

No.

In The
Supreme Court of the United States

Pavenell R. May - Petitioner
Dexter Payne Vs. - Respondent

Appendices to Petitioner's Petition for Writ of Certiorari
to United States Court of Appeals for the Eighth Circuit

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 25-1057

Parnell R. May

Plaintiff - Appellant

v.

Dexter Payne, Director, Arkansas Division of Correction (originally named as M Jackson)

Defendant - Appellee

Appeal from U.S. District Court for the Eastern District of Arkansas - Central
(4:23-cv-00350-JM)

JUDGMENT

Before SMITH, GRASZ, and KOBES, Circuit Judges.

This appeal comes before the court on appellant's application for a certificate of appealability. The court has carefully reviewed the original file of the district court, and the application for a certificate of appealability is denied.

Appellant's motion for remand and motion for leave to proceed on appeal in forma pauperis are denied as moot.

The appeal is dismissed.

April 18, 2025

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Susan E. Bindler

Appendix A
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UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 25-1353

Parnell R. May

Plaintiff - Appellant

v.

Dexter Payne, Director, Arkansas Division of Correction (originally named as M Jackson)

Defendant - Appellee

Appeal from U.S. District Court for the Eastern District of Arkansas - Central
(4:23-cv-00350-JM)

JUDGMENT

Before SMITH, GRASZ, and KOBES, Circuit Judges.

This appeal comes before the court on appellant's application for a certificate of appealability. The court has carefully reviewed the original file of the district court, and the application for a certificate of appealability is denied.

Appellant's motion for leave to proceed on appeal in forma pauperis is denied as moot.

The appeal is dismissed.

April 18, 2025

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Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Susan E. Bindler

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UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 25-1057

Parnell R. May

Appellant

v.

Dexter Payne, Director, Arkansas Division of Correction (originally named as M Jackson)

Appellee

Appeal from U.S. District Court for the Eastern District of Arkansas - Central
(4:23-cv-00350-JM)

ORDER

The petition for rehearing en banc and the petition for rehearing by the panel is denied.

June 04, 2025

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Susan E. Bindler



UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 25-1353

Parnell R. May

Appellant

v.

Dexter Payne, Director, Arkansas Division of Correction (originally named as M Jackson)

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Appeal from U.S. District Court for the Eastern District of Arkansas - Central
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ORDER

The petition for rehearing en banc and the petition for rehearing by the panel are denied.

June 04, 2025

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Susan E. Bindler

Appendix B
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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

PARNELL R MAY
ADC#153557

PETITIONER

v.

CASE NO. 4:23-cv-00350-JM

DEXTER PAYNE

RESPONDENT

ORDER

The Court has received proposed findings and recommendations from United States Magistrate Judge Jerome T. Kearney. After careful review of the findings and recommendations and the timely objections thereto, as well as a de novo review of the record, the Court concludes that the findings and recommendations should be, and are hereby, approved and adopted as this Court's findings in their entirety.

The Court will not issue a certificate of appealability because Petitioner has not made a substantial showing of a denial of a constitutional right. 28 U.S.C. § 2253(c)(1)-(2). Because the Court will not issue a certificate of appealability, it certifies that an appeal in forma pauperis would not be taken in good faith. Fed. R. App. P. 24(a)(3)(A). Petitioner's motion for certificate of appealability (ECF No. 46) is DENIED.

Petitioner's motion for extension of time to file objections (ECF No. 40) is MOOT and his motion for reconsideration, motions to renew, and motion for hearing (ECF Nos. 42, 43, 44, 45) are DENIED. The petition for writ of habeas corpus (ECF No. 2) is DISMISSED with prejudice.

IT IS SO ORDERED this 7th day of January, 2025.


UNITED STATES DISTRICT JUDGE

Appendix B
Page 1 of 2

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

PARNELL R MAY
ADC #153557

PETITIONER

V.

CASE NO. 4:23-cv-00350-JM

DEXTER PAYNE

RESPONDENT

JUDGMENT

Pursuant to the Order entered on this day, IT IS CONSIDERED, ORDERED and ADJUDGED that the petition for writ of habeas corpus is DISMISSED with prejudice. All habeas relief is denied, and this case is closed.

