

No. 23-6738
CAPITAL CASE

**In the
Supreme Court of the United States**

ELLIS MASHBURN, JR.,
Petitioner,

v.

JOHN HAMM, Commissioner,
Alabama Department of Corrections,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Eleventh Circuit

BRIEF IN OPPOSITION

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CAPITAL CASE
QUESTION PRESENTED (RESTATED)

1. Mashburn's ineffective assistance of counsel claim was denied on the merits by state courts. When he brought the claim through a federal habeas petition under 28 U.S.C. § 2254(d), the district court correctly applied AEDPA's deferential standard and found that the state court had not unreasonably applied federal law in rejecting Mashburn's claim. On appeal, the Eleventh Circuit Court of Appeals affirmed the district court's finding. Did the Court of Appeals apply the correct standard?

PARTIES

The caption contains the names of all parties in the courts below.

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STATEMENT OF THE CASE

A. Proceedings and Disposition Below

On September 13, 2006, Mashburn pled guilty before the jury to five counts of capital murder, stating that he was doing so because he was in fact guilty. (R. 912-921.) After hearing all the evidence, the jury convicted Mashburn on each count. (C. 277-283.) After an extensive penalty phase, the jury found that Mashburn's crime was heinous, atrocious and cruel, and voted 11-1 in favor of recommending the death penalty. (C. 283.) The trial court conducted a sentencing hearing and sentenced Mashburn to death. (C. 284-286.)

Mashburn's conviction and sentence were affirmed by the Alabama Court of Criminal Appeals (hereinafter "ACCA") and certiorari review was denied by the Alabama Supreme Court. *Mashburn v. State*, 7 So. 3d 453 (Ala. Crim. App. 2007), *cert. denied* October 24, 2008. The United States Supreme Court denied Mashburn's petition for certiorari review on June 1, 2009. *Mashburn v. Alabama*, 556 U.S. 1270 (2009).

Mashburn filed a petition for post-conviction relief on October 21, 2009. On February 8, 2010, the State filed its answer and a motion to dismiss all claims in Mashburn's petition.

On March 30, 2010, the State filed a proposed order dismissing Mashburn's petition. The circuit court entered an order dismissing Mashburn's Rule 32 petition, in its entirety, on April 1, 2010. (R. 32 C. 177-242.) Under

Alabama law, the circuit court retained jurisdiction over the case for thirty days after the entry of its dismissal order. *Loggins v. State*, 910 So. 2d 146, 149 (Ala. Crim. App. 2005). Consequently, the circuit court's jurisdiction over Mashburn's original state court post-conviction proceeding terminated on May 1, 2010. Mashburn did not file a notice of appeal within the 42-day period provided under Alabama law. *Ex parte Wright*, 860 So. 2d 1253, 1254 (Ala. 2002); Rule 26(a), Ala. R. App. P..

On August 23, 2011, undersigned counsel for the Respondent notified Mashburn's counsel of the circuit court's April 1, 2010 order by telephone and e-mail. Undersigned counsel informed Mashburn's counsel that the State had not been served with a copy of the order. Opposing counsel represented that Mashburn had not been served either. Undersigned counsel then informed opposing counsel that the State would not oppose a new petition seeking an out-of-time appeal under Rule 32.1(f), Ala. R. Crim. P.

On September 8, 2011, Mashburn filed a pleading styled as "Motion Pursuant to Alabama Rule of Criminal Procedure 32.1(f) to Set Aside or Vacate the Court's Order Dismissing Petitioner's Rule 32 Motion." (R. 32 C. 246-251.) This motion did not request an out-of-time appeal and, as the State explained to the circuit court and Mashburn's counsel via e-mail, the only avenue for relief was a properly filed Rule 32.1(f) petition. As such, Mashburn's September 8, 2011 pleading was not "properly filed."

In open court on October 12, 2011, Mashburn filed a new petition styled “Amended Petition for Relief from Judgment Pursuant to Rule 32.1(f).” (R.32 C. Supp. 24-101.) Among other things, the petition sought, under Rule 32.1(f), an out-of-time appeal from the Circuit Court’s dismissal of his original Rule 32 petition. *Id.* at 95, 99. That same day, the circuit court held a hearing on the petition. The circuit court dismissed successive claims raised in the new petition, but granted Mashburn’s petition for an out-of-time appeal. *Id.* at 102.

