

No. 23-6776
CAPITAL CASE

IN THE
SUPREME COURT OF THE UNITED STATES

ROBERT SHAWN INGRAM,
Petitioner,
v.
WARDEN,
HOLMAN CORRECTIONAL FACILITY,
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

QUESTIONS PRESENTED

1. The district court held that the state court's rejection of Ingram's ineffective assistance of counsel claim on prejudice grounds was reasonable. Could reasonable jurists have debated that conclusion?

2. Did the Eleventh Circuit apply the proper COA standard to Ingram's claim that he was denied due process during the state postconviction proceedings?

PARTIES

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

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STATEMENT OF THE CASE

A. **Ingram murders Gregory Huguley, is convicted of the crime, and is sentenced to death.**

There is no doubt about Ingram's guilt or the heinousness of his crime.

Over thirty years ago, Ingram and three of his friends kidnapped Gregory Huguley at gunpoint and took him to a "ballpark in a rural area of Talladega County." *Ingram v. State*, 779 So. 2d 1225, 1238 (Ala. Crim. App. 1999). There, the men taped Huguley to a park bench, doused him with gasoline, set him on fire, and "stood there for approximately 20 minutes and watched him burn to death." *Id.* Ingram was a principal actor in the murder, "wielding the gun and using force to effect the kidnapping, pouring the gasoline on Huguley, and lighting the gasoline with a match." *Id.* He did all of this over a \$200 debt. *Id.*

Dr. Joseph Embry, a state medical examiner with the Alabama Department of Forensic Sciences, performed the autopsy on Huguley. Doc. 33-3, Tab #R-10, at 445–46. Dr. Embry testified that Huguley's body was essentially charred. *Id.* at 449. His internal examination of the victim's body revealed that he had inhaled soot into the trachea or windpipe, indicating that the victim was alive when he was set on fire. *Id.* at 462, 468–69. According to Dr. Embry, Huguley's cause of death was thermal burns. *Id.* at 467, 477. Dr. Embry explained death by burning:

In burning like this, the mechanism of death is that the skin being a really large organ, draws fluid from the body by virtue of damage to the skin, to the extent that the blood pressure drops to a fatal level. In other words, the blood plasma is drawn into the skin to the extent that the blood volume can't sustain life. The volume of the blood is too diminished to function to carry oxygen to the brain and the heart.

Id. at 476. It was a matter of minutes before Huguley died. *Id.* at 481.

Before his trial, Ingram entered into a negotiated plea agreement with the State in which he could enter a guilty plea to the lesser included offense of murder and the State would recommend that he receive a sentence of life imprisonment. Doc. 33-1 at C. 33–35. In return, Ingram was required to cooperate with the State’s investigation and testify against his codefendants. *Id.* If he failed to perform either condition, then the agreement would be “null and void.” *Id.* at C. 35.

When it came time for Ingram to fulfill his end of the bargain and testify against codefendant Anthony Boyd, he decided to exercise his right to remain silent. After he had an opportunity to meet with his attorneys, he and his counsel appeared before the circuit court, who conducted a thorough colloquy with Ingram to determine whether he understood what he was doing. Resp. App’x A at 61–69. During that colloquy, the State noted that Ingram had given a statement admitting his involvement in the crime, that it was viewing his failure to testify against Boyd as a breach of the plea agreement, that it would try Ingram for capital murder, and that it intended to use Ingram’s statement against him at trial. *Id.* at 61–66. Despite all this, Ingram maintained that he wanted to exercise his right to remain silent and not testify against Boyd. *Id.* at 66. The circuit court then explained to Ingram that under the terms of the plea agreement, he would plead guilty to murder, and the maximum punishment for that crime was life with the possibility of parole. *Id.* If he reneged on his deal, there were only two possible punishments—death or life without parole. *Id.* at 66–67. The judge also informed Ingram that he was deciding his fate to some extent

by reneging on the deal and gave him a last chance to change his mind, which Ingram refused. *Id.* at 67–68. After the court determined that Ingram understood what he was doing and what he was giving up, the State sought permission to proceed against him for capital murder, which the court granted. Doc. 33-1 at C. 36–37.

