NO.

IN THE SUPREME COURT OF THE UNITED STATES

BRIAN TOOTLE, PETITIONER

vs.

SUPERINTENDENT SCI DALLAS, ET AL, RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APEALS
FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Third Circuit erred in denying a certificate of appealability where Petitioner made a substantial showing that the State obtained his conviction through the knowing use of false eyewitness identification testimony, in violation of due process under *Mooney v. Holohan*, 294 U.S. 103 (1935), *Napue v. Illinois*, 360 U.S. 264 (1959), and *Giglio v. United States*, 405 U.S. 150 (1972), where the prosecutor knew the eyewitness had never identified Petitioner in a pre-trial photo array.

2. Whether the state court violated Petitioner's due process rights when it permitted the prosecution to reopen its case after both sides had rested based upon a stipulation that the trial court acknowledged had been "vitiated," and whether the court of appeals erred in finding no clearly established federal law on this issue.

3. Whether the district court violated 28 U.S.C. § 2254(d)(2) by characterizing the only eyewitness identification testimony as "subsidiary" to the state court's decision when the record established that the eyewitness never identified Petitioner in any pre-trial photo array, and whether this constitutes an unreasonable determination of the facts.

4. Whether Petitioner's rights to due process and equal protection were violated when the Pennsylvania Supreme Court failed to docket his timely-filed pro se petition for allowance of appeal, and whether the interference by state officials with Petitioner's right to appeal establishes "cause" to excuse any procedural default under *Coleman v. Thompson*, 501 U.S. 722 (1991).

5. Whether the trial court violated Petitioner's Sixth Amendment right to a fair and impartial jury when it removed Juror No. 8—who unequivocally confirmed her ability to remain impartial—based solely on her "facial expression," and replaced her with Juror No. 13, who had openly expressed bias against Petitioner for exercising his right not to testify, contrary to *Wainwright v. Witt*, 469 U.S. 412 (1985), and *Patton v. Yount*, 467 U.S. 1025 (1984).

LIST OF PARTIES

All parties appear in the caption of the case on the cover page

RELATED CASES

United States Court of Appeals (3rd Circuit):

Brian Tootle v. Superintendent Dallas, SCI, *et al.,* 25-1692 (3d Cir. Jul. 11, 2025)

Brian Tootle v. Superintendent Dallas, SCI, et al., 25-1692 (3d Cir. Oct. 7, 2025)

United States District Court (Eastern District of Pennsylvania):

Brian Tootle v. Jasen Bohinski, et al., 22-2947 (E.D. Pa. Oct. 23, 2024)(Sitarski, U.S.M.J.)

Brian Tootle v. Alen Irwin, et al., 22-2947 (E.D. Pa. Mar. 21, 2025)(Gallagher, J.)

Supreme Court of Pennsylvania:

Commonwealth v. Brian Tootle, No. 520 EAL 2016, 169 A.3d 559 *; 2017 Pa. LEXIS 1272 **; 641 Pa. 716; 2017 WL 2389297 (Pa. Jun. 1, 2017)

Commonwealth v. Brian Tootle, No. 58 EM 2021, 2022 Pa. LEXIS 30* (Pa. Jan. 4, 2022)

Superior Court of Pennsylvania:

Commonwealth v. Brian Tootle, No. 3000 EDA 2014, 2016 Pa. Super. Unpub. LEXIS 3995 *; 159 A.3d 573; 2016 WL 6459816 (Pa. Super. Nov. 1, 2016)

Commonwealth v. Brian Tootle, No. 2542 EDA 2019, 2021 Pa. Super. Unpub. LEXIS 848 *; 251 A.3d 1273; 2021 WL 1233389 (Pa. Super. Mar. 31, 2021)

Court of Common Pleas Philadelphia County:

Commonwealth of Pennsylvania v. Brian Tootle, CP-51-CR-0014103-2012 (Phila. Ct. Com. Pl., Jul. 2, 2015)

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The order of the United States Court of Appeals for the Third Circuit denying Petitioner's request for a certificate of appealability is unreported and is reproduced in the Appendix at App. 3a-8a. The order of the United States District Court for the Eastern District of Pennsylvania adopting the Magistrate Judge's Report and Recommendation and denying the petition for writ of habeas corpus is unreported and is reproduced in the Appendix at App. 9a-10a. The Report and Recommendation of the United States Magistrate Judge is reproduced in the Appendix at App. 11a-61a.