IT IS SO ORDERED this 7th day of January, 2025.



UNITED STATES DISTRICT JUDGE

Appendix B
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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

PARNELL R. MAY

PETITIONER

v.

No. 4:23-cv-00350-JM-JTK

DEXTER PAYNE, Director,
Arkansas Division of Correction

RESPONDENT

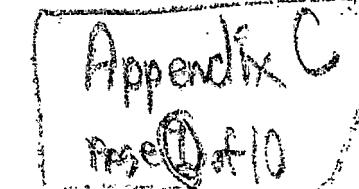
RECOMMENDED DISPOSITION

The following Recommended Disposition has been sent to United States District Judge James M. Moody, Jr. You may file written objections to all or part of this Recommendation. If you do so, those objections must: (1) specifically explain the factual and/or legal basis for your objection; and (2) be received by the Clerk of this Court within fourteen (14) days of the date of this Recommendation. If you do not file objections, Judge Moody may adopt this Recommendation without independently reviewing all of the evidence in the record. By not objecting, you may waive the right to appeal questions of fact.

*

Parnell R. May seeks *habeas* relief from his state court capital murder conviction and life imprisonment sentence. The Pulaski County jury found May acted with premeditation and deliberation when he killed his girlfriend, Anna Morales.¹ The Arkansas Supreme Court affirmed the capital murder conviction and life sentence, *May v. State*, 2022 Ark. 216, 655 S.W.3d 74, and the United States Supreme Court denied *certiorari*, *May v. Arkansas*, 143 S. Ct. 2593 (2023).

¹ May was initially charged with first-degree murder and proceeded *pro se*. After May was disruptive and failed to follow court rules during the first-degree murder trial, the trial court revoked May's right to proceed *pro se* and appointed standby counsel. At the request of May and standby counsel, the trial court granted a mistrial to allow standby counsel to prepare a defense. On appeal, the Arkansas Court of Appeals held that, because May was "not goaded into requesting a mistrial," the trial court's mistrial order was not a violation of the double jeopardy bar. *May v. State*, 2019 Ark. App. 443, *10, 587 S.W.3d 257, 262. While May's appeal was pending, the prosecution filed an amended felony information, charging May with first-degree murder and capital murder. Doc. 14-15.



(Mem). May proceeded *pro se* at trial and did not seek post-conviction relief pursuant to Rule 37 of the Arkansas Rules of Criminal Procedure. He timely filed a federal *habeas* petition on April 1, 2023.² *Doc. 1.*

*

In *May*, the Arkansas Supreme Court summarized the mostly undisputed facts:

At trial, James Woodell testified that on December 3, 2016, he was living in a duplex next door to May and Morales. That day, Morales knocked on his door and asked Woodell if he would come next door and help May fix his radio. Woodell agreed, followed her next door, and fixed the radio. May and Morales began arguing, and Woodell heard May threaten her, saying “I’ll beat you to death[,]” and “I’ll put you six foot down[.]” May then apologized to Morales and Woodell. Later that night, Woodell was getting ready for bed about 11:00 and heard music blaring. He knocked on May’s door, which was cracked open, and saw May in the kitchen taking pictures with his cell phone. Woodell also saw Morales lying on the floor. She was moving a little bit and appeared to be mumbling, so Woodell thought she was drunk. When May finally came to the door, Woodell asked him to turn down the radio, and May did so.

Around 7:00 the next morning, as Woodell left for work, he saw Morales lying outside on the porch step. He thought she might have been drunk and fallen asleep, so he nudged her with his foot, but she did not respond. She looked pale, had bruising on her face, and he could not tell if she was breathing. He called 911. Woodell also recalled that he did not see May that morning. Woodell entered May’s duplex around noon that day to leave food and water for the cats. He went back that evening and noticed a pair of boots by the door that had not been there at lunch. He left and called the police. They arrived several minutes later and found May hiding in a bedroom between two mattresses.

