Nos. 19-6860 and 19A626

CAPITAL CASE
Execution Scheduled: December 5, 2019 at 7:00 p.m. CST

IN THE
SUPREME COURT OF THE UNITED STATES

IN RE: LEE HALL, a/k/a LEROY HALL, JR.,
Petitioner

ON ORIGINAL PETITION FOR WRIT OF HABEAS CORPUS AND APPLICATION FOR STAY OF EXECUTION

RESPONDENT'S BRIEF IN OPPOSITION TO ORIGINAL PETITION FOR WRIT OF HABEAS CORPUS AND APPLICATION FOR STAY OF EXECUTION

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CAPITAL CASE
QUESTIONS PRESENTED

I. Whether this Court should grant Hall's original petition for habeas relief when the only claim he raises was already carefully considered on the merits by the state courts and correctly rejected and the case otherwise presents no exceptional circumstances.

II. Whether this Court should grant Hall a last-minute stay of execution when he cannot show a significant possibility of success on the merits and waited until mere months before his scheduled execution date to raise a claim that could have been brought years earlier.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

OPINIONS BELOW

The December 4, 2019, order of the U.S. Court of Appeals for the Sixth Circuit denying Hall's request to file a second or successive habeas petition, his motion to remand, and his motion to stay his execution is not reported. *See* Pet. App. J. The December 3, 2019, order of the district court transferring Hall's request to file a second or successive habeas petition and his motion to stay his execution to the U.S. Court of Appeals for the Sixth Circuit is not reported. *See* Pet. App. I.

The December 4, 2019, order of the Tennessee Court of Criminal Appeals dismissing Hall's appeals from the Hamilton County Criminal Court's dismissal of his petition for a writ of error coram nobis and second petition for post-conviction relief and denying permission to appeal from the trial court's dismissal of his motion to reopen post-conviction proceedings is not reported. *See* Resp. App. A. The December 4, 2019, order of the Tennessee Supreme Court denying Hall's motion to recall the mandate affirming his conviction and death sentence and to stay his execution is not reported. *See* Resp. App. B. The December 3, 2019, order of the Tennessee Supreme Court denying Hall's motion to stay his execution, and accompanying dissent, are not reported. *See* Pet. App. H. The Hamilton County Criminal Court's November 26, 2019, order dismissing Hall's motion for reconsideration of that court's dismissal of his second petition for post-conviction relief is not reported. *See* Resp. App. C. The Hamilton County Criminal Court's November 19, 2019, order dismissing Hall's second petition for post-conviction relief is not reported. *See* Pet. App. F. The Hamilton County Criminal Court's November 6, 2019, order dismissing Hall's petition for a writ of error coram nobis and his motion to reopen his post-conviction proceedings is not reported. *See* Pet. App. D.

STATEMENT OF JURISDICTION

Hall invokes this Court's jurisdiction under 28 U.S.C. §§ 1651, 2101(f), 2241(a), 2241(c)(3), and 2254(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1651(a) provides:

> The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

28 U.S.C. § 2101(f) provides in relevant part:

> In any case in which the final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable the party aggrieved to obtain a writ of certiorari from the Supreme Court. . . . .

28 U.S.C. § 2241 provides in relevant part:

> (a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.
>
> . . . .
>
> (c) The writ of habeas corpus shall not extend to a prisoner unless—
>
> > . . . .
> >
> > (3) He is in custody in violation of the Constitution or laws or treaties of the United States.

28 U.S.C. § 2244 provides in relevant part:

> . . . .
>
> (b)(1) A claim presented in a successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed unless—

> (A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or
>
> (B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and
>
> (iii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(d)(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of—

> . . . .
>
> (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

28 U.S.C. § 2254 provides in relevant part:

> (a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is custody in violation of the Constitution or laws or treaties of the United States.
>
> (b)(1) 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 unless it appears that—
>
> > (A) the applicant has exhausted the remedies available in the courts of the State; or
> >
> > (B)(i) there is an absence of available State corrective process; or
> >
> > (ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

(2) An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.

(3) A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement.

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

(d) 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.

(e)(1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.

(2) If the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that—

> (A) the claim relies on—
>
> > (i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or
> >
> > (ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and
>
> (B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

. . . .

