No. 24-6420

IN THE
SUPREME COURT OF THE UNTED STATES

STEPHEN C. STANKO,

Petitioner,

v.

BRYAN STIRLING, Director, South Carolina Department of Corrections, and LYDELL CHESTNUT, Deputy Warden Broad River Correctional Institution,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED
CAPITAL CASE

Petitioner, Steven C. Stanko, is a death-sentenced state prisoner. After exhausting state remedies without relief, he sought review in federal court under 28 U.S.C. § 2254. The district court granted the Warden's motion for summary judgment finding no relief could be due and denied Stanko's subsequent motion to reconsider the grant of summary judgment prior to submission of evidence outside the state court records. The district court also denied a certificate of appealability. On appeal, the Fourth Circuit granted a certificate on four of Stanko's offered fourteen issues. The Court of Appeals affirmed the denial of relief. Stanko seeks further review. Respondents reframe Stanko's issues presented as follows:

I.

Did the Fourth Circuit correctly adhere to 28 U.S.C. § 2253(c)(1)(A) in finding that Stanko required a certificate of appealability for merits review of the district court's denial of his Rule 59 motion?

II.

Did the Fourth Circuit properly apply 28 U.S.C. § 2254(d) to deny relief on Stanko's trial counsel conflict claim when the Supreme Court of South Carolina reasonably upheld the waiver of any conflict on a record that spanned multiple state court hearings on the matter?

INTRODUCTION

Petitioner, Steven C. Stanko, is under two death sentences imposed by South Carolina juries in two separate proceedings for murders in two different counties. The murders occurred in April 2005. Stanko first murdered his girlfriend Laura Ling, and kidnapped, raped, and attempted to murder Ling's minor daughter, in Georgetown County. A few hours later, he murdered and robbed Charles Henry Turner in nearby Horry County. Stanko exhausted his state remedies for the Horry County proceedings first and turned to the federal court for additional review. Stanko is seeking review of the Fourth Circuit's decision affirming the district court's denial of relief as to the Horry County Turner murder.

Stanko, though, shows no error of law at all, much less one that warrants certiorari review. It is settled that a certificate of appealability is required for a Court of Appeals to obtain jurisdiction to review disposition of a habeas issue. *See* 28 U.S.C. § 2253(c)(1)(A). And, since this Court's decision in *Shinn v. Ramirez,* 596 U.S. 366 (2022), which was issued during the Rule 59 motion consideration in the instant case, there is no further need for clarification on the restrictions of 28 U.S.C. § 2254(e)(2). The district court was correctly guided by that holding.

In sum, Stanko fails to show a case for certiorari review. That leaves him with a request to review the facts. That is not a favorable position for certiorari review. Even so, the facts do not help him either.

As to the certificate issue, the case shows an ordinary application of 28 U.S.C. § 2253. The Fourth Circuit was guided by the logical approach: The district court denied Stanko's motion for reconsideration by review of the underlying issue that it

determined was properly handled under 28 U.S.C. § 2254 review. Thus, a certificate was necessary for appellate review. Because neither the district court nor the Fourth Circuit granted a certificate, Stanko's argument raised in the Rule 59 motion that his case was decided prematurely, without consideration of his new, federal level evidence, was not considered on the merits.

As to his trial counsel conflict claim, this simply failed under application of 28 U.S.C. § 2254 review. To consider this issue would require a particularly fact-intensive review. Stanko was tried first in Georgetown County. William Diggs, Esq., and Gerald Kelly, Esq., were appointed to represent him. The defense secured multiple scans, medical and personal history records, and expert opinions. Stanko's experts opined that he suffered from psychopathy/anti-social personality disorder (ASPD) because of a frontal lobe defect received at birth or from the traumatic brain injury at age seventeen, or a combination of both. The experts further opined that his condition with the addition of extreme stress rendered Stanko insane at the time of the Ling crimes. The defense crafted a case around the medical and historical evidence. The State's experts countered the testimony both on the diagnosis and the opinion on insanity. The Georgetown jury convicted as charged and assessed death was the appropriate sentence.

When the Horry County case was to be called for trial, Stanko requested that Diggs be appointed again to represent him. Stanko also filed a state post-conviction relief (PCR) action alleging ineffective assistance against Diggs in the Georgetown convictions. Through several hearings in advance of the Horry County trial, Stanko

reaffirmed that he wanted Diggs as his attorney, even offering to abandon his Georgetown PCR claims if necessary.

After receiving a death sentence in Horry County, Stanko sought direct appeal review. In that appeal, Stanko claimed for the first time that the lower court should not have accepted his waiver. The South Carolina Supreme Court, based on the record reflecting several hearings on the matter in the trial court, found not only was this issue not preserved for appeal, but also continued to review the issue on the merits ultimately determining that Stanko knowingly, intelligently, and voluntarily waived any conflict of interest. *State v. Stanko*, 741 S.E.2d 708, 717 (S.C. 2013).

