No. 24-5775

IN THE
Supreme Court of the United States

TIMOTHY ROBERT RONK,
Petitioner,

v.

THE STATE OF MISSISSIPPI,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Mississippi

BRIEF IN OPPOSITION

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CAPITAL CASE
QUESTION PRESENTED

Petitioner robbed and murdered his girlfriend by stabbing her multiple times and burning her alive. In his second petition for state post-conviction relief, petitioner claimed that his trial counsel was ineffective for failing to hire an expert to challenge the State's expert evidence showing that petitioner's girlfriend was still alive during the fire, and that his state post-conviction counsel was ineffective for not challenging trial counsel's effectiveness. The Mississippi Supreme Court rejected petitioner's claims. The court ruled that, under state law, petitioner's claims were barred as untimely and successive. And, alternatively, applying *Strickland v. Washington*, 466 U.S. 668 (1984), and its progeny, the court ruled that petitioner's claims lacked merit: petitioner's trial counsel performed adequately by challenging the State's expert on cross-examination, and a different strategy was not reasonably likely to prove that petitioner was not guilty of capital murder at trial.

The question presented is whether this Court should review the state supreme court's rejection of petitioner's ineffective-assistance claims when the decision below rests on two adequate and independent state-law grounds and alternatively rests on a fact-bound rejection of petitioner's claims that applied settled legal standards, and petitioner's claims are meritless and do not raise any lower-court conflict.

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The Mississippi Supreme Court's opinion denying petitioner's motion for leave to file a successive petition for post-conviction relief (Petition Appendix (App.) 1-67) is reported at 391 So. 3d 785.

JURISDICTION

The Mississippi Supreme Court entered judgment on January 11, 2024, and denied rehearing on July 18, 2024. App.1, 68. A petition for certiorari was filed on October 15, 2024. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a).

STATEMENT

In 2008, petitioner Timothy Robert Ronk robbed and murdered his 37-year-old girlfriend Michelle Lynn Craite by stabbing her multiple times and burning her alive in a house fire. A jury convicted petitioner of armed robbery and capital murder and, after finding three aggravating circumstances, sentenced him to death. The Mississippi Supreme Court affirmed petitioner's conviction and sentence, and this Court denied certiorari review. Years after his first motion for state post-conviction relief was denied, petitioner filed a second motion for relief. The present petition for certiorari arises from the Mississippi Supreme Court's denial of that second motion.

1. On August 26, 2008, petitioner stabbed his girlfriend Michelle Lynn Craite multiple times in the back at her home in Biloxi, Mississippi. App.3-4; *Ronk v. State*, 172 So. 3d 1112, 1121 (Miss. 2015). The wounds incapacitated Michelle, who collapsed on her bedroom floor. 172 So. 3d at 1121. Petitioner poured gasoline around Michelle and throughout the house. *Id.* at 1122-23, 1143. He then burned down the house and fled with valuables including a television and Xbox. *Ibid.* That same day, petitioner

withdrew $500 from an ATM and purchased a diamond ring, cigarettes, and other items using Michelle's debit card. *Id.* at 1122-23.

Authorities responded to the fire and discovered Michelle's body. 172 So. 3d at 1121. The fire "severely burned" Michelle and "destroyed her flesh down to the bone." *Id.* at 1121, 1122. Investigators determined that the fire was "intentionally set" and found a "gasoline trail" from the "carport" to "the kitchen and down the hall and into the master bedroom ... where [Michelle] had died." *Id.* at 1122.

Police identified petitioner as the primary suspect. 172 So. 3d at 1122. Three weeks prior to Michelle's death, petitioner was convicted of grand larceny and sentenced to ten years' imprisonment. *Id.* at 1147. He was serving house arrest in Michelle's home at the time of the murder. *Ibid.*

The day after the murder, petitioner was arrested leaving a store in Jacksonville, Florida with Heather Hindall. 172 So. 3d at 1123. Police found a knife in petitioner's car. Hindall told police that she and petitioner had an online relationship since July 2008. She knew that petitioner had a "roommate" in Mississippi but believed he planned to move to Florida to marry her. *Ibid.* On the morning of the murder, petitioner told Hindall that he was loading his car and coming to Florida. Petitioner met Hindall that evening and proposed to her with the ring he purchased with Michelle's debit card. Petitioner told Hindall that he and Michelle had an argument and that she tried to attack him with a knife. Petitioner said that he disarmed Michelle and stabbed her when she threatened to kill him. Then he "poured gasoline over everything," "lit it on fire," and fled. *Ibid.*

Petitioner later "confirmed this story" in a letter to Hindall from prison. 172 So. 3d at 1123. Petitioner called Michelle a "rich widow" and an "alcoholic millionaire." *Ibid.* He admitted to "us[ing] her" "to buy [a] ring" for Hindall and "to [get] money" for his "trip" to Florida. *Ibid.* Petitioner said that, before Michelle's death, Michelle "began slapping him" and "approached him with a knife" after petitioner said he was leaving. *Ibid.* Petitioner said that he "never intended to kill" Michelle and "stabbed her only after she threatened to shoot him." *Ibid.* When he "realized what [he] had done," he "cleaned the knife off, changed [his] clothes, doused the house with gasoline, set it on fire[,] and drove off." *Ibid.*

2. Petitioner was indicted and tried for armed robbery and for capital murder based on a felony-murder theory with the underlying crime of arson. App.3-4. To convict on the capital-murder charge, the jury had to find that petitioner killed Michelle "without the authority of law" while "engaged in the commission of the crime of ... arson." Miss. Code Ann. § 97-3-19(2)(e); *see* App.17, 23.

