

In the Supreme Court of the United States

TONY VON CARRUTHERS,
PETITIONER

v.

STATE OF TENNESSEE,
RESPONDENT

ON APPLICATION FOR STAY OF EXECUTION AND ON
PETITION FOR WRIT OF CERTIORARI
TO THE TENNESSEE SUPREME COURT

BRIEF IN OPPOSITION

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**CAPITAL CASE
QUESTIONS PRESENTED**

1. Whether this Court has jurisdiction to consider a constitutional claim that was not raised below.

2. Whether the Tennessee Supreme Court's interpretation of Tennessee's Post-Conviction DNA Analysis Act violates the Due Process Clause.

TABLE OF CONTENTS

QUESTIONS PRESENTED.....	i
TABLE OF APPENDICIES.....	iii
TABLE OF AUTHORITIES	iv
INTRODUCTION	1
STATEMENT.....	3
REASONS FOR DENYING THE WRIT AND A STAY	11
I. This Court Cannot, And Should Not, Grant Review.	12
II. The Question Presented Is Not Certworthy.	14
A. There is no right to DNA testing in Tennessee.....	15
B. The state courts correctly applied the Tennessee Post-Conviction DNA Analysis Act of 2001.	15
C. Carruthers’s contrary arguments fail.	19
III. Carruthers’s Tactical Delay Justified Denial of a Stay.....	20
CONCLUSION.....	24

TABLE OF APPENDICIES

APPENDIX 1: Carruthers’s Appellant Brief Challenging the Denial of his Petition for Post-Conviction DNA Analysis, *Carruthers v. Tennessee*, No. W2026-00706-SC-RDM-PD (Tenn. May 16, 2026)

TABLE OF AUTHORITIES

CASES

<i>Adams v. Robertson</i> , 520 U.S. 83 (1997).....	12, 13
<i>Alley v. State</i> , No. W2006-01179-CCA-R3-PD, 2006 WL 1703820 (Tenn. Crim. App. June 22, 2006)	4, 20
<i>Bowe v. Scott</i> , 233 U.S. 658 (1914).....	13
<i>Bucklew v. Precythe</i> , 587 U.S. 119 (2019).....	21, 22
<i>Calderon v. Thompson</i> , 523 U.S. 538 (1998).....	22
<i>Cardinale v. Louisiana</i> , 394 U.S. 437 (1969).....	1, 13
<i>Carruthers v. Mays</i> , 586 U.S. 1146 (2019).....	1, 8
<i>Carruthers v. Mays</i> , 889 F.3d 273 (6th Cir. 2018)	8
<i>Carruthers v. State</i> , No. W2006-00376-CCA-R3-PD, 2007 WL 4355481 (Tenn. Crim. App. Dec. 12, 2007)	8, 17
<i>Carruthers v. State</i> , No. W2026-00226-CCA-R3-PD, 2026 WL 1031140 (Tenn. Crim. App. Apr. 16, 2026)	10, 17
<i>Crowell v. Randell</i> , 35 U.S. 368 (1836).....	12
<i>Elsa v. State</i> , No. E2017-01676-CCA-R3-PC, 2018 WL 2363589 (Tenn. Crim. App. May 24, 2018)	4
<i>Hemphill v. New York</i> , 595 U.S. 140 (2022).....	13, 14

<i>Herndon v. Georgia</i> , 295 U.S. 441 (1935).....	13
<i>Hill v. McDonough</i> , 547 U. S. 573 (2006).....	20
<i>Hitchcock v. Florida</i> , -- S.Ct. --, 2026 WL 1170862 (2026)	14
<i>Hollingsworth v. Perry</i> , 558 U. S. 183 (2010).....	21
<i>Kearse v. Florida</i> , --- S.Ct. ----, 2026 WL 586905 (2026)	14
<i>Lance v. Georgia</i> , 589 U.S. 1189 (2020).....	14
<i>Oxley Stave Co. v. Butler County</i> , 166 U.S. 648 (1897).....	13
<i>Pennsylvania v. Finley</i> , 481 U.S. 551 (1987).....	20
<i>Powers v. State</i> , 343 S.W.3d 36 (Tenn. 2011).....	4, 17, 19
<i>Rogers v. Peck</i> , 199 U.S. 425 (1905).....	14
<i>State v. Carruthers</i> , 35 S.W.3d 516 (Tenn. 2000).....	<i>passim</i>
<i>State v. Carruthers</i> , No. W1997-00097-SC-DDT-DD (Tenn. Sept. 30, 2026) (order setting execution for May 21, 2026)	2, 8, 18
<i>State v. Wilks</i> , No. W2014-02304-CCA-R3-PC, 2015 WL 5719926 (Tenn. Crim. App. Sept. 30, 2015)	18
<i>Webb v. Webb</i> , 451 U.S. 493 (1981).....	13
<i>Willacy v. Florida</i> , --- S.Ct. ---, 2026 WL 1074143 (2026).....	14

<i>Workman v. Bell</i> , 550 U.S. 930 (2007).....	23
<i>Workman v. Bell</i> , 484 F.3d 837 (6th Cir. 2007)	23

