CASE NO. 24-5309

IN THE SUPREME COURT OF THE UNITED STATES

ANDREW R. ALLRED,

Petitioner,

v.

SECRETARY, DEPARTMENT OF CORRECTIONS, ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents.

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

DEATH PENALTY CASE

RESPONDENT'S BRIEF IN OPPOSITION

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CAPITAL CASE

QUESTION PRESENTED

(Restated)

Whether certiorari review of the habeas corpus claim of ineffective assistance of penalty phase counsel challenging counsel's investigation, preparation, and presentation of a mitigation case should be denied where the circuit court determined that the state court's resolution of postconviction relief was not contrary to or an unreasonable application of *Strickland* and its progeny.

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PRELIMINARY STATEMENT

In this appeal, Respondent-Appellee, Secretary, Florida Department of Corrections, will be referred to as "Appellee" or "the State." Petitioner-Appellant, Andrew Allred, will be referred to as "Petitioner" or "Allred."

References to the district court record follow the procedure authorized by this Court when the volume numbers are not available, i.e., "Doc. (Doc. #: page #)."

Respondent filed a copy of the state court proceedings in paper format in the district court and filed a Master Index of Exhibits. (Doc. 22). Citations to the state court record will utilize the system contained in Doc. 22, for example (Ex. A-2 at 198-212) is the Sentencing Order dated November 19, 2008.

STATEMENT OF JURISDICTION

The Eleventh Circuit Court of Appeals affirmed the district court's denial of habeas relief. The instant petition was timely filed with this Court on August 9, 2024. Petitioner invokes the jurisdiction of this Court based upon 28 U.S.C. § 1254(1). Respondent agrees that this statutory provision sets out the scope of this Court's certiorari jurisdiction but submits that this case is inappropriate for the exercise of this Court's discretionary jurisdiction.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Respondent accepts Petitioner's statement regarding the applicable constitutional and statutory provisions involved.

STATEMENT OF THE CASE

Allred had a romantic relationship with one of the two victims in this case, Tiffany Barwick. At his twenty-first birthday party, on August 25, 2007, a month before the murder, Barwick and Allred broke up. Unable to cope with the breakup, Allred began harassing Barwick. Soon after, he bought a .45 caliber pistol and on September 7 used pictures of Barwick as target practice. He emailed her a photo of her bullet-ridden picture hanging on his wall.

A few days before the murders he learned that Ruschak and Barwick had started a relationship, and he sent angry and threatening messages to both. The day before and day of the murders he told another friend, Michael Siler, that he wanted to kill Barwick and Ruschak, and on September 24, 2007, he told both Ruschak and Barwick that if he saw Ruschak again, Allred would kill him.

That same night Allred drove to a house he knew both victims were at with a group of friends, telling them he was on his way. When no one let him in the front of the house he went around the back and shot his way in through a sliding glass door. As the people in the house panicked, Allred found Ruschak in the kitchen and shot him several times. One of the other attendees, Eric Roberts, attempted to subdue Allred, and when Allred was unable to break free, he pointed his gun down and shot Roberts in the leg instead of trying to kill him, forcing Roberts to let go. He then hunted down Barwick, who had hidden in a bathroom. While Allred was killing

Ruschak, Barwick had time to call 911, and her final screams can be heard on the recording as he murdered her. Later that night he called the police, confessed to the murders, and was apprehended. *Allred v. State,* 55 So. 3d 1267, 1272–74 (Fla. 2010). (Ex. D).

A. Trial Proceedings

Allred was indicted on October 23, 2007, on the following charges: (1) first-degree premeditated murder of Michael Ruschak by shooting with a firearm; (2) first-degree premeditated murder of Tiffany Barwick by shooting with a firearm; (3) armed burglary of a dwelling while inflicting great bodily harm or death; (4) aggravated battery with a firearm (victim Eric Roberts) while inflicting great bodily harm or death; and (5) criminal mischief of a motor vehicle (Barwick's car). On April 30, 2008, Allred, against counsel's advice, pled guilty to all charges with no promises regarding the sentences that would be imposed. *See* Ex. A-1 at 45-49; Ex. A-5 at 473; Ex. G-12 at 173.

On May 15, 2008, again against the advice of counsel, Allred waived his right to a penalty phase jury. (Ex. A-1 at 52-53; Ex. G-12 at 180.) The parties presented aggravating and mitigating evidence at the penalty-phase proceeding and *Spencer*[1] hearing. The trial court sentenced Allred to death for both murders.[2] In

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[1] *Spencer v. State*, 615 So. 2d 688, 691 (Fla. 1993).

