

\_\_\_\_\_  
No. \_\_\_\_\_

IN THE  
**Supreme Court of the United States**

\_\_\_\_\_  
**KEONTAE NELSON,**  
*Petitioner,*

v.

**TIM SHOOP, WARDEN,**  
**ROSS CORRECTIONAL INSTITUTE,**  
*Respondent.*

\_\_\_\_\_  
On Petition for a Writ of Certiorari to the  
United States Court of Appeals for the Sixth Circuit

\_\_\_\_\_  
**PETITION FOR A WRIT OF CERTIORARI**

\_\_\_\_\_  
**RHYS BRENDAN**  
**CARTWRIGHT-JONES, OH 0078597**

*Counsel of Record*  
26 Market St., No. 304  
Youngstown, Ohio 44503  
216-272-1938  
rhys44503@gmail.com  
*Counsel for Petitioner*

## **QUESTION PRESENTED**

Whether 28 U.S.C. § 2253(c) permits a court of appeals to deny a certificate of appealability by first resolving the ultimate merits under § 2254(d) and then declaring that no reasonable jurist could disagree, when the district court denied a certificate in part because no prior case showed disagreement on materially similar facts.

## **PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT**

Petitioner Keontae Nelson was the petitioner in the district court and petitioner-appellant in the court of appeals. Respondent Tim Shoop, Warden, Ross Correctional Institute, was the respondent-appellee.

No corporate disclosure statement is required under Rule 29.6.

## **RELATED PROCEEDINGS**

- *State v. Nelson*, Meigs County Court of Common Pleas No. 22 CR 112; judgment entered November 17, 2022; amended judgment entered December 12, 2022.
- *State v. Nelson*, Ohio Court of Appeals, Fourth District, No. 22CA10, 2023-Ohio-3566, 225 N.E.3d 480; judgment entered September 28, 2023.
- *State v. Koentae Nelson* (caption as docketed), Supreme Court of Ohio No. 2023-1276; jurisdiction declined December 26, 2023, 224 N.E.3d 57 (Ohio 2023) (table).
- *State v. Nelson*, Ohio Court of Appeals, Fourth District, No. 22CA10; application to reopen denied October 21, 2024.
- *State v. Koentae Nelson* (caption as docketed), Supreme Court of Ohio No. 2024-1680; jurisdiction declined April 1, 2025.
- *Nelson v. Warden, Ross Correctional Institution*, U.S. District Court for the Southern District of Ohio No. 2:24-cv-04301-SDM-MRM; judgment entered November 17, 2025.

- *Nelson v. Shoop*, U.S. Court of Appeals for the Sixth Circuit No. 25-3992; certificate of appealability denied and judgment entered May 12, 2026.

## TABLE OF CONTENTS

|                                                          |     |
|----------------------------------------------------------|-----|
| QUESTION PRESENTED.....                                  | i   |
| PARTIES TO THE PROCEEDING AND RULE 29.6                  |     |
| STATEMENT.....                                           | ii  |
| RELATED PROCEEDINGS.....                                 | ii  |
| TABLE OF CONTENTS.....                                   | iv  |
| TABLE OF AUTHORITIES.....                                | v   |
| OPINIONS BELOW.....                                      | 1   |
| JURISDICTION.....                                        | 1   |
| CONSTITUTIONAL AND STATUTORY PROVISIONS                  |     |
| INVOLVED.....                                            | 1   |
| STATEMENT OF THE CASE.....                               | 2   |
| REASONS FOR GRANTING THE PETITION.....                   | 4   |
| I. The decision below conflicts with Miller-El and       |     |
| Buck.....                                                | 4   |
| A. The certificate inquiry precedes full merits          |     |
| review.....                                              | 4   |
| B. The courts below substituted merits                   |     |
| adjudication and an extra-statutory comparator           |     |
| for the threshold Congress prescribed.....               | 5   |
| II. The question governs access to appellate review in   |     |
| habeas cases and warrants this Court’s intervention...   | 7   |
| III...This case cleanly presents the threshold question, |     |
| and a limited remand is the proper disposition.....      | 8   |
| CONCLUSION.....                                          | 9   |
| APPENDIX CONTENTS.....                                   | 1a  |
| Appendix A. Sixth Circuit order.....                     | 2a  |
| Appendix B. Sixth Circuit judgment.....                  | 9a  |
| Appendix C. District-court opinion and order.....        | 10a |
| Appendix D. District-court judgment.....                 | 19a |
| Appendix E. Statutory provisions.....                    | 20a |

## TABLE OF AUTHORITIES

### *Cases*

|                                                              |        |
|--------------------------------------------------------------|--------|
| Buck v. Davis, 580 U.S. 100 (2017).....                      | passim |
| Cavazos v. Smith, 565 U.S. 1 (2011).....                     | 6      |
| Coleman v. Thompson, 501 U.S. 722 (1991).....                | 3      |
| Edwards v. Carpenter, 529 U.S. 446 (2000).....               | 3      |
| Harmelin v. Michigan, 501 U.S. 957 (1991).....               | 8      |
| Harrington v. Richter, 562 U.S. 86 (2011).....               | 6      |
| Hohn v. United States, 524 U.S. 236 (1998).....              | 1, 7   |
| Jackson v. Virginia, 443 U.S. 307 (1979).....                | passim |
| Klein v. Martin, 607 U.S. 213 (2026).....                    | 7      |
| McCarthy v. Hernandez, 608 U.S. ____ (2026).....             | 7      |
| Miller-El v. Cockrell, 537 U.S. 322 (2003).....              | passim |
| Slack v. McDaniel, 529 U.S. 473 (2000).....                  | passim |
| State v. Nelson, 225 N.E.3d 480<br>(Ohio Ct. App. 2023)..... | passim |
| Tennard v. Dretke, 542 U.S. 274 (2004).....                  | 5      |

### *Statutes*

|                       |        |
|-----------------------|--------|
| 28 U.S.C. § 1254..... | 1, 8   |
| 28 U.S.C. § 2101..... | 1      |
| 28 U.S.C. § 2253..... | passim |
| 28 U.S.C. § 2254..... | passim |

### *Rules*

|                               |   |
|-------------------------------|---|
| Supreme Court Rule 10(c)..... | 7 |
| Supreme Court Rule 13.....    | 1 |

## **OPINIONS BELOW**

The order of the United States Court of Appeals for the Sixth Circuit denying a certificate of appealability is unpublished. Pet. App. 2a–9a. The court of appeals entered a separate judgment the same day. Pet. App. 10a.