STATUTES

28 U.S.C. § 1257(a)	12
Tenn. Code Ann. § 40-30-301	18, 21
Tenn. Code Ann. § 40-30-303	3, 17
Tenn. Code Ann. § 40-30-304	14, 19
Tenn. Code Ann. § 40-30-305	14, 19
Tenn. Code Ann. § 40-30-305(1).....	4

OTHER AUTHORITIES

Tenn. Const. art I, § 35	22
Tenn. R. App. P. Rule 13(b)	14
Tenn. Sup. Ct. R. 12(4)(E).....	5, 12, 13
https://tinyurl.com/mss6t8sx	22

INTRODUCTION

“It was very early established that the Court will not decide federal constitutional issues raised here for the first time on review of state court decisions.” *Cardinale v. Louisiana*, 394 U.S. 437, 438 (1969). And the question presented here was neither raised to nor addressed by the Tennessee Supreme Court. That ends the inquiry. There’s no federal question for this Court to review. The stay and the petition should be denied.

Over thirty years ago, Tony Von Carruthers and two other men murdered Marcellos “Cello” Anderson, his mother Delois Anderson, and Freddrick Tucker. They shot both men, bound all three victims, and buried them alive in an empty grave at a Memphis cemetery. Carruthers planned the murders for months and discussed his plans with others. He later confessed the murders to fellow inmate, Alfredo Shaw, who relayed the confession to police. After a trial, the jury sentenced Carruthers to death on three convictions for first-degree murder. *State v. Carruthers*, 35 S.W.3d 516, 524-32 (Tenn. 2000), *cert. denied*, 533 U.S. 953 (2001).

The Tennessee Supreme Court affirmed Carruthers’s convictions and death sentence on the strength of several aggravating factors, noting that “[t]hese murders were committed in a particularly cruel manner, and the proof indicates that the victims were maliciously mistreated before they were buried alive.” *Id.* at 570, 572. Many years later, Carruthers completed an exhaustive review process—three-tiers of direct review, state post-conviction review, and federal habeas review—when this Court denied review of his unsuccessful federal habeas bid. *Carruthers v. Mays*, 586

U.S. 1146 (2019). The Tennessee Supreme Court then set Carruthers’s execution date for May 21, 2026. *State v. Carruthers*, No. W1997-00097-SC-DDT-DD (Tenn. Sept. 30, 2026) (order setting execution for May 21, 2026).

Beginning mere weeks before his scheduled execution, Carruthers sought DNA testing of certain evidence items in the state courts. *See* Pet. App. 2a-49a, 55a-80a. According to Carruthers’s own pleadings, the items he wants tested have been sitting in various storage rooms and medical examiners’ offices since 2002. Yet he waited until seventeen days before his execution to request testing. The state post-conviction court denied that request for testing because Carruthers did not meet the statutory requirements to obtain it. Pet App. 738a-53a. The Tennessee Supreme Court affirmed, holding that the state post-conviction court did not abuse its discretion in concluding that Carruthers had not met the statutory factors of Tennessee’s Post-Conviction DNA Analysis Act of 2001. Pet. App. 762a-68a. This Court cannot second-guess a state court’s application of state law, so Carruthers pivots to due process. But below, he never raised—and the Tennessee Supreme Court never ruled on—any due process issue related to his petition under the DNA Act. So there’s no federal question properly before this Court.

Regardless, *contra* Carruthers’ contention, the Tennessee Supreme Court did not “impos[e] ... arbitrary procedural barriers, contrary to its own rules and state statutes.” Pet. ii. It properly and thoroughly analyzed the claims presented under established procedures. Carruthers’ simply doesn’t like the outcome. That’s not a due process violation.

This Court should deny certiorari and deny a stay of execution.

STATEMENT

A. Legal Background

Under Tennessee's Post-Conviction DNA Analysis Act of 2001 ("DNA Act"), a defendant convicted of first-degree murder may, at any time, "file a petition requesting the forensic DNA analysis of any evidence that is in the possession or control of the prosecution, law enforcement, laboratory, or court, and that is related to the investigation or prosecution that resulted in the judgment of conviction and that may contain biological evidence." Tenn. Code Ann. § 40-30-303.

The DNA Act contains two provisions under which a petitioner may obtain testing, one mandatory, the other permissive. The court *shall* order DNA analysis if it finds that:

- (1) A reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through fingerprint analysis;
- (2) The evidence is still in existence and in such a condition that DNA analysis may be conducted;
- (3) The evidence was never previously subjected to DNA analysis or was not subjected to the analysis that is now requested which could resolve an issue not resolved by previous analysis; and
- (4) The application for analysis is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of sentence or administration of justice.

Id. § -304.

Conversely, the court *may* order fingerprint analysis if it finds the latter three criteria above and:

(1) A reasonable probability exists that analysis of the evidence will produce DNA results that would have rendered the petitioner's verdict or sentence more favorable if the results had been available at the proceeding leading to the judgment of conviction[.]

