

No. _____

CAPITAL CASE

IN THE SUPREME COURT OF THE UNITED STATES

JERRY SCOTT HEIDLER,

Applicant,

-v-

SHAWN EMMONS, WARDEN,
Georgia Diagnostic Prison,

Respondent.

**APPLICATION FOR AN EXTENSION OF TIME
TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

Marcia A. Widder (Ga. 643407)*
Anna Arceneaux (Ga. 401554)
Danielle Allyn (Ga. 277928)
Georgia Resource Center
104 Marietta Street NW, Suite 260
Atlanta, Georgia 30303
Phone: 404-222-9202
marcy.widder@garesource.org

December 21st, 2023

COUNSEL FOR APPLICANT,
JERRY SCOTT HEIDLER

*Counsel of record

TABLE OF CONTENTS

TABLE OF AUTHORITIESiii

APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A
PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE ELEVENTH CIRCUIT 1

TABLE OF AUTHORITIES

CASES

<i>Buck v. Davis</i> , 580 U.S. 100 (2017)	10
<i>Martinez v. Ryan</i> , 566 U.S. 1 (2012)	2-3
<i>Cullen v. Pinholster</i> , 563 U.S. 170 (2011)	8
<i>Slack v. McDaniel</i> , 529 U.S. 473 (2000).....	10
<i>Lawrence v. Sec’ e Fla. Dep’t of Corr.</i> , 700 F.3d 464 (11th Cir. 2012).....	8
<i>Heidler v. GDCP Warden</i> , 2019 U.S. Dist. LEXIS 214444 (S.D. Ga.)	8-9

STATUTES

28 U.S.C. § 1254(1)	2
28 U.S.C. § 2101(c).....	1
28 U.S.C. § 2253(c)(2)	11
O.C.G.A. § 17-7-131(b)(D).....	5

OTHER AUTHORITIES

S. Ct. R. 13.5	1
S. Ct. R. 22	1
S. Ct. R. 13.1	1
S. Ct. R. 30.1	1
S. Ct. R. 30.2	1

CAPITAL CASE

IN THE
SUPREME COURT OF THE UNITED STATES

No. _____

JERRY SCOTT HEIDLER,
Applicant,

v.

SHAWN EMMONS, WARDEN,
Georgia Diagnostic Prison,
Respondent.

**APPLICATION FOR AN EXTENSION OF TIME WITHIN
WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

Pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rules 13.5, 22, and 30.2, applicant Jerry Scott Heidler respectfully requests a forty-five (45) day extension of time, *i.e.* up to and including February 22, 2024, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit. Mr. Heidler has not previously sought an extension of time from this Court. In support of this request, Mr. Heidler submits the following:

1. The Court of Appeals for the Eleventh Circuit denied Mr. Heidler's petition for rehearing *en banc* on October 10, 2023. *See* Tab 1. Without an extension, the time to file a petition for a writ of certiorari in this Court will expire on January 8, 2023. *See* S. Ct. R. 13.1, 30.1. Consistent with Rule 13.5, this application is being filed more than 10 days before that date. A copy of the Eleventh Circuit's opinion is

attached. *See* Tab 2. This Court will have jurisdiction of Mr. Heidler’s future petition for writ of certiorari pursuant to 28 U.S.C. § 1254(1).

2. Mr. Heidler was convicted and sentenced to death following a jury trial in Walton County, Georgia in September 1999.¹ Following direct appeal and state habeas proceedings, he filed a timely petition for writ of habeas corpus in the Southern District of Georgia in October 2011. More than eight years later, the district court denied relief and denied a certificate of appealability (“COA”) on any issue.

