

No. _____

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

ROBERT SHAWN INGRAM,

Petitioner,

v.

WARDEN, HOLMAN CORRECTIONAL FACILITY,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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CAPITAL CASE QUESTIONS PRESENTED

Robert Shawn Ingram was arrested along with three other men and charged with the murder of Gregory Huguley. After he was charged, he agreed to cooperate with the prosecutor's investigation, gave statements implicating himself, and agreed to testify against Anthony Boyd. In exchange, he would receive a sentence of life with the possibility of parole.

Before Mr. Boyd's trial, Mr. Ingram was kept in jail with the other co-defendants. One of them told the others that if none testified, they would all be acquitted. On the morning of Mr. Boyd's trial, Mr. Ingram faced a choice that was not really a choice—testify against Mr. Boyd, avoid a trial, and have a chance to get out of prison—or refuse to testify, go to trial, assuredly be convicted based on his confession, and be sentenced to death. When he told his attorneys he didn't want to testify against Mr. Boyd, they accurately told him he would go to trial, but they also told him he could be acquitted. They did not mention the 100% chance of his conviction—he had confessed to his role in the crime, and eyewitness statements corroborated his confession—and the near 100% chance he would receive a death sentence. They enlisted none of his relatives to convince him to follow through with the deal he made with prosecutors 18 months before. They did nothing to persuade him, and he did not testify. Meanwhile, one of the co-defendants, who also initially balked at testifying, was persuaded by his family to testify against Mr. Boyd. He received the benefit of his guilty plea and is now out of prison.

After Mr. Boyd was convicted and sentenced to death, Mr. Ingram was also tried, convicted, and sentenced to death. This series of events leads to the following question:

Is an attorney constitutionally ineffective when he does not realistically convey to his client the consequences of failing to honor his plea agreement, and does not take reasonable steps to ensure he honors it, when the consequences are certain conviction and a near-certain death sentence?

During state post-conviction proceedings, the state court refused to grant Mr. Ingram funds for mental health experts. In federal habeas proceedings, he raised this issue as a due process violation. The District Court refused to consider the claim, and the Circuit Court denied a certificate of appealability, leading to this question:

Is a denial of due process during state post-conviction proceedings cognizable in federal habeas corpus?

LIST OF PARTIES

The Petitioner (and petitioner-appellant below) is Robert Shawn Ingram. The Respondent (and respondent-appellee below) is the Warden of Holman Correctional Facility, a position currently held by Terry Raybon. Because Petitioner is not a corporation, a corporate disclosure statement is not required under Supreme Court Rule 29.6.

LIST OF RELATED PROCEEDINGS

State Court

State v. Ingram, No. CC-94-260 (Talladega Cnty. Cir. Ct. June 16, 1995) (capital sentencing order)

Ingram v. State, No. CR-94-1733 (Ala. Crim. App., Aug. 27, 1999) (affirming conviction and sentence)

Ex parte Ingram, No. 1990282 (Ala. June 23, 2000) (affirming conviction and sentence)

Ingram v. State, No. CC-94-260.60 (Talladega Cnty Cir. Ct. June 28, 2017) (denying relief in post-conviction)

Ingram v. State, No. CR-03-1707 (Ala. Crim. App. June 16, 2010) (reversed and remanded)

Ex parte Ingram, No. 1060413 (Ala. Mar. 19, 2010) (reversed and remanded)

Ingram v. State, No. CR-10-0485 (Ala. Crim. App. Aug. 24, 2012) (reversed and remanded)

Ingram v. State, No. CR-17-0774 (Ala. Crim. App. Sept. 13, 2019) (affirming denial of relief in post-conviction)

Ex parte Ingram, No. 1190195 (Ala. Feb. 21, 2020) (denying writ, no opinion)

Federal Court

Ingram v. Alabama, No. 00-7310 (U.S. Feb. 26, 2001) (denying petition for writ of certiorari from direct appeal)

