No. 24-6182

In The
Supreme Court of the United States

DANIEL OWEN CONAHAN, JR.,

Petitioner,

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent.

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

RESPONDENT'S BRIEF IN OPPOSITION

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Capital Case

QUESTIONS PRESENTED

Petitioner, a state prisoner, seeks certiorari review of an unpublished order from the Eleventh Circuit Court of Appeals denying his motion for a certificate of appealability (COA) in a federal habeas corpus proceeding. *See* 28 U.S.C. § 2253(c). The questions raised in the Petition address the issue of whether the lower court's actions violate Due Process. When reframed for clarity, the questions at issue are essentially as follows:

1. Whether application of AEDPA in denying Certificates of Appealability by the various federal circuits creates a "circuit split" and violates Due Process.

2. Whether Conahan is constitutionally entitled to a written opinion from the Eleventh Circuit Court of Appeals where the basis for its denial of COA appears in the district court's Order denying habeas relief.

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The opinion from which Petitioner seeks certiorari review is the Eleventh Circuit's order denying his application for a Certificate of Appealability (COA), which appears as *Conahan v. Secretary, Department of Corrections*, No. 24-10844, 2024 WL 2950845 (11th Cir. May 31, 2024), *recons. denied*, (Aug. 20, 2024). Conahan sought COA from an order by the district court denying his petition for a writ of habeas corpus, which appears as *Conahan v. Secretary, Department of Corrections*, No. 2:13-cv-428, 2023 WL 2648168 (M.D. Fla. Mar. 27, 2023), *reh'g denied* (Feb. 13, 2024).

STATEMENT OF JURISDICTION

Petitioner seeks to invoke this Court's jurisdiction under 28 U.S.C. § 1254. Respondent agrees that this Court has the authority to grant review under that statute but denies that this is an appropriate case for the exercise of this Court's discretionary jurisdiction as the Eleventh Circuit's order has no precedential value, does not conflict with any decision by this Court or any other United States court of appeals, and does not decide any important or unsettled question of federal law. *See* Sup. Ct. R. 10(a), (c).

STATEMENT OF THE CASE AND FACTS

Petitioner, Daniel Owen Conahan, Jr., is a Florida prisoner under a sentence of death. The sentence was imposed for the 1996 murder of a young homeless man named Richard Montgomery, whom Petitioner lured to a remote area by a promise of payment in exchange for explicit photographs. Conahan tied Montgomery to a tree and sexually assaulted him before ultimately strangling him. Petitioner's conviction

and death sentence were affirmed on direct appeal. *See Conahan v. State*, 844 So. 2d 629 (Fla. 2003). The Florida Supreme Court also affirmed denial of his initial Rule 3.851 postconviction motion on appeal, *Conahan v. State*, 118 So. 3d 718 (Fla. 2013), as well as his successive Rule 3.851 motion *Conahan v. State*, 258 So. 3d 1257 (Fla. 2018). Petitioner initiated the present federal proceeding by filing a petition for writ of habeas corpus under 28 U.S.C. § 2254. *See Conahan Secretary, Department of Corrections*, 2023 WL 2648168 (M.D. Fla. March 27, 2023).

Convictions and Death Sentence

On April 17, 1996, law enforcement discovered the nude body of Richard Montgomery in a remote Charlotte County trash dump. His body bore visible signs of trauma to his neck, waist, and wrists; his genitalia had been surgically removed. The medical examiner concluded that Montgomery died from strangulation and that the trauma to his neck, wrists and waist was consistent with his having been tied to a tree. Trace evidence included fibers linked to Conahan and a paint chip that was indistinguishable from paint samples obtained from a car Conahan occasionally used. On the day of Montgomery's disappearance, bank records revealed that Conahan purchased clothesline, Polaroid film, pliers, and a utility knife from a Wal-Mart store. A surveillance camera showed Conahan withdrawing cash from a nearby ATM. *Conahan v. State*, 844 So. 2d 629, 632 (Fla. 2003).