For Ingram’s role as the principal actor in Huguley’s death, a jury found him guilty of capital murder, *see* ALA. CODE § 13A-5-40 (a)(1), and recommended that he be sentenced to death by an 11 to 1 vote. Doc. 33-6, Tab #R-16, at 927. The trial court followed the jury’s recommendation. *Id.*, Tab #R-25, at 1054.

B. State courts reject Ingram’s direct appeal and collateral challenges.

On direct appeal, the Alabama Court of Criminal Appeals (“ACCA”) affirmed Ingram’s conviction and death sentence. *Ingram*, 779 So. 2d at 1283. The Alabama Supreme Court denied certiorari, *Ex part Ingram*, 779 So. 2d 1283 (Ala. 2000), and this Court did likewise. Doc. 33-13, Tab #R-40.¹

After his direct appeal concluded, Ingram filed a petition for postconviction relief pursuant to Rule 32 of the Alabama Rules of Criminal Procedure. Doc. 33-14, Tab #R-41. Thereafter, Ingram’s petition bounced among the circuit court, the ACCA,

1. As for Ingram’s three friends, Anthony Boyd was convicted of capital murder and sentenced to death. *Boyd v. State*, 715 So. 2d 825 (Ala. Crim. App. 1997). Moneek Marcel Ackles was convicted of capital murder and sentenced to life without the possibility of parole. *Ackles v. State*, 689 So. 2d 1010 (Ala. Crim. App. 1996). Dwinaune Qunitay Cox negotiated a plea agreement and pleaded guilty to murder in exchange for his testimony. *Ingram*, 779 So. 2d at 1238 n.6.

and the Alabama Supreme Court for several years, largely on mandamus petitions.² Ingram then filed a third amended Rule 32 petition, Doc. 33-28, Tab #R-86, a fourth amended petition, Doc. 33-30, Tab #R-91, and a fifth amended petition, Docs. 33-31 & 33-32, Tab #R-94. After the circuit court reviewed Ingram’s amended petitions and the State’s answers, it summarily dismissed most of Ingram’s claims. Resp. App’x B.

The circuit court conducted an evidentiary hearing on the few claims that survived on April 4, 2014. Docs. 33-36, 33-37, & 33-38, Tab #R-102, at R. 1–250. At this hearing, one of Ingram’s trial counsel, Judge Jeb Fannin, testified that leading up to Boyd’s trial, he had hoped that Ingram would uphold the agreement with the State, Doc. 33-37, Tab #R-102, at R. 45, and stated that he had conversations with Ingram about testifying against Boyd. *Id.* at R. 49. Although Fannin could not specifically detail those conversations from twenty-nine years prior, he said that he “would have made [Ingram] aware of the evidence and his chances so to speak.” *Id.* Fannin further testified that counsel were not aware that Ingram was not going to honor his agreement until Ingram got on the stand at Boyd’s trial and announced that he did not want to testify. *Id.* at R. 50–51. At that point, Fannin and co-counsel Mark Nelson met with Ingram, explained to him the consequences of his decision, and tried to influence him to change his mind. *Id.* at R. 52. Fannin explained that while they urged him to testify, Ingram was “adamant in his decision,” and they could not “twist his arm and make him testify.” *Id.* at R. 79.

2. The district court offers an extensive procedural history in its memorandum opinion, which the State adopts for a more detailed analysis of the procedural history of this case. Doc. 44 at 2–10.