Id. § -305(1). Under the DNA Act, “[a] reasonable probability is a probability sufficient to undermine the confidence in the conviction or prosecution.” *Powers v. State*, 343 S.W.3d 36, 55 (Tenn. 2011).

The only way for a petitioner to obtain testing is by satisfying all four elements of either test. *Id.* at 48. Courts must presume the testing would be exculpatory. *Id.* at 55 & n.28. Courts need not hold an evidentiary hearing to determine whether to grant testing. *Elesa v. State*, No. E2017-01676-CCA-R3-PC, 2018 WL 2363589, at *3 (Tenn. Crim. App. May 24, 2018) (no perm. app. filed).

Tennessee's appellate courts review the denial of a motion for DNA testing for abuse of discretion and will only reverse if the post-conviction court's decision was not supported by “substantial evidence.” *Id.* But the scope of review in these cases is narrow. The Tennessee Court of Criminal Appeals held long ago that the Post-Conviction DNA Analysis Act:

does not permit the court to consider new evidence, aside f[rom] DNA test results, supporting a different theory than the one relied upon by the petitioner. The Post-Conviction DNA Analysis Act is not the proper vehicle to seek review of evidence other than results available from DNA testing of biological specimens recovered during the course of the investigation or prosecution of the petitioner. *See generally* T.C.A. § 40-30-302. Other avenues exist for consideration of newly discovered evidence in both the state and federal courts.

Alley v. State, No. W2006-01179-CCA-R3-PD, 2006 WL 1703820, at *7 (Tenn. Crim. App. June 22, 2006), *perm. app. denied* (Tenn. June 27, 2006).

Additionally, when a capital case is set for execution, Tenn. Sup. Ct. R. 12(4)(E) provides that “any state court collateral litigation that would potentially affect the method or timing of execution must comment with the filing of a motion [for stay or appointment of a special master] in [the Tennessee Supreme Court].” And the court has also explained that Rule 12(4)(E) does provide an independent avenue for seeking collateral review. Pet. App. 53a. Instead, petitioners seeking relief under Rule 12 must also file a parallel collateral proceeding in the appropriate court.

B. Factual Background

In late February 1994, Tony Carruthers and two other men murdered Marcellos “Cello” Anderson, his mother Delois Anderson, and Fredrick Tucker. *Carruthers*, 35 S.W.3d at 524. The men shot Mr. Anderson and Mr. Tucker, beat and strangled Ms. Anderson, and buried all three victims with their hands bound behind their backs in an empty grave at a Memphis cemetery. *Id.* at 527. The State’s expert opined that the victims were buried alive. *Id.* at 528. Their bodies were discovered in early March 1994. *Id.* at 527-28.

While incarcerated during the summer of 1993, Carruthers began broadcasting his plans to kidnap, rob, and murder Mr. Anderson. *Id.* at 524. He wrote a letter to Jimmy Lee Maze describing a “master plan” that was a “winner.” *Id.* He intended to “make those streets pay” him and told Maze that “everything I do from now on will be well organized and extremely violent.” *Id.* That fall, while on a work detail assisting with a cemetery burial, Carruthers told fellow inmate Charles Ray Smith that this “would be a good way, you know, to bury somebody, if you’re going to kill

them.” *Id.* He explained, “[I]f you ain’t got no body, you don’t have a case.” *Id.* Smith also heard Carruthers and his co-defendant, James Montgomery¹, discussing their plans to rob Mr. Anderson because he had a lot of money through dealing drugs. *Id.*

A month after Carruthers’s release from jail in November 1993, he told co-defendant Jonathan Montgomery that when James was released from prison, “it would be the best time to kidnap Marcellos.” *Id.* at 525. James left prison in January 1994, and Carruthers executed his plan in February. *Id.*

Multiple witnesses saw Carruthers and James with Mr. Anderson and Mr. Tucker on the evening of February 23. *Id.* at 526. Nakeita Shaw told police that she saw Carruthers and James lead Mr. Anderson and Mr. Tucker to a Jeep with their hands tied behind their backs. *Id.* Mr. Anderson had recently borrowed a Jeep, which was later found destroyed by fire on February 25. *Id.*

On the evening of February 24, Jonathan told Chris Hines that they had stolen \$200,000 and had killed “Cello and them” “out at the cemetery on Elvis Presley.” *Id.* Jonathan repeatedly told Hines that “they had to kill some people.” *Id.* at 527.

On March 3, 1994, Jonathan led police to a grave in the Rose Hill Cemetery on Elvis Presley Boulevard in Memphis where they found the three victims’ bodies buried under a casket *Id.* at 527 n.5. Though Mr. Anderson was known to wear “expensive jewelry . . . [and] carr[y] large sums of money on his person,” no money or jewelry was found with his body. *Id.* at 524.

¹ Because co-defendants James and Jonathan Montgomery share a surname, the State uses their first names.

After seeing a news report about the killings, Alfredo Shaw called a police tip line and later testified before the grand jury that “he had been on a three-way call with Carruthers” and another man and that “during this call, Carruthers had asked [Mr. Shaw] to participate in these murders, saying he had a ‘sweet plan’ and that they would each earn \$100,000 and a kilogram of cocaine.” *Id.* at 528-29.