At the guilt phase of trial, the State introduced evidence showing that petitioner stabbed Michelle in the back and then burned her alive by dousing her house in gasoline and setting it on fire as she lay incapacitated. App.17-22; *see* App.23-24. Dr. Paul McGarry, the forensic pathologist who performed Michelle's autopsy, testified that petitioner's knife "severed a major artery in [Michelle's] chest, punctured both her lungs, and pierced her liver, filling her chest and abdominal cavities with blood." App.23-24. Dr. McGarry said that the stab wounds were the cause of Michelle's death and would have killed her within "minutes to an hour." App.17, 19. Dr. McGarry also determined that Michelle "was still alive and breathing

during the fire." App.24. Michelle suffered "burning and blistering to the lining of her mouth, tongue, larynx, and windpipe." *Ibid.* Dr. McGarry said that such blistering "only" happens "when very hot burning fumes are inhaled and eventually blister the lining of the respiratory track." App.17-18. He testified that Michelle's blood and internal tissue "had a bright cherry red color." App.18. That results from "breath[ing] in ... carbon monoxide" from a fire, which "combin[es] with the hemoglobin" in a victim's blood to produce a distinct appearance. *Ibid.* Dr. McGarry also said that testing confirmed that Michelle's blood "contained a high level" of carbon monoxide. App.19; *see* App.18-19. Dr. McGarry concluded that Michelle could feel the "pain of her body being burned" but her wounds "prevented her escape." App.19.

Defense counsel argued that petitioner "stabbed" Michelle "in self-defense," "panicked," and set the house on fire "to cover his involvement." Pet. 3; *see* App.30, 32, 45-48. Counsel also claimed that Michelle "was already dead" when petitioner "set her house on fire." App.23. And so, counsel argued, her death did not occur "during the commission of an arson," which meant that the killing was not felony capital murder. *Ibid.* For support, counsel "challenged" Dr. McGarry's view that Michelle "was conscious after the stabbing." App.19; *see* App.19-21. Counsel cross-examined Dr. McGarry on how Michelle "could have breathed with collapsed lungs" and whether "the hot, expanding gas" from the fire could have caused "an intake of flame ... down [Michelle's] larynx." App.20, 21. Dr. McGarry maintained that Michelle was "conscious" after the stabbing; that she "did not have an injury that would make her unconscious" until she "lost enough blood"; that she was "incapacitated" but her "brain" "function" was "still ... intact" for a time; that she was "in respiratory distress"

but could "do some breathing" during the fire; and that any "intake of flame" was due to "[b]reathing inward inhalation." App.19, 20, 21 (brackets in original).

The jury convicted petitioner of armed robbery and capital murder. App.3.

At the penalty phase, the jury found three aggravating circumstances and that those factors outweighed any mitigation case. App.4. First, Michelle's murder "was committed while" petitioner "was engaged in the commission of [a]rson." *Ibid.* (brackets in original). Second, the murder "was committed by a person under sentence of imprisonment." *Ibid.* (As noted, petitioner was convicted of grand larceny three weeks before Michelle's death. *Supra* p. 2.) And third, the murder "was especially heinous, atrocious, or cruel." App.4. The jury sentenced petitioner to thirty years in prison for the robbery and to death for the murder. App.2.

The Mississippi Supreme Court affirmed on direct appeal. 172 So. 3d 1112 (Miss. 2015). This Court denied certiorari. 578 U.S. 926 (2016).

3. a. The mandate in petitioner's direct appeal issued on September 24, 2015. That triggered Mississippi's one-year statute of limitations to seek state post-conviction relief. *See* Miss. Code Ann. § 99-39-5(2); *Puckett v. State*, 834 So. 2d 676, 677 (Miss. 2002). In September 2016, petitioner sought post-conviction relief. *Ronk v. State*, 267 So. 3d 1239, 1246-47 (Miss. 2019). The Mississippi Supreme Court denied relief and later denied rehearing. *Id.* at 1239, 1291. Petitioner then sought federal habeas review and later obtained a stay to exhaust certain claims not previously raised in state court. App.4; *see* Order at 3-4, *Ronk v. Cain*, Dkt. No. 35, No. 19-cv-00346-HSO (S.D. Miss. Feb. 23, 2021).

b. In August 2022, petitioner moved for leave to file a successive petition for post-conviction relief with the Mississippi Supreme Court. Relevant here, petitioner claimed that his trial counsel was ineffective for "failing to seek funds to hire an independent forensic pathologist to review Dr. McGarry's autopsy report and to challenge his trial testimony," and that his post-conviction counsel was ineffective for "neither investigating nor asserting trial counsel's ineffectiveness." App.16.

Petitioner offered an affidavit from forensic pathologist Dr. James R. Lauridson. App.24-26. That affidavit disputed Dr. McGarry's testimony that Michelle was alive during the fire on two grounds. First, Dr. Lauridson disagreed with Dr. McGarry's view that Michelle's carbon-monoxide level—5.5%—was "abnormally high." App.25. Dr. Lauridson claimed that "[n]ormal carboxyhemoglobin levels range anywhere from 0 percent to as high as 10 percent in smokers"; that Michelle's level "was not an indication of exposure to" fire; and that "forensic pathologists" commonly "consider carbon monoxide as a factor in death associated in fire or smoke deaths only if ... above 10%." App.24-25. Second, Dr. Lauridson disputed Dr. McGarry's opinion that the damage to Michelle's airway showed that she was "burned alive." App.26. Dr. Lauridson claimed that Michelle "died" from "being stabbed" and that the "blistering" to her "airway" "can be attributed to" "post-mortem burning." *Ibid.*