The State also introduced evidence of a similar assault committed by Conahan through the testimony of Stanley Burden, who testified that in 1994 Conahan offered him money to pose for nude photographs. Conahan took Burden to a remote area

where he eventually persuaded him to remove his clothes while Conahan used the rope ostensibly to simulate a bondage scenario. Conahan tied Burden's hands, legs, and chest to the tree after which he performed oral sex on Burden and attempted to sodomize him while Burden struggled to prevent it. Failing at this, Conahan then tried to strangle Burden but was unable to kill him. Eventually Conahan gave up, gathered his possessions, and left. Burden freed himself and reported it to law enforcement. This incident, which occurred approximately 16 months before Montgomery's death, led law enforcement to suspect Conahan. An undercover officer testified that while he was posing as an unemployed homeless man Conahan approached him at Kiwanis Park and offered to pay him $150 to pose for nude photos *Conahan*, 844 So. 2d at 633.

Before he disappeared, Montgomery told his mother, Mary Montgomery-West, that he had made a new friend named Conahan who lived nearby in Punta Gorda Isles. The State also introduced testimony from Montgomery's roommate (Whitaker) that Conahan had come to his home looking for Montgomery. Similarly, Conahan's cellmate (Neuman) testified that Conahan told him that he had been on "beer runs" with Montgomery and that "Montgomery was a mistake." *Conahan v. State*, 118 So. 3d 718, 727 (Fla. 2013). Conahan, however, consistently denied knowing Montgomery.

Conahan waived a jury during guilt phase and was found guilty by the court of first-degree murder and kidnapping. His penalty phase jury heard instructions that the murder was heinous, atrocious, or cruel; that it was cold, calculated and

premeditated, and that the murder was committed during the course of a kidnapping. The jury's death recommendation was unanimous, and the court sentenced him to death on December 10, 1999.

The Florida Supreme Court affirmed his death sentence. *Conahan v. State*, 844 So. 2d 629 (Fla. 2003). Certiorari review was denied. *Conahan v. Florida*, 540 U.S. 895 (2003).

State Postconviction Proceedings

Petitioner filed his first postconviction motion in 2009. Among other claims, Petitioner alleged that the State violated *Giglio*[1] by knowingly using the false testimony of the victim's mother, Mary Montgomery-West after the victim's mother unexpectedly revealed during cross examination that her son had told her details about his new friend named Conahan. The Florida Supreme Court affirmed the lower court's denial of this claim, as well as his unpreserved argument regarding the State's dismissal of charges involving Conahan's alleged assault on Stanley Burden, which it found lacked fundamental error. *Conahan v. State*, 118 So. 3d 718 (Fla. 2013).

In 2016 Conahan filed a successive postconviction claim in which he asserted, among other things, that the State had violated both *Giglio* and *Brady*[2] by allowing Stanley Burden to falsely testify that his testimony had not been procured by any promises from the State and by failing to disclose this information to the defense. The

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[1] *Giglio v. United States*, 405 U.S. 150 (1972).

[2] *Brady v. Maryland*, 373 U.S. 83 (1963).

Florida Supreme Court affirmed the postconviction court's summary denial of relief. *Conahan v. State*, No. SC16-1153, 2017 WL 656306 (Fla. Feb 17, 2017); *Conahan v. State*, 258 So. 3d 1237 (Fla. 2018).

In denying the claim regarding false testimony by Mary Montgomery-West, the Florida Supreme Court first outlined the elements of a valid *Giglio* claim as follows:

> To establish a *Giglio* violation, three prongs must be shown: (1) the testimony was false; (2); the prosecutor knew it was false; and (3) the testimony was material. *Guzman v. State*, 868 So. 2d 498, 505 (Fla. 2003) (citing *Ventura v. State*, (794 So. 2d 553, 562 (Fla. 2001)). If the defendant successfully establishes the first two prongs, then the State bears the burden of proving that the testimony was not material by showing that there is no reasonable possibility that it could have affected the verdict because it was harmless beyond a reasonable doubt. *See Johnson v. State*, 44 So. 3d 51, 64-65 (Fla. 2010); *Guzman*, 868 So. 2d at 506-507. In evaluating *Giglio* claims, this Court applies a mixed standard of review, deferring to the trial court's factual findings that are supported by competent, substantial evidence and reviewing the application of the law to those facts *de novo*. *Suggs v. State*, 923 So. 2d 419, 426 (Fla. 2005).

Conahan, 118 So. 3d at 728.

The Florida Supreme Court affirmed the postconviction court's denial of relief because it concluded there was no evidence that Mary Montgomery-West's testimony was false, or that the prosecution knew that her testimony was false. Moreover, even had her testimony been stricken, there was ample evidence (testimony of Whitaker and Neuman) linking Conahan to Richard Montgomery. Accordingly, even if Mary Montgomery-West's testimony was false, Florida's high court concluded it was immaterial to Conahan's conviction. *Conahan*, 118 So. 3d at 729.

