

Nos. 26-5558, 26A353

IN THE
Supreme Court of the United States

LEJAMES NORMAN,
Petitioner,

v.

STATE OF TEXAS,
Respondent.

On Petition for Writ of Certiorari to the
Court of Criminal Appeals of Texas

**RESPONDENT'S BRIEF IN OPPOSITION TO
PETITION FOR A WRIT OF CERTIORARI AND
MOTION FOR STAY OF EXECUTION**

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**CAPITAL CASE
QUESTIONS PRESENTED**

1. Whether the Court has jurisdiction over claims that were disposed of on an adequate and independent state law ground.
2. Whether the Court should expend its limited resources to consider fact-bound questions, raised on the eve of Norman's impending execution date, where the claim is dilatory and meritless.

LIST OF ALL PROCEEDINGS

State v. Norman, No. 06-1-7346 (Crim. Dist. Ct. No. 24 Jackson Cty., Tex. Dec. 12, 2008) (conviction of capital murder and sentence of death)

Norman v. State, No. AP-74,063 (Tex. Crim. App. Feb. 16, 2011) (direct appeal opinion affirming conviction and sentence)

Ex parte Norman, WR-74,743-01 (Tex. Crim. App. Aug. 22, 2012) (denying relief from initial state habeas application)

Ex parte Norman, WR-74,743-02 (Tex. Crim. App. Aug. 22, 2012) (dismissing subsequent state habeas application as an abuse of the writ)

Norman v. Stephens, No. V-12-054 (S.D. Tex. Sept. 30, 2015) (denying federal habeas relief)

Norman v. Stephens, No. 15-70034 (5th Cir. Mar. 18, 2016) (denying certificate of appealability and request for evidentiary hearing)

Norman v. Davis, No. 16-5307 (Feb. 27, 2017) (denying certiorari off federal habeas)

Ex parte Norman, WR-74,743-03 (Tex. Crim. App. Sept. 14, 2026) (denying motion for a stay of execution, dismissing subsequent state habeas application as an abuse of the writ, and taking no action on the suggestion to reconsider the initial state habeas application)

In re LeJames Norman and John Rubio, No. 26-1049 (Tex. Sept. 14, 2026) (petition for a writ of mandamus and motion for a stay of execution pending)

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INTRODUCTION

In August 2005, LeJames Norman and his accomplice, Ker'sean Ramey, entered a neighbor's home with the intention of stealing cocaine. They shot the home's occupants, Celso Lopez, Tiffani Peacock, and Sam Roberts multiple times. Norman fled to Mexico after the murders and was apprehended as he tried to return to Texas using false identification papers. Norman gave several statements to police and eventually testified against Ramey, admitting his participation in the planning and execution of the murders. Norman testified that he shot Lopez in the cheek, Peacock in the head, and Roberts multiple times after they fought. Norman pleaded guilty to capital murder.

Norman's criminal history began long before the triple murder. At ten years old, he committed two robberies involving a firearm on the same day. At eleven, Norman burglarized an elementary school three times. As a teenager, he used and sold drugs and committed criminal trespass, criminal mischief, and assaults. While awaiting trial, Norman tried to escape the county jail by holding a shank to a sixty-three-year-old jailer's neck and threatened to kill her. While in county jail, he also made weapons and talked about murdering people. Based on these and other egregious facts, a Texas jury convicted Norman of capital murder and sentenced him to death.

Pursuant to the order of the trial court, Norman is **scheduled to be executed sometime after 6:00 P.M. on September 16, 2026**. As shown

below, Norman has already availed himself of the full state and federal appeals available to death-row inmates in Texas. Now, nine years after his federal habeas proceedings concluded and one day before his scheduled execution, Norman seeks certiorari review of the Texas Court of Criminal Appeal's (CCA) decision to dismiss his subsequent state habeas application, which itself was only filed less than three weeks ago. *Ex parte Norman*, No. WR-74,743–03, slip op. at 3 (Tex. Crim. App. Sept. 14, 2026) (per curiam) (not designated for publication).

In the question presented in the instant petition for certiorari (Pet.), Norman argues that due process is violated when the State presents inconsistent evidence and argument in co-defendants' separate trials. Pet. 6–29. However, this claim is not worthy of the Court's review. Norman's claim was dismissed on adequate and independent state law grounds. Norman's petition simply does not demonstrate any special or important reason for this Court to review the CCA's decision, and this Court does not typically engage in routine error correction. Certiorari review is therefore unwarranted.

Similarly, Norman's request for a stay is meritless. Norman has the burden of persuasion on his stay request, and he is required to make "a clear showing" that he is entitled to one. *Hill v. McDonough*, 547 U.S. 573, 584 (2006). "Last-minute stays should be the extreme exception, not the norm[.]"

Bucklew v. Precythe, 587 U.S. 119, 150 (2019); *see also Barr v. Lee*, 591 U.S. 979, 981 (2020). As the Court has explained:

“[T]he last-minute nature of an application” that “could have been brought” earlier, or “an applicant’s attempt at manipulation,” “may be grounds for denial of a stay.” *Hill*, 547 U.S. at 584 (internal quotation marks omitted). . . . If litigation is allowed to proceed, federal courts “can and should” protect settled state judgments from “undue interference” by invoking their “equitable powers” to dismiss or curtail suits that are pursued in a “dilatory” fashion or based on “speculative” theories. [*Hill*, 547 U.S. at 584–85].

Bucklew, 587 U.S. at 150 (footnote omitted).

By delaying until the last minute to raise his claim, Norman fails to make the requisite showing to justify interference by the federal courts. Twenty-one years have passed since Norman killed three people in their home. The ensuing delay in carrying out Norman’s sentence should weigh heavily in the evaluation of this application for a stay, and justice for Norman’s victims should be denied no longer. Simply put, “[t]he people of [Texas], the surviving victims of Mr. [Norman]’s crimes, and others like them deserve better.” *Id.* at 149. The strong interest of the State in the timely enforcement of Norman’s sentence is not outweighed by the unlikely possibility that certiorari will be granted. Norman thus fails to demonstrate that he is entitled to a stay of execution under this Court’s precedent. Accordingly, Norman’s request for a stay should be denied.