Stanko next turned to his state post-conviction relief (PCR) remedies. He alleged, in relevant part, that counsel (1) failed to adequately inform him of the conflict that he waived; and (2) was ineffective for failing to adequately investigate and/or present mitigation, specifically by presenting evidence on psychopathy and revealing that Stanko was not supported by his family. The state court denied relief.

Stanko then turned to the federal courts. In his federal habeas corpus action, Stanko alleged his direct appeal conflict claim and the ineffective assistance conflict advice claim and the insufficient investigation and presentation of mitigation claim. After summary judgment in Respondents favor, Stanko filed a Rule 59 motion arguing, in relevant part, that the district court erred in granting summary judgment without allowing presentation of evidence (*i.e.,* additional scans and medical opinion) outside the state court record that he obtained with federal funding pursuant 18 U.S.C. § 3599(f). The district court denied the motion and found the would-be offered

evidence could not be accepted for review of the conflict claim presented, or the mitigation ineffective assistance claim that was defaulted. *See Cullen v. Pinholster*, 563 U.S. 170, 181 (2011), *Shinn v. Ramirez*; *supra*. Stanko appealed.

The Fourth Circuit resolved, as to the conflict claim, that no relief was due. It first found no precedent from this Court to support that certain conflicts are, by class, "unwaivable," and then resolved the S.C. Supreme Court reasonably found a knowing and intelligent waiver based on the record before it. Next, the Fourth Circuit found the ineffective assistance arguments regarding investigation and presentation of mitigation evidence were procedurally barred because they were not raised in the PCR appeal. Further, because the default occurred on the appeal from the denial of the claims in the PCR, *Martinez v. Ryan*, 566 U.S. 1 (2012), could not be used to attempt to excuse the default. *See Stanko v. Stirling*, 109 F.4th 681 (4th Cir. 2024). Stanko cannot successfully show any error of fact or law. He was not entitled to relief on either fact or law; thus, he received none.

However, this introduction reflects the infirmity in his petition which is that Stanko has failed to present a case worthy of certiorari review. He has already received the full measure of review that he was allowed and is due no more.

STATEMENT OF THE CASE

There is no claim of innocence before the Court and rightly so. The evidence of Stanko's guilt of both the Georgetown crimes and the Horry County crimes was overwhelming.

A. Facts of the Murder:

On April 8, 2005, around 4:00 a.m., Stanko drove to the home of 74-year-old Henry Turner, a person who had been a friend to him. Stanko had called Turner and informed him Stanko's father had died. Turner told Stanko to come over to his home, and he would console him. Stanko had lied. Stanko drove a red Ford Mustang convertible belonging to his girlfriend, Laura Ling, who he had just murdered hours before. Stanko and Turner sat in the living room of Turner's home discussing Stanko's loss well into the night. The next morning, after daylight, Turner drove his gray Mazda pick-up truck to a nearby McDonalds, got breakfast and returned home. (JA 1668-1673; 1690-1717; 2098-2102; 2113-2123; 3037; 3041-3042; 2552-2556; 2563; 1718-1726; 1732-1746; 1802-1803). After returning home, Turner was shaving with an electric razor in front of his bathroom mirror. While Turner was shaving, Stanko approached Turner from behind armed with a .357 caliber revolver loaded with .38 caliber bullets, and while placing a pillow over the gun to silence the weapon, shot Turner in the back. Turner turned and walked a few steps to the bathroom doorway. Stanko struck Turner in the head with his hand or possibly the gun. Turner dropped to his knees. Stanko then shot the helpless Turner again, this time in the chest. Turner collapsed on the floor dead. Stanko removed items from Turner's pockets

including the keys to his truck. Stanko then stole Turner's gray truck, leaving Ling's red Mustang at Turner's home. Stanko then fled the coastal area of South Carolina in Turner's truck. (JA 1667-1689; 1802-1803; 1805; 397-398; 1808-1809; 2071-2092; 2098-2103; 2121; 2602; 1694-1787; 1790-1812; 1813-1818; 1971-2019; 1992-2008; 2024-25; 2038-2039; 2046). Police were called to Turner's home that evening when Turner's son became worried about his father when he saw news reports Stanko was wanted for Ling's murder. Police found Ling's Mustang still parked in front of Turner's home. Inside the home, police found Turner's body face down on the floor with his electric razor next to his body. Police also found the pillow Stanko used to muffle the first shot fired into Turner's back and 2 fired shell casings on the dresser. Stanko's business card was also found. (JA 1747-1772; 1774-1787; 1790-1818).