Conahan's *Brady* and *Giglio* claim, raised in his successive postconviction

motion, alleged that a portion of Stanley Burden's testimony was false- specifically, that the State had not promised him anything in exchange for his testimony, which violated *Giglio*, and that the State failed to disclose this information to the defense, which violated *Brady*. The Florida Supreme Court rejected both claims because they lacked materiality. *Brady*, the Court held, requires the proponent to establish a reasonable probability of a different outcome, or that confidence in the verdict is undermined. Similarly, *Giglio* materiality is established if there is any reasonable possibility that the evidence could have affected the verdict, and the State bears the burden of establishing that the evidence was harmless beyond a reasonable doubt.

Burden, the Florida Supreme Court concluded, never retracted his testimony that Conahan tied him to a tree, attempted to sodomize and then strangle him; he merely asserted that without the State's promise of assistance, his testimony would not have been voluntary. Because the credibility of Burden's trial testimony was not materially affected by his subsequent claim, Florida's high court ruled, Conahan's claim for relief was properly rejected. *Conahan v. State,* 258 So. 3d 1237 (Fla. 2018).

The District Court's Denial of Federal Habeas Relief

Petitioner raised the same *Brady* and *Giglio* claims in his federal habeas petition. *Conahan*, 2023 WL 2648168 at 21, 26. Before addressing the merits of the claim, the district court explained that the petition was governed in federal court by the provisions of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). *Id.* at 6. Under AEDPA, when a claim has previously been adjudicated on the merits in state court, federal habeas relief may not be granted on the claim unless the state

court's adjudication: "(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." *Id.* at 7 (quoting 28 U.S.C. § 2254(d). The district court continued:

> "Clearly established Federal law" consists of the governing legal principles set forth in the decisions of the United States Supreme Court when the state court issued its decision. *White,* 134 S. Ct. at 1702; *Casey v. Musladin,* 549 U.S. 70, 74 (2006) (citing *Williams v. Taylor,* 529 U.S. 362, 412 (2000)). Habeas relief is appropriate only if the state court decision was "contrary to, or an unreasonable application of," that federal law. 28. U.S.C. § 2254(d)(1). A decision is "contrary to" clearly established federal law if the state court either: (1) applied a rule that contradicts the governing law set forth by the Supreme Court case law, or (2) reached a different result from the Supreme Court when faced with materially indistinguishable facts. *Ward v. Hall,* 592 F. 3d 1144, 1155 (11th Cir. 2010); *Mitchell v. Esparza,* 540 U.S. 12, 16 (2003).
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> A state court decision involves an "unreasonable application" of Supreme Court precedent if the state court correctly identifies the governing legal principle, but applies it to the facts of the prisoner's case in an objectively unreasonable manner, *Brown v. Payton,* 544 U.S. 133, 134 (2005); *Bottoson v. Moore,* 234 F. 3d 526, 531 (11th Cir. 2000), or "if the state court either unreasonably extends a legal principle from [Supreme Court] precedent to a new context where it should not apply or unreasonably refuses to extend that principle to a new context where it should apply." *Bottoson,* 234 F. 3d at 531 (quoting *Williams,* 529 U.S. at 406).
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> When reviewing a claim under 28 U.S.C. § 2254(d), a federal court must remember that any "determination of a factual issue made by a State court shall be presumed to be correct[,]" and the petitioner bears "the burden of rebutting the presumption of correctness by clear and convincing evidence." 28. U.S.C. § 2254(d)(1); *Burt v. Titlow,* 134 S. Ct. 10, 15 (2013). ("[A] state-court factual determination is not unreasonable merely because the federal habeas court would have reached a different conclusion in the first instance.:). "A state court's determination that a claim lacks merit precludes federal habeas relief so long as fair-minded jurists could disagree on the correctness of the state court's decision."

> *Harrington v. Richter*, 562 U.S. 86, 101 (2011). "[T]his standard is difficult to meet because it was meant to be." *Sexton v. Beaudreaux*, 138 S. Ct. 2555, 2558 (2018).

Id. at 7 (original alterations).