STATEMENT

In April 1991, petitioner Lee Hall doused his ex-girlfriend, Traci Crozier, with gasoline and set her on fire as she was lying in the front seat of her car, causing third-degree burns to more than ninety percent of her body. *State v. Hall*, 958 S.W.2d 679, 682 (Tenn. 1997), *cert. denied*, 524 U.S. 941 (1998). Crozier died at the hospital several hours later. *Id.* at 682, 684. She had been "so badly burned that her hair was melted and skin was hanging from her arms," her tongue "swell[ed] until it protruded from her mouth," and her eyelids "became inverted." *Id.* at 684. Despite the "gravity and extent of her injuries," Crozier remained "conscious, coherent, and alert" and endured "constant pain" until her death. *Id.* at 684, 700. "The only provocation or motive for this horrendous killing was [Hall's] anger with the victim for leaving him and refusing to return." *Id.* at 700. Although Hall "initially denied involvement in the offense," he eventually "admitted responsibility" but claimed that he intended only to burn Crozier's car, not kill her. *Id.* at 683.

A Tennessee jury convicted Hall of first-degree murder and sentenced him to death. *Id.* The Tennessee Supreme Court affirmed Hall's conviction and death sentence on direct appeal. *Id.* at 702-03. Hall sought post-conviction relief in state court, but those efforts were unsuccessful. *Hall v. State*, No. E2004-01635-CCA-R3-PD, 2005 WL 2008176 (Tenn. Crim. App. Aug. 22, 2005), *perm. app. denied* (Tenn. Dec. 19, 2005). He then sought habeas relief in federal court. The district court denied his petition but granted a certificate of appealability on certain claims. Rather than pursue those claims, Hall filed a pro se motion to waive any further appeals, and the district court granted the motion after determining that Hall was competent. *Hall v. Bell*, No. 2:06-CV-56, 2010 WL 9089933, at *1, 64 (E.D. Tenn. Mar. 12, 2010); *Hall v. Bell*, No. 2:06-CV-56, 2011 WL 4431100, at *1, 6 (E.D. Tenn. Sept. 22, 2011).

After the three-tier appeals process was complete, the Tennessee Supreme Court scheduled Hall's execution for January 12, 2016. The court vacated that execution date pending the outcome of litigation challenging the State's lethal injection protocol. When that litigation concluded in May 2019, the Tennessee Supreme Court rescheduled Hall's execution date for December 5, 2019. *See* Pet. App. H at 1.

On October 17, 2019—about a month and a half before his scheduled execution date—Hall filed three pleadings in state court seeking to adjudicate a never-before-raised claim: that one of the jurors at his trial had been biased against him because she was a victim of domestic violence and had failed to disclose this information during voir dire. *See* Pet. App. H at 2. He filed (1) a petition for writ of error coram nobis; (2) a motion to reopen his post-conviction proceedings; and (3) a second petition for post-conviction relief. *Id.*

On November 6, 2019, the trial court dismissed the petition for writ of error coram nobis because the writ is available only for factual claims of actual innocence, and Hall was attempting to raise a constitutional claim. *See* Pet. App. D at 5-6. And it dismissed the motion to reopen because it did not satisfy any of the statutory grounds for reopening post-conviction proceedings, *see* Tenn. Code Ann. § 40-30-117, and the court had no authority to expand those categories. *Id.* at 7-9.

As for the second post-conviction petition, the trial court acknowledged that Tenn. Code Ann. § 40-30-102 limits an inmate to a single post-conviction petition and that Hall's second petition violated that provision. *Id.* at 10. But because Hall had argued that due process required the court to consider his juror-bias claim, the court held a hearing on November 14, 2019, to allow Hall to present his proof on the claim. *Id.* at 13. The allegedly biased juror testified at the hearing,

as did three investigators from the Tennessee Office of the Post-Conviction Defender who had worked on Hall's case. Pet. App. E at 2.

Although the investigators had the juror's address, they initially made no efforts to contact the juror because she lived out of state and they preferred to show up unannounced at a juror's residence rather than discuss a case by phone or mail. *See id.* at 65-70, 88-99, 109-15, 122-32. The investigators did not send the juror a letter. *Id.* at 91-92. Nor did they call her; they did not have her phone number and could not recall searching for it. *Id.* An attorney and an investigator finally interviewed the juror in 2014, years after the conclusion of Hall's state and federal collateral review proceedings. *Id.* at 140-41. But they did not ask the juror whether she had a history of domestic violence. *Id.* at 34, 46, 140-49, 152-53. Investigators from the Office of the Post-Conviction Defender did not contact the juror again until late September 2019, and it was apparently then that the juror informed them of her history of domestic violence. *See* Pet. App. A at 8 (alleging that the juror disclosed this information to investigators during interviews on September 26, 2019, and October 7, 2019).