Before trial, Mr. Shaw told media that he had lied to the grand jury about Carruthers’s involvement in the murders. *Id.* at 528. But when called to testify as a trial witness *by Carruthers*, Mr. Shaw testified that he lied to the media because Carruthers had threatened him and his family.² *Id.* at 528-29. Mr. Shaw further testified that Carruthers confessed to the murders while they were jailed together before Carruthers’s trial. *Id.* at 529. Carruthers told Mr. Shaw that he used Ms. Anderson to lure Mr. Anderson and Mr. Tucker home. *Id.* Carruthers said he then shot two of the victims, burned the Jeep, stole a car to return to Memphis, and buried the victims alive. *Id.* According to Carruthers, Ms. Anderson began screaming as Mr. Anderson and Mr. Tucker were forced into the grave, and so Carruthers or a co-defendant pushed her into the grave too. *Id.* Carruthers lamented to Mr. Shaw that the bodies would never have been found if “the boy wouldn’t have went and told them folks.” *Id.*

² Carruthers represented himself at trial. He asserts in his petition (at 6) that he was “forced” to represent himself at trial. However, as the Tennessee Supreme Court has explained, Carruthers was afforded numerous attorneys by the state trial court. *Carruthers*, 35 S.W.3d at 533-52. He was ultimately deemed to have forfeited counsel based on his own inability to cooperate with his attorneys (including at least one instance of threatening his attorney and the attorney’s staff with violence). *Id.* at 533-52.

C. Procedural Background

1. The Tennessee Supreme Court sets Carruthers's execution after his death sentence survives exhaustive review.

The jury convicted Carruthers of three counts of first-degree murder and sentenced him to death. *Id.* at 524-32. The Tennessee Supreme Court affirmed Carruthers's three first-degree murder convictions and death sentences on direct appeal in 2000. *Id.* at 572. For many years, Carruthers challenged his convictions and death sentences in state and federal courts. His petition under the Tennessee Post-Conviction Procedure Act failed. *Carruthers v. State*, No. W2006-00376-CCA-R3-PD, 2007 WL 4355481, at *1 (Tenn. Crim. App. Dec. 12, 2007), *perm. app. denied* (Tenn. May 27, 2008). So did his petition for federal habeas corpus relief. *Carruthers v. Mays*, 889 F.3d 273 (6th Cir. 2018), *cert. denied*, *Carruthers v. May*, 586 U.S. 1146 (2019).

After that exhaustive review, and the uniform denial of Carruthers's claims, the State moved the Tennessee Supreme Court to set Carruthers's execution date. *State v. Carruthers*, No. W1997-00097-SC-DDT-DD (Tenn. Sept. 20, 2019) (motion to set execution). On September 30, 2025, the Tennessee Supreme Court set Carruthers's execution for May 21, 2026. *State v. Carruthers*, No. W1997-00097-SC-DDT-DD (Tenn. Sept. 30, 2025) (order).

2. Carruthers mounts a last-ditch bid for DNA testing.

On April 9, 2026—roughly a month and a half before his scheduled execution—Carruthers filed in the Tennessee Supreme Court a motion seeking DNA testing of certain evidence. Pet. App. 2a. The Tennessee Supreme Court denied his motion

because the procedural mechanism through which Carruthers filed his motion did not give that court original jurisdiction to consider his claim. Pet. App. 53a.

Carruthers then returned to the state post-conviction court. On May 4, 2026, less than three weeks before his scheduled execution, he filed a motion for DNA testing pursuant to the DNA Act. Pet. App. 55a. He sought additional testing on (1) fingernail scrapings from Mr. Anderson, Mr. Tucker, and Ms. Anderson, (2) the bindings of Ms. Anderson, (3) the bindings of Ms. Anderson, and (4) unknown male DNA found on a blanket in the grave with the victims. He sought to compare any DNA obtained from those items to the DNA of Ronnie “Eyeball” Irving, whom he alleged was the “true perpetrator.” Pet. App. 67a-69a.

The state post-conviction court denied Carruthers’s motion for DNA testing. Pet. App. 739a-53a. The court determined that even assuming additional DNA testing identified a known third party’s DNA, there was no reasonable probability that Carruthers would not have been prosecuted or convicted. Pet. App. 748a-52a. The court noted the extensive evidence showing that Carruthers had meticulously planned the crimes, including his inculpatory statements to many individuals, and eyewitness testimony placing Carruthers with two of the victims on the night of the murders. Pet. App. 748a-49a. The court found that “th[e] crime was planned over a period of time and was not a spur-of-the-moment idea.” Pet. App. 751a.

The court likewise found that Carruthers had not shown that exculpatory DNA results would have rendered his verdict or sentence more favorable. Pet. App. 751a-52a. The court found that the number of victims and the trial testimony that they

had been buried alive “would weigh heavily in favor of death sentences.” Pet. App. 751a. And the court found that Ms. Anderson was “a truly innocent victim.” Pet. App. 751a-52a. Therefore, while DNA from a third party could lead the jury to conclude there was another participant in the offense who was not charged or raise questions about Carruthers’s specific role, it did not result in “a probability sufficient to undermine the confidence” in Carruthers’s prosecution, conviction, or death sentences. Pet. App. 752a.