On November 18, 2011, Mashburn filed his notice of appeal in the ACCA. The ACCA affirmed the Circuit Court’s summary dismissal of Mashburn’s original Rule 32 petition on July 12, 2013. *Mashburn v. State*, 148 So. 3d 1094 (Ala. Crim. App. 2013), *reh’g denied* (Sept. 27, 2013), *cert. denied* (Feb. 21, 2014).

On September 26, 2014, Mashburn filed his Petition for Writ of Habeas Corpus in the District Court for the Northern District of Alabama. On December 1, 2014, the Respondent filed a motion to dismiss Mashburn’s petition because it was untimely. After briefing of the issue by the parties, on January 20, 2015 the district court dismissed Mashburn’s petition for failure to comply with the one-year limitations period established by 28 U.S.C. § 2244(d). *Mashburn v. Thomas*, No. 1:14-CV-1829-LSC, 2015 WL 247730, at *5 (N.D. Ala. Jan. 20, 2015) . Mashburn appealed and this Court reversed the district court and remanded for the district court to address Mashburn’s claims

“on the merits.” *Mashburn v. Comm’r, Ala. Dep’t of Corr.*, 713 F. App’x 832, 842 (11th Cir. 2017) .

On remand the district court addressed Mashburn’s petition, concluding that it warranted no relief. *Mashburn v. Dunn*, No. 1:14-CV-01829-LSC, 2021 WL 1208868, at *42 (N.D. Ala. Mar. 31, 2021) . Subsequently, the Eleventh Circuit Court of Appeals affirmed the decision of the district court. *Mashburn v. Comm’r, Alabama Dep’t of Corr.*, 80 F.4th 1292, 1295 (11th Cir. 2023). This petition follows.

B. Statement of the Facts

On October 30, 2002, at about six in the evening, Virginia Mashburn called Grover Whatley because she could not locate her mother, Clara Birmingham. (R. 970.) The Whatleys¹ lived next door to Clara and her husband Henry Birmingham. The Birminghams were an elderly couple; Clara was 80 years old, and Henry was 85. (R. 950) Grover agreed to walk over to Clara’s house and check on her. (R. 970.)

Normally, when friends and family arrive at the Birminghams’, they enter the house through the garage, which is typically left open. (R. 972.) When Grover arrived he noticed that the garage door was closed but the Birminghams’ cars were parked outside. *Id.* So he decided to go to the front door and ring the doorbell. (R. 973.) After no one answered, Grover looked through the blinds and saw that the house was completely ransacked and

¹ Evelyn Whatley was Clara Birmingham’s sister.

disheveled. (R. 973.) He could see that furniture was overturned, glass was broken, and things were in complete disarray. (R. 973.) Then Grover saw Henry Birmingham lying in a pool of blood on the floor in the hallway immediately behind the front door. (R. 973-974.) Grover ran home to dial 911 and get his wife. (R. 974.)

When Grover returned with his wife Evelyn Whatley, they went inside the house and discovered the aftermath of a violent massacre. (R. 975.) Henry Birmingham was laying on the floor face down in a pool of his own blood, amidst broken glass, fallen pictures, and overturned furniture. (R. 976.) Blood was splattered on the walls and on the carpet. (R. 977, 988.) Henry Birmingham was so bloodied and mutilated that Evelyn could not even recognize him, and instead mistook him for her sister, Clara. (R. 977.) Meanwhile, Clara was in the back den of the house, also lying face down on the floor in a pool of blood. (R. 977.) Clara was wearing nothing but her nightgown and underwear, both of which were soaked with blood. (R. 977.) Shortly thereafter, Calhoun County Sheriff's officials arrived at the scene.

With assistance from the Alabama Bureau of Investigation, the Calhoun County Sheriff's Department immediately began their investigation. The crime scene reflected that a substantial struggle had taken place between the victims and their assailant(s). (C. 377.) It also appeared that whoever entered the home had not done so by forcible entry into the house, but rather the perpetrator(s) had been initially admitted entry. (C. 377.) Early on, police received several

leads that pointed to Ellis Louis Mashburn as the perpetrator. (R. 1058.) Mashburn is the grandson of Clara Birmingham and the step-grandson of Henry Birmingham.