[2] Allred was given life sentences for armed burglary of a dwelling while inflicting great bodily harm or death and for aggravated battery with a firearm while inflicting great bodily harm on Eric Roberts. Finally, appellant was sentenced to five years for criminal mischief. All sentences were ordered to be served concurrently. *Id.* at 1271.

sentencing Allred to death for the murders, the court found the following three aggravating factors and ascribed the weight indicated. As to Allred's murder of Michael Ruschak: (1) cold, calculated, and premeditated (CCP)—great weight; (2) murder committed while engaged in a burglary—little weight; and (3) prior capital or violent felony conviction (Barwick's contemporaneous murder)—great weight; as to Barwick's murder, (1) the murder was especially heinous, atrocious, or cruel (HAC)—great weight; (2) CCP—great weight; and (3) prior capital or violent felony conviction (Ruschak's contemporaneous murder)—great weight. The court also considered the following mitigating circumstances and ascribed the weight indicated: (1) defendant accepted responsibility by entering guilty pleas—little weight; (2) defendant cooperated with law enforcement-moderate weight; (3) defendant suffered from an emotional disturbance-moderate weight; (4) defendant's emotional and developmental age was less than his chronological age—not established; (5) other factors including that defendant was likely sexually abused—not established; and (6) defendant's developmental problems at a young age impacted his educational and social development—little weight. *Id.* at 1277. (Ex. A-2 at 205-210).

The Supreme Court of Florida affirmed Allred's convictions and sentences. (Ex. D); *Allred v. State*, 55 So. 3d 1267 (Fla. 2010) ("*Allred I*"). Allred filed a petition for writ of certiorari with the Supreme Court of the United States, which was denied on October 3, 2011. (Ex. F-3); *see also Allred v. Florida*, 565 U.S. 853 (2011).

B. State Postconviction Proceedings

Allred filed a motion for post-conviction relief pursuant to Rule 3.851 of the Florida Rules of Criminal Procedure, which he twice amended. (Ex. G-1 at 1-38; Ex. G-4 at 576-623, 710-63). Allred raised eleven claims, in which, as relevant here, he claimed that Caudill, his penalty-phase trial counsel, rendered constitutionally ineffective assistance under *Strickland v. Washington*, 466 U.S. 668 (1984), by failing to ensure that he received a reasonably competent mental health evaluation. Allred alleged that Caudill performed deficiently in three respects. Specifically, that trial counsel unreasonably relied on the opinion of Dr. Day, the mental health expert Caudill retained. Allred alleged that Caudill mistakenly believed Dr. Day would testify that Allred had antisocial personality disorder, sociopathy, or psychopathy and relied on this understanding in deciding to withdraw her testimony in the penalty phase. Second, Allred alleged that Caudill failed to conduct an adequate background investigation and therefore failed to adequately prepare Dr. Day. Third, Allred alleged that Caudill failed to present the testimony of a mental health expert as mitigation in the penalty phase. (Ex. G-4, at 576-623, 710-763).

The postconviction trial court conducted an evidentiary hearing on several of Allred's claims, including the claim relevant here, on August 1, 2, and 5, 2013. (Ex. G12-14 at 1-461). At the evidentiary hearing, Allred presented two mental health experts that Allred contended supported his theories of deficient performance. The first was Dr. Glenn Caddy, a forensic psychologist who specializes in clinical psychology. (Ex. G-12 at 7). Dr. Caddy reviewed various documents related to Allred's case and met with Allred twice, for several hours each time. (Ex. G-12, at 12-13, 66).

In Dr. Caddy's opinion, Allred did not meet the criteria for antisocial personality disorder. (Ex. G-12, at 34, 40). He did concede, however, that Dr. Day, the expert hired by trial counsel, found that Allred exhibited traits of that disorder. (Ex. G-12, at 71). Dr. Caddy concluded that prior to the murder, Allred would not have been diagnosed as suffering from any mental disorders. (Ex. G-12, at 45). Dr. Caddy testified that Allred exhibited signs of dissociation at the time of the murders—where a person "disconnects from a clear understanding of the circumstances of their present-day functioning." (Ex. G-12, at 47, 48). Despite this diagnosis, Dr. Caddy also said the dissociative episode did not rise to the level of "a legitimate fugue state". (Ex. G-12, at 61, 62). In addition, Dr. Caddy could not determine whether the dissociative state set the stage for the shooting, or the shooting caused the dissociative state. (Ex. G-12, at 79).

