

No. 26-5343

In the Supreme Court of the United States

JUAN ANTONIO LAMAR KINLEY,

Petitioner,

v.

TIM SHOOP, WARDEN,

Respondent.

*ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT*

BRIEF IN OPPOSITION

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CAPITAL CASE – NO EXECUTION DATE SET

QUESTION PRESENTED

- I. Did the Sixth Circuit correctly reject Kinley's sixteenth claim—that the prosecution's witness lied about his confession—because Kinley did not assert that the prosecution knew of the alleged falsehood?
- II. Did the Sixth Circuit use the correct legal standard when ruling that there was no reasonable likelihood of a different trial outcome even if Kinley proved the alleged knowing use of false testimony?
- III. Did the Sixth Circuit correctly rule that Kinley's jury waiver was intelligent even though he was not explicitly told that a single juror could vote to spare him from the death penalty?

LIST OF PARTIES

The Petitioner is Juan Antonio Lamar Kinley.

The Respondent is Warden Tim Shoop.

LIST OF DIRECTLY RELATED PROCEEDINGS

Petitioner's list of related proceedings is missing the following entries:

- *Kinley v. Bradshaw*, 3:03-cv-127, 2011 U.S. Dist. LEXIS 158466 (S.D. Ohio June 30, 2011) (district court's final decision as to all claims except sixteen and seventeen, belongs between entries three and four)
- *State v. Kinley*, No. 89CR0065 (Clark Cnty. C.P. Jan. 27, 2016) (denial of second petition for postconviction relief, belongs between entries five and six)
- *State v. Kinley*, CA Case No. 99 CA 20, 1999 Ohio App. LEXIS 5391 (Ohio 2d Dist. Nov. 12, 1999) (state postconviction review, opinion remanding for evidentiary hearing, belongs between entries eight and nine)
- *State v. Kinley*, No. 89CR0065 (Clark Cnty. C.P. Mar. 18, 1991) (trial verdicts); (Clark Cnty. C.P. Jan. 19, 1999) (denial of first petition for postconviction relief) (belongs after entry eleven)

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INTRODUCTION

Juan Antonio Lamar Kinley maimed and killed Thelma Miller and her son by attacking them with a machete. That was 37 years ago. But for all these years, and despite a sentence of death, this case (and Kinley) has lived on—through motions, long delays, remands, and abeyances. By now, dozens of claims have whittled down to three, none of which calls for this Court’s attention.

First, Kinley argues that the Sixth Circuit overlooked his argument that a witness testified falsely without the prosecutor’s knowledge. But the court did address that argument—in one paragraph because it was destined to fail. Second, Kinley argues that the Sixth Circuit erred by holding that the result “would” not have been different rather than “could” not have been different. But its stated rule and application aligned with this Court’s instructions for harmless error. Finally, Kinley claims that his jury waiver was invalid because the judge did not tell him that a jury would be more likely to impose a life sentence. For one thing, that is not always true. For another, that choice is a strategic one. Most importantly, none of this Court’s decisions clearly establish such a requirement.

In any event, this case is a poor vehicle for review of his Questions Presented because the Sixth Circuit skipped over considerable issues of deference and procedural default under the Antiterrorism and Effective Death Penalty Act (AEDPA). To reverse the decision below and rule for Kinley, this Court would need to first wade through the mire of these overlooked issues, all of which would make Kinley’s success *less* likely than it was when the Sixth Circuit ruled against him.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. §1254(1).

STATEMENT

I. A state court convicted Kinley for killing Thelma Miller and her son.

Juan Antonio Lamar Kinley used to date Thelma Miller. He told her that he planned to kill her. Pet.App.4. Two days later, he did. Kinley tracked down Miller at her housecleaning job where she was with her younger son. He took the homeowner's machete, maimed Miller and her son, left them for dead, and stole Miller's car keys. Pet.App.4–5. Kinley fled. Miller and her son died.