3. Thereafter, a panel of the Eleventh Circuit granted a COA on a limited set of issues, allowing Mr. Heidler to appeal the district court’s adjudication of certain ineffective-assistance-of-counsel (“IAC”) subclaims regarding counsel’s deficient investigation and presentation of a mental health defense at the culpability phase of trial and mitigating evidence at sentencing, and the district court’s dismissal on procedural grounds of a separate IAC subclaim regarding counsel’s insufficient efforts to suppress Mr. Heidler’s custodial statements (“suppression IAC subclaim”). The Eleventh Circuit rejected Mr. Heidler’s several efforts to expand the COA to include additional claims: the trial court’s rejection of Mr. Heidler’s allegation that one of his attorneys had an actual conflict of interest at sentencing, which was raised in federal court pursuant to *Martinez v. Ryan*, 566

¹ Venue was transferred from Toombs County, Georgia.

U.S. 1 (2012);² the district court merits denial of a substantive due process challenge to Mr. Heidler's competence at the time of trial; and the district court's dismissal of numerous other claims on the same procedural grounds the district court had relied on to dismiss the suppression IAC subclaim. Following briefing and argument, the Eleventh Circuit affirmed the district court's denial of habeas relief, though without addressing the propriety of the district court's procedural ruling. Tab 2 (hereinafter "Slip Op."). It thereafter denied rehearing and rehearing *en banc*. Tab 1.

4. Many of Mr. Heidler's federal habeas claims relate to his longstanding and severe mental illness. Mr. Heidler has lived with severe depression and active psychosis since childhood. Contemporaneous medical records and other evidence reflect that his symptoms of severe depression, suicidality, and auditory and visual hallucinations date back to, at the least, his preteen years. When he was only 11, he was admitted for inpatient psychiatric treatment at a regional mental-health hospital following several suicide attempts.³ He was discharged six weeks later, against medical advice, after his mother refused to return him to the hospital from a weekend furlough. The hospital records and other evidence document that Mr. Heidler was suffering from psychosis even at this tender age. For example, he

² Although the state habeas record revealed trial counsel's simultaneous representation of Mr. Heidler and another criminal defendant with conflicting interests, the conflict claim was not raised until federal habeas proceedings.

³ Mr. Heidler was brought to the hospital after he "jump[ed] in front of semi trucks" and attempted to hang himself. Slip Op. at 26, 64, 97, 100.

reported to a school psychologist when he was 11 that he “saw things coming off the wall.” *See, e.g.*, Slip Op. at 44. His foster mother testified that, also at 11, he was terrified of the dark and saw images of a knife, which he believed would come through the ceiling and cut him. Slip Op. at 30. Hospital records note that Scott heard voices telling him to kill himself, D.21-10:1,⁴ and Mr. Heidler’s teachers testified that he “constantly cut himself.” Slip Op. at 41. Just two months after his six-week hospitalization, Mr. Heidler, now 12, was brought to a community mental health center “in crisis” after acting bizarrely at the school he attended for emotionally troubled children. Dr. Adrienne Butler, the pediatrician who saw him at the clinic, documented in her notes that he was actively hallucinating in front of her and referred him for inpatient evaluation. D.28-15:53.⁵ Instead, his mother took him home. D.28-15:59.

5. Mr. Heidler has since continued to suffer from distorted and paranoid thinking; auditory and visual hallucinations, often involving frightening images and voices telling him to kill himself; recurrent suicide attempts and self-mutilation; and severe depression. Slip. Op. at 41-49. He was treated for psychosis by a jail psychiatrist while he awaited trial in this case and has been under constant psychiatric care while on death row for schizophrenia and other major psychiatric

⁴ Citations to “D.— ” refer to the federal district court docket entries in *Heidler v. Warden*, Case No. 6:11-cv-00109-LGW (S.D. Ga.) and the relevant page numbers therein.

⁵ More than 16 years later, Dr. Butler testified in state habeas proceedings that she vividly recalled the visit as “I almost never saw a psychotic child in that setting, and he stuck in my memory.” D.19-6:93.

illnesses. As the state habeas court observed in its final order, “For the majority of [Mr. Heidler’s] life, [he] has been significantly impaired by his mental illness and...it is highly unlikely he will ever be free from the substantial impairments.” D.31-12:17.

