CAPITAL CASE
No. 24-517

In the Supreme Court of the United States

LANCE SHOCKLEY, Petitioner,

v.

DAVID VANDERGRIFF, Warden.

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

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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CAPITAL CASE
QUESTION PRESENTED

After being convicted of a capital offense by a jury of his peers, and receiving full and fair review of his conviction in Missouri state courts, Petitioner Lance Shockley filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254. The United States District Court for the Eastern District of Missouri denied Shockley relief on his petition and, further, denied him a certificate of appealability.

After considering briefing on Shockley's amended application for a certificate of appealability, the United States Court of Appeals for the Eighth Circuit denied Shockley a certificate of appealability over an unreasoned dissent from a single member of that panel. The order from the panel stated that the dissenting judge would have granted a certificate of appealability as to a single claim of ineffective assistance of counsel. The United States Court of Appeals for the Eighth Circuit denied rehearing en banc, over the unreasoned dissent of the same dissenting panel member and another member of the en banc court.

The question presented is:

Must a circuit court grant a certificate of appealability any time a single judge from that court would grant a certificate of appealability, even though this Court and Congress have left the determination of whether to grant a certificate of appealability, and the procedures governing the consideration of an application for a certificate, to the discretion of the circuit courts of appeals?

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STATEMENT OF THE CASE

On November 4, 2004, Lance Shockley went for a ride with his sister in-law's fiancé, J.B., in J.B.'s pickup truck. App. 297a. While Shockley was driving, he crashed the truck into a ditch. *Id.* Shockley was able to extricate himself from the wreck and walked to a nearby home to ask for help. *Id.* Shockley came upon the home of a husband and wife, P.N. and I.N., respectively, and asked them for assistance. *Id.* P.N. accompanied Shockley back to the accident scene and found J.B. injured beyond help. *Id.* at 297a–298a. The two men returned to the couple's home, where Shockley called his wife, and I.N. called 911. *Id.* at 298a.

I.N. then set out to find the accident scene, came upon the truck off the side of the road, and found J.B. inside the truck with no pulse. *Id.* In the meantime, Shockley's wife and her sister drove to the couple's home to pick up Shockley. *Id.* On the drive back to Shockley's residence, Shockley told the women that J.B. was dead. *Id.* After dropping Shockley off at his residence, the women then went to the accident scene. *Id.* When the women arrived, they found that P.N. had also returned to the accident scene. *Id.*

When local and Missouri State Highway Patrol officers reached the scene, they found J.B. slumped over in the truck's passenger seat, beer cans and a tequila bottle inside the truck, and a blood smear on the outside of the truck, above the passenger-side wheel. *Id.* The officers instructed Shockley's wife, her sister, I.N., and P.N. to go home. *Id.*

Sergeant Carl DeWayne Graham, Jr., the lead Missouri State Highway Patrol Investigator investigating the accident, questioned Shockley on the night of the incident. *Id.* Neither Shockley nor his sister-in-law admitted that he was involved in the wreck. *Id.* Sergeant Graham then visited the couple who had helped Shockley, P.N., and I.N. *Id.* Although Shockley had confessed to I.N. on the night of the accident that he had been driving the truck, I.N. told Sergeant Graham that she did not know who was involved in the accident. *Id.* at 298–299a.

Four months later, Sergeant Graham went to I.N.'s place of employment. *Id.* at 299a. Sergeant Graham told her that Shockley had confessed that he was involved in the wreck. *Id.* I.N. then told Sergeant Graham that Shockley had wrecked the truck. *Id.* That afternoon, I.N. called Shockley, and learned that he had not confessed anything to Sergeant Graham. *Id.* Shockley then obtained Sergeant Graham's home address from his sister-in-law's stepfather, who was a friend of Sergeant Graham's landlord. *Id.*

The next day, Shockley borrowed his grandmother's car and parked it a few hundred feet from Sergeant Graham's residence. *Id.* When Sergeant Graham returned home from work a little after four and exited his vehicle, Shockley shot him from behind with a high powered rifle. *Id.* at 300a. The bullet penetrated Graham's Kevlar vest and severed Graham's spinal cord at the neck, paralyzing him immediately. *Id.* Sergeant Graham fell backward from the impact, suffering fractures to his skull and ribs when he hit the pavement. *Id.* Shockley then approached Sergeant Graham, who was still alive, and shot Sergeant Graham twice with a shotgun, once

in the shoulder and once in the face. *Id.* Later that evening, Shockley's wife gave Shockley's uncle a box of bullets, telling the uncle that "[Shockley] said you'd know what to do with them." *Id.*

A S.W.A.T. team and investigators went to Shockley's property to interview him that evening, but Shockley refused to talk and ordered them to leave. *Id.* at 301a. When investigators came to Shockley's place of employment the next day, Shockley told them he would talk to them when he finished his lunch. *Id.* Shockley then called his wife and coordinated an alibi for the time of the shooting. *Id.* Shockley spoke to the investigators providing this alibi for the previous day, stating that he did not know where Sergeant Graham lived, and telling them that if they came back to his house without a warrant there would be trouble and someone would be shot. *Id.* at 302a.