Petitioner argued that Dr. Lauridson's affidavit showed that his trial counsel was ineffective for failing to "investigate[ ] the arson's connection to [Michelle's] death" and seek "funds to hire an independent forensic pathologist." App.26. Petitioner claimed that counsel "tried to challenge Dr. McGarry's opinions" but "lacked counter evidence." *Ibid.* In petitioner's view, "[h]ad trial counsel presented

counter evidence via expert testimony," there was "a reasonable probability" that the "result" of his trial "would have been different." App.28. Petitioner also claimed that his initial post-conviction counsel was ineffective "for neither investigating nor raising trial counsel's ineffectiveness in failing to seek funds to hire a forensic pathologist." *Ibid.* So, according to petitioner, "false forensic evidence went unchallenged throughout trial, appellate, and postconviction proceedings." *Ibid.*

b. The Mississippi Supreme Court denied petitioner's motion. To start, the court ruled that, under the Mississippi Uniform Post-Conviction Collateral Relief Act, the motion was barred on two procedural grounds—as untimely and successive. App. 4-14; *see* Miss. Code Ann. § 99-39-5(2)(b) ("filings for post-conviction relief in capital cases" must be made "within one (1) year after conviction"); *id.* § 99-39-27(9) (barring "second or successive" applications for post-conviction relief). The court ruled that no exception applied to the Act's time and successive-writ bars. The court first held that petitioner's claims were not based on "newly discovered evidence." App.5; *see* Miss. Code Ann. §§ 99-39-5(2)(a)(i), 99-39-27(9). The court next held that petitioner could not rely on a "judicially crafted" "fundamental-rights exception" that "can[not] apply to the substantive, constitutional bars codified by the [State] Legislature" in the UPCCRA. App.2, 6; *see* App.5-6. Last, the court held that no "ineffective-assistance-of-post-conviction-counsel exception" applied to the UPCCRA's "substantive" time and successive-writ bars. App.6; *see* App.6-14. The court acknowledged that, unlike federal law and other States, Mississippi recognizes a judicially created right to effective assistance of post-conviction counsel in capital cases. App.10-11. But, the court ruled, applying such a right to alter the UPCCRA was "a decision for the

Legislature," not state courts. App. 12; *see* App.8-14. The court thus overruled its prior precedent that had applied an ineffective-assistance-of-post-conviction-counsel exception to the UPCCRA's time and successive-writ bars in capital cases. App.9. But, because the court reached that decision "for the first time" in petitioner's case, it independently "address[ed] the merits" of his claims. App.14.

On the merits, the court ruled that petitioner's ineffective-assistance arguments failed. App.14-32. The supreme court explained that the two-part test set out in *Strickland v. Washington*, 466 U.S. 668 (1984), and its progeny governs petitioner's claims. App.14. "First, counsel's performance must have been deficient—i.e., 'counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment.'" *Ibid.* (quoting *Strickland*, 466 U.S. at 687). In making that assessment, a reviewing court applies "a strong presumption" that counsel's conduct "fell within the wide range of reasonable professional assistance." App.14-15. "Second," counsel's deficient performance "must have prejudiced the defense—i.e., 'counsel's errors were so serious as to deprive the defendant of a fair trial ... whose result is reliable.'" App.15 (quoting *Strickland*, 466 U.S. at 677). That standard requires showing a "reasonable probability" that the result at trial "would have been different but for counsel's errors." *Ibid.*

Applying these principles, the Mississippi Supreme Court rejected petitioner's "layered" ineffective-assistance claims. App.16; *see* App.14-32. On performance, the court concluded that trial counsel's "challenge[ ]" to "Dr. McGarry's opinions" on cross-examination was not deficient. App.29. Counsel "questioned" Dr. McGarry's conclusions on Michelle's "consciousness," "asked how she could have breathed with

collapsed lungs," and "suggested that the hot, expanding gas caused the blistering and burning in her airway" without her being alive during the fire. *Ibid.* The court stressed that, as this Court has recognized, "'*Strickland* d[id] not enact Newton's third law for the presentation of evidence, requiring for every prosecution expert an equal and opposite expert from the defense.'" *Ibid.* (quoting *Harrington v. Richter*, 562 U.S. 86, 111 (2011)). And "'cross-examination'" itself can "'be sufficient to expose defects in an expert's presentation.'" *Ibid.* (quoting *Richter*, 562 U.S. at 111).

On prejudice, for two independent reasons, the supreme court concluded that petitioner failed to show "a reasonable probability" that the result of his trial or sentencing would have been different. App.28; *see* App.29-32. First, the court ruled that Dr. Lauridson's affidavit "d[id] not disprove Dr. McGarry's opinion" that Michelle was alive during the fire. App.31; *see* App.29, 30-32. "[E]ven if" Michelle's carbon-monoxide level were normal, that did not refute Dr. McGarry's "opinion," which relied on a blood test *and* the appearance of Michelle's "blood and tissues." App.30. The court further stressed that Dr. Lauridson "d[id] not exclude" "inhaling hot, burning fumes as a possible cause" of "the burning and blistering to [Michelle's] airway." App.31. Dr. Lauridson contended that Dr. McGarry's explanation was "highly subjective"—not "false"—and claimed without any "rationale" that damage to Michelle's airway "*can be* attributed" to "post-mortem burning"—"not *is* attributable" to such burning. *Ibid.* (emphases added). And Dr. Lauridson failed to "rebut Dr. McGarry's testimony that [Michelle] could have lived up to an hour after the stabbing," which left enough time for her "[t]o have been alive during the fire." App.31, 32. Second, the court concluded that there was "no reasonable probability"

that Dr. Lauridson's testimony would have changed the outcome because, "[n]o matter" when Michelle died, "the murder and arson were part of one continuous transaction." App.29, 30. Under Mississippi's felony-murder "one-continuous-transaction" rule, where a killing and certain felonies "are connected in a chain of events and occur as part of the res gestae, the crime of capital murder is sustained." App.30. Here, the court concluded that the murder and arson "were clearly part of one continuous transaction." *Ibid.* By petitioner's "own account," he "stabbed" Michelle, "cleaned the knife," "changed [his] clothes," "doused the house with gasoline," "set [the house] on fire," and "drove off" within "minutes." App.30, 32.