The opinion of the Pennsylvania Superior Court affirming the denial of Petitioner's PCRA petition is unreported and is reproduced in the Appendix at App. 64a-68a.

JURISDICTION

The United States Court of Appeals for the Third Circuit denied Petitioner's request for a certificate of appealability on July 11, 2025. A timely petition for rehearing *en banc* was filed on September 22, 2025, and was denied on October 7, 2025. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides, in relevant part:

> "No person shall . . . be deprived of life, liberty, or property, without due process of law . . . ."

The Sixth Amendment to the United States Constitution provides, in relevant part:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . . ."

The Fourteenth Amendment to the United States Constitution provides, in relevant part:

> "No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

28 U.S.C. § 2253(c) provides, in relevant part:

> "(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court . . . (2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right."

28 U.S.C. § 2254(d) provides:

> "An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—(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."

STATEMENT OF THE CASE

A. Factual Background

On July 27, 2012, at approximately 8:37 p.m., Gerald Jones and Nafis Armstead were outside on the 200 block of East Sharpnack Street in Philadelphia. A green van pulled up, and according to the prosecution's theory, gunmen exited and opened fire. Armstead was killed, and Jones was shot five times but survived. App. 77a-78a.

Officer Tyrone Broaddus, responding to a radio call about the shooting, observed a green van and followed it to an apartment complex parking lot. Petitioner Brian Tootle was apprehended in the area. *Id.* Police recovered two firearms: a .40 caliber Glock inside the vehicle and a .357 caliber revolver approximately ten feet from where Petitioner was arrested. *Id.*

The critical eyewitness identification in this case came from Christina Dorman. At trial, the prosecution presented Dorman as the *only witness who identified Petitioner as one of the shooters during the crime*. The prosecutor, Richard Sax, relied heavily on her testimony in his opening statement, promising the jury that witnesses would identify Petitioner as the person they "knew and recognized . . . either all day or at the time of the shooting." N.T. 6-30-14 at 81.

However, as the trial record establishes—and as the Magistrate Judge acknowledged—**Dorman was never shown a pre-trial photo array containing Petitioner's photograph, and thus never identified him before**

trial. N.T. 7/2/14 at 113. When the prosecutor was confronted about Dorman's misidentification testimony, he stated: "[I]t's an array that does not contain the defendant's photo. . . . I think she is confused about as to which array or which photo or whatever." *Id.* The trial court acknowledged: "I think she is confused about as to which array or what photo or whatever. 'I certainly in no way, shape, or form—I mean this statement was brought to me well after I was assigned to the case but never met her. The detectives came to me and said we have another interview for you and I relied on this as what she was going to say . . . .'" *Id.* at 110-113.

Despite this acknowledgment that the eyewitness identification was based on false premises, the prosecution proceeded with the testimony, and Petitioner was convicted. The prosecution's knowledge of the falsity of this testimony—and its failure to correct it—lies at the heart of this petition.

Additionally, DNA analysis of both firearms revealed that Petitioner was excluded as a source of DNA recovered from the weapons. *Id.* Trial counsel failed to call the DNA expert to present this exculpatory evidence, instead attempting unsuccessfully to introduce it through a detective who had not reviewed the report. App. *Id.*

B. State Court Proceedings

Petitioner was tried and convicted in July 2014 before the Philadelphia Court of Common Pleas. He was found guilty of first-degree murder, criminal conspiracy, and related firearms offenses. He was sentenced to an aggregate

term of life imprisonment without parole plus 24.5 to 52 years of incarceration. App. 76a-77a.

During trial, the court permitted the Commonwealth to reopen its case after both sides had rested. The basis for this ruling was a purported stipulation between the parties. However, the trial court explicitly acknowledged that the stipulation had been "vitiated" by the prosecutor's subsequent conduct. N.T. 7-3-14 at 36. Nevertheless, the court allowed the prosecution to present additional fingerprint evidence regarding a cell phone recovered from the van, despite defense counsel's objection that the evidence had not been disclosed through proper discovery. N.T. 7-3-14 at 37-41.

