

No. 24-6099

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

**REPLY BRIEF IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI**

CUAUHTEMOC ORTEGA
Federal Public Defender
LAUREN COLLINS*
HOPE BENTLEY
Deputy Federal Public Defenders
321 East 2nd Street
Los Angeles, California 90012
Telephone: (213) 894-3806
Facsimile: (213) 894-0081
Lauren_Collins@fd.org

Attorneys for Petitioner
**Counsel of Record*

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**REPLY BRIEF IN SUPPORT OF PETITION FOR
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I. ARGUMENT

The issue presented in Joseph Hart’s petition for writ of certiorari is whether the Ninth Circuit misapplied the standard for adequate state grounds, in conflict with this Court’s precedent in *Coleman v. Thompson*, 501 U.S. 722 (1991), and *Lee v. Kemna*, 534 U.S. 362, 375 (2002), when it found that California’s timeliness bar under *Clark*¹ was “firmly established and regularly followed” and applied that bar to Hart’s habeas petition.

Respondent’s brief in opposition (“BIO”) overextends the holding of *Walker v. Martin*, 562 U.S. 307, 320-21 (2011) in order to support its contention that California’s timeliness requirement for habeas petitions was an adequate state ground at the time of the alleged default in this case, on November 6, 1998. (BIO at 7.) *Walker*, involving a noncapital petitioner, particularly addressed whether California’s timeliness guidelines were adequate, despite being discretionary. *Walker*, 562 U.S. at 313, 316. *Walker* did not establish that the timeliness bar is adequate in all applications. Nor

¹ *In re Clark*, 5 Cal. 4th 750 (1993).

did *Walker* alter the framework set out in *Bennett v. Mueller*, 322 F.3d 573, 585 (9th Cir. 2003) for asserting procedural bars, which sets forth a burden-shifting analysis, where the ultimate burden for proving adequacy rests on the State. “[T]he fact that a state procedural rule is adequate in general does not answer the question of whether the rule is adequate as applied in a particular case.” *Jones v. Sussex I State Prison*, 591 F.3d 707, 716 (4th Cir. 2010) (citation omitted); see *Walker*, 562 U.S. at 316 n.4 (describing an exception to a rule that was otherwise deemed adequate).

The timeliness bar applied to Hart’s petition was not adequate at the time it was applied in his case. Respondent, as the Ninth Circuit did, misapprehends the critical interplay between *Clark*, *Robbins*, and *Gallego*. These three cases, as Respondent acknowledges, form a “trilogy” of decisions describing California’s timeliness requirement. (BIO at 9, citing *Walker*, 562 U.S. at 312, 317.) *Clark* was first decided in 1993, but “some points remained unclear.” *In re Robbins*, 18 Cal. 4th 770, 818 (1998) (Kennard, J. dissenting). For that reason, the California Supreme Court took two related cases, *Robbins* and *Gallego*, to “analyze the timeliness issue and to explain, in the context of specific claims, how the timeliness rules are applied by our court.” *Id.*; see *In re Gallego*, 18 Cal. 4th 825, 828 (1998). Thus, the three cases together “describe California’s timeliness requirement.” *Walker*, 562 U.S. at 312.

The *Walker* Court found that California's timeliness rule was "regularly followed" in 2002 because the "California Supreme Court summarily denies hundreds of habeas petitions by citing *Clark* and *Robbins*." *Walker*, 562 U.S. at 318. The Court went on to say that "[o]n the same day the court denied [the petitioner's] petition, it issued 21 other *Clark /Robbins* summary denials." *Id.* at 319. This does not establish that in 1998, when Hart filed his petition, four years before the *Walker* petition, that the rule under *Clark* and *Robbins* was regularly followed. *Robbins* was only decided three months before Hart filed his state habeas petition. Respondent ignores the fact that there was not sufficient time for *Clark* and *Robbins* to be regularly followed at this time.

Further, *Walker* established that *Clark* and *Robbins* together were an adequate rule. This is a distinct question from whether *Clark* alone is adequate. Regardless, *Walker* also did not establish that *Clark* alone was adequate in 1998. *Walker* only decided what was adequate by 2002.