Ingram v. Stewart, No. 1:17-cv-01464-LSC (N.D. Ala. Mar. 31, 2021) (denying petition for writ of habeas corpus)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Robert Shawn Ingram, an indigent prisoner sentenced to death in Alabama, respectfully requests this Court grant certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The Eleventh Circuit's opinion is published and can be found at *Ingram v. Warden, Holman Corr. Facility*, 80 F.4th 1304 (11th Cir. 2023). Pet. App. 1a. The Eleventh Circuit's decision granting in part and denying in part a certificate of appealability is unpublished and can be found at *Ingram v. Warden, Holman Corr. Facility*, 2022 WL 14660327 (11th Cir. 2022). Pet. App. 22a. The District Court's ruling is unpublished and can be found at *Ingram v. Stewart*, No. 1:17-CV-01464-LSC, 2021 WL 1208867, at *1 (N.D. Ala. Mar. 31, 2021), *aff'd sub nom. Ingram v. Warden, Holman Corr. Facility*, 80 F.4th 1304 (11th Cir. 2023). Pet. App. 27a.

JURISDICTION

On September 6, 2023, the United States Court of Appeals for the Eleventh Circuit affirmed the United States District Court's denial of Mr. Ingram's petition for writ of habeas corpus. Pet. App. 1a. Mr. Ingram filed a timely petition for panel rehearing, which was denied on October 17, 2023. Pet. App. 202a. He applied for extension of time to file this petition, and Justice Clarence Thomas extended the deadline until February 14, 2024. This petition is now timely filed, and the Court has jurisdiction to review this case under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL & STATUTORY PROVISIONS

28 U.S.C. § 2253(c)

(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

.....

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

INTRODUCTION

Robert Shawn Ingram was convicted and sentenced to death after his attorneys failed to ensure he complied with the terms of an 18-month-old plea agreement that would have given him a sentence of life with the possibility of parole. Specifically, he did not testify against Anthony Boyd at his trial when requested.

Mr. Ingram argued this violated his right to the effective assistance of counsel. The Alabama state courts misinterpreted this Court's precedent and concluded that he was not prejudiced by counsel's actions. The District Court deferred to that decision and the Eleventh Circuit affirmed.

While in state post-conviction proceedings, Mr. Ingram requested funds for a mental health expert and was denied. In response to that, state post-conviction counsel advised him to refuse to let the State's experts examine him. In habeas corpus proceedings, Mr. Ingram argued that failing to provide funds for experts was a due process violation. The District Court found this claim was not cognizable in habeas. Mr. Ingram asked for a certificate of appealability, and the Eleventh Circuit denied it, blaming Mr. Ingram for failing to cooperate with the State's experts.

STATEMENT OF THE CASE

On July 31, 1993, four men, including Mr. Ingram, kidnapped Gregory Huguley at gunpoint from a public street in Anniston, Alabama, because he owed

them \$200 for drugs.¹ The four men forced Mr. Huguley into a van and drove him to a rural area. Once there, the men taped Mr. Huguley to a park bench at a baseball field and set him on fire. His body was found the next morning.²

The police quickly focused their inquiries on Mr. Ingram, Anthony Boyd, Moneek Ackles, and Dwinaune Quintay Cox. Shortly after Mr. Huguley's murder, and before counsel was appointed for him, Mr. Ingram agreed to plead guilty to a lesser charge of murder contingent on his cooperation with the investigation and on testifying against any other people charged in the crime.³ In exchange, he would receive a *parole-eligible* life sentence. The plea agreement also provided that if he did not testify, his plea agreement would become void and he could be prosecuted for capital murder.⁴ After signing the agreement, Mr. Ingram gave several statements to the police admitting his involvement in the crime. Mr. Ingram was formally charged in the Circuit Court of Talladega County with the capital murder of Gregory Huguley.⁵

As the four co-defendants were awaiting Mr. Boyd's trial, they were housed together in the Talladega County jail. Mr. Ackles convinced the others that the

¹ Pet. App. 165a-166a.

² *Ingram v. State*, 779 So. 2d 1225, 1237 (Ala. Crim. App. 1999).