STATEMENT OF THE CASE

I. Facts of the Crime

The district court provided the following summary of the facts in its opinion on federal habeas review:

On August 24, 2005, Norman and accomplice Ker'sean Ramey entered a neighbor's home in Edna, Texas, wearing masks with the intention of stealing cocaine. When Celso Lopez answered the door, the men forced their way inside. While Norman held Lopez at gunpoint, Ramey looked for the cocaine. Norman then shot Lopez, allegedly by accident. As the men forced the bleeding Lopez into a backroom, Tiffan[i] Peacock and Sam Roberts came into the home. Norman forced Peacock to her knees and shot her in the head. Norman began tussling with Roberts as he tried to flee. Ramey fired his weapon when Norman told him to shoot Roberts. While Roberts lay on the floor, Norman shot him several more times. Ramey then returned to the backroom and shot Lopez dead. The two men did not find any cocaine. As they were leaving, Norman realized he had left something inside the house. Ramey returned and shot the victims several more times to ensure they were dead.

Law enforcement officers soon arrested Ramey, but Norman fled to Mexico. On January 6, 2006, U.S. Customs and Border Protection officers arrested Norman as he crossed the International Bridge into Brownsville, Texas, using false identification papers.

Norman cooperated with the State after his arrest. Norman gave police statements confessing his role in the murder. He voluntarily testified in front of a grand jury.^[1] On January 17,

¹ Norman filed a motion for leave to file his petition for a writ of certiorari under seal due to the secrecy of grand jury proceedings. Motion for Leave at 1. However, the grand jury testimony Norman relies on was admitted as an exhibit during his trial and was not placed under seal by the trial court. 91 RR 70–71 (exhibit admitted), 81 (exhibit published), 100 RR Ex. 901, 901A–C (transcript of exhibit offered for the record only). If the Court orders the grand jury testimony to be redacted, the

2006, the grand jury returned an indictment charging Norman with capital murder. Two days later, the trial court appointed Elliott Costas, Esq. to serve as lead defense counsel. The trial court later appointed Keith Weiser, Esq. to serve as co-counsel.^[2]

Norman testified against Ramey in 2007. The prosecution's preparations for this case followed their prosecution of Ramey. For the case against Norman, Norman's counsel knew the State would rely on much of the same testimony and evidence it used to convict Ramey. Norman's trial attorneys thus had a detailed preview into the evidence against their client. Norman's testimony on direct examination by the State in the Ramey case would be introduced in his own trial, foreclosing any guilt/innocence defense.

Norman pleaded guilty. After the State presented evidence of Norman's guilt, including Norman's testimony from Ramey's trial, the trial court instructed the jury to find him guilty of capital murder.

Norman v. Stephens, No. V-12-054, 2015 WL 5732122, at *2 (S.D. Tex. Sept. 30, 2015) (citations and footnote omitted).

II. Punishment Evidence

The Fifth Circuit provided the following summary of the punishment evidence:

undersigned attorney will file a redacted version of this brief in opposition and motion to file the unredacted version under seal.

² During jury selection, the trial court allowed Costas to withdraw. 2 CR 321–22. The trial court substituted Allen Tanner as first chair, while Weiser continued his representation as second chair. *Id.* The trial court granted Norman's motion to select a new jury. *Id.* at 326.

“CR” refers to the clerk's record of trial documents. “RR” refers to the court reporter's trial transcript. “SHCR” refers to the clerk's record of state habeas documents. “Supp. SHCR” refers to the supplemental state habeas clerk's record. All references are preceded by volume number and followed by page number, where applicable.

The state presented testimony and evidence demonstrating Norman's escalating history of criminality. At age ten, he committed two robberies on the same day using a firearm. In later years, he committed burglaries, criminal trespass, criminal mischief, using and selling drugs, and assault. At age nineteen, he committed the triple murder at issue here. Then, while on the run from law enforcement, he sold drugs, and while in county jail awaiting trial for capital murder, he made weapons, planned escapes, and talked about murdering people. During an unsuccessful escape attempt, Norman held a shank to the neck of a sixty-three-year-old jailer and threatened to kill her.

The defense focused on the two special issues. It claimed that Norman would not be a future danger and that mitigating circumstances warranted a life sentence. In support, the defense pointed to Norman's cooperation with police—his confessions, grand jury testimony, and testimony at Ramey's trial. It stressed how, in pre-indictment statements, Norman accepted responsibility and displayed remorse. And it presented testimony from twenty-one witnesses, including family members, friends, a coach, and teachers, and Norman's testimony, which he gave against the advice of counsel.

That testimony provided details into Norman's troubled childhood. His family was low-income and for a time lived in homeless shelters. His parents fought constantly, including physically, abused drugs and alcohol, sold drugs, associated with gang members, and abused Norman physically. When Norman was young, a police officer shot and killed his father. That incident greatly affected Norman, who was close to his father. In school, Norman attended special education classes. During high school, he fathered three children, whom witnesses say he loved and treated well.

In preparation for the sentencing phase, [Costas] hired at least two psychologists: Jack Greeson and Mark Cunningham. Greeson conducted extensive interviews with Norman's family and may have performed a psychological examination. Cunningham, on the other hand, only conducted a face-to-face interview with Norman, in county jail, lasting four hours twenty-eight minutes. Neither expert testified at any proceeding.

After [Costas] withdrew, the court appointed Allen Tanner, who secured the services of Micki Perry, a mitigation investigator. Perry recommended that Norman be evaluated by an expert in neuropsychology because Norman “was exposed to an extraordinary level of violence as a child,” and “[t]here was a possibility of trauma to Mr. Norman’s brain.”

Thereafter, Tanner retained Mohammed Hamza, a neuropsychologist. But because Hamza was unavailable to perform an examination, Tanner had Hamza’s office partner, Curt Wills, perform a psychological examination. Wills was a clinical psychologist who did not have sufficient training to qualify as an expert in neuropsychology. He observed only “mild to moderate impairment” and “an indication of significant psychopathology.” He did not diagnose any significant neuropsychological or psychological problem. Tanner chose not to call Wills as a witness because his overall testimony would have been detrimental to Norman’s case.

