

In the Supreme Court of the United States

JOSEPH WILLIAM HART,
Petitioner,

v.

CHANCE ANDES, WARDEN,
Respondent.

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

BRIEF IN OPPOSITION

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February 6, 2025

**CAPITAL CASE
QUESTION PRESENTED**

Whether the court of appeals erred in holding that a decision of the California Supreme Court, denying petitioner's habeas claim as untimely, rested on an independent and adequate state ground that barred federal review of that claim.

DIRECTLY RELATED PROCEEDINGS

United States Supreme Court:

Hart v. California, No. 99-6694 (Jan. 10, 2000) (denying petition for writ of certiorari on direct appeal).

United States Court of Appeals for the Ninth Circuit:

Hart v. Broomfield, No. 20-99011 (July 11, 2024) (denying petition for rehearing); (Mar. 28, 2024) (affirming district court judgment) (this case below).

United States District Court for the Central District of California:

Hart v. Broomfield, No. CV-05-03633-DSF (Sept. 1, 2020) (entering judgment dismissing habeas petition) (this case below).

California Supreme Court:

In re Hart, No. S152912 (Sept. 28, 2011) (denying petition on state collateral review).

In re Hart, No. S134962 (Mar. 28, 2007) (denying petition on state collateral review).

In re Hart, No. S074569 (Mar. 1, 2006) (denying petition on state collateral review).

People v. Hart, No. S005970 (July 21, 1999) (modifying opinion without change in judgment); (June 1, 1999) (affirming judgment on direct appeal).

California Superior Court, Riverside County:

People v. Hart, No. 25670 (May 27, 1988) (entering judgment of conviction and sentence).

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STATEMENT

Petitioner Joseph William Hart was sentenced to death for the murder of Diana Harper.¹ His petition challenges the denial of federal habeas relief.

1. a. The guilt-phase evidence in Hart’s trial showed that in March 1986, Hart encountered Diana and her friend Amy—both 15 years old—and offered to pay one of them to serve as a lookout while he harvested marijuana. Pet. App. 5.² Hart drove the girls 30 to 40 miles away and had Amy wait at the car while Diana walked up a path with him. *Id.* at 5-6. Eventually, Hart returned to the car alone and told Amy to follow him. *Id.* at 6. Amy soon saw Diana’s partially clothed body lying face down on the ground. *Id.* Amy ran, and Hart chased after her, hitting her with a rock and causing her to fall. *Id.* When Amy asked to speak to Diana, Hart responded, “You’re kind of funny, kid, I’m about to rape you and all you can do is think about your friend.” *Id.* Hart sodomized Amy, forced her to orally copulate him, and then raped her. *Id.* at 6-7. Hart eventually let Amy go after she promised not to tell anyone what had happened. *Id.* at 7.

The jury found Hart guilty of first-degree murder, with rape and sodomy special circumstances, for his attack against Diana. Pet. App. 11. The special

¹ Diana was also known as Diane Harper, and some documents in the record refer to her by that name.

² The appendix to the petition is consecutively paginated and uses item numbers before each page number (e.g., “1-5”). This brief omits the item number and uses the page number only (e.g., “Pet. App. 5”).

circumstances findings made Hart eligible for the death penalty. *Id.* The jury also found Hart guilty of rape, sodomy, and forced oral copulation for his attack against Amy. *Id.*

b. In the penalty phase, the prosecution presented evidence regarding numerous other violent crimes that Hart committed against women before his crimes against Diana and Amy. Pet. App. 11. Those prior crimes included two separate assaults in 1973, in which he attacked women indoors with the intent to rape them; forcible sexual assault of a woman at knifepoint in 1975; forcible oral copulation of a woman whose apartment he entered in the middle of the night in 1975; and an attempted burglary of a woman's apartment in 1975 with the intent to commit sexual assault. *Id.* at 60-63. After his arrest for the last of those crimes, Hart admitted committing all five of the crimes, and he was institutionalized as a mentally disordered sex offender from 1975 to 1978. *Id.* at 11.