³ Pet. App. 5a.

⁴ *Id.*

⁵ *Id.*

government's case against them was weak and if they did not testify, none of them would be convicted.⁶ Mr. Ingram believed this.

When it came time for Mr. Ingram to testify, he refused. His attorneys did not undertake a significant effort to persuade him otherwise, telling him it was his decision whether to follow through with his plea deal. Counsel's only advice was that *someone* would take the deal to testify against Mr. Boyd.⁷ Mr. Ingram didn't believe them because they couldn't tell him who might do that. Mr. Ingram's attorneys never told him that a conviction and death sentence were a foregone conclusion if he went to trial given his repeated prior admissions of guilt to the police.

Counsel did not attempt to enlist Mr. Ingram's family or anyone else to persuade him to honor his agreement. Mr. Ingram did not testify against Mr. Boyd, but Mr. Cox did, after his family persuaded him to do so. Mr. Boyd was convicted and sentenced to death, then Mr. Ingram was tried, convicted, and sentenced to death.⁸

Mr. Ingram challenged his conviction and sentence on direct appeal, and they were affirmed.⁹ He then filed a state post-conviction petition. At the hearing on the

⁶ *Id.*

⁷ Pet. App. 6a.

⁸ Quintay Cox also was offered a plea in exchange for his testimony. Mr. Cox abided by the terms of his plea agreement after advice from his family and received a parole-eligible sentence. *Ingram v. State*, 779 So. 2d at 1237, n. 6. A search of the Alabama Department of Corrections inmate database on February 14, 2024, shows that Mr. Cox is no longer in custody.

⁹ Pet. App. 161a.

petition, Mr. Ingram and his lawyers testified about the events of the morning of Anthony Boyd's trial. His sister Carla and his Aunt Joyce also testified.

Mr. Ingram testified that his sister Carla was like a second mother to him, particularly at this time when his mother was on her death bed. Carla Ingram testified that Mr. Ingram generally took her advice when he had a difficult decision to make, and there was no doubt that if his lawyers asked her to talk to him, she would have done that without hesitation.¹⁰ Joyce Elston testified that the attorneys never asked her to help persuade him to testify against Anthony Boyd. Had they done so, she would have told him to testify, and he would have listened to her.¹¹

The Talladega Circuit Court denied Mr. Ingram's post-conviction petition. The court concluded that Mr. Ingram's lawyers performed reasonably because they could have done nothing to make Mr. Ingram comply with the terms of his plea agreement. The Alabama Court of Criminal Appeals affirmed the trial court's decision, concluding that Mr. Ingram did not prove he was prejudiced by counsel's actions, based on the circuit court's finding there was nothing the lawyers could have done.

Mr. Ingram sought habeas corpus relief on this claim (and others). The District Court denied the petition, concluding that the state court decision was not an unreasonable application of Supreme Court precedent or based on an

¹⁰ Pet. App. 10a.

¹¹ *Id.*

unreasonable determination of the facts.¹² In the petition, Mr. Ingram also claimed that he was denied due process when the state post-conviction court refused him funds for mental health experts.

Mr. Ingram applied for a certificate of appealability in the Eleventh Circuit, asking for the opportunity to appeal the District Court's determinations regarding his plea claim and the cognizability of his state post-conviction due process claim. The Eleventh Circuit only granted the certificate on the issue surrounding his guilty plea.¹³ After briefing and oral argument, the Eleventh Circuit affirmed the District Court, concluding that the state courts' decisions were presumptively correct, and those presumptions were not overcome by clear and convincing evidence.¹⁴ Rehearing was denied.

REASONS FOR GRANTING THE WRIT

I. The writ should be granted because the Alabama state courts decided this case contrary to *Lafler v. Cooper*, and the federal courts, instead of deciding the case *de novo*, deferred to the state courts' determinations.

