No. 20-7536

In the Supreme Court of the United States

TIMOTHY L. COLEMAN,

Petitioner,

v.

MARGARET BRADSHAW, Warden

Respondent.

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

BRIEF IN OPPOSITION

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CAPITAL CASE – NO EXECUTION DATE SET

QUESTION PRESENTED

Did the Sixth Circuit correctly deny habeas relief to a petitioner whose constitutional arguments were carefully and correctly rejected by Ohio state courts, and who attempted to strengthen his weak claims using evidence from outside the state-court record?

LIST OF PARTIES

The Petitioner is Timothy Coleman, an inmate at the Chillicothe Correctional Institution.

The Respondent is Margaret Bradshaw, the Warden of the Chillicothe Correctional Institution.

LIST OF DIRECTLY RELATED PROCEEDINGS

Coleman's list of directly related proceedings is complete and accurate.

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INTRODUCTION

The typical murder defendant at least *pretends* to show empathy for the victim. But Timothy Coleman is not the typical defendant, for his habeas petition insinuates that the victim—a mother of five named Melinda Stevens—had it coming. Coleman shot Stevens execution style because he feared she would testify against him on a pending drug charge. According to Coleman, Stevens exposed herself to death due to her own "selfish disloyalty." Pet.6, 22. Coleman even likens Stevens to Judas and Benedict Arnold. Pet.22–23. According to him, the murder is your typical "garden-variety" violence—nothing more than a "common urban crime." Pet.5. True, he makes these statements partly in a ham-fisted attempt to suggest someone else might have murdered Stevens. (Though he also says that Stevens's snitching constituted a mitigating circumstance, as it would have tended to provoke his violent reaction.) Still, a woman senselessly murdered deserves better than to have her memory needlessly tarnished before the Supreme Court of the United States.

While Coleman's victim blaming is extraordinary, his petition is anything but. He seeks pure error correction of a habeas decision in which the Sixth Circuit properly denied relief. This Court should deny Coleman's petition.

STATEMENT

1. On a snowy night in 1996, Timothy Coleman murdered Melinda Stevens. After dining together at a local restaurant, Coleman escorted Stevens to an alley and shot her in the back of the head, twice. Pet.App.4. "The bitch fell like a rock," Coleman bragged. *Id.* Stevens's execution-style murder left five children motherless. Pet.App.32. The following facts provide some necessary context.

Pre-Execution. Months earlier, a grand jury indicted Coleman for trafficking in cocaine. Pet.App.2. While awaiting trial, Coleman discovered that the police used Stevens as a confidential informant. Desperate to avoid a lengthy prison sentence for the pending charges, Coleman schemed to stop Stevens from testifying against him. He decided to "take care of her." *Id.* Coleman recruited a friend to brainstorm ideas. They debated between burning Stevens's house and shooting her. Pet.App.2–3.

Coleman did not keep his plan a secret. He told one relative that "he was going to kill … a drug informant," a "black bitch." Pet.App.3 (quotation omitted). He spoke to another relative about "popping" Stevens. *Id.* He told a neighborhood friend that "he was going to kill" her. *Id.* And mere hours before the slaying, he asked a different relative for bullets, flashed his pistol, and proclaimed: "I'm going to go take care of a bitch that set me up." *Id.*

Eyewitness. Minutes before the execution, an eyewitness saw Coleman and Stevens at the local restaurant. Pet.App.3. Coleman was wearing a flannel shirt. *Id.* The eyewitness left the restaurant around the same time as Coleman and Stevens. He last saw them in the alley, alone. The eyewitness heard gunshots as he walked away. *Id.*

Post-Execution. Roughly ten minutes after Stevens died, Coleman went to a neighborhood friend's house to gloat: "I took care of my business." Pet.App.3. Coleman also reenacted the slaughter: "Bloop, bloop, two in the back of the head …. The bitch fell like a rock." *Id.* Coleman then jaunted to his relatives' house. He was

still wearing a flannel shirt, and he admitted to shooting Stevens "twice in the head because he couldn't do that many years." Pet.App.4.