The prosecution also presented evidence that Hart had committed another crime a few weeks after his attacks against Diana and Amy: the murder of his 11-year-old niece Shelah. *See* Pet. App. 11-12. His petition for certiorari concerns the evidence of that crime. The evidence showed that a few days before Hart was arrested for his crimes against Diana and Amy, Shelah's body was found at a garbage dump with her hands tied behind her back. *Id.* at 63. Hart lived next to Shelah's house, had regular access to the room where she was sleeping, and was the last person to see her alive. *Id.* at 218-219, 390.

Much of the evidence connecting Hart to that murder was physical. *See id.* at 63-65, 203, 218-219; *infra* pp. 12-13.

Additional evidence tying Hart to Shelah's murder came through the testimony of Randall Gresham, who had shared a jail cell with Hart. Pet. App. 12. According to Gresham, Hart had admitted that he killed Shelah. *Id.*

Defense counsel introduced mitigating evidence, including testimony about Hart's childhood and positive qualities. Pet. App. 12. The jury returned a death verdict. *Id.*

2. On direct appeal, the California Supreme Court affirmed the convictions and sentence. Pet App. 275-402. Among the claims rejected was Hart's claim that Gresham acted as a government agent and that defense counsel performed deficiently by not seeking to exclude Gresham's testimony. *Id.* at 371. Hart then filed a petition for a writ of certiorari from this Court, which this Court denied. *Hart v. California*, 528 U.S. 1085 (2000) (No. 99-6694).

3. Hart filed three petitions for habeas corpus in the California Supreme Court. The first, filed in 1998, raised a claim under *Brady v. Maryland*, 373 U.S. 83 (1963), alleging that the prosecution had failed to disclose additional evidence that could have been used to impeach Gresham. *See* Pet. App. 27, 33, 217. In 2006, the California Supreme Court denied that claim (listed as Claim K) on multiple grounds: "on the merits"; as barred to the extent that "it could and should have been raised on appeal"; and "barred

as untimely under [*In re Robbins*, 18 Cal. 4th 770 (1998)], and [*In re Clark*, 5 Cal. 4th 750 (1993)].” *Id.* at 268.

In 2005, Hart filed a second state habeas petition in the California Supreme Court, raising the same claim. *See* Pet. App. 27, 270. The court again denied his claim on the merits and as procedurally barred, including because it was “untimely under *Robbins*.” *Id.* at 270 (Claim 12).

Hart filed a third state habeas petition in the California Supreme Court in 2007, raising the same claim but supplemented with additional evidence. *See* Pet. App. 215-216, 274. The court denied the claim both because it was untimely under *Robbins* and *Clark* and on the merits. *Id.* at 274.

4. Hart filed a federal habeas petition in 2005, then amended his federal petition after exhausting his claims in state court. Pet. App. 12-13. The district court ultimately denied the amended petition. *Id.* at 13. As relevant here, the court rejected Hart’s penalty-phase *Brady* claims, including his claim based on the assertion that the prosecution failed to disclose material information regarding Gresham. *Id.* at 215-220. The court treated this claim as procedurally barred because the California Supreme Court had denied the claim as untimely, which the court held was an independent and adequate state ground that precluded federal habeas review. *Id.* at 216-217. The court concluded that Hart failed to demonstrate any basis for excusing his procedural default. *Id.* at 218. And it concluded that the state court had

reasonably denied the claim on the merits because the additional impeachment evidence was “immaterial for *Brady* purposes.” *Id.* at 220.