The last reasoned state court decision was a decision from the Alabama Court of Criminal Appeals (ACCA) that improperly applied *Lafler v. Cooper*.¹⁵ The ACCA affirmed the state trial court's conclusion that Mr. Ingram was not prejudiced by counsel's actions because counsel could not have done anything to change Mr. Ingram's mind about testifying. Specifically, the ACCA's decision was contrary to

¹² Pet. App. 12a-13a.

¹³ Pet. App. 22a.

¹⁴ Pet. App. 1a.

¹⁵ 556 U.S. 156 (2012).

Lafler because the court found that Mr. Ingram was not prejudiced by counsel's actions, even though Mr. Ingram easily satisfied *Lafler's* prejudice analysis. The federal courts, rather than acknowledging this was contrary to this Court's precedent, affirmed the state court by deferring to its decision. Certiorari is appropriate because the lower courts decided an important federal question in a way that conflicts with this Court's precedent.¹⁶

The ACCA conflated the *Strickland*¹⁷ / *Lafler* deficient-performance and prejudice analyses when it held that the circuit court's statement, made in the context of a deficient-performance analysis, was fatal to Mr. Ingram's ability to prove prejudice. This means the circuit court—the court hearing the evidence—never conducted the prejudice analysis. The ACCA therefore could not reasonably rely on that court's statement to support its own prejudice analysis. When it did so, the ACCA applied the wrong standard of proof.

Strickland and *Lafler* require relief when counsel performs deficiently and the petitioner is prejudiced such that, but for counsel's errors, there is a "reasonable probability he and the trial court would have accepted the guilty plea."¹⁸ *Lafler* specifically defines prejudice in this situation:

In these circumstances a defendant must show that but for the ineffective advice of counsel there is a reasonable probability that the plea offer would have been presented to the court (*i.e.*, that the defendant would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstances), that the

¹⁶ Rule 10(c).

¹⁷ *Strickland v. Washington*, 466 U.S. 668 (1984).

¹⁸ *Lafler*, 566 U.S. at 174.

court would have accepted its terms, and that the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact were imposed.¹⁹

The notion that no action by counsel could have changed Mr. Ingram's mind originated in the state circuit court's deficient-performance analysis,²⁰ but it was not a finding of fact relevant to the prejudice inquiry. The state courts did not find facts with bearing on the prejudice inquiry. There were no findings, for example, as to the credibility of Mr. Ingram's sister Carla or his Aunt Joyce on whether they could have persuaded Mr. Ingram to honor his plea agreement.²¹ But because the ACCA cited that court's statement to justify denying Mr. Ingram's claim on prejudice grounds, the Eleventh Circuit treated the statement as a factual finding

¹⁹ *Id.* at 164.

²⁰ Pet. App. 171a-172a.

²¹ See Pet. App. 19a. (citing *Jenkins v. Comm'r, Alabama Dep't of Corr.*, 963 F.3d 1248, 1272 (11th Cir. 2020)) ("And '[t]he credibility of a witness is a question of fact entitled to a presumption of correctness under AEDPA.'). The Eleventh Circuit compounded the state courts' errors when it combined the circuit court and ACCA rulings to determine the "Alabama courts did not fail to consider" the testimony of Mr. Ingram and his relatives on separate issues—first, whether Mr. Ingram would have honored the plea agreement with competent advice by counsel, and second, whether Mr. Ingram would have listened to his family if they told him to do so. Pet. App. 18a-19a. Citing a Second Circuit case predating *Strickland*, the Eleventh Circuit determined the state courts—treated as one entity— "did not credit" the entirety of this testimony. Pet. App. 19a. This is not true. The ACCA called this testimony "self-serving," but because the circuit court did not make credibility determinations related to prejudice and instead rejected the claim on the deficient-performance prong, it cannot be said that the fact-finding court found the facts necessary to discredit the testimony as it applies to prejudice.

that must be overcome by clear and convincing evidence under § 2254(e)(1)²² and as dispositive on *Strickland's* prejudice prong, allowing it § 2254(d)(2) deference.²³ This is untenable because no court has ever applied the correct prejudice standard to the question of whether Mr. Ingram would have changed his mind with competent representation.