Justice Kitchens, joined by Justices King and Ishee, dissented. App.60-67. The dissent argued only that claims of ineffective assistance of post-conviction counsel should be "exempted" from the UPCCRA's time and successive-writ bars in capital cases. App.60. The dissent did not address the merits of petitioner's claims.

REASONS FOR DENYING THE PETITION

Petitioner asks this Court to decide (1) whether defense counsel's "failure ... to seek funding for an independent expert" and "failure to challenge the State's" allegedly "flawed expert testimony before or during trial" violates the Sixth Amendment right to counsel, and (2) whether "a novel procedural rule [can] be used by a state court in a death penalty case to preclude review of a federal constitutional claim." Pet. i; *see* Pet. 15-32. This case is not a vehicle for resolving those questions, the decision below is correct, and this case does not meet any of the traditional certiorari criteria. The petition should be denied.

1. This case is not a vehicle to decide the questions that the petition presses.

a. On the first question presented, this Court lacks jurisdiction to review the Mississippi Supreme Court's resolution of petitioner's ineffective-assistance claims because that court's decision rests on adequate and independent state-law grounds.

This Court "will not review judgments of state courts that rest on adequate and independent state grounds." *Herb v. Pitcairn,* 324 U.S. 117, 125 (1945). "This rule applies whether the state law ground is substantive or procedural." *Coleman v. Thompson,* 501 U.S. 722, 729 (1991). And where, as here, this Court is asked to directly review a state-court judgment, "the independent and adequate state ground doctrine is jurisdictional." *Ibid.*

That rule bars this Court's review. The Mississippi Supreme Court's resolution of petitioner's ineffective-assistance claims rests on two "state law ground[s]." *Coleman*, 501 U.S. at 729. First, as that court ruled, petitioner's claims are barred by the Mississippi Uniform Post-Conviction Collateral Relief Act's one-year limitations period. App.4-14. Under that Act, "filings for post-conviction relief in capital cases" must be made "within one (1) year after conviction." Miss. Code Ann. § 99-39-5(2)(b). Petitioner's conviction became final in 2015, yet he did not file this present motion until 2022—well beyond the one-year limitations period. Second, as the court also ruled, petitioner's claims are barred by the successive-writ prohibition imposed by the UPCCRA. App.4-14. Under that Act, "[t]he dismissal or denial of an application under this section is a final judgment and shall be a bar to a second or successive application under this article." Miss. Code Ann. § 99-39-27(9). The Mississippi Supreme Court denied petitioner's first motion for post-conviction relief. *Ronk v.*

State, 267 So. 3d 1239 (Miss. 2019). So his present motion is successive and barred. The court was thus required to deny all the claims he pressed in his successive petition. Miss. Code Ann. § 99-39-27(5).

Those state-law grounds are "independent of" federal law and "adequate to support the judgment" below. *Coleman*, 501 U.S. at 729. Start with independence. A state-law ground is "independent of federal law" if its resolution does not "depend upon a federal constitutional ruling on the merits." *Stewart v. Smith*, 536 U.S. 856, 860 (2002) (per curiam). The UPCCRA's time and successive-writ bars satisfy that standard because both apply without regard for federal law. Because the decision below was not "entirely dependent on" federal law, did not "rest[ ] primarily on" federal law, and was not even "influenced by" federal law, it is "independent of federal law." *Foster v. Chatman*, 578 U.S. 488, 499 n.4 (2016). Now take adequacy. A state-law ground is "adequate to foreclose review" of a "federal claim" when the ground is "firmly established and regularly followed." *Lee v. Kemna*, 534 U.S. 362, 376 (2002). The time and successive-writ bars satisfy that standard. Longstanding precedent holds that Mississippi's time and successive-writ bars are firmly established and regularly followed. *See Sones v. Hargett*, 61 F.3d 410, 417-18 (5th Cir. 1995) (holding that the Mississippi Supreme Court "regularly" and "consistently" applies the Act's time bar); *Moawad v. Anderson*, 143 F.3d 942, 947 (5th Cir. 1998) (finding the Act's successive-writ bar an "adequate state procedural rule"); *Lott v. Hargett*, 80 F.3d 161, 165 (5th Cir. 1996) (finding the Act's time and successive-writ bars "adequate" to support judgment because they are "consistently or regularly applied").

Because this Court's "only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights," *Herb*, 324 U.S. at 125-26, and because the Mississippi Supreme Court's decision denying petitioner's post-conviction-relief motion was based on state-law rules that are independent of federal law and are consistently followed, this Court lacks jurisdiction and should deny review on that basis alone.

Petitioner claims that the adequate-and-independent-state-ground doctrine does not apply because the "procedural denial" of his "ineffective assistance of counsel claims was novel and unforeseeable." Pet. 30. That is wrong. *Contra* Pet. 30-32.

Petitioner does not dispute that the UPCCRA's time and successive-writ bars are "independent of" federal law and "adequate to support the judgment" below. *Coleman*, 501 U.S. at 729. But he claims that the Mississippi Supreme Court's abrogation of a judicially created *exception* to the UPCCRA's bars for ineffective-assistance-of-post-conviction-counsel claims shows that the time and successive-writ bars are not "firmly established" or "consistently or regularly applied." Pet. 32. Not so. The relevant issue is the application of the UPCCRA's time and successive-writ bars *themselves*—not the creation or rejection of a judicially created exception to them. That the Mississippi Supreme Court closed an extra-statutory loophole does not change that the time and successive-writ bars are "firmly established" and "consistently or regularly applied" to prohibit review of untimely or successive claims. The time and successive-writ bars were on the books for years before petitioner's crimes. *E.g.*, 2000 Miss. Laws Ch. 569 (H.B. 1228); 1995 Miss. Laws Ch. 566 (H.B. 541). So petitioner cannot claim that he was not "fairly ... apprised" of their