The opinion and order of the United States District Court for the Southern District of Ohio is unpublished. Pet. App. 11a–20a. The district court’s judgment appears at Pet. App. 21a.

The opinion of the Ohio Court of Appeals on direct review is reported at *State v. Nelson*, 2023-Ohio-3566, 225 N.E.3d 480. The state court’s later order denying reopening is unpublished.

## **JURISDICTION**

The court of appeals entered its order and judgment on May 12, 2026. Pet. App. 2a, 10a. Under Supreme Court Rule 13.1 and 28 U.S.C. § 2101(c), the last day of the 90-day period is Monday, August 10, 2026. This petition is timely if filed on or before that date. The issuance of a mandate does not affect the time to petition. Sup. Ct. R. 13.3.

This Court has jurisdiction under 28 U.S.C. § 1254(1). A court of appeals’ denial of a certificate of appealability is a judicial decision reviewable by certiorari. *Hohn v. United States*, 524 U.S. 236, 253 (1998).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

Section 2253(c) of Title 28 of the United States Code provides in relevant part: “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.”

Section 2254(d) of Title 28 limits habeas relief on a claim adjudicated on the merits in state court unless the state decision was contrary to or an unreasonable application of clearly established federal law, or rested on an unreasonable determination of the facts. The relevant provisions appear at Pet. App. 22a et seq.

## STATEMENT OF THE CASE

1. An Ohio jury convicted petitioner Keontae Nelson of aggravated murder and related offenses arising from the shooting death of Kane Roush. The prosecution presented testimony that Nelson and two others planned the killing, traveled from West Virginia to Ohio with firearms, entered Roush's home through a ruse, and shot him as he fled. DNA evidence also connected Nelson to an item recovered near the scene. The trial court imposed a three-year firearm term followed by life without parole. Pet. App. 2a.

The Ohio Court of Appeals reversed only the conspiracy conviction because the indictment failed to allege a substantial overt act. It affirmed the other convictions and the sentence. *State v. Nelson*, 225 N.E.3d 480, 502 (Ohio Ct. App. 2023). The Supreme Court of Ohio declined review. Pet. App. 2a.

2. Nelson timely sought federal habeas relief under 28 U.S.C. § 2254. The petition asserted that the evidence did not establish the intent required by *Jackson v. Virginia*, 443 U.S. 307 (1979); that life without parole for a 20-year-old offender violated the Eighth Amendment; and that conspiracy-related evidence denied due process after reversal of the conspiracy count. The original habeas petition is not reproduced as a standalone document in the supplied record, but the district court and court of appeals identified those three grounds. Pet. App. 3a, 11a et seq.



The district court denied relief. On the Jackson claim, it applied deference to the verdict and to the state court under § 2254(d). Pet. App. 12a. In addressing a certificate of appealability, the court relied on two additional considerations: the state appellate decision was unanimous, and Nelson had not supplied a case in which reasonable jurists had debated similar facts. Pet. App. 13a. The court used the absence of factually similar authority again when addressing evidentiary development. Pet. App. 19a. It ultimately denied a certificate and certified that any appeal would be objectively frivolous. Pet. App. 20a.

3. Nelson’s corrected application to the Sixth Circuit invoked *Miller-El v. Cockrell*, 537 U.S. 322 (2003), and *Buck v. Davis*, 580 U.S. 100 (2017). It argued that the certificate inquiry is a threshold question distinct from the merits, and that unanimity below or the absence of a case involving similar facts cannot replace § 2253(c)’s standard.

A single circuit judge denied the application. The order correctly recited that a certificate should issue when reasonable jurists could disagree with the district court or conclude that an issue deserves encouragement to proceed further. Pet. App. 4a. The order then resolved each claim under the ultimate habeas standards. On sufficiency, it held that the state decision “was not an unreasonable application of Jackson” and was not based on an unreasonable factual determination. Pet. App. 7a. Only after reaching that merits conclusion did the court state that no reasonable jurist could disagree. *Ibid.* The court followed the same sequence for the Eighth Amendment claim and resolved the procedural-default question under *Coleman v. Thompson*, 501 U.S. 722 (1991), and *Edwards v. Carpenter*, 529 U.S. 446 (2000). Pet. App. 7a–8a.

The order did not address the district court’s reliance on unanimity or prior cases involving similar facts. It denied a

certificate on all claims and entered judgment. Pet. App. 9a–10a.

## **REASONS FOR GRANTING THE PETITION**

### **I. The decision below conflicts with *Miller-El* and *Buck*.**

Section 2253(c) creates a threshold inquiry. It does not authorize a court to decide the ultimate habeas merits and then use that decision to justify closing the appellate door. This Court has enforced that distinction repeatedly. The order below recited the right words but used the wrong sequence.

#### **A. The certificate inquiry precedes full merits review.**

A state prisoner may not appeal the denial of habeas relief without a certificate of appealability. 28 U.S.C. § 2253(c)(1). A certificate may issue when the prisoner makes “a substantial showing of the denial of a constitutional right.” § 2253(c)(2). When a district court rejects a constitutional claim on the merits, the applicant meets that threshold by showing that reasonable jurists could debate the district court’s assessment or that the issue deserves encouragement to proceed further. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

*Miller-El* applied that rule to a claim governed by AEDPA. The certificate question was not whether the petitioner had already proved entitlement to habeas relief. It was whether “the District Court’s application of AEDPA deference” was debatable among jurists of reason. 537 U.S. at 341. A court must conduct “an overview of the claims” and a “general assessment” of their merits, but it may not engage in “full consideration of the factual or legal bases” supporting them. *Id.* at 336. When a court decides the merits

while resolving a certificate, it acts “without jurisdiction to do so.” *Id.* at 336–337.

