No. 25-6846

IN THE
Supreme Court of the United States

TONY TERRELL CLARK,
Petitioner,

v.

THE STATE OF MISSISSIPPI,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Mississippi

BRIEF IN OPPOSITION

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CAPITAL CASE
QUESTIONS PRESENTED

During jury selection at petitioner's capital-murder trial, the defense objected to the State's use of peremptory strikes against several black jurors under *Batson v. Kentucky*, 476 U.S. 79 (1986). After considering the State's reasons for the strikes and petitioner's rebuttal arguments, the trial court overruled the objections. The Mississippi Supreme Court upheld that ruling after reviewing the pretext arguments that petitioner made at trial and pretext arguments that he pressed for the first time on appeal. Petitioner sought post-conviction relief, claiming that his trial counsel rendered ineffective assistance by not better preparing to rebut the State's peremptory challenges and by not making other pretext arguments at trial. The Mississippi Supreme Court rejected that claim, ruling that petitioner failed to establish that trial counsel performed deficiently or that counsel's performance prejudiced him. The questions presented are:

1. Should this Court decide whether, to succeed on his ineffective-assistance claim, petitioner was required to prove that a successful *Batson* challenge would have changed the outcome of his trial (rather than the outcome of his *Batson* hearing), when the Mississippi Supreme Court did not apply that standard and petitioner does not challenge an independent ground—the Mississippi Supreme Court's ruling that his trial counsel performed adequately at the *Batson* hearing—for rejecting his claim?

2. Should this Court address whether the Mississippi Supreme Court violated petitioner's due-process rights by refusing to review his ineffective-assistance claim when that court in fact considered and rejected that claim on the merits?

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OPINION BELOW

The Mississippi Supreme Court's opinion granting in part and denying in part petitioner's motion for post-conviction relief (App.3a-19a) is reported at 418 So. 3d 1226.

JURISDICTION

The Mississippi Supreme Court's judgment was entered on June 19, 2025. App.3a. The court denied rehearing on October 2, 2025. App.1a. On December 18, 2025, Justice Alito extended the time to file a petition for certiorari to January 30, 2026. The petition was filed on January 30, 2026. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a).

STATEMENT

In 2014, petitioner Tony Terrell Clark murdered 13-year-old Muhammed Saeed during a robbery. A jury convicted petitioner of capital murder and sentenced him to death. The Mississippi Supreme Court affirmed. Petitioner filed a motion for post-conviction relief, which the Mississippi Supreme Court granted in part and denied in part. The petition for certiorari concerns the denial of one of petitioner's ten post-conviction claims—his claim that his trial counsel provided ineffective assistance in challenging the State's use of peremptory strikes.

1. On October 27, 2014, petitioner and his nephew went to Fahd Saeed's convenience store to commit an armed robbery. *Clark v. State*, 343 So. 3d 943, 952-53 (Miss. 2022). Muhammed, Fahd's son, was standing behind the counter with Fahd talking with Mrs. Saeed on FaceTime. *Id.* at 952. Muhammed had just finished with a customer when petitioner and his nephew walked in. *Ibid.* Petitioner walked up to

Muhammed and shot him point-blank in the head. *Id.* at 953. Petitioner then shot Fahd in the stomach. *Ibid.* Petitioner stepped over Muhammed's body and was trying to open the cash register when his nephew warned that customers were nearing the store. *Ibid.* Petitioner and his nephew fled. *Ibid.* Surveillance cameras in the store captured the robbery, murder, and attempted murder. *Ibid.* Petitioner was apprehended a week later in Dallas, Texas. *Ibid.*

2. Petitioner was indicted for capital murder, attempted murder, and possessing a firearm as a felon. *Ibid.* During jury selection, the parties exercised peremptory strikes. The defense used eleven of its twelve peremptory strikes, all against white prospective jurors. Tr. 1568-96. The State used all twelve of its peremptory strikes—five against white prospective jurors and seven against black prospective jurors. 343 So. 3d at 954.

Petitioner's trial counsel objected to the State's seven strikes against black jurors. He claimed that the strikes violated *Batson v. Kentucky*, 476 U.S. 79 (1986), because they were exercised based on race. Applying the three-step *Batson* framework, the trial court rejected each of petitioner's challenges. At the first step, the court ruled that petitioner established a prima facie case based on numbers alone. 343 So. 3d at 954. At the second step, the State offered race-neutral reasons for each strike and the court asked petitioner's counsel to respond to those reasons. *See id.* at 956-59. At the third step, the court found that petitioner failed to show purposeful discrimination behind any strike. *Ibid.* The seated jury consisted of eleven white jurors, one black juror, and two white alternate jurors. *Id.* at 954.

