No. 24-255

IN THE

Supreme Court of the United States

DARRYL SCOTT STINSKI,

Petitioner,

v.

SHAWN EMMONS, WARDEN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION

CHRISTOPHER M. CARR
Attorney General
STEPHEN J. PETRANY
Solicitor General
Counsel of Record
JUSTIN T. GOLART
Deputy Solicitor General
OFFICE OF THE GEORGIA ATTORNEY GENERAL
40 Capitol Square, SW
Atlanta, Georgia 30334
(404) 458-3408
spetrany@law.ga.gov

Counsel for Respondent

CAPITAL CASE

QUESTION PRESENTED

Whether the lower courts correctly rejected Darryl Stinski's federal habeas petition (alleging ineffective assistance of counsel), where the state court's judgment was reasonable under 28 U.S.C. § 2254(d), and where the only issue that Stinski raises is whether the federal courts correctly applied § 2254(e)(1)'s presumption of correctness to a single state-court factual determination that was not even necessary to the deficiency prong and was completely irrelevant to the prejudice prong.

TABLE OF CONTENTS

TABLE OF CITED AUTHORITIES

Page

Cases

Cited Authorities

Page

Cited Authorities

Statutes

Other Authorities

INTRODUCTION

Petitioner Darryl Stinski asks this Court to examine the relationship between 28 U.S.C. § 2254(d)(2) and (e)(1). The former provides that federal habeas courts may intervene only when a state court's adjudication of a claim "resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." The latter provides that "a determination of a factual issue made by a State court shall be presumed to be correct" and "[t]he applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence." Although Stinski is a federal habeas petitioner, he argues that (e)(1) has "no role to play" in cases like his. Pet.6. In his view, *only* (d)(2) applies, so a federal court should examine whether a state court's determination of the facts was "unreasonable," but should not presume the correctness of any particular factual finding. Pet.5–6.

Stinksi is wrong—§ 2254(e)(1) is not a dead letter—but the more important point is that there is no reason for this Court to review. There is no circuit split on this question. This Court has *repeatedly* denied review in petitions attempting to raise some variation of this question, including just this past year, in *Pye v. Emmons*, 144 S. Ct. 344 (2023), involving an *en banc* decision from the same circuit, *see Pye v. Warden, Ga. Diagnostic Prison*, 50 F.4th 1025 (11th Cir. 2022) (en banc). And this case demonstrates why this Court has previously not taken up this supposed dispute: it makes no difference. The district court applied (e)(1) to only a *single* factual finding of the state habeas court, and that finding was not dispositive, nor would it have been any different if the district court had applied deference solely under (d)(2), as Stinski wants.

A jury sentenced Stinski to death after he and an accomplice broke into a home where Susan Pittman and her 13-year-old daughter Kimberly were sleeping. Pet. App.1a–3a. They proceeded to brutally kill both Susan and Kimberly, with Kimberly being raped and tortured before finally dying due to smoke inhalation after the two men set the house on fire. Pet.App.3a–4a.

At Stinski's trial's sentencing phase, a team of experienced lawyers conducted a sweeping investigation of potential mitigation evidence and presented an extensive amount of it. Pet.App.6a–7a. The jury, however, concluded that nine aggravating factors regarding Stinski's crime justified his death sentence. Pet.App.7a–8a. Stinski later sought habeas review in Georgia state court, alleging ineffective assistance of counsel by his trial team because, according to Stinski, their two mitigation experts should have been augmented by three additional experts who evaluated him after trial. Pet.App.9a. One of Stinski's arguments was that his lawyers ignored the advice of an expert to conduct additional testing or retain additional experts. Pet.App.10a. But the state habeas court made a factual determination that this never happened. Pet. App.10a. And on federal habeas review, the district court properly applied (e)(1)'s "presumption of correctness" to uphold this factual finding. Pet.App.94a–95a.

The courts below got it right, but even if they did not, applying (d)(2) (as Stinski prefers) would have resulted in the same outcome, and for that matter, whether a mitigation expert recommended additional experts simply was not a dispositive factual finding anyway. It was not critical to the question of deficient performance, and even if it were, it would not affect the prejudice analysis, where both state and federal habeas courts *also* rejected

Stinski's claim. This Court has repeatedly and recently denied certiorari on this question, and it should do so again here, where it could not even *reach* the question because it does not affect the equally dispositive prejudice holdings of the lower courts.