Witnesses nearby spotted Kinley at the scene. And later, other witnesses saw Kinley with a flowered bank envelope and car keys—two items stolen from the house. Pet.App.5. When later speaking with investigators, Kinley denied ever being at the scene. *Id.* His story then changed. Kinley admitted that he visited the house, but he offered various reasons why he did so other than to commit murder. *Id.*

Other evidence further implicated Kinley. His jacket had bloodstains. When tested, the blood matched that of Miller's son. *Id.* The homeowner's machete—covered in blood—turned up near Kinley's apartment. And the steering wheel of the car Kinley had been driving had blood on it, too. Pet.App.6. Later at trial, Kinley's longtime acquaintance Donald Merriman testified that Kinley admitted to killing Miller and her son and “f___[ing] them up.” *Id.* (quotation omitted).

The state charged Kinley with two counts of aggravated murder. He waived his right to a jury trial, and a panel of three judges convicted Kinley. Pet.App.6. They sentenced him to death. *Id.* Kinley appealed and lost. *Id.*

II. Kinley unsuccessfully sought postconviction relief.

Kinley filed a petition for postconviction relief in state court. Relevant here, Kinley claimed that the prosecutor had knowingly used false testimony from Merriman at trial. Specifically, the prosecutor failed to correct Merriman when he said that he was *not* testifying pursuant to a deal with the prosecutor to get a lighter sentence on his own pending criminal charges. Pet.App.130. The trial court denied the petition without an evidentiary hearing, but the Ohio Court of Appeals remanded for a hearing to determine whether Merriman had lied about not having a deal with the prosecutor. Pet.App.6–7. No one could locate Merriman to testify at the hearing, but Kinley relied on recanting affidavits from Merriman. Pet.App.131. Still, other witnesses testified that Merriman later revoked his recantation when confronted about it. *Id.* The trial court found that Kinley had failed to prove Merriman’s testimony false. Pet.App.7.

The state appeals court affirmed. It analyzed Merriman’s affidavits and the circumstances of Merriman’s sentencing, and it concluded that the trial court reasonably found that he had no deal with the prosecutor. Pet.App.190–92. The court noted that Merriman’s prosecutor acknowledged Merriman’s helpful testimony at Kinley’s trial, and that Merriman received a lenient sentence. Pet.App.191. And it reviewed Merriman’s recantation and later revocation of his recantation. Pet.App.190–91. In the end, it concluded that the trial court could have reasonably decided for either side, and “while there is evidence that Merriman was given a lighter sentence after the fact because of his testimony, there is no evidence of a

promise of leniency to Merriman prior to his testimony.” Pet.App.191. The Ohio Supreme Court declined jurisdiction. Pet.App.7.

Kinley filed his federal habeas petition shortly afterward. During federal proceedings, he deposed Merriman and “relied almost solely” on that deposition to support his claim that Merriman’s testimony denying a deal with the prosecutor was false. Pet.App.135–36. In the deposition, Merriman explained that his recanting affidavits were the real truth, and his original testimony and revocation of the recantation were not. Pet.App.214–19. The district court noted that the Supreme Court’s holding in *Pinholster* prevented Kinley from adding the deposition to his federal claims because he had not included it in his state petition. Pet.App.132, 137–38 (citing *Cullen v. Pinholster*, 563 U.S. 170, 180–81 (2011)). Kinley appealed but successfully moved to hold the federal case in abeyance so that he could return to state court. Pet.App.7.

In his return to state court, Kinley filed a second postconviction petition re-raising his false-testimony claim about Merriman but added Merriman’s deposition to support his claim. Pet.App.8. The Ohio courts rejected his second postconviction petition because it was second or successive and untimely. Pet.App.169–71. They also noted that Kinley’s re-raised claim rested on the same credibility issues that the Ohio courts had resolved in the first postconviction decision. Pet.App.178–79.

Kinley resumed his federal petition, which was sitting in abeyance at the Sixth Circuit. Pet.App.8. He successfully sought a remand to the district court so that it would reconsider the false-testimony claims that it previously rejected—this time

with the new Merriman deposition in evidence. Doc.48-1. The district court expressed doubts about jurisdiction and then explained that merely presenting the deposition to the state courts in a new postconviction petition did not solve the *Pinholster* problem, so it could not consider the deposition. R.138, PageID#9241–45. But the Sixth Circuit, on Kinley’s motion, then re-remanded back to the district court again with an explicit command to “reconsider[] these claims in light of the new deposition testimony.” Pet.App.8 (quotation omitted). The district court did so, notwithstanding that it posed an apparent *Pinholster* violation. Pet.App.46–47.