At the hearing, Ingram admitted that his counsel encouraged him to testify and said that if he did not, then one of his other codefendants would. *Id.* at R. 101. But Ingram explained that he chose to not testify against Boyd for two reasons. First, he said that he and his codefendants (Boyd, Ackles, and Cox) devised a plan to stay silent because they believed that if “everybody be quiet, we all go home.” *Id.* at R. 90. Ingram said that he did not listen to his counsel’s advice about one of his codefendants taking the deal because he thought they were “bluffing.” *Id.* at R. 91. Second, Ingram said that he chose to not testify because he did not want to be labeled a “snitch.” *Id.* at R. 90. According to Ingram, “you don’t last in the penitentiary when you get a label like that,” and he “didn’t never want that label carried on [him] in the penitentiary.” *Id.* Ingram claimed, however, that had his trial counsel sought out his sister, Carla, or his aunt to talk to him, he would have listened to them and honored the agreement. *Id.* at R. 96–97. But Fannin disagreed, saying that if he thought that anyone could have persuaded Ingram otherwise, then he would have sought them out. *Id.* at 79.

After the hearing, the circuit court issued a nearly one-hundred-page order denying postconviction relief. Resp. App’x C.³ The court specifically denied relief on Ingram’s claim that his attorneys were ineffective because they “failed to undertake reasonable efforts to persuade [him] to honor the terms of his plea agreement.” *Id.* at 40–50. The court found that Ingram made the following claims concerning counsel’s alleged ineffectiveness:

3. The references to the page numbers on Appellee’s Appendix C are to the page numbers at the bottom of the page.

- They only met briefly with Ingram prior to the announcement that he would not testify against Boyd.
- They failed to inform Ingram of other key considerations, including the inevitability of a capital murder conviction based on his own incriminating statements and other evidence.
- They failed to arrange for members of Ingram’s family to meet with him to talk with him about his decision not to honor his plea agreements.
- They failed to ask the court for more time to explain the consequences of Ingram’s failure to abide by the terms of his plea agreement.

Id. at 41–42. The court found that Ingram failed to prove that counsel’s performance was deficient. After examining the testimony from the evidentiary hearing and the colloquy held by the trial court with Ingram, his counsel, and the State at Boyd’s trial, the circuit court found, despite Ingram’s testimony to the contrary, that the court was “not convinced that there was anything his trial counsel could have done to persuade him to change his mind.” *Id.* at 41–47.

The circuit court then found:

Indeed, Ingram blindsided his trial counsel with his decision to not testify against Boyd. Despite being blindsided with such a decision, Ingram’s trial counsel met with Ingram, explained to him the consequences of his decision, and told him that if he did not take the deal one of his other codefendants would. Ingram, however, was “adamant” that he would not testify against Boyd because, he believed, if he and his codefendants all remained silent they would be acquitted. Additionally, Ingram believed that testifying against Boyd would label him as a “snitch.” After explaining to Ingram the consequences of his decision to not testify, Ingram was brought in front of the circuit court and was again informed of the consequences of his decision and was specifically told that his confession would be used against him. Ingram, however, insisted that he would not testify.

Id. at 47. The court concluded, “Because Ingram’s trial counsel met with Ingram, advised him of the consequences, warned him that one of his codefendants would take

the State's offer if he did not want to take it, and urged him to honor his agreement with the State, this Court finds that trial counsel's actions were reasonable." *Id.* at 47–48.

The circuit court also found the following concerning Ingram's IAC claim. First, Ingram presented no evidence at the evidentiary hearing that his family members could have arrived at the courthouse in time to meet with him to try to persuade him to change his mind. *Id.* at 48. Second, "there is no way to do anything more than speculate as to whether Ingram's family members would have been successful in their attempts to honor his plea agreement, especially given that neither his counsel, nor the trial judge presiding over Boyd's trial (who told Ingram he was 'deciding his fate') were able to convince him to honor the agreement." *Id.* at 49. Third, Ingram failed to sustain his burden of proving his IAC claim because he did not ask trial counsel at the evidentiary hearing why they did not request more time. *Id.* Based on these facts, the circuit court found that "[a]lthough Ingram may regret his decision, his counsel did all that was constitutionally required of them when they attempted to persuade him to honor his agreement with the State." *Id.* at 50.