The *Strickland* prejudice inquiry is a mixed question of law and fact, and state court conclusions on this question are not subject to AEDPA deference under § 2254(d) to the extent the Eleventh Circuit suggests.²⁴ In *Strickland*, this Court described the deference required:

Finally, in a federal habeas challenge to a state criminal judgment, a state court conclusion that counsel rendered effective assistance is not a finding of fact binding on the federal court to the extent stated by 28 § U.S.C. 2254(d). Ineffectiveness is not a question of basic, primary, or historical fact. Rather, like the question whether multiple representations in a particular case gave rise to a conflict of interest, it is a mixed question of law and fact. Although state court findings of fact made in the course of deciding an ineffectiveness claim are subject to the deference requirement of § 2254(d), and although district court findings are subject to the clearly erroneous standard of Federal Rule of Civil Procedure 52(a), both the performance and prejudice components of the ineffectiveness inquiry are mixed question of law and fact.²⁵

The Eleventh Circuit overlooked *Strickland's* guidance when holding Mr. Ingram to the requirements of both § 2254(d) and (e) on the question of whether the

²² Pet. App. 19a.

²³ Pet. App. 21a.

²⁴ Pet. App. 21a (citing *Harrington v. Richter*, 562 U.S. 86, 103 (2011)).

²⁵ *Strickland*, 466 U.S. at 698 (internal citations and quotations omitted).

ACCA erred when concluding, based on the circuit court’s out-of-context statement, that he had not proven prejudice. The ACCA’s conclusion transformed the statement into a mixed question of law and fact, but it has been treated as a basic factual finding.

The Eleventh Circuit opinion cited holdings from other circuits and one unpublished Eleventh Circuit case for the proposition that “a determination that a habeas petitioner or a 28 U.S.C. § 2255 movant would (or would not) have gone to trial but for counsel’s deficient advice and performance constitutes a finding of fact”²⁶ Yet, in none of those cases did AEDPA deference apply.²⁷ Therefore, while the Alabama courts would require Mr. Ingram to “convince” them that his family could have changed his mind, the caselaw only supports deference to factual findings made applying the correct burden.²⁸ The state court decision is therefore contrary to this Court’s precedent. The Eleventh Circuit’s opinion affirming that decision should be vacated and the cause remanded to the District Court for *de novo*

²⁶ Pet. App. 16a.

²⁷ The Eleventh Circuit declined to decide whether AEDPA deference was appropriate where the district court held an evidentiary hearing, because it determined the petitioner’s claim failed on *de novo* review. *Millan v. Sec’y, Fla. Dep’t of Corr.*, 663 F. App’x 753, 754 (11th Cir. 2016).

²⁸ *Cullen v. United States*, a Second Circuit case cited by the Eleventh Circuit, (Pet. App. 16a) supports the idea that it is inappropriate for a reviewing court to make the prejudice determination when a fact-finding court had the opportunity to hear the evidence. *See* 194 F.3d 401, 407 (2d Cir. 1999) (“Accordingly, we hold that, without an evidentiary hearing, the District Court could not reject the Magistrate Judge’s proposed credibility finding regarding a reasonable probability that Cullen would have accepted the plea bargain if fully informed.”).

review on the question of whether Mr. Ingram was denied the effective assistance of counsel regarding his guilty plea.

II. The Eleventh Circuit's refusal to grant a certificate of appealability on the important undecided question of whether a due process violation in state post-conviction proceedings is cognizable in habeas corpus proceedings violated long-standing precedent.

Despite his indigence, the state post-conviction court improperly denied Mr. Ingram's funding requests for mental health experts. He eventually found non-mental health experts to testify generally about some of the mental health matters in question. But the court did not permit them to testify at the state post-conviction hearing because Mr. Ingram refused to cooperate with the State's mental health expert.