Over the next few days, Coleman confessed to several more people. He told one relative that he took "the bitch out." *Id.* He described to a friend how "he had slowed down while walking in order to shoot Stevens from behind." *Id.* He told another friend that "he took care of … business." Pet.App.3. After being arrested, he detailed the murder for a fellow inmate. Pet.App.4. And months later, Coleman discussed with a different inmate every aspect of the killing, including where he hid his flannel shirt. Pet.App.4–5. The police found the shirt precisely where Coleman said it was. Pet.App.5.

2. A jury convicted Coleman of aggravated murder. The trial court sentenced him to death. Pet.App.2. The Supreme Court of Ohio affirmed. Pet.App.134–48. This Court denied *certiorari*. *Coleman v. Ohio*, 528 U.S. 954 (1999). Coleman subsequently filed two petitions for postconviction relief in state court, raising numerous grounds for relief. One petition pleaded a claim under *Brady v. Maryland*, 373 U.S. 83 (1963). *See* Pet.App.112, ¶4. The other petition pleaded ineffective assistance of counsel during the sentencing phase. *See* Pet.App.125–29, ¶¶43–69. As these are the only claims at issue in Coleman's *certiorari* petition, it is worth saying a bit more about each.

The* Brady *claim. Sometime after the Supreme Court of Ohio affirmed Coleman's death sentence, Coleman received a letter that said, "I was told, by a person in a position to know, that another prisoner on death row wishes to confess

publicly to the murder for which you have been convicted." Pet.App.7. Coleman then submitted to the state court an affidavit in which the other prisoner, William Sapp, swore that he killed Stevens and that he previously confessed to the police about killing her. *Id.* Coleman argued that Sapp's supposed prior confession to the police—there is no record of any such confession—is exculpatory evidence and the State violated *Brady* by failing to disclose it. *Id.*; Pet.App.10. Additionally, Coleman submitted a letter that Sapp wrote to one of his rape victims. In the letter, Sapp threatened to harm the victim and, to legitimize the threat, mentioned his other crimes, like killing her friend "over off of Pleasant." Pet.App.7. Coleman argued that this letter, which was in the State's possession, is also exculpatory evidence because the alley where Stevens took her last breath is near Pleasant Street. Pet.App.114, ¶19; *see also* Pet.App.3.

The state-postconviction court rejected Coleman's claim. The appellate court affirmed. The Supreme Court of Ohio declined to accept review. *See* Pet.App.52–53. In the last reasoned state court decision on this claim, *see* Pet.App.111–18, the Ohio Court of Appeals held that Coleman failed to establish that Sapp's alleged confession actually took place. The only evidence supporting that fact was Sapp's affidavit, but his affidavit "lacks any credibility." Pet.App.117. For starters, "Sapp is a convicted double murderer who is under a sentence of death and has nothing to lose by claiming responsibility for another murder." Pet.App.116. A clinical psychologist even described Sapp as a "chronic" liar. *Id.* Moreover, "Sapp's affidavit is inconsistent with the facts" and "contradicted by the overwhelming evidence" of Coleman's guilt.

Id. For example, Sapp swore that he was with Stevens "minutes before he killed her," but Coleman "admitted to police that he was with Stevens … moments before she was shot." *Id.* Plus, the eyewitness saw Coleman and Stevens alone in the alley immediately before the execution. *Id.* Sapp also swore that he murdered Stevens, but "no less than seven witnesses testified" that Coleman "bragged" about "how he had killed Stevens." *Id.* For these reasons, the state postconviction court concluded that Sapp's affidavit could not be believed. And because no other evidence supported the contention that Sapp confessed to the police, Coleman necessarily failed to establish that the alleged *Brady* material even existed.