Stanko appeared that evening in the Congaree Vista area of Columbia, South Carolina, partying at various restaurants or bars representing himself to be a successful businessman. Stanko was carrying a large amount of cash and spending it. Stanko had an injury to his hand and told various tales of how he hurt his hand. (JA 1819-1848). Next he appeared in Augusta, Ga. where *The Masters* was taking place. Stanko was again seen at a bar and struck up a romantic relationship with a young lady, Dana Putnam, representing himself to be the owner of several *Hooters* in the southeast. Putnam also noticed an injury to Stanko's hand, and that he was spending a lot of cash. The entire time she was with Stanko, he was driving a Mazda pick-up truck. Stanko told her the truck belonged to his mechanic, and his Jaguar was being repaired. Stanko gave Putnam jewelry he had taken off Ling's dead body.

After several days, Putnam saw Stanko's picture in a local paper indicating he was wanted for the South Carolina murders. She called police. U.S. Marshall's located Stanko, arrested him, and he waived extradition to South Carolina. (JA 1851-1903; 1885-1892). When arrested, Stanko was still in possession of Turner's truck containing items linked directly to Stanko, including his business card, and a receipt for flowers he had bought Putnam in Augusta. Also in the truck was a .357 revolver loaded with .38 caliber ammunition, Turner's check book, the key fob to Ling's Mustang, and a notebook with Ling's name on it. At Turner's autopsy, two fired .38 caliber bullets were recovered from Turner's body. A forensic firearms examiner concluded the 2 bullets were fired by the .357 revolver recovered from Turner's truck in Stanko's possession. (JA 1885-1892; 1922-1965; 2108-2109; 2127; 1971-1998; 2110).

B. The Trial and Death Sentence.

On August 25, 2005, the Horry County Grand Jury indicted Stanko for the murder and armed robbery of Turner. The State sought the death penalty. Stanko was appointed two attorneys, William (Bill) Diggs, Esq., and Brana J. Williams, Esq., to represent him on the Horry County charges. (JA 3243-3258; 3958- 3959). Stanko proceeded to a jury trial before Circuit Court Judge Steven H. John, beginning November 14, 2009. Stanko called a series of experts who opined Stanko was insane at the time of the crime and had, based on brain scans, including MRI and PET scans, a malformed frontal lobe of the brain. The State called several experts who testified Stanko was not insane and the frontal lobe of Stanko's brain was not malformed. At

the conclusion of the guilt phase, the jury was instructed they may find Stanko not guilty; not guilty by reason of insanity; guilty but mentally ill; or guilty of the crimes charged. (JA 2756-2763). After deliberations, the jury returned a verdict of guilty on each charge. (JA 2769).

In the separate sentencing phase, the State established Stanko's bad character and future dangerousness. Stanko was previously convicted in Charleston, South Carolina of kidnapping, obtaining goods by false pretenses, and multiple counts of breach of trust and served 8 ½ years in prison for these crimes. After being released on community supervision, Stanko was representing himself to be an attorney, paralegal, or investigator and had defrauded several individuals of large amounts of money through his fraudulent cons and schemes. (JA 2811-2927). The jury also heard the facts and circumstances surrounding Stanko's murder of Laura Ling, and the kidnapping, rape, and attempted murder of her 15-year-old daughter. Stanko bound Ling and strangled her to death. Stanko also beat, bound, and brutally raped her 15-year-old daughter. Stanko then cut the daughter's throat and left her believing she was dead.[1] Ling's daughter survived the brutal assault and called 911. (JA 2936-2949; 2964-3008; 3012-3024; 2927-2934).

[1] The following morning, Stanko called Ling's employer, the Socastee Library, and informed them Ling would not be at work because she was ill. The library staff already knew police had discovered a dead body in Ling's home; however, Stanko was not aware Ling's body and that of her living daughter had been discovered in the early morning hours after he left Ling's home. Police were already looking for Stanko when he made the call to the library and when he murdered Turner and stole his truck. (JA 2936-2949; 2964-3008; 3012-3024; 2927-2934; 2936-2949).

The jury unanimously found the State proved two statutory aggravating circumstances [eligibility factors] beyond a reasonable doubt. [2] After consideration of all the evidence in aggravation and mitigation, the jury unanimously recommended a sentence of death. (JA 3227- 3228). Judge John sentenced Stanko to death for Turner's murder and 30 years for armed robbery. (JA 3236-3237).

C. Direct Appeal.

Stanko appealed his Horry County convictions and death sentence to the S.C. Supreme Court raising 6 issues. (JA 3840-4201; 3979- 3980). Relevant to this current appeal he raised the following issue:

> Whether the trial court erred in accepting Appellant's waiver of his trial counsel's conflict of interest where that counsel was subject to a pending accusation of ineffective assistance of counsel for his representation of Appellant in a prior capital murder case?

(JA 3708-3774).