Because Ingram did not timely appeal that decision, he filed a Rule 32.1(f) petition requesting an out-of-time appeal, which the State did not oppose. Doc. 33-36, Tabs #R-98, R-99. The circuit court granted Ingram's request. *Id.*, Tab #R-101.

The ACCA affirmed the denial of the Rule 32 petition in a memorandum opinion. Resp. App'x D. Regarding Ingram's claim that counsel were ineffective

because they failed to convince him to honor his plea agreement, the ACCA made the following findings of fact:

In denying this claim, (C. 948–56), the circuit court reviewed the colloquy the trial court had conducted with Ingram about the ramifications of his decision and credited the testimony of Judge Fannin with respect to trial counsel’s efforts to coax Ingram into honoring the plea agreement. The circuit court found trial counsel’s actions to be reasonable. With respect to Ingram’s claim regarding his family members, the circuit court considered opinions regarding their ability to influence Ingram as speculative, and found that Ingram had failed to offer any evidence that the family members would have been available to meet with Ingram at the time trial counsel were efforting to change Ingram’s mind. Relatedly, the circuit court found that there was no evidence offered that the trial court would have waited on Ingram’s family members to arrive at the courthouse on the day of Boyd’s trial to speak with Ingram, and that Ingram failed to ask Judge Fannin why he did not seek a continuance from the trial court for more time to speak with Ingram; thus, Judge Fannin’s reasoning was entitled to a presumption of effectiveness.

Id. at 12. The ACCA then deemed the following finding of the circuit court fatal to Ingram’s IAC claim: “Although Ingram testified at the evidentiary hearing that, had his counsel done something more—for example, bringing in members of his family to persuade him to honor the agreement—he would have honored the agreement, *this Court is not convinced that there was anything his trial counsel could have done to persuade him to change his mind.*” *Id.* at 12–13 (emphasis in original). This finding convinced the ACCA that Ingram failed to prove that he was prejudiced by his attorneys’ actions. The ACCA concluded:

The circuit court, as the finder of fact, was free to reject Ingram’s self-serving testimony on this point as well as the testimony of Carla and Elston. After all, if Ingram had honored his plea agreement, he likely faced a sentence of life in prison. Yet, Ingram testified that he did not honor his plea agreement, in part, because he did not “want to get that label of snitch. You know, you don’t last in the penitentiary when you

get a label like that.” (R. 90.) Because serving time in prison was inevitable and Ingram “never” wanted to be known as a “snitch” in prison, it was reasonable for the circuit court to conclude that Ingram would not have honored his plea agreement regardless of trial counsel’s actions.

Id. at 13.

The Alabama Supreme Court again denied certiorari. Doc. 33-48, Tab #R-110.

C. The federal district court denies Ingram’s habeas petition.

While Ingram was attempting to perfect his appeal to the ACCA, he filed his habeas petition with the district court and asked the court to stay the proceedings until he had exhausted his postconviction claims. Doc. 44 at 8. The district court granted the stay and requested periodic status reports until Ingram exhausted his state claims. *Id.* at 9. After several pandemic-related delays, Ingram filed his amended habeas petition on November 20, 2020. Doc. 31. After that, the State filed its answer and brief, Docs. 35 & 36, and Ingram filed his reply brief, Doc. 43.