The juror testified at the hearing that her first husband, to whom she was married from 1969-1975, physically and emotionally abused her. Pet. App. E at 11-17. He committed suicide in 1975. *Id.* at 18-20. The juror remarried in 1981 and remained happily married to her second husband at the time of Hall's trial. *Id.* at 20, 26. She never told her second husband that she had been abused, *id.* at 25, and, other than talking to a friend shortly after her first husband's death, she did not "share it much with anybody else" until she began seeing a grief counselor in 2007, after her second husband died. *Id.* at 25-26. Although the juror testified that she probably would not have told investigators about her first marriage if they had asked her about it between 1998 and 2003, she was not sure whether she would have told them in 2014 and did not recall the

investigators specifically asking about domestic violence when they interviewed her that year. *Id.* at 28, 34.

When asked about certain answers that she gave on the jury questionnaire, the juror explained that she answered "no" to the question whether she had been the victim of a crime because, at that time, she did not think of marital rape or domestic violence as crimes. *Id.* at 22. She did not "consider [her]self a victim" and thought she was answering the question truthfully. *Id.* at 39. She did not disclose that her first husband had been arrested for drunk driving or that she had reported his drunk driving to the authorities because she "had totally forgotten." *Id.* at 22. She did not even "think[] about [her] first husband" when she was filling out the questionnaire because "it had been years and [she] had put it out of [her] mind." *Id.* It was not until Hall took the stand to testify that she was reminded of her first husband. *Id.* at 23. She recalled having a "fleeting" thought that she hated Hall when he testified about stalking his ex-girlfriend, because the juror's first husband had threatened to stalk her, but she did not "dwell[]" on it and did not consider herself biased against Hall. *Id.* at 24. She testified that her experiences in her first marriage had no influence on her deliberations. *Id.* at 40-41.

On November 19, 2019, the court issued an order dismissing Hall's second petition for post-conviction relief. *See* Pet. App. F. The court concluded that Hall's petition was procedurally barred by the statutory provision limiting inmates to a single post-conviction petition and that due process did not require consideration of Hall's juror-bias claim. *Id.* at 1. But the court also "examine[d] the merits of [Hall's] claims to facilitate appellate review" and concluded that even "had this petition been properly before the Court, the evidence presented would not have entitled Mr. Hall to relief on the merits." *Id.* at 2, 21.

The court observed that "both the United States and the Tennessee Constitutions guarantee a criminal defendant the right to a trial by an impartial jury," and it applied state common law in determining whether Hall had established bias. *Id.* at 21-22 (citing *State v. Atkins*, 867 S.W.2d 350, 354-57 (Tenn. Crim. App. 1993) (holding that the failure to disclose information gives rise to a presumption of bias that can be rebutted by "an absence of actual prejudice or actual partiality"). The court found that the evidence Hall had presented did not establish that the juror "was prejudiced against him at the time of trial." Pet. App. F at 25. The court credited the juror's testimony that "she did not think of herself as a victim at the time . . . and that her past experiences did not render her prejudiced against Mr. Hall." *Id.* at 26. Moreover, the questions that were asked of the juror during voir dire "may not have been reasonably calculated to elicit an answer in which the juror would have disclosed her past abuse." *Id.* The most relevant question concerned whether "past exposure to domestic violence 'would in any way possibly affect or influence you to the point where it would maybe compromise you to be able to render an impartial verdict,'" and the juror "answered this question truthfully" because her past experience with domestic violence "did not appear to leave the juror unable to render a fair and impartial verdict as of the time the question was asked." *Id.* at 26.

Hall immediately appealed from the dismissal of his coram nobis petition, *Hall. v. State*, No. E2-19-01978-CCA-R3-ECN (Tenn. Crim. App.), and he also immediately filed an application for permission to appeal from the dismissal of his motion to reopen. *Hall v. State*, No. E2019-01977-CCA-R28-PD (Tenn. Crim. App.).[1] But Hall did *not* immediately appeal the dismissal of

[1] The Tennessee Court of Criminal Appeals dismissed the application for permission to appeal because of procedural deficiencies, and Hall did not refile the application until December 2, 2019.

his second post-conviction petition. Instead, he waited nearly one week and, on November 25, 2019, filed a motion to reconsider requesting that the trial court consider a declaration from a psychologist who speculated about how the juror's past trauma might have affected her. The trial court denied the motion to reconsider the next day. *See* Resp. App. C. Hall finally filed a notice of appeal on November 26, 2019. *See Hall v. State*, No. E2019-02094-CCA-R3-PD (Tenn. Crim. App.).