Norman v. Stephens, 817 F.3d 226, 229–30 (5th Cir. 2016) (citations omitted).

III. Conviction and Postconviction Proceedings

A Texas jury convicted Norman of capital murder. 1 CR 4–5; 2 CR 392; 90 RR 141. Pursuant to the jury’s answers to Texas’s punishment-phase special issues, the trial court sentenced Norman to death. 2 CR 392; 98 RR 122. The Texas Court of Criminal Appeals (CCA) upheld Norman’s conviction and sentence on direct appeal. *Norman v. State*, No. AP-76,063, 2011 WL 1158574, at *11 (Tex. Crim. App. Feb. 16, 2011).

While his direct appeal was pending, Norman filed a state application for a writ of habeas corpus. SHCR-01 at 3–42. The trial court issued findings of fact and conclusions of law recommending that the CCA deny relief. 1 Supp.

SHCR-01 at 41–45. The CCA remanded for additional findings on one claim, *Ex parte Norman*, No. WR-74,743-01, 2011 WL 13213981, at *1 (Tex. Crim. App. Aug. 24, 2011), which the trial court later issued, 2 Supp. SHCR-01 at 30–49. While his initial application was pending, Norman filed a “pro se motion for leave to file amended notice of appeal.” SHCR-02 at 3–5. In it, he requested to add four claims to his initial state habeas application. *Id.* The CCA issued a combined order that adopted the trial court’s findings and conclusions and denied relief on Norman’s initial application based on those findings and conclusions as well as the CCA’s own review. *Ex parte Norman*, WR-74,743-01 & WR-74,743-02, 2012 WL 3600318, at *1 (Tex. Crim. App. Aug. 22, 2012). The CCA treated Norman’s pro se motion as a subsequent application and dismissed it as an abuse of the writ. *Id.*

Norman then filed a federal habeas petition and an amended petition, which the district court denied. *Norman v. Stephens*, 2015 WL 5732122, at *1, *18. The Fifth Circuit denied Norman’s application for a certificate of appealability and affirmed the district court’s denial of his request for an evidentiary hearing. *Norman v. Stephens*, 817 F.3d at 235. The Supreme Court denied certiorari. *Norman v. Davis*, No. 16-5307, 137 S. Ct. 1201 (Feb. 27, 2017).

On May 7, 2026, the 24th Judicial District of Jackson County, Texas, scheduled Norman for execution on Wednesday, September 16, 2026. Norman

filed in state court a suggestion that the CCA reconsider the denial of his first state habeas application, a motion for stay of execution, and a third subsequent state habeas application. *See* Ord. 1–3. On September 14, 2026, the CCA took no action on Norman’s suggestion to reconsider the denial of his first application, dismissed the third subsequent application as an abuse of the writ, and denied a stay of execution. *Id.* Norman then filed in this Court a petition for a writ of certiorari and application for a stay of execution. The instant opposition follows.³

REASONS FOR DENYING THE WRIT

The questions that Norman presents for review are unworthy of the Court’s attention. Supreme Court Rule 10 provides that review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only for “compelling reasons.” Where a petitioner asserts only factual errors or that a properly stated rule of law was misapplied, certiorari review is “rarely granted.” *Id.*

Here, Norman advances no compelling reason to review his case, and none exists. Indeed, the issue in this case involves only the lower court’s proper

³ After the CCA granted a writ of prohibition prohibiting the Honorable Daniella DeSeta Lyttle or any other judge assigned to the case from issuing any order purporting to stay Norman’s execution, *In re State of Texas ex rel. Ken Paxton*, No. WR-97,914-01 (Tex. Crim. App. Sept. 11, 2026), Order 2–3, Norman filed a petition for a writ of mandamus and motion for a stay of execution in the Supreme Court of Texas. As of the time of filing, both the petition and motion are pending.

application of state procedural rules for collateral review of death sentences. Specifically, Norman was cited for abuse of the writ because he did not meet the subsequent application requirements of Texas Code of Criminal Procedure Article 11.071, § 5. The state court's disposition, which relied upon an adequate and independent state procedural ground and did not reach the merits of Norman's claim, forecloses a stay of execution or certiorari review.

Additionally, as Justice Stevens noted, concurring in the denial of an application for a stay in *Kyles v. Whitley*, 498 U.S. 931, 932 (1990):

This Court rarely grants review at this stage of the litigation even when the application for state collateral relief is supported by arguably meritorious federal constitutional claims. Instead, the Court usually deems federal habeas proceedings to be the more appropriate avenues for consideration of federal constitutional claims.

However, if Norman attempted to raise this claim in federal habeas now, the federal court would find that the claim was procedurally defaulted by virtue of the CCA's application of § 5.⁴ Moreover, any new federal habeas petition would also be impermissibly successive⁵ and barred by the relevant

⁴ *Aguilar v. Dretke*, 428 F.3d 526, 533 (5th Cir. 2005) ("Texas' abuse-of-writ rule is ordinarily an 'adequate and independent' procedural ground on which to base a procedural default ruling.").

⁵ To the extent that Norman is re-raising his previous claim from his federal habeas proceeding, "[a] claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed." 28 U.S.C. § 2244(b)(1). To the extent that Norman is raising a new claim, he fails to meet requirements of 28 U.S.C. § 2244(b)(2)(A).

statute of limitations.⁶ Norman’s petition presents no important questions of law to justify this Court’s exercise of its certiorari jurisdiction, and certiorari should be denied.

I. Certiorari Review and a Stay of Execution Are Foreclosed by an Independent and Adequate State-Procedural Bar.

Norman seeks review of the lower court’s dismissal of his claim that the prosecutor presented false evidence based on the prosecutor’s presentation of inconsistent evidence, argument, and theories at Norman’s co-defendant’s trial. *See generally* Pet. Despite the CCA’s explicit statement that it was not “reviewing the merits of the claims raised,” Ord. 3, Norman argues that it did so sub silentio, meaning this Court can reach them too. Pet. 4–6. But he is wrong, and the CCA’s dismissal on a state law ground strips the Court of jurisdiction.