STATEMENT

A. Factual Background

In April 2002, Petitioner Darryl Stinski and Dorian O'Kelley broke into Susan Pittman's home while she and her 13-year-old daughter Kimberly were sleeping. *Stinski v. State*, 286 Ga. 839, 840 (2010). Initially, Stinski held a flashlight while O'Kelley beat Susan with a walking cane. *Id.* Then Stinski beat Susan with the flashlight. *Id.* at 840–41. At this point, Kimberly "had awakened to her mother's screams," so Stinski "left the room to subdue" her while O'Kelley continued to beat Susan with a lamp and kick her. *Id.* "At some point, Susan Pittman was also stabbed three to four times in the chest and abdomen" before she "died from her attack." *Id.* at 841.

While Susan was being attacked, "Stinski took Kimberly Pittman upstairs so she would not continue to hear her mother's screams," but Stinski and O'Kelley brought her back downstairs after Susan died. *Id.* With Kimberly downstairs, Stinski and O'Kelley "drank beverages, and discussed 'taking care of' her.'" *Id.* (alteration accepted). Stinski then took Kimberly back upstairs, where he bound and gagged her. *Id.*

O'Kelley proceeded to rape Kimberly while Stinski "rummaged through the house downstairs." *Id.* Next,

after "Stinski and O'Kelley . . . agreed that Stinski would begin beating Kimberly Pittman with a baseball bat, . . . Stinski hit Kimberly Pittman in the head with the bat as she knelt on the floor, bloody from the rape and with her hands bound." *Id.* "O'Kelley then slit Kimberly Pittman's throat with a knife" while Stinski went back downstairs. *Id.* When O'Kelley called Stinski back upstairs, Stinski "hit Kimberly Pittman in her knee with the [baseball] bat as O'Kelley tried to suffocate her." *Id.* O'Kelley then "stabbed her in the torso and legs," "kicked her[,] and threw objects at her head," but Kimberly's "groans indicated that she was still alive." *Id.*

Stinksi and O'Kelley then lit the house on fire and watched it burn from O'Kelley's house across the street. *Id.* Kimberly died of smoke inhalation before the fire fully consumed the house. *Id.* In the aftermath, O'Kelley (the Pittmans' neighbor) spoke to a local television station. *Id.* at 840. Stinski "laughed when he saw O'Kelley being interviewed on the news in front of the victims' house." *Id.*

B. Proceedings Below

1. In June 2002, a grand jury indicted Stinski on two counts of malice murder and related charges, and prosecutors sought the death penalty. Pet.App.4a.

A team of three attorneys represented Stinski at trial, all of whom were "experienced criminal defense attorneys." State Habeas Final Order at 8, *Stinski v. Chatman*, No. 2011-V-942 (Butts Cnty. Sup. Ct. Jan. 15, 2017), https://law.georgia.gov/document/document/state-

court-habeas-order-2017.[1] Michael Schiavone, who had already "tried or been co-counsel on at least ten death penalty cases" at the time, was lead trial counsel. *Id.* at 8–9. Steve Sparger, who led the team's mitigation efforts, had regularly worked with Schiavone in death penalty cases (though not as lead counsel), where he "assisted with pretrial preparations for the guilt and sentencing phases, drafted motions and briefs, conducted research, and spoke with experts." *Id.* at 9. Willie Yancey, who "had tried between fifty and one hundred felony cases and around ten to fifteen murder cases," including as lead counsel, assisted Schiavone and Sparger. *Id.* at 10.

Trial counsel's mitigation strategy was to convince the jury that Stinski's "immaturity" and "troubled background" caused him to be "caught up" in a crime that O'Kelley led. Pet.App.4a–5a (quotation omitted). To this end, they retained two mitigation experts: social worker Dale Davis and Dr. Jane Weilenman, a clinical psychologist. *See* Pet.App.5a. Davis was "an experienced mitigation specialist" who had worked on over thirty death penalty cases in state and federal courts, Pet. App.121a, and Dr. Weilenman also "had experience with death penalty cases, having worked on two Georgia death penalty cases, performed work for the Department of Juvenile Justice, and attended annual death penalty seminars," Pet.App.92a.