*Tennard v. Dretke*, 542 U.S. 274 (2004), rejected an added screening rule that displaced the statutory threshold. The Court again explained that an applicant need not prove ultimate entitlement to relief before obtaining appellate review. *Id.* at 282–283. The inquiry remains a threshold one. *Buck*, 580 U.S. at 115.

*Buck* leaves no room for the sequence used below. There, the court of appeals first decided that the claim failed on its ultimate merits and then used that adjudication to deny a certificate. This Court held that the lower court had “inverted the statutory order of operations” and “placed too heavy a burden on the prisoner at the COA stage.” *Id.* at 115, 117. A certificate proceeding has two steps: first, decide whether the claim is reasonably debatable; if so, permit an appeal in the ordinary course. *Id.* at 115. The merits belong to the second step.

**B. The courts below substituted merits adjudication and an extra-statutory comparator for the threshold Congress prescribed.**

The district court’s certificate analysis did more than recognize AEDPA’s demanding merits standard. It treated unanimity in the state appellate court and the absence of a prior case involving “similar facts” as reasons that no jurist could debate the claim. Pet. App. 13a. It repeated the similar-facts requirement when considering whether a separate evidentiary-development question could receive a certificate. Pet. App. 19a. The court then declared any appeal objectively frivolous. Pet. App. 20a.

Neither § 2253(c) nor this Court’s cases require an applicant to produce a prior judicial disagreement on

matching facts. The statute asks whether the district court's resolution is open to reasonable debate. *Slack*, 529 U.S. at 484. *Miller-El* asks whether the district court's application of AEDPA is debatable. 537 U.S. at 341. A rule demanding an earlier fact-matched debate converts the certificate inquiry into a precedent-counting test and excludes the first debatable case of its kind. Unanimity below fares no better. The certificate question exists precisely because the district court has already ruled against the applicant.

Nelson squarely presented that error to the Sixth Circuit. The court of appeals recited *Miller-El*'s standard but did not decide whether the district court's comparator was lawful. It instead performed the ultimate § 2254(d) analysis. It reviewed the state court's evidentiary inferences, held that its Jackson decision was not objectively unreasonable, and only then declared that no reasonable jurist could disagree. Pet. App. 4a–7a. It repeated the sequence on the Eighth Amendment claim. Pet. App. 7a. That is the order of operations *Buck* forbids.

Reciting the certificate standard before resolving the merits does not cure the defect. *Buck* itself recognized that some preliminary merits assessment is unavoidable. 580 U.S. at 115. But the Court drew a firm line between asking whether a claim is debatable and deciding it. *Id.* at 115–118. The order below crossed that line when it adjudicated whether the state decision satisfied § 2254(d), then used that answer as the reason no jurist could debate the district court's ruling.

The deference required by *Jackson* and § 2254(d) does not alter the statutory sequence. *Cavazos v. Smith*, 565 U.S. 1, 2 (2011) (per curiam), confirms that habeas review of a sufficiency claim is demanding. *Harrington v. Richter*, 562 U.S. 86, 102 (2011), likewise protects reasonable state decisions. But *Miller-El* already involved AEDPA, and it framed the certificate question around the debatability of the

district court's application of that deference. 537 U.S. at 341. Strict merits review informs the threshold; it does not erase it.

The Court's recent AEDPA decisions reinforce the distinction. *Klein v. Martin*, 607 U.S. 213 (2026) (per curiam), and *McCarthy v. Hernandez*, 608 U.S. \_\_\_\_ (2026) (per curiam), enforce § 2254(d)'s limits when a court reaches the habeas merits. Neither decision changed § 2253(c), *Miller-El*, or *Buck*. A court may apply AEDPA rigorously after a certificate issues. It may not import final merits adjudication into the gatekeeping step.

## **II. The question governs access to appellate review in habeas cases and warrants this Court's intervention.**

The certificate is the only route from a district court's final habeas judgment to appellate review. § 2253(c)(1). Its denial is therefore consequential even though it is preliminary. *Hohn*, 524 U.S. at 248–253. If a court may decide the merits first and deny a certificate second, the two-step process collapses into one unreviewable adjudication.

This Court's repeated interventions show that the problem recurs. *Miller-El* rejected full merits review at the certificate stage. *Tennard* rejected an extra threshold added by a court of appeals. *Buck* again corrected merits-first adjudication. The persistence of the same sequence after those decisions warrants review under Rule 10(c), even without a mature conflict among circuits.

The district court's fact-matching requirement also threatens novel claims as a class. A question can be debatable even if no court has confronted identical facts. Indeed, the “encouragement to proceed further” formulation protects issues that warrant adversarial consideration before a court of appeals. *Miller-El*, 537 U.S. at 327. Requiring an applicant to

identify a prior debate on similar facts turns novelty into a categorical reason to close the courthouse door.

The error matters most where AEDPA applies. The merits standard is deliberately restrictive, as *Klein* and *McCarthy* confirm. But Congress used different words in § 2253(c) and § 2254(d), and this Court has assigned them different functions. Preserving that boundary respects both statutes: § 2253 filters appeals, while § 2254 governs whether a federal court may grant relief.

**III. This case cleanly presents the threshold question, and a limited remand is the proper disposition.**

Nelson preserved the issue. His corrected certificate application relied on *Miller-El* and *Buck*, described the certificate inquiry as distinct from merits review, and challenged the district court's reliance on unanimity and the absence of factually similar authority. The Sixth Circuit denied the application in an order that resolved the ultimate AEDPA questions. Pet. App. 4a–9a. The issue was therefore pressed and passed upon.