On November 28, 2019—just one week before his scheduled execution date—Hall asked the Tennessee Supreme Court to stay his execution pending his appeals. *See* Pet. App. H at 3. The Tennessee Supreme Court denied the stay on December 3, 2019, concluding that Hall had not established a likelihood of success on his juror-bias claim. *Id.* at 11. The Tennessee Supreme Court agreed with the trial court that Hall was procedurally barred from raising his juror-bias claim in either a coram nobis petition, a motion to reopen, or a second post-conviction petition. *Id.* at 4-5, 10.[2] Nevertheless, like the trial court, the Tennessee Supreme Court also addressed the merits of the juror-bias claim and agreed that Hall "failed to establish that the juror was prejudiced against him at the time of trial." *Id.* at 9. On December 4, 2019, the Court of Criminal Appeals dismissed all three of Hall's pending appeals based on the Tennessee Supreme Court's opinion. *See* Resp. App. A.

Meanwhile, on December 2, 2019—just three days before his scheduled execution date—Hall filed a second federal habeas petition and motion for stay of execution in federal district court. *See* Pet. App. I at 1. The next day, the district court concluded that it lacked jurisdiction because

[2] The court chose "not to go into the significant issue regarding the timeliness of the assertion of the [juror-bias] claim," but noted that "this matter quite likely could have been decided on that issue alone." Pet. App. H. at 6 n.2.

Hall's petition qualified as a "second or successive" petition within the meaning of 28 U.S.C. § 2244(b) that requires authorization from the court of appeals. The district court thus immediately transferred the petition and stay motion to the Sixth Circuit. *Id.*

The following day—just one day before Hall's scheduled execution—the Sixth Circuit denied Hall permission to file a second or successive petition and denied his motion for a stay of execution. *See* Pet. App. J. The Sixth Circuit agreed that Hall's petition qualified as a "second or successive" petition—it "attack[ed] the same judgment that he did [in his first petition]," and the "claim could have been brought in his first federal habeas petition" had Hall been aware of the facts underlying the claim. *Id.* at 4. And Hall could not satisfy either of the two "narrow exceptions to the prohibition on second or successive filings." *Id.* at 5. Among other reasons, Hall could not satisfy the actual innocence requirement of § 2244(b)(2)(B)(ii) because he did "not dispute that he murdered Crozier." *Id.* Because Hall was not entitled to "file a habeas claim," it followed that he was "not entitled to a stay to pursue that claim as a matter of law." *Id.* And the Sixth Circuit saw "no grounds for finding that Hall's case should be [the] rare exception" to the rule that last-minute stays are disfavored. *Id.*

Now, on the evening before his scheduled execution date, Hall has filed in this Court an original petition for a writ of habeas corpus and an application for a stay of execution. This Court should deny Hall relief.

This case presents no exceptional circumstances, and Hall patently does not satisfy the conditions required by 28 U.S.C. §§ 2244(b)(1)-(2) and 2254. First, Hall cannot establish that the state court's adjudication of his juror-bias claim on the merits was unreasonable in any respect. For that reason alone, his petition must be denied. Second, as Hall himself concedes, he cannot satisfy the actual-innocence requirement of § 2244(b)(2)(B)(ii), nor, as the record bears out, can

he satisfy the reasonable-diligence requirement of § 2244(b)(2)(B)(i). Failure to satisfy either one of these two conditions is further reason to deny the petition.

Hall is not entitled to a stay of his execution either. He cannot succeed on the merits of his original habeas petition because this case presents no exceptional circumstances that would warrant an exercise of this Court's original jurisdiction and does not satisfy the conditions imposed by 28 U.S.C. §§ 2244(a)(1)-(2) or 2254. And the last-minute timing of his request creates a strong equitable presumption against a stay, a presumption that cannot be overcome in light of Hall's total lack of diligence in pursuing his alleged claim. As this Court has instructed, "[l]ast-minute stays should be the extreme exception, not the norm." *Bucklew v. Precythe*, 139 S. Ct. 1112, 1134 (2019). There is no reason here for any such extreme exception.

REASONS FOR DENYING THE PETITION AND THE STAY

I. This Case Presents No Exceptional Circumstances and Does Not Satisfy the Conditions Imposed by 28 U.S.C. §§ 2244(b)(1)-(2) and 2254.