Respondent's brief misleadingly states, "[a]s an initial matter, Hart admits that he did not argue in his briefing below that '*Clark* alone was inadequate.'" (BIO at 8.) The rest of the quoted sentence from Hart's petition explains that Hart did not argue that because "*Clark* itself was not the rule at the time." (Petition at 14.) The question of *Clark*'s adequacy alone did not come up during Ninth Circuit briefing, but only at oral argument. *Hart v.*

Broomfield, Ninth Cir. No. 20-99011, Dkt. 61, Oral Argument at 19:21 (Jan. 22, 2024). For the same reason, Respondent did not argue that *Clark* was adequate, alone. Any suggestion that Hart waived this argument below should be disregarded. Hart at the very least “assert[ed] specific factual allegations that demonstrate the inadequacy” of the *Clark* timeliness rule, and shifted the burden of proving adequacy to the State. *Bennett*, 322 F.3d at 585–86.

In a footnote, Respondent asserts that Hart’s state habeas petition “should have been filed by October 14, 1997 to be presumed timely under *Clark*.” (BIO at 6.) This is misleading. Though there is a presumption of timeliness under *Clark* when a petitioner files within 90-days of the due date of appellant’s reply brief, the California rule requires a petitioner to seek habeas relief “without substantial delay.” *Walker*, 562 U.S. at 312 (cleaned up), citing *Robbins*, 18 Cal.4th, at 780; *Gallego*, 18 Cal.4th, at 833; *Clark*, 5 Cal.4th, at 783). California’s general reasonableness standard is discretionary and indeterminate, “measured from the time the petitioner or counsel knew, or reasonably should have known, of the information offered in support of the claim and the legal basis for the claim,” *Robbins*, 18 Cal.4th, at 787; see *Walker*, 562 U.S. at 312. Hart complied with this rule, filing his petition on November 6, 1998, only two months after counsel was denied

further funding for investigation, and offering a specific explanation for the delay. (*See* Pet. App. 76-744-46.)

Respondent also goes to great length to justify the prosecution's misconduct in this case and dismiss it as inconsequential. Respondent acknowledges that cause and prejudice may be excused when the reason for the failure to bring a timely *Brady* claim was the State's suppression of relevant, material evidence. (BIO at 11, citing *Banks v. Dretke*, 540 U.S. 668, 691 (2004).) Yet, Respondent dismisses the prosecution's duty under *Brady* in this case, instead faulting Hart for not coming forward with evidence the prosecution was duty-bound to disclose. (BIO at 10-11.) However, "the prosecution's responsibility for failing to disclose known, favorable evidence rising to a material level of importance is inescapable." *Kyles v. Whitley*, 514 U.S. 419, 438 (1995). A California habeas petitioner has no subpoena power absent an order to show cause. *In re Steele*, 32 Cal.4th 682, 690 (2004). Hart was thus limited in his ability to obtain evidence to support his claim, including from Gresham. As presented below, Hart's challenges uncovering the prosecutorial misconduct in this case were compounded by the state court's denial of funding, and its failure to respond to several funding requests. *See Hart v. Broomfield*, Ninth Cir. No. 20-99011, Dkt. 52 at 1-FER-40-53 (March 21, 2023). In addition, the delay in filing the initial state habeas petition was a result of initial habeas counsel's inexperience and

corresponding reliance on the advice provided to state habeas counsel by the CSC's own contracting agency, the California Appellate Project. (*Id.* at 1-FER-14-48.)

Respondent also discounts Hart's showing of prejudice. Yet, the difference between what the jury heard (that Gresham testified in exchange for a 5-year reduction in sentence) and what the jury should have heard (that Gresham was afraid he would be sentenced to life in prison), is vast. (*See* Pet. App. 21-438; Pet. App. 12-411-14.) In habeas, Hart presented evidence that completely undermined Gresham's testimony that Hart had confessed to killing McMahan. The jury requested Gresham's testimony during deliberations so they could "keep going over it." (Pet. App. 72-734.) Given the strength of evidence against Gresham and the jury's singular focus on it, in this case, impeaching Gresham's credibility could have made the difference between a life verdict and a death sentence.

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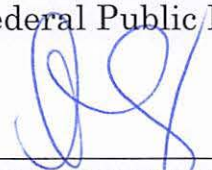
II. CONCLUSION

Because the Ninth Circuit's decision creates a conflict with *Coleman* and *Lee*, which set forth the standard for when a state procedural rule is adequate to support the judgment and may foreclose federal relief, Hart respectfully requests that this Court vacate the Ninth Circuit's decision and grant his petition for writ of certiorari.

Respectfully submitted,

CUAUHTEMOC ORTEGA
Federal Public Defender

DATED: February 19, 2025

By: _____
LAUREN COLLINS*
HOPE BENTLEY
Deputy Federal Public Defenders
Attorneys for Petitioner
**Counsel of Record*