The state court also held that Sapp's letter did not constitute *Brady* evidence. Although "the letter is certainly favorable" to Coleman, its reference to killing someone "over off of Pleasant" is so "vague" that a jury would have to speculate who Sapp was even referring to. Pet.App.117. "Therefore, the letter is simply too indefinite in its nature to be material to [Coleman's] guilt or innocence." *Id.*

Ineffective-assistance claim. During sentencing, Coleman's father testified about Coleman's childhood and character: He "was like any other kid growing up." Pet.App.93. He participated in several activities, like Boy Scouts, school functions, and sports. *Id.* And although Coleman could be "hardheaded at times," Pet.App.146, he was also an "obedient child" who would "give you his heart," Pet.App.93. Coleman's mother attended the sentencing hearing, but "she was too emotional to testify." *Id.* No one else testified on Coleman's behalf.

Coleman claimed that he received ineffective assistance of counsel throughout sentencing. Coleman made several arguments to support that claim. In the last reasoned decision, the Ohio Court of Appeals rejected them all. *See* Pet.App.125–29.

First, Coleman argued that counsel should have called more people to testify, including his mother and sister, along with some ex-girlfriends with whom he had children. Pet.App.125–26. Coleman's mother would have testified that "her son was a happy and friendly child," and that he struggled in school because of a learning disability. Pet.App.126. Coleman's sister would have testified about Coleman's teenage years. *Id.* And Coleman's ex-girlfriends would have testified that he was a good father. Pet.App.125. With respect to Coleman's mother, the court reasoned that counsel could "hardly be faulted for not calling [her] to the stand after she indicated she was too upset to testify." Pet.App.126. As for Coleman's sister, the court held that her testimony "was merely cumulative to that of her father's." *Id.* Regarding Coleman's ex-girlfriends, the court noted that "counsel may not have wished to diminish the poignant testimony of Coleman's father with the testimony of the women who Coleman had impregnated but never married." Pet.App.125. And most importantly, even if the testimony had been presented during sentencing, the court held that "there was no likelihood that the outcome … would have been different" in light of the "jury's finding" that Coleman "virtually executed" Stevens to prevent her testimony. Pet.App.126.

Second, Coleman argued that counsel should have presented testimony from an expert psychologist. Pet.App.127. Counsel retained an expert psychologist to

evaluate Coleman. The expert's findings were inconclusive. On the one hand, the expert found that Coleman's personality is not "associated with a tendency to engage in violent crimes." *Id.* On the other hand, the expert found that "Coleman typically does not assume responsibility for his problems and tends to blame others," as he did by "blaming Melinda Stevens for his problems with the law." *Id.* The expert also would have testified that, in his opinion, Coleman "is not a person who would have committed such a crime." Pet.App.17. The court held that it was reasonable for counsel not to call the expert psychologist to testify. Pet.App.127. As an initial matter, the expert's non-medical opinion was inadmissible under state law. *Id.* And in light of the expert's conflicting findings, the court determined that the testimony would neither be helpful nor provide substantial mitigation. *Id.*

Third, Coleman argued that counsel should have presented evidence of his good behavior while in jail. Pet.App.127. Specifically, a deputy sheriff could have testified that Coleman did not misbehave during the six-day trial. *Id.* But good behavior for less than a week is hardly persuasive; the court thus determined that there was "no reasonable probability that the jury's sentence would have been different" had the deputy sheriff testified. Pet.App.128.