6. Trial counsel were appointed soon after Mr. Heidler was arrested for killing four members of the Daniels family on December 4, 1997, when he was twenty years old—a crime inextricably linked to Mr. Heidler’s severe mental illness.⁶ Although counsel, from the start of their representation, recognized that Mr. Heidler was severely impaired and decided early on to raise the defense that he was guilty but mentally ill pursuant to O.C.G.A. § 17-7-131(b)(D), they did not adequately investigate either Mr. Heidler’s background or his contemporaneous mental state, and failed to make sure that the mental health experts who testified at a pretrial competency hearing and at trial considered his long history of psychosis and severe depression. As a result, the trial court and jurors heard a dramatically different and misleadingly benign version of Mr. Heidler’s psychiatric challenges. They were told that he merely had a borderline or antisocial personality disorder, rather than a psychotic disorder, and did not learn of the long-term and

⁶ Just days before the shootings occurred, Mr. Heidler’s second son, Matthew, died at birth. Consumed by grief, Mr. Heidler’s “mind just went blank,” he experienced “rage,” “went berserk,” and felt as though he were “in a dream.” Slip Op. at 3, 5, 24, 49. The crime occurred just hours after Matthew’s funeral, and Mr. Heidler returned to his baby’s grave after the crime. Slip Op. at 49.

debilitating psychiatric symptoms Mr. Heidler had suffered for over a decade.⁷ Jurors unsurprisingly rejected the GBMI defense and ultimately voted to impose the death penalty.

7. Following arrest, Mr. Heidler spent nearly two years incarcerated at the Toombs County Jail awaiting trial, where he continued to experience auditory hallucinations of his dead baby crying. Slip Op. at 49. He burned himself with cigarettes to stay awake so as to avoid terrifying nightmares, and he reported “seeing visions of people.” Slip Op. at 44. Mr. Heidler cut himself on the arms as a form of self-mutilation and picked at his face until there were open sores. Slip Op. at 80. In the spring of 1998, Mr. Heidler attempted suicide numerous times. D.20-19:51-57. He was eventually referred for mental health treatment, and in September 1998, the jail psychiatrist diagnosed him with psychosis NOS (not otherwise specified) and prescribed a powerful antipsychotic, Haldol. D.19-10:33, 21-17:33. Haldol helped mitigate Mr. Heidler’s most severe symptoms, as evidenced by the fact that he did not once attempt suicide when taking the drug.⁸

⁷ At sentencing, the jury was further misled about the abysmal conditions in which Mr. Heidler was raised. Witnesses in state habeas proceedings described Mr. Heidler’s childhood environment as “deplorable,” and afflicted by alcoholism, violence, neglect, and physical and emotional abuse, but jurors heard virtually nothing of this evidence. Mr. Heidler’s traumatic childhood exacerbated his mental health symptoms and made it impossible for him to receive the treatment that he needed. Slip. Op. at 42-43, 47.

⁸ Mr. Heidler’s initial suicide attempts all occurred prior to September 1998, when he was first prescribed Haldol. D.21-17:33. He did not attempt suicide again until August 1999, on the eve of trial, after he had stopped taking the drug. D.20-20:28-31, 20-21:5-16.

8. Although trial counsel recognized that Mr. Heidler's mental illness dramatically impacted their representation and, in state habeas proceedings, testified that they "couldn't communicate with [their client] at all, nobody could," Slip Op. at 91, counsel did not challenge Mr. Heidler's competence. The trial court, however, aware that Mr. Heidler planned to raise a mental health defense, asked the appointed mental health experts to determine whether he was competent to stand trial and held a competency hearing on May 25, 1999, three months before the start of trial.⁹ At the hearing, three court-appointed evaluators testified based on assessments of Mr. Heidler in the preceding three months, which, as their later trial testimony would demonstrate, were conducted without any understanding of the severe impairments Mr. Heidler had suffered for many years and without knowledge of his deteriorating mental health at the jail or the contemporaneous diagnosis of psychosis Mr. Heidler had received while in jail by a treating psychiatrist.¹⁰ Moreover, at the time of the evaluations, Mr. Heidler had been taking Haldol for at least five months, a factor that alleviated his more severe symptoms. *See supra* n.8; *see also* Slip Op. at 44, 46, 49. The trial court's ruling on the basis of evidence presented at the May 1999 hearing, that Mr. Heidler was competent to stand trial, was thus rendered without the benefit of substantial evidence of Mr. Heidler's mental incompetence.