On February 27, 2013, the S.C. Supreme Court affirmed Stanko's convictions and death sentence for the Turner murder. *State v. Stanko*, *supra.* The state supreme court found the issue was unpreserved, but also without merit based on a knowing and voluntary waiver. *Id.* A petition for rehearing was denied on April 3, 2013. Stanko sought certiorari in this Court raising two issues unrelated to this current

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[2] South Carolina is not a "weighing state" which requires reported findings for aggravation and mitigation and a formal process for considering those findings. After the return of any one statutory aggravating circumstance – which must be found beyond a reasonable doubt – the jury may then consider the whole of the evidence in determining the appropriate sentence, *i.e.,* selection, without further structure. S.C. Code Ann. § 16-3-20 (C). *See Simmons v. South Carolina,* 512 U.S. 154, 162 (1994) (describing South Carolina capital sentencing procedure: "evidence in aggravation is not limited to evidence relating to statutory aggravating circumstances").

federal habeas appeal. This Court denied certiorari on October 7, 2013. *Stanko v. South Carolina*, 571 U.S. 902 (2013).

D. State Post-Conviction Relief Action and Appeal.

Stanko filed a post-conviction relief (PCR) application on January 6, 2014, in Horry County. (JA 4154-4160). Circuit Court Judge Benjamin H. Culbertson, ("the PCR Court") was appointed over the case. Attorneys Emily Paavola and Lindsey Van represented Stanko. Counsel filed amendments to the application. (JA 4162- 4174).

Prior to any evidentiary hearing, a series of *ex parte* hearings were conducted regarding Stanko's motions for funding for expert and investigative services. Stanko, dissatisfied with the denial of some of his requests for funding, filed in the S.C. Supreme Court a petition for oversight regarding the funding. (JA 4265-4372). Respondents countered with a request to unseal the *ex parte* proceedings, which Stanko opposed. (JA 4241-4264; 4373-4403). The S.C. Supreme Court denied the petition. (JA 4404-4405). Following that denial, the *ex parte* motions and orders were unsealed by the PCR court. (JA 5053-5318).

The PCR merits hearing was held in March 2015. (JA 4464-4474). The PCR Court denied relief on the merits of the allegations in an Order Denying Relief issued May 13, 2016. (JA 5319-5327). Stanko filed a motion to alter or amend judgment. (JA 5328-5373). A hearing was held on the motion. After oral argument, the PCR Court denied the 59(e) motion in an extensive and detailed Order Denying the Motion to Alter or Amend issued September 27, 2017. (JA 5436-5482). Stanko appealed this denial of PCR by way of a Petition for Writ of

Certiorari, a merits petition, filed in the S.C. Supreme Court, raising the following issues only:

> Whether the PCR Court erred in failing to grant Petitioner a new trial under circumstances where his trial counsel operated under an actual conflict of interest, due to trial counsel representing him at a prior trial in which the effectiveness of his representation was being challenged by Petitioner, and where the conflict of interest and resulting risks were never adequately explained to Petitioner in order for him to make a knowing waiver of the conflict of interest?
>
> Whether the PCR Court erred in denying funding for expert assistance to investigate and present evidence in support of Petitioner's constitutional claims for post-conviction relief where the PCR Court applied an erroneous standard by requiring Petitioner to demonstrate the expert assistance would lead to a favorable result prior to authorizing funding?

(JA 6712-6767).

On September 19, 2019, by Order, the S.C. Supreme Court denied certiorari. Stanko's petition for rehearing was denied on October 31, 2019, and the remittitur was subsequently issued ending state appellate jurisdiction.

E. Federal Review Pursuant to 28 U.S.C.§ 2254.

Stanko filed a petition for review and the Honorable Richard M. Gergel was assigned the matter. Stanko filed multiple amended petitions. Respondents filed a Motion for Summary Judgment and Return and Memorandum of Law as to the final amended petition on July 29, 2021, which Stanko opposed. Stanko also moved for partial summary judgment in his favor. On May 24, 2022, Judge Gergel granted Respondents' motion and denied Stanko's motion for partial summary judgment (JA

a453-a486; 7582-7614; 7615). Stanko then filed a motion pursuant to Rule 59, Fed.R.Civ.P. Respondents filed a Response to the same. Judge Gergel denied motion on July 1, 2022. (JA 7843-7848). Stanko appealed.

Stanko had already filed a notice of appeal on a motion to unseal his federal funding requests. (COA4, Doc. 22-2). Respondents then filed a Motion to Merge or Consolidate the two appeals. (JA 7937-43). The Fourth Circuit granted that motion. Stanko then filed his opening brief. The Fourth Circuit granted a certificate of appealability on four of Stanko's fourteen issues:

> Whether the trial court deprived Stanko of effective assistance of counsel by allowing him to proceed with conflicted counsel, including by failing to appoint conflict counsel.
>
> Whether trial counsel deprived Stanko of effective assistance of counsel by failing to advise (or pursue conflict counsel to advise) him about the implications of continuing with conflicted representation.
>
> Whether trial counsel deprived Stanko of effective assistance of counsel by failing to investigate and present mitigating evidence related to Stanko's personal history and mental illness.
>
> Whether trial counsel deprived Stanko of effective assistance of counsel by pursuing an unreasonable strategy of depicting Stanko as a person with antisocial personality disorder (ASPD) who was disavowed by his family.