Before trial, Davis spent "approximately 432 hours," State Habeas Final Order at 31, interviewing over forty people—including Stinski's "family, friends, pastor,

1. The Warden provided a web link to access the state habeas court's final order because it was not included in Stinski's appendix.

psychiatrist, teachers, and acquaintances," Pet.App.91a (quotation omitted). Davis also obtained documents and records about Stinski's background, including birth records, medical records, school records, social services and family court records, counseling records, National Guard records, his parents' divorce records, and a police report regarding his father. *See id.*; State Habeas Final Order at 31–32.

Meanwhile, Dr. Weilenman performed a psychological evaluation to determine Stinski's mental-health status and social history. State Habeas Final Order at 36. She interviewed Stinski five times and provided additional questions in writing. *Id.* All told, Dr. Weilenman interviewed Stinksi for approximately ten to fifteen hours. Pet.App.72a–73a.

At trial, a jury found Stinski guilty on fifteen counts, including two counts of malice murder and two counts of felony murder. *See* State Habeas Final Order at 1–2. During the sentencing phase, Davis and Dr. Weilenman were two of twenty-six witnesses whom Stinski's attorneys called to testify. *See id.* at 40. These witnesses described Stinski's troubled childhood, which included frequent moves, his parents' divorce, abuse and neglect, and a family history of alcoholism and mental-health issues. *See id.* at 42–68.

Davis introduced "several volumes" of records and a social history on Stinski, and she testified about his attention-deficit/hyperactivity disorder and post-traumatic stress disorder diagnoses, his father's "overly strict" home, his potential learning disability, and his "dysfunctional" home life. *Id.* at 45–47. Dr. Weilenman

then "built upon the records and history introduced by Davis and the other mitigation witnesses," to explain how Stinski's "entire background" led to his crimes. Pet. App.6a–7a. Like Davis, Dr. Weilenman testified about Stinski's mental health and opined about his "impulse control" and follower tendencies. State Habeas Final Order at 64–65, 67 (quotation omitted).

After the sentencing phase, the jury found that a death sentence was warranted due to nine aggravating factors, including that both murders were "outrageously or wantonly vile, horrible or inhuman" and "involved depravity of mind," and that the murder of Kimberly Pittman "involved torture to the victim before death." *Id.* at 83–84.

Stinski was sentenced to death, his motion for new trial was denied, and the Georgia Supreme Court affirmed his convictions and death sentence. Pet.App.8a (citing *Stinski*, 286 Ga. at 840, *cert. denied*, 562 U.S. 1011 (2010)).

2. Stinski petitioned for a writ of habeas corpus in the Superior Court of Butts County. *See* State Habeas Final Order at 2. He claimed, inter alia, ineffective assistance of counsel during the sentencing phase of trial. *Id.* at 2–3. The state habeas court held an evidentiary hearing, at which it heard from twenty witnesses, including Dr. Peter Ash, a forensic psychiatrist; Dr. James Garbarino, a developmental psychologist; and Dr. Joette James, a clinical neuropsychologist. *See id.* at 81; Pet.App.9a. Stinski argued that these three additional experts would have helped his mitigation case because they "focused on deficiencies or abnormalities in Stinski's brain functioning, caused by the psychological maltreatment he experienced

in childhood, that could have made him particularly vulnerable to outside influence in a high-stress situation." Pet.App.9a. In other words, Stinski claimed these additional experts could "explain the connection between [his] alleged mental health problems and life history with [his] conduct on the night of the crimes." State Habeas Final Order at 37.

In January 2017, the state habeas court issued a 91-page order denying Stinski's habeas petition, in which it addressed both prongs of the *Strickland* test for ineffective assistance of counsel. *See id.* at 6 (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)); *see also Strickland*, 466 U.S. at 687 (counsel's performance must be deficient and must have prejudiced the defense). The state habeas court determined that Stinski's trial counsel acted reasonably "in retaining Dr. Weilenman and relying upon her findings," including her conclusion that no additional testing was required. State Habeas Final Order at 38. It further concluded that Stinski's trial counsel "effectively presented much of the same factual evidence" that Stinski argued Drs. Ash, Garbarino, and James would have provided, whose testimony would have been "largely cumulative." *Id.* at 5, 37.