The court also found that Carruthers’s motion was simply an attempt to unreasonably delay his execution. Pet. App. 750a. The court noted that Carruthers could have filed his motion “years ago” or, at the very least, he could have filed it contemporaneously with a motion for fingerprint analysis Carruthers had recently filed. Pet. App. 750a; *see also Carruthers v. State*, No. W2026-00226-CCA-R3-PD, 2026 WL 1031140, at *1 (Tenn. Crim. App. Apr. 16, 2026) (affirming the state post-conviction court’s denial of Carruthers’s petition for fingerprint analysis) (no perm. app. filed).

Carruthers appealed the denial of his motion for DNA analysis. The Tennessee Court of Criminal Appeals granted Carruthers’s request to expedite the appeal and the Tennessee Supreme Court granted Carruthers’s request that it assume jurisdiction over the matter. Pet. App. 755a.

3. The Tennessee Supreme Court affirms the denial of DNA testing.

The Tennessee Supreme Court affirmed. It held that the state post-conviction court did not abuse its discretion in concluding that Carruthers failed to show a

reasonable probability of a different result in light of assumed-favorable DNA evidence and that Carruthers's motion was a delay tactic. Pet. App. 757a-68a. As to reasonable probability, the Tennessee Supreme Court agreed with the post-conviction court that favorable DNA evidence could have suggested another person was involved in the crimes but would not have undermined any of the "[o]verwhelming evidence . . . of Mr. Carruthers's involvement in planning and perpetrating the murders[.]" Pet. App. 765a-66a. As to delay, the Tennessee Supreme Court also agreed with the post-conviction court that Carruthers had a procedural avenue to seek DNA testing beginning in 2001 yet did not file the motion at issue until one month before his execution and seven months after the Tennessee Supreme Court set his execution date. Pet. App. 767a.

REASONS FOR DENYING THE WRIT AND A STAY

This case is not certworthy. This Court lacks jurisdiction to consider Carruthers's federal law claim because he never raised it in the state courts. Further, Carruthers's remaining complaints seek simple error correction in collateral proceedings governed by state statute. But this Court, of course, rarely grants review for error-correction—and certainly not errors that turn on the interpretation of state law. And in any event, the Tennessee Supreme Court's decision contains no error. It did not misapply the State's DNA Act when denying Carruthers's claim. There is no reason to grant certiorari or reverse the decision below.

I. This Court Cannot, And Should Not, Grant Review.

Carruthers raises a federal due process challenge to Tennessee’s post-conviction DNA procedures for the first time in his petition. His failure to raise any due process challenge to the DNA Act or Rule 12(4)(E) in the state court deprives this Court of jurisdiction and defeats any argument for certiorari.

At bottom, Carruthers’s petition presents an unremarkable attack on the Tennessee court’s straightforward application of a state statute governing post-conviction DNA testing. Nothing about the question presented warrants this Court’s review.

This Court lacks jurisdiction to address the due-process question presented because that question was neither raised to nor addressed by the Tennessee Supreme Court below.

Under 28 U.S.C. § 1257(a), this Court may review “[f]inal judgments or decrees rendered by the highest court of a State” only when a federal question “is specially set up or claimed” in the state court. 28 U.S.C. § 1257(a). This Court has long understood that jurisdictional limit to prevent consideration of a “federal claim unless it was either addressed by or properly presented to the state court that rendered the decision . . . [under] review.” *Adams v. Robertson*, 520 U.S. 83, 86 (1997) (per curiam); *see also Crowell v. Randell*, 35 U.S. 368 (1836) (interpreting Section 25 of the Judiciary Act of 1789, the lineal ancestor of § 1257(a)). This Court “has almost unfailingly refused to consider any federal-law challenge to a state-court decision” that was not presented below. *Hemphill v. New York*, 595 U.S. 140, 148 (2022)

(quotation omitted); *see also Cardinale*, 394 U.S. at 438 (“It was very early established that the Court will not decide federal constitutional issues raised here for the first time on review of state court decisions.”).

Petitioners bear the “burden of showing that the issue was properly presented.” *Adams*, 520 U.S. at 86. And “[w]hen the highest state court is silent on a federal question,” this Court “assume[s] that the issue was not properly presented.” *Id.* That presumption cannot be overcome with cursory references to the “Constitution of the United States” or the “laws of the United States.” *Herndon v. Georgia*, 295 U.S. 441, 442-43 (1935); *Oxley Stave Co. v. Butler County*, 166 U.S. 648, 656 (1897). Nor do cursory allusions to “due process of law” suffice. *Bowe v. Scott*, 233 U.S. 658, 665 (1914). A petitioner must show that the state court had “a fair opportunity to address the federal question that is sought to be presented here.” *Webb v. Webb*, 451 U.S. 493, 501 (1981).