⁹ D.13-3.

¹⁰ D.23-12:30 (Ifill and D'Alesandro evaluations, February and April 1999), 23-12:45 (Kuglar evaluation, May 1999).

9. More significantly, Mr. Heidler’s mental health took a turn for the worse *after* that hearing. In June 1999, Mr. Heidler began refusing Haldol, and by July, the jail stopped giving him the drug.¹¹ His condition rapidly deteriorated, culminating in a suicide attempt on August 6, 1999, on the eve of trial.¹² D. 20-20:28-31. Mr. Heidler’s attorneys did not raise Mr. Heidler’s competency with the court, nor did the court revisit the issue again on its own. Mr. Heidler went to trial despite significant evidence that he was not competent at the time.

10. Although not pursued in state habeas proceedings, Mr. Heidler alleged in federal habeas proceedings that he was not competent at the time of trial pursuant to Eleventh Circuit law recognizing that a substantive due process claim of incompetence cannot be defaulted. *See, e.g., Lawrence v. Sec’y Fla. Dep’t of Corr.*, 700 F.3d 464, 481 (11th Cir. 2012). Although the district court recognized that it was required to hear the claim on the merits, it refused to consider any evidence outside the evidence presented at the May 1999 hearing on which the trial court had based its competency finding, and concluded that the trial court’s competency finding was not unreasonable under AEDPA’s deferential review. *See Heidler v. GDCP Warden*, No. 6:11-cv-00109, 2019 U.S. Dist. LEXIS 214444, at *61 (observing that “Heidler looks to evidence developed during the state habeas evidentiary hearing and the state habeas case” and holding that, because it “was not before the

¹¹ Jail medication logs indicate that Mr. Heidler began consistently refusing Haldol around June 8, 1999. The jail stopped administering the medication in July—Mr. Heidler was last offered Haldol on July 9, 1999. D.20-21:5-16.

¹² Trial began with jury selection on August 23, 1999. D.13-5.

trial court when it made its decision on this claim,” it could not be considered) (citing *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011)). The district court thus failed to consider evidence, not only of the true extent of Mr. Heidler’s debilitating mental illness, but also his marked deterioration in the weeks leading up to trial and other substantial evidence of incompetence in the state habeas record never considered by the trial court. *Id.* The Eleventh Circuit denied a COA to address this claim.

11. The district court further denied a COA to address Mr. Heidler’s claim that trial counsel operated under an actual conflict of interest. *Id.* at *63-64. At sentencing, the State introduced evidence concerning Mr. Heidler’s brief escape from jail.¹³ This evidence was highly aggravating, as it supported the State’s sentencing portrayal of Mr. Heidler as dangerous and uncontainable. *See* D.14-7:95-97, 14-11:47. Unknown to Mr. Heidler, his attorney Kathy Palmer was concurrently defending Joel Buttersworth, on his charges stemming from his escape from the Toombs County Jail a few months before Mr. Heidler’s escape. Indeed, Mr. Heidler effectuated his escape the same way as Buttersworth, using a tool Buttersworth had left behind at the jail. *See* D.19-3:81. This conflict prevented Palmer from presenting evidence that would have mitigated the escape, showing that Mr. Heidler had not developed the plan but instead copied Buttersworth. *See, e.g.*, D.31-2:14-15.

¹³ This occurred two months before trial. Mr. Heidler was found less than 12 hours after he left the jail, walking in the middle of the highway in its direction. D.14-9:5-7; 17-19.

