

IN THE
Supreme Court of the United States

TREMANE WOOD,
Petitioner,

vs.

STATE OF OKLAHOMA,
Respondent.

**ON PETITION FOR A WRIT OF CERTIORARI
TO THE OKLAHOMA COURT OF CRIMINAL APPEALS**

APPLICATION FOR A STAY OF EXECUTION

***** SCHEDULED FOR NOVEMBER 13, 2025 *****

TO THE HONORABLE BRETT KAVANAUGH, ASSOCIATE JUSTICE OF THE
SUPREME COURT:

Petitioner Tremane Wood respectfully asks the Court to stay his upcoming execution, currently scheduled for November 13, 2025. A stay would allow the Court to fully consider the claims presented in the accompanying petition for a writ of certiorari to review the decision of the Oklahoma Court of Criminal Appeals denying Mr. Wood’s claims under *Brady v. Maryland*, 373 U.S. 83 (1963), and *Napue v. Illinois*, 360 U.S. 264 (1959), following an evidentiary hearing, under a timetable that does not risk the petition becoming moot pending review.

“Stays of execution are not automatic pending the filing and consideration of a petition for a writ of certiorari.” *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983). “It is well established that there must be a reasonable probability that four Members of the Court would consider the underlying issue sufficiently meritorious for the grant of certiorari or notation of probable jurisdiction; there must be a significant probability of reversal of the lower court’s decision; and there must be a likelihood that irreparable harm will result if [the lower court’s] decision is not stayed.” *Id.* (quoting *White v. Florida*, 458 U.S. 1301,

1302 (1982) (Powell, J., in chambers)) (internal quotation marks omitted). Mr. Wood can make all three of these showings.

First, there is a reasonable probability that at least four Members of this Court would consider the issues in the petition sufficiently meritorious as to warrant either plenary review or summary reversal. The evidence developed at the reference hearing showed that Oklahoma County prosecutors entered into a cooperation agreement with Brandy Warden, a cooperating witness against Mr. Wood at his 2004 capital-murder trial. This cooperation memorandum promised Ms. Warden that she would receive a 35-year prison sentence in exchange for her testimony against Mr. Wood and his codefendants at their respective trials. Moreover, fulfilling the 35-year deal required Oklahoma County prosecutors to ensure that Ms. Warden's pending deferred sentencing arrangement in another county would not be converted to a felony conviction, so that she could testify against Mr. Wood without fear of being impeached with that prior conviction. Although Ms. Warden entered into this agreement with Oklahoma County prosecutors in 2003, Mr. Wood did not find out about it until April 9, 2025, the last day of the hearing. The fact that this 35-year deal was the true and complete agreement with Ms. Warden was confirmed through the testimony of George Burnett, one of the prosecutors at Mr. Wood's trial. Mr. Burnett explained that the reason the cooperation memorandum had been hidden from Mr. Wood for 22 years was because he wanted to avoid being exposed as having hidden it through testifying at a postconviction hearing—which is exactly what happened.

Evidence at the trial phase and at the evidentiary hearing confirmed that concealing the cooperation memorandum from Mr. Wood for all time was the prosecutors' strategy. The memorandum was dated February 4, 2003, and signed by Ms. Warden, her lawyer, and both prosecutors, Mr. Burnett and Fern Smith. But the judicial proceedings took a circuitous route on the way to fulfilling their promises to Ms. Warden, as due process requires. *See Santobello v. New York*, 404 U.S. 257, 262 (1971). On February 19, 2003, Ms. Warden pleaded guilty in open court to lesser charges, as she had agreed to do two weeks earlier—accessory after the fact to murder, and conspiracy to commit robbery. A written plea agreement filed in open court reflected that she had agreed to a *45-year* total sentence in exchange for her plea and testimony. At the change-of-plea hearing, Ms. Smith and Ms. Warden's lawyer both falsely told the court that Ms. Warden's deferred sentence had expired, when in fact there were eight months remaining on her probationary term. Ms. Warden was sentenced in accordance with the plea agreement two months later.