5. The court of appeals affirmed the denial of Hart’s Gresham-related *Brady* claim in an unpublished opinion. Pet. App. 25-34.³ It agreed with the district court that the state court’s denial of the claim as untimely was an adequate and independent ground that procedurally barred federal habeas review. *Id.* at 25-31. The court of appeals concluded that Hart had “not met his burden of showing that California’s timeliness rule was not adequate at the time of his default, in light of his particular circumstances.” *Id.* at 28. The court reasoned that the California Supreme Court had decided *Clark* several years before Hart’s default, and that Hart had “not explained why *Clark* was insufficient to provide him notice of the timeliness rule.” *Id.* at 29. Nor had Hart shown any reason why, in the circumstances of his case, *Clark* was “inadequate to bar his claim.” *Id.*

Finally, the court concluded, Hart had not established the cause and prejudice that would be needed to excuse the default. Pet. App. 30-33. Hart had long been “on notice of the factual basis for this claim.” *Id.* at 32. In any event, the additional impeachment evidence regarding Gresham was not material because it would have been “cumulative of evidence and argument that was already before the jury.” *Id.* at 33.

³ The court rejected other claims and recounted the underlying facts in a concurrently filed published opinion. See Pet. App. 1-24.

The court denied a petition for panel and en banc rehearing, with no judge requesting a vote. Pet. App. 35.

ARGUMENT

The court of appeals correctly applied this Court’s precedent on procedural bars and adequate and independent state grounds. Its decision does not create or implicate any conflict of authority. And Hart’s underlying claim would fail on the merits in any event. No further review is warranted.

1. Under this Court’s precedent, federal courts “will not review a claim rejected by a state court ‘if the decision of [the state] court rests on a state law ground that is independent of the federal question and adequate to support the judgment.’” *Beard v. Kindler*, 558 U.S. 53, 55 (2009) (quoting *Coleman v. Thompson*, 501 U.S. 722, 729 (1991)). As relevant here, the California Supreme Court dismissed Hart’s claim as “untimely,” citing *In re Clark*, 5 Cal. 4th 750 (1993), and *In re Robbins*, 18 Cal. 4th 770 (1998). Pet. App. 268. Hart does not dispute that California’s timeliness requirement is independent of his federal *Brady* claim, so his argument turns on whether the state-law ground was adequate when he filed the operative state habeas petition on November 6, 1998.⁴

⁴ The final due date for Hart to file his reply brief in the direct appeal was July 16, 1997. See Docket, *People v. Hart*, Case No. S005970 (Cal.). His habeas petition should have been filed by October 14, 1997, to be presumed timely under *Clark*.

Clark and *Robbins* require habeas corpus petitions to be filed in the state court “without substantial delay.” *Clark*, 5 Cal. 4th at 799; *see also Robbins*, 18 Cal. 4th at 787. As *Clark* explained, a state habeas petition filed more than 90 days after the final due date for the appellant’s reply brief in the direct appeal must do one of three things to avoid denial as untimely: “establish an absence of substantial delay,” which requires the petitioner to “allege with specificity when he became aware of the factual and legal bases for the claims he now raises”; “explain and justify delayed presentation” of the claims; or show why the petition falls within one of several exceptions for a “fundamental miscarriage of justice.” *Clark*, 5 Cal. 4th at 786-787, 797-798 (internal quotation marks omitted).

To qualify as adequate, a state rule must be “‘firmly established and regularly followed.’” *Walker v. Martin*, 562 U.S. 307, 316 (2011) (quoting *Beard*, 558 U.S. at 60-61). In *Walker*, this Court held that California’s timeliness requirement for habeas petitions is an adequate state procedural ground. 562 U.S. at 312, 321-322. The Court reasoned that the timeliness rule “meets the ‘firmly established’ criterion” based on *Clark* and other California Supreme Court decisions articulating the rule. *Id.* at 317. And the rule is “regularly followed” given that “[e]ach year, the California Supreme Court summarily denies hundreds of habeas petitions by citing *Clark* and *Robbins*.” *Id.* at 318-319.

