

**APPENDIX A**

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## APPENDIX B

A “‡” indicates state decisional law that is highly probative of the state’s willingness to provide a post-conviction forum for non-new rules as a general matter.

A “\*” indicates that the state provides a post-conviction forum that denies relief for old rules of federal law, where this Court issues a decision reiterating the old federal rule but effecting a change in state decisional law.

The absence of any symbol indicates that as a general matter, a non-new rule receives a post-conviction forum.

<b>Whether a non-new rule receives a post-conviction forum</b>	
<b>State</b>	<b>Relevant Law</b>
‡Alaska	<i>State v. Smart</i> , 202 P.3d 1130, 1138-39 (Alaska 2009) (applying federal retroactivity standard to ensure that state retroactivity standard was “no less protective”).
*Arizona	<i>State v. Cruz</i> , 487 P.3d 991, 992 (Ariz. 2021) (refusing to apply <i>Simmons v. South Carolina</i> , 512 U.S. 154 (1994)).
California	<i>In re Gomez</i> , 45 Cal. 4th 650, 660 (2009) (holding <i>Cunningham v. California</i> , 549 U.S. 270 (2007) was dictated by <i>Blakely v. Washington</i> , 542 U.S. 296 (2004) and,

Whether a non-new rule receives a post-conviction forum	
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	therefore, applies retroactively on collateral review).
‡Delaware	<i>Powell v. State</i> , 153 A.3d 69 (Del. 2016) (applying federal retroactivity standard to state supreme court decision).
Florida	<i>Mosley v. State</i> , 209 So. 3d 1248, 1281 (Fla. 2016) (giving retroactive effect to <i>Hurst v. Florida</i> , 577 U.S. 92 (2016), where that case’s reasoning makes clear “that Florida’s capital sentencing statute was unconstitutional from the time that the United States Supreme Court decided <i>Ring [v. Arizona]</i> , 536 U.S. 584 (2002)”).
‡Hawaii	<i>Schwartz v. State</i> , 361 P.3d 1161 (Haw. 2015) (noting that <i>Yates v. Aiken</i> , 484 U.S. 211 (1988) explained that <i>Francis v. Franklin</i> , 471 U.S. 307 (1985) “merely applied” <i>Sandstrom v. Montana</i> , 442 U.S. 510 (1979) and thus did not create a new rule).
Massachusetts	<i>Commonwealth v. Nieves</i> , 476 N.E.2d 179 (Mass. 1985) (giving retroactive effect to <i>Sandstrom v. Montana</i> , 442 U.S. 510 (1979)’s application of earlier precedent).

<b>Whether a non-new rule receives a post-conviction forum</b>	
<b>State</b>	<b>Relevant Law</b>
Mississippi	<i>Woodward v. State</i> , 635 So. 2d 805, 811-12 (Miss. 1993) (adjudicating in post-conviction proceedings a claim based on <i>Stringer v. Black</i> , 503 U.S. 222 (1992), which held that <i>Clemons v. Mississippi</i> , 494 U.S. 738 (1990) was dictated by <i>Godfrey v. Georgia</i> , 446 U.S. 420 (1980)).
New York	<i>People v. Smith</i> , 66 N.E.3d 641, 651-52 (N.Y. 2016) (recognizing application of “old” rules in post-conviction review).
South Carolina	<i>Arnold v. State</i> , 420 S.E.2d 834 (S.C. 1992) (adjudicating in post-conviction proceedings a claim based on <i>Yates v. Aiken</i> , 484 U.S. 211 (1988) which had held that <i>Francis v. Franklin</i> , 471 U.S. 307 (1985) was a non-new rule).
Tennessee	<i>Swanson v. State</i> , 749 S.W.2d 731, 732-33 (Tenn. 1988) (adjudicating in post-conviction proceedings a claim based on <i>Yates v. Aiken</i> , 484 U.S. 211 (1988) which had held that <i>Francis v. Franklin</i> , 471 U.S. 307 (1985) was a non-new rule).
Texas	<i>Ex parte Goodman</i> , 816 S.W.2d 383, 384 (Tex. Crim. App. 1991) (adjudicating in post-conviction proceedings a claim based on

<b>Whether a non-new rule receives a post-conviction forum</b>	
<b>State</b>	<b>Relevant Law</b>
	<i>Penry v. Lynaugh</i> , 492 U.S. 302 (1989) “although [the defendant’s] trial, direct appeal, and filing of this writ application all preceded the Supreme Court’s decision in <i>Penry</i> .”)
‡Vermont	<i>State v. White</i> , 944 A.2d 203, 208 n.2 (Vt. 2007) (explaining that its approach to retroactivity, which is rooted in the same basis as <i>Teague</i> , “is in harmony with the federal test and does not dictate a different result.”)