Under the circumstances, the district court believed that it had to analyze the false-testimony claim *de novo*, not with AEDPA deference as to the state court’s decision. Pet.App.54–55. The court explained that the first state postconviction proceedings did not have the deposition, so there was no way to defer to its decision while also considering the deposition. Pet.App.54. And because it concluded that the second state postconviction proceeding ended in procedural default rather than a merits decision, there was “no adjudication on the merits” coming out of the second postconviction decision. Pet.App.55. Still, the court deferred to the state court’s factual findings. Pet.App.56 (citing 28 U.S.C. §2254(e)(1)). And it found no clear and convincing evidence rebutting the state court’s finding that Merriman’s recantation was not credible. Pet.App.62–71. It also noted that it would have decided the same way without deference. Pet.App.71–73.

On appeal, a panel of the Sixth Circuit grouped Kinley’s grounds for relief into three “categories.” Pet.App.9. First was that the State had used false testimony from

Merriman—both unknowingly because the testimony about the confession was false, and knowingly because the testimony about having no deal with the prosecutor was false. Pet.App.9–10. Second was that Kinley’s jury waiver was invalid because of an insufficient colloquy, or because he was coerced. *Id.* And third was that his appointed counsel had a conflict of interest. *Id.* Only the first and second are relevant here.

As to knowingly using false testimony, the Sixth Circuit rejected Kinley’s claim on the merits, passing over arguments about AEDPA deference and procedural default. Pet.App.10 n.2. The court concluded that Merriman had lied on the stand—and the prosecutor knew it—about having no deal with the prosecution in exchange for testifying against Kinley. Pet.App.11–14. But the court also concluded that the violation was harmless; it had no reasonable likelihood of affecting the judgment. Pet.App.17. For one, Kinley’s guilt was overwhelmingly obvious. Pet.App.17–18. For another, credibility issues clouded Merriman’s testimony anyway. Pet.App.18.

The court also addressed Kinley’s alternative argument that Merriman’s testimony was false as to the confession—something the prosecution would *not* be aware of. Pet.App.19. Acknowledging that under this Court’s binding precedent alleging unknowing use of false testimony does not constitute a viable habeas claim, the court rejected his argument in a single paragraph. *Id.*

Second, the court addressed Kinley’s argument that his waiver of a jury trial was involuntary. Although the trial court had discussed the jury right with Kinley, and had even explained the jury’s role in sentencing, Kinley argued that the court was required to tell him various other details about voir dire, appeal strategy, and risk

tradeoffs. Pet.App.21–22. Because the state court had passed on this argument already, the Sixth Circuit deferred to its decision. Pet.App.19–20; *see* 28 U.S.C. §2254(d). And the circuit court concluded that Kinley could not show a conflict with any clearly established law; courts need not advise the defendant on jury-trial details and strategies. Pet.App.22–23.

Kinley now seeks a writ of *certiorari* from this Court on three questions. Pet.i.

REASONS FOR DENYING THE WRIT

This case does not call for this Court’s attention. There is no split on any of Kinley’s three Questions Presented. Nor do those questions raise important, or any, legal issues that this Court must resolve. His claims rest largely on alleged misapplication of well-established legal rules. Because Kinley’s petition raises only trivial disputes over fact-bound issues unworthy of review, the Court should deny it.

Moreover, this case is an exceptionally poor vehicle to resolve the errors raised by Kinley because the lower-court opinion passed over complicated issues of AEDPA limits and deference to deny the writ. To reverse the decision below, this Court would need to wade through thorny AEDPA issues, under each of which the Warden would prevail.

I. Kinley has not raised an important legal question, much less a disputed one, for this Court’s review.

None of Kinley’s Questions Presented features a split among courts of a legal question or raises an important question calling for this Court’s intervention. *See* S. Ct. Rule 10. At most, he charges the Sixth Circuit with improper application of

already-established rules, something this Court “rarely” concerns itself with. *Id.* And in the end, the Sixth Circuit came to the correct conclusions.