Ms. Warden testified against Mr. Wood on April 1, 2004. She minimized the extent of her involvement in the murder and robbery with which Mr. Wood had been charged, and she emphasized that Mr. Wood was the mastermind of the activity, with which she cooperated because she was afraid of him. The prosecutor elicited from Ms. Warden the terms of the plea agreement—truthful testimony against Mr. Wood in exchange for a 45-year sentence. The prosecutor successfully objected to a question from Mr. Wood's counsel on cross-examination that would have told the jury that Ms. Warden would be

able to get out of prison in less time than the nominal 45-year sentence might suggest. And in their closing arguments at the guilt and penalty phases of Mr. Wood’s trial, both prosecutors stressed Ms. Warden’s testimony against Mr. Wood and her lack of felony convictions preceding the murder in this case. Mr. Wood was convicted of first-degree murder, and the jury sentenced him to death.

On April 15, 2004, Ms. Warden appeared before the trial judge for an off-the-record sentence-modification hearing. The fact that the hearing was conducted off the record was not consistent with Oklahoma law, which required the hearing to be “in open court.” Okla. Stat. tit. 22, § 982a(C) (2004). Her sentence was reduced to 35 years, just as the cooperation memorandum reflected. The trial judge issued two orders reflecting this modification. The first, issued April 15, 2004, on a preprinted form, simply noted that the court had considered the evidence presented at the hearing and granted the sentence reduction in the interests of justice. Then, on April 19, 2004, the judge issued a second, bespoke order. This order noted that the sentence reduction had been granted over the “strenuous objection” of the state because Ms. Warden had done the “right thing” by cooperating with the state and testifying against Mr. Wood. The only explanation in the record for the basis of the state’s objection is Mr. Burnett’s testimony at the reference hearing—that he had objected to Ms. Warden’s sentencing being modified *post hoc* in order to avoid being exposed at a postconviction hearing for concealing the true nature of Ms. Warden’s deal.

These are textbook violations of *Brady* and *Napue*. There is a reasonable likelihood that at least four Members of this Court—and possibly as many as six—would vote to grant certiorari in this case, because six Members of this Court agreed that there was a violation of *Napue* (at least) in *Glossip v. Oklahoma*, 604 U.S. 226 (2025). The facts in *Glossip* strongly resemble the facts here. Just as here, *Glossip* involves the knowing failure on the part of Oklahoma County prosecutors to correct false testimony provided by a crucial witness for their case. *See* 604 U.S. at 247. The prosecutors signed Ms. Warden’s cooperation memorandum that reflected the 35-year sentence, so they surely knew that Ms. Warden’s trial testimony about her deal was false. And the credibility of Ms. Warden’s trial testimony “plainly would have suffered” if the prosecutors had corrected it. *Id.* at 248. The theory that Mr. Wood was the mastermind and Ms. Warden (whom they repeatedly stressed had no prior felony convictions) was merely following his orders “was an important part of the prosecution’s case and featured prominently in its opening and closing statements” at both the guilt and penalty phases. *Id.* at 249.

Additional misconduct relating to Ms. Warden and another cooperating witness, Coleman Givens, “further undermines confidence in the verdict.” *Id.* at 250. The prosecutors successfully prevented Ms. Warden from testifying—correctly, as a matter of Oklahoma law—that the charges of conviction would have allowed her to “get out faster” than the nominal 45-year sentence might otherwise suggest. And in order to accomplish the reduction from 45 to 35 years, Oklahoma County prosecutors arranged with prosecutors in Payne County, where Ms. Warden was on probation, to prevent the

probation from being converted to a felony conviction, because that would have been a legal disqualification from the sentence modification that led to the 35-year sentence. *See* Okla. Stat. tit. 22, § 982a(A) (2004). Coleman Givens was an eyewitness to the activity that preceded the murder who happened to be in jail with Mr. Wood on unrelated charges. Mr. Burnett testified that he acted to time critical events in Mr. Givens's cases so that after Mr. Givens testified against Mr. Wood, his two pending felony cases would be resolved with a single misdemeanor. This evidence of additional misconduct did not emerge until 2024, when Mr. Wood was permitted to review the Oklahoma County District Attorney's file without gatekeeping from line prosecutors.

In short, this case has many parallels to *Glossip*. In *Glossip*, at least four—and as many as six—Members of this Court voted to grant certiorari. There is thus a reasonable probability that at least four Members of this Court would vote to grant review here.