(COA4 22-3, Doc. 56, Filed 7/05/23).

The State filed its responsive brief. On July 29, 2024, the Fourth Circuit affirmed the District Court' denial of Stanko's four habeas claims above, and dismissed, for lack of jurisdiction, his argument regarding the denial of his Rule 59 motion. *Stanko v. Stirling*, 109 F.4th 681 (4th Cir. 2024). This appeal follows.

REASONS FOR DENYING THE PETITION

I.

The denial of a Rule 59 motion to alter or amend the order denying federal habeas corpus relief is an order on the merits requiring a certificate of appealability to argue an issue raised for the first time in the motion; regardless, the evidence Stanko seeks to admit or use is outside the state court record and is inadmissible on preserved or unpreserved claims pursuant to *Cullen v. Pinholster* and *Shinn v. Ramirez*.

Stanko argued in a Rule 59 motion that the district court prematurely granted summary judgment in the Warden's favor. Stanko posited this was so because he was still waiting for the results of brain imaging and expert analysis. Stanko had been granted funding for the imaging and analysis under 18 U.S.C. § 3599(f). The district court denied the motion finding, in relevant part, that it was unnecessary to wait on the results of the *ex parte* funding requests and specialist services since they would be inadmissible on any preserved claim pursuant to *Cullen v. Pinholster* and they would be inadmissible as to any non-preserved claim [*Martinez* claim] pursuant to *Shinn v. Ramirez*. (Pet.App. 429). The district court also noted that "[h]aving rejected the substance of Petitioner's motion for reconsideration, the Court rejects Petitioner's further contention that the denial of a certificate of appealability was erroneous." (Pet.App. 430 at n. 6).

The district court also observed the lack of diligence that Stanko showed in that Stanko had "waited until February 14, 2022—after briefing was *complete* on both parties' motions for summary judgment—to move for a transfer order and obtain the requested medical scans." (Pet.App. 428). Stanko had failed to provide the district

court with any "reason for this delay" and even noted that he had "'not yet obtained the'" scans obviously needed for the expert analysis Stanko was seeking. (Pet.App. 428).

Stanko asked the Court of Appeals to consider the argument that the district court erred in "[f]ailing to correct its own errors" and "denying Mr. Stanko's Rule 59(e) motion." (COA4 49, Issue 2). The Fourth Circuit denied a certificate of appealability for that issue. Even so, as the Fourth Circuit phrased it, "Stanko insists he does not need one to go forward." *Stanko v. Stirling,* 109 F.4th at 700. The Fourth Circuit "disagree[d]" finding that the district court denied the motion based on review of the underlying issues. *Id.* Thus, it was a merits ruling, specifically: "There was no need to wait for the testing at issue … because the results would be inadmissible under … *Shinn" v. Ramirez. Id.* Thus, the Court of Appeals resolved it "lack[ed] jurisdiction to review this argument and must dismiss the portion of the appeal raising it." *Id.*

Stanko submits to this Court that the Fourth Circuit incorrectly resolved that it had no jurisdiction to consider his argument. Stanko is wrong.

28 U.S.C. § 2253(c)(1)(A) requires a petition to obtain a certificate of appealability to appeal "final orders that dispose of the merits of a habeas corpus proceeding." *Harbison v. Bell*, 556 U.S. 180, 183 (2009). The certificate is necessary for appellate jurisdiction over the merits. *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003).

As the Fourth Circuit held below, "the COA requirement does not apply to all final orders; some orders, even if final, lack 'a sufficient nexus' to the underlying

merits of a habeas petition to 'trigger the COA requirement.'" *Stanko v. Stirling,* 109 F.4th at 700, quoting *United States v. McRae*, 793 F.3d 392, 399 (4th Cir. 2015). The Court noted that it had in prior circuit precedent "drawn a line between *dismissal* of a motion for reconsideration as an unauthorized successive petition, which may be appealed without a COA," citing *McRae,* "at 399-400, and a *denial* of a motion for reconsideration on its merits, which may not, *see Reid v. Angelone*, 369 F.2d 363, 370 (4th Cir. 2004)." *Stanko v. Stirling,* 109 F.4th at 700. The Fourth Circuit explained

> Whereas a dismissal by definition does not pass on a habeas petition's merits, the same is not true of a denial: When a district court denies a reconsideration motion "on the merits, it necessarily considers the merits of the underlying habeas petition" because such a motion "alleges illegality in the conduct of" the habeas proceedings.