False Testimony. In his first question presented, Kinley asserts that the Sixth Circuit misunderstood his false-testimony argument and therefore overlooked his claim that Merriman’s testimony about hearing Kinley confess was false. Pet.9–10. Kinley argues that this violated his due-process rights regardless of whether the prosecutor knew the testimony was false. *Id.*

Even if the court had overlooked his argument, that would not call for *certiorari* because it raises only fact-bound claims of error. But even more because Kinley is wrong. The Sixth Circuit expressly addressed the argument that Merriman’s testimony about the confession was secretly false. Pet.App.19. And it explained, as Kinley does now, that Kinley’s claim did not assert that the prosecutor knew that Merriman lied. *Id.* Finally, it explained that such a claim categorically fails. *Id.* (citing *Herrera v. Collins*, 506 U.S. 390, 400 (1993)). Thus, there is no reason for *certiorari* or even a remand.

The Sixth Circuit was right that Kinley’s argument failed. For one, this Court has not recognized an unknowing-use-of-false-evidence claim. Instead, it has held that a State violates the Fourteenth Amendment when it “knowingly use[s] false evidence, including false testimony.” *Napue v. Illinois*, 360 U.S. 264, 269 (1959). For another, Kinley’s claim is that Merriman’s testimony was false because Kinley is innocent. But this Court also has never recognized a freestanding actual-innocence claim. *See, e.g., McQuiggin v. Perkins*, 569 U.S. 383, 392 (2013); *Cress v. Palmer*, 484 F.3d 844,

854 (6th Cir. 2007); *Farrar v. Raemisch*, 924 F.3d 1126, 1131 (10th Cir. 2019); *Raulerson v. Warden*, 928 F.3d 987, 1004 (11th Cir. 2019); *see also* 28 U.S.C. §2244(b)(2)(B)(ii). And even if it had recognized such a claim, Kinley comes nowhere close to showing that “it is more likely than not that no reasonable juror would have found [him] guilty beyond a reasonable doubt” without Merriman’s testimony. *Schlup v. Delo*, 513 U.S. 298, 327 (1995). Instead, he ignores the objective evidence of guilt, arguing that “the remaining circumstantial evidence at best placed [him] at the scene of the crime, which is insufficient to convict.” Pet.11. The actual evidence tells a different story. Pet.App.5–6. Kinley was covered in the younger victim’s blood. He was spotted at the scene of the crime, carrying the stolen items. Blood was found on his steering wheel. And he lied about his presence at the scene. The evidence was overwhelming that Kinley was guilty—even without Merriman’s testimony.

Harmlessness Standard. Kinley’s second question presented says that the Sixth Circuit “correctly cited” the harmlessness standard but erred when “applying that test.” Pet.10. Specifically, he notes that the court stated that Merriman’s false testimony “would not have” affected the verdict instead of saying that the testimony “could not have” affected the verdict. Pet.10 (quotation omitted). He notes that “could” and “would” have different meanings in some contexts, but he does not explain why that matters. This claim likewise lacks an important legal question or split among authorities over one.

In the end, there is no helpful legal rule this Court could articulate. Kinley never explains how the Sixth Circuit’s decision would (or could) mean anything different if

it had said, “We are confident that [the evidence] ... [*could*] not have changed the ... outcome” rather than “*would* not have changed the ... outcome.” Pet.App.18 (emphasis added). That is because saying that the evidence *would not* change the outcome (that is, the outcome definitely remains the same) forecloses the idea that the evidence *could* change the outcome (that is, that the outcome might possibly be different). More yet, it is clear that the Sixth Circuit was applying the correct standard because in another place, it included the probability language in expressing the same outcome: “Given the overwhelming evidence of Kinley’s guilt, we are persuaded that there is no reasonable likelihood that the outcome would have been different if the prosecution had corrected Merriman’s false testimony about his deal.” *Id.* All this aligns with “materiality analysis, which asks what a reasonable decisionmaker *would have done* with the new evidence.” *Glossip v. Oklahoma*, 604 U.S. 226, 250 (2025) (emphasis added). And this Court should not read isolated statements to undermine the court’s correct application of the standard. *Cf. Holland v. Jackson*, 542 U.S. 649, 654–55 (2004).