Also during trial, Juror No. 8 reported to a court officer that the prosecutor was "making faces" that she found distracting and "disparaging." N.T. 7/2/14 at 118-119. Upon questioning, Juror No. 8 unequivocally confirmed that she could remain fair and impartial. N.T. 7/2/14 at 120-122. Nevertheless, the trial court removed her, citing only a "facial expression" the juror made while answering. N.T. 7/2/14 at 125-126.

Juror No. 8 was replaced by Juror No. 13, who during voir dire had expressed *explicit bias* against Petitioner for exercising his constitutional right not to testify. Juror No. 13 stated: "I would think it is unfair simple as that. . . . I don't need to hide behind a lawyer . . . if he didn't do it . . . I don't know that because he ain't participate in the system himself . . . I'm just telling you the reason I marked what I marked . . . now the law, maybe I got to change the

law." N.T. 6-30-14 at 250-255. Despite defense counsel's motion to strike Juror No. 13 for cause, the trial court permitted him to serve. N.T. 6-30-14 at 256-259.

The Pennsylvania Superior Court affirmed the judgment of sentence on direct appeal, and the Pennsylvania Supreme Court denied allocatur. *Commonwealth v. Tootle*, No. 3030 EDA 2014 (Pa. Super. Nov. 1, 2016), *allocatur denied*, 169 A.3d 559 (Pa. 2017). App. 71a-74a; 69a-70a.

Petitioner filed a timely PCRA petition on May 18, 2018, raising claims of ineffective assistance of trial and appellate counsel. The PCRA court dismissed the petition without a hearing on August 1, 2019. The Superior Court affirmed on March 31, 2021. App. 64a-68a.

Petitioner filed a *pro se* petition for allowance of appeal with the Pennsylvania Supreme Court on April 22, 2021. However, instead of docketing the petition, the court forwarded it to prior counsel (who had just informed Petitioner that he was no longer representing him on appeal). App. 62a-63a. When Petitioner contacted the Pennsylvania Supreme Court on August 3, 2021, he was informed that his appeal had not been received. *Id.*. Subsequent counsel's motion to file a petition for allowance of appeal *nunc pro tunc* was denied, as was a motion for reconsideration. *Id.*

C. Federal Habeas Proceedings

Petitioner timely filed his federal habeas petition on July 19, 2022, asserting multiple constitutional claims. On October 23, 2024, the Magistrate

Judge issued a Report and Recommendation recommending denial of the petition. App. 11a-61a.

Significantly, the Magistrate Judge *acknowledged* that Petitioner had "successfully rebutted with clear and convincing evidence the presumption of correctness attached to the Superior Court's determination that Dorman identified Petitioner as one of the perpetrators in a pretrial photo array." *Id.* The Magistrate Judge found that "Petitioner has successfully rebutted with clear and convincing evidence the presumption of correctness attached to the Superior Court's determination" because the trial record established that *Dorman was never shown a photo array containing Petitioner's photograph*. *Id.*

Despite this finding, the Magistrate Judge characterized the misidentification testimony as merely "subsidiary" and concluded that Petitioner had not established entitlement to relief. *Id.* The District Court adopted the Report and Recommendation.

The District Court also found Claims Five and Six (regarding ineffective assistance of counsel for failing to object to Dorman's identification and for failing to object to prosecutorial misconduct) to be procedurally defaulted. *Id.* The court declined to find that PCRA appellate counsel's ineffectiveness established "cause" to excuse the default because the alleged ineffectiveness occurred during appellate, rather than initial-level, PCRA proceedings. *Id.*

Moreover, the District Court changed Petitioner's Claim Four from "*per se* ineffective assistance of appellate PCRA counsel" to "attorney

abandonment," relying on *Martinez v. Ryan*'s holding that it does not extend to appellate PCRA counsel ineffectiveness. *Id.* Petitioner had never raised a claim of "attorney abandonment" under *Maples v. Thomas*; rather, he asserted *per se* ineffective assistance. This mischaracterization deprived Petitioner of fair and actual review of his claim. The District Court overruled the objections. App. 9a.