"existence." *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 457 (1958). Nor can he have "justifi[ably] reli[ed]" on an exception to those bars in filing his untimely and successive motion for post-conviction relief. *Contra* Pet. 32 (quoting *Patterson*, 357 U.S. at 457 (1958)). The cases petitioner relies on do not help him. None involved a longstanding statutory scheme like the UPCCRA. *See Patterson*, 357 U.S. at 457-58 (no adequate state ground where "nothing" in state law "suggest[ed] that mandamus [was] the exclusive remedy for reviewing [certain state] court orders") (emphasis omitted); *Bouie v. City of Columbia*, 378 U.S. 347, 354 (1964) ("state-court decision on a question of state procedure" was "unforeseeable and unsupported"); *Ford v. Georgia*, 498 U.S. 411, 424 (1991) ("retroactive[ ]" application of a rule "unannounced at the time of petitioner's trial"); *Johnson v. Mississippi*, 486 U.S. 578, 587 (1988) (claimed procedural bar was "contrary" to "the weight of [state] law").

b. On the second question presented, the Mississippi Supreme Court's abrogation of a judge-made exception to the UPCCRA's bars raises a pure issue of state law that this Court cannot review.

This Court lacks the "power" to resolve state-law issues that do not implicate "federal rights." *Herb,* 324 U.S. at 125, 126. In resolving petitioner's motion, the state supreme court overruled its prior decision applying a "judicially crafted" "ineffective-assistance-of-post-conviction-counsel exception to the UPCCRA's [time and successive-writ] bars." App.2-3; *see* App.4-14, 59. That decision does not implicate any federal issue. The UPCCRA is a state statute that governs state post-conviction proceedings. And as the court below observed, "'[t]here is no [federal] constitutional right to an attorney in state post-conviction proceedings.'" App.10 (quoting *Coleman*,

501 U.S. at 752); *see Pennsylvania v. Finley*, 481 U.S. 551, 557 (1987) (States "have no obligation" to allow proceedings for post-conviction relief at all). So litigants (like petitioner here) "'cannot claim constitutionally ineffective assistance of counsel in such proceedings'" under federal law. App.10 (quoting *Coleman*, 501 U.S. at 752). The Mississippi Supreme Court rested its now defunct ineffective-assistance-of-post-conviction-counsel exception on an interpretation of state law. *See Grayson v. State*, 118 So. 3d 118, 126 (Miss. 2013) (holding that post-conviction petitioners in capital cases "have a right to the effective assistance of [post-conviction] counsel" under state law), *overruled by Ronk*, 391 So. 3d 785. That court's decision below to jettison the exception also rests on an interpretation of state law. App.12 ("Whether Mississippi law should except ineffective-assistance-of-post-conviction-counsel claims from the UPCCRA's bars ... is a decision for the [Mississippi] Legislature."); *see* App.10 ("[N]o federal constitutional right is at stake.").

Petitioner claims that the Mississippi Supreme Court's decision improperly "bar[s] review of ... federal constitutional claim[s]." Pet. 30 (formatting omitted); *see* Pet. 30-32. That argument ignores that petitioner has no federal right to state post-conviction relief proceedings—let alone to successive proceedings. *E.g.*, *Finley*, 481 U.S. at 557. And litigants like petitioner *can* seek review of federal constitutional claims in state post-conviction proceedings; they simply must comply with the state-law procedures that govern those proceedings, including the UPCCRA's time and successive-writ bars. *E.g.*, *Coleman*, 501 U.S. at 750.

2. In any event, the Mississippi Supreme Court's alternative merits holding is correct. App.14-32; *contra* Pet. 16-30. No further review is warranted.

a. As the state supreme court held, petitioner's trial counsel was not ineffective. App.14-32. And, because petitioner's ineffective-assistance claims are "layered," his post-conviction counsel did not err by failing to raise trial counsel's performance on post-conviction review. App.16; *cf. Martinez v. Ryan*, 566 U.S. 1, 14 (2012).

The state supreme court soundly applied this Court's ineffective-assistance precedents. As this Court has held, counsel's representation must meet "an objective standard of reasonableness." *Strickland v. Washington*, 466 U.S. 668, 688 (1984). That requires counsel "to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Id.* at 691. To satisfy that duty, counsel may employ "any number of hypothetical experts ... whose insight might possibly [be] useful." *Harrington v. Richter*, 562 U.S. 86, 107 (2011). But there are "countless ways to provide effective assistance in any given case," and counsel is "entitled to formulate a strategy that [is] reasonable at the time and to balance limited resources in accord with effective trial tactics and strategies." *Id.* at 106, 107. For example, counsel may account for the "possibility" that expert testimony "could shift attention to esoteric matters of forensic science," "distract the jury," or "transform the case into a battle of the experts." *Id.* at 108-09. Ultimately, a "strategic decision[ ]" of "whether to hire an expert" is "entitled to a 'strong presumption' of reasonableness." *Dunn v. Reeves*, 594 U.S. 731, 739 (2021) (per curiam).