On this same question, Kinley misconstrues the Sixth Circuit’s opinion in a way that is easy to clear up. Kinley says that the Sixth Circuit held that Merriman’s testimony “could not have had an impact on the outcome of the guilt verdict, as judges are presumed to ignore irrelevant or improper arguments.” Pet.13. That was not the court’s reasoning. Rather, it explained that Merriman was already beset with credibility problems, like crimes of dishonesty and pending charges that were openly

discussed at the trial. Pet.App.18. In light of those issues, and the overwhelming other evidence of Kinley’s guilt, the panel concluded that the error was harmless. *Id.*

Kinley also charges the Sixth Circuit with overlooking his argument that Merriman’s testimony affected the death sentence. Pet.13–14. But he never adequately raised this argument. In his brief, he asked the court to order the state court to “retry” him, not resentence him. No. 14-4063, Doc.90 at 65, 71. And his fleeting references to the possibility of “a sentence less than death” do not develop any argument in this vein, *id.* at 69–70, nor do his passing references in his motion for rehearing *en banc*, even if that would have been a timely chance to raise the argument, No. 14-4063, Doc.106 at 1, 3.

Intelligent Waiver. Finally, Kinley’s third question presented asks this Court to craft a new jury-waiver rule specific to his factual circumstance. The trial judge discussed the jury right with Kinley before accepting his waiver, explaining the nature of the jury right and that it also applied to the sentencing phase. Pet.App.20–21. For that reason, the state court rejected this claim of ineffective waiver on the merits. *See* R.67, PageID#497–502. Kinley now asks this Court to require a new warning before accepting a jury waiver: “that ... a vote for life [from a jury] is substantially more probable, as it is one out of twelve citizen jurors, vers[u]s one out of three, elected trial court judges.” Pet.15.

This Court has never clearly established a requirement for that kind of warning, so the state court’s decision was not contrary to controlling law. *See* 28 U.S.C. §2254(d)(1). This Court has clearly established that a defendant must “fully

understand[] the nature of the right and how it would likely apply *in general* in the circumstances—even though the defendant may not know the *specific detailed* consequences of invoking it.” *United States v. Ruiz*, 536 U.S. 622, 629 (2002). And this Court has already discredited the idea that “misapprehend[ing] the likely penalties” is a misunderstanding that can undermine a waiver of constitutional rights. *Id.* at 630 (quotation omitted). Indeed, whether jurors are more likely to vote for a lifetime term of imprisonment than judges is a strategy call that differs between cases. So such admonition would be inappropriate strategy coaching, and for that matter, likely often wrong.

II. This case is a poor vehicle to resolve the Questions Presented.

The questions raised by Kinley do not warrant review because this case is an exceptionally poor vehicle to resolve them. Reversing the Sixth Circuit to *grant* Kinley habeas relief would require bushwhacking through complex procedural and substantive tangles that the Sixth Circuit sidestepped in *denying* the writ. To be sure, it is unclear from the opinion whether the court believed it was addressing the first postconviction decision or the later second postconviction decision. Either way, Kinley has no path to success.

Kinley’s petition understandably does not address the latent barriers to the writ that the Sixth overlooked, and these barriers would bar relief many times over.

A. Reversing the decision below to grant Kinley relief raises two AEDPA-based, doctrinal obstacles: *Pinholster* and procedural default.

The Sixth Circuit started with the claim that the prosecution knowingly introduced false evidence. This claim rested on the idea that Merriman had a deal

with the prosecutor to testify in exchange for a light sentence, yet, on the stand, Merriman denied that he had such a deal.