*Hohn* removes any jurisdictional obstacle. This Court may review the denial itself under § 1254(1). 524 U.S. at 253. The Court reviews the federal certificate ruling, not a state judgment. It need not revisit witness credibility or decide whether Nelson ultimately satisfies *Jackson*, *Harmelin v. Michigan*, 501 U.S. 957 (1991), or the procedural-default rules.

The underlying claims face substantial obstacles. The prosecution introduced direct accomplice testimony concerning planning and intent, and AEDPA requires deference to reasonable state-court adjudication. Nelson does not ask this Court to reweigh that testimony or to extend juvenile-sentencing decisions to a 20-year-old homicide

offender in this petition. Those difficulties do not license a court to replace § 2253(c)'s threshold with a final merits decision. They are matters for the proper certificate analysis and, if a certificate issues, an appeal in the ordinary course.

The appropriate disposition is correspondingly narrow. The Court should grant the petition, vacate the May 12, 2026 order, and remand for the Sixth Circuit to apply § 2253(c) without requiring fact-matched precedent and without deciding the ultimate § 2254(d) merits first. That relief would restore the statutory sequence without expressing any view on whether a certificate should issue or whether Nelson is entitled to habeas relief.

### **CONCLUSION**

The petition for a writ of certiorari should be granted, the order of the court of appeals vacated, and the case remanded for application of the certificate-of-appealability standard required by 28 U.S.C. § 2253(c).

*Respectfully submitted,*

**RHYS BRENDAN CARTWRIGHT-  
JONES**

*Counsel of Record*

26 Market St., No. 304

Youngstown, Ohio 44503

216-272-1938

rhys44503@gmail.com

*Counsel for Petitioner*

August 9, 2026

**APPENDIX CONTENTS**

Appendix A. Order of the U.S. Court of Appeals for the Sixth Circuit (May 12, 2026).....2a

Appendix B. Judgment of the U.S. Court of Appeals for the Sixth Circuit (May 12, 2026).....10a

Appendix C. Opinion and Order of the U.S. District Court for the Southern District of Ohio (Nov. 17, 2025).....11a

Appendix D. Judgment of the U.S. District Court for the Southern District of Ohio (Nov. 17, 2025).....21a

Appendix E. Statutory Provisions.....22a



**APPENDIX A**  
**ORDER OF THE UNITED STATES COURT OF**  
**APPEALS FOR THE SIXTH CIRCUIT**  
(MAY 12, 2026)

No. 25-3992

**UNITED STATES COURT OF APPEALS FOR THE**  
**SIXTH CIRCUIT**

KEONTAE NELSON, Petitioner-Appellant,

v.

TIM SHOOP, Warden, Ross Correctional Institute,  
Respondent-Appellee.

**ORDER**

Before: MATHIS, Circuit Judge.

Keontae Nelson, an Ohio prisoner, appeals the district court’s judgment denying his petition for a writ of habeas corpus filed under 28 U.S.C. § 2254. Nelson moves this court for a certificate of appealability. See Fed. R. App. P. 22(b) (1). As set forth below, we deny his motion. In October 2022, an Ohio jury convicted Nelson of aggravated murder, murder, complicity to aggravated murder or murder, conspiracy, burglary, and tampering with evidence. The aggravated murder and murder convictions included firearm specifications. These convictions arose from the shooting death of Kane Roush. DNA evidence connected Nelson and Jaquan Hall to the crime scene. When interviewed by law enforcement, Nelson implicated Richard Walker, admitting that they were present at Roush’s house at the time in question. Walker pleaded guilty and testified against Nelson and Hall. The trial court merged Nelson’s convictions for sentencing purposes and sentenced him to three years in prison for the firearm specifications followed by life in prison without the possibility of parole for the aggravated murder

conviction. On direct appeal, the Ohio Court of Appeals reversed his conspiracy conviction because the indictment failed to allege an overt act in furtherance of the conspiracy but affirmed his other convictions and related firearm specifications as well as his sentence. *State v. Nelson*, 225 N.E.3d 480, 502 (Ohio Ct. App.), perm. app. denied,

224 N.E.3d 57 (Ohio 2023) (table). Nelson later moved for delayed reopening of his direct appeal based on ineffective assistance of appellate counsel under Ohio Rule of Appellate Procedure Rule 26(B); the Ohio Court of Appeals denied his motion. Nelson filed a timely § 2254 habeas petition raising three grounds for relief: (1) there was insufficient evidence to support his convictions, (2) his sentence of life imprisonment without the possibility of parole constituted cruel and unusual punishment considering his young age and rehabilitation potential, and (3) given the reversal of his conspiracy conviction due to a defect in the indictment, the admission of the conspiracy-related evidence prejudicially influenced the verdict on the remaining counts in violation of his right to a fair trial. A magistrate judge recommended that Nelson's habeas petition be denied, concluding that his third ground for relief was procedurally defaulted and that his other grounds failed on the merits. Over Nelson's objections, the district court adopted the magistrate judge's report and recommendation, denied the habeas petition, and declined to issue a certificate of appealability. This timely appeal followed. Nelson moves this court for a certificate of appealability. See Fed. R. App. P. 22(b)(1). To obtain a certificate of appealability, a petitioner must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). "A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Where the district court dismisses a claim on procedural grounds, a certificate of appealability should issue if the petitioner “shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Sufficiency of the Evidence. Nelson first challenged his convictions for aggravated murder, murder, and complicity to aggravated murder or murder, arguing that there was insufficient

evidence that he had the requisite intent for each crime. In reviewing the sufficiency of the evidence, “the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). That “standard must be applied with explicit reference to the substantive elements of the criminal offense as defined by state law.” *Id.* at 324 n.16. And in applying that standard, the court does “not reweigh the evidence, re-evaluate the credibility of witnesses, or substitute [its] judgment for that of the jury.” *Brown v. Konteh*, 567 F.3d 191, 205 (6th Cir. 2009). The jury convicted Nelson of aggravated murder under Ohio Revised Code § 2903.01(A), which provides that “[n]o person shall purposely, and with prior calculation and design, cause the death of another.” Ohio Rev. Code Ann. § 2903.01(A). “The phrase ‘prior calculation and design’ by its own terms suggests advance reasoning to formulate the purpose to kill.” *State v. Walker*, 82 N.E.3d 1124, 1128 (Ohio 2016). The Ohio Court of Appeals summarized the evidence supporting Nelson’s prior calculation and design as follows: The state presented sufficient evidence of prior calculation and design through the testimony of Walker, who testified that Hall and Nelson planned to murder Roush approximately a week before they