12. The Eleventh Circuit also denied a COA to address the district court’s dismissal of numerous claims (in addition to the suppression IAC claim) on procedural grounds. In adjudicating Mr. Heidler’s Third Amended Petition for Writ of Habeas Corpus more than eight years after the initial petition had been filed and answered (and twice amended and answered), the court dismissed numerous claims and subclaims as insufficiently pled and/or unexhausted, without providing notice or an opportunity to address or correct many of these purported deficiencies. The district court, moreover, ignored the State’s waiver of the exhaustion defense as to many of them. Although the Eleventh Circuit had granted a COA to hear one small portion of these claims—the IAC suppression subclaim—as noted, the court never reached the procedural issues for which it had granted COA, instead ruling that any improper admission of Mr. Heidler’s statements did not prejudice him. Slip Op. at 110-12. Thus, “the difficult procedural default questions,” Slip Op. at 110, surrounding the district court’s dismissal of numerous other claims—rulings the court of appeals, in granting COA, had found were “debatable among jurists of reason” and/or “deserve[d] encouragement to proceed further”¹⁴—have never been addressed. Such underlying substantive claims included colorable IAC subclaims, including counsel’s failure to object to important but misleading jury instructions on mental health defenses and to the prosecutor’s improper and misleading comments and arguments; and a separate due process challenge to prosecutorial misconduct.

¹⁴ *Buck v. Davis*, 580 U.S. 100, 122 (2017) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (internal citation omitted)).

Individually and collectively, these underlying claims satisfy the requirement that Mr. Heidler “ma[k]e a substantial showing of the denial of a constitutional right,” 28 U.S.C. § 2253(c)(2), and thus a COA should have issued.

13. This capital case thus has several issues that would be appropriate to raise in a petition seeking certiorari review in this Court, including the Eleventh Circuit’s denial of the IAC subclaims it rejected on the merits; and whether the Eleventh Circuit erred in denying a COA to address the district court’s consideration of the trial-competency claim, the conflict of interest claim, and/or the district court’s dismissal of numerous claims, years after the habeas petition had been filed and without notice or an opportunity to cure, on the grounds they were inadequately pled or unexhausted.

14. These issues are complex and fact-intensive, requiring meticulous and probing review of a state-court record that is over 18,800 pages long. Counsel of record, Marcia Widder, needs additional time in which to review and research the issues in this case, determine the best strategy for seeking certiorari, and draft the petition for writ of certiorari Mr. Heidler intends to file.¹⁵

15. In addition to her role as lead counsel in Mr. Heidler’s case, Ms. Widder is one of only two attorneys at the Resource Center with significant federal habeas experience. She accordingly carries a heavy caseload of other capital cases

¹⁵ Ms. Widder has been Mr. Heidler’s lead attorney for several years and is the only attorney currently at the Georgia Resource Center who is both sufficiently familiar with the record in this case and sufficiently experienced to prepare the petition in this matter.

that has limited her ability to work on this case. In particular, Ms. Widder has had several competing deadlines in other capital cases in December and January. These cases include:

- Petition for Writ of Certiorari in *King v. Emmons*, Case No. 23A412 (U.S.) (filed in this Court December 18, 2023)
- Supplemental briefing ordered by district court in *Rivera v. Warden, Georgia Diagnostic Prison*, Case No. 1:13-cv-00161-JRH (S.D. Ga.) (filed December 8, 2023)
- Reply brief in state habeas proceedings in *Esposito v. Warden, Georgia Diagnostic Prison*, Butts County Civil Action No. 2022-SV-HC-0003 (due January 5, 2023)

16. Counsel's conflicting obligations have thus far prevented, and will continue to prevent, her from having significant time to devote to Mr. Heidler's certiorari petition until after the first week of January 2024. In light of her competing obligations and the complexity of the issues in this case, counsel respectfully requests an additional 45 days in which to prepare an appropriate petition for consideration by this Court, *i.e.*, up to and including February 22, 2024.

Respectfully submitted,

/s/ Marcia Widder
Marcia A. Widder (Ga. 643407)*
Anna Arceneaux (Ga. 401554)
Danielle Allyn (Ga. 277928)
Georgia Resource Center
104 Marietta Street NW, Suite 260
Atlanta, Georgia 30303
Phone: 404-222-9202
marcy.widder@garesource.org

Counsel for Petitioner-Applicant

December 21, 2023