Fourth, Coleman argued that counsel should have presented the testimony of a cultural expert. *Id.* According to Coleman, a cultural expert "could have helped the jury understand why he turned to a life of drug dealing despite the fact that he had a stable family life." *Id.* The court, however, held that "such testimony would not mitigate the fact that Coleman executed the mother of five children and … would not

have overcome the aggravated circumstances presented by the State." *Id.* In other words, "such testimony would not present a reasonable probability of a different sentence." *Id.*

Finally, Coleman argued that counsel should have introduced evidence of his employment records. *Id.* The records showed that Coleman worked in a factory for a couple months before he executed Stevens. *Id.* The court held that "there is no reasonable probability" that the employment records would have made a difference. *Id.* Coleman also argued that counsel should have prepared a better closing argument, but the court rejected that argument because it should have been raised on direct appeal. *Id.*

3. Coleman filed a federal habeas petition, raising the *Brady* claim and the ineffective-assistance-of-counsel claim. The magistrate judge twice recommended denying the petition. *See* Pet.App.27–41, 42–110. The District Court denied the petition. *See* Pet.App.21–26. The Sixth Circuit affirmed. *See* Pet.App.1–19.

On the *Brady* claim, the Sixth Circuit initially noted that the alleged exculpatory evidence—Sapp's letter and Sapp's supposed confession to the police—was not even subject to *Brady*: because the materials "came into existence after Coleman was sentenced," the State had no disclosure obligation whatsoever. Pet.App.9 (citing *Dist. Att'ys Off. v. Osborne*, 557 U.S. 52 67–69 (2009)). But because the state court applied *Brady*, and because federal courts are required "to review the actual grounds on which the state court relied," Pet.App.10, the Sixth Circuit analyzed whether the state court decision was contrary to or an unreasonable

application of *Brady*, or an unreasonable determination of the facts. *See* 28 U.S.C. §2254(d)(1)–(2).

The Sixth Circuit held that the state court committed neither error. To the contrary, the state court "reasonably determined that the Sapp letter was not material" because the letter "failed to identify a victim." Pet.App.10. Had the Sapp letter been introduced as evidence, "jurors would necessarily have had to speculate about whether the letter referred to Stevens." *Id.* Coleman thus "failed to establish a reasonable probability that … a different jury would have reached a different result" had the letter been disclosed. *Id.* The Sixth Circuit also agreed with the state court's determination that Coleman did not establish that Sapp ever confessed to the police. "Because Coleman failed to establish that there was any *Brady* evidence, he necessarily failed to establish that the state suppressed such evidence." *Id.*

The Sixth Circuit next addressed Coleman's claim that he received ineffective assistance of counsel at the sentencing stage. It held that the state court "reasonably conclude[d] that Coleman experienced no prejudice from his counsel's conduct," after "evaluat[ing] the totality of the mitigation evidence and reweigh[ing] it against the evidence in aggravation." Pet.App.19.

Finally, the Court considered and rejected a few new ineffective-assistance arguments, which Coleman raised for the first time on appeal.

First, Coleman argued that counsel inadequately prepared Coleman's father for his testimony. Pet.App.13. The Sixth Circuit rejected that argument, however, because Coleman "fail[ed] to assert what his father would have testified to had he

been better prepared and thus fail[ed] to establish how he might have been prejudiced by any lack of preparation." *Id.*

Second, Coleman changed his cultural-expert argument. In state court, Coleman suggested that a cultural expert "could have helped the jury understand why he turned to a life of drug dealing despite the fact that he had a stable family life." Pet.App.128. To support that assertion, Coleman relied on affidavits from his parents. Pet.App.16. In the Sixth Circuit, however, Coleman argued that a cultural expert could have explained how drug dealers hate "snitching." *Id.* To support *that* argument, Coleman submitted *new* evidence: articles discussing the perils of snitching on drug dealers. *Id.* Coleman apparently believed that testimony on this issue would have a mitigating effect: because of the "universal disdain for rats and snitches," Stevens must have provoked Coleman into killing her. Pet.17. The Sixth Circuit declined to review this new evidence.

Third, Coleman used the same new evidence to bolster his argument that counsel should have presented testimony from an expert psychologist. Pet.App.18. The Sixth Circuit again declined to review the new evidence. *Id.*

Coleman timely filed his petition for a writ of *certiorari*.