An original petition for habeas corpus is "rarely granted." Sup. Ct. R. 20.4(a). A petitioner wishing to invoke this Court's original habeas jurisdiction "must show that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court." *Id.* Moreover, this Court's "authority to grant habeas relief to state prisoners is limited by § 2254" and "inform[ed]" by "the restrictions on repetitive and new claims imposed by §§ 2244(b)(1) and (2)." *Felker v. Turpin*, 518 U.S. 651, 662-63 (1996). This case presents no exceptional circumstances that warrant this Court's intervention, and the statutory restrictions of §§ 2244(b)(1) and (2) and 2254 foreclose Hall from obtaining relief.

Hall contends that this case is exceptional because he has made out a "clear case of structural error due to juror bias," and that, absent this Court's intervention, he will be executed without any "plenary consideration" of that claim. Pet. 7, 13. Both of those assertions are demonstrably incorrect. The state courts correctly concluded that Hall was procedurally barred from raising this belated claim using any of the three vehicles he attempted. That could have ended their analysis, but both the trial court and the Tennessee Supreme Court nevertheless considered Hall's juror-bias claim on the merits and correctly held that Hall had failed to establish that the juror was prejudiced against him.

The Tennessee Supreme Court upheld the trial court's findings, which were based on the juror's own testimony at the evidentiary hearing—testimony that the trial court found to be credible. The Tennessee Supreme Court agreed with the trial court that "the juror did not attempt to deceive the court or counsel" and was not biased against Hall. Pet. App. H at 9. And the

Tennessee Supreme Court agreed with the trial court that none of the questions asked of the juror during voir dire was reasonably calculated to elicit information about the juror's past domestic abuse. *Id.* As this Court explained in *McDonough Power Equipment, Inc. v. Greenwood*, 464 U.S. 548 (1984), "[t]he motives for concealing information may vary, but only those reasons *that affect a juror's impartiality* can truly be said to affect the fairness of a trial." *Id.* at 850 (emphasis added). Because the state courts correctly concluded that the juror was not biased, Hall has not "shown an egregious harm to the foundational right to a fair and impartial tribunal." Pet. 33.

Hall accuses the Tennessee courts of "rushing to execute [him] without careful consideration of his foundational constitutional claim of denial of a fair and impartial jury" and complains that, absent this Court's intervention, "no court will have given plenary consideration" to that claim. *Id.* at 7, 33. But the trial court in fact took great care to allow Hall to develop a record on his juror-bias claim and carefully considered the merits of that claim notwithstanding the procedural bars to review. The Tennessee Supreme Court praised the trial court for "wisely . . . allow[ing] Mr. Hall to present evidence on his second post-conviction as if it were a proper vehicle" and likewise carefully considered the merits of Hall's claims. Pet. App. H at 10. Tellingly, Hall identifies no additional testimony or witnesses "[o]ther than the testimony of a trauma specialist, Linda Manning, whose declaration was made an offer of proof with the motion to reconsider the denial of the second petition for post-conviction relief" that he "was unable to present due to the timing of the hearing." *Id.* And the testimony of Manning, who never personally met or interviewed the juror, provides no reason to doubt the juror's own testimony that she was not biased at the time of Hall's trial.

If there is anything exceptional about this case, it is that Hall waited until *one and a half months before his scheduled execution date* to raise his juror-bias claim—a claim that could have

been raised years earlier if Hall's post-conviction team had bothered to interview the juror and inquire about domestic violence before late September 2019—and was still afforded an opportunity to develop an evidentiary record on that claim and obtain a determination on the merits. That is hardly the kind of "exceptional circumstance" that warrants an exercise of this Court's original jurisdiction.

Even if this Court were inclined to exercise its original jurisdiction in this case, the statutory constraints on federal review of state-court convictions set out in 28 U.S.C. § 2254 would prevent Hall from obtaining relief. This Court's "authority to grant habeas relief to state prisoners is limited by § 2254, which specifies the conditions under which such relief may be granted to 'a person in custody pursuant to the judgment of a State court.'" *Felker*, 518 U.S. at 663 (quoting 28 U.S.C. § 2254(a)). Among other restrictions, a federal court may not grant habeas relief to a state prisoner on "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." 28 U.S.C. § 2254(d).