Relevant here are the strikes of three black prospective jurors. The names of those jurors, the State's reasons for striking them, trial counsel's rebuttal, and the trial court's rulings are as follows:

Juror #6, Alicia Esco-Johnson: The State's reasons for striking Esco-Johnson were: "her answer to question 35 on the juror questionnaire (she considered the death penalty 'wasteful')"; "she had written a research paper on the cost of the death penalty"; "she was close in age to [petitioner]"; "she had attended the same middle school [petitioner] had attended"; and the district attorney's office "had prosecuted numerous individuals with the last name of Esco." 343 So. 3d at 956-57. Trial counsel offered rebuttal for only two of those reasons, "arguing that the State never voir dired Esco-Johnson" to determine if she was in fact related to any prosecuted Escos and that "regardless of her answer to question 35, she also indicated she was neither opposed to or in favor of the death penalty." *Id.* at 957. The trial court ruled that petitioner failed to show that the strike was race-based. *Ibid.*

Juror #46, Kathy Luckett: The State's reasons for striking Luckett were her answers to three juror-questionnaire questions seeking death-penalty views to which she responded "depends on the case," and the fact that the D.A.'s office "had prosecuted numerous Lucketts" and had an active prosecution against a Luckett. 343 So. 3d at 958. Trial counsel argued that the State did not voir dire Luckett about her relation to any prosecuted Lucketts, that her answer of "depends on the case" is "precisely what the law requires," and that she had said that she was "in favor of capital punishment except in a few cases where it may not be appropriate." *Ibid.* The trial court ruled that petitioner failed to show that the strike was race-based. *Ibid.*

Juror #81, Freida Day: The State's reasons for striking Day were her juror-questionnaire answer that "she would only be in favor of the death penalty" if the State proved guilt "beyond a shadow of a doubt" and that "two of her children have the last name Luckett," a name shared by "numerous people in Canton" whom the D.A.'s office had prosecuted. 343 So. 3d at 959. Trial counsel responded that Day "had not been questioned about whether any of her relatives had been prosecuted." *Ibid*. As for her questionnaire answer, trial counsel claimed that Day answered similarly to potential jurors "of both races who did not understand the system coming into this process," and that after being "educated" on the "standard of proof," she said that she would "abide by that." *Ibid*. When the trial court asked trial counsel if he was aware of "any specific jurors" whom the State did not strike who "would fall in the same category" as Day by requiring proof beyond a "shadow of a doubt," counsel said, "Your Honor, I would have to go back through, I don't have that information on hand." *Ibid*. Counsel did not ask for time to go through his notes or cite any comparable jurors the State did not strike. The trial court ruled that petitioner failed to show that the strike was race-based. *Ibid*.

As the above makes clear, petitioner is wrong to assert that trial counsel "made no attempt to rebut the purported race neutral reasons and accepted the prosecutor's conclusory unsupported arguments at face value." Pet. 5-6.

3. Trial followed. At the guilt phase, the State called six witnesses and played surveillance video for the jury. 343 So. 3d at 953. The defense called no witnesses. The jury found petitioner guilty on all counts. *Ibid*. After a bifurcated sentencing trial, the jury weighed aggravating and mitigating circumstances and determined that

petitioner should be sentenced to death for Muhammed's murder. *Ibid*. The trial court—the sentencing authority for petitioner's non-capital convictions—sentenced him to 40 years' imprisonment for attempted murder and 10 years' imprisonment for the firearm conviction. *Ibid*.

4. Petitioner appealed, challenging (among other things) the State's use of peremptory strikes. His arguments differed significantly from those his trial counsel had made to the trial court. Trial counsel had argued that the State's peremptory strikes were suspect because: (1) the State did not voir dire some jurors on the grounds the State offered for the strikes; and (2) although the State struck jurors who gave questionnaire and voir dire answers suggesting opposition to the death penalty, those jurors gave other answers showing willingness to consider the death penalty. 343 So. 3d at 957-59. By contrast, petitioner's appellate counsel relied almost entirely on new comparative-juror arguments—arguments that the State's asserted reasons for the challenged strikes did not hold up when considered against the State's decisions not to strike similarly situated white prospective jurors. *Id*. at 962, 964-69. Petitioner also pressed for the first time other alleged indicia of pretext, including "racially disparate questioning ... [and] investigation" and "evidence of a fairly recent history of [race-based peremptory strikes] on the part of the office prosecuting this case." *Id*. at 955, 962-63. He claimed that the trial court's failure to consider these indicia of pretext meant that the trial court improperly viewed the State's reasons for its strikes in isolation, rather than under the totality of the circumstances. *Id*. at 963.