Id., quoting *McCrae*, 793 F.3d at 399.

The Fourth Circuit correctly found, Stanko's Rule 59(e) motion to alter or amend was *denied,* indicating a ruling after merits review. Indeed, the district confirmed the merits review by footnote. (Pet.App. 430 at n.6). Additionally, the district court was correct that even if it did allow the delay, it would mean nothing to the case. This was because the materials could not be used either to supplement the record on a preserved claim pursuant to his Court's holding in *Cullen v. Pinholster,* or used to attempt to show ineffective assistance of PCR counsel to avoid a default since *Shinn v. Ramirez* set out that a federal court should not "consider evidence beyond the state court record" on such assertions. (*See* Pet.App. 429).

As the Fourth Circuit noted even if it could consider this argument, it would not get Stanko far. In light of *Shinn v. Ramirez*, which confirmed that any evidence

from the sought after testing would have been inadmissible, and *Shoop v. Twyford*, 596 U.S. 811, 820 (2022), which held that a court lacked authority to arrange for medical testing if *Shinn* would exclude the resulting evidence, the district court did not err in denying the Rule 59 motion to alter or amend on the merits. *Stanko v. Stirling*, 109 F.4th at 700, n. 10. The Court of Appeals correctly held that given the absence of a certificate, it lacked jurisdiction to review this argument. *See Miller-El*, 537 U.S. at 336.

Stanko basically argues here that he was not finished asserting claims; however, this does not help as the "new" evidence is still outside the state court record and inadmissible. *Cullen, supra, Shinn, supra.* Moreover, this would only lead to additional delay which this Court has expressly instructed should be avoided: "A federal court 'may *never* needlessly prolong a habeas case, particularly given the essential need to promote the finality of state convictions,' so a court must, before facilitating the development of new evidence, determine that it could be legally considered in the prisoner's case." *Shoop*, 596 U.S. at 820 (2022), quoting *Shinn,* 596 U.S. at 390. *See also Woodford v. Garceau,* 538 U.S. 202, 206 (2003) (observing a goal of § 2254 restrictive review was "to reduce delays in the execution of state and federal criminal sentences, particularly in capital cases").

Stanko also argues that he wanted to move for a stay under *Rhines v. Webber,* 544 U.S. 269 (2005), return to state court to exhaust unexhausted claims, then plead them in an amended federal habeas petition. Besides the very obvious concession that he was, in fact, seeking delay, this would not work. With very rare

exceptions, South Carolina does not allow time barred or successive applications in post-conviction relief. *See* S.C. Code Ann. § 17-27-45 (establishing one-year statute of limitations from finality on appeal or within discovery of material facts not otherwise available previously with due diligence); S.C. Code Ann. § 17-27-90 (establishing that "[a]ll grounds for relief available" should be raised in the original action); *Robertson v. State*, 795 S.E.2d 29, 33 (S.C. 2016) (recognizing applicability of time and successiveness bars to capital PCR cases); *see also Bryant v. Stirling,* 126 F.4th 991, 997-998 (4th Cir. 2025) (recognizing South Carolina's state law procedural bars for successive and untimely applications as "adequate to bar federal habeas relief"). And, it must be evidence that could not have been discovered before trial to be considered for exception. *See* 17-27-45, *supra.* More scans are hardly new. Simply, Stanko need not return to state court to litigate claims that are procedurally barred. Again, Stanko favors delay, § 2254 does not.

Yet, as to this issue, Stanko has shown nothing more than a correct application of 28 U.S.C. § 2253. The petition should be denied.

II.

Certiorari should be denied on the conflict claim because the South Carolina Supreme Court neither reached a decision that was contrary to this Court's precedent nor did it's decision rest on an unreasonable determination of the facts given the record before the state court.

Stanko raised a conflict of counsel issue in his direct appeal. The S.C. Supreme Court found that Stanko knowingly, intelligently, and voluntarily waived any conflict of interest flowing from Diggs' continuing to represent him in the Horry County case

after he had filed a PCR application in his Georgetown case. *State v. Stanko*, 741 S.E.2d at 712, 715- 717. The state supreme court considered the ample evidence available in the record, particularly the court hearings held on the matter which reflected Stanko's repeated desire to have Diggs remain on the case. *Id,* at 715-717; *see also* JA 422-25; 448-453; 456-66; 472-86; see also JA 399-401, 3252-3255, 3278-3283, 3286-3296, 3302-3316; 3229-3231; 3960-3261. The state supreme court found, based on the extensive record, not just that Stanko "did not object to the appointment of Diggs as counsel, but had emphatically requested that Diggs continue to represent him." *State v. Stanko,* 741 S.E.2d at 717.