did so. Even though it was not established whether Nelson knew Roush personally, through Walker's testimony the state established that Nelson believed Roush was "snitching" on Hall and thus he had a negative or strained attitude toward him. Nelson agreed to Hall's plan to murder Roush and travelled with guns on an hour-long car trip to Roush's house. When Hall told Nelson, "You know what to do," Nelson immediately began shooting Roush at least four times with a 45-caliber handgun. Nelson, 225 N.E.3d at 494. Viewing this evidence in the light most favorable to the prosecution, the state appellate court concluded that any rational trier of fact could have found the essential elements of aggravated murder beyond a reasonable doubt. *Id.* The jury also convicted Nelson of murder under Ohio Revised Code § 2903.02(A), which provides that "[n]o person shall purposely cause the death of another." Ohio Rev. Code Ann. § 2903.02(A). Under Ohio law, "[a] person acts purposely when it is the person's specific intention to cause a certain result." *Id.* § 2901.22(A). The Ohio Court of Appeals observed that

"the state presented evidence that Nelson went to Roush's house with the intent to kill Roush and shot Roush multiple times from a short distance with a 45-caliber firearm while Roush attempted to flee out the door." Nelson, 225 N.E.3d at 494. Viewing this evidence in the light most favorable to the prosecution, the state appellate court concluded that any rational trier of fact could have found the essential elements of murder beyond a reasonable doubt. *Id.* Finally, the jury convicted Nelson of complicity to aggravated murder or murder under Ohio Revised Code § 2923.03(A)(2), which provides that "[n]o person, acting with the kind of culpability required for the commission of an offense, shall . . . [a]id or abet another in committing the offense." Ohio Rev. Code Ann. § 2924.03(A)(2). The Ohio Court of Appeals pointed out that it had already determined that Nelson acted with the requisite intent with respect to the aggravated murder and

murder convictions. According to the state appellate court, Walker’s testimony established that Nelson assisted Hall in Roush’s murder “by obtaining entry into Roush’s house by feigning a need to borrow a phone” and by shooting “Roush multiple times as Roush attempted to flee.” Nelson, 225 N.E.3d at 495. The Ohio Court of Appeals concluded that, when viewed in the light most favorable to the prosecution, this evidence established that Nelson “had the requisite intent and aided Hall in committing the offenses of aggravated murder and murder.” *Id.* On habeas review, “a federal court may not overturn a state court decision rejecting a sufficiency of the evidence challenge simply because the federal court disagrees with the state court” and “instead may do so only if the state court decision was ‘objectively unreasonable.’” *Cavazos v. Smith*, 565 U.S. 1, 2 (2011) (per curiam) (quoting *Renico v. Lett*, 559 U.S. 766, 773 (2010)). The state appellate court’s rejection of Nelson’s sufficiency-of-the-evidence challenge was not an unreasonable application of *Jackson*, nor was it based on an unreasonable determination of the facts in light of the evidence. See 28 U.S.C. § 2254(d). In his motion for a certificate of appealability, Nelson contends that the state appellate court’s discussion of the sufficiency of the evidence was “summary” when the “issue turns on record-specific inference-drawing regarding mens rea.” Contrary to Nelson’s argument, the Ohio Court of Appeals conducted a thorough review of the evidence, including the testimony Nelson’s co-conspirator, and made reasonable

inferences from that evidence. No reasonable jurist could disagree with the district court’s decision to defer to the state appellate court’s sufficiency determination. See *Chandler v. Brown*, 137 F.4th 525, 536 (6th Cir. 2025) (per curiam) (“A state court’s resolution of a claim on the merits receives significant deference in federal habeas proceedings.”). Cruel and Unusual Punishment. Nelson’s second ground for relief asserted that his sentence of life imprisonment without the possibility of parole constituted cruel and unusual

punishment considering his young age (20 years old at the time of the offense) and rehabilitation potential. But the Eighth Amendment does not require consideration of mitigating factors in a non-capital case. *Harmelin v. Michigan*, 501 U.S. 957, 995 (1991). Rather, the Eighth Amendment’s “Cruel and Unusual Punishments Clause encompasses a narrow proportionality principle,” forbidding “only extreme sentences that are ‘grossly disproportionate’ to the crime.” *Id.* at 997, 1001 (Kennedy, J., concurring) (quoting *Solem v. Helm*, 463 U.S. 277, 288 (1983)). On direct appeal, the Ohio Court of Appeals concluded that Nelson’s sentence of life imprisonment without the possibility of parole was not grossly disproportionate to the offense of aggravated murder. Because the state appellate court’s conclusion involved a reasonable application of *Harmelin* and because Nelson failed to identify any Supreme Court precedent demonstrating that his sentence was grossly disproportionate to his offense, no reasonable jurist could disagree with the district court’s rejection of his Eighth Amendment claim. See *United States v. Silvers*, 129 F.4th 332, 353 (6th Cir. 2025) (upholding a life sentence where the circumstances underlying the defendant’s conviction and sentence were more egregious than the simple-possession conviction at issue in *Harmelin*). Conspiracy-Related Evidence. Nelson’s third ground for relief challenged the admission of the conspiracy-related evidence in light of the reversal of his conspiracy conviction. The district court concluded that Nelson’s third ground for relief was procedurally defaulted because he could have but failed to raise this claim on direct appeal. Ohio’s doctrine of *res judicata* requires claims to be raised on direct appeal if possible and is an adequate and independent state ground foreclosing federal habeas review. *Whitman v. Gray*, 103 F.4th 1235, 1239 (6th Cir. 2024).