Further evidence of a reasonable probability that at least four Members of this Court would vote to grant certiorari here comes from the summary reversal in *Andrew v. White*, 604 U.S. 86 (2025) (per curiam). This Court generally does not issue summary reversals at the certiorari stage without the agreement of at least five, and usually six, Justices. *See* Stephen M. Shapiro et al., *Supreme Court Practice* 5-35 (11th ed. 2019). *Andrew* involved yet another Oklahoma County capital murder prosecution; one of the prosecutors in *Andrew* was the lead prosecutor in Mr. Wood's case. *See Andrew v. State*, [2007 OK CR 23](#) (noting the participation of Fern Smith as trial prosecutor against Ms. Andrew). Like this case, *Andrew* involves the prosecutors' violation of a capital defendant's due-process rights. *See Andrew*, 604 U.S. at 88 (“By the time of Andrew's trial, this Court had made clear that when evidence is introduced that is so unduly prejudicial that it renders the trial fundamentally unfair, the Due Process Clause of the Fourteenth Amendment provides a mechanism for relief.”) (quoting *Payne v. Tennessee*, 501 U.S. 808, 825 (1991)) (cleaned up). The Justices in the majority in *Andrew* all voted to correct a misapplication of this Court's due-process rules to the case by both the Oklahoma Court of Criminal Appeals (OCCA), which had denied relief on direct appeal, and the Tenth Circuit Court of Appeals, which had held relief to be foreclosed under 28 U.S.C. § 2254(d) due to (what that court said was) the absence of any clearly established federal law.

Second, there is a reasonable probability that this Court would reverse the decision of the OCCA here. That is what this Court did in *Glossip*. And the OCCA's errors in this case resemble the errors that that court made in *Glossip*. Just as in *Glossip*, the OCCA's “holding rested on a mistaken interpretation of *Napue*.” 604 U.S. at 252. The OCCA denied that the cooperation memorandum did not reflect the true agreement with Ms. Warden because no other evidence in the record reflected a 35-year sentence. But that assertion ignores the agreement itself, the fact that both prosecutors signed it, the fact that Ms. Warden's pending felony charge in another county was dismissed and expunged, and the fact that the dismissal and expungement allowed Ms. Warden's sentence ultimately to be reduced to 35 years. It also ignores the only evidence in the record that

explains *why* the cooperation memorandum was hidden from Mr. Wood for 22 years—the prosecutor did not want to be exposed at a postconviction hearing. And, as in *Glossip*, what “matters here is that [Ms. Warden’s] testimony was false and a prosecutor knowingly let it stand nonetheless.” *Id.* (citing *Napue*, 360 U.S. at 269). And as in *Glossip*, the “failure to correct [Ms. Warden’s] false testimony is the relevant error,” yet the OCCA failed to ask “whether a correction could have made a material difference.” *Id.* at 253.

And as in *Glossip*, further proceedings in the state courts are unnecessary. There, ample evidence supported the state’s confession of error. *Id.* at 256. Here, there was an evidentiary hearing on Mr. Wood’s claims, after which the OCCA denied both claims on the merits. In such a situation, this Court has a “constitutional duty to conduct an independent examination of the record as a whole, without deference to” the lower courts, when those courts’ resolution of federal claims is inseparable from their assessment of “crucial facts.” *Hurley v. Irish-American Gay, Lesbian & Bisexual Group of Boston, Inc.*, 515 U.S. 557, 567 (1995) (citing *Bose Corp. v. Consumers Union of United States, Inc.*, 466 U.S. 485, 499 (1984)). The further proceedings that Justice Barrett believed should occur on remand in *Glossip*—an evidentiary hearing, *see id.* at 260–62 (Barrett, J., concurring)—have already occurred here. Mr. Wood was granted a hearing on his claims. The state courts simply failed to grant Mr. Wood the relief that this Court’s precedent requires.

The record thus shows that there is a reasonable probability that this Court would reverse the decision of the OCCA and remand for a new trial.

Third, there is no doubt that irreparable harm would befall Mr. Wood without a stay. Under more than a half-century of this Court’s precedent, Mr. Wood is entitled to a new trial. But he will never receive that new trial if he is executed before this Court fully considers the issues in his petition. There is no harm more irreparable than a wrongful execution. This Court should grant a stay of execution, currently set for November 13, 2025.

Respectfully submitted:

October 30, 2025.

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