Further, the state habeas court concluded that Stinski could not show prejudice, due to "the overwhelming evidence in aggravation." *Id.* at 80. That is, even if trial counsel should have utilized Drs. Ash, Garbarino, and James, any "new evidence" of "subtle neurological impairments . . . would not in reasonable probability have changed the outcome of the sentencing phase." *Id.*

The Georgia Supreme Court denied Stinski's application for a certificate of probable cause to appeal the superior court's denial of his habeas petition. Pet.App.11a.

3. Stinski next sought federal habeas relief under 28 U.S.C. § 2254 in federal district court, where he again claimed his trial counsel "unreasonably neglected to present available expert mental health mitigation evidence, including testimonies from experts such as Dr. James, Dr. Ash, and Dr. Garbarino." Pet.App.11a (quotation omitted). Applying the Antiterrorism and Effective Death Penalty Act, the district court denied Stinski's petition because he "failed to show that the state habeas court's decision 'resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law' or 'was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.'" Pet.App.106a (quoting 28 U.S.C. § 2254(d)).

The district court addressed both *Strickland* prongs. Regarding ineffectiveness, the court "conclude[d] that the state habeas court reasonably determined that trial counsel was not deficient for failing to provide testimony from experts such as Dr. James, Dr. Ash, and Dr. Garbarino during the sentencing phase of trial." Pet. App.90a. The court noted the "extensive work by Davis as a mitigation specialist and Dr. Weilenman as the retained clinical psychologist," as well as the "extensive mitigation investigation." Pet.App.92a, 94a. That is, the court held that, under § 2254(d), the state habeas court's conclusion was at least reasonable. Moreover, the court rejected Stinski's factual assertion that Weilenman had suggested the need for additional experts, holding that there was no "clear and convincing evidence" that

the state habeas court had erred in finding otherwise. Pet.App.95a (quotation omitted). The record, "at best, reveal[ed] contradictory evidence regarding whether Dr. Weilenman" had even "*discussed* [with trial counsel] the need to retain *additional experts*." Pet.App.94a–95a (first emphasis added). So with respect to that single factual finding, the district court applied (e)(1)'s presumption of correctness to the state habeas court's factual determination. Pet.App.95a.

Regarding prejudice, the district court applied § 2254(d) exclusively. It agreed with the state habeas court's determination that "much of the subject matter raised by [Stinski's] habeas witnesses was cumulative of the testimony actually presented at [his] trial" and that "their testimonies did not differ greatly from Dr. Weilenman's testimony in the sentencing phase of trial." Pet.App.95a, 96a (quotation omitted). The district court determined that Stinski failed to show the state habeas court's conclusion of no prejudice was unreasonable—indeed, the district court held that "[t]he evidence that [Stinski's] actions were outrageously and wantonly vile, horrible, inhuman, and depraved, was so strong that it is hard to imagine that *any amount* of mitigating evidence could have outweighed it." Pet.App.103a (emphasis added).

The district court granted a certificate of appealability on "whether the Court properly applied Sections 2254(d)(2) and 2254(e)(1) of AEDPA in the Habeas Order when evaluating [Stinski's] ineffective assistance of counsel claim." Pet.App.12a (quotation omitted).

4. On appeal, the Eleventh Circuit relied on its recent en banc opinion in *Pye*. In *Pye*, the en banc court

directly addressed the relationship between (d)(2) and (e)(1) and held that (e)(1) applies when a district court reviews a state habeas court's specific factual determinations, and (d)(2) applies to the state court's overall conclusions. 50 F.4th at 1034–35.

The court of appeals here, then, unsurprisingly determined the district court was "spot on" when it applied (e)(1)'s "presumption of correctness" to the state habeas court's factual "determination that Dr. Weilenman did not recommend further testing and additional experts"; and under (d)(2), "asked whether the state court's overall determination was reasonable, given the evidence presented." Pet.App.17a. And the court affirmed the district court's conclusions as to § 2254(d)(2), because a "reasonable jurist" could have denied Stinski's state habeas petition on the basis that either there was no deficient performance or there was no prejudice. Pet. App.23a.