Habeas review of a procedurally defaulted claim is barred unless a petitioner “can demonstrate cause for the default and

actual prejudice as a result of the alleged violation of federal law” or “a fundamental miscarriage of justice” resulting from the failure to consider the claim. *Coleman v. Thompson*, 501 U.S. 722, 750 (1991). In his Rule 26(B) motion to reopen his direct appeal, Nelson raised his appellate counsel’s ineffectiveness in failing to challenge the admission of the conspiracy-related evidence. Although ineffective assistance of counsel may serve as cause for a procedural default, “an ineffective-assistance-of-counsel claim asserted as cause for the procedural default of another claim can itself be procedurally defaulted.” *Edwards v. Carpenter*, 529 U.S. 446, 453 (2000). Because the Ohio Court of Appeals denied Nelson’s motion to reopen as untimely filed, his appellate-counsel claim was procedurally defaulted, see *Wogenstahl v. Mitchell*, 668 F.3d 307, 322 (6th Cir. 2012), and therefore could not serve as cause for the procedural default of the underlying claim about the admission of the conspiracy-related evidence. Jurists of reason therefore could not debate the district court’s conclusion that Nelson’s third ground for relief was procedurally defaulted. For these reasons, we DENY Nelson’s motion for a certificate of appealability. ENTERED BY ORDER OF THE COURT Kelly L. Stephens, Clerk

**APPENDIX B**  
**JUDGMENT OF THE UNITED STATES COURT OF**  
**APPEALS FOR THE SIXTH CIRCUIT**  
(MAY 12, 2026)

No. 25-3992

KEONTAE NELSON, Petitioner-Appellant,

v.

TIM SHOOP, Warden, Ross Correctional Institute,  
Respondent-Appellee.

THIS MATTER came before the court upon the application by Keontae Nelson for a certificate of appealability.

UPON FULL REVIEW of the record and any submissions by the parties,

IT IS ORDERED that the application for a certificate of appealability is DENIED.

**ENTERED BY ORDER OF THE COURT**

Kelly L. Stephens, Clerk



## **APPENDIX C**

### **OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO**

(NOVEMBER 17, 2025)

#### **UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF OHIO EASTERN DIVISION**

KEONTAE NELSON, Petitioner,

v.

BILL COOL, WARDEN, ROSS CORRECTIONAL  
INSTITUTION, Respondent.

Case No. 2:24-cv-4301

Chief Judge Sarah D. Morrison

Magistrate Judge Michael R. Merz

#### **OPINION AND ORDER**

This is an action for a writ of habeas corpus under 28 U.S.C. § 2254, brought by Petitioner Keontae Nelson with the assistance of counsel. The Magistrate Judge has filed a Report and Recommendation recommending that the Petition be dismissed with prejudice and that Petitioner be denied a certificate of appealability. (R&R, ECF No. 19.) Petitioner has objected (Objs., ECF No. 20) and Respondent's time for responding to those Objections has expired. If a party objects within the allotted time to a report and recommendation, the Court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1); see also Fed. R. Civ. P. 72(b). Upon review, the Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1).

The Court has reviewed the Magistrate Judge's R&R, Petitioner's Objections, and those portions of the record implicated therein, *de novo*, and finds no error in the Magistrate Judge's conclusions or reasoning. I. GROUND ONE: INSUFFICIENT EVIDENCE TO CONVICT In his first ground for relief, Petitioner claims he was convicted on constitutionally insufficient evidence. As set forth in the R&R, the governing standard for a claim of insufficient evidence is found in *Jackson v. Virginia*, 443 U.S. 307 (1979). Petitioner agrees. Yet he misstates the standard of review as "not whether an inference is available in the abstract, but whether every rational juror, on this record, could find the specific mental element beyond a reasonable doubt." (Objs., PAGEID# 2004 (emphasis added).) The standard, rather, is whether any rational juror could make that finding. *Jackson*, 443 U.S. at 319. Under the correct standard, the answer is undoubtedly yes. The Objections also ignore the Court's required double deference—first to the jury that made the inference and then to the appellate court that affirmed that finding. *Brown v. Konteh*, 567 F.3d 191, 205 (6th Cir. 2009). When reviewing a claim for sufficient evidence, a federal habeas court must apply a twice-deferential standard. *Parker v. Matthews*, 567 U.S. 37, 43 (2012) (*per curiam*). In a sufficiency of the evidence habeas corpus case, deference should be given to the trier-of-fact's verdict under *Jackson* and then to the appellate court's consideration of that verdict, as commanded by the Antiterrorism and Effective Death Penalty Act. *Tucker v. Palmer*, 541 F.3d 652 (6th Cir. 2008); accord *Davis v. Lafler*, 658 F.3d 525,

531 (6th Cir. 2011) (*en banc*); *Parker v. Matthews*, 567 U.S. 37, 43 (2012). The Objections assert that Petitioner should be granted a certificate of appealability because reasonable jurists could debate the appellate court's resolution of the *Jackson* issue. Not only does the Court disagree, but that assertion is based on speculation. The

appellate decision was unanimous, and the Petitioner does not present a single case in which there has been debate among reasonable jurists on similar facts. Petitioner's objections to the R&R's treatment of Ground One is **OVERRULED. II. GROUND TWO: CRUEL AND UNUSUAL PUNISHMENT** In his second ground for relief, Petitioner asserts that his sentence to life imprisonment without the possibility of parole amounts to cruel and unusual punishment in violation of the Ohio Constitution and the Eighth Amendment to the United States Constitution considering his age (20-years-old) and amenability to rehabilitation. The Court disagrees. Petitioner presented both claims as a combined assignment of error on direct appeal which the Fourth Appellate District rejected. The R&R noted that this Court cannot review the decision on the Ohio Constitution. Petitioner does not contest that conclusion. He also requested an evidentiary hearing to present evidence on this claim. The R&R found an evidentiary hearing barred by *Cullen v. Pinholster*, 563 U.S. 170 (2011), and Petitioner likewise does not object to that conclusion. As to his Eighth Amendment claim, the R&R found that Petitioner needed to