Hart’s argument fails in light of *Walker*. As the court of appeals recognized, Hart raised his *Brady* claim in a state habeas petition filed five years after the California Supreme Court explained its timeliness rule in *Clark*, and he has not shown that “*Clark* was inadequate to bar his claim.” Pet. App. 29.

2. Notwithstanding this Court’s decision in *Walker*, Hart contends that *Clark* did not establish “an adequate rule under this Court’s precedent.” Pet. 16. Hart’s primary argument is that if *Clark* had established a clear rule on its own, then the California Supreme Court would not have felt the need to further elaborate on the timeliness requirement in two later cases—*Robbins* and *In re Gallego*, 18 Cal. 4th 825 (1998)—both of which were decided several months before Hart’s default. Pet. 16.⁵

That argument lacks merit. As an initial matter, Hart admits that he did not argue in his briefing below “that *Clark* alone was inadequate.” Pet. 14. And his petition for certiorari admits that *Clark* “established” long before his 1998 default that petitions filed more than 90 days after the reply brief in a petitioner’s direct appeal are untimely, unless the petitioner demonstrates

⁵ *Robbins* “elaborate[d] on the timeliness pleading requirements for presumptively untimely habeas petitions, and applie[d] those pleading requirements” to one claim in a habeas corpus petition. 18 Cal. 4th at 817 (Kennard, J., concurring and dissenting). In *Gallego*, the Court addressed a “narrow issue” concerning the circumstances in which its denial of funding for capital habeas investigation “may be relevant to establishing the absence of substantial delay or good cause for such delay.” 18 Cal. 4th at 828.

with specificity that the petition was nevertheless filed without substantial delay or that the delay should be excused. *Id.* at 11.

Although this Court referred to *Clark*, *Robbins*, and *Gallego* as a “trilogy” of “leading decisions” that “describe California’s timeliness requirement,” *Walker*, 562 U.S. at 312, 317, the Court never suggested that California’s timeliness rule was inadequate prior to *Robbins* and *Gallego*. When an appellate court elaborates on aspects of rules announced in prior decisions, that hardly suggests that the original statement of the rule was not firmly established and regularly followed. Indeed, the rule that this Court held to be adequate in *Walker* was the same rule the California Supreme Court explained in *Clark*: if the petition is presumptively untimely, habeas petitioners must “alleg[e] with specificity the absence of substantial delay, good cause for delay, or eligibility for one of four exceptions to the time bar.” *Walker*, 562 U.S. at 316-317 (internal quotation marks omitted).

Hart admits that “*Robbins* and *Gallego* do not conflict with *Clark*.” Pet. 12. And Hart makes no claim that *Robbins* or *Gallego* changed the timeliness requirement in some other way that rendered his *Brady* claim untimely. If anything, because *Robbins* and *Gallego* reiterated and applied California’s timeliness rule—and did so prior to Hart’s default—those decisions underscore

that the rule was firmly established and regularly followed as of November 1998.⁶

Finally, Hart argues that the California Supreme Court erred because his petition *was* timely as a matter of state law. Pet. 17-18. But “it is not the province of a federal habeas court to reexamine state-court determinations on state-law questions.” *Estelle v. McGuire*, 502 U.S. 62, 67-68 (1991). And Hart does not contend that this case falls within the narrow range of “‘exceptional cases’” in which a state court’s “‘generally sound rule’” was “‘applied in a way that ‘renders the state ground inadequate to stop consideration of a federal question.’” *Cruz v. Arizona*, 598 U.S. 17, 26 (2023) (quoting *Lee v. Kemna*, 534 U.S. 362, 376 (2002)). Rather, as the court of appeals observed, Hart “‘identifies nothing unusual about the way California’s procedural bar was applied to his claims.” Pet. App. 30.