“This Court lacks jurisdiction to entertain a federal claim on review of a state court judgment ‘if that judgment rests on a state law ground that is both ‘independent’ of the merits of the federal claim and an ‘adequate’ basis for the court’s decision.’” *Foster v. Chatman*, 578 U.S. 488, 497 (2016) (quoting *Harris v. Reed*, 489 U.S. 255, 260 (1989)). The state law ground barring federal review

⁶ Norman’s conviction and sentence was affirmed on direct appeal on February 16, 2011, and his initial state habeas application was denied on August 22, 2012, meaning that the federal statute of limitations expired on August 22, 2013. 28 U.S.C. § 2244(d)(1). Norman’s federal habeas proceeding did not toll the statute of limitations. *Duncan v. Walker*, 533 U.S. 167, 181–82 (2001).

may be “substantive or procedural.” *Coleman v. Thompson*, 501 U.S. 722, 729 (1991).

To be adequate, a state law ground must be “firmly established and regularly followed.” *Lee v. Kemna*, 534 U.S. 362, 376 (2002) (quoting *James v. Kentucky*, 466 U.S. 341, 348 (1984)). Discretion does not deprive a state law ground of its adequacy because “a discretionary rule can be ‘firmly established’ and ‘regularly followed’—even if the appropriate exercise of discretion may permit consideration of a federal claim in some cases but not others.” *Beard v. Kindler*, 558 U.S. 53, 60–61 (2009). Ultimately, situations where a state law ground is found inadequate are but a “small category of cases.” *Kemna*, 534 U.S. at 381.

A state law ground is “independent of federal law [when it] do[es] not depend upon a federal constitutional ruling on the merits.” *Stewart v. Smith*, 536 U.S. 856, 860 (2002). There is no presumption of federal law consideration. *Coleman*, 501 U.S. at 735–36. To so find, the state court’s decision must “fairly appear to rest primarily on federal law, or to be interwoven with the federal law.” *Id.* Where there is no “clear indication that a state court rested its decision on federal law, a federal court’s task will not be difficult.” *Id.* at 739–40.

Texas, like Congress, has imposed significant restrictions on subsequent habeas applications. *Compare* Tex. Code Crim. Proc. art. 11.071 § 5, *with* 28

U.S.C. § 2244(b); *see Kindler*, 558 U.S. at 62 (noting that federal courts should not “disregard state procedural rules that are substantially similar to those to which we give full force in our own courts”). A Texas court may not reach the merits of a claim in a subsequent application “*except* in exceptional circumstances.” *Ex parte Kerr*, 64 S.W.3d 414, 418 (Tex. Crim. App. 2002). The applicant bears the burden of providing “sufficient specific facts establishing,” Tex. Code Crim. Proc. art. 11.071, § 5(a), one of these “exceptional circumstances,” *Ex parte Kerr*, 64 S.W.3d at 418.

Norman argued in the CCA that his claim was authorized under Texas Code of Criminal Procedure Article 11.071 § 5(a)(3). *See* Sub. App. 35–39, 43. Under § 5(a)(3), an applicant can prove that, “by clear and convincing evidence, but for a violation of the United States Constitution no rational juror would have answered in the [S]tate’s favor one or more of the special issues.” Tex. Code Crim. Proc. art. 11.071 § 5(a)(3). Section 5(a)(3), “more or less, [codifies] the doctrine found in *Sawyer v. Whitley*, 505 U.S. 333 (1992).” *Ex parte Blue*, 230 S.W.3d 151, 151 (Tex. Crim. App. 2007). But the CCA found that Norman did not satisfy “the requirements of Article 11.071 § 5,” and it dismissed “the application as an abuse of the writ without reviewing the merits of his claims.” Ord. 3.

Before this Court, Norman does not challenge the adequacy of § 5, and that is with good reason—the Fifth Circuit “has held that, since 1994, the

Texas abuse of the writ doctrine has been consistently applied as a procedural bar, and that it is an . . . adequate state ground for the purpose of imposing a [federal] procedural bar.” *Hughes v. Quarterman*, 530 F.3d 336, 342 (5th Cir. 2008); *cf. Expressions Hair Design v. Schneiderman*, 137 S. Ct. 1144, 1149–50 (2017) (noting that this Court generally defers to a court of appeals’ interpretation of their respective states’ laws); *De Buono v. NYSA-ILA Medical & Clinical Servs. Fund*, 520 U.S. 806, 810 n.5 (1997) (noting “settled practice of according respect to the courts of appeals’ greater familiarity with issues of state law”).

The only question then is whether § 5 is independent of federal law. It is, and the state court’s dismissal of Norman’s claim deprives this Court of jurisdiction. Indeed, this Court has held on numerous occasions that it “will not review a question of federal law decided by a state court if the decision of that court rests on a state law ground that is independent of the federal question and adequate to support the judgment,” *Coleman*, 501 U.S. at 729, because “[the Court] in fact lack[s] jurisdiction to review such independently supported judgments on direct appeal: Since the state-law determination is sufficient to sustain the decree, any opinion of this Court on the federal question would be purely advisory.” *Lambrix v. Singletary*, 520 U.S. 518, 523 (1997) (citing *Herb v. Pitcairn*, 324 U.S. 117, 125–26 (1945), and *Sochor v.*

Florida, 504 U.S. 527, 533–34 & n.112 (1992)); *Michigan v. Long*, 463 U.S. 1032, 1042 (1983).