Contrary to Hall's assertions, his petition does not satisfy the strict requirements of § 2254 because it fails to establish that the state court's adjudication of his juror-bias claim on the merits was unreasonable in any respect. For that reason alone, his petition must be denied.[3] Hall purports

[3] It is also doubtful that Hall "fairly presented" to the state courts the precise federal claim that he now presses in this Court, as is required to exhaust the claim under 28 U.S.C. § 2254(b)(1)(A). *Bray v. Andrews*, 640 F.3d 731, 735 (6th Cir. 2011). While Hall's pleadings in state court cursorily mentioned the Sixth Amendment, the legal analysis focused almost exclusively on Tennessee law, and Hall never cited this Court's decision in *McDonough*, which he now contends "applies to the review of the issue of Juror A's bias." Pet. 18.

to "meet the standards for habeas relief under 28 U.S.C. § 2254" by arguing that the "[t]he state post-conviction court was unreasonable when it found that Juror A's concealment was not deliberate and that she was not biased against Mr. Hall." Pet. 18, 25. He second-guesses the trial court's finding that the "questions in jury selection were not designed to elicit the information that Juror A concealed," Pet. 25, by quibbling that defense counsel's question about domestic violence, which asked only whether jurors had experience with domestic violence *that would affect their ability to render a fair and impartial verdict*, was "broadly stated to elicit even minor or insignificant possible effects." Pet. 27. He also disputes the trial court's decision to credit the juror's testimony about her lack of bias by speculating that the juror's "self-assessment was unreliable and characteristic of a traumatized person." Pet. 29. But these arguments do not even create "reason to question" the trial court's findings, let alone "compel the conclusion that the trial court had no permissible alternative" but to make different ones. *Rice v. Collins*, 546 U.S. 333, 341 (2006). A "state-court factual determination is not unreasonable merely because the federal habeas court would have reached a different conclusion in the first instance." *Wood v. Allen*, 558 U.S. 290, 301 (2010).

The limitations on second or successive habeas petitions imposed by 28 U.S.C. § 2244(b)(2), which Hall acknowledges must "inform [this Court's] consideration of original habeas petitions," *Felker*, 518 U.S. at 662-63, also foreclose Hall from obtaining relief. That provision requires dismissal of a second or successive habeas petition unless certain conditions are met, including (1) that "the factual predicate for the claim could not have been discovered previously through the exercise of due diligence," and (2) that "the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have

found the [prisoner] guilty of the underlying offense." 28 U.S.C. § 2244(b)(2)(B)(i)-(ii). In other words, Hall would have to satisfy both a reasonable-diligence and an actual-innocence requirement, but he readily concedes that he cannot satisfy those conditions, because he cannot show that the facts underlying his juror-bias claim, "if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for the constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense." Pet. 2 (quoting 28 U.S.C. § 2244(b)(2)(B)(ii)). As the Sixth Circuit put it, Hall "cannot show that he is actually innocent of the crime" because "he does not dispute that he murdered Crozier." Pet. App. J at 5.

Nor can Hall show that "the factual predicate for [his juror-bias] claim could not have been discovered previously through the exercise of due diligence." 28 U.S.C. § 2244(b)(2)(B)(i). The evidence Hall presented in the state trial court established that his post-conviction investigators never even attempted to contact the juror until 2014 and then failed to ask her about domestic violence until late September 2019. Hall suggests that any efforts to obtain this information before their September 2019 interview would have been futile, because the juror testified that she would that she probably would not have told investigators about her first marriage if they had asked her about it between 1998 and 2003. But the juror testified that she began opening up about her experience with domestic violence during grief counseling around 2008. That left *more than a decade* during which investigators exercising due diligence could have discovered the facts on which Hall's claim is based.

Hall argues that this Court's original jurisdiction is "'informed,' but not necessarily limited by these statutory restrictions." Pet. 2. Regardless, Hall's utter failure to satisfy *any* of the

conditions that would ordinarily justify a second or successive habeas petition is a compelling reason for this Court to deny review.

II. A Stay Is Not Warranted Because Hall Cannot Succeed on the Merits and Unreasonably Delayed in Bringing His Claim.

A "stay of execution is an equitable remedy." *Hill v. McDonough*, 547 U.S. 573, 583 (2006). That remedy "is not available as a matter of right, and equity must be sensitive to the State's strong interest in enforcing its criminal judgments without undue interference from the federal courts"—an interest that is shared by "the victims of crime." *Id.* Accordingly, an inmate seeking to stay his execution "must satisfy all of the requirements for a stay, including a showing of a significant possibility of success on the merits." *Id.* And a "court considering a stay must also apply a strong equitable presumption against the grant of a stay where a claim could have been brought at such a time as to allow consideration of the merits without requiring entry of a stay." *Id.*

Hall is plainly not entitled to a stay of his execution. As explained above, he cannot succeed on the merits of his original habeas petition because this case presents no exceptional circumstances that would warrant an exercise of this Court's original jurisdiction and fails to satisfy the conditions imposed by 28 U.S.C. §§ 2244(a)(1)-(2) or 2254. The state courts carefully considered Hall's juror-bias claim on the merits and correctly concluded that the juror *was not biased*.