REASONS FOR DENYING THE PETITION

This Court should deny Stinski's petition for at least three reasons. *First*, there is no split of authority. Stinski attempts to manufacture a split by resurrecting a Ninth Circuit case that distinguished "intrinsic" federal habeas petitions from those "based on extrinsic evidence, *i.e.*, evidence presented for the first time in federal court." *Taylor v. Maddox*, 366 F.3d 992, 999–1000 (9th Cir. 2004). But *Taylor*'s intrinsic/extrinsic distinction has been obsolete for over a decade due to this Court's decision in *Cullen v. Pinholster*, 563 U.S. 170 (2011), as the Ninth Circuit has acknowledged, *see Murray v. Schiro*, 745 F.3d 984, 999 (9th Cir. 2014). And the Ninth Circuit now

expressly describes *Taylor* as having been "overruled" by *Pinholster*. *Prescott v. Santoro*, 53 F.4th 470, 480 (9th Cir. 2022). In other words, *Taylor* was an outlier when it issued, and "even the Ninth Circuit no longer follows" its approach. Pet.App.20a. That probably explains why this Court has repeatedly (and recently) denied review on this or similar questions. *See*, *e.g.*, *Pye v. Emmons*, 144 S. Ct. 344 (2023); *Presnell v. Ford*, 142 S. Ct. 131 (2021); *Esposito v. Ford*, 141 S. Ct. 2727 (2021); *Tollette v. Ford*, 141 S. Ct. 2574 (2021); *Meders v. Ford*, 140 S. Ct. 394 (2019).

Second, this case is a poor vehicle for review because the question is not dispositive—indeed, it is barely even relevant. The district court applied § 2254(e)(1)'s "presumption of correctness" to only *one* of the state habeas court's factual findings: whether Dr. Weilenman supposedly suggested to trial counsel that they should obtain further experts or perform more psychological testing. Pet.App.95a. But if the court had done what Stinski hopes for—apply (d)(2) deference to that question—the outcome would be the same. There was no "clear and convincing evidence" that the state habeas court was wrong, but also, it was not an "unreasonable determination of the facts." § 2254(d)(2), (e)(1). And even if the state habeas court received no deference—indeed, even assuming *arguendo* that Dr. Weilenman had made that recommendation—it was not dispositive of the deficient performance prong, and it was *utterly irrelevant to the prejudice prong*, where the district court did not apply (e)(1), so Stinski cannot seriously assert error.

Third, the lower court was correct. Subsections (d)(2) and (e)(1) are "independent requirements." *Miller-El v. Cockrell*, 537 U.S. 322, 341 (2003). Subsection (d)(2)

"applies to the granting of habeas relief," whereas (e)(1) "pertains only to state-court determinations of factual issues, rather than decisions." *Id.* at 341–42. And this is precisely the "approach . . . that AEDPA's plain language requires." *Pye*, 50 F.4th at 1037. Stinski's argument that (e)(1) "has no role to play in cases like this one" is simply untenable. Pet.6. Subsection (e)(1) applies to federal habeas applicants "in custody pursuant to the judgment of a State court"—which describes Stinski. 28 U.S.C. § 2254(e)(1).

I. There is no circuit split.

Under AEDPA, a federal habeas petitioner cannot obtain relief based on purported factual errors in the state proceedings "unless the adjudication of the claim . . . resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." *Id.* § 2254(d)(2). Moreover, a state habeas court's "determination of a factual issue . . . shall be presumed to be correct" unless rebutted by "clear and convincing evidence." *Id.* § 2254(e)(1).

All the circuits apply (d)(2) and (e)(1) correctly: the latter is for individual factual findings, the former for the overall determination of the state habeas court. *Field v. Hallett*, 37 F.4th 8, 16–17 (1st Cir. 2022); *Abdul-Salaam v. Sec'y of Pa. Dep't of Corr.*, 895 F.3d 254, 266 (3d Cir. 2018); *Elmore v. Ozmint*, 661 F.3d 783, 850 (4th Cir. 2011); *Matamoros v. Stephens*, 783 F.3d 212, 215–16 (5th Cir. 2015); *Michael v. Butts*, 59 F.4th 219, 225–26 (6th Cir. 2023), *Shannon v. Hepp*, 27 F.4th 1258, 1267–68 (7th Cir. 2022); *Trussell v. Bowersox*, 447 F.3d 588, 591 (8th Cir. 2006); *Smith v. Duckworth*, 824 F.3d 1233, 1241 (10th Cir.