Carruthers did not, and cannot, make that showing here. His initial motion in the Tennessee Supreme Court seeking DNA testing—the Rule 12(4)(E) motion— included no argument that due process required the Court to grant his motion. Pet. App. 2a-51a. His subsequent petition for DNA testing, filed after his Rule 12(4)(E) motion was denied as procedurally improper, likewise nowhere argued that failing to grant his petition would violate due process. Pet. App. 55a-84a. Nor did Carruthers’s appeal to the Tennessee Supreme Court mention the Fourteenth Amendment or any deprivation of any liberty interest without due process in connection with his Rule

12(4)(E) motion or DNA Act motion. (Resp’s Appx. 1).³ Unsurprisingly, the Tennessee Supreme Court did not address any due-process question, as its “[r]eview generally will extend only to those issues presented for review.” Tenn. R. App. P. Rule 13(b).

Carruthers’s failure to present his due-process arguments in state court means this Court lacks jurisdiction to consider that waived issue. See *Hemphill*, 595 U.S. at 148. And the arguments the Tennessee Supreme Court actually addressed—whether Carruthers is entitled to DNA testing under Tenn. Code Ann. §§ 40-30-304 and -305—are “entirely a question of state procedure, presenting no Federal question for review here.” *Rogers v. Peck*, 199 U.S. 425, 435 (1905).

II. The Question Presented Is Not Certworthy.

Carruthers’s arguments simply challenge Tennessee courts’ treatment of a purely state law issue. This Court cannot resolve issues of State law. See, e.g. *Lance v. Georgia*, 589 U.S. 1189 (2020) (Mem.); *Hitchcock v. Florida*, -- S.Ct. --, 2026 WL 1170862 (2026) (Mem.); *Willacy v. Florida*, --- S.Ct. ---, 2026 WL 1074143 (2026) (Mem.); *Kearse v. Florida*, --- S.Ct. ----, 2026 WL 586905 (2026) (Mem.). Again, that ends the inquiry.

But even Carruthers’ disagreement with the application of state law raises a due-process question, the question does not warrant this Court’s review. Carruthers points to no split, no confusion in the doctrine, and no legal issue of importance. He

³ Carruthers, on appeal, made a due process argument only with respect to a separate motion to compel production of an alternative suspect’s biological standards.

seeks requests splitless error correction.

And there's no apparent error. The state court properly applied state law to the facts and arguments presented.

A. There is no right to DNA testing in Tennessee.

To begin, contrary to Carruthers's claims (at 19-21), Tennessee's DNA Act does not grant him a *right* to DNA testing. Instead, it provides a procedural avenue whereby petitioners can seek DNA analysis *if and only if* they satisfy the statutory requirements of the Act. As explained below, *infra* Section II(B), Carruthers wholly failed to meet that standard, and the state courts properly denied his petition.

B. The state courts correctly applied the Tennessee Post-Conviction DNA Analysis Act of 2001.

The state courts properly applied the Tennessee statutes governing post-conviction DNA testing.

Throughout its order, the trial court methodically laid out the requirements of the tests governing both mandatory and discretionary testing: (1) whether there was a reasonable probability that he would not have been prosecuted or convicted (mandatory test) or that his verdict or sentence would have been more favorable (discretionary test) if DNA analysis obtained exculpatory results; (2) whether the evidence still existed and was in such a condition that DNA analysis could be conducted; (3) whether the evidence was never previously subjected to the analysis now requested; and (4) whether the application was made for a purpose other than unreasonably delaying the execution of the sentence. Pet. App. 740a-42a, 747a-51a. It correctly assumed, for the purpose of the analysis, that any DNA testing would

lead to the exact exculpatory results Carruthers alleged—a positive identification of a third person’s DNA on items found on items at the crime scene, indicating another individual participated in the crime. Pet. App. 747a-48a, 750a-51a.

Nevertheless, the trial court properly found that, even if the DNA of Mr. Irving, Carruthers’s proposed alternative suspect, was on the victims’ fingernail scrapings, their bindings, or on the blanket found at the crime scene, that would do nothing to undermine the mountain of evidence presented against him. *Carruthers*, 35 S.W.3d at 524, 527-29. Mr. Irving’s DNA would not undermine Carruthers’s remarks to Charles Ray Smith that burying someone in an empty grave would be a good way to hide a body. *Id.* at 525. Mr. Irving’s DNA would not undermine the evidence that Carruthers told others about this scheme beforehand and bragged about it afterward. *Id.* at 524, 527-29. Mr. Irving’s DNA would not undermine that Nakeita Shaw told police that she saw Carruthers and James Montgomery leading Mr. Anderson and Mr. Tucker, with their hands tied behind their backs, out of her house the night of the murders. *Id.* at 525. Mr. Irving’s DNA would not undermine Carruthers’s lament to Alfredo Shaw that police would not have found the victims if “the boy wouldn’t have went and told them folks.” *Id.* at 529. Even with Mr. Irving’s DNA, Carruthers would still have been prosecuted, convicted, and sentenced to death. Because Carruthers failed to prove the first prong of either DNA test, the trial court properly denied his petition.