2022 Ark. 16, *1–2, 655 S.W.3d at 76–77. When EMT responders arrived at the duplex, Morales’s body was outside on the front steps with no vital signs. Attempts to revive Morales at the scene

² The presiding Court dismissed without prejudice May’s *habeas* petition, filed July 15, 2022. The Court adopted the proposed findings and recommendations of the undersigned Magistrate Judge that May had not exhausted state court remedies and that his direct appeal was active and pending in the Arkansas Supreme Court. *May v. Musselwhite*, No. 4:22-cv-653-JM, *Doc. 5* (E.D. Ark. Aug. 11, 2022), *adopting the recommended disposition in May v. Musselwhite*, No. 4:22-cv-653-JM-JTK, *No. 3* (July 6, 2022). The Eighth Circuit Court of Appeals dismissed May’s appeal. *May v. Musselwhite*, No. 22-2779 (8th Cir. Nov. 4, 2022).

and in the emergency room were unsuccessful. Dr. Stephen Erickson, the State Crime Lab deputy chief medical examiner, performed the autopsy. He determined Morales's cause of death was multiple blunt-force injuries by homicide. In other words, "she was beaten to death." *Doc. 14-8 at 113.* In the autopsy report, Dr. Erickson noted "severe blunt-force injuries were present on Morales's head, trunk, and extremities, with extensive internal injury to the scalp, thick subdural hemorrhage, multiple fractured ribs, and a severely lacerated liver." *Doc. 14-5 at 129.* A metal pipe and wooden walking stick were found in the duplex. DNA profiles from the ends of the metal pipe and wooden stick, and from May's boots, matched Morales's DNA sample.

Proceeding *pro se*, May testified at trial. The Arkansas Supreme Court summarized his testimony:

May testified on his own behalf and admitted that he and Morales began fighting the afternoon of December 3 because she thought he was watching pornography. May admitted that he had been drinking, hit her, and "in this situation, it was too extreme[.]" He acknowledged that he had beat her "over and over" with the stick but claimed that "that iron pipe never touched her." He admitted beating her for ten minutes and acknowledged causing all of her injuries that were depicted in the medical examiner's photographs except for her tooth being knocked out. He described the injuries he had inflicted as "vicious" and "violent." He nonetheless claimed that he was not guilty of causing her death. He asserted that Morales died from a combination of the cold weather and resuscitation efforts by first responders.

2022 Ark. 216, *4, 655 S.W.3d at 78.

*

May, a state prisoner, may seek a writ of *habeas corpus* in federal court, if he is "in custody in violation of the Constitution or laws or treatises of the United States." 28 U.S.C. § 2254(a). Before seeking *habeas* review, May must have exhausted available state remedies by fairly presenting each of his claims in state court. *Coleman v. Thompson*, 501 U.S. 722, 731 (1991); *O'Sullivan v. Boerckel*, 526 U.S. 838, 848 (1999).

On claims adjudicated on the merits, this Court may grant *habeas* relief only if May satisfies 28 U.S.C. § 2254(d) requirements and United States Supreme Court “precedents governing the appropriate exercise of equitable discretion.” *Brown v. Davenport*, 596 U.S. 118, 134 (2022). May must demonstrate that the state court 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.” 28 U.S.C. § 2254(d). May also must pass the *Brech* test for assessing the state court error’s prejudicial effect. *Brown*, 596 U.S. at 134. He must show the error had “substantial and injurious effect or influence” on the verdict or sentence. *Brech v. Abrahamson*, 507 U.S. 619, 622 (1993) (quotations omitted).

A claim is procedurally defaulted when the state court declined to review it because the petitioner failed to comply with a state procedural rule. *Coleman*, 501 U.S. at 729–32. Procedural default also occurs when a petitioner did not present a claim in state court and a state court remedy is no longer available. *O’Sullivan*, 526 U.S. at 848. If a claim is procedurally defaulted, this Court can consider it only if May establishes either cause for the default and actual prejudice, or that the default will result in a fundamental miscarriage of justice. *Coleman*, 501 U.S. at 750.

*

1st May first contends there was insufficient evidence to find him guilty of capital murder. He made a similar argument in state court. Denying relief, the Arkansas Supreme Court held substantial evidence supported the guilty verdict. *May*, 2022 Ark. 216, *4-6, 655 S.W.3d at 78–79. The Supreme Court’s denial of May’s sufficiency point under the substantial evidence

standard was an adjudication of the *habeas* due process claim. *Dansby v. Payne*, 766 F.3d 809, 817–18 (8th Cir. 2014). Deference review under 28 U.S.C. § 2254(d)(1) therefore is appropriate.