3. Hart argues in the alternative that his procedural default should be excused. Pet. 18-21. A petitioner may overcome a state procedural bar by showing cause for the default and prejudice resulting from it. *Harris v. Reed*, 489 U.S. 255, 262 (1989). In the *Brady* context, a petitioner establishes cause when the reason for his failure to bring a timely *Brady* claim “was the State’s

⁶ Hart argues that *Bradford v. Davis*, 923 F.3d 599 (9th Cir. 2019), supports his position that California’s timeliness requirement was not firmly established or regularly followed in 1998. Pet. 14. It does not. In *Bradford*, the Ninth Circuit held that “California’s timeliness rule was adequate as of January 6, 2000” and noted that the petitioner in that case “concedes that California’s timeliness rule was adequate as of 1998.” 923 F.3d at 611.

suppression of the relevant evidence,” and establishes prejudice “when the suppressed evidence is ‘material’ for *Brady* purposes.” *Banks v. Dretke*, 540 U.S. 668, 691 (2004). Hart cannot satisfy those requirements.

Hart asserts that cause exists because “the state’s suppression of the evidence was the reason for failing to develop the facts.” Pet. 18. But as the court of appeals concluded, Hart had sufficient notice to investigate and timely file this claim. Gresham purportedly told Hart before the 1988 trial that Hart’s counsel should contact Gresham to find out “what was going on with the prosecution”; Hart “could have contacted Gresham at any time after his 1988 trial”; and Hart believed as early as his 1995 direct appeal that Gresham was a government agent. Pet. App. 32-33 (internal quotation marks omitted). Hart did not explain below—and does not explain in his petition—why the government’s conduct is the reason “he did not file a claim on this theory until 1998, did not interview Gresham until 2002, and did not file an amended petition based on the interview until 2005.” *Id.* at 33.

Nor has Hart shown prejudice. To establish prejudice, Hart must show “‘not merely that the errors at . . . trial constituted a *possibility* of prejudice, but that they worked to his *actual* and substantial disadvantage, infecting his entire trial with errors of constitutional dimension.’” *Murray v. Carrier*, 477 U.S. 478, 494 (1986) (quoting *United States v. Frady*, 456 U.S. 152, 170 (1982)).

While Gresham’s testimony was part of the prosecution’s presentation, Hart’s trial counsel vigorously cross-examined Gresham based on the

impeachment material already known to counsel at the time. As the California Supreme Court noted in addressing Hart's direct appeal, defense "counsel's cross-examination of Gresham was zealous and thorough" and "[c]ounsel sought to undermine Gresham's credibility by focusing upon Gresham's opportunism in testifying against defendant." Pet. App. 371. Specifically, defense counsel exploited the fact that at the time Gresham decided to testify against Hart, he was facing very serious charges, including attempted murder of a police officer. *Id.* at 215. Gresham understood that he could have been sentenced to 15 years in state prison, but in exchange for testifying in Hart's trial, he would get no more than 10 years. *Id.* at 730-732. Defense counsel also emphasized Gresham's plea agreement in his penalty-phase closing statement, arguing that it undermined Gresham's credibility. *Id.* at 33. The court of appeals was thus correct that any additional impeachment evidence would be "cumulative of evidence and argument that was already before the jury." *Id.*

In addition, the prosecution presented "ample" evidence beyond Gresham's testimony that linked Hart to the murder of Shelah. Pet. App. 209, 218. Shelah lived next door to Hart, and he had ready access to the house where she slept. *Id.* at 201. Hart admitted being in the house around the time she went missing, and he was the last person to see her alive. *Id.* at 209, 390. Shelah was not the sort of child to leave the house with a stranger, but Hart was her uncle, and she was known to accompany him. *Id.* at 205-206, 219. Shortly after Shelah's murder, Hart was seen grading soil in his yard, *id.* at