The trial court was not breaking new ground when it concluded as much. Tennessee courts have repeatedly reached the same conclusion on Carruthers’s

similar prior requests. The Tennessee Court of Criminal Appeals concluded in his post-conviction proceedings that he was not prejudiced by pretrial counsel's failure to retain a DNA expert because the DNA evidence was "only very minimally helpful" to him. *Carruthers*, 2007 WL 4355481, at *33. And just last month, the Court of Criminal Appeals affirmed the denial of Carruthers's petition for fingerprint analysis, stating that "[a]t best, any alleged exculpatory information would have led to a possible fourth participant in these crimes. Even if the analysis revealed exactly what [Carruthers] asserts, it would not have undermined the significant evidence against him unrelated to those fingerprints." *Carruthers*, 2026 WL 1031140, at *9. Though Carruthers sought different testing now, the same reasoning applies.

Even assuming that Mr. Irving's DNA was on the victims' fingernail scrapings or the bindings or on the blanket collected from the crime scene, that simply means that there might have been an additional accomplice involved in the murders. It doesn't erase Carruthers's involvement and thus creates no reasonable probability that Carruthers would not have been prosecuted, convicted of murder, or sentenced to death. Favorable DNA evidence would pale in comparison to the State's formidable evidence against Carruthers. *Powers*, 343 S.W.3d at 55 (noting that "the analysis must focus on the strength of the DNA evidence as compared to the evidence presented at trial"). For this reason alone, Carruthers was not entitled to relief.

Further, the trial court properly found that Carruthers's eleventh-hour petition was filed only to "unreasonably delay the execution of [his] sentence." Tenn. Code Ann. § 40-30-303; *id.* § 40-30-304. Carruthers has pursued nearly every

conceivable collateral attack on his convictions, yet he waited until the eve of his execution to bring this one. He could have sought this testing at *any time in the past twenty-five years*. The procedural avenue became available in 2001. Tenn. Code Ann. § 40-30-301. According to Carruthers, the evidence has been sitting in storage rooms and various medical examiners' offices since 2002 at the latest. Pet. App. 65a-66a, 67a, 76a. And James Montgomery supposedly identified Mr. Irving as an additional suspect in 2010. Pet. App. 65a-66a. What's more, this Court set Carruthers's execution date in September 2025. Order, *State v. Carruthers*, No. W1997-00097-SC-DDT-DD (Tenn. Sept. 30, 2025). He had an active petition for fingerprint testing pending at that time, and yet he made no effort to amend that petition or otherwise bring this DNA analysis request until shortly before his execution.

Any assertion that the motion was filed for any purpose beyond delay is simply not credible. The post-conviction court properly denied relief because Carruthers filed this motion as an eleventh-hour trump card to delay his execution.

Finally, the Tennessee Supreme Court properly affirmed the trial court's decision. Tennessee appellate courts apply an abuse of discretion standard when reviewing a trial court's decision of whether to grant relief under the Post-Conviction DNA Analysis Act. *See, e.g., State v. Wilks*, No. W2014-02304-CCA-R3-PC, 2015 WL 5719926, at *3 (Tenn. Crim. App. Sept. 30, 2015). The Tennessee Supreme Court applied that exact standard in Carruthers's case, and it agreed with the trial court's conclusion that exculpatory DNA analysis would have had no effect on Carruthers's prosecution, conviction, or sentence. Pet. App. 761a-66a. Indeed, the

court commented, “Overwhelming evidence remains of Mr. Carruthers’s involvement in planning and perpetrating the murder, and this evidence would not be undermined by favorable DNA analysis.” Pet. App. 766a. Additionally, the court also correctly affirmed the trial court’s finding that Carruthers brought his request solely to delay his execution when he could have sought testing as early as 2001 but he waited until mere weeks before his execution. Pet. App. 767a.

Tennessee courts properly denied Carruthers’s eleventh-hour petition seeking post-conviction DNA testing. His claim to the contrary does not present a reason to grant certiorari.

C. Carruthers’s contrary arguments fail.

Contrary to Carruthers’s argument (at 21-24), the Tennessee Supreme Court properly weighed the possible exculpatory DNA analysis against the evidence that was presented at trial. Both statutory tests required the court to examine the exculpatory DNA analysis against facts known to the prosecutors and jury at the time of the trial. *Powers*, 343 S.W.3d at 55. And that limitation makes sense because the statute asks whether the exculpatory DNA evidence would have affected the prosecution, verdict, or sentence when viewed in the context of what was known by those decision-makers at the time. See Tenn. Code Ann. §§ 40-30-304, -305; *Powers*, 343 S.W.3d at 55.