Proceeding to the merits, the district court summarized the Florida Supreme Court's reasons for denying each of the Petitioner's claims. Relevant here, the district court addressed the requirements for establishing a *Giglio* claim by quoting with approval the Florida Supreme Court's summary of the applicable law, as follows:

> To establish a *Giglio* violation, three prongs must be shown: (1) the testimony was false; (2) the prosecutor knew it was false' and (3) the testimony was material. *Guzman v. State*, 868 So. 2d 498, 505 (Fla. 2003) (citing *Ventura v. State*, 794 So. 2d 553, 562 (Fla. 2001)). If the defendant successfully establishes the first two prongs, then the State bears the burden of proving that the testimony was not material by showing that there is no reasonable possibility that it could have affected the verdict because it was harmless beyond a reasonable doubt. *See Johnson v. State*, 44 So. 3d 51, 64-65 (Fla. 2010); *Guzman*, 868 So. 2d at 506-07. In evaluating *Giglio* claims, this Court applies a mixed standard of review, deferring to the trial court's factual findings that are supported by competent, substantial evidence and reviewing the application of the law to those facts de novo. *Suggs v. State*, 923 So. 2d 419, 426 (Fla. 2005) (citing *Sochor*, 883 So. 2d at 785).

Id. at 23-4. The basis of Conahan's *Giglio* claim was that State's witness Mary Montgomery-West provided unexpected testimony during cross examination which, Conahan claimed, was false. The district court, however, noted that Conahan never challenged the truth of her testimony at trial and instead chose to address the question of *when* she disclosed the information to law enforcement. As a result, Conahan failed to show that any of the testimony in question was false, or that the State knew it was false. Moreover, even if the testimony at issue were stricken, the district court concluded, there were other witnesses (Neuman and Whitaker) who

linked Conahan with the victim. Accordingly, the district court concluded, fair-minded jurists could come to the same conclusions as did the Florida Supreme Court. *Id.* at 25-6.

Conahan next asserted that the State knowingly allowed Stanley Burden to testify falsely that his testimony was not induced by any promises of assistance from the State while failing to disclose this information to the defense. The district court noted that the Florida Supreme Court rejected this claim not only on state law grounds but also because it was not material under either *Brady* or *Giglio*. The district court quoted the Florida Supreme Court's review of the materiality standards thusly:

> Evidence is material under *Giglio* "if there is any reasonable possibility that it could have affected the verdict, and the State bears the burden of proving the false testimony was not material by demonstrating it was harmless beyond a reasonable doubt." *Rivera v. State*, 187 So. 3d 822, 835 (Fla. 2015). Under *Brady*, "[t]o establish the materiality prong, a defendant must demonstrate a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. In other words, evidence is material under *Brady* only if it undermines confidence in the verdict." *Id.* at 838 (citation omitted).

Id. at 46. The district court found the Florida high court's application of the federal standard for *Giglio* and *Brady* claims reasonable, and noted with particularity that the veracity of Stanley Burden's testimony implicating Conahan was never challenged; Burden's affidavit merely asserted that he would not have testified voluntarily. Not only did Burden identify Conahan as his attacker, he provided a detailed description of his ordeal two years prior to Conahan's trial. Burden, the district court concluded, "has not recanted any of that testimony." *Id.* at 47.

Accordingly, "[t]here is no reasonable probability that evidence of [Prosecutor] Lee's alleged secret promise to write the Ohio parole board a letter on Burden's behalf would change the outcome of the proceedings." *Id.* at 48.

The Eleventh Circuit's Denial of a Certificate of Appealability

Because the district court declined to issue a COA, *Id.* at 55-56, Petitioner applied to the Eleventh Circuit for authorization to appeal. *Conahan v. Sec'y, Dep't of Corr.*, No. 24-10844, 2024 WL 2950845 (11th Cir., May 31, 2024); *see* 28 U.S.C. § 2253(c)(1). The Eleventh Circuit, via an unpublished order by United States Circuit Judge Britt C. Grant, denied the application without opinion. *Conahan*, 2024 WL 2950845. Conahan's motion for reconsideration was similarly denied without opinion by a three-judge panel. *Id.*, Doc. 18-1. The instant petition for writ of certiorari follows.

REASONS FOR DENYING THE PETITION

1. The Eleventh Circuit's Order Is Not Binding Precedent And Does Not Conflict With Any Decision By Another United States Court Of Appeals.