Later that day, Shockley asked his grandmother to say that he was home all day the day of the murder, but Shockley's grandmother told him that she would not lie. *Id.* Shockley also instructed his cousin, who had overhead the phone call with his wife about his alibi, to not say anything about it. *Id.*

Shockley was later arrested and tried by a jury for first-degree murder. *Id.* at 303a. The jury found Shockley guilty. *Id.* After the penalty phase, the jury then found that three statutory aggravators had been proven beyond a reasonable doubt, qualifying Shockley for the death penalty. *Id.* at 303–305a. The trial court then determined that death was the appropriate sentence. *Id.* at 303a.

The Missouri Supreme Court affirmed the judgment of conviction and sentence on direct review on August 13, 2013. *Id.* at 296a–297a, 349a. The Missouri Supreme Court rejected Shockley's claim that the trial court committed plain error by failing to hold a hearing, or to declare a mistrial, based on an allegation that Juror 58, who had written a novel involving brutal revenge for the death of the protagonist's wife in a drunk driving accident, had improperly influenced other jurors. *Id.* at 337a.

On April 16, 2019, the Missouri Supreme Court affirmed the post-conviction review court's denial of relief after an evidentiary hearing. *Id.* at 217a–289a. The Missouri Supreme Court rejected four claims concerning Juror 58. *Id.* at 224a–252a. The court rejected Shockley's claim that trial counsel provided ineffective assistance in questioning juror 58 during voir dire. *Id.* at 224a–233a. The court rejected Shockley's claim that counsel provided ineffective assistance in failing to present witnesses at the hearing on Shockley's motion for a new trial to testify about Juror 58's alleged misconduct. *Id.* at 233a–237a. The court rejected Shockley's claim that the trial court failed to disclose that Juror 58 allegedly brought his book to the sequestered jury, noting that the claim was neither preserved nor supported by the record. *Id.* at 237a–240a. Finally, the court denied Shockley's claim that Juror 58 committed juror misconduct. *Id.* at 240a–252a.

After receiving a full and fair opportunity to press claims in state court, Shockley filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254 in federal district court. On September 29, 2023, the United States District Court for the Eastern District

of Missouri denied Shockley's federal habeas petition. *Id*. at 3a–216a. The district court found that Shockley had intentionally delayed the resolution of his federal habeas petition. *Id*. at 21a–22a. And it rejected multiple claims about Juror 58. *Id.* at 57a–67a, 97a–103a, 103a–108a, 196a–199a.

The district court further found that, even if Shockley could succeed on the merits of his claims, which he could not, the principles of federalism and the law-and-justice standard would counsel thoughtful deference and restraint from granting relief, because there was no allegation that Shockley was innocent. *Id.* at 213a–215a. The district court denied a certificate of appealability, finding that the issues Shockley raised lacked debatable merit, could not be resolved differently, and did not warrant further proceedings well past seventeen years after the murder. *Id*. at 216a.

On September 29, 2023, the district court also ordered counsel for Shockley to show cause as to why they should not be sanctioned for twenty-three alleged violations of the Federal Rules of Civil Procedure and the Missouri Rules of Professional Conduct. Show Cause Order, Doc. 76, *Shockley v. Crews*, 4:19-CV-02520-SRC (E.D. Mo. Sep. 29, 2023). On February 10, 2024, the district court admonished Shockley's habeas counsel for eleven distinct counts of misstatements and mischaracterizations. Order at 58–59, Doc. 101, *Shockley v. Crews*, 4:19-CV-02520-SRC (E.D. Mo. Feb. 10, 2024). The district court found that Shockley's habeas counsel had abdicated their responsibility by muddling briefing with frivolous arguments and fallacious assertions. *Id*. at 59. The court further found that counsel's recurring lack of candor

threatened to undermine the confidence of the public in the integrity of the justice system by advocating lawlessness and casting aspersions without due regard to the accuracy of the claims. *Id.*

A panel of the United States Court of Appeals for the Eighth Circuit denied Shockley a certificate of appealability. App. at 1a–2a. The panel stated that a single judge would have granted a certificate of appealability as to Claim 1 of Shockley's habeas petition. *Id.* at 2a. Claim 1 alleged that trial counsel provided ineffective assistance during voir dire by failing to search for biases when Juror 58 stated that he was a published author and by not effectively litigating alleged misconduct by Juror 58 during the proceedings on Shockley's motion for a new trial. *Id.* at 58a. The United States Court of Appeals for the Eighth Circuit denied rehearing en banc, over the dissent of two judges. App. at 350a.