As the state supreme court ruled, petitioner's counsel employed a reasonably competent strategy of cross-examining the prosecution's expert, Dr. McGarry, on the timing of Michelle's death without employing a competing expert. App.29. Counsel "challenged" Dr. McGarry's conclusions on Michelle's "consciousness" after the

stabbing; pressed him on how Michelle "could have breathed" during the fire "with collapsed lungs"; and "question[ed]" him as to whether "the hot, expanding gas" from the fire could have caused "an intake of flame ... down [Michelle's] larynx" to try to show that Michelle was not alive during the fire. App.19, 20, 21. That strategy was objectively reasonable. That it was ultimately unsuccessful does not show that it was constitutionally defective. *Cf. Strickland*, 466 U.S. at 689 (courts must not "conclude that a particular act or omission of counsel was unreasonable" simply because "counsel's defense ... proved unsuccessful"). Petitioner faults counsel for not further "investigat[ing]" "the forensic issues related to the timing of the fire relative to [Michelle's] death" leading up to trial. Pet 11; *see* Pet. 4-7, 14, 16-23. That decision, petitioner claims, was unreasonable because if the fire "occurred after" Michelle's "killing was completed," then "a capital murder conviction with an underlying felony of arson could not be sustained." Pet. 21. But that is incorrect. Petitioner's argument ignores Mississippi's one-continuous-transaction rule, discussed further below. *Infra* Part 2.b. Under that rule, as the state supreme court recognized, the jury could find petitioner guilty of capital murder even if Michelle died just prior to the fire. App.29-30. So it was reasonable for counsel not to focus heavily on a defense that had little chance of success in the first place. *See Richter*, 562 U.S. at 106 ("*Strickland* ... permits counsel to 'make a reasonable decision that makes particular investigations unnecessary,'" including a decision "not [to] consult ... experts ... or offer their testimony."). Counsel made a reasonable decision to challenge Dr. McGarry's testimony on cross-examination and to focus on other issues, like petitioner's

"strongest primary defense" that he stabbed Michelle in "self-defense." *Ronk v. State*, 267 So. 3d 1239, 1283 (Miss. 2019).

Petitioner also claims that "trial counsel had no legitimate strategic reason for failing to exercise his right to seek court funding to hire a forensic pathologist" to rebut Dr. McGarry's testimony. Pet. 19-20. That conclusory assertion fails to overcome the "'strong presumption' of reasonableness" that attaches to his counsel's "decision[ ]" on "whether to hire an expert." *Reeves*, 594 U.S. at 739. Petitioner's counsel could have reasonably decided not to hire a forensic pathologist to instead focus the defense's efforts on self-defense, or out of concern that additional expert testimony would "distract the jury" (*Richter*, 562 U.S. at 108) or backfire by further highlighting Dr. McGarry's testimony. And petitioner ignores that counsel needed no expert assistance to "press[ ]" and "challenge[ ]" Dr. McGarry's central conclusions. App.20, 21. Petitioner claims that "it is not enough" that trial counsel "merely cross-examined Dr. McGarry." Pet. 22. But as this Court has stressed, "[i]n many instances cross-examination will be sufficient to expose defects in an expert's presentation"—without expert involvement. *Richter*, 562 U.S. at 111. As the state supreme court ruled, counsel's cross-examination strategy was not unreasonable. *See* App.28-29; App.29 (quoting *Richter*'s explanation that "*Strickland* d[id] not enact Newton's third law for the presentation of evidence, requiring for every prosecution expert an equal and opposite expert from the defense").

Counsel's performance here contrasts sharply with the performance of counsel in *Hinton v. Alabama*, 571 U.S. 263 (2014) (per curiam), on which petitioner relies. *See* Pet. 19-21, 22. In *Hinton*, defense counsel hired an unqualified firearms expert

(who counsel himself thought was "[in]effective") to rebut the "only evidence linking" the defendant "to the two murders" at issue. 571 U.S. at 265, 268-69. Counsel settled on that expert due to the "mistaken belief" that he could not request additional funds for a qualified expert—a belief that even a "cursory investigation" would have proven wrong and that belied the trial judge's "express invitation ... to seek more funds." *Id.* at 270, 273, 274. This Court held that counsel unreasonably "fail[ed] to seek additional funds to hire an expert where that failure was based not on any strategic choice but on [such] a mistaken belief." *Id.* at 273. But *Hinton* did not suggest that every failure to hire an expert that might be helpful to the defense is deficient performance. Rather, "[t]he *only* inadequate assistance of counsel" in that case "was the inexcusable mistake of law—the unreasonable failure to understand the resources that state law made available ... —that caused counsel to employ an expert that *he himself* deemed inadequate." *Id.* at 275 (first emphasis added).

Petitioner's case is nothing like *Hinton*, where "the only reasonable and available defense strategy require[d] consultation with experts or introduction of expert evidence." 571 U.S. at 273; *see id.* at 274 (Hinton's counsel "knew that he needed [expert] funding to present an effective defense"). Petitioner's central defense here was not based on forensic evidence but on "self-defense" (Pet. 3), and his trial counsel was able to "challenge[ ]" the State's evidence without the aid of an expert (App.29). Dr. McGarry's testimony also was not the "only evidence" (*Hinton*, 571 U.S. at 265) linking petitioner to Michelle's murder. Petitioner admitted that he stabbed Michelle. App.30. And petitioner does not claim that his counsel's decision not to hire an expert was due to any "mistake of law." *Hinton*, 571 U.S. at 275. So petitioner's

case lacks the core element rendering counsel's performance deficient in *Hinton*. *See ibid.* Petitioner has failed to prove that his counsel's decision to rely on cross-examination to rebut Dr. McGarry was not a reasonable "strategic choic[e]." *Ibid.*; *cf. Reeves*, 594 U.S. at 740-42; *Richter*, 562 U.S. at 110-11.

The Mississippi Supreme Court correctly held that petitioner did not overcome the "strong presumption" that his counsel's performance "fell within the wide range of reasonable professional assistance." App.15; *see* App.29.

b. As the Mississippi Supreme Court independently held, counsel's performance did not prejudice petitioner. App.29-32.

An ineffective-assistance claim requires showing deficient performance of counsel *and* that that deficiency "prejudiced the defense." *Strickland*, 466 U.S. at 687. There must be a "reasonable probability" that "the result" of the petitioner's trial "would have been different" with adequate assistance of counsel. *Id.* at 694. And "[t]he likelihood of a different result must be substantial, not just conceivable." *Richter*, 562 U.S. at 112. The Mississippi Supreme Court invoked the governing standards (App.15, 29) and soundly applied them to reject petitioner's claims for two independent reasons (App.29-32; *see* App.15-28).