REASONS FOR DENYING THE WRIT

This is a kiln-run habeas case. The question is whether Coleman is entitled to relief under 28 U.S.C. §2254(d). Every judge presented with this question has answered it in the negative. Coleman says the Sixth Circuit misapplied §2254(d). Coleman does not argue that the Sixth Circuit created a circuit split. Nor does he

suggest that the court changed the rules by which habeas claims are adjudicated. Instead, Coleman asks this Court to do one thing: correct case-specific errors.

The Court should deny Coleman's *certiorari* petition. For one thing, pure error correction is not a ground on which this Court generally grants review. *See* Rule 10. More fundamentally, the Sixth Circuit correctly denied Coleman's habeas petition.

1. When a petitioner is in custody because of a state court adjudication, AEDPA permits courts to award relief only if the state court judgment (1) "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) "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).

A few principles are important. Under §2254(d)(1), a state court decision is "contrary to" Supreme Court precedent in only two circumstances: (1) "if the state court applie[d] a rule that contradicts the governing law set forth in [the Court's] cases," or (2) "if the state court confront[ed] a set of facts that are materially indistinguishable from a decision of this Court and nevertheless arrives at a result different from [its] precedent." *Williams v. Taylor*, 529 U.S. 362, 405, 406 (2000). An "unreasonable application" of Supreme Court precedent is an application "so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Harrington v. Richter*, 562 U.S. 86, 103 (2011). And regardless of whether the petitioner seeks relief under the "contrary to" or "unreasonable application" part of §2254(d)(1), he must

prove the error based on the record before the state court: "evidence introduced in federal court has no bearing on §2254(d)(1) review." *Cullen v. Pinholster*, 563 U.S. 170, 185 (2011).

Section 2254(d)(2), like §2254(d)(1), requires that state courts' factual determinations be given "substantial deference." *Brumfield v. Cain*, 576 U.S. 305, 314 (2015). And just like §2254(d)(1), "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). If "[r]easonable minds reviewing the record might disagree" about a finding the state court made, the finding is not "unreasonable" for purposes of §2254(d)(2). *Rice v. Collins*, 546 U.S. 333, 341–42 (2006).

2. These well-established habeas principles defeat Coleman's *Brady* claim. Coleman says he is entitled to habeas relief on the ground that the Ohio Court of Appeals committed egregious errors of law and fact when it rejected his *Brady* claim. His *Brady* claim accused the government of wrongfully withholding two pieces of evidence: (1) a letter that Sapp sent to one of his rape victims, in which Sapp claimed to have killed someone "over off of Pleasant"; and (2) a supposed confession that Sapp made to police.

The state court's rejection of the *Brady* claim predicated on this evidence does not entitle Coleman to habeas relief. As an initial matter, Coleman does not even argue that the state court's decision in his case was "contrary to" *Brady*. §2254(d)(1). Nor could he. Again, a state-court decision is "contrary to" this Court's cases if it

"applies a rule that contradicts the governing law set forth in [the Court's] cases," or "confronts a set of facts that are materially indistinguishable from a decision of this Court and nevertheless arrives at" a different result. *Williams*, 529 U.S. at 405, 406. Here, the state court identified *Brady* "as the controlling legal authority" and applied "the correct legal rule" in rejecting Coleman's claim. *Id.* at 406; *see* Pet.App.117. And this case does not present "a set of facts that are materially indistinguishable from a decision of this Court." *Id.* So the state court did not issue a ruling "contrary to" *Brady*.

The only question, then, is whether the state court either unreasonably applied settled precedent, or relied on an unreasonable finding of fact, in rejecting the *Brady* claims predicated on the Sapp letter or the Sapp confession. It did not.

Sapp letter. The state court's rejection of the Sapp-letter *Brady* claim rested on a determination of law, not a finding of fact: the court determined that the letter was not "material" for *Brady* purposes. Pet.App.117. That means §2254(d)(2) is irrelevant to this claim, and that Coleman can win relief only by showing that the materiality finding rested on an "unreasonable application" of Supreme Court precedent. He must, in other words, show that the non-materiality determination was "so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Harrington*, 562 U.S. at 103.