Allred also presented the testimony of Dr. Gary Geffken. Dr. Geffken works at the University of Florida training psychology and psychiatry interns, and has a practice of his own, 20% of which concerns treating autistic individuals. (Ex. G-12, at 109-110, 111). Dr. Geffken reviewed records related to Allred's life and case, met with Allred for a six-hour evaluation in 2013, and administered several tests related to autism and adaptive behavior. (Ex. G-12, at 115, 136, 148). Dr. Geffken diagnosed Allred with a high-functioning variant of autism spectrum disorder. (Ex. G-12, at 118, 135-136). In Dr. Geffken's opinion, individuals who exhibit features of autism or pervasive developmental disorder are less capable than an average individual to handle emotional situations. (Ex. G-12, at 128). Dr. Geffken admitted that the

murders Allred committed were not typical of a person with an autism-spectrum diagnosis because Allred's plan was very deliberate. (Ex. G-12, at 145, 146).

The State presented the testimony of Dr. Deborah Day, a psychologist and licensed mental health counselor who specializes in clinical psychology. (Ex. G-13, at 335-338). Dr. Day was involved in Allred's original trial and was contacted by trial counsel shortly after the murders. (Ex. G-13, at 339). During her pretrial investigation, Dr. Day and her team met with Allred and administered various psychological tests. (Ex. G-13, at 343-344). She also reviewed material related to the case, including statements made and letters written by Allred. (Ex. G-13, at 344-345). Dr. Day spoke with Allred's parents to obtain an overall view of his history. (Ex. G-13, at 346, 362). Dr. Day did not believe that Allred met the criteria for antisocial personality disorder, but she did believe that he exhibited "psychopathy features" and demonstrated lack of remorse, lack of guilt, and lack of empathy, which she explained are not "per se, aggravating, but they go under cold, calculating because of the manner...the predatory natures of his behavior." Ex. G-13, at 369, 347-48). Dr. Day believed there were very few statutory mitigators she could testify about.

Next the State presented the testimony of Dr. Jeffrey Danziger, a forensic psychiatrist who also maintains an outpatient psychiatry practice treating patients with a wide variety of mental issues. (Ex. G-13, at 378-379). Danziger first became involved in the case when trial counsel requested that he evaluate Allred for a possible insanity defense. After meeting with Allred, Danziger determined that

Allred did not meet the criteria for an insanity defense. He maintained that opinion at the time of the evidentiary hearing. (Ex. G-13, at 381; G-14, at 409-410).

Prior to the evidentiary hearing, Dr. Danzinger reviewed all documents related to Allred's case, the opinions of Drs. Geffken, Caddy, and Day, and reevaluated Allred. (Ex. G-13, at 381-383; G-14, at 411). In his opinion, Allred had "an adjustment disorder with depressed mood," but his symptoms were "not severe enough to meet the criteria for any other mood anxiety or psychotic disorder." (Ex. G-13, at 383). Dr. Danziger agreed with the other doctors that while Allred committed antisocial acts, he fell short of having antisocial personality disorder. (Ex. G-13, at 386-387, 390). He disagreed with Dr. Caddy's opinion that Allred had a dissociative emotional state, recounting that Allred had made several threats prior to and on the day of the murders, and acted rationally and calmly. He said, "There is nothing here to suggest any sort of dissociative or fugue state." (Ex. G-13, at 392-393). Dr. Danziger also disagreed with Dr. Geffken's diagnosis of high-functioning autism, explaining that although Allred exhibited some deficits in social skills, "just because someone is introverted, or a bit socially backward...is not enough to make that diagnosis." (Ex. G-13, at 398-399). Additionally, Allred did not exhibit any signs of restrictive or repetitive patterns of behavior indicative of autism. (Ex. G-14, at 403; G-14, at 418).

Allred called trial counsel Timothy Caudill and Rebecca Sinclair as witnesses. Caudill was lead counsel and made the ultimate strategic decisions regarding Allred's case. (Ex. G-12, at 169). By the time of his representation of Allred, Caudill had defended over one hundred various capital cases. About twenty-five of those cases

proceeded to trial. Eight of those twenty-five defendants were sentenced to death. (Ex. G-12, at 160-161; Ex. G-13, at 225). Caudill met with Allred two days after the murders, and Allred already wanted to enter a guilty plea. (Ex. G-13, at 229; G-12, P175). Allred also stated he wanted to waive a jury and waive presentation of mitigation. (Ex. G-12, at 163; Ex. G-13, at 219, and 233). Caudill said it was very hard to establish a rapport with Allred because Allred was very closed off and uncooperative. (Ex. G-13, at 232-233). Against Caudill's advice, and despite Caudill's efforts to delay it as long as possible, Allred pled guilty as charged. (Ex. G-12, at 173; Ex. G-13, at 246). Caudill's trial strategy would have been to argue for a lesser-included offense, which he discussed with Allred. (Ex. G-12, at 178). Allred, however, "was never open to the possibility of going to trial as in a guilt phase." (Ex. G-12, at 179).