First, as the Mississippi Supreme Court ruled, the expert affidavit that petitioner submitted on post-conviction review does not disprove Dr. McGarry's conclusion that Michelle was alive when petitioner set the fire. App.29, 30-32. Petitioner's expert, Dr. Lauridson, claims that Michelle died with a carbon-monoxide level "within normal limits" and that damage to her airway "can be attributed" to "post-mortem burning." App.26. So, petitioner argues, Dr. McGarry's conclusion that

Michelle was "alive and breathing during the fire" was "false." Pet. 7, 19; *see* Pet. 6-10, 16-19. Not so. Even if Dr. Lauridson were right about Michelle's carbon-monoxide level, Dr. McGarry's testimony was not "false." Dr. McGarry based his conclusion "not only" on a blood test but on the appearance of Michelle's "blood and tissues." App.30. Dr. Lauridson failed to account for that. And he said only that the damage to Michelle's airway "*can be* attributed" to "post-mortem burning"—without any "rationale." App.31 (emphasis added). That opinion "does not rebut Dr. McGarry's testimony that [Michelle] could have lived up to an hour after the stabbing" nor "exclude" the "inhaling [of] hot, burning fumes" as the "possible cause" of the damage to Michelle's airway. *Ibid.* So petitioner's repeated assertions that Dr. McGarry's testimony was "false," "flawed," or "incorrect" (Pet. 2, 4, 6-10, 15, 16, 21-23) are themselves flawed. His new expert evidence does not "directly challeng[e]" the key "conclusions reached by the prosecution's expert[ ]," and thus does not "establish[ ] prejudice." *Richter*, 562 U.S. at 112.

Petitioner again relies on *Hinton* to claim that he was "clearly prejudiced" by his counsel's failure to use "expert assistance." Pet. 22; *see* Pet. 16-23. And again, petitioner's argument fails. The defendant in *Hinton* "produced three new experts" on post-conviction review who "examined the physical evidence and testified that they could not conclude that any of the six bullets" used in the murders "had been fired from the [defendant's] revolver." 571 U.S. at 270. The defense experts directly "counter[ed]" the conclusion of the prosecution's expert and refuted the "only evidence linking [the defendant] to the two murders." *Id.* at 265, 268, 276. Here, Dr. Lauridson's affidavit does not "undermine the results" of Dr. McGarry's analysis or

"direct[ly] refut[e]" his conclusion that Michelle was alive during the fire. *Richter*, 562 U.S. at 112; *see* App.30-32. So the state supreme court was correct to hold that petitioner failed to show a substantial likelihood of a different result. *See* App.24-32.

Second, the Mississippi Supreme Court alternatively ruled that "the exact timing of [Michelle's] death" did not "matter" because Mississippi adheres to the "one-continuous-transaction" rule in "felony-murder cases" like this one. App.29, 30. That rule "defines the causal nexus required between the killing and the underlying felony" and provides that "where the two crimes . . . are connected in a chain of events and occur as part of the res gestae, the crime of capital murder is sustained." *Ibid.* Unrebutted evidence shows that Michelle's murder was part of the same "continuous transaction" as the fire. Under petitioner's "own account," he "stabbed" Michelle, "cleaned the knife," "changed [his] clothes," "doused the house with gasoline," "set [the house] on fire," and "drove off"—all within "minutes." App.30, 32. And petitioner maintains that he "set[ ] the fire" to "cover his involvement" in the stabbing. Pet. 3. Nothing in Dr. Lauridson's account disproves that petitioner murdered Michelle "while engaged in the commission" of arson under Mississippi Law. App.29. Petitioner's "murder and arson were part of one continuous transaction" under his own theory of the crime (App.30), so there is no "substantial ... likelihood" (*Richter*, 562 at 112) that Dr. Lauridson's testimony would have affected petitioner's capital-murder conviction. *See* App.29-30.

Petitioner argues that Mississippi's one-continuous-transaction rule "is constitutionally infirm." Pet. 24; *see* Pet. 24-30. This case is (again) a poor vehicle to address that issue. Petitioner wraps his criticism of the State's rule in a blanket of

"due process." Pet. 24-32. But the rule's validity is a pure issue of state law. Moreover, as explained above, the Mississippi Supreme Court's decision rests on multiple alternative and independent grounds. And this Court previously denied the invitation to address a similar question on petitioner's direct appeal. *See Ronk v. State*, 172 So. 3d 1112, 1129 (Miss. 2015), *cert. denied*, 578 U.S. 926 (2016).

In any event, petitioner's attack on the one-continuous-transaction rule fails on the merits. *Contra* Pet. 24-30. Mississippi has applied that rule for decades. *E.g.*, *Batiste v. State*, 121 So. 3d 808, 831 (Miss. 2013) (the rule is "settled law"); *Turner v. State*, 732 So. 2d 937, 949-50 (Miss. 1999); *Othie West v. State*, 553 So. 2d 8, 13 (Miss. 1989); *Tony West v. State*, 463 So. 2d 1048, 1055-56 (Miss. 1985); *Pickle v. State*, 345 So. 2d 623, 627 (Miss. 1977). That approach "construe[s]" the State's capital-murder statute consistent with its plain terms and "the intention of the legislature." *Pickle*, 345 So. 2d at 626; *see Othie West*, 553 So. 2d at 13; *Turner*, 732 So. 2d at 949. The capital-murder statute "does not contain a temporal requirement." *Gillett v. Hall*, No. 2:19-CV-44, 2022 WL 602192, at *10 (S.D. Miss. Feb. 28, 2022). The statute applies to certain killings when committed by a person "engaged in the commission of" listed felonies such as "arson," "or in any attempt to commit such felonies." Miss. Code Ann. § 97-3-19(2)(e). Under longstanding principles, "the commission of" a felony "includes the actions of the defendant leading up to the felony, the attempted felony, and flight from the scene of the felony." *Othie West*, 553 So. 2d at 13. Applying those principles, Mississippi courts have consistently held that, under the capital-murder statute, a killing occurs while a person is engaged in the commission of an enumerated felony if the two crimes "formed a continuous chain of events." *Tony West*, 463 So. 2d at