Although the state courts addressed this claim on the merits, the Sixth Circuit reviewed the claim *de novo* rather than address AEDPA deference and procedural default. Pet.App.10 n.2. And it concluded that the testimony *was* false based on Merriman’s deposition and, most importantly, the attached transcript from Merriman’s testimony—both of which entered the record for the first time during federal habeas review. Pet.App.10–16. It then held that Kinley’s claim failed anyway because the violation was harmless in light of the overwhelming evidence of guilt. Pet.App.16–18.

Reversing the Sixth Circuit to rule for Kinley on this claim would require a more careful walk through the state-court dockets and application of AEDPA doctrines under which the Warden ultimately prevails. In the end, two doctrines would have prevented the Sixth Circuit from even considering Merriman’s deposition and the attached transcript: *Pinholster* and procedural default. Any reversal would have to grapple with each reason for denying relief.

Pinholster. A federal court reviewing a habeas petition must look only to evidence that the state courts had before them. *Cullen v. Pinholster*, 563 U.S. 170, 180–81 (2011). This limit flows from AEDPA’s exhaustion requirements: a federal court reviews only the claim that a prisoner presented to the state courts, and it would be “strange to ask federal courts to analyze whether a state court’s adjudication

resulted in a decision that unreasonably applied federal law to facts not before the state court.” *Id.* at 182–83.

Here, Kinley did not introduce Merriman’s deposition or its attached sentencing transcript in his first postconviction petition, when the state court adjudicated the merits of his false-testimony claim in 2002. Indeed, the 2006 deposition did not exist yet. And the transcript of Merriman’s sentencing presumably *did*—meaning that Kinley could have introduced it in his first postconviction petition and did not. It apparently did not enter the record until Kinley attached it to the 2006 deposition transcript. *See* R.102–103, PageID#978–6234.

The district court understood the importance of these facts, but the Sixth Circuit did not. The Sixth Circuit specifically commanded the district court in a remand order to consider the deposition, but it never explained why that was proper. Pet.App.46–47. The district court explained that considering Merriman’s deposition “flies in the face of ... *Pinholster*” because “the state courts did not have [the deposition or its attachments] before them in rejecting the claims during [Kinley’s] initial postconviction action.” Pet.App.54. But the Sixth Circuit brushed over that and criticized the 2002 state-court opinion for not referencing the 2006 deposition and its attached sentencing transcript. Pet.App.15.

Pinholster bars federal courts from relying on the 2006 deposition and the sentencing transcript. In reviewing the 2002 state court’s decision that did not have either before it, the Sixth Circuit ignored that problem, but this Court cannot. So Kinley cannot win here unless he circumvents *Pinholster*. He is unable to do so. And

because the deposition and sentencing transcript cannot enter the federal court's calculus, Kinley could never prevail on that claim. For that reason, this case is a poor fit for this Court's review.

Procedural Default. Separately, Kinley procedurally defaulted his false-testimony claim. Ordinarily, a federal court will “decline to hear any federal claim that was not presented to the state courts consistent with the State’s own procedural rules.” *Shinn v. Ramirez*, 596 U.S. 366, 378 (2022) (quotation and brackets omitted). If a state court would dismiss a claim for failure to comply with its procedures, then the claim is procedurally defaulted. *Id.*

So even if Kinley relabels his claim to evade *Pinholster*, procedural default poses another obstacle in his way. Kinley did not properly raise this claim in state court in compliance with its procedural rules. *See Gray v. Netherland*, 518 U.S. 152, 161–62 (1996); Pet.App.169–71, 177–79.

Assume that the claims avoid *Pinholster* because they are new. Kinley raises two theories, but both end in default. *First*, Kinley presented a deposition-based false-testimony theory in state court via his second postconviction petition. Pet.App.169–71, 177–79. The state court ruled that the theory was procedurally defaulted because it could have been raised in the first postconviction motion and was not. *Id.* To overcome that procedural default, Kinley would need to show cause and prejudice, and he cannot do so. *Shinn*, 596 U.S. at 379.