In habeas proceedings, Mr. Ingram raised this issue in various ways. First, he argued that Alabama's state post-conviction process was inadequate to protect his rights because it does not provide indigent petitioners funds for expert witnesses. Then, later in the petition, he argued that the Alabama courts' refusal to a) provide funds and b) allow testimony from the experts that he obtained violates due process of law. The District Court detailed the procedural history of that claim then refused to consider the issue, finding it wasn't cognizable in habeas corpus.²⁹

Mr. Ingram requested a certificate of appealability from the Eleventh Circuit on several issues, including this one. In the request, he argued that both the lack of

²⁹ Pet. App. 150a-153a.

funding and the refusal to allow his witnesses to testify violated due process. The Eleventh Circuit denied a certificate of appealability on this issue, concluding:

Second, with respect to the claim that Mr. Ingram was denied due process in the state post-conviction proceedings due to the exclusion of his mental health experts, he has not made a substantial showing of the denial of a constitutional right. Assuming that such a claim is cognizable on federal habeas review, the reason for the exclusion was that Mr. Ingram refused to be examined by the state’s mental health expert.³⁰

In denying the certificate of appealability, the Eleventh Circuit failed to address the first part of the issue—the failure to provide funds for an expert. It solely focused on Mr. Ingram’s refusal to cooperate with the State’s experts when that was completely unrelated to the trial court’s refusal to provide funds for experts.

The Eleventh Circuit’s denial of the certificate of appealability has multiple issues,³¹ one of which should concern this Court. In *Buck v. Davis*, this Court reiterated the rule set forth in *Miller-El v. Cockrell* 14 years prior: it is improper for an appellate court to resolve the merits of an issue as a means to deny a certificate of appealability.³² Doing so amounts to “deciding an appeal without jurisdiction.”³³ As illustrated above, the Eleventh Circuit skipped the question as posed and went

³⁰ Pet. App. 25a.

³¹ Additionally, the Eleventh Circuit misinterpreted the facts in denying the certificate, specifically by finding that the exclusion of Mr. Ingram’s witnesses was due to his refusal to cooperate with the State’s mental health expert. While that happened at the hearing, the reason for his initial refusal, which was based on the advice of state post-conviction counsel, was that the state refused to supply funds for mental health experts of his own.

³² *Buck v. Davis*, 580 U.S. 100, 115-17 (2017) (citing *Miller-El v. Cockrell*, 537 U.S. 322, 336-37 (2003)).

³³ *Miller-El*, 537 U.S. at 336-37.

straight to the merits of the second portion of the claim by concluding that Mr. Ingram caused the denial of the presentation of his witnesses by refusing to cooperate with the State’s mental health expert.

The question Mr. Ingram asked the Eleventh Circuit to resolve, and is asking this Court to resolve, is whether a claim of denial of due process in state post-conviction proceedings is cognizable in habeas. That issue has never been definitively resolved by this Court, and there are conflicts, even within the Eleventh Circuit.³⁴ By examining the underlying events, the Eleventh Circuit went beyond the issue to decide the merits of Mr. Ingram’s claim, then used that determination to conclude that he did not make a substantial showing of the denial of a constitutional right. This is exactly what this Court reiterated was improper about the Fifth Circuit’s denial of a certificate in *Buck*, which was based on that court’s determination that the petitioner had “not shown extraordinary circumstances that would permit relief,” and it is contrary to this Court’s long-standing precedent. This Court should grant certiorari, vacate the Eleventh Circuit’s opinion, and remand the case for further proceedings.

³⁴ See e.g., *Broadnax v. Comm’r. Ala. Dept. of Corr.*, 996 F.3d 1215 (11th Cir. 2021).

CONCLUSION

The state court decisions denying Mr. Ingram relief were contrary to this Court's precedent. Despite this, the federal courts did not do *de novo* review of his claim of ineffective assistance of counsel. Further, when the Eleventh Circuit denied Mr. Ingram's request for a certificate of appealability, it did so by making a merits determination on what it viewed as the sole issue in question, without addressing the other, properly raised, issue. For the above reasons, this Court should grant this petition for writ of certiorari.

Respectfully submitted,

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