Coleman cannot come close to meeting that demanding standard. Evidence is material under *Brady* "only if there is a reasonable probability that, had the evidence

been disclosed to the defense, the result of the proceeding would have been different." *United States v. Bagley*, 473 U.S. 667, 682 (1985). "A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome." *Id.* The fundamental flaw with the Sapp letter is its vagueness. The letter mentions neither a name nor any other concrete and discernible fact. Sure, the letter references a murder "over off of Pleasant," but that statement does not move the needle. At the very least, it was entirely reasonable for the state court to conclude that a jury would still have convicted Coleman had it known about the Sapp letter. That defeats Coleman's claim to relief under §2254(d)(1). *See Harrington*, 562 U.S. at 103.

Sapp confession. The Sixth Circuit also correctly denied the *Brady* claim insofar as it rested on the withholding of a confession Sapp made to police. The Ohio Court of Appeals rejected this argument because Coleman failed to establish that Sapp ever confessed to the police. In other words, the State could not have violated *Brady* because there was no confession to disclose. *See* Pet.App.10. In so holding, the state court found Sapp's affidavit to lack "any credibility." Pet.App.117. That finding is entitled to "substantial deference." *Brumfield*, 576 U.S. at 314. Relief may not be granted unless *every* reasonable mind would conclude that Sapp—"a convicted double murderer who is under a sentence of death and has nothing to lose by claiming responsibility for another murder," Pet.App.116—submitted a truthful affidavit. *See Rice*, 546 U.S. at 341–42. The record leans heavily against Coleman. For example, Sapp's vow that he was with Stevens "minutes before he killed her" is contradicted by an eyewitness and *Coleman himself*. Pet.App.116. Frankly, there are many

reasons why the state court's factual determination regarding the affidavit's credibility was reasonable. The reasonableness of that finding precludes relief under §2254(d)(2). And because there was no confession to disclose, there could be no *Brady* violation. The state court's ruling cannot possibly have been an "unreasonable application" of *Brady* that would entitle Coleman to relief.

Coleman says he is entitled to relief because the state court did not conduct an evidentiary hearing before finding Sapp's affidavit to lack credibility. This, according to Coleman, constitutes a *per se* unreasonable determination of fact. Pet.33–34, 36–37. He is mistaken. This Court has never held, let alone suggested, that a federal court can disregard a state court's factual findings whenever the state court decides not to conduct an evidentiary hearing. To the contrary, in a pre-AEDPA decision, the Court confirmed the opposite is true. *See Sumner v. Mata*, 449 U.S. 539, 546–47 (1981). Coleman cites to a recent Tenth Circuit opinion, but that case proves why he is wrong. In *Smith v. Aldridge*, the court explained that even if a state court's decision not to hold an evidentiary hearing can render its factual findings unreasonable, a petitioner must nevertheless establish that "all 'reasonable minds' agree that the state court needed to hold a hearing in order to make those factual determinations." 904 F.3d 874, 883 (10th Cir. 2018) (alteration adopted) (citing *Brumfield*, 576 U.S. at 314). Only the "rare" petitioner can make that showing. *Id.* Coleman is no exception. Given the evidence Coleman submitted in state court, it was entirely reasonable for that court to make factual determinations without conducting an evidentiary hearing.

3. Coleman's ineffective-assistance-of-counsel claim also breaks down under well-established habeas principles. Begin again with the fact that the state court's ruling could not have been "contrary to" Supreme Court precedent: the state court identified the controlling legal authority, which is *Strickland v. Washington*, 466 U.S. 668 (1984), *see* Pet.App.128, and the facts of this case are not "materially indistinguishable" from the facts of a case in which this Court found ineffective assistance, *Williams*, 529 U.S. at 406. The state court also applied the correct legal rule: it correctly recognized that Coleman needed to show "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694; *see* Pet.App.125–26, 128–29. The state court decision is thus consistent with Supreme Court precedent.