On March 31, 2021, the district court entered a memorandum opinion and final judgement denying all claims in the habeas petition and denying a motion for a certificate of appealability. Docs. 44 & 45. In rejecting Ingram’s IAC claim concerning his plea agreement, the district court found that the ACCA made a reasonable determination of the facts when it held that Ingram could not demonstrate *Strickland* prejudice because nothing counsel did could have made Ingram change his mind about testifying against Boyd. Doc. 44 at 36–37. The district court made this determination based on two reasons. First, Ingram’s argument was based on pure speculation that he would have heeded his attorneys’ advice. *Id.* at 37. Second,

Ingram failed to sustain his burden of proving that no reasonable attorney would have more persuasively informed him that he would already be labeled a snitch. Thus, the state courts were entirely reasonable in finding that nothing his attorneys could have done would have changed his mind. *Id.*

The district court also rejected Ingram’s argument that the state courts’ fact findings concerning Ingram’s claim that he would have been influenced to keep his plea bargain by family members was not an unreasonable determination of the facts. *Id.* at 38–39. Finally, although Ingram did not argue that the state courts’ rejection of his claim were contrary to, or an unreasonable application of, Supreme Court precedent, the district court found that the facts in *Missouri v. Frye*, 566 U.S. 134 (2021), and *Lafler v. Cooper*, 566 U.S. 156 (2012), do not exist in this case. *Id.* at 39–40.

On April 28, 2021, Ingram filed a motion to alter, amend, or vacate judgment, Doc. 46, which the district court denied in March 2022. Doc. 47.

Ingram filed a notice of appeal on April 27, 2022. Doc. 48. He then filed a motion for a certificate of appealability (“COA”) in the Eleventh Circuit on May 16.

D. The Eleventh Circuit affirms the district court.

The Eleventh Circuit granted Ingram a COA “on whether his attorneys ‘rendered ineffective assistance when they failed to properly advise him on the risks of failing to follow through with his plea agreement and the cooperation it required.’” *Ingram v. Warden, Holman Corr. Facility*, 80 F. 4th 1304, 1310 (11th Cir. 2023). After setting forth the standard of review for this ineffective assistance of counsel claim,

the Eleventh Circuit focused its analysis on the prejudice prong of *Strickland v. Washington*, 466 U.S. 668 (1984). *Id.* at 1311. The court noted that under *Lafler v. Cooper*, 566 U.S. 156 (2012), the prejudice question is whether “Ingram has shown a reasonable probability that he would have honored his pleas agreement and testified against Mr. Boyd if his attorneys had done more[.]” *Id.*

The court then found that whether a petitioner “would (or would not) have accepted a plea offer and would (or would not) have gone to trial but for counsel’s deficient advice and performance constitutes a finding of fact.” *Id.* at 1312. The court noted that the state courts found that Ingram would not have testified against Boyd no matter what his attorneys had done. *Id.* This finding was based on the following facts: (1) Ingram believed that no one was going to testify against anyone else, and he did not want to be labeled a snitch, (2) counsel informed Ingram that he should honor his plea agreement but could not make him testify, told him that one of his codefendants would take the deal if he did not, and warned him that he could receive the death penalty, and (3) Ingram believed his attorneys were “bluffing” and did not follow their advice. *Id.* at 1313. The Eleventh Circuit found that this evidence made the factual findings of the state courts plausible. *Id.* The court also rejected Ingram’s argument that the Alabama court failed to consider his evidence and instead found that they did not credit Ingram’s evidence. *Id.*

Finally, the Eleventh Circuit found that the Alabama courts’ factual finding that Ingram would not have changed his mind no matter what his attorneys had done was entitled to a presumption of correctness under 28 U.S.C. § 2254(e)(1). *Id.* In

addition, the court found that Ingram failed to overcome the presumption of correctness by clear and convincing evidence for the following reasons: (1) Ingram’s belief that he would be labeled a snitch was a firm reason not to testify, and this concern would not have gone away if his attorneys had done more, (2) his attorneys told Ingram that if he did not testify, one of his codefendants would take the deal, and told him that he could receive the death penalty, and (3) even if his attorneys did not fully explain the consequences of breaching the plea, the trial court clearly explained the consequences to him. *Id.* at 1313–14. Based on these findings and because Ingram failed to prove that the trial court would have waited for his family to arrive during Boyd’s trial, the Eleventh Circuit held that the finding of the Alabama courts that Ingram would have refused to testify no matter what his attorneys did stands. *Id.* The court then held that the conclusion by the Alabama courts that Ingram “was not prejudiced by his attorneys’ allegedly deficient performance—which constitutes a ruling on a mixed question of law and fact—is not unreasonable under § 2254(d)(2).” *Id.*