Mashburn was questioned several times by investigators. He told sheriff's deputies that he slept most of the day on Tuesday October 29, the day of the murders. (R. 1264-65.) He claimed that he did not find out about the murders until the next day, Wednesday October 30, when his siblings came over to tell him. (R. 1267.) Investigators noticed that Mashburn had a gash on his left hand that had been stitched up. (R. 1060.) Mashburn lied to police and claimed that he cut his hand with a razor blade while he was trying to erect a fence, on Monday October 28, 2002.² (R. 1124, 1222.) He explained that he stitched up the wound himself because he was distrustful of the hospital as it had previously misdiagnosed a concussion he had received, and because he did not want to pay for medical care. (R. 1223.)

Seeking to verify his story, police asked Mashburn what he was wearing when he cut his hand. (R. 1274.) He told investigators he was wearing a Corona t-shirt and Ralph Lauren jeans. (R. 1274-76.) Mashburn even gave the sheriff's deputies permission to go and search his house. (R. 1381.)

With Mashburn's permission, officers from the Calhoun County Sheriff's Department conducted a search of his house. (R. 1064.) Inside the residence investigators recovered a pair of pearl earrings. (R. 1085-87.) In a crawl space

² Mashburn had actually received this wound while he attacked his grandparents on October 29, 2002. Mashburn's blood was found inside the Birmingham's house. (R. 1192)

underneath the house, officials found a plastic bag containing a dark blue colored ring box. (R. 1085.) Inside the box was a gold ring with diamonds. *Id.* Both pieces of jewelry were identified by family members as belonging to Clara Birmingham. (R. 1088.)

While incarcerated at the Calhoun County Jail, Mashburn admitted his crimes to his cellmate, Michael Simpson. (R. 1388.) Mashburn told Simpson how his friend Tony Brooks picked him up on the evening of October 29, 2002. (R. 1390-91.) Mashburn confided in Simpson that the two men drove over to the home of Mashburn's grandparents—Henry and Clara Birmingham. Upon arrival, they went to the front door. (R. 1392.) When Clara Birmingham answered the door Mashburn immediately attacked his elderly grandmother with a hatchet. (R. 1393.) Meanwhile, Brooks located Henry Birmingham and proceeded to stab and cut the elderly man with a knife. (R. 1392-94.) Mashburn was making quick work of his grandmother, but Brooks was having trouble with Henry Birmingham. (R. 1395.) So Mashburn left his grandmother on the floor, bloodied but still alive, and went over to assist Brooks in subduing his grandfather. (R. 1395.) Mashburn was eventually able to slay Mr. Birmingham, so he went back to finish off Clara. *Id.* Mashburn admitted to Simpson that he received a cut on his hand during the attacks. (R. 1397.)

When the bloodbath concluded, Mashburn and his accomplice stole several pieces of jewelry and valuables. The two men then went to Jeremy

Butler's house where they divvied up their plunder. (R. 1089.) The men burned their clothing to destroy the evidence. (R. 1398.)

REASONS FOR DENYING THE PETITION

This case was a highly aggravated case. Mashburn brutally murdered his own elderly grandmother and her husband, bludgeoning them to death in their own home. Wielding a hatchet, Mashburn left Henry so battered and bloody that he was unidentifiable, while Clara was left face-down in a pool of her own blood. Given the savagery of Mashburn's crime and the correct opinions of the courts below, there is no reason for this Court to entertain Mashburn's fact-bound, split-less cert petition.

As set forth below, the Eleventh Circuit properly analyzed Mashburn's claims of prejudice and found that the state courts had not unreasonably applied federal law. Smith has not raised any cert-worthy issue. The decision below does not implicate any split, involves only fact-bound claims, and presents no novel issue. Sup. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."). Moreover, the sole basis for Mashburn's petition, an alleged conflict between the Eleventh Circuit's decision and this Court's decision in *Sears v. Upton*, 561 U.S. 945, 955 (2010), is wholly meritless. This Court should, therefore, deny Smith's petition for a writ of certiorari. *See* Sup. Ct. R. 10.

The Eleventh Circuit Correctly Rejected Mashburn’s Penalty Phase Claims.