To be clear, Coleman's ineffective-assistance-of-counsel claim rests on questions of law, not questions of fact: the dispute does not concern *what* Coleman's attorneys did, but rather whether the things they are assumed to have done (or not done) constituted inadequate performance that prejudiced Coleman. (Insofar as Coleman seeks relief under §2254(d)(2), his claims are so underdeveloped that they can be ignored.) That takes any relief under §2254(d)(2) off the table.

The only question, then, is whether Coleman is entitled to relief under §2254(d)(1) on the ground that the Ohio Court of Appeals unreasonably applied *Strickland*. In other words, he must show that the state court's application of *Strickland* "was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded

disagreement." *Harrington*, 562 U.S. at 103. "This is a difficult to meet … and highly deferential standard." *Cullen*, 563 U.S. at 181 (alterations and quotations omitted). That standard is lost on Coleman, who suggests that his entitlement to habeas relief is "easy." Pet.25. He is wrong. The Sixth Circuit correctly deferred to the state court's determination on each of Coleman's specific arguments. And for the new arguments Coleman raised for the first time on appeal, the Sixth Circuit correctly denied relief.

Coleman's father. Coleman says counsel inadequately prepared his father to testify during sentencing. Pet.28. This is a new argument in federal court. The Sixth Circuit nevertheless addressed it, holding that Coleman cannot satisfy *Strickland*'s prejudice prong because he did not establish "what his father would have testified to had he been better prepared." Pet.App.13. Coleman's *certiorari* petition is no different; he fails to explain what else his father would have said and how that testimony would have resulted in a different outcome. His argument thus fails even on *de novo* review, let alone under AEDPA's demanding standards.

Testimony from friends and family. Coleman argued that counsel should have called his mother and sister to testify during sentencing, as well as his ex-girlfriends. Pet.29–31. The state court, after assessing the content of the proposed testimony and comparing it to the aggravating evidence, determined that "there was no likelihood that the outcome … would have been different." Pet.App.126. The Sixth Circuit agreed, because much of the testimony "was either cumulative … or did not rise to the level that a reasonable jurist would have found that it outweighed the

aggravating circumstance." Pet.App.14. In his *certiorari* petition, Coleman reargues the facts. Pet.29–31. That tactic is incompatible with the purpose of federal habeas review. Congress enacted §2254(d) to "guard against extreme malfunctions in the state criminal justice systems, not [to] substitute for ordinary error correction through appeal." *Harrington*, 562 U.S. at 102–03 (quotation omitted). He has failed to show that the state court, in deeming this evidence cumulative, misapplied *Strickland* so egregiously that the error was beyond fairminded disagreement. He is therefore not entitled to relief under AEDPA. *Id.*

Behavior in jail. Coleman argued that counsel should have presented evidence of his good behavior while in jail. Pet.App.127. The state court determined that there was "no reasonable probability that the jury's sentence would have been different" had this evidence been presented, Pet.App.128, because six days' of good behavior is "hardly very persuasive," Pet.App.15. Coleman's *certiorari* petition does not separately challenge this holding. He is thus not entitled to relief on this claim.

Employment. Coleman argued that counsel should have introduced evidence of his employment records. Pet.App.128. As the Sixth Circuit noted, those records "contain mediocre reviews, absenteeism, and tardiness." Pet.App.15 (quotation omitted). That is why the state court held "there is no reasonable probability" that the employment records would have made a difference. Pet.App.129. Like the good-behavior evidence, Coleman's *certiorari* petition does not separately challenge the state court's rejecting of the *Strickland* claim insofar as it rested on the failure to introduce employment records. Rightly so: the state court's determination does not

amount to an error that is egregiously wrong "beyond any possibility for fairminded disagreement." *Harrington*, 562 U.S. at 103.