Second, even in the second postconviction petition, Kinley did not develop any theory related to Merriman’s sentencing transcript, on which the Sixth Circuit so

heavily leaned. It made no appearance in his post-deposition petition in state court. R.103-1, PageID#5078–122. Nor did it show up in his appellate briefing there. R.103-2, PageID#5863–92, 5930–42. Only in the federal courts did Kinley begin to note the transcript and argue based on it. R.50, PageID#303–05. And if Kinley were to return yet again to state court to make this argument, the courts would reject it yet again for failing to comply with state procedures. That makes his transcript-based false-testimony theory procedurally defaulted as well. *Anderson v. Harless*, 459 U.S. 4, 6 (1982) (*per curiam*).

B. The Sixth Circuit did not defer to the state court's determinations, which stand as an obstacle to reversing the decision below to grant Kinley relief.

In addition to the above issues, the Sixth Circuit failed to defer to the state court's decisions and factual findings as AEDPA requires. When a state court decides an issue on the merits, a federal court can grant habeas relief only when the state court's adjudication "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 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." 28 U.S.C. §2254(d). And a state court's factual findings deserve great deference on habeas review: they are "presumed to be correct" unless a petitioner carries the "burden of rebutting the presumption of correctness by clear and convincing evidence." 28 U.S.C. §2254(e)(1). And credibility determinations are factual findings that deserve particular deference. *Davis v. Ayala*, 576 U.S. 257, 274 (2015).

For all the claims, there is a state-court decision to defer to: Kinley's first postconviction review decision. The second-postconviction procedural default has no effect on that prior decision determining the claim. *See Cone v. Bell*, 556 U.S. 449, 466–67 (2009). So the Sixth Circuit should have ignored the second postconviction decision (and the deposition and its attached transcript) and deferred to the first postconviction decision.

On the false-testimony claim, the Sixth Circuit did not defer to the state court at all. It did not acknowledge that the state court had adjudicated the claim without the benefit of the deposition or transcript, and it did not attempt to explain how the state court's adjudication stacked up against the AEDPA standard. Pet.App.10–16. It also applied no presumption of correctness to the state court's factual findings. The state court found Merriman's recantation not credible in light of affidavits and prosecutor testimony, which constitutes a classic factual determination. Pet.App.189–92. But the Sixth Circuit did not even discuss deferring to that finding. Pet.App.15. Instead, the Sixth Circuit found the opposite based on the Merriman sentencing transcript, which it noted that the state court did not reference. *Id.*

It appears that the Sixth Circuit skipped over these steps because it believed it could *deny* relief without walking through those steps, even if it could not *grant* relief in that manner. Pet.App.10 n.2. Whether or not that is true for issues other than exhaustion, *see* 28 U.S.C. §2254(b)(2), those hurdles remain for Kinley to ever succeed. Thus, for Kinley to prevail on this claim, he would need to win despite a

heavy presumption against him—one that he did not have when he lost in the appeals court.

C. The Sixth Circuit applied circuit precedent rather than Supreme Court precedent, which stands as an obstacle to reversing the decision below to grant Kinley relief.

Finally, on the voluntary-waiver claim, the Sixth Circuit relied on its own precedent as clearly established law rather than this Court’s precedent. That approach misapplies AEDPA.

For legal errors, relief under AEDPA requires a showing that the state court’s decision was against “clearly established Federal law, as determined by the Supreme Court of the United States.” 28 U.S.C. §2254(d)(1). That means the state-court ruling must violate one of “the holdings, as opposed to the dicta, of [the Supreme] Court’s decisions.” *White v. Woodall*, 572 U.S. 415, 419 (2014) (quotation omitted). Circuit-court opinions do not bind the state courts.

The Sixth Circuit cited AEDPA’s deference standards when addressing the voluntary-waiver claim, but it ultimately held the state court to circuit precedent, not Supreme Court precedent. Pet.App.22–23. Because the state court’s colloquy was consistent with what “[Sixth Circuit] precedent requires,” the court approved. Pet.App.23. Thus, for Kinley to prevail, he would need to show not merely that the Sixth Circuit was wrong, but also that the state court’s decisions were an unreasonable application of one of this Court’s decisions. He cannot come close. And that presents another insurmountable obstacle to granting Kinley habeas relief—and another reason to deny his petition here.

CONCLUSION

This Court should deny the petition for certiorari.

Respectfully submitted,

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