On July 11, 2025, the Third Circuit denied Petitioner's request for a certificate of appealability, stating that "reasonable jurists would not debate the District Court's denial." App. 6a-8a. Petitioner's timely petition for rehearing *en banc* was denied on October 7, 2025. App. 3a-5a.

REASONS FOR GRANTING THE WRIT

I. THE THIRD CIRCUIT'S DECISION CONFLICTS WITH THIS COURT'S PRECEDENTS ON THE USE OF FALSE TESTIMONY

For over ninety years, this Court has held that "[a] conviction obtained through the knowing use of perjured testimony is fundamentally unfair, and must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury." *Napue v. Illinois*, 360 U.S. 264, 269 (1959); *see also Mooney v. Holohan*, 294 U.S. 103, 112 (1935) ("deliberate deception of a court and jurors by the presentation of testimony known to be perjured" violates due process); *Giglio v. United States*, 405 U.S. 150, 153-54 (1972).

Most recently, in *Glossip v. Oklahoma*, 604 U.S. ___ (2025), this Court reaffirmed that "the prosecutor violated its constitutional obligation under due process to correct false testimony" and held that the touchstone of prosecutor misconduct is the fairness of the trial, not the culpability of the prosecutor. *Id.* at ___ (slip op. at 15-16).

Here, the record demonstrates that the prosecution obtained Petitioner's conviction through testimony it *knew* to be false. Christina Dorman testified as the only eyewitness who identified Petitioner as one of the shooters. Yet the prosecutor acknowledged on the record that Dorman *was never shown a photo array containing Petitioner's photograph*. N.T. 7/2/14 at 113 ("[I]t's an array

that does not contain the defendant's photo. . . . I think she is confused about as to which array or which photo or whatever.").

The prosecutor knew this testimony was false before trial. In his opening statement, he promised the jury testimony from witnesses who "knew and recognized" the defendant, building his case on Dorman's identification. When confronted with the falsity of her claim to have identified Petitioner in a pre-trial array, the prosecutor attempted to circumvent the issue rather than correct the false impression left with the jury.

The Magistrate Judge acknowledged this problem, finding that "Petitioner has successfully rebutted with clear and convincing evidence the presumption of correctness attached to the Superior Court's determination that Dorman identified Petitioner as one of the perpetrators in a pretrial photo array." Yet the court below erroneously characterized this finding as merely "subsidiary" to the ultimate determination.

Under *Mooney*, *Napue*, *Giglio*, and *Glossip*, evidence of the prosecution's knowing use of false testimony cannot be "subsidiary." The focus is on whether the false testimony "could have affected the judgment of the jury." *Napue*, 360 U.S. at 269. Dorman was the *only* witness who claimed to identify Petitioner as one of the shooters during the crime. Her false testimony—that she had identified Petitioner in a pre-trial photo array when no such identification occurred—went to the heart of the prosecution's case.

The Third Circuit's refusal to grant a certificate of appealability on this claim conflicts with this Court's ninety-year line of precedent requiring reversal where the prosecution obtains a conviction through the knowing use of false testimony. This Court should grant certiorari to reaffirm that a conviction obtained through false identification testimony cannot stand, regardless of other evidence that may exist.

II. THE LOWER COURTS UNREASONABLY DETERMINED THE FACTS REGARDING EYEWITNESS IDENTIFICATION

Under 28 U.S.C. § 2254(d)(2), habeas relief is warranted when the state court's decision "was based on an unreasonable determination of the facts in light of the evidence presented." This Court has explained that "[f]actual determinations by state courts are presumed correct absent clear and convincing evidence to the contrary," *Miller-El v. Cockrell*, 537 U.S. 322, 340 (2003), but that presumption can be overcome where the record clearly contradicts the state court's findings, *Wiggins v. Smith*, 539 U.S. 510, 528 (2003).

Here, the Superior Court found that "Dorman . . . was able to identify Tootle as one of the shooters because she had known him for several years" and had "identified [him] . . . two years after the incident while this case was awaiting trial." App. 20a n.5. However, as the Magistrate Judge acknowledged, this finding is *directly contradicted* by the trial record, which establishes that Dorman was never shown a photo array containing Petitioner's photograph. App. 20a.