REASONS FOR DENYING THE PETITION

I. There is no split warranting review.

Shockley alleges that there is a deep split between the circuit courts of appeal as to whether a dissent from a single circuit judge, regarding the court's denial of a certificate of appealability, entitles a habeas petitioner to an appeal. But Shockley is merely attempting to manufacture a circuit split where none exists. This Court and Congress have left it to the circuit courts of appeal to decide how they handle applications for certificates of appealability. Because the decision of whether to grant a certificate of appealability is a decision for the particular circuit court of appeals, and not an individual judge, a circuit

court may choose to deny a certificate of appealability over the dissent of an individual judge. The court's denial, then, represents the court's correction of the individual dissenting judge. A circuit court may, alternatively, choose to issue a certificate of appealability if any single judge believes a certificate should issue. But that choice is a matter of administrative discretion left to the individual circuit courts. Shockley attempts to create a circuit split out of differences of administration on a procedural matter within the discretionary power of the circuit courts. There is no real split and no issue worthy of certiorari review.

In discussing the denial of a certificate of probable cause, a precursor to certificates of appealability, this Court has held: "It is for the Court of Appeals to determine whether such an application to the court is to be considered by a panel of the Court of Appeals, by one of its judges, or in some other way deemed appropriate by the Court of Appeals within the scope of its powers." *In re Burwell*, 350 U.S. 521, 522 (1956). Although certificates of appealability have now taken the place of certificates of probable cause, this Court's determination that circuit courts have discretion in the procedure for considering a certificate of appealability has remained.

Section 2253 provides that either a circuit justice or judge may issue a certificate of appealability. § 2253(c)(1). The circuit courts have adopted administrative rules to govern how those courts process applications for certificates of appealability. The federal courts may promulgate rules about certificates of appealability, because Federal Rule of Appellate Procedure 22(b) provides

that authority. Fed. R. App. P. 22(b)(2) ("A request addressed to the court of appeals may be addressed by a circuit judge or judges *as the court prescribes*.") (emphasis added). This Court has apparently agreed, holding: "It is more consistent with the Federal Rules and the uniform practice of the courts of appeals to construe § 2253(c)(1) as conferring the jurisdiction to issue certificates of appealability upon the court of appeals rather than by a judge acting under his or her own seal." *Hohn v. United States*, 524 U.S. 236, 245 (1998). Accordingly, this Court, relying on its prior decision in *Burwell,* stated that, even though individual circuit judges are empowered to issue certificates of appealability, the decision to issue a certificate made by an individual judge is an "action of the court itself[,]" and remains subject to correction by the entire court. *Id*. at 245.

This Court has adopted the practice of submitting applications for certificates of appealability, made to a single justice, to the entire court. *See, e.g.*, *DeBenedetto v. Lumpkin*, 141 S. Ct. 2697 (2021); *Stoutamire v. La Rose,* 140 S. Ct. 128 (2019); *Taylor v. Bowersox*, 571 U.S. 1233 (2014); *Mathis v. Thaler*, 564 U.S. 1032 (2011); *Roberts v. Luebbers*, 534 U.S. 946 (2001). Similarly, this Court has denied applications for certificates of appealability over dissents. *See e.g.*, *Anderson v. Collins*, 495 U.S. 943 (1990).

At bottom, the Eighth Circuit's practice of considering certificates of appealability does not evidence the existence of a circuit split, and it certainly does not present a question worthy of certiorari review. The petition should be denied

without further briefing and Missouri should be permitted to finally carry out its lawful sentence.

II. This case is a poor vehicle to review this issue.

This is a capital case that should be decided expeditiously due to the strong interest of the State, crime victims, and the public in general in timely execution of a criminal sentence imposed for a crime committed over two decades ago. *Bucklew v. Precythe*, 587 U.S. 119, 149–50 (2019). If there were a conflict here, which there is not, this Court will have ample opportunity to review it because as Petitioner asserts at pages twenty-two to twenty-five of his brief this Court has repeatedly declined to review this alleged conflict. Finally, the court below acted correctly under *Burwell* and *Hohn*. All these reasons make this case a poor choice to review the issue.

CONCLUSION

This Court should deny the petition for a writ of certiorari.

Respectfully submitted,

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