Determining whether an inmate has provided the requisite level of evidence to prove innocence of the death penalty does not touch on federal law. *See Moore v. Texas*, 122 S. Ct. 2350, 2353–54 (2002) (Scalia, J., dissenting in grant of stay) (“The [CCA] was not required to pass on any federal question in deciding whether ‘clear and convincing evidence’ showed that ‘but for a violation of the United States Constitution no rational juror would have answered in the state’s favor one or more of the special issues that were submitted to the jury.’” (quoting Tex. Code Crim. Proc. art. 11.071 § 5(a)(3))). Federal law does not dictate whether Norman met the “clear and convincing” burden of proof mandated by Texas law. Tex. Code Crim. Proc. art. 11.071 § 5(a)(3); *see Rocha v. Thaler*, 626 F.3d 815, 823–24 (5th Cir. 2010) (the federal courts of appeals “have unanimously held that a federal court’s determination that a petitioner cannot prove his actual innocence does not constitute a decision on the merits of the petitioner’s constitutional claim for habeas relief).

Norman’s latest subsequent state habeas application was subject to dismissal on adequate and independent state law grounds. First, his claim that the State presented false evidence based on inconsistent theories, evidence, and argument presented at his co-defendant’s trial is *entirely* record-bound. Norman cited nothing other than the record of his trial and his co-defendant’s

trial and grand jury testimony. *See* Sub. App. 9–43. Norman’s co-defendant was tried before him, so this claim was previously available at trial, in his direct appeal, and in his 2010 and 2012 state habeas applications. *See* 88 RR 8–75 (reading Norman’s testimony from co-defendant’s trial into the record), 92 RR 78–127 (same). The claim also necessarily could not have demonstrated his innocence of the death penalty. Tex. Code Crim. Proc. art. 11.071 § 5(a)(3); *see Rocha*, 626 F.3d at 825–26 (“Evidence that might have persuaded the jury to decline to impose the death penalty is irrelevant” to a claim of actual innocence of the death penalty).

Norman relies on *Ex parte Speer*, in which the CCA found that a habeas applicant made a sufficient showing under § 5(a)(3) with respect to an ineffective-assistance-of-counsel-punishment claim. *Ex parte Speer*, No. WR-59,101-06, 2025 WL 2151382, at *1 (Tex. Crim. App. July 30, 2025). But this act of grace fails to undermine the state-law nature of the procedural bar. *Cf. Hogue v. Johnson*, 131 F.3d 466, 487–88 (5th Cir. 1997) (explaining that an occasional act of grace by a state court in entertaining the merits of a claim did not constitute a failure to regularly follow a procedural bar). Absent an indication in the CCA’s order, the CCA presumptively did not reach the federal issue Norman raised. *Coleman*, 501 U.S. at 735 (explaining that there is no presumption of federal-law consideration unless it is first determined that the state court decision “fairly appears to rest primarily on federal law, or to be

interwoven with the federal law”), 739–40 (“In the absence of a clear indication that a state court rested its decision on federal law, a federal court’s task will not be difficult.”).

Norman also cites *Busby v. Davis*, which held that the state court’s decision dismissing Busby’s *Atkins v. Virginia*, 536 U.S. 304 (2002), claim was not independent of the federal question and necessarily entailed an assessment of the facts presented in support of the *Atkins* claim. *Busby v. Davis*, 925 F.3d 699, 706–07 (5th Cir. 2019). But Norman fails to point out that the CCA has explained it engages in a prima facie review of *Atkins* claims under § 5(a)(3). *Ex parte Blue*, 230 S.W.3d at 162–63. Norman does not cite any precedent establishing that the CCA engages in the same prima facie analysis for other types of federal claims.

Ultimately, the abuse-of-the-writ bar—a state-law ground clearly and unambiguously applied by the CCA—prohibits this Court from exercising jurisdiction over the claims for which Norman now seeks review. *See Kunkle v. Texas*, 125 S. Ct. 2898, 2898 (2004) (Stevens, J., concurring) (“I am now satisfied that the Texas court’s determination was independently based on a determination of state law, *see* Tex. Code Crim. Proc. art. 11.071, § 5 [], and therefore that we cannot grant petitioner his requested relief.”). Norman’s claims are foreclosed by an adequate and independent state procedural bar and certiorari review should be denied.

II. Norman Provides No Compelling Reason for Further Review and His Claims Lack Merit in Any Event.

The Court requires those seeking a writ of certiorari to provide “[a] direct and concise argument amplifying the reasons relied on for allowance of the writ.” Sup. Ct. R. 14.1(h). The Court would be hard pressed to discover any such reason in Norman’s petition, let alone amplification thereof. Indeed, Norman makes no allegations of circuit or state-court-of-last-resort conflict. *See* Sup. Ct. R. 10(a)–(b).

Left with no true ground for review in his briefing, the only reasonable conclusion is that Norman seeks mere error correction. But that is hardly a good reason to expend the Court’s limited resources. *See* Sup. Ct. R. 10 (“A petition . . . is rarely granted when the asserted error consists of . . . the misapplication of a properly stated rule of law.”). And such a request is especially problematic here because the court below did not reach the merits of Norman’s claims and the Court is one “of review, not of first view.” *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005).

Moreover, Norman’s claim has evolved from his subsequent state habeas application to his instant petition. In his subsequent state habeas application, Norman primarily argued that the prosecution’s use of inconsistent theories, evidence, and argument at separate co-defendant’s trials violated due process. Sub. App. 9–35. He relied on the inconsistent-theories line of cases, including

Stumpf v. Mitchell, 367 F.3d 594 (6th Cir. 2004), *rev'd in part, remanded in part by Bradshaw v. Stumpf*, 545 U.S. 175 (2005). Sub. App. 11–14 (Claim I titled “In Presenting Flatly Contradictory Evidence and Argument from One Defendant’s Trial to the Next, the Prosecutor Violated Due Process.”). The only mention of *Napue v. Illinois*, 360 U.S. 264 (1959), was in a separate claim. Sub. App. 39–43 (Claim II, arguing specifically about a prison expert’s testimony that Norman was not a snitch and a medical examiner’s testimony). After the State filed its response to the subsequent application raising a *Teague v. Lane*, 489 U.S. 288, 310 (1989) (plurality opinion), argument, Norman changed course. Motion to Dismiss Sub. App. 16. In Norman’s reply, he argued that the CCA “need not concern itself with th[e] *Teague* question,” because the prosecutor presented false evidence under *Napue*. *See* Reply Sub. App. 0–1.⁷ Norman appears to have merged his separate claims in the instant petition. *See* Pet. 6 (claiming that “due process is violated when the State presents false evidence and argument that is materially inconsistent with evidence and argument presented at a co-defendant’s trial[.]”).