The Magistrate Judge correctly found that Petitioner "successfully rebutted with clear and convincing evidence the presumption of correctness attached to the Superior Court's determination." App. 24a. This finding should have led to relief under § 2254(d)(2). Instead, the court characterized the eyewitness identification as "subsidiary" to other factual findings and denied relief.

Under this Court's precedents in *Wiggins* and *Miller-El*, once a petitioner rebuts the presumption of correctness attached to a state court's factual determination, that determination cannot simply be swept aside as "subsidiary." The erroneous factual finding—that Dorman identified Petitioner in a pre-trial photo array—was central to the state court's analysis of the reliability of her identification and, consequently, to the sufficiency of the evidence supporting the conviction.

This Court should grant certiorari to clarify that when a federal habeas court finds that a petitioner has rebutted the presumption of correctness under § 2254(e)(1), the unreasonably determined facts cannot be dismissed as "subsidiary" to an "overarching" determination, particularly where those facts relate to the only eyewitness identification of the petitioner as a perpetrator of the crime.

III. THE STATE COURT'S ALLOWANCE OF REOPENING VIOLATED DUE PROCESS

The trial court permitted the Commonwealth to reopen its case after both sides had rested. The stated basis was a stipulation between the parties. However, the trial court itself acknowledged that this stipulation had been "vitiated" by the prosecutor's conduct:

> "[T]here was no reference to the cell phone . . . . At the same time the beginning part of the stipulation did refer to [the expert's] report. I could see [the prosecutor's] misunderstanding. I think that's possible. I accept both what you tell me as they can both be true and if they're both true, then there was just a misunderstanding . . . ."

N.T. 7-3-14 at 36.

Twenty minutes after being allowed to reopen based on this "stipulation misunderstanding," the prosecutor argued for admission of evidence that was *never part of any stipulation*:

> "MS. D'ANDREA: Good morning, Your Honor. I just spoke with Mr. Sax . . . he said he doesn't feel they could reach a stipulation.
>
> MR. JOHNSON: That's news to me. As a matter of fact, I wrote it out. . . .
>
> MR. SAX: Your Honor may I address the Court? . . . I'm not going to stipulate at this point. . . . I have additional exhibits related to a 48 what's called the latent print card . . . .
>
> MR. JOHNSON: Your Honor, there were talks of a stipulation. Quite frankly, I actually didn't talk about the language that said stipulation, but I thought there was one. It's okay that it's not, I'm okay with that as well, but I do take issue at this point since he's not wanting to stipulate allowing the Commonwealth to reopen for all the reasons I stated earlier."

N.T. 7-14-25 at 37-41.

Thus, the trial court initially allowed the prosecution to reopen based upon a "stipulation misunderstanding," but the prosecutor then reneged on the stipulation entirely and sought to introduce evidence that had never been disclosed through proper discovery. This "unsupported discovery/due process violation" tendered an ambush at trial.

The District Court characterized this sequence of events as merely a "stipulation misunderstanding" and found no federal constitutional violation. However, under the Due Process Clause, a conviction obtained through government conduct that "so infect[s] the trial with unfairness as to make the resulting conviction a denial of due process" cannot stand. *Donnelly v. DeChristoforo*, 416 U.S. 637, 643 (1974).

The prosecution's bait-and-switch—obtaining the court's permission to reopen based on a stipulation, then abandoning the stipulation and introducing undisclosed evidence—deprived Petitioner of his due process right to a fair trial. This Court should grant certiorari to address the circumstances under which prosecutorial conduct in reopening a case violates due process.