Mashburn’s crime was a highly aggravated one in which he carried out a gruesome, savage, unprovoked, and painful crime against two defenseless senior citizens—including his own grandmother. Indeed, the jury unanimously found that the “heinous, atrocious, or cruel” aggravating circumstance applied in this case, a fact that the trial court took into account when it sentenced Mashburn to death. *Mashburn v. Comm’r, Alabama Dep’t of Corr.*, 80 F.4th 1292, 1295 (11th Cir. 2023). Four aggravating circumstances were found in Mashburn’s case: 1) murder during the course of a burglary, 2) murder during the course of a robbery, 3) the murders were especially heinous, atrocious, or cruel, and 4) that Mashburn murdered two or more persons pursuant to one scheme or course of conduct. (Vol. 28, Tab R-78, p. 8.) Extensive mitigation evidence was also presented to the jury and sentencing judge. *See, e.g.*, Doc. 42 at 7 (summarizing mitigation evidence presented to trial court). But the court understandably found that Mashburn’s heinous conduct merited the ultimate penalty.

Despite the mitigation evidence presented at trial, Mashburn claimed that trial counsel should have done more. But his claims were rejected on the merits by the ACCA, and in his federal habeas action, the Eleventh Circuit affirmed the district court’s denial of relief based on the inadequacy of Mashburn’s penalty phase prejudice claims. This is exactly the sort of case Congress contemplated when it enacted Antiterrorism and Effective Death

Penalty Act (“AEDPA”), and both the district court and the Eleventh Circuit applied AEDPA deference. *Mashburn v. Comm'r, Alabama Dep't of Corr.*, 80 F.4th 1292, 1297 (11th Cir. 2023). But Mashburn’s petition fails to even cite AEDPA – much less to account for the doubly-deferential standards that the federal courts properly applied in this case.

A. Mashburn’s Penalty Phase IAC Claim.

1. Deficient performance.

Mashburn argues that trial counsel rendered ineffective assistance of counsel (hereinafter “IAC”) by not investigating his background more extensively. As an initial matter, Mashburn implies that the courts below found deficient performance on the part of trial counsel, asserting that he “had established that counsel’s investigation was deficient[.]” (Pet. at 13.) But neither the state court decision nor the district court decision made any such finding. Nor did the Eleventh Circuit. Instead, the courts below merely accepted “for analysis purposes” that Mashburn had sufficiently *alleged* deficient performance. *Mashburn*, 2021 WL 1208868, at *35. The Eleventh Circuit’s decision was much the same, focusing on whether Mashburn had “failed to sufficiently plead facts that *establish prejudice*.” *Mashburn*, 80 F.4th at 1301 (emphasis in original).

Moreover, the present case is not one in which trial counsel did “no investigation” or failed to present a meaningful mitigation case. *Reaves v. Sec’y, Fla. Dep’t of Corr.*, 872 F.3d 1137, 1159 (11th Cir. 2017) . To the contrary,

counsel did a considerable amount of work, hiring experts, calling thirteen witnesses, and proving the existence of at least ten mitigating circumstances. *Mashburn*, 148 So. 3d at 1131–32. Clearly, there was considerable mitigation evidence in the record. Thus, Mashburn is left to argue that trial counsel’s presentation of mitigating evidence was “uncontextualized.” (Petition, p. 22.) But at bottom, given the highly aggravated nature of Mashburn’s crime and the breadth of the mitigation evidence counsel offered at trial, Mashburn’s allegations of prejudice fell far short of the mark.

B. Mashburn’s Insufficient Prejudice Allegations.

Turning to Mashburn’s prejudice allegations, the ACCA rejected them, and—especially given the doubly-deferential standard required by AEDPA and *Strickland*—the district court correctly found no reason to disturb the ACCA’s decision. *Pye v. Warden, Georgia Diagnostic Prison*, 2022 WL 4866336 at *9, No. 18-12147 (11th Cir. Oct. 4, 2022) (“Applying AEDPA to *Strickland*’s prejudice standard, we must decide whether the state court’s conclusion that Mostiler’s performance at the sentencing phase of Pye’s trial didn’t prejudice him—that there was no ‘substantial likelihood’ of a different result—was ‘so obviously wrong that its error lies beyond any possibility for fairminded disagreement.’”); *see also Cave v. Sec’y Dept. of Corr.*, 638 F.3d 739, 744 (11th Cir. 2011) (holding that habeas petitions are not vehicles for error correction and should only be granted for extreme malfunctions in the state criminal justice system). Ultimately, Mashburn’s failures to meet Alabama’s pleading