2016); *Pye*, 50 F.4th at 1035. This unanimity hardly calls for the Court's intervention.

Stinski claims to identify an "acknowledged, longstanding, and intractable" circuit split, but he relies solely on *Taylor v. Maddox*, 366 F.3d 992 (9th Cir. 2004), for the other side of this "split," and the Ninth Circuit has long since stepped back from this contrary view, Pet.3. Any "split" *Taylor* created in 2004 was resolved by this Court's 2011 opinion in *Pinholster*, and ever since federal courts (including the Ninth Circuit) have applied (d)(2) and (e)(1) consistently and correctly.

In *Taylor*, the Ninth Circuit drew a distinction between "intrinsic review of a state court's processes," in which no new evidence is presented to the federal habeas court and the court proceeds based entirely on the state court record, and "extrinsic" challenges involving "evidence presented for the first time in federal court." 366 F.3d at 999–1000. *Taylor* held that (d)(2)'s "unreasonable determination" standard applied in *intrinsic* federal habeas appeals, while (e)(1)'s "clear and convincing proof" requirement applied in *extrinsic* cases. *Id.*

But "even the Ninth Circuit no longer follows" *Taylor*'s intrinsic/extrinsic framework. Pet.App.20a. In *Cullen v. Pinholster*, this Court held there was no such thing as "extrinsic" federal review of state-court habeas decisions under AEDPA because "[t]he federal habeas scheme leaves primary responsibility with the state courts," and "[i]t would be contrary to [AEDPA's] purpose to allow a petitioner to overcome an adverse state-court decision with new evidence introduced in a federal habeas court and reviewed by that court in the first instance effectively *de*

novo." 563 U.S. at 182 (quotation omitted). In short order, the Ninth Circuit recognized that "*Pinholster* eliminated the relevance of 'extrinsic' challenges when . . . reviewing state-court decisions under AEDPA." *Murray*, 745 F.3d at 999. Indeed, the Ninth Circuit now recognizes that *Pinholster* "overruled" *Taylor*'s intrinsic/extrinsic divide. *Prescott*, 53 F.4th at 480; *see also Crawford v. Hamilton*, No. 21-35385, 2024 WL 1042994, at *2 (9th Cir. Mar. 11, 2024).

Undaunted, Stinski claims "[t]he Ninth Circuit continues to apply *Taylor*, considers it controlling, and has not reconsidered it since *Pinholster* or *Murray*," citing *Kipp v. Davis*, 971 F.3d 939 (9th Cir. 2020), as a case in which "a Ninth Circuit panel explicitly reaffirmed *Taylor*'s analysis." Pet.15. But *Kipp* did no such thing, and Stinski misstates *Taylor*'s current relevance in the Ninth Circuit. In *Kipp*, the Ninth Circuit discussed the different "'flavors' of [federal habeas] challenges to state-court findings" that *Taylor* articulated. 971 F.3d at 953 (quoting *Taylor*, 366 F.3d at 1000). The court held that an "unreasonable determination of the facts" under (d)(2) could be shown in a variety of ways; for example, "the state court might have neglected to make a finding of fact when it should have done so," or "the state court might make factual findings under a misapprehension as to the correct legal standard." *Id.* (citing *Taylor*, 366 F.3d at 1000, 1001). But that only means *Taylor* continues to guide the Ninth Circuit's application of *(d)(2)*, not its analysis of the relationship between (d)(2) and (e)(1). In other words, *Taylor* was resolved under (d)(2), and *how it applied* (d)(2) still carries weight in the Ninth Circuit, but that does not mean there is a circuit split regarding the relationship between (d)(2) and (e)(1).

But even if the Ninth Circuit is arguably, maybe, possibly, slightly out of step with the other circuits, it makes no difference as the question is rarely, if ever, dispositive. In almost any case where a petitioner challenges a state-court fact finding, whether the state court's decision is reasonable "does not turn on any interpretive difference regarding the relationship between these provisions." *Wood v. Allen*, 558 U.S. 290, 300 (2010); *see also id.* ("Although we granted certiorari to resolve the question of how §§ 2254(d)(2) and (e)(1) fit together, we find once more that we need not reach this question."). If a petitioner (like Stinski) cannot overcome the "clear and convincing" standard of (e)(1), he will virtually never be able to overcome the "unreasonable determination" standard of (d)(2), anyway. That is exactly the case here.