Caudill was able to convince Allred to allow presentation of some mitigation; however, Allred was not fully cooperative with defense experts. He would not fully discuss his background and psychological state. There were times he refused to meet with counsel as well as Dr. Day. (Ex. G-12, at 186, 188). In addition, Allred's mother told counsel about Allred being sexually abused as a child by his paternal grandfather. Allred "became angry when we brought it up," which limited the investigation into the allegation. At one point, Allred "threatened to shut us down completely if we were going to go there." Allred was adamant that he had not been abused. (Ex. G-12, at 186; Ex. G-13, at 233, 234). Caudill's original strategy was to present strong mental health mitigation that was tied to the murders as well as tied

to Allred's background and childhood issues. (Ex. G-12, at 189, 190). Caudill originally retained Dr. Danziger early on, but quickly determined that the psychiatrist would not be helpful. (Ex. G-12, at 194-195). Dr. Day was then hired to do psychological evaluations. (Ex. G-12, at 164; Ex. G-13, at 227). Caudill recalled a September 10, 2008, memo, written by co-counsel Sinclair, which indicated Dr. Day had concluded Allred "is a sociopath or psychopath." (Ex. G-13, at 206-207, 208). Caudill said, however, that those terms were not interchangeable with a diagnosis of "antisocial personality disorder." He said, "There are features that are unique to each." (Ex. G-13, at 208). Caudill said that if Dr. Day was called as a witness, she would have offered the diagnosis of antisocial personality disorder, "the only diagnosis that she could offer." (Ex. G-13, at 209, 212). Caudill said Dr. Day could not offer anything helpful regarding mitigation. "You don't want to use them if it's not going to be helpful." (Ex. G-13, at 210, 212). In addition, Allred told Dr. Day that he had "ill will" toward his victims—Caudill did not want another expert to have that information as well. (Ex. G-13, at 221-222).

If Allred had chosen to have a jury, then Caudill believed he could have gotten "some votes" for a life sentence. (Ex. G-13, at 218). Caudill discussed mitigation "at length" with Allred. (Ex. G-13, at 235). Caudill said that if Dr. Day had been called as a witness her opinion that Allred showed traits of antisocial personality disorder would have been harmful to Allred. (Ex. G-13, at 235, 237-238). In his experience, a diagnosis of antisocial personality disorder is not mitigating. (Ex. G-13, at 238).

Rebecca Sinclair was second-chair counsel representing Allred. (Ex. G-13, at 310, 316). Sinclair got involved in Allred's case in the fall of 2007. (Ex. G-13, at 313). She attended meetings that Caudill had with Allred. (Ex. G-13, at 314). Allred was very uncooperative and uncommunicative. (Ex. G-13, at 315). Sinclair wrote a memorandum to Caudill that mentioned Dr. Day had diagnosed Allred as a sociopath or psychopath, but they were her words, not Dr. Day's. Sinclair used the terms "sociopath" and "psychopath" in the context of some case law that she had researched. (Ex. G-13, at 316). Even though Dr. Day did not make that diagnosis, the defense team was concerned that if Dr. Day was called as a witness, she would testify using terms like "psychopathic deviate... [and] antisocial personality disorder traits ..." (Ex. G-13, at 317, 328). Sinclair recalled that she and Caudill informally talked to Dr. Day about whether or not Dr. Day had anything positive to offer in Allred's case. (Ex. G-13, at 317). Sinclair recollected that Dr. Day "very clearly" stated that she would "be more damning than helpful." (Ex. G-13, at 318). As a result, a tactical decision was made not to call Dr. Day as a witness. (Ex. G-13, at 329).

The postconviction trial court denied Allred's claim, concluding that Allred failed to show that Caudill performed deficiently or that any deficiency prejudiced him. As to the deficiency prong, the postconviction court ruled that trial counsel made a strategic decision not to call Dr. Day at the penalty phase because her testimony would have been more aggravating than mitigating. Finding the testimony of both experts not credible, the court determined that the new mental health evidence

adduced in postconviction—the diagnoses provided by Caddy and Geffken—would not have altered the sentencing outcome. (Ex. G-11, at 1859-1867).