The recommended finding is that the Arkansas Supreme Court's decision was not contrary to, or an unreasonable application of, federal law; nor was it an unreasonable determination of the facts. 28 U.S.C. § 2254(d)(2). The Due Process Clause forbids a conviction when “no rational trier of fact could have found proof of guilt beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 324 (1979). The *Jackson* standard does not permit reweighing the evidence; inconsistencies must be resolved in favor of the prosecution. *Id.* at 319. Under Arkansas law, a person commits capital murder if, with the premeditated and deliberated purpose of causing the death of another person, he caused the death of any person. Ark. Code Ann. § 5-10-101(a)(4). Applying the capital murder definition, the Arkansas Supreme Court held substantial evidence supported the jury’s guilty verdict:

[May’s] sufficiency challenges center on his contention that, although he admittedly beat Morales on December 3, the State failed to present substantial evidence that his conduct caused her death. Instead, he claims that her death was caused by the resuscitation efforts of first responders or by the cold weather that she endured prior to being found unresponsive on the porch of his duplex the morning of December 4.

Here, Dr. Erickson testified that Morales’s cause of death was multiple blunt-force injuries inflicted by another individual. When pressed by May on cross-examination about his theory on causation, Dr. Erickson remained firm that Morales “was beaten to death.” He further opined that Morales suffered all of the blunt-force injuries while she was alive, as he saw no postmortem injuries. Additionally, the first responders that transported Morales to the hospital noted that although they attempted to revive her, nothing they did had any physiological response. They further noted that she had “extensive trauma,” no vital signs, and was cold to the touch when they arrived.

Ultimately, May's arguments challenge the credibility of the witnesses at trial. The jury believed Dr. Erickson's testimony that Morales was beaten to death over May's version of events. This determination was strictly within the province of the jury.

*May, 2022 Ark. 16, *5–6, 655 S.W.3d at 79.*

The recommended finding is that the Arkansas Supreme Court's analysis "was not an unreasonable way for a state court to ensure that a rational trier of fact could have found the requisite elements [of capital murder] beyond a reasonable doubt." *Dansby*, 766 F.3d at 818. This Court further concludes the Supreme Court made a reasonable determination that there was substantial evidence supporting the guilty verdict. On *habeas* review, May continues to challenge Dr. Erickson's conclusion that Morales's death was caused by homicide. He repeats his state court argument that CPR compressions or hypothermia, not the blunt trauma that he inflicted, caused Morales's death. The jury heard May's testimony that he repeatedly struck Morales's torso with a wooden stick. His defense was that "no matter how brutal and violent [the beating] was, [he] didn't cause her death." *Doc. 14-11 at 164*. May claimed that, after he beat the victim, she walked outside with a beer. The jury, however, heard convincing evidence that Morales's death was caused by being repeatedly struck by another person and that she did not have vital signs when emergency responders arrived at the scene. This Court concludes trial evidence more than satisfies the due process standard. Under deference review, the recommendation is denial of the claim.

*

May contends the trial court's exclusion of Morales's emergency room medical records and uncertified death certificate copy (and an incomplete death certificate) was a violation of his right to due process. He argues that, with these records, he could have challenged Dr. Erickson's

conclusions about Morales's cause of death. The proffered papers are part of the state court record.³ *Doc. 14-12 at 131–67, 68, 69.*

May made similar arguments on appeal, raising both state evidentiary and constitutional grounds. *May v. State*, CR-22-221 (Ark.) (appellant's petition, filed Aug. 3, 2022). The Arkansas Supreme Court affirmed the trial court's evidentiary rulings but did not address the constitutional issues. *May*, 2022 Ark. 216, *7–9, 655 S.W.3d at 79–81. The presumption is not rebutted that the Supreme Court adjudicated the due process claims on the merits. *Johnson v. Williams*, 568 U.S. 289, 300–01 (2013). The constitutional claims were not “rejected as a result of sheer advertence.” *Id.* at 302–03. The Supreme Court recognized May's constitutional challenges, but there was no basis for finding a due process violation after the Court affirmed the trial court's evidentiary rulings. The Court, moreover, independently reviewed the entire record, as required by state rules, and found no reversible error. *May*, 2022 Ark. 216, *10, 655 S.W.3d at 81. The mandatory review “fortifies the presumption” that the state court decided May's due process claims on the merits. *Dansby*, 766 F.3d at 832. Because the claims are exhausted, deference review is appropriate. 28 U.S.C. § 2254(d).

