 (8th Cir. 1995) (emphasis added)).

The questions this case presents are very similar to those in *Glossip*. Due to those similarities, a reasonable probability exists that at least four members of this Court would consider the underlying case worthy of a certiorari grant. Similarly, as in *Glossip*, Collings has established a reasonable probability of success on the merits. This factor weighs in favor of a stay.

**B. Absent a stay, Collings will suffer irreparable harm, and the grant of a stay will not substantially harm the State.**

The State wrongly suggests that Collings will not be irreparably harmed if this Court does not intervene. Absent a stay, Collings will suffer an irrevocable punishment: death. And this punishment itself is the result of a proceeding in which neither the trial court nor the jury knew that the principal witness against Collings had four prior criminal convictions. There is no dispute that, during the trial proceedings, the State did not provide this information to Collings or the court. Thus, not only is Collings's sentence irreparable after it has been carried out, but it also the result of a tainted trial—one that the State apparently believed it could only win by hiding information favorable to Collings's case.

In contrast, the State will not suffer any tangible harm were this Court to grant a stay. The only argument the State raises is that it will suffer harm because this Court's consideration of Collings's claims will unnecessarily delay the resolution of the case. BIO at 22. But as in *Glossip*, it is the State, not Collings, who has caused any delayed resolution of the *Brady* claims. In both cases, the State failed to disclose the prior convictions of its star witness until after the conclusion of the ordinary course of review in state court. In both cases, had the State timely disclosed the impeachment material, as it had a constitutional duty to do, the grounds for claims pending before this Court would not even exist.

Neither the harm to Collings nor the purported harm to the State could have occurred had the State at trial properly disclosed the impeachment evidence. The relative harm to the parties weighs in favor of a stay. The grant of a stay also serves

the public interest in ensuring the constitutionality of Collings’s sentence, particularly when the State’s actions in this case raise the same due process concerns this Court is presently addressing in *Glossip*.

**C. Once the State disclosed the information establishing Collings’s *Brady* claims, Collings diligently sought relief.**

Collings has not been dilatory in bringing the claims at issue. The State admits that Collings could not have raised his *Brady* claims until after the trial. BIO at 23 n.2. However, despite also admitting that it did not provide Clark’s convictions until after Collings had completed the ordinary course of review in state court, BIO at 8, 10, the State contends that Collings nonetheless should have raised his claims before the State disclosed the *Brady* material. BIO at 23. This position directly contradicts this Court’s controlling authority holding that “defense counsel has no ‘procedural obligation to assert constitutional error on the basis of mere suspicion that some prosecutorial misstep may have occurred.’” *Banks*, 540 U.S. at 696 (quoting *Strickler*, 527 U.S. at 286-87).

Once the State finally disclosed Clark’s prior convictions during federal habeas proceedings, Collings diligently sought relief. He first sought federal habeas relief, and when this Court issued its decision in *Shinn v. Ramirez*, 596 U.S. 366 (2022), Collings sought a stay of the federal habeas proceedings so he could return

to state court to comply with the new obligations of *Ramirez*. The State opposed the motion.<sup>2</sup>

After the district court denied that motion and the petition for habeas relief, Collings timely sought appellate review in both the Eighth Circuit and this Court. Soon after this Court denied relief, Collings timely sought state habeas relief in the Missouri Supreme Court.

On April 2, 2024,<sup>3</sup> the same day appellate review of the federal habeas proceedings concluded, the State requested the state court to set an execution date. Mot. to Set an Execution Date, *State v. Collings*, No. SC92720. Collings requested an extension of 60 days (up to and including July 1, 2024) to file a response and alerted the state court he would be filing a state habeas petition containing *Brady* claims prior to filing his response. Mot. for Ext. of Time to File Response to Mot. to Set Execution Date, *State v. Collings*, No. SC92720. The court granted Collings's request, and Collings timely filed his petition on June 27, 2024. Order, *State v. Collings*, No. SC92720 (Apr. 29, 2024); App. 4a. Collings responded to the State's motion to set an execution date on July 1, 2024. App. Christopher Collings's Resp. in Opp. to State's Mot. to Set an Execution Date, *State v. Collings*, No. SC92720

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<sup>2</sup> In the State's current attempt to blame Collings for not obtaining state court review during the federal habeas proceedings, the State overlooks the fact that Collings did seek to return to state court while his federal habeas petition was pending. However, the State successfully blocked Collings's attempt to do so.

<sup>3</sup> Collings's petition erroneously identified this date as April 3, 2024, instead of April 2, 2024.

(Apr. 29, 2024). On August 13, 2024, the court issued its order setting the execution date. Order, *State v. Collings*, No. SC92720 (Aug. 13, 2024).

The above timeline shows that once the State finally disclosed Clark's prior convictions, Collings diligently sought relief in federal and state court. Collings submitted his state habeas petition before the Missouri Supreme Court even set an execution date and 160 days before the court's later-selected execution date of December 3, 2024. This bears no reasonable similarity to *Bucklew v. Precythe*, 587 U.S. 119, 125-26 (2019), in which the challenge being reviewed in this Court was filed *after* the Missouri Supreme Court set an execution date and 12 days before the scheduled execution. This Court should not credit any suggestion that Collings has been dilatory.

Had the State timely disclosed Clark's impeachment material, as it had a duty to do, Collings would not have had any *Brady* claims to raise in this Court. It is beyond question that during the trial proceedings in this case, the State had the duty to disclose Clark's convictions and any other impeachment evidence. Had the State done so, Collings would have used it at trial and would not have had grounds for his pending *Brady* claims. This Court should attribute any delay in the resolution of this matter to the State, not Collings. This factor weighs in favor of a stay.

## CONCLUSION

Especially given this Court's pending case in *Glossip*, this Court should enter a stay to allow full and fair litigation of Mr. Collings's petition for writ of certiorari.

Respectfully submitted,



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