show that the Fourth Appellate District's decision was "an objectively unreasonable application of relevant Supreme Court precedent." 28 U.S.C. § 2254(d)(1). But he has failed to do so. Petitioner has not cited to any Supreme Court precedent that requires "individualized consideration of psychological evidence before imposing a sentence of life without parole on a twenty-year-old murderer." (R&R, PAGEID# 2000.) Petitioner disagrees. Instead, he asserts: the claim rests on the general proportionality framework that the Supreme Court has long articulated (and repeatedly applied in youth- related contexts): sentences must not be "grossly disproportionate" and youth bears on culpability and penological justifications. The state court's analysis treated adult vs. juvenile as rather dispositive and did not meaningfully engage comparative proportionality or the

mitigating force of near-youth in imposing an irreducible life term. (Objs., PAGEID# 2005–06). But to prevail in habeas corpus on an issue decided on the merits by a state court, a petitioner must show that the state court’s decision “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[.]” 28 U.S.C. § 2254(d)(1); *Harrington v. Richter*, 562 U.S. 86, 100 (2011). Again, Petitioner’s failure to cite any precedent for his position is dispositive here. It is “clearly established” that the “gross disproportionality principle is applicable to sentences for terms of years.” *Lockyer v. Andrade*, 538 U.S. 63, 72 (2003). In *Graham v. Florida*, 560 U.S. 48, 59–60 (2010), the Court explained the gross disproportionality principle:

The Court's cases addressing the proportionality of sentences fall within two general classifications. The first involves challenges to the length of term-of-years sentences given all the circumstances in a particular case. The second comprises cases in which the Court implements the proportionality standard by certain categorical restrictions on the death penalty. In the first classification the Court considers all of the circumstances of the case to determine whether the sentence is unconstitutionally excessive. Under this approach, the Court has held unconstitutional a life without parole sentence for the defendant's seventh nonviolent felony, the crime of passing a worthless check. *Solem v. Helm*, 463 U.S. 277, 103 S. Ct. 3001, 77 L. Ed. 2d 637 (1983). In other cases, however, it has been difficult for the challenger to establish a lack of proportionality. A leading case is *Harmelin v. Michigan*, 501 U.S. 957, 111 S. Ct. 2680, 115 L. Ed. 2d 836 (1991), in which the offender was sentenced under state law to life without parole for possessing a large quantity of cocaine. A closely divided Court upheld the sentence. The controlling opinion concluded that the Eighth Amendment contains a “narrow

proportionality principle,” that “does not require strict proportionality between crime and sentence” but rather “forbids only extreme sentences that are 'grossly disproportionate' to the crime.” *Id.*, at 997, 1000-1001, 111 S. Ct. 2680, 115 L. Ed. 2d 836 (Kennedy J., concurring in part and concurring in judgment). Again closely divided, the Court rejected a challenge to a sentence of 25 years to life for the theft of a few golf clubs under California's so-called three-strikes recidivist sentencing scheme. *Ewing v. California*, 538 U.S. 11, 123 S. Ct. 1179, 155 L. Ed. 2d 108 (2003); see also *Lockyer v. Andrade*, 538 U.S. 63, 123 S. Ct. 1166, 155 L. Ed. 2d 144 (2003). The Court has also upheld a sentence of life with the possibility of parole for a defendant's third nonviolent felony, the crime of obtaining money by false pretenses, *Rummel v. Estelle*, 445 U.S. 263, 100 S. Ct. 1133, 63 L. Ed. 2d 382 (1980), and a sentence of forty years for possession of marijuana with intent to distribute and distribution of marijuana, *Hutto v. Davis*, 454 U.S. 370, 102 S. Ct. 703, 70 L. Ed. 2d 556 (1982) (per curiam). The controlling opinion in *Harmelin* explained its approach for determining whether a sentence for a term of years is grossly disproportionate for a particular defendant's crime. A court must begin by comparing the gravity of the offense and the severity of the sentence. 501 U.S., at 1005, 111 S. Ct. 2680, 115 L. Ed. 2d 836 (opinion of Kennedy J.). “[I]n the rare case in which [this] threshold comparison . . . leads to an inference of gross disproportionality” the court should then compare the defendant's sentence with the sentences received by other offenders

in the same jurisdiction and with the sentences imposed for the same crime in other jurisdictions. *Ibid.* If this comparative analysis “validate[s] an initial judgment that [the] sentence is grossly disproportionate,” the sentence is cruel and unusual. *Ibid.* *Graham*, 560 U.S. at 59–60. While youth—understood as a legal minor—has been dispositive with respect to imposing the death penalty, the Supreme

Court has never suggested that being “near youth” is a required consideration. Because the Supreme Court has not yet held that this must be taken into consideration, the Court declines to do so here. Petitioner further asserts that the state courts did not consider his amenability to rehabilitation. Again, no decision of the Supreme Court requires this factor to be considered, much less establishes any standard for proving such amenability. Petitioner again requests a certificate of appealability because reasonable jurists “could debate the Eighth Amendment analysis.” (Objs., PAGEID# 2007.) Because Petitioner has provided no support for his position, the Court disagrees. Petitioner’s objections to the R&R’s treatment of Ground Two is **OVERRULED**. III. **GROUND THREE: UNCONSTITUTIONAL ADMISSION OF CONSPIRACY-RELATED EVIDENCE** In his third ground for relief, Petitioner asserts the admission of conspiracy-related evidence at trial was unconstitutional because the Fourth Appellate District dismissed the conspiracy charge on appeal. The R&R recommended this claim be dismissed because it could have been raised on direct appeal but was not. The Court agrees. Petitioner objects that the Fourth Appellate District made an alternative