The Mississippi Supreme Court affirmed. By a 6-to-3 vote the court rejected petitioner's claim that the State had struck any black juror in violation of *Batson*. 343

So. 3d at 959-71 (majority); *see id.* at 1014-24 (dissent). The majority addressed all the pretext claims that petitioner had preserved by presenting them in the trial court. *Id.* at 956-59, 964-71. Despite its misgivings about considering new arguments not presented in the trial court, the court also considered arguments that petitioner made for the first time on appeal—including comparisons of jurors the State struck to jurors the State accepted, claims that the State disparately questioned black and white prospective jurors, and allegations that the State misrepresented the record. *Id.* at 964-71. The dissent agreed that three of the State's strikes (including the strike of Day) should be upheld but maintained that four other strikes (including the strikes of Esco-Johnson and Luckett) violated *Batson*. *Id.* at 1017. This Court denied certiorari over a dissent. *Clark v. Mississippi*, 143 S. Ct. 2406 (2023).

5. Petitioner moved for post-conviction relief, raising ten claims. Motion for Post-Conviction Relief, *Clark v. State*, No. 2022-DR-00829-SCT (Miss. Aug. 18, 2023). Relevant here, he argued that his trial counsel "should have better supported his *Batson* challenges and should have been better prepared to rebut the State's race neutral reasons" for striking Esco-Johnson, Luckett, and Day. *Id.* at 73-109; App.8a. In reviewing this *Batson*-based ineffective-assistance claim, the Mississippi Supreme Court noted that petitioner had to "make a sufficient showing" under *Strickland v. Washington*, 466 U.S. 668 (1984), to obtain relief. App.8a. *Strickland*'s two-part test for ineffective-assistance claims requires petitioners to show "deficient performance" (that "counsel's representation fell below an objective standard of reasonableness") and "prejudice" (that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different"). 466

U.S. at 688, 694. On performance, the Mississippi Supreme Court "review[ed] counsel's *Batson* challenges and rebuttals" and ruled that "counsel's performance did not deprive [petitioner] of the assistance guaranteed by the Sixth Amendment." App.9a. The court considered "additional or alternative arguments [trial] counsel could have made" and found that none of petitioner's "new" pretext arguments "show[ed] that counsel's performance before the trial court was deficient." *Ibid*. On prejudice, the court ruled that petitioner failed to show "that counsel's performance deprived him of a fair trial with a reliable result." *Ibid*. (citing *Powers v. State*, 371 So. 3d 629, 658 (Miss. 2023)). (The court granted petitioner an evidentiary hearing on his claim that he is intellectually disabled and thus exempt from execution, App.4a-6a, and denied relief on all other claims, App.6a-18a.) In a separate opinion, Justice King faulted the court for "foreclos[ing] any remedy via post-conviction relief for the failure to present rebuttal evidence" by finding no deficient performance. App.19a.

REASONS FOR DENYING THE PETITION

Petitioner asks this Court to grant review on two questions concerning his trial counsel's performance in challenging the State's peremptory strikes. This case does not present either question, neither question satisfies any of the traditional certiorari criteria, and none of petitioner's arguments has merit. The petition should be denied.

1. Petitioner asks this Court to decide "whether a post-conviction petitioner must prove a successful *Batson* challenge would change the outcome of the trial to show *Strickland* prejudice." Pet. iii; *see* Pet. 8-16. Review of that question is not warranted.

That question is not presented. The Mississippi Supreme Court did not require petitioner to show that "the outcome of the trial would have been different" had trial counsel performed as petitioner claims he should have. Pet. 8. The court did not announce the prejudice standard that petitioner imputes to it. It observed only that petitioner failed to show "that counsel's performance deprived him of a fair trial with reliable results." App.9a. That statement comports with *Strickland*, which says that prejudice occurs when "counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." 466 U.S. at 687. So even if there were a lower-court conflict on petitioner's *Strickland*-prejudice question (Pet. 10-11), it would not help petitioner: the question is not presented here.

Even if petitioner's *Strickland*-prejudice question were presented, this case would be a poor vehicle for addressing it. The Mississippi Supreme Court did not rule only that petitioner failed to show prejudice. It also ruled that he failed to show deficient performance. App.9a. That latter ruling provides a full basis for rejecting petitioner's ineffective-assistance claim. *See Strickland*, 466 U.S. at 687 (petitioner must make "both showings"—deficient performance and prejudice—to prevail on his ineffective-assistance claim). Yet petitioner does not ask this Court to decide any question about counsel's performance. *See* Pet. iii. And he makes no argument challenging that ruling. He instead erroneously claims that the Mississippi Supreme Court previously ruled that his counsel performed deficiently (or at times takes as given that his counsel performed deficiently). *See*, *e.g.*, Pet. 10 (claiming—wrongly—that the state supreme court "held on direct appeal that [petitioner's] counsel was deficient in his *Batson* rebuttal"); Pet. 3 (suggesting that failure to make a timely

Batson objection is per se "defective" assistance). *But see* Pet. 8 (acknowledging that the state supreme court found that petitioner "did not show 'that counsel's performance before the trial court was deficient'"(quoting App.9a)). He is not entitled to that erroneous view. His failure to attack the performance ruling dooms his petition.