1056; *see Batiste*, 121 So. 3d at 831-33; *Turner*, 732 So. 2d at 949-50; *Othie West*, 553 So. 2d at 11-13; *Pickle*, 345 So. 2d at 625-27. So, as in petitioner's case here, "[t]he fact that the actual moment of the victim's death" may have "preceded consummation of the underlying felony does not vitiate the capital charge" under Mississippi law. *Othie West*, 553 So. 2d at 13; *see* App.30.

Petitioner argues that the one-continuous-transaction rule is a "judicial creation" that conflicts with "a plain reading or strict construction" of the State's capital-murder statute. Pet. 28; *see* Pet. 28-29. But, as explained, the Mississippi Supreme Court—the final arbiter of what Mississippi statutes mean—has rejected that view. *Cf. Bradshaw v. Richey*, 546 U.S. 74, 75-78 (2005). The one-continuous-transaction rule is a reasonable "construction" of the capital-murder statute and "carrie[s] into" "practical[ ]" "effect" the "intention of the legislature." *Pickle*, 345 So. 2d at 626. Petitioner also claims that the rule "relieved the prosecution of its burden of proving beyond a reasonable doubt" "every element" of capital murder in this case. Pet. 26, 28; *see* Pet. 24-28. Not so. The prosecution had to prove (and did prove) beyond a reasonable doubt that petitioner committed arson, that he killed Michelle "without the authority of law," and that he killed her while "engaged in the commission of" arson. Miss. Code Ann. § 97-3-19(2)(e); *see Ronk*, 172 So. 3d at 1129-30 (rejecting on direct appeal petitioner's jury-instruction and sufficiency-of-the-evidence challenges). The one-continuous-transaction rule simply provides the proper context for the capital-murder statute's "engaged in the commission of" requirement. The rule does not impose any presumption or alter the level of proof necessary for a conviction. So this case is thus nothing like the cases petitioner relies on. *See Sullivan v. Louisiana*,

508 U.S. 275, 276-78 (1993) (holding that a "constitutionally deficient reasonable-doubt instruction" cannot be "harmless error"); *Carella v. California*, 491 U.S. 263, 265, 266 (1989) (faulting instructions that "imposed conclusive presumptions" and "directly foreclosed" a jury's "consideration of whether the facts proved established certain elements of the offenses ... beyond a reasonable doubt"); *Sandstrom v. Montana*, 442 U.S. 510, 523-24 (1979) (faulting instructions that a jury may view as imposing a "conclusive" presumption and as "shifting the burden of persuasion to the defendant"); *Jackson v. Virginia*, 443 U.S. 307, 316-20, 324 (1979) (rejecting "no-evidence" standard for insufficient-evidence claims on habeas review).

Petitioner invokes *Bouie v. City of Columbia*, 378 U.S. 347 (1964), to claim that the one-continuous-transaction rule "judicially enlarge[s] two loosely connected events into the ultimate crime of capital murder" and thus violates "[d]ue process." Pet. 29; *see* Pet. 28-30. But the murder and arson that petitioner committed were not "loosely connected." By his own account, petitioner stabbed Michelle and then set fire to her body within "minutes" (App.32), and he set the fire "to cover his involvement" in the killing (Pet. 3). And this case is nothing like *Bouie*. There, this Court rejected an "unforeseeable and retroactive judicial expansion of [the] narrow and precise statutory language" of a trespass statute, which "depriv[ed]" defendants of "fair warning." 378 U.S. at 352; *see id.* at 352-57. Here petitioner *had* fair warning. *Cf. United States v. Lanier*, 520 U.S. 259, 267 (1997) ("[T]he touchstone" of due process "is whether [a] statute, either standing alone *or as construed*, made it reasonably clear at the relevant time that the defendant's conduct was criminal.") (emphasis added). Mississippi courts applied the one-continuous-transaction rule for decades

before petitioner committed capital murder. *See supra* p. 23; *compare Bouie*, 378 U.S. at 354, 356-57 (faulting "unforeseeable state-court construction" that "ha[d] not the slightest support in prior [state court] decisions" that "uniformly" applied a different rule). And, as explained, the rule is a reasonable construction of the State's capital-murder statute. *Compare Bouie*, 378 U.S. at 356 (faulting construction that was "clearly at variance with the statutory language"). Petitioner also claims that the rule is "so vague and amorphous as to violate Due Process," and that "[a]ny event that follows another is, by logic, a continuous chain of events, whether separated by seconds, days, weeks, or months." Pet. 28; *see* Pet. 28-29. That is an unreasonable view of the rule—and a view that the Mississippi Supreme Court has rejected. The rule requires a causal nexus: the killing and underlying felony must be integral parts of the same "res gestae" or continuous "chain of events," and there can be "no break" in the causal "chain." *Pickle*, 345 So. 2d at 626, 627. Here, there was certainly a causal nexus between the stabbing and arson that petitioner committed within moments. Petitioner's complaints about the rule's contours and application here are meritless.

3. Last, this case does not implicate any lower-court conflict or satisfy any of the other traditional certiorari criteria. Petitioner does not attempt to show otherwise. That failure underscores that the petition does not seek review of a recurring legal question—let alone one of nationwide importance—but instead asks this Court to address a fact-bound disagreement with a decision that applies decades-old, settled legal standards. This case does not warrant further review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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