IV. THE STATE COURT'S INTERFERENCE ESTABLISHES CAUSE TO EXCUSE PROCEDURAL DEFAULT

In *Coleman v. Thompson*, 501 U.S. 722 (1991), this Court recognized that the "cause" standard for excusing procedural default is satisfied when "some interference by officials . . . made compliance [with a state procedural rule]

impracticable." *Id.* at 753 (citation omitted). The Court further noted that courts must consider "the limitations and constraints upon pro se prisoners" because, for them, "even minor impediments may prove insurmountable." *Id.*

Here, the Pennsylvania Supreme Court's handling of Petitioner's *pro se* appeal demonstrates precisely the type of "interference by officials" that establishes cause. Petitioner timely filed a *pro se* petition for allowance of appeal on April 22, 2021, but rather than docket it, the court forwarded it to prior counsel—who had just informed Petitioner he was no longer representing him. When Petitioner contacted the court on August 3, 2021, he was informed that his appeal "had not been received."

This failure to docket Petitioner's timely appeal—and the subsequent denial of his nunc pro tunc petition—constituted state interference that made compliance with Pennsylvania's appellate procedures impracticable. The District Court found that this did not establish cause because "the protections of the Due Process Clause do not apply" to collateral proceedings.

However, the question here is not whether Petitioner has a due process right to collateral review, but whether the state's interference with his ability to pursue that review establishes "cause" to excuse the procedural default of his federal habeas claims. Under *Coleman*, the answer is yes. When state officials prevent a prisoner from complying with state procedural rules—as occurred here when the Pennsylvania Supreme Court failed to docket Petitioner's timely appeal—cause is established.

This Court should grant certiorari to clarify that state court interference with a prisoner's ability to pursue available state remedies establishes "cause" under *Coleman*, regardless of whether the prisoner has a constitutional right to those remedies.

V. THE JUROR REMOVAL VIOLATED PETITIONER'S SIXTH AMENDMENT RIGHTS

The Sixth Amendment guarantees "the right to a speedy and public trial, by an impartial jury." This Court has held that the proper standard for determining juror impartiality "is whether the juror's views would 'prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath.'" *Wainwright v. Witt*, 469 U.S. 412, 424 (1985) (citation omitted); *see also Patton v. Yount*, 467 U.S. 1025, 1036 (1984).

Here, Juror No. 8 unequivocally confirmed her ability to remain impartial despite finding the prosecutor's facial expressions distracting. When asked directly whether she could "disregard [her] impression of the prosecutor and be fair," she confirmed she could. N.T. 7/2/14 at 120-122. The trial court removed her anyway, based solely on a "facial expression" and "hesitation" it observed. N.T. 7/2/14 at 122-123.

Under *Witt*, a juror who confirms her ability to follow the court's instructions and perform her duties impartially cannot be removed based on speculation about her demeanor. Juror No. 8 did exactly what the court instructed jurors to do—she reported a problem to a court officer. She then

assured the court she could remain fair. The trial court's removal of her, based on subjective impressions of her "facial expression," was inconsistent with the *Witt* standard.

More troubling still is that Juror No. 8 was replaced by Juror No. 13, who had expressed *explicit bias* against Petitioner for exercising his constitutional right not to testify. Juror No. 13 stated that he thought it "unfair" that Petitioner would not testify, that he didn't need to "hide behind a lawyer," and that "maybe I got to change the law." N.T. 6-30-14 at 250-255.

The trial court's decision to remove an impartial juror and replace her with one who had expressed bias reflects a double standard inconsistent with *Witt* and *Patton*. This Court should grant certiorari to address whether the Sixth Amendment permits removal of a juror who confirms her impartiality based solely on subjective impressions of her demeanor, particularly when the replacement juror expressed actual bias.

CONCLUSION

WHEREFORE, for all of the reasons set forth above, Petitioner, Brian Tootle respectfully requests that Your Honorable Court grant his Petition for a Writ Of Certiorari and issue a Certificate of Appealability.

Because reasonable jurists could debate whether the District Court should have granted habeas relief on Tootle's claims, the Third Circuit should have authorized an appeal and this Court should not allow that error to go uncorrected.

Therefore, the court should grant the petition for a writ of certiorari and summarily reverse the order of the Third Circuit denying a Certificate of Appealability.

In the end, regardless of how the Third Circuit would resolve Tootle's appeal on the merits, it is beyond question that Tootle's claim is, at minimum, "reasonably debatable."

Respectfully submitted,

s/Jonathan J. Sobel, Esquire
Jonathan J. Sobel, Esquire,
Attorney for Brian Tootle

Date: January 6, 2026