Conahan's petition asks the Court only whether the Eleventh Circuit wrongly denied a certificate of Appealability via an unreasoned order. The petition neither addresses the underlying merits of his claims nor argues that the Eleventh Circuit applied the wrong legal standards for considering a certificate. It simply asks the Court to establish a non-statutory rule that federal circuit courts must now use three-judge panels and provide reasoned opinions explaining their resolution of all applications for COA. In short, Conahan wants the Court to impose an opinion-

writing requirement on lower courts that AEDPA does not require.

Section 2253(c) does not require a written opinion where a circuit court declines to grant an application for COA. Sidestepping this obstacle, Conahan tries to manufacture a conflict for the Court to resolve. But the "circuit split" Conahan purports to identify has no merit. There is no circuit split. The Eleventh Circuit's Order denying COA was unpublished and as such, is only binding on the parties involved. Indeed, review of the local rules of all federal appellate courts establishes that rather than being split, the federal appellate courts are uniform in distinguishing published opinions from unpublished orders- with the exception of the Third Circuit, whose local rules are silent on the matter, the remaining circuits all expressly state that unpublished opinions are persuasive but not binding authority.[3]

28 U.S.C. § 2254 provides that a petitioner may not appeal a district court's final order "[u]nless a circuit justice or judge issues a certificate of Appealability." 28 U.S.C. § 2253(c). For a certificate to issue, the petitioner must make "a substantial showing of the denial of a constitutional right." *Id.*, 28 U.S.C. § 2253(c)(2). Additionally, a judge *issuing* a certificate must "indicate which specific issue or issues" satisfies this required showing. *Id.*, § 2253(c)(3). The statute quite simply does not require a circuit court *denying* COA to explain or justify its decision.

Nothing in the Court's precedent requires it, either. The certificate analysis is a procedural rule mandating a "threshold inquiry into whether the circuit court may

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[3] *See* 1st Cir. R. 36(c); 2d Cir. R. 32.1.1(a); 4th Cir. R. 32.1; 5th Cir. R. 47.5.4; 6th Cir. Local Rule 32.1(b); 7th Cir. Local Rule 32.1; 8th Cir. Local Rule 32.1a; 9th Cir. Local Rule 36-3; 10th Cir. R. 32.1; 11th Cir. R. 36-2.

entertain an appeal." *Slack v. McDaniel,* 529 U.S. 473, 482 (2000). It allows courts to "screen[] out issues unworthy of judicial time and attention," thus protecting appellate panels from frivolous claims. *Gonzalez v. Thaier*, 565 U.S. 134, 145 (2012). In this sense, it gives courts a "gatekeeping function." *Id.*

Petitioner correctly notes that certificate analysis under AEDPA "is not coextensive with a merits analysis." *Buck v. Davis*, 580 U.S. 100, 115 (2017). Indeed, a court of appeals that engages with the merits of a petitioner's claim in order to justify denying a certificate "is in essence deciding an appeal without jurisdiction." *Id.* (quoting *Miller-El v. Cockrell*, 537 U.S. 322, 337 (2003)).

The Court has explained that to receive a certificate under the AEDPA rules, a petitioner must make "a substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), by "demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further," *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). Similarly, if a district court denies a petition on procedural grounds, a COA should issue if jurists of reason would find it debatable both "whether the petition states a valid claim of the denial of a constitutional right" and "whether the district court was correct in its procedural ruling." *Slack*, 529 U.S. at 484.

Conahan's district court correctly recited these standards in denying COA, and Conahan's petition does not contend otherwise. Instead, he urges the Court to read into *Miller-El* and *Slack* an additional procedural step not found in the text of section

2253. Nothing requires his proposed written opinion rule. And even if the Court were inclined to adopt it, this case is a poor vehicle to do so, because the outcome- denial of a certificate- will be the same.

In advocating for a new rule requiring "reasoned opinions," Conahan inexplicably omits any discussion of the district court's determination regarding COA. The district court carefully analyzed each of Conahan's claims for relief and, applying the proper standards under AEDPA, concluded that none warranted habeas relief. Following this and applying the correct standards in light of that thorough analysis of Conahan's claims, the district court also concluded that he was not entitled to a COA. *See* R. Governing Section 2254 cases in U.S. Dist. Cts. 11(a). And, the circuit court may properly rely on the district court's merits analysis when it reviews a certificate application. *Wilson v. Sellers*, 584 U.S. 122, 127 (2018) ("[F]ederal habeas laws employs a 'look through' presumption.") Accordingly, there would appear to be no reason to adopt a new rule requiring appellate courts to provide reasoned opinions where there is already a reasoned opinion available.