requirements for *Strickland* claims and his failure to show any grounds for relief pursuant to AEDPA arose out of a singular failing: his failure to “identify[] what witness, record, diagnosis, or other mitigating evidence counsel overlooked[.]” (Doc. 42 at 95.) For its part, after a *de novo* review, the Eleventh Circuit affirmed the district court, because “tethered to the highly deferential standards of review imposed by AEDPA and *Strickland*, we cannot say the ACCA unreasonably erred in determining that Mashburn failed to sufficiently plead facts that would establish prejudice under *Strickland*.” *Mashburn*, 80 F.4th at 1298, 1304.

In his petition to this Court, Mashburn attempts to dodge the deferential requirements of AEDPA by ignoring them and, instead, framing this case as if the Eleventh Circuit had applied the wrong standard: imposing a “preclu[sion]” based on the fact that his counsel presented “some mitigating evidence at his capital trial.” (Pet. at i.) Had it done so, Mashburn would be right, and the Eleventh Circuit would have fallen into the error condemned by *Sears v. Upton*, the idea that if “*some* mitigation evidence [was presented it] should foreclose an inquiry into whether a facially deficient mitigation investigation might have prejudiced the defendant.” *Sears*, 561 U.S. at 955. But the Eleventh Circuit *did not* preclude the possibility of prejudice. Instead, it properly recognized that with prejudice at issue, the question is whether the “totality of the available mitigating evidence” equals or outweighs the aggravating evidence proved at trial. *Mashburn*, 80 F.4th 1298-1299. In doing so it was in perfect accord with

this Court’s teaching in *Sears* that a “proper analysis of prejudice under *Strickland* would have taken into account the newly uncovered evidence[.]” *Sears*, 561 U.S. at 956.

Nor was the reweighing in this case a close question. Mashburn contends that the jury didn’t hear mitigating evidence regarding that his “state of mind [] was altered by methamphetamine intoxication” and that he struggled with untreated bipolar disorder.” (Petition, p. 3.) With respect to his “state of mind,” the ACCA rejected his claim because he “failed to allege [] what his state of mind was at the time of the crime or how his state of mind at the time of the crime would have been mitigating.” *Mashburn*, 148 So. 3d at 1143-45. It is axiomatic that in order to evaluate whether a petitioner’s “state of mind” *could* have led to a different result in his trial, the reviewing court would have to know *what his state of mind was*. But Mashburn has never explained to any court what, precisely, trial counsel could have established about his state of mind, much less how it would have actually led to a different result at his trial. Moreover, on habeas review, AEDPA also required Mashburn to show “beyond any possibility for fairminded disagreement” that the additional evidence would have *compelled* a different result. *Shinn v. Kayer*, 592 U.S. 111, 112 (2020). This he failed to do.

Even if this Court were to read some meaning into Mashburn’s vague allegations about his “state of mind,” he failed to meet AEDPA’s standard. Indeed, this was a highly aggravated case in which Mashburn carried out a

gruesome, savage, unprovoked, and painful crime against two defenseless senior citizens. “[S]ubstantial evidence of aggravating circumstances, [] makes it more difficult to establish prejudice under *Strickland*.” *Holsey v. Warden, Georgia Diagnostic Prison*, 694 F.3d 1230, 1269 (11th Cir. 2012). Contrary to Mashburn’s claims, the Eleventh Circuit did not “merely” observe that evidence that Mashburn was a meth user could prove a “double-edged sword.” (Petition, p. 21.) Instead, the court considered that allegation in context with the “ten mitigating factors that were proven” and “the strength of the aggravating circumstances[.]” *Mashburn*, 80 F. 4th at 1302-1303. Thus, the Eleventh Circuit correctly concluded that—when weighed against the highly aggravated nature of his crime—Mashburn’s vague allegations regarding his “state of mind” were insufficient to “tip[] the aggravation-mitigation scale in his favor.” *Mashburn*, 80 F.4th at 1302. Once again, the plain language of the Eleventh Circuit’s decision demonstrates that it was applying the correct, *Sears*-compliant, analysis of prejudice.