If that were not reason enough to deny Hall a stay, the last-minute nature of his request creates a "strong equitable presumption against" a stay. *Hill*, 547 U.S. at 583. And this Court has instructed that "[l]ast-minute stays should be the extreme exception, not the norm." *Bucklew*, 139 S. Ct. at 1134.

Hall was sentenced to death nearly three decades ago. Rather than diligently pursue his claims, he waited until mere months before his scheduled execution date to raise a juror-bias claim that could have been discovered years earlier. And after raising that belated claim in the state courts, he engaged in further delay by failing to seek expedited appeals in the state-court system and filing a motion for reconsideration instead of immediately appealing the trial court's denial of his second post-conviction petition. Hall's application for a "last-minute stay" from this Court, filed on the very eve of his execution, should be denied. *Bucklew*, 139 S. Ct. at 1134. There are "no grounds for finding that Hall's case should be that rare exception." Pet. App. J at 6.

CONCLUSION

Petitioner's Original Petition for Writ of Habeas Corpus and Application for Stay of Execution should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Response was forwarded by United States mail, first-class postage prepaid, and by email on the 5th day of December, 2019, to the following:

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/s/ Sarah K. Campbell
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Appendix A

Tennessee Court of Criminal Appeals December 4, 2019
Order Dismissing Hall's Appeals

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

LEE HALL, a/k/a LEROY HALL, JR.[1] v. STATE OF TENNESSEE

Criminal Court for Hamilton County
Nos. 222931 (Motion to Reopen), 308968 (Post-Conviction), and
308969 (Error Coram Nobis)

No. E2019-02120-CCA-R28-PD

No. E2019-02094-CCA-R3-PD

No. E2019-01978-CCA-R3-ECN

NOT FOR PUBLICATION

ORDER

On November 16, 2018, the Tennessee Supreme Court issued an order setting Mr. Hall's execution date for December 5, 2019. *State v. Lee Hall, a/k/a Leroy Hall, Jr.*, No. E1997-00344-SC-DDT-DD (Order, Nov. 16, 2018). On December 3, 2019, the Supreme Court denied "Lee Hall's Motion to Stay His Execution Date Pending Appeals of Right Regarding Biased Juror." *State v. Lee Hall, a/k/a Leroy Hall, Jr.*, No. E1997-00344-SC-DDT-DD (Order, Dec. 3, 2019) (Sharon G. Lee, J. dissenting). The procedural history of Mr. Hall's case is outlined in the Supreme Court's order. Mr. Hall currently has three matters pending before this Court: an appeal from the Hamilton County Criminal Court's order denying a petition for a writ of error coram nobis, an appeal from the Hamilton County Criminal Court's order denying a second petition for post-conviction relief, and an application for permission to appeal from the Hamilton County Criminal Court's denial of a motion to reopen a post-conviction petition. All three matters concern the same allegation that "newly discovered evidence" of juror bias at the time of Mr. Hall's trial is "structural constitutional error" requiring a new trial.

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[1] On March 11, 2014, the Tennessee Supreme Court granted Mr. Hall's motion to change the style of his case to reflect his legal name change to Lee Hall. In that order, the Supreme Court directed the appellate court clerk to format "the Court files" to reflect Mr. Hall's legal names as "Lee Hall, also known as Leroy Hall, Jr."

In denying Mr. Hall's motion for stay, the Supreme Court determined that neither a writ of error coram nobis nor a motion to reopen a post-conviction petition were proper means to adjudicate the juror bias claim. Therefore, the Supreme Court concluded that "Mr. Hall has failed to establish the likelihood of success on the merits of his claim for juror bias under any existing procedural vehicle." Order, at 11. The Supreme Court further determined that "Mr. Hall failed to demonstrate that [the Tennessee Supreme Court] should create a new, previously unrecognized procedure" under the facts of this case to permit a second post-conviction petition to adjudicate the juror bias claim. Order, at 11.