The recommended finding is that the Arkansas Supreme Court's decision was not contrary to, or an unreasonable application of, federal law; nor was it an unreasonable determination of the facts. 28 U.S.C. § 2254(d). “Whether rooted in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or the Confrontation Clauses of the Sixth Amendment, the Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense.” *Holmes v. South Carolina*, 547 U.S. 319, 324–25 (2006) (quotations omitted). The

³ Although May also seems to frame the issue as evidence suppression by the prosecution, he had possession of the papers at trial and attempted to introduce them into evidence. To the extent May raises evidence suppression, the claim fails. See *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

constitutional right to present a defense is violated when evidence rules “infringe upon a weighty interest of the accused and are arbitrary or disproportionate to the purposes they are designed to serve.” *Id.* (quotations omitted). Evidence rules are arbitrary, as written or applied, if they “excluded important defense evidence” but “did not serve any legitimate interests.” *Id.*

May argues only that the excluded papers would have allowed him to challenge Dr. Erickson’s credibility about Morales’s cause of death. He has not developed any convincing argument that state evidentiary hearsay or authentication rules fail to serve a legitimate interest. *Id.* In any event, the trial court permitted May to cross-examine Dr. Erickson at length about Morales’s emergency room records and unofficial death records. *Docs. 14-8 at 191-201 & 14-9 at 1-4.* A finding is therefore recommended that May was not deprived of a meaningful opportunity to present a complete defense. This Court also concludes that May has not demonstrated that any error had “substantial and injurious effect or influence” on the verdict or sentence. *Brecht*, 507 U.S. at 622. Under deference review, the claims should be denied.

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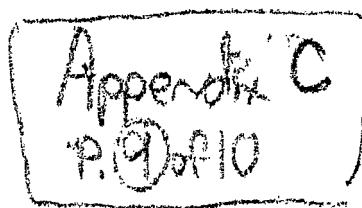
May says Dr. Erickson “gave invalid forensic testimonial evidence,” an investigating officer “fabricated evidence and wrote false reports,” and subpoenaed defense witnesses did not appear at trial. *Doc. 2 at 9.* He says there was prosecutorial misconduct and malicious prosecution because the prosecution knew about false testimony. May also contends his capital murder conviction and life sentence are cruel and unusual punishment.

May similarly challenged Dr. Erickson’s testimony on direct appeal. The Arkansas Supreme Court held the point was not preserved for review because May had not made a contemporaneous objection. *May*, 2022 Ark. 216, *10, 655 S.W.3d at 81. The Supreme Court determined that, to the extent May was raising a sufficiency-of-the-evidence argument, Dr.

A *New
Claim
Issue*

Erickson's credibility was a jury determination. *Id.* As outlined herein, the trial evidence satisfies the due process standard. To the extent May is raising a different claim, the claim is procedurally defaulted. *Coleman*, 501 U.S. at 729–32. The other claims are also procedurally defaulted. May has raised the claims for the first time on *habeas* review, and he has not shown there is an available state remedy. *O'Sullivan*, 526 U.S. at 848.