2. Conahan Attempts To Raise A Due Process Claim For The First Time That Was Never Presented To The Lower Courts.

This Court should not consider Conahan's Due Process claim because it was never presented to the lower courts. *Kingdomware Technologies, Inc. v. United States*, 579 U.S. 162, 174 (2016) (holding that a claim not raised in the lower court was brought too late and the Court "normally decline[s] to entertain such arguments"). Conahan's argument before this Court is that minor differences in how the various

courts assess applications for COA, combined with statistical analysis suggesting that the Eleventh Circuit's denial of COA applications is higher than most other circuits, demonstrates a violation of his right to due process. This claim however, was never raised in any of the lower courts.

The argument Conahan presented to the Eleventh Circuit merely mentioned that its COA application denials was approaching approximately 40% of its cases (Reconsideration motion at 10). His argument never asked the court to view this argument as a denial of due process. Nor did Conahan suggest that the Eleventh Circuit's denial rate was due to failure by appellate courts in general to apply the standard established by the Federal Rules of Appellate Procedure in a uniform, consistent manner. To the contrary, Conahan merely suggested that the percentage of cases denied by the Eleventh Circuit was "alarming." (*Id.* at 11). Conahan's due process claim thus appears for the first time in his petition for a writ of certiorari and should be rejected on that basis alone.

On the merits, Conahan's due process argument fails. While recognizing that the lower courts have the authority to craft their own local rules, he contends that minor differences in how the various courts apply the standard Rules of Appellate Procedure, combined with statistical analysis showing that some courts apparently deny more COA applications than others, somehow combine to establish that he was denied due process. His analysis fails to take into account the fact that every case is different and each must be evaluated on the basis of individual merit. It is inapposite to suggest that a circuit court must be doing things wrong based solely on the number

of cases it turns away. His suggestion that a higher percentage in denial of COA applications necessarily equates to a due process violation is equally susceptible of the opposite conclusion- that courts more generous in granting appellate review of district court opinions are improperly granting review in cases that fail to meet the proper standard.

Moreover, Conahan's weak due process argument focuses on only one small part of the overall picture. The procedures enacted in section 2253(c) are but a piece of a broader procedural context governed by AEDPA. Congress adopted AEDPA to regulate federal courts' power to grant writs of habeas corpus. *See Miller-El*, 537 U.S. at 337. Under these laws, Conahan completed a full round of appellate review at the state court level, and then filed a petition for a writ of habeas corpus raising claims that (presumably) had been properly exhausted at the state level, *see* 28 U.S.C. § 2254, litigated those claims in the district court, and filed an application for a certificate under 28 U.S.C. § 2253. Conahan has been heard, and as the district court's thorough opinion demonstrates, he has been heard meaningfully. *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Thus, the claim that the Eleventh Circuit's decision to deny his COA application violated Due Process is belied by the record and the extensive process he has received throughout his case.

Conahan also seems to suggest that the circuit court's failure to provide a reasoned opinion somehow violates Due Process. But when a court declines to *explain* a decision, this does not mean that the court has failed to *make* a decision. Courts often summarily affirm a lower court's decision without opinion; doing so does not

necessarily mean that the court has failed to consider the arguments advanced. It is wrong to conclude that the well-established procedures described *supra* violates Due Process, especially where section 2253 simply requires the reviewing court to decide whether a claim should proceed further, not to assess the merits of the judgment itself. *See, e.g., Denko v. INS*, 351 F.3d 717, 729-730 (6th Cir. 2003) (collecting cases that demonstrate a uniform conclusion among the circuits that a streamlined summary affirmance procedure in the Board of Immigration Appeals did not violate due process).

Remanding Conahan's case to the Eleventh Circuit for additional written analysis would serve no purpose. Asking the court to write an opinion elaborating upon that conclusion will result only in the expenditure of that court's resources to reiterate the written conclusions already explicated in the district court's well-reasoned order. It will not result in issuance of a COA, because Conahan has offered no basis for the Eleventh Circuit to change its conclusion. The district court's thorough explanation and rejection of Conahan's claims underscores why this case does not "deserve encouragement to proceed further." *Miller-El*, 537 U.S. at 327.