After identifying the standard of review as *Strickland,* 466 U.S. 668, the Florida Supreme Court affirmed the postconviction trial court's denial of Allred's ineffective assistance claim. *Allred v. State (Allred II)*, 186 So. 3d 530, 539 (Fla. 2016). Like the postconviction trial court, the Florida Supreme Court evaluated Caudill's performance as to each of the three deficiencies that Allred alleged. First, the court concluded that Caudill reasonably relied on Dr. Day's opinion. *Id.* at 536–37. It held that Dr. Day had "clearly indicated," and Caudill correctly understood, "that her testimony would be more aggravating than mitigating." *Id.* at 537. Second, the court concluded that Caudill's background investigation was not deficient. *Id.* at 537–38. Third, the Florida Supreme Court determined that Caudill's decision not to call Dr. Day "did not require the continued search for a more favorable mental health opinion." *Id.* Caudill's failure to find and present a favorable mental health expert in the penalty phase did not constitute deficient performance. *Id.* In addition, Caddy and Geffken were not credible, and the evidence presented at the postconviction hearing "established neither that [Allred] was in a dissociative state nor that he suffered from an autism spectrum disorder." *Id.* at 538–39. Thus, Allred failed to present evidence of a favorable opinion. But even if he had, the court stated that "securing a more favorable expert opinion" would not "undermine the sufficiency" of Dr. Day's opinion, on which Caudill was entitled to rely. *Id.* at 539. Allred did not file a petition for writ of habeas corpus in state court.

C. Federal Court History

Allred then filed a petition for a writ of habeas corpus in federal district court, raising several claims, including a claim that trial counsel rendered ineffective assistance by failing to obtain a reasonably competent mental health evaluation. (Petitioner's Appendix H).[3] The district court issued an order denying the petition on August 3, 2021. (Petitioner's Appendix G). Judgment was entered on August 4, 2021. The district court declined to issue a certificate of appealability ("COA"). (Petitioner's Appendix C).

Allred filed an application requesting a COA with the Eleventh Circuit on August 8, 2022. In a January 5, 2023, order, the Eleventh Circuit granted Allred a certificate of appealability on his claim that trial counsel was constitutionally ineffective in two ways, for failing to (1) conduct a sufficient background investigation and (2) ensure a reasonably competent mental health evaluation for Allred's penalty phase. (Petitioner's Appendix B).

Oral argument was held on November 15, 2023, and the Eleventh Circuit issued its opinion on April 11, 2024, denying Allred's appeal.[4] (Petitioner's Appendix A). In affirming the denial of habeas relief, the circuit court concluded:

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[3] After Petitioner filed his federal habeas petition, the district court stayed the proceeding based on *Hurst v. Florida*, 136 S. Ct. 616 (2016)3 ("*Hurst I*"). (Doc. Nos. 7, 13.) Petitioner filed a successive state post-conviction motion raising a *Hurst* claim, which the circuit court denied. (Ex. M-1 at 150-52.) The Florida Supreme Court affirmed. (Ex. Q); *see also Allred v. State*, 230 So. 3d 412 (Fla. 2017) ("*Allred III*").

[4] In its opinion, the court of appeals noted: Allred's argument on appeal, however, addresses only (2), counsel's failure to ensure a reasonably competent mental health evaluation. He does not argue that Caudill performed a deficient background

> Our reweighing of the totality of the evidence in mitigation against the evidence in aggravation shows that Allred was unable to shift the balance of the sentencing factors. Although Allred argues that evidence of his mental state should have been presented at trial, the mental health evidence adduced at the postconviction hearing—notwithstanding the testimony found not credible—would have been of little value. The mental health expert testimony presented was either supportive of existing aggravating factors like premeditation, supportive of new and potentially aggravating mental health diagnoses like antisocial personality disorder, or cumulative of mitigating evidence the sentencing court considered. We therefore cannot say that the Florida Supreme Court's prejudice ruling was "contrary to" or "an unreasonable application of [ ] clearly established Federal law." 28 U.S.C. § 2254(d)(1). The court's decision withstands our highly deferential review under AEDPA, and we affirm the denial of relief on Allred's penalty phase ineffective assistance of counsel claim.

Allred v. Sec'y, Fla. Dep't of Corr., No. 22-12331, 2024 WL 1578019, at *15 (11th Cir. Apr. 11, 2024).

A petition for writ of certiorari was filed by Allred on August 9, 2024, to which this response issues.

REASONS FOR DENYING THE WRIT

The Eleventh Circuit Properly Analyzed the Ineffective Assistance of Counsel Claim Under This Court's Precedent.