Carruthers pulls hand-selected excerpts from thirty-plus years of collateral litigation to try to discredit the evidence from Alfredo Shaw and the medical examiner that was presented at trial. Pet. App. 21a-24a. His disputes have no place in

Tennessee Post-Conviction DNA Analysis proceedings. Tennessee’s “Post-Conviction DNA Analysis Act is not the proper vehicle to seek review of evidence other than results available from DNA testing of biological specimens recovered during the course of investigation or prosecution of the petitioner.” *Alley v. State* No. W2006-01179-CCA-R3-PD, 2006 WL 1703820, at *7 (Tenn. Crim. App. June 22, 2006). It is simply a vehicle by which petitioners can later bring exculpatory DNA evidence to challenge their conviction—nothing more.

Tennessee was not required to create additional collateral vehicles to allow Carruthers to bring his additional challenges to the trial testimony. *Pennsylvania v. Finley*, 481 U.S. 551, 554-55 (1987). The state courts properly declined to engage with Carruthers’s attempts at distraction with those ancillary issues. And, regardless, there was sufficient evidence to sustain Carruthers’s conviction and sentence—even with the DNA evidence and absent the testimony of Afredo Shaw and the medical examiner. *Supra* at 16.

Tennessee courts properly applied the state’s own Post-Conviction DNA Analysis Act. Carruthers’s arguments to the contrary do not present a reason to grant certiorari.

III. Carruthers’s Tactical Delay Justified Denial of a Stay.

With no certworthy issue, Carruthers’s stay request is hollow. And the equities only tip the scales further against a stay.

“[A] stay of execution is an equitable remedy. It is not available as a matter of right, and equity must be sensitive to the State’s strong interest in enforcing its

criminal judgments without undue interference from the federal courts.” *Hill v. McDonough*, 547 U. S. 573, 584 (2006). An applicant for a stay of execution must satisfy all the traditional stay factors and therefore must show that there is “a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari,” that there is “a fair prospect that a majority of the Court will vote to reverse the judgment below,” and, in a close case, that the equities favor the granting of relief. *Hollingsworth v. Perry*, 558 U. S. 183, 190 (2010) (per curiam).

For the reasons stated above in Sections I and II, there is no reason to grant certiorari or reverse the judgment below. The Tennessee Supreme Court faithfully applied the established statutes governing post-conviction DNA testing.

Even setting aside the question of certworthiness, “[l]ast-minute stays should be the extreme exception, not the norm.” *Bucklew v. Precythe*, 587 U.S. 119, 150 (2019) (cleaned up). The timing of Carruthers’s request exposes it as a naked attempt to delay his execution. The procedural avenue to pursue such testing was available in 2001. Tenn. Code Ann. § 40-30-301. According to Carruthers’s own pleadings, the items he wants tested have been sitting in various storage rooms and medical examiners’ offices since 2002, at the latest. Pet. App. 65a-66a, 67a, 76a. And Mr. Irving was supposedly identified as an additional suspect in 2010 or 2011. Pet. App. 65a-66a. Yet in that decade or more, Carruthers *never* sought to have the DNA analysis he now requests. Instead, he waited until seventeen days before his execution to bring his claim. Such delay weighs heavily against Carruthers.

Moreover, the State and victims have a “powerful and legitimate interest in punishing the guilty.” *Calderon v. Thompson*, 523 U.S. 538, 556 (1998) (cleaned up). They also “have an important interest in the timely enforcement of a [death] sentence.” *Bucklew*, 587 U.S. at 149 (cleaned up). In Tennessee, crime victims have the constitutional right to “a prompt and final conclusion of the case after the conviction or sentence.” Tenn. Const. art I, § 35. Once post-conviction proceedings “have run their course . . . finality acquires an added moral dimension.” *Calderon*, 523 U.S. at 556. “Only with an assurance of real finality can the State execute its moral judgment in a case” and “the victims of crime move forward knowing the moral judgment will be carried out.” *Id.* “To unsettle these expectations is to inflict a profound injury.” *Id.*

The harm further delay would cause to the family of Carruthers’s victims weighs heavily against a stay. After waiting decades for justice, victim Freddrick Tucker’s father, Andri Steele, has spoken out publicly about his need for closure. *See* <https://tinyurl.com/mss6t8sx>. After attending Carruthers’s trial and hearing the overwhelming proof against him, Steele is greatly disturbed by the media campaign Carruthers continues to lead from prison. Steele explained, “He can fool the whole public. He can fool everybody. They say free Tony Carruthers. That’s what they say on the t-shirt. [T]hey’re talking about freeing this murderer. Would you want him on the street to do this to your family?” <https://tinyurl.com/mss6t8sx>.

Finally, the public interest further tips the balance against a stay. “Nearly [thirty-two] years after [Carruthers’s] capital sentence . . . both the state and the

public have an interest in finality which, if not deserving of respect yet, may never receive respect.” *Workman v. Bell*, 484 F.3d 837, 842 (6th Cir. 2007), *stay denied*, *Workman v. Bell*, 550 U.S. 930 (2007).

The Court should deny a stay because Carruthers’s petition is not certworthy and is meritless, and to prevent further trauma to the victims’ family, and to protect Tennessee’s grave sovereign interest in the execution of its exhaustively reviewed judgment.

CONCLUSION

The application for stay of execution and petition for writ of certiorari should be denied.

Respectfully submitted,

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