And, importantly, whether Norman raises an inconsistent theories claim or a false testimony claim, it is dilatory. Norman’s co-defendant Ker’sean Ramey was tried before Norman and Norman testified against him. *See* 89 RR

⁷ The first page of Norman’s Reply is misnumbered, with no number appearing on the first page of the document.

8–75 (Ramey transcript read during guilt phase); 92 RR 78–125 (Ramey transcript read during punishment phase); 97 RR 26–52 (Ramey transcript read during punishment phase). Thus, this claim was available to Norman at the time of his trial. In fact, at Norman’s punishment hearing, the State offered testimony from Ramey’s trial where Norman admitted to lying in multiple statements to police and changing his story, and defense counsel responded by offering testimony from Ramey’s trial where the prosecution elicited Norman’s consistent statements and acceptance of responsibility. *See* 97 RR 26–52. Therefore, any allegedly inconsistent statements from Ramey to Norman’s trial could have been raised at Norman’s trial or on direct appeal. But Norman waited over seventeen years after he was sentenced to death to raise his claim. *See* 98 RR 119 (punishment verdict read December 10, 2008). Consequently, this case presents an exceptionally poor vehicle for reaching the merits of Norman’s claims and his petition should be denied on this basis alone.

A. Norman’s inconsistent theories claim lacks merit.

Norman argues the prosecution presented inconsistent theories, argument, and evidence between Norman’s co-defendant’s trial and Norman’s trial in violation of due process. Pet. 6–29; Sub. App. 9–43. This claim lacks merit.

Prosecutorial misconduct may “so infec[t] the trial with unfairness as to make the resulting conviction a denial of due process.” *Greer v. Miller*, 483 U.S.

756, 765 (1987) (quoting *Donnelly v. DeChristoforo*, 416 U.S. 637, 643 (1974)). The misconduct must be “of sufficient significance to result in the denial of the defendant’s right to a fair trial.” *Greer*, 483 U.S. at 765 (quoting *United States v. Bagley*, 473 U.S. 667, 676 (1985) (quoting *United States v. Agurs*, 427 U.S. 97, 108 (1976))). The Fifth Circuit has held that the use of inconsistent theories in the separate trials of co-defendants is not a violation of due process. See *Pondexter v. Quarterman*, 537 F.3d 511, 527 (5th Cir. 2008) (citing *United States v. Frye*, 489 F.3d 201, 214 (5th Cir. 2007)). Further, this Court has upheld a guilty plea where the defendant’s assertions of inconsistency related to which individual shot the victim because “the precise identity of the triggerman was immaterial to [the defendant]’s conviction for aggravated murder.” *Stumpf*, 545 U.S. at 187. In refusing to resolve the merits of Stumpf’s sentencing claim, the Court stated, “[W]e express no opinion on whether the prosecutor’s actions amounted to a due process violation, or whether any such violation would have been prejudicial.” *Id.*

Norman asks this Court to announce a new rule of constitutional law and retroactively apply it to his case. But habeas is generally not an appropriate avenue for the recognition of new constitutional rules. *Teague*, 489

U.S. at 310. Thus, for the most part, new constitutional rules do not apply to convictions final before the new rule was announced. *Id.*⁸

Acknowledging that this Court has not held that inconsistent theories presented at separate co-defendants' trials violate due process, Norman argued that the state court "need not concern itself with th[e] *Teague* question," because his claim is that the prosecutor presented false statements through his presentation of evidence and arguments to the jury. Reply Sub. App. 0–1. Thus, he abandoned his inconsistent theories claim.

Nonetheless, even if the Court were to find that inconsistent theories and arguments raised at separate trials violated due process, the inconsistencies Norman complains of are immaterial to his conviction and sentence. Norman argues that the prosecution (1) told Ramey's jury that Norman did not know about the later shots but told Norman's jury that he ordered them; (2) told Ramey's jury that Ramey killed Roberts but told Norman's jury that Norman killed Roberts; (3) solicited Norman's grand-jury testimony but denied doing so at Norman's trial; (4) elicited testimony at Ramey's trial that Norman was a "snitch," but at Norman's trial said Norman had nothing to fear from his cooperation; (5) misrepresented Norman's testimony that he was "in pieces"

⁸ Norman's conviction was final with the CCA's affirmance of his conviction and sentence in 2011. *Norman v. State*, 2011 WL 1158574.

after the offense by saying Norman said “at peace;” (6) said Norman intended to surrender before he was apprehended at the border during Ramey’s trial but at Norman’s trial said that was “bull;” (7) characterized Norman’s account of the crime as honest during Ramey’s trial but said Norman was a liar in his trial; and (8) told Ramey’s jury that Norman had accepted responsibility but told Norman’s jury that he had not. Pet. 8–29.

First, any inconsistent theories could not have undermined the fairness of his conviction because he pleaded guilty to capital murder, parts of his testimony from Ramey’s trial were read to his jury, and Norman testified during his punishment phase. *See* 88 RR 20 (pleading guilty); 89 RR 8–75 (Ramey transcript read during guilt phase); 92 RR 78–125 (Ramey transcript read during punishment phase); 95 RR 106–64 (Norman’s testimony during punishment phase); 96 RR 7–154 (same); 97 RR 26–52 (Ramey transcript read during punishment phase). Norman explained that he allegedly accidentally shot Lopez in the cheek, he shot Peacock in the head, and he shot Roberts multiple times. 89 RR 44–54. Norman testified that he understood his testimony was sufficient to find him guilty of capital murder. *Id.* at 73. Therefore, the alleged inconsistencies are not material to Norman’s conviction for capital murder. *See Greer*, 483 U.S. at 765 (explaining that prosecutorial misconduct must infect “the trial with unfairness as to make the *resulting conviction* a denial of due process.” (emphasis added)).