202, 390, and police found two sets of handcuffs buried under freshly turned soil within a shed in Hart's yard, including one with traces of blood that matched Shelah's blood type. *Id.* at 299, 390. A fiber collected from the handcuffs was similar to the fabric in a black T-shirt Shelah was wearing when her body was discovered. *Id.* Ligature marks on Shelah's arms resembled those made by the handcuffs. *Id.* The cable tie on Shelah's wrists was similar to a cable tie recovered from Hart's bedroom. *Id.* Fibers from Shelah's T-shirt were similar to those collected from one of Hart's vehicles, and animal hairs recovered from her body were similar to samples taken from Hart's vehicle and his dog. *Id.* at 299-300. And consistent with Hart's history of sexual assault, Shelah's shirt was ripped, and there was a semen stain on her pant leg. *Id.* at 63.

Moreover, even without *any* evidence pertaining to Shelah's murder, the prosecution's case established Hart to be an extraordinarily incorrigible and dangerous offender, with a history of repeated violence, rape, and brutality. In 1973, he committed two violent and unprovoked assaults on women indoors. Pet. App. 295-96. In January 1975, he raped a woman at knifepoint in an alley. *Id.* at 296-97. The next month, he broke into another young woman's apartment and forced her to orally copulate him. *Id.* at 297-298. The month after that, he attempted to burglarize yet another young woman's apartment with the intent to rape her. *Id.* at 298. As a result of these crimes, Hart was institutionalized for several years as a mentally disordered sex offender. *Id.*

at 11. And the jury had also just heard extensive guilt-phase evidence about his horrific crimes against Diana (whom he raped and murdered) and Amy (whom he attacked with a rock, taunted, raped, sodomized, and likely would have murdered if she had not convinced him that she would not tell). The evidence about Hart's niece was by no means necessary to the jury verdict given the other evidence of his brutality toward women.⁷

4. Finally, as the preceding discussion shows, even if Hart's *Brady* claim were not defaulted, the claim would still not have entitled him to federal habeas relief. The California Supreme Court summarily denied his claim both because of his default and, in the alternative, on the merits. Pet. App. 268, 270, 274. Under 28 U.S.C. § 2254(d), Hart can receive federal habeas relief only if there was "no reasonable basis" for that merits determination. *Harrington v. Richter*, 562 U.S. 86, 98 (2011). This entails determining what grounds "could have supported" the state court's summary rejection of the merits. *Id.* at 102. Hart is not entitled to federal habeas

⁷ Hart argues in passing that application of California's timeliness bar "would result in a fundamental miscarriage of justice." Pet. 21. This Court limits the "miscarriage of justice" exception to petitioners who can show they are "actually innocent." *Schlup v. Delo*, 513 U.S. 298, 321, 324, 327 (1995) (quoting *Murray*, 477 U.S. at 496). In the death penalty context, a claim of actual innocence requires the petitioner to "show by clear and convincing evidence that, but for a constitutional error, no reasonable juror would have found the petitioner eligible for the death penalty under the applicable state law." *Sawyer v. Whitley*, 505 U.S. 333, 336 (1992). Given his brutal crimes against Diana and Amy and his history of prior violence, Hart certainly has not shown that, but for the additional impeachment evidence of Gresham, no reasonable juror would have chosen a sentence of death.

relief “so long as fairminded jurists could disagree on the correctness of the state court’s decision.” *Id.* at 101 (internal quotation marks omitted).

That is a standard Hart could not possibly meet here. Reasonable jurists could have found that Hart failed to satisfy *Brady*’s materiality requirement because of the brutality of the charged crimes and Hart’s history of violence toward women—not to mention the extensive impeachment of Gresham that in fact occurred at trial. *See* Pet. App. 219-220 (district court’s conclusion that the additional evidence was “immaterial for *Brady* purposes” in light of Hart’s “brutal crimes against Amy Ryan and Diane Harper,” “his history of sexual crimes,” and “all the evidence pointing to [his] guilt as the perpetrator in his niece’s murder”).

CONCLUSION

The petition for a writ of certiorari should be denied.

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February 6, 2025