Even putting those points aside, this Court's review is not warranted because petitioner has failed to show that "his *Batson* challenge had merit and would have been sustained" had trial counsel made other rebuttal arguments. *Contra* Pet. 16. Petitioner claims that had trial counsel obtained and used "readily available evidence" in the form of "criminal case lists," he would have prevailed at the *Batson* hearing. *Id.* at 15-16; *see id.* at 14-16. Those lists show Madison County felony convictions spanning 30+ years for persons with last names that correspond with jurors the State did not strike. Exhibit EE (Madison County Criminal Case Lists of Surname), *Clark v. State*, No. 2022-DR-00829-SCT (Miss. Aug. 18, 2023). There is no reasonable probability that petitioner's *Batson* objections would have prevailed had his counsel made arguments using those lists.

One of the State's reasons for striking Esco-Johnson, Luckett, and Day was that they shared the same last name (or had children who shared the same last name) as persons prosecuted in Madison County. 343 So. 3d at 956-59. Petitioner's trial counsel argued to the trial court that the State did not question Esco-Johnson, Luckett, or Day on whether they were in fact related to the many Escos and Lucketts the D.A.'s office had prosecuted. *Id*. Petitioner's post-conviction counsel argues that if trial counsel had also secured a recess to obtain additional criminal-case lists and

presented those lists to the trial court, then trial counsel would have actually established that the State's strikes of Esco-Johnson, Luckett, or Day were race-based. Pet. 15-16. That is untenable. Petitioner agrees that the case lists show that "seventy-five Lucketts" and "fifteen Escos" were prosecuted in Madison County prior to petitioner's trial. Pet. 15. That shows that the prosecutor had legitimate grounds for striking jurors named Luckett or Esco (or having children with those names). Had trial counsel argued that the State did not strike white jurors whose last names also appeared on the case lists, the State would have had the opportunity to elaborate on why it recognized the names Esco and Luckett and not others, given its "active prosecutions" at the time of petitioner's trial. 343 So. 3d at 958. In all events, the lists do nothing to show that the prosecutor's stated reasons were not the true reasons for the strikes. And the State gave additional reasons for its strikes, all of which the trial court considered in deciding whether petitioner had proven pretext. *See Snyder v. Louisiana*, 552 U.S. 472, 477 (2008) (the trial court must determine whether the petitioner has proven the State's reasons for its strikes were pretextual "in light of the parties' submissions"). At worst, the State was mistaken about which potential jurors' names matched that of numerous convicts, but that does not show that its reasons were pretextual. *See Flowers v. Mississippi*, 588 U.S. 284, 314 (2019) ("mistaken explanations should not be confused with racial discrimination").

As the State explained the last time this case was before this Court, petitioner's *Batson* arguments—as advanced at trial and on direct appeal—lack merit. BIO 18-24, *Clark v. Mississippi*, No. 22-6057 (U.S. Jan. 17, 2023). Petitioner would not have prevailed on any of his *Batson* challenges had trial counsel made the additional

meager rebuttal argument that petitioner presented in post-conviction proceedings and presses here. This Court's intervention on his ineffective-assistance claim is not warranted.

2. Petitioner also asks this Court to decide "whether the Mississippi Supreme Court violated due process by holding [that] trial counsel waived [petitioner's] *Batson* rebuttal arguments, rendering him ineffective, but then refus[ing] to review [petitioner's] ineffective assistance claim on post-conviction [review]." Pet. iii; *see* Pet. 16-17. Petitioner does not contend that this case-specific question implicates any lower-court conflict or any recurring question of federal law. And this case does not even present this question. Again, the Mississippi Supreme Court rejected the view that petitioner's trial counsel was ineffective. App.9a. And that court did not "refuse[ ] to review" petitioner's ineffective-assistance claim on post-conviction review. *Contra* Pet. iii. The court considered and rejected that claim on its merits. App.9a. Petitioner's arguments on this unpresented question (Pet. 16-17) all rest on a distorted, untenable view of that court's analysis and the standard it applied. *Supra* pp. 8-9. Review of that question is not warranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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