The same holds true of his claims that his bipolar disorder had some impact on his “state of mind.” (Petition, p. 22.) Mashburn concedes that trial counsel presented testimony from a psychologist, Dr. Sachy, that he suffered from bipolar disorder. *Id.* at 16. In the Eleventh Circuit, he argued that that unspecified additional evidence on this point could have “bolstered” the bipolar diagnosis and “strengthened [the mitigating factor regarding decreased intellectual function]’s influence.” *Mashburn*, 80 F.4th at 1300. But Mashburn

never pointed to any admissible evidence that trial counsel could have offered that would show what specific effects bipolar had on *him* or how they affected his state of mind during his crime, much less how those effects were so sufficiently weighty in mitigation that no reasonable jurist could disagree that admission of that evidence would have created a substantial likelihood that the jury and trial court would have reached a different conclusion as to his sentence. *Pye*, 50 F.4th 1025. The Eleventh Circuit correctly recognized this, holding:

considering Mashburn’s claim that counsel should have presented more expert testimony of the potential deleterious effects of bipolar disorder, such as the link between bipolar disorder and childhood substance abuse, the record reflects that the jury did hear evidence that Mashburn started huffing paint and gasoline at eleven years old to deal with the voices he heard, and by thirteen he started drinking wine and taking his parents’ prescription pain medication to subdue his psychiatric ailments. The trial judge credited this testimony and noted that Mashburn’s history of substance abuse and mental health issues were mitigating factors. We cannot say that every fair-minded jurist would believe that more details about the effects of bipolar disorder on Mashburn’s life, including during his childhood, would create a substantial likelihood of a different sentence.

Mashburn, 80 F.4th 1302–03. Thus, as it should have under this Court’s teaching in *Sears*, the Eleventh Circuit evaluated Mashburn’s new claims *in context* with the evidence—both aggravating and mitigating—that was presented at trial. *Id.* This fully complied with *Sears*’s instruction to “consider the totality of the available mitigation evidence ... and reweigh[h] it against the evidence in aggravation.” *Sears*, 561 U.S. at 956 (quoting *Porter v. McCollum*, 558 U.S. 30, 41 (2009)).

C. AEDPA Deference

As a final note, the Eleventh Circuit clearly had no difficulty considering Mashburn's claims in context. But throughout his petition, Mashburn ignores important context that shows why his petition should be denied—most notably by ignoring the fact that his petition arises from a habeas action that was governed by AEDPA. In rejecting Mashburn's claims, the ACCA correctly applied the governing legal principles of this Court's case law, including *Strickland v. Washington*, 466 U.S. 668 (1984), *Mashburn*, 148 So. 3d at 1107, and reached the merits of Mashburn's claims. Thus, in habeas, Mashburn had to show:

far more than that the state court's decision was “merely wrong” or “even clear error.” *Virginia v. LeBlanc*, 582 U.S. —, —, 137 S.Ct. 1726, 1728, 198 L.Ed.2d 186 (2017) (*per curiam*) (internal quotation marks omitted). The prisoner must show that the state court's decision is so obviously wrong that its error lies “beyond any possibility for fairminded disagreement.” *Richter*, 562 U.S. at 103, 131 S.Ct. 770. Congress “meant” this standard to be “difficult to meet.” *Id.*, at 102, 131 S.Ct. 770.

Shinn, 592 U.S. at 118. As shown above, Mashburn failed to even mention this “difficult” standard, much less attempt to meet it.

At its heart, Mashburn's petition represents the culmination of a long effort to have the federal courts engage in error correction of the ACCA's decision. But, as this Court has repeatedly recognized, AEDPA restricts the power of federal courts to grant writs of habeas corpus based on claims that were “adjudicated on the merits” by a state court. *Shinn*, 592 U.S. at 112. Thus, the Eleventh Circuit, like the district court before it, was bound to consider

whether “[f]airminded jurists also could take a different view of [Mashburn]’s mitigating evidence. *Shinn*, 592 U.S. at 122. In this context, it is only by tossing aside that deference—as well as this Court’s own reluctance to engage in mere error correction—that this Court could grant Mashburn’s petition. It should not do so because such an approach would be “fundamentally inconsistent with AEDPA.” *Shinn*, 592 U.S. at 119.

CONCLUSION

For the foregoing reasons, this Court should deny Mashburn’s petition for writ of certiorari.

Respectfully submitted,

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