In recognizing that neither Dr. Caddy's nor Dr. Geffken's testimony would have changed the outcome of Allred's penalty phase, the lower courts, including the Eleventh Circuit, correctly rejected Allred's claim that his trial counsel was

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investigation; instead, he now argues that Caudill failed to investigate the basis of Dr. Day's evaluation and opinion, which is simply another way of saying that Caudill unreasonably relied on Dr. Day's opinion in deciding not to call her as a witness. We therefore discuss only the claim that Caudill was ineffective in failing to ensure Allred underwent a reasonably competent mental health evaluation for the penalty phase. (Petitioner's Appendix A).

ineffective for failing to obtain a competent mental health evaluation during the penalty phase. The court of appeals acknowledged that the evidence admitted in the postconviction evidentiary hearing both undermined the evidence presented to the sentencing court that it found mitigating and would open the door to damaging evidence that may have hurt Allred more than it helped him. Regardless, Allred contends that this is an unreasonable interpretation of the facts, the testimony, and of *Strickland v. Washington*, 466 U.S. 668 (1984) and *Wiggins v. Smith*, 539 U.S. 510, 524 (2003). Pet. at 21.

Allred's ineffective assistance of penalty phase counsel claim is wholly reliant on the particular facts of his case and is of no significance to anyone other than the present parties. Allred cites no law or case which is in conflict with the decision of the Eleventh Circuit. *See*, Rule 10, *Rules of the Supreme Court of the United States.* Allred simply disagrees with the court's conclusions and reargues the issue as he did below. In essence, Allred asks this Court to conduct a new factual determination rather than giving the state court's factual determination the deference that is required under AEDPA. The law is well-settled that this Court does not grant a certiorari "to review evidence and discuss specific facts." *United States v. Johnston*, 268 U.S. 220, 227 (1925); *Texas v. Mead*, 465 U.S. 1041 (1984). This Court is "consistent in not granting the certiorari except in cases involving principles, the settlement of which is of importance to the public as distinguished from that of the parties." *Rice v. Sioux City Memorial Park Cemetery, Inc.,* 349 U.S. 70 (1955). Consequently, this petition should be denied.

1. **The proper application of the AEDPA standard supports denial of certiorari.**

28 U.S.C. Section 2254(d)(1)(3) mandates that review of the denial of habeas corpus relief is circumscribed to focusing solely on the propriety of the state court's decision on the merits of the claim of ineffective assistance of penalty phase counsel. Federal habeas relief is not available unless the state decision is contrary to, or involved an unreasonable application of, clearly established federal law as determined by the United States Supreme Court, or the state court's determination of facts was unreasonable in light of the evidence. *Williams v. Taylor*, 529 U.S. 362, 412-13 (2000). *See Woodford v. Visciotti,* 537 U.S. 19 (2002) (explaining when a habeas applicant alleges a Sixth Amendment violation, he must show that the state court applied Strickland in an objectively unreasonable manner); *Yarborough v. Gentry*, 124 S. Ct. 1 (2003) (noting that the focus is on the state court's application of governing federal law).

AEDPA "imposes a highly deferential standard for evaluating state-court rulings and demands that state-court decisions be given the benefit of the doubt." *Felkner v. Jackson*, 131 S. Ct. 1305, 1307 (2011) (per curiam) (citation omitted). Under ADEPA's deference, even if the reviewing federal court believes the state court's determinations to be incorrect, that alone cannot support a grant of certiorari review. "A state court's determination that a claim lacks merit precludes federal habeas relief so long as fairminded jurists could disagree on the correctness of [the state court's] decision." *Harrington v. Richter*, 562 U.S. 86 (2011) (citation and punctuation omitted). To be granted relief, a petitioner must show that the state

court's merits ruling was so lacking in justification that it was an error so well understood and comprehended in existing law that it was beyond any possibility for fair minded disagreement. *Id.* Here, Allred cannot show that the state court's opinion on *Strickland* deficiency and prejudice, which rested on factual and credibility determinations supported by the record, in any way conflicts with a decision of this Court.

2. The state court determination that counsel's investigation, preparation, and presentation of the mitigation was not deficient was objectively reasonable.

As an initial matter, this is not a case like *Porter v. McCollum,* 130 S. Ct. 447, 453 (2009), as Allred suggests. (Petition at 27-28). In *Porter,* the question before the Court was whether Porter was prejudiced when penalty phase counsel had only one short meeting with the defendant about mitigation, never attempted to obtain any records, and never requested a mental health evaluation for mitigation. *Id.* As a result of counsel's inadequate investigation, defense counsel failed to present Porter's extensive combat experience in the Korean War and its lasting impact upon him. *Porter* applied well established law (*Strickland*) to a much different factual situation from that presented here.