3. Because The District Court's Opinion Was Correct In Denying COA, The Eleventh Circuit's Order Recognizing That Decision Was Correct And No Conflict Is Shown.

Conahan's petition ignores the district court's opinion, which fully grappled with Conahan's arguments and explained why each failed to clear AEDPA's threshold. In short, the district court explained precisely why Conahan's claims did not merit a certificate. Against this backdrop, Conahan's claim that the Eleventh

Circuit's denial of his application for COA without opinion somehow violated his right to Due Process rings hollow.

Conahan sought a COA as to three claims: (1) that "false" testimony by Mary Montgomery-West violated *Giglio*, (2) that "false" testimony from Stanley Burden regarding whether the State promised him a benefit in exchange for his trial testimony violated *Brady* because the State failed to disclose it and violated *Giglio* because the State knew his testimony was false and failed to correct it, and (3) prosecutorial misconduct violated Conahan's right to a fair trial. The district court rejected all three of these claims, finding that the Florida Supreme Court's resolution of them was neither an unreasonable application of the Court's precedent nor an unreasonable determination of the facts.

First, the district court reviewed Conahan's claims regarding Mary Montgomery-West, and concluded that her testimony, while surprising and unexpected, was not false. This witness unexpectedly told defense counsel during cross examination that her son, victim Richard Montgomery, had told her shortly before he disappeared that he had met a new friend named Conahan. It was not disputed below that this statement did not appear in any of the police reports, but the Florida Supreme Court concluded that her statement that she believed she had disclosed the information to law enforcement was possible and the facts failed to establish that the State had any reason to believe her testimony was false. Even if it were improper, Florida's high court concluded, it was not material because testimony from other witnesses also linked Conahan with Montgomery. The district court

determined this to be a reasonable application of *Giglio* and denied habeas relief on that basis. *Conahan*, 2023 WL 2648168 at 21-26.

Conahan's second claim, that use of Stanley Burden's testimony violated both *Brady* and *Giglio* was also rejected by the Florida Supreme Court. The court found no support for Conahan's claim that the State failed to disclose a promise of assistance in exchange for Burden's testimony, thus foreclosing his *Brady* claim, and in any event because Burden did not retract his trial testimony but merely asserted that he would not have voluntarily testified, this claim lacked materiality under either *Brady* or *Giglio* standards. The trial court was already aware of Burden's weakened credibility but specifically found that his testimony was worthy of belief because photographic evidence combined with scars to Burden's wrists and neck provided ample support to his testimony. The district court considered the Florida Supreme Court's resolution of this claim and found it was a reasonable application of Supreme Court precedent as well as a reasonable interpretation of the facts. *Id.* at 45-48.

Finally, the district court considered Conahan's claim that he was denied a fair trial because of prosecutorial misconduct. While Conahan advanced multiple grounds in his petition, his COA application focused on the State's alleged misconduct in entering a nolle prosequi to gain a strategic advantage. At the trial level, the State had, in addition to those charges involving the kidnapping and murder of Richard Montgomery, also charged Conahan with criminal charges arising out of his assault on Stanley Burden. Conahan complained that the State deliberately dismissed the

Burden charges because it believed Conahan might be found not guilty, thereby precluding the State from using Burden's testimony in the Montgomery case as similar fact evidence.

This claim, the district court observed, was not preserved in the state court and the error was not deemed fundamental by the Florida Supreme Court. *Conahan v. State*, 118 So. 3d 718, 735 (Fla. 2013). The district court concluded that habeas relief was not warranted as to this claim because assessment of whether an unpreserved claim amounts to fundamental error is a matter of state law and outside the scope of federal habeas review. *Conahan*, 2023 WL 2648168 at 34. *Pinkney v. Sec'y, DOC*, 876 F.3d 1290, 1299 (11th Cir. 2017).

Let us not be deceived in understanding Conahan's true goal here- he wants this Court to require written opinions from all appellate courts in violation of the dictates of AEDPA and even in cases where no reasonable jurist could disagree. Should Conahan have his way, there would be no difference in the outcome of his case except for a longer denial of COA and a massive waste of judicial resources in a case that lacks any cognizable constitutional error. This Court should not issue the Writ.

CONCLUSION

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

Respectfully submitted,

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