Second, the alleged inconsistent statements are either not inconsistent or are misstatements of the record, and all are immaterial to Norman's sentence because he disputed all of the alleged inconsistencies: (1) Norman testified at Ramey's trial that Ramey went alone back to the house to get a scanner that Norman dropped, 89 RR 57; Norman testified in Ramey's trial that after Ramey went back for the scanner, Norman asked if anyone was still alive and Ramey said he made sure no one was alive, 89 RR 66; (2) the medical examiner in Ramey's trial testified that the bullet was "rapidly fatal," and clarified that death would be "within minutes," 33 Ramey-RR 21–22; Norman testified in Ramey's trial that Norman and Ramey both shot Roberts, 89 RR 53–44; Norman testified that he intentionally shot Roberts, 95 RR 136–37; that after Ramey shot Roberts, Norman stood over Roberts and shot toward his head four times, 96 RR 38; and Norman denied that Roberts was ever on his knees, 96 RR 39; (3) the grand jury testimony that Norman alleges shows that the State "solicited" his testimony was admitted as an exhibit, 91 RR 70–71 (exhibit admitted), 81 (exhibit published), 100 RR Ex. 901, 901A–C (transcript of exhibit offered for the record only); the grand jury testimony merely shows that the prosecutor thanked Norman for "coming in here and being honest with us," before Norman spontaneously said he would testify against Ramey, 99 RR Ex. 901C at 27; (4) Norman testified that he received threats in jail because he cooperated with the State against Ramey and inmates called him a snitch, 95

RR 141; (5) Norman testified that he was “in pieces, sweating, shaking,” after the triple murder, 95 RR 151, but on cross-examination, he asked the prosecutor, “Did I say that,” instead of correcting the prosecutor’s misstatement that Norman was “at peace,” 96 RR 118; (6) Norman testified in Ramey’s trial that Norman intended to surrender but he wanted to see his kids before turning himself in, 92 RR 85–86; (7) Norman admitted that he lied about his role in the offense in earlier statements to police, 95 RR 130–35; Norman testified that he admitted “everything” to police after his grand jury testimony, 95 RR 137; and the defense offered Norman’s testimony from Ramey’s trial demonstrating his consistent statements, 97 RR 44–52; and (8) Norman agreed that it was his fault he was on trial, and that he had dreams about the victims which made him want to confess and cooperate with the State, 95 RR 158–59; and Norman apologized to the victims’ families, 95 RR 107. Thus, the allegedly inconsistent statements did not deprive Norman of a fair trial or punishment hearing. *See Darden v. Wainwright*, 477 U.S. 168, 181–83 (1986).

B. Norman’s *Napue* claim lacks merit.

Norman claims the prosecutor presented false evidence and argument based on the prosecutor’s presentation of contradictory evidence in Ramey’s earlier trial. Pet. 6–29. This claim lacks merit.

It is well settled that the State may not knowingly use perjured testimony, and the State must correct perjured testimony if known. *Giglio v.*

United States, 405 U.S. 150, 154 (1972); *Napue*, 360 U.S. at 269. To demonstrate a *Napue* violation, a defendant must show that the prosecution solicited false testimony or allowed false testimony to go uncorrected, the prosecution knew the testimony was false, and testimony was material. *Glossip v. Oklahoma*, 604 U.S. 226, 246 (2025) (citing *Napue*, 360 U.S. at 269, 272). A new trial is proper only if there is a reasonable likelihood that the false testimony could have affected the judgment of the jury. *Id.* (quoting *Giglio*, 405 U.S. at 154).

To the extent Norman raises a false-testimony claim, it is facially meritless. Norman complains that the prosecutor’s allegedly inconsistent presentation of evidence and arguments to the jury constitute false testimony. *See generally* Pet. 6–29; *Ukwuachu v. State*, 613 S.W.3d 149, 157–58 (Tex. Crim. App. 2020) (“a prosecutor’s questions of a witness and his arguments to the jury are not ‘evidence’ within the meaning of a false-evidence claim”). But Norman merely quibbles with the prosecution’s interpretation of the evidence. Norman does not allege that the testimony was false, but that the prosecutor’s argument based on the testimony was false. *See* Pet. 8–9 (arguing that based on Norman’s testimony at Ramey’s trial, he did not know that Ramey shot the victims when he returned for the scanner, and therefore it was false *to argue to Norman’s jury* that Norman ordered the later shots), 9–11 (arguing that the prosecutor’s *question on cross-examination* was false which posited that

Roberts was on his knees, alive, when Norman shot at him because at Ramey's trial the prosecutor presented evidence that Roberts died immediately after Ramey shot him),⁹ 11–13 (arguing that the prosecutor's *closing argument* was false), 19–20 (arguing that the prosecutor's *question on cross-examination and jury argument* were false), 20–24 (arguing that the prosecutor's *closing argument* was false), 24–26 (same), 26–29 (arguing that the prosecutor's *question on cross-examination and jury argument* were false). Thus, Norman's argument goes beyond *Napue* and its progeny and is *Teague*-barred. See *Teague*, 489 U.S. at 310.

Regardless, Norman cannot demonstrate that false testimony was presented at Norman's trial, or that the prosecution knew the testimony was false. Norman merely speculates that the prosecution's interpretation of the evidence was correct during Ramey's trial and incorrect during Norman's trial. And, as explained above, none of the alleged inconsistent statements were material. See *supra*, Argument, Part II.A.