In *Strickland v. Washington,* 466 U.S. 668 (1984), the Court provided both state and other federal courts a standard for determining whether an attorney failed to provide effective representation to a client:

> A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction or death sentence has two components. First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the

> defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. Unless a defendant makes both showings, it cannot be said that the conviction or death sentence resulted from a breakdown in the adversary process that renders the result unreliable.

Strickland, 466 U.S. 668, 687. The Court explained further that because the defendant is required to demonstrate both that the attorney's performance was deficient and that the deficient performance prejudiced the defense, if the defendant makes an insufficient showing as to one of these two components, there is no reason for the reviewing court to address the other. *Strickland,* 466 U.S. 668, 697.

As circumstances would have it, the district court in this case addressed both the deficiency prong and prejudice prong of *Strickland* and the circuit court only addressed the prejudice prong of *Strickland.* Yet, each court determined from its review of the particular prong it examined, that Allred failed to demonstrate that the Florida Supreme Court's decision was unreasonable when viewing that decision through the lens of AEDPA (a writ of habeas corpus shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the decision was contrary to, or involved an unreasonable application of, clearly established Federal law). 28 U.S.C. § 2254(d).

Although Allred argues that evidence of his mental state should have been presented at trial, the mental health evidence adduced at the postconviction hearing—notwithstanding the testimony found not credible—would have been of little value. The mental health expert testimony presented was either supportive of

existing aggravating factors like premeditation, supportive of new and potentially aggravating mental health diagnoses like antisocial personality disorder, or cumulative of mitigating evidence the sentencing court considered. *Allred v. Sec'y, Fla. Dep't of Corr.,* No. 22-12331, 2024 WL 1578019, at *15 (11th Cir. Apr. 11, 2024).

The Eleventh Circuit focused on the prejudice prong of the ineffective assistance claim and explicitly stated that it was reviewing *all* the mitigation evidence presented. It pointed to *Porter,* in finding its task was to review the new evidence presented by Allred at the evidentiary hearing and then 'reweigh the evidence in aggravation against the totality of available mitigating evidence.'" The Eleventh Circuit examined the testimony of the mental health experts who testified both at the trial and at the evidentiary hearing, adopting the credibility and factual findings made by the lower court as required under AEDPA. In evaluating the evidence, the court determined that without Caddy's and Geffken's opinions, the mental health evidence adduced at the evidentiary hearing yielded little in mitigation. The only other testimony indicating that Allred had significant mental health conditions came from Dr. Day, who testified that Allred had features of antisocial personality disorder and psychopathy. The court noted that in a case where a habeas petitioner presented with "antisocial tendencies," that evidence of antisocial personality disorder is "not mitigating but damaging." *Allred v. Sec'y, Fla. Dep't of Corr.*, No. 22-12331, 2024 WL 1578019, at *13 (11th Cir. Apr. 11, 2024) *citing Suggs v. McNeil*, 609 F.3d 1218, 1231 (11th Cir. 2010) (internal quotation marks omitted).

The court further observed that here, as in *Suggs*, Dr. Day's testimony "would have come at a steep price."

The court of appeal further held that even considering the mitigating evidence presented at trial—that Allred had social difficulties, a troubled family life, and childhood developmental disorders but was a self-sufficient young adult with no prior history of violence—they could not conclude that the Florida Supreme Court unreasonably found no prejudice, given the aggravating circumstances:

> For the cold, calculated, and premeditated aggravator, the evidence of premeditation in the penalty-phase case was strong. The trial court cited the timing of Allred's purchase of the murder weapon, his threatening messages to and about the victims, and his warning to Ruschak about his arrival at the scene as evidence that the murders were preplanned. If Caddy's testimony had been credited, it is possible that his opinion of Allred's diminished capacity might have mitigated the impact of this premeditation evidence. But Caddy's testimony was not credited. And Allred introduced no other evidence at the evidentiary hearing to undercut the cold, calculated, and premeditated aggravator. To the contrary, the evidence adduced at the evidentiary hearing tended to show that the testimony of a mental health expert would have supported the cold, calculated, and premeditated aggravator. Based on her evaluation of Allred, Day opined that his behavior leading up to the murders suggested premeditation. Caddy testified that Allred had a preconceived fantasy of killing Ruschak and Barwick.
>
> To support the heinous, atrocious, or cruel aggravator, the trial court adduced from the 911 call Barwick made while hiding from Allred that she was terror-stricken, anticipating her own death, in the minutes before Allred shot and killed her. It described the 911 call "as the most horrific piece of evidence this court has heard in a homicide case in nearly twenty-three years as a trial judge." And the heinous, atrocious, or cruel aggravator "pertains more to the nature of the killing and the surrounding circumstances" than the Allred's mental state. *Hardwick v. Sec'y, Fla. Dep't of Corr.*, 803 F.3d 541, 561 (11th Cir. 2015) (internal quotation marks omitted). Thus, postconviction testimony about Allred's mental state was unlikely to undermine the heinous, atrocious, or cruel aggravator.