REASONS FOR DENYING THE PETITION

The ACCA reasonably concluded that Ingram was not prejudiced by counsel’s allegedly deficient performance after he reneged on his plea agreement because there was nothing more counsel could have done to change Ingram’s mind. The ACCA did nothing wrong when it considered this finding of fact made in the deficient performance analysis as part of its prejudice analysis, and Ingram fails to cite any authority to support his argument that this was improper. Moreover, the ACCA’s

finding of no prejudice is amply supported by clear and convincing evidence. The Eleventh Circuit then properly found that this finding is entitled to a presumption of correctness and that Ingram failed to overcome this presumption by clear and convincing evidence.

Ingram asserts that the Eleventh Circuit applied the wrong standard when it denied his motion for COA on his claim that he was denied due process in the postconviction proceedings. The Eleventh Circuit properly denied a COA because Ingram failed to make “a substantial showing of the denial of a constitutional right,” as required by 28 U.S.C. § 2253(c)(2). Ingram did not raise a certworthy issue in this claim because the Eleventh Circuit presumed that due process claims were cognizable in habeas and then denied relief on Ingram’s claim. The decision below does not implicate any split, involves only factbound claims, and presents no novel issue. This Court should, therefore, deny certiorari on this claim.

I. The state court’s determination that Ingram did not establish prejudice to prove his IAC claim is not objectively unreasonable.

Ingram contends that the ACCA unreasonably concluded that he was prejudiced by counsel’s alleged deficient performance because it did not apply the correct prejudice standard. Specifically, Ingram argues that the ACCA conflated the *Strickland* and *Lafler*⁴ standards “when it held that the circuit court’s statement, made in the context of a deficient-performance analysis, was fatal to Mr. Ingram’s

4. Ingram argues that the ACCA’s decision is contrary to *Lafler* and that the federal courts should have conducted de novo review of this IAC claim. However, Ingram fails to explain how he easily satisfied *Lafler*’s prejudice analysis or why the federal courts should have conducted de novo review.

ability to prove prejudice” because “the circuit court—the court hearing the evidence—never conducted the prejudice analysis.” Pet. 8. Ingram next argues that the Eleventh Circuit improperly treated the ACCA’s holding—that no action by trial counsel would have changed Ingram’s mind—as a factual finding that Ingram had to overcome by clear and convincing evidence under § 2254(e)(1). Ingram asserts that this holding is untenable “because no court has even applied the correct prejudice standard to the question of whether Mr. Ingram would have changed his mind with competent representation.” Pet. 9–10.

There are two reasons that Ingram’s arguments do not entitle him to certiorari review. First, Ingram cites no authority for his argument that the ACCA improperly considered the circuit court’s finding that there was nothing counsel could have done to change Ingram’s mind when it found no prejudice. He cites nothing in *Strickland*, *Lafler*, or any other authority that suggests that a court cannot apply a finding of fact made in a deficient-performance analysis to a prejudice determination. Instead, as the Eleventh Circuit properly found, “the determination by the Alabama courts that Mr. Ingram would not have testified against Mr. Boyd no matter what his attorneys did is a factual one” that is entitled to a presumption of correctness that must be overcome by clear and convincing evidence. *Ingram*, 80 F.4th 1304, at 1312–13.

Second, as the Eleventh Circuit found, this finding of fact by the ACCA was supported by clear and convincing evidence. The ACCA stated the following concerning the circuit court’s finding:

Yet, Ingram testified that he did not honor his plea agreement, in part, because he did not “want to get that label of snitch. You know you don’t last in the penitentiary when you get a label like that. (R. 90.)” Because serving time in prison was inevitable and Ingram “never” wanted to be known as a “snitch” in prison, it was reasonable for the circuit court to conclude that Ingram would not have honored his plea agreement regardless of trial counsel’s actions.