So we are left with where we started. All the circuits agree, and even if they were all wrong, there is no need for this Court to address this question.

II. This case is not a vehicle to clarify the relationship between (d)(2) and (e)(1) because it would make no difference.

Even if, in the abstract, this Court should dive into the splitless question of how (d)(2) and (e)(1) interact, it would make no difference in this case, for reason upon reason. Apply (d)(2) as Stinski wants, and the state habeas court's fact finding stands. Apply *de novo review* and the state habeas court's overall conclusion still stands. Hold that the state habeas court got the deficiency prong entirely wrong, and it *still makes no difference*, because the state habeas court also determined there was no prejudice, an issue Stinski does not contest. This Court could not even

reach the question presented as it would make utterly no difference if it did.

The state habeas court rejected Stinski's petition because it failed both *Strickland* factors, deciding that "counsel's preparation for the sentencing phase was not deficient," State Habeas Final Order at 39, *and* that Stinski "failed to demonstrate prejudice resulting from counsel's preparation of mitigation evidence," *id.* at 42. The district court held that both determinations were "reasonable" under § 2254(d). Pet.App.103a–104a. In rejecting a single factual assertion from Stinski, the district court applied (e)(1): Stinski argued that Dr. Weilenman had suggested the need for additional experts, and the state habeas court had found that had not happened. Pet.App.94a–95a. The district court held that there was no "clear and convincing evidence" to overturn that finding. Pet.App.95a. The Eleventh Circuit then affirmed the district court across the board. Pet.App.23a.

Stinski's entire argument relies on the notion that the district court should have applied (d)(2) rather than (e)(1) to that factual determination, but that argument could not matter less. First, suppose you applied (d)(2): it was a plainly reasonable fact finding. As the district court held, there was, *at best*, competing evidence with respect to whether Dr. Weilenman told trial counsel they needed to hire more experts. *See* Pet.App.94a–95a. Where there is competing evidence, it is plainly not *unreasonable* to take one side of the evidence. Second, even if you applied *de novo* review to that factual question, the evidence was clear that Dr. Weilenman never actually said they needed additional experts or testing. She testified at the state habeas hearing that she did not recommend

additional experts, State Habeas Final Order at 38, and trial counsel Sparger's testimony reinforced her assertion, Pet.App.93a–94a. Stinski's speculation that "a single page from Dr. Weilenman's notes that shows a list of purported [neuropsychological] experts," Pet.App.94a, means Dr. Weilenman *must have* recommended additional experts to his trial counsel is pure conjecture that does nothing to refute Dr. Weilenman's and Sparger's sworn testimony. Third, even if the state habeas court was wrong about that, its overall conclusion—that there was no deficient performance—was still reasonable, as the district court held. That a single expert suggested the need for more testing or additional experts is not somehow dispositive. The trial team engaged in an *extensive* mitigation investigation and, as the district court explained, everything Stinski claims trial counsel should have done was cumulative of what they did. *See* Pet.App.95a.

On top of all that, there is another independent reason that Stinski's purported legal dispute is wholly irrelevant here: there was no prejudice. That is, even if Stinski is correct that his trial counsel was constitutionally deficient at the sentencing phase, that is not dispositive because the district court also held (and the Eleventh Circuit affirmed) its decision on prejudice. "[E]ven if [Stinski] showed that trial counsel's performance was deficient for not retaining experts such as Drs. James, Ash, and Garbarino, the state habeas court reasonably determined that Petitioner failed to establish prejudice for that deficiency." Pet.App.95a. And that prejudice determination had nothing to do with (e)(1). The district court simply applied (d)(2) (as Stinski prefers) and correctly held that the state habeas court's prejudice determination was reasonable. If this Court were to address the (e)(1) question, it would make no

difference to the prejudice determination and thus no difference to the case. The Court would have to affirm anyway.