As to the merits of the waiver, the state supreme court found: "To the extent that this situation gave rise to a conflict of interest, implicating any constitutional right, Appellant was fully informed of that conflict. Appellant's extensive endorsement of Diggs's continued representation constituted a valid waiver." *Id.* at 717. The state court record not just reasonably, but fully and fairly supported the relevant facts and the reasonable conclusion on waiver.

First, at the November 2006 hearing regarding the appointment of counsel in the Horry prosecution, Judge Michael Baxley discussed *ex parte* with Stanko the nature of any potential conflict. Stanko responded he was "satisfied with what Mr. Diggs did" in the Georgetown case, in the "way [they] designed the defense," though he was not satisfied with second-chair's representation. (JA 3253-55).

Second, at a December 2008 hearing also before Judge Baxley, Stanko expressed his belief that Diggs would have "learned from" any mistakes in the first

trial, "or may see them differently," consequently, Stanko wanted to keep Diggs on the Horry County case: "I don't want to lose him; because I believe in him. He knows my case. He's the one who had the test ordered and found out everything that was wrong with my medical frontal lobe. I don't want to lose him. . . . " (JA 3278). Notably, the PCR court in the separate Georgetown matter allowed Stanko the opportunity to discuss this with the PCR attorneys that would be appointed to him. (JA 3279).

Third, Judge John, the Horry County trial judge, directed a hearing on the conflict issue in March 2009. (JA 3288-3296). Stanko at that hearing explained his appellate counsel in the Georgetown County prosecution advised him to file the PCR application "in order to stop the death watch[.]" (JA 3290). Stanko again expressed an understanding that the filing of the PCR application indicated he would likely be filing ineffective assistance claims against his current trial counsel for the Georgetown trial, but doing so did not equate with a belief that Diggs would not reconsider his presentation of the first trial in his calibration of the defense in the second. He asserted that he had "trust" in Diggs, and "believe[d] in him and his efforts" on Stanko's behalf. Judge John also questioned Diggs concerning whether he believed any conflict to exist, and Diggs responded he did not "have a problem with [Stanko] making [PCR allegations against him]" in the Georgetown case. (JA 3295). Diggs informed the court that if it identified a conflict in the theories being presented, that if they undermined the overall status of Stanko's case, the trial court should revisit the conflict issue. (JA 3295).

Fourth, Judge John in June 2009 again addressed the conflict of interest upon motion by the State. (JA 3304). Critically, Diggs at that time represented to the trial court that he did not take the allegations personally and that "any defense attorney who's in business for any length of time will go through the post-conviction relief process as a witness from time to time. That doesn't cause me a problem" and further asserted that he would continue to do his best for his client if he was allowed to stay on as counsel in the Horry County case. (JA 3308-3309). Judge John also questioned Stanko about whether he felt he had "free and open communication" with Diggs "despite the fact that the PCR application ha[d] been filed" in the Georgetown County case, and whether he was "able to fully discuss all issues that [he] deem[ed] necessary with him." Stanko persisted he was not having, nor did he expect to have, any problems with Diggs' "presenting the second trial." (JA 3312-13). Stanko again expressed an understanding that Diggs would not refuse to consider alternative methods of presenting the trial and professed his trust in Diggs even if "mistakes" were made in the prior Georgetown trial. (JA 3314). Moreover, a motion by the State raised the concern of possible reputational self-interest. (JA 3960-61). And, at least part of the purpose for the hearing before Judge John was not just because Stanko had filed a PCR application in Georgetown, but also because Diggs indicated to the

State he was going to present the same defense in Horry County.[3] (JA 3302-3331; 3352-3361). Stanko still persisted in his desire to have Diggs on the case.[4]

The S.C. Supreme Court's decision on the merits of this claim based on the state court record did not unreasonably apply U.S. Supreme Court precedent because this Court has not held that in this circumstance a conflict of interest cannot be waived knowingly, intelligently, and voluntarily. Notably, Stanko did not raise the issue of an "unwaivable" conflict until the federal habeas proceedings. *Stanko v. Stirling*, 109 F.4th at 687. Even so, Stanko simply evidenced a misunderstanding of the precedent he relied upon.

For example, while this Court found in *Wheat v. United States*, 486 U.S. 153, 162-163 (1988), that a district court *may* refuse a waiver when the circumstances are less than clear in the "murkier pre-trial context when relationships between parties are seen through a glass, darkly." There, counsel at issue attempted to defend three

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[3] Respondents maintained, though similar, there were some changes made to the presentation of Stanko's defense in the Horry case.