Id. As is set forth above, this finding is amply supported by the record. When Ingram refused to testify in Boyd’s trial, his attorneys talked to him and tried to talk him out of his decision. Doc. 33-37, Tab #R-109, at R. 52. Fannin testified that he and his co-counsel urged Ingram to testify, but Ingram was “adamant in his decision,” and they could not “twist his arm and make him testify.” *Id.* at R. 79. Ingram did not dispute this testimony, and in fact, he acknowledged that his attorneys encouraged him to testify and told him that if he did not, one of the other codefendants would. He explained, however, that he and his codefendants agreed to remain silent on the assumption that they would all “go home” if no one spoke, *id.* at R. 90–92, and more importantly, Ingram testified that he did not want to be labeled a “snitch” in prison, *id.* After a colloquy, the trial court was satisfied that Ingram understood the consequences of his decision, and Ingram maintained that he did not want to testify against Boyd.

The ACCA properly found that Ingram was not prejudiced by counsel’s actions. Counsel attempted to persuade Ingram not to renege on his plea deal but were unable to do so. Counsel’s attempt was reasonable, and at a minimum, a fair-minded jurist could so conclude. The ACCA’s finding of no prejudice was reasonable where the court found that Ingram’s testimony was fatal to a finding of prejudice because

there was nothing counsel could have done to convince Ingram to change his mind about testifying against Boyd.

The Eleventh Circuit correctly held that this finding was entitled to a presumption of correctness and that Ingram failed to overcome this presumption by clear and convincing evidence. *Ingram*, 80 F.4th at 1313–14. The court noted that this factual finding stands, and based on that finding, the ACCA’s “ultimate conclusion that Mr. Ingram was not prejudiced by his attorneys’ alleged deficient performance—which constitutes a ruling on a mixed question of law and fact—is not unreasonable under § 2254(d)(2).” *Id.* at 1314. Certiorari, therefore, should not be granted on this claim.

II. The Eleventh Circuit applied the correct COA standard to Ingram’s claim that he was denied due process during the state postconviction proceedings.

Ingram contends that the Eleventh Circuit failed to resolve “whether claims of a denial of due process in state post-conviction proceedings is cognizable in habeas.” Pet. 14. He also asserts that in denying a COA on the question of the circuit court’s refusal to allow witnesses to testify, the Eleventh Circuit failed to apply the correct COA standard, in violation of *Buck v. Davis*, 580 U.S. 100 (2017). Neither argument entitles Ingram to certiorari review.

First, and contrary to Ingram’s argument, the Eleventh Circuit did not fail to address whether due process claims in state postconviction proceedings are cognizable in habeas. Instead, the court assumed that the due process claim was cognizable in habeas and then found that the circuit court refused to allow the testimony of Ingram’s

expert during the evidentiary hearing because Ingram refused to allow the state's mental health expert to examine him. Because the Eleventh Circuit presumed Ingram's due process claim was cognizable in habeas, his argument does not present a question this Court should resolve. The decision below does not implicate any split, involves only factbound claims, and presents no novel issue. This Court should, therefore, deny certiorari on this argument.

Second, the Eleventh Circuit applied the correct COA standard to Ingram's argument that the circuit court erred when it refused to allow his witnesses to testify during the postconviction evidentiary hearing. In denying Ingram's request for a COA, the court noted that a COA will be granted "'if reasonable jurists could debate' the resolution of a given claim or if the issue presented is 'adequate to deserve encouragement to proceed further,'" relying on this Court's opinion in *Miller-El v. Cockrell*, 537 U.S. 322, 326 (2003). The Eleventh Circuit then also specifically noted, relying again on *Miller-El*, that "full adjudication of the merits is 'forbid[den]' by § 2253." Pet. App. 24a.