We conclude that the Supreme Court's determinations concerning the trial court's orders, and by extension the pending appellate matters in this Court concerning those orders, are binding upon this Court. Accordingly, the appeals as of right in case numbers E2019-02094-CCA-R3-PD and E2019-01978-CCA-R3-ECN and the application for permission to appeal in case number E2019-02120-CCA-R28-PD are hereby DISMISSED. The appellate court clerk is DIRECTED to file this order in each case. The costs associated with these proceedings are taxed to the State of Tennessee.

PRESIDING JUDGE JOHN EVERETT WILLIAMS
JUDGE D. KELLY THOMAS, JR.
JUDGE ROBERT H. MONTGOMERY, JR.

PER CURIAM

Appendix B

Tennessee Supreme Court's December 4, 2019 Order
Denying Hall's Motion to Recall Mandate

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

STATE OF TENNESSEE v. LEE HALL, a/k/a LEROY HALL, JR.

Criminal Court for Hamilton County
No. 222931

No. E1997-00344-SC-DDT-DD

NOT FOR PUBLICATION

ORDER

On November 16, 2018, the Court issued an order setting the execution date for Lee Hall on December 5, 2019. Late in the afternoon on December 3, 2019, Mr. Hall filed a motion to (1) recall the mandate issued on or about March 18, 1998, affirming his convictions and death sentence; (2) stay his execution; and (3) remand the case for a hearing on his claim for juror bias. Mr. Hall presented this same claim in his November 28, 2019 motion to stay his scheduled execution.

For the same reasons stated in the Court's December 3, 2019 order denying the November 28, 2019 motion for a stay of execution, the Court declines to recall the mandate and stay the execution. Accordingly, "Lee Hall's Motion to Recall the Mandate, Stay Mr. Hall's Execution, and Remand the Case for a Hearing" is DENIED.

PER CURIAM

SHARON G. LEE, J., dissenting.

Appendix C

Tennessee Criminal Court's November 26, 2019
Order Dismissing Hall's Motion for Reconsideration

IN THE CRIMINAL COURT FOR HAMILTON COUNTY, TENNESSEE
DIVISION III

LEE HALL,	)	
f/k/a Leroy Hall, Jr.,	)	
Petitioner	)	**No. 308968**
vs.	)	**(Post-Conviction)**
	)	**Execution Date 12/5/2019**
STATE OF TENNESSEE,	)	
Respondent	)	

ORDER DISMISSING PETITIONER'S MOTION TO RECONSIDER

The Petitioner, who is set to be executed December 5, 2019, filed this motion following the Court's November 19, 2019 order dismissing Mr. Hall's second petition for post-conviction relief. The Court concludes the motion is not well-taken; therefore, the motion is DISMISSED. The Court reaches this conclusion for two reasons.

First, "neither a motion to rehear nor a motion to reconsider is authorized by the Tennessee Rules of Criminal Procedure, the Tennessee Rules of Post-Conviction Procedure,[1] or the Tennessee Rules of Appellate Procedure." *Tony Craig Woods v. State*, 1997 WL 602865, at *2 (Tenn. Crim. App. Sept. 30, 1997) (citing *State v. Burrow*, 769 S.W.2d 510, 511 (Tenn. Crim. App. 1989) and *State v. Ryan*, 756 S.W.2d 284, 285 n.2 (Tenn. Crim. App. 1988)). Nor are such motions recognized in the statutes governing post-conviction proceedings. *See* Tenn. Code Ann. §§ 40-30-111 (addressing final disposition of petitions) and -116 (addressing appeal of final judgment; neither section contemplates a motion such as the one filed by Mr. Hall). Thus, this Court "is under no obligation" to review Mr. Hall's motion. *Antonio Kendrick v. State*, 1999 WL 1531345,

[1] These Rules are codified in Tennessee Supreme Court Rule 28.

at *3 (Tenn. Crim. App. Dec. 27, 1999). Any review of this Court's post-conviction rulings must occur in the appellate courts.

Furthermore, this Court's November 19 order concluded the Petitioner's second post-conviction petition was not properly before the Court. This procedural ruling prevents the Court from considering, as substantive evidence, the declaration attached to the motion to reconsider. The declaration shall be considered an offer of proof for the appellate courts to consider on appeal.

Accordingly, the motion is DISMISSED. Mr. Hall is indigent, so all costs associated with this matter are assessed to the State.

IT IS SO ORDERED this 26 day of November, 2019

Don W. Poole, Judge
Criminal Court, Division III

Immediate copy to:
Attorneys for the Petitioner
District Attorney for Hamilton County