> We have said that the cold, calculated, premeditated and heinous, atrocious, or cruel aggravators are "among the most serious aggravating circumstances." *Id.* at 559. It is improbable that the evidence adduced at Allred's postconviction evidentiary hearing would have reduced the impact of these powerful aggravators sufficiently to introduce the reasonable probability of a different outcome for Allred. *See Pye*, 50 F.4th at 1049 ("We've repeatedly held that even extensive mitigating evidence wouldn't have been reasonably likely to change the outcome of sentencing in light of a particularly heinous crime and significant aggravating factors.").

Allred v. Sec'y, Fla. Dep't of Corr., No. 22-12331, 2024 WL 1578019, at *14–15 (11th Cir. Apr. 11, 2024).

Ultimately, a court's decision comes down to whether, considering the totality of the evidence introduced as both aggravation and mitigation, with the mitigation evidence being viewed to the extent it helps in some ways and hurts in others, is there a reasonable probability that Allred would have received a different sentence. This was a heavily aggravated case with two pre-planned murders, the second of which the victim can be heard screaming for her life. *See Thornell v. Jones*, 144 S. Ct. 1302, 1314 (2024) (reversing the Ninth Circuit's finding of ineffective assistance on habeas review, noting that a case with weighty aggravation will rarely alter the comparative balance of aggravators and mitigators sufficiently to warrant relief). The court of appeals correctly concluded that given the nature, circumstances, and aggravating factors present in the case and the totality of the mitigation, some of which undermined the minimal mitigation the trial court found and much of which is more harmful than helpful, it could not find that the decision of the Florida Supreme Court was unreasonable.

3. **This is a fact-intensive issue not appropriate for certiorari review.**

What Allred really seeks is a fact intensive review of his claim in the hope that this Court will resolve it differently from the state and lower federal courts. Allred's attempt to re-litigate the findings of the Florida Supreme Court is not a proper basis for this court to review the denial of habeas relief on certiorari. As this Court has noted, the AEDPA "modified a federal habeas court's role in reviewing state prisoner applications in order to prevent federal habeas 'retrials' and to ensure that state court convictions are given effect to the extent possible under law." *Bell v. Cone*, 535 U.S. 685, 693 (2002). A fact-intensive, case-specific "retrial" is what Allred would have this Court conduct, and that is not the function of certiorari review. The law is well-settled that this Court does not grant a certiorari "to review evidence and discuss specific facts." *United States v. Johnston*, 268 U.S. 220, 227 (1925); *Texas v. Mead*, 465 U.S. 1041 (1984). This Court is "consistent in not granting the certiorari except in cases involving principles, the settlement of which is of importance to the public as distinguished from that of the parties." *Rice v. Sioux City Memorial Park Cemetery, Inc.* 349 U.S. 70 (1955). *See also Bartlett v. Stephenson*, 535 U.S. 1301, 1304 (2002) (issues with few, if any, ramifications beyond the presenting case do not satisfy any of the criteria for exercise of certiorari jurisdiction).

Allred has done no more than quarrel with the result reached by the State courts and the Federal Courts in turn. That mere disagreement has done nothing to show that the courts below failed to recognize *Strickland* as the controlling legal standard or that they failed to correctly apply *Strickland's* prejudice prong to the

specific facts of Allred's case in finding his claim of ineffective assistance of counsel meritless. The Florida Supreme Court's decision was not contrary to, or an unreasonable application of, *Strickland*. The determination of lack of prejudice is correct under controlling law, is supported by the record, and should not be disturbed. The Circuit Court complied in all respects with the deference requirements of the AEDPA and reached the correct result. For this reason and for all the foregoing reasons, this claim is insufficient to justify the exercise of this Court's certiorari jurisdiction. *See,* Rule 10, *Rules of the Supreme Court of the United States.*

This Court should deny certiorari review where the Eleventh Circuit Court of Appeals' review of the Florida Supreme Court's denial of an ineffective assistance of counsel claim does not conflict with a decision of any other state court of last resort or any decision of any other federal court of appeals. Allred has not proven that both courts' merits determination requires review by this Court.

Consequently, and pursuant to the standards set forth in 28 U.S.C. §2254(d), Allred is not entitled to habeas relief and certiorari should be denied.

CONCLUSION

Based on the foregoing, Respondent respectfully requests that this Court deny the petition for writ of certiorari.

Respectfully submitted,

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