While the Eleventh Circuit did not cite *Buck v. Davis*, 580 U.S. 100 (2017), the court's denial of a COA in Ingram's case is entirely consistent with *Buck*. As this Court explained in *Buck*, quoting *Miller-El*, "[a]t the COA stage, the only question is whether the application has shown that 'jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.'" 580 U.S. at

115. This is the same standard the Eleventh Circuit applied in denying Ingram’s COA. Ingram’s argument to the contrary is without merit.

Finally, this Court should deny certiorari because Ingram has not raised a certworthy issue. While Ingram asserts that there are splits in the circuits and even within the Eleventh Circuit, he fails to cite any cases to show that a split exists. Moreover, Ingram’s claim is without merit. As the district court noted, Ingram’s challenge to the state postconviction proceedings does not provide a basis for federal habeas relief. Doc. 44 at 120–29. Federal habeas corpus is available only to persons held in custody in “violation of the Constitution or law or treaties of the United States.” 28 U.S.C. § 2254(a). Federal habeas does not lie to review error, if any, under state law. *Estelle v. McGuire*, 502 U.S. 62, 67–68 (1991); *Bradshaw v. Richey*, 546 U.S. 74, 76 (2005) (“We have repeatedly held that a state court’s interpretation of state law, including one announced on direct appeal of the challenged conviction, binds a federal court sitting in habeas corpus.”).

The Eleventh Circuit has also repeatedly held that “defects in state collateral proceedings do not provide a basis for federal habeas relief. *Alston v. Dep’t of Corr., State of Fla.*, 610 F.3d 1318, 1325–26 (11th Cir. 2010), *cert. denied*, 562 U.S. 1113 (2010); *Carroll v. Sec’y, Dep’t of Corr.*, 574 F.3d 1354, 1365 (11th Cir. 2009), *cert. denied*, 558 U.S. 995 (2009); *Quince v. Crosby*, 360 F.3d 1259, 1261–62 (11th Cir. 2004), *cert. denied*, 543 U.S. 960 (2004). Doc. 44 at 127–28. The Eleventh Circuit’s holding in these cases is consistent with the holdings of the Fourth, Tenth, and Seventh Circuits. *See Lawrence v. Branker*, 517 F.3d 700, 717 (4th Cir. 2008) (holding

that “an infirmity in a state post-conviction proceeding does not raise a constitutional issue cognizable in a federal habeas application”); *United States v. Dago*, 441 F.3d 1238, 1248 (10th Cir. 2006) (“[D]ue process challenges to post-conviction procedures fail to state constitutional claims cognizable in a federal habeas proceeding.”); *Montgomery v. Meloy*, 90 F.3d 1200 (7th Cir. 1996) (“[E]rrors in state collateral review cannot form the basis for federal habeas corpus relief.”).

Ingram cites to *Broadnax v. Commissioner, Alabama Department of Corrections*, 996 F.3d 1215 (11th Cir. 2021), in footnote 34 of his petition, apparently to support his claim that there is a split among the circuits. However, his reliance on *Broadnax* is misplaced. First, *Broadnax*’s claim was decided against him. Second, the Eleventh Circuit held as follows concerning *Broadnax*’s claim: “And, although questions of admissibility under Alabama’s hearsay Rule, regarding exclusion or admission, are subject to constitutional requirements (including due process), *see* ALA. R. EVID. 802 advisory committee’s note, *there is no precedent that clearly establishes Mr. Broadnax was deprived of a fair postconviction proceedings.*” *Broadnax*, 996 F.3d at 1228. (emphasis added). Thus, the Eleventh Circuit’s opinion in *Broadnax* does not support Ingram’s argument that there is a split in the circuits.

As set forth above, the Eleventh Circuit applied the correct COA standard to this argument in Ingram’s petition. Since the Eleventh Circuit properly denied the COA, this Court should decline to grant certiorari.

CONCLUSION

For the foregoing reasons, this Court should deny certiorari.

Respectfully submitted,

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