merits decision on this question when it denied his claim of ineffective assistance of appellate counsel in his Application for Reopening under Ohio App. R. 26(B). But that does not address the procedural default on direct appeal on which the R&R relied. Petitioner does not deny that the evidence he argues should have been excluded was in the record on direct appeal. Nor does he deny that he could have raised this claim on direct appeal. Nor does he contest that Ohio law bars by res judicata later consideration of any claim which could have been raised on direct appeal but was not. *State v. Perry*, 226 N.E.2d 104 (Ohio 1967). Indeed, the Sixth Circuit has repeatedly held the *Perry* rule to be an adequate and independent procedural rule. See, e.g., *Durr v. Mitchell*, 487 F.3d 423, 432 (6th Cir. 2007). Petitioner cites to his

having raised this claim as an omitted assignment of error when he filed his 26(B) appeal. But asserting it was ineffective assistance of appellate counsel to omit a particular assignment of error is not an excuse for not presenting the error in the first place. An Ohio App. Rule 26(B) application preserves for habeas review only the ineffective assistance of appellate counsel argument, not underlying substantive arguments. *Wogenstahl v. Mitchell*, 668 F.3d 307, 338 (6th Cir. 2012) (“permitting an Ohio prisoner to raise a substantive claim in a Rule 26(B) motion ‘would eviscerate the continued vitality of the procedural default rule; every procedural default could be avoided, and federal court merits review guaranteed, by claims that every act giving rise to every procedural default was the result of constitutionally ineffective counsel.’”) (citing *Lott v. Coyle*, 261 F.3d 594, 612 (6th Cir. 2001)). Of course, if the Fourth Appellate District had found

it was ineffective assistance of appellate counsel to omit this claim and had reopened the appeal, this claim would have been resurrected. But that did not happen. Petitioner’s objections to the R&R’s treatment of Ground Three is **OVERRULED**. IV. EVIDENTIARY DEVELOPMENT In a fourth objection, Petitioner asserts the Magistrate Judge’s reading of *Cullen v. Pinholster* as barring evidentiary development in this case is at least debatable. The Court disagrees. According to the Petitioner, “reasonable jurists could debate ... whether the Eighth Amendment claim’s disposition here—resting on a truncated proportionality analysis with no mitigation record—permits any development to determine whether the state court unreasonably applied the general standard.” (Objs., PAGEID# 2008). But *Pinholster* “bars a federal court ‘from admitting new evidence upon which to assess the reasonableness of a state court’s constitutional analysis.’” *Upshaw v. Stephenson*, 97 F. 4th 365, 372 (6th Cir. 2024) (quoting *Mitchell v. Genovese*, 974 F.3d 638, 647 (6th Cir.

2020)). Petitioner has not suggested what additional evidence he would submit or cited any authority to suggest that Pinholster would not apply to that evidence. Apart from Pinholster, Petitioner asserts that reasonable jurists could debate “whether, at the COA stage, the legal question of proportionality and the absence of individualized youth-based mitigation warrant appellate review regardless of evidentiary expansion.” (Objs., PAGEID# 2008.) Yet again, he cites no authority to

suggest that reasonable jurists have debated such an issue on similar facts. Petitioner’s fourth objection is **OVERRULED**. **V. CERTIFICATE OF APPEALABILITY** The requirement for a certificate of appealability in habeas corpus cases was enacted by Congress as part of the Antiterrorism and Effective Death Penalty Act of 1996 (Pub. L. No 104-132, 110 Stat. 1214) (the “AEDPA”). As enacted, 28 U.S.C. §2253(c)(1) required a certificate of appealability to be issued by a “circuit justice or judge” and required a finding that the petitioner had “made a substantial showing of the denial of a constitutional right.” The circuit courts quickly devolved initial consideration of such certificates to the district courts. *Lyons v. Ohio Adult Parole Auth.*, 105 F.3d 1063 (6th Cir. 1997); *Kincade v. Sparkman*, 117 F.3d 949 (6th Cir. 1997) (adopting analysis in *Lozada v. United States*, 107 F.3d 1011, 1017 (2d Cir. 1997)). The United States Supreme Court endorsed that devolution of authority by adopting Rule 11 of the Rules Governing Section 2254 Cases in 2009. The Supreme Court has adopted a standard to apply to the decision on whether to issue or deny a certificate. When a district court has rejected a constitutional claim on the merits, a movant must show that jurists of reason would find the district court’s assessment of the claim to be debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). “A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that



jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” Miller-El v.

Cockrell, 537 U.S. 322, 327 (2003). As addressed above, Petitioner has provided no authority, for any of his objections, to suggest that reasonable jurists would disagree with the Court’s conclusions. As such, Petitioner’s request for a certificate of appealability is DENIED. VI. CONCLUSION Having considered the Magistrate Judge’s Report and Recommendation de novo in light of Petitioner’s Objections, the Court ADOPTS the Report and Recommendation (ECF No. 19) and OVERRULES Petitioner’s Objections (ECF No. 20). The Clerk will enter judgment dismissing with prejudice the Petition. Because reasonable jurists would not disagree with this conclusion, Petitioner is DENIED a certificate of appealability, and the Court certifies to the Sixth Circuit that any appeal would be objectively frivolous and should not be permitted to proceed in forma pauperis. IT IS SO ORDERED. /s/ Sarah D. Morrison SARAH D. MORRISON, CHIEF JUDGE UNITED STATES DISTRICT COURT

**APPENDIX D**

**JUDGMENT OF THE UNITED STATES DISTRICT  
COURT FOR THE SOUTHERN DISTRICT OF OHIO  
(NOVEMBER 17, 2025)**

Nelson v. Warden, Ross Correctional Institution  
Civil Action No. 2:24-cv-4301

**JUDGMENT IN A CIVIL ACTION**

Other: Pursuant to the Order by Chief Judge Sarah D.  
Morrison.

Date: November 17, 2025

Maria Rossi Cook, Clerk of Court

**APPENDIX E**  
**STATUTORY PROVISIONS**

**28 U.S.C. § 1254(1)**

Cases in the courts of appeals may be reviewed by the Supreme Court by writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

**28 U.S.C. § 2253(c)(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)**

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.