[4] Though not a part of the state appeal record, in subsequent PCR proceedings regarding the Horry convictions, Diggs confirmed that though he spoke frankly to Stanko about the conflict, "Stephen liked the defense that we presented" and "wanted to pursue that" in this case. (JA 4543, 4561). Diggs informed Stanko he was aware that ineffective assistance claims were going to be levied against him; he "also let him know it wasn't going to affect any representation that [he] provided for him at the second case." (JA 4562). Notably, co-counsel Brana Williams testified that she, Diggs, Stanko, and the court discussed the conflict of interest "ad nauseam, quite frankly." (JA 4733-35; *see also* 4742-44). She asserted that "Mr. Stanko waived it. He absolutely wanted Bill [Diggs]. He didn't want anybody else but Bill handling Stanko II." (JA 4734). Stanko does not squarely raise any issue regarding an ineffective assistance claim as to Diggs' advice, though he did argue to the Fourth Circuit that perhaps there was error in not providing separate counsel to Stanko in making the decision. *Stanko v. Stirling,* 109 F.4th at 696. The Fourth Circuit also quickly reject the insulation of error as noting that this "Court has stated in analogous contexts that the 'decision to waive [the right to counsel] need not itself be counseled," citing *Montejo v. Louisiana*, 556 U.S. 778, 786 (2009), and also finding that "Stanko *did* consult with independent counsel, int eh form of his PCR lawyers from Georgetown County – lawyers with no personal stake in whether Diggs remained on the case in Horry County." *Stanko v. Stirling,* 109 F4th at 696.

conspirators of varying stature in a complex drug distribution scheme" when it was unsure who may have to be cross-examined or to what extent. *Id.*, at 163–64. The Fourth Circuit, in affirming the district court, agreed that an "non-waivable conflict" is not an absolute, but "shorthand" for "a conflict … so severe and obviously prejudicial that a court's interest in fairness (and its appearance) outweighs the defendant's interest in choosing his lawyer…." *Stanko v. Stirling*, 109 F.4th at 692. *See also Holloway v. Arkansas*, 435 U.S. 475, 483 n.5 (1978) (recognizing conflict may be waived); *Brady v. United States*, 397 U.S. 742, 742 (1970) ("Waivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences.") In fact, the S.C. Supreme Court cited to *Brady*, 397 U.S. 742 for this vary requirement. *State v. Stanko,* 741 S.E.2d at 717. And, in keeping with this Court's precedent that waivers turn on the facts of the case, *see Edwards v. Arizona*, 451 U.S. 477, 482 (1981), the state supreme court correctly considered the knowing and intelligent nature of the waiver as shown in the series of hearings at the trial level. *State v. Stanko,* 741 S.E.2d at 715-717. Considering the ruling, the Fourth Circuit found the conclusion "was not an unreasonable application of the waiver standard" where discretion was carefully exercised. *Stanko v. Stirling,* 109 F.4th at 696. Though the Fourth Circuit did not discard the possibility "that a lawyer's self-interest" could "generate a conflict," it found, in this case, as Diggs himself recognized, ineffective assistance allegations are "sufficiently routine that Diggs was unlikely to be overly concerned" about the claims. *Stanko v. Stirling*, 109 F.4th at 693. Again,

given the discretionary nature of the decision, that leaves much room for reasonableness as required under § 2254 review. Moreover, the state supreme court did not reach an unreasonable determination of the facts on this record which showed Stanko was repeatedly informed and warned of any conflict or potential conflict by his attorneys, by the trial court, and through the state's motion. [5] *See State v. Stanko,* 741 S.E.2d at 715-717. Stanko knowingly, voluntarily, and intelligently waived any conflict. *Holloway*. As for § 2254 review, both the district court and the Fourth Circuit analyzed the issue with appropriate deference as required under § 2254 (d). *See, e.g, Harrington v. Richter,* 562 U.S. 86, 101 (2011) ("A state court's determination that a claim lacks merit precludes federal habeas relief so long as 'fairminded jurists could disagree' on the correctness of the state court's decision.) (quoting *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004)). As the Fourth Circuit summed up:

> … we agree with the district court as to the validity of Stanko's waiver of conflict-free counsel. The state court's determination that Stanko "was fully informed of [any] conflict," and executed a "knowing and intelligent waiver," 741 S.E.2d at 717, was not an unreasonable application of the waiver standard established by the United States Supreme Court. *See* 28 U.S.C. § 2254(d)(1). For that reason, it cannot be the basis for relief under AEDPA.

Stanko v. Stirling, 109 F.4th at 696.

Stanko has failed to show anything other than an ordinary application of the reasonableness standard. The petition should be denied.

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[5] Stanko previously discussed the State's position at one pre-trial hearing on this issue, thus showing that Stanko was, not only fully informed of any conflict by the Court and counsel, but also by the State. (JA 3960-61). He still chose to voluntarily, knowingly, and intelligently, waive any conflict after being fully informed by everyone involved in the case.

CONCLUSION

Based on the foregoing, this Court should deny Stanko's petition in its entirety.

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