The only allegedly false testimony Norman points to is that he would not be characterized as a “snitch.” Pet. 13–19. The State elicited testimony from

⁹ Norman claims the medical examiner testified at Ramey's trial that Ramey's shot “caused rapid, immediate death.” Pet. 10. But the medical examiner clarified that death would occur “within minutes.” 33 Ramey-RR 21–22. Thus, the prosecutor's argument was not false based on the medical examiner's testimony from Ramey's trial.

its prison-expert that Norman was not considered a “snitch” because he testified that he killed two of the three victims and did not say someone else killed them. 97 RR 114–15. The expert agreed that, “[Norman’s] not going to be someone they’re going to target to kill.” *Id.* at 115–16. Even if this testimony was false, and the prosecution knew it was false, it was not material. The jury heard Norman’s testimony against Ramey, *see* 89 RR 8–75; 92 RR 78–125; 97 RR 26–52, and it is common-sense that they understood Norman was cooperating with the State. Furthermore, Norman testified that he received threats after testifying against Ramey because he cooperated with the State, and that inmates called him a snitch. 95 RR 141. Additionally, the jury heard overwhelming evidence of Norman’s callousness from his own testimony including that he planned a lot of the robbery, set up an alibi before the murders, shot Peacock in cold blood, intentionally shot multiple times at Roberts’ head, sold crack while on the run in Mexico after the murders, threatened a jailer with a shank to her neck while awaiting trial, made a shank in an attempt to dig his way out of jail before trial, and committed robberies, break-ins, and assaults prior to the offense. *See* 95 RR 106–64; 96 RR 7–154. Thus, there is no reasonable likelihood that the alleged false testimony about whether Norman was a “snitch” affected the judgment of the jury.

III. Norman Is Not Entitled to a Stay of Execution.

A. Standard of review

A stay of execution is an equitable remedy. *Hill*, 547 U.S. at 584. “It is not available as a matter of right, and equity must be sensitive to the State’s strong interest in enforcing its criminal judgments without undue interference from the federal courts.” *Id.* (citing *Nelson v. Campbell*, 541 U.S. 637, 649–50 (2004)). “It is well-established that petitioners on death row must show a “reasonable probability” that the underlying issue is “sufficiently meritorious” to warrant a stay and that failure to grant the stay would result in “irreparable harm.” *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983), *superseded on other grounds by* 28 U.S.C. § 2253(c)(2). Indeed, “[a]pplications for stays of death sentences are expected to contain the information and materials necessary to make a careful assessment of the merits of the issue and so reliably to determine whether plenary review and a stay are warranted.” *Id.* To demonstrate an entitlement to a stay, a petitioner must demonstrate more than “the absence of frivolity” or “good faith” on the part of petitioner. *Id.* at 892–93. Rather, the petitioner must make a substantial showing of the denial of a federal right. *Id.* In a capital case, a court may properly consider the nature of the penalty in deciding whether to grant a stay, but “the severity of the penalty does not in itself suffice.” *Id.* at 893. The State’s “powerful and legitimate interest in punishing the guilty,” as well as its interest in finality,

must also be considered, especially in a case such as this where the State and victims have for years borne the “significant costs of federal habeas review.” *Herrera v. Collins*, 506 U.S. 390, 421 (1993) (O’Connor, J., concurring); *Calderon v. Thompson*, 523 U.S. 538, 556 (1998) (both the State and the victims of crime have an important interest in the timely enforcement of a sentence).

Thus, in deciding whether to grant a stay of execution, the Court must consider four factors: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Nken v. Holder*, 556 U.S. 418, 434 (2009) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)); see also *Buxton v. Collins*, 925 F.2d 816, 819 (5th Cir. 1991).

B. Norman has not made a strong showing that he will succeed on the merits.

Given the dilatory, procedurally defective, and meritless nature of his claim, Norman fails to show that there is any significant possibility that the Court will grant certiorari. As demonstrated above, Norman’s failure to offer a sound claim for relief therefore supports the denial of a stay of execution.

C. Norman is unlikely to suffer irreparable harm.

In a capital case, a court may properly consider the nature of the penalty in deciding whether to grant a stay, but “the severity of the penalty does not in itself suffice.” *Barefoot*, 463 U.S. at 893. In his application for a stay of execution, Norman only points to the “irreversible nature of the death penalty” in attempting to show harm. App. 3. Without more, Norman cannot demonstrate a likelihood that he will suffer irreparable harm if a stay of execution is not granted.

D. The State and the public have a strong interest in seeing the state court judgment carried out.

The State and crime victims have a “powerful and legitimate interest in punishing the guilty.” *Calderon*, 523 U.S. at 556 (citation omitted). And “[b]oth the State and the victims of crime have an important interest in the timely enforcement of a [death] sentence,” *Bucklew*, 587 U.S. at 149 (quotation omitted); see *Nelson*, 541 U.S. at 650 (“a State retains a significant interest in meting out a sentence of death in a timely fashion”); *Gomez v. United States Dist. Court*, 503 U.S. 653, 654 (1992) (per curiam) (“[e]quity must take into consideration the State’s strong interest in proceeding with its judgment”). Once post-conviction proceedings “have run their course . . . finality acquires an added moral dimension.” *Calderon*, 523 U.S. at 556. “Only with an assurance of real finality can the State execute its moral judgment in a case”

and “the victims of crime move forward knowing the moral judgment will be carried out.” *Id.* The State should be allowed to pursue its “strong interest in enforcing its criminal judgments without undue interference from the federal courts.” *Crutsinger v. Davis*, 936 F.3d 265, 273 (5th Cir. 2019) (citations and internal quotations omitted).

Indeed, Norman has already passed through the state and federal collateral review process. The public’s interest is not advanced by postponing Norman’s execution, and the State opposes any action that would cause further delay. *Martel v. Clair*, 565 U.S. 648, 662 (2012) (“Protecting against abusive delay *is* an interest of justice.”) (emphasis in original).

It is no secret that “capital petitioners might deliberately engage in dilatory tactics to prolong their incarceration and avoid execution of a sentence of death.” *Rhines v. Weber*, 544 U.S. 269, 277–78 (2005). The fact that this claim was not raised until after an execution was set must inform the Court’s analysis. “A court considering a stay must also apply ‘a strong equitable presumption against the grant of a stay where a claim could have been brought at such a time as to allow consideration of the merits without requiring entry of a stay.’” *Hill*, 547 U.S. at 584 (quoting *Nelson*, 541 U.S. at 650). Here, Norman’s claim is meritless and does not warrant staying his execution.

CONCLUSION

For the reasons set forth above, Norman's petition for a writ of certiorari should be denied. Moreover, the State's strong interest in the timely enforcement of a sentence is not outweighed by the unlikely possibility that Norman's petition for certiorari will be granted. Thus, his motion for a stay of execution should be denied as well.

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