Cultural expert. Coleman wanted counsel to retain a cultural expert who "could have helped the jury understand why he turned to a life of drug dealing." Pet.App.128. But Coleman failed to submit any evidence from a cultural expert to support his argument. Pet.App.16. Therefore, the state court found no "reasonable probability of a different sentence." Pet.App.128. The Sixth Circuit agreed, reasoning that Coleman's claim was "speculative." Pet.App.16. Coleman does not directly challenge this holding in his *certiorari* petition. He instead argues that the Sixth Circuit erred by refusing to consider the *new evidence* he presented for the first time in federal court. Specifically, Coleman says that the lower court violated the "party presentation principle" because, even though he presented new evidence and even though the State did not object to the new evidence, the Sixth Circuit nevertheless refused to consider it. *See* Pet.16–24. Coleman is wrong. Evidence that was never presented to the state court cannot be considered by a federal court when reviewing a claim under §2254(d)(1). *Cullen*, 563 U.S. at 185; *see also Greene v. Fisher*, 565 U.S. 34, 38 (2011).

In declining to review Coleman's newly presented argument, the Sixth Circuit cited a case about forfeiture. Pet.App.16 (citing *Coley v. Bagley*, 706 F.3d 741, 755 (6th Cir. 2013)). Coleman says that, even if he forfeited his argument relying on new evidence, the government forfeited its forfeiture argument. Pet.17. This argument is irrelevant because the forfeiture doctrine is irrelevant: regardless of who forfeited

what, AEDPA *prohibited* the Sixth Circuit from considering new evidence—evidence from outside the state-court record—in adjudicating Coleman's habeas claims. *Cullen*, 563 U.S. at 185. If the Sixth Circuit had considered that evidence, it would have committed reversible error.

In any event, given the heinousness of the murder and Coleman's conduct, there is plenty of room for debate regarding whether a cultural expert would have been any help to him at all. So the state court's decision was not wrong "beyond any possibility for fairminded disagreement," and Coleman's habeas claim fails. *Harrington*, 562 U.S. at 103.

Psychological expert. Coleman argued that counsel should have had an expert psychologist testify during sentencing. Pet.App.127. The state court held that Coleman did not satisfy *Strickland*'s prejudice prong because: (a) part of the psychologist's testimony would not have been admissible under state law; and (b) the testimony that would have been admissible was inconclusive. *Id.* In other words, Coleman failed to show a reasonable probability that a jury would not have sentenced him to death had the psychological expert been allowed to testify. The Sixth Circuit agreed, Pet.App.16–18, and Coleman offers no sound basis for reversing the conclusion that the state court cleared AEDPA's very low bar. For example, Coleman argues that the Sixth Circuit erred by refusing to consider his new evidence, which he cited to support an expanded argument regarding the expert psychologist. Pet.17. For the reasons just discussed, the Sixth Circuit would have erred had it considered that evidence. *Cullen*, 563 U.S. at 185.

Closing argument. Coleman argued that counsel should have prepared a better closing argument. Pet.App.128. The state court rejected that claim, and the Sixth Circuit affirmed. *Id.*; Pet.App.18–19. Coleman nowhere mentions this claim in his *certiorari* petition. He is not entitled to relief.

Aggregate. Coleman argues that "the omitted mitigation evidence must be considered in the aggregate." Pet.27. The Sixth Circuit agreed, and after considering the mitigating evidence that would "have been available for presentation in state court," it concluded that Coleman has no claim under "*Strickland*'s deferential standard." Pet.App.19 n.11. Coleman's *certiorari* petition does not raise any persuasive argument to the contrary. He certainly has not shown that the state court's application of this deferential standard was wrong "beyond any possibility for fairminded disagreement." *Harrington*, 562 U.S. at 103.

CONCLUSION

For the foregoing reasons, the Court should deny Coleman's petition for a writ of *certiorari*.

Respectfully submitted,

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