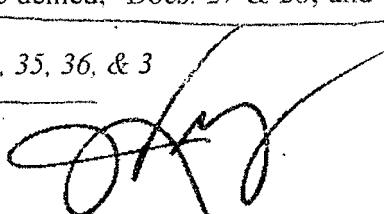
To establish cause to excuse procedural default, May must "show that some objective factor external to the defense impeded counsel's efforts to comply with the State's procedural rule." *Murray v. Carrier*, 477 U.S. 478, 488 (1986). May says that, because of the state procedural rule limiting the length of appellate briefs, he was not able to raise an argument about fabricated evidence on direct appeal. He says that the Arkansas Supreme Court denied his motions to expand the page limit. A page limitation on appellate briefs is not cause to excuse procedural default. *Mueller v. Angeone*, 181 F.3d 557, 585 (4th Cir. 1999). "The existence of a page limitation that affords a petitioner ample opportunity to present numerous claims, forcing only some small measure of strategic choice, is not at all problematic." *Id.* The state procedural rule limits the length of appellants' briefs—including the jurisdictional statement, the statement of the case and the facts, the argument, and the request for relief—to 8600 words. *See* Ark. R. Sup. Ct. 4-2(d)(1). This Court concludes that May has not provided any convincing reason why he could not make room for additional claims in his appellate brief. His argument in the appellate brief, moreover, is meandering and repetitive. *See May v. State*, No. 22-221 (Ark.) (appellant's brief, filed Aug. 3, 2022). The recommended finding is that the word limitation in the state procedural rule does not excuse procedural default. May has not offered any cause for procedural default of the remaining claims. The recommendation is that all these claims should therefore be denied based on procedural default.



This is the Primary Focus

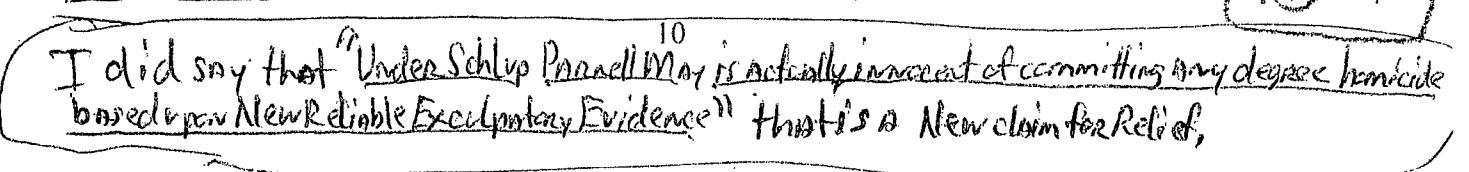
May contends that he is actually innocent of capital murder—either as a standalone claim or as a gateway to consider procedurally defaulted claims. He continues to challenge Dr. Erickson's finding that the cause of Morales's death was homicide. May, however, has not established that, in light of new evidence, “it is more likely than not that no reasonable juror would have convicted him” of capital murder. *Schlup v. Delo*, 513 U.S. 298, 327 (1995). He does not rely on new evidence that was unavailable at trial and “could not have been discovered earlier through the exercise of due diligence.” *Nash v. Russell*, 807 F.3d 892, 899 (2015). The recommended finding therefore is that May has not established gateway actual innocence to overcome procedural default. Because the threshold for a standalone actual-innocence claim is even higher, the recommended finding is that the evidence also falls short of demonstrating a freestanding claim of actual innocence. *House v. Bell*, 547 U.S. 518, 554–55 (2006); *Dansby*, 766 F.3d at 840.

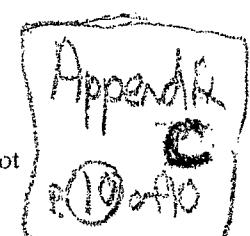
IT IS THEREFORE RECOMMENDED THAT: (1) May's Petition for Writ of Habeas Corpus be DENIED, Doc. 2; (2) this case be DISMISSED without prejudice; (3) that the motion to amend the petition and for an evidentiary hearing be denied,⁴ Docs. 27 & 28; and (4) that the remaining motions be denied as moot, Docs. 29, 33, 34, 35, 36, & 3


JEROME T. KEARNEY
UNITED STATES MAGISTRATE JUDGE

12/3/2024
DATE

⁴ Based on careful review, the proposed amended petition does not offer any new claims for relief. May has not made any convincing record expansion argument under 28 U.S.C. § 2254(e)(2).


I did say that “Under ¹⁰ Schlup Parrott May is actually innocent of committing any degree homicide based on New Reliable Exculpatory Evidence” that’s a New claim for Relief,



**Additional material
from this filing is
available in the
Clerk's Office.**