As the Eleventh Circuit correctly recognized, the district court was "spot on" in how it applied AEDPA. Pet.App.17a. But even assuming Stinski were correct that it made a tiny little error in applying (e)(1) rather than (d)(2) to a single fact finding, it would have no bearing on the outcome of the deficiency analysis and *certainly* no bearing on the outcome of the case.

III. The lower courts correctly applied (d)(2) and (e)(1).

Finally, this Court should deny Stinski's petition because he is wrong about (d)(2) and (e)(1). The courts of appeal are not only aligned, *see* § I *supra*, they are correct.

This Court has already declared that (d)(2) and (e)(1) are "independent requirements." *Miller-El*, 537 U.S. at 341. What Stinski describes as a "byzantine, layered framework," Pet.5, is not particularly complex—the subsections are each one sentence long—and because AEDPA is a federal statute, it "is what it is and says what it says," *Pye*, 50 F.4th at 1034 n.1.

Before AEDPA, a state habeas court's individual fact findings were presumed correct unless "the Federal court on consideration of the record as a whole concludes that such factual determination is not fairly supported by the record." 28 U.S.C. § 2254(d)(8) (1994). But AEDPA removed federal courts' discretion to determine what is "fairly supported by the record" and instead mandates deference to the state habeas court's individual factual

findings unless the petitioner disproves them by clear and convincing evidence. 28 U.S.C. § 2254(e)(1).

So when Stinski complains that (e)(1) "supercharge[s]" (d)(2) "by requiring the federal court . . . to presume that the determination of every factual issue was correct," Pet.5–6 (quotations omitted) (alterations accepted), he simply highlights one of AEDPA's features. *By design*, "AEDPA sets 'a difficult to meet and highly deferential standard for evaluating state-court rulings, which demands that state-court decisions be given the benefit of the doubt.'" Pet.App.14a (quoting *Pinholster*, 563 U.S. at 181).

Moreover, successfully refuting a state habeas court's factual determination under (e)(1) is not enough to obtain federal habeas relief under AEDPA, because an erroneous factual determination does not always mean "the state court's '*decision*' was '*based on*' an 'unreasonable determination of the facts in light of the evidence presented in the State court proceeding.'" *Pye*, 50 F.4th at 1035 (quoting 28 U.S.C. § 2254(d)(2)) (emphases added). The critical question under (d)(2) is whether the state court decision, *taken as a whole*, was based on an "unreasonable determination of the facts."

Meanwhile, Stinski's preferred interpretation—where (e)(1) has "no role to play" when a federal habeas petitioner relies exclusively on the state court record—is undoubtedly wrong. Pet.6. Textually, (e)(1) applies in "a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court." 28 U.S.C. § 2254(e)(1). This case is "a proceeding instituted by an application for a writ of habeas

corpus by a person in custody pursuant to the judgment of a State court." *See* Pet.App.1a. So if (e)(1) applies anywhere, it applies to Stinski, and if it does not apply to Stinski, it is a dead letter. Yet "[i]t is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that . . . no *clause, sentence, or word* shall be superfluous, void, or insignificant," much less an entire subsection. *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (emphasis added) (quotation omitted).

Stinski argues that, "[c]orrectly interpreted, the entirety of § 2254(e) applies only when a federal habeas court conducts independent factfinding." Pet.22. But setting aside the tension with *Pinholster*, that doesn't make sense of the text of (e)(1), which is broad, general, and says nothing about a limitation to circumstances of additional federal court factfinding. Indeed, § 2254(e)(2) specifically provides for how to handle the (rare) allowable situation of independent federal court factfinding. Subsection (e)(1) would be virtually meaningless if it only applied in situations where (e)(2) already applies.

* * *

Just last year, this Court denied certiorari in *Pye*, 144 S. Ct. 344, one of many recent denials. Nothing has changed since *Pye*, except that here, there are numerous reasons why the question does not even affect this case. Stinski does nothing to establish otherwise.

CONCLUSION

For the reasons set out above, this Court should deny the petition.

Respectfully submitted,

Christopher M. Carr
Attorney General
Stephen J. Petrany
Solicitor General
Counsel of Record
Justin T. Golart
Deputy Solicitor General
Office of the Georgia
Attorney General
40 Capitol Square, SW
Atlanta, Georgia 30334
(404) 458-3408
spetrany@law.ga.gov

Counsel for Respondent

November 2024