Nos. 09-5352/5406

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Feb 26, 2026
KELLY L. STEPHENS, Clerk

ROBERT KEITH WOODALL,

Petitioner – Appellee - Cross-Appellant,

v.

LAURA PLAPPERT, Warden,

Respondent – Appellant - Cross-Appellee.

O R D E R

Before: GRIFFIN, STRANCH, and BUSH, Circuit Judges.

Laura Plappert, a Kentucky warden, appealed from the district court judgment partially granting Robert Keith Woodall, a death-row prisoner proceeding through counsel, a writ of habeas corpus under 28 U.S.C. § 2254 and vacating his death sentence on two grounds (Case No. 09-5352). Woodall filed a cross-appeal (Case No. 09-5406). We affirmed on the basis of one of the two grounds—that the trial court failed to issue a "no adverse inference" instruction (ground 1), but did not address the second claim on which the district court granted relief—that the trial court failed to ensure that the prosecution had a race-neutral reason for exercising a peremptory challenge during jury selection (ground 2). The Supreme Court reversed our decision as to ground 1 and remanded the cases for "further proceedings consistent with this opinion." *See Woodall v. Simpson*, 685 F.3d 574 (6th Cir. 2012), *rev'd sub nom.*, *White v. Woodall*, 572 U.S. 415, 427 (2014).

We held the cases in abeyance while Woodall unsuccessfully pursued an intellectual disability claim in state court. The warden now moves to remove the cases from abeyance; set a briefing schedule to determine whether a certificate of appealability (COA) should issue for the intellectual disability claim or, alternatively, remand the cases to the district court for briefing; and to narrow the COA by striking a claim regarding jury instructions that the district court certified

in 2009 (ground 5). Woodall agrees to removing the abeyance and opposes the other motions. Upon this court's order, the parties submitted supplemental briefs addressing "the scope of any potential remand to the district court," "any issues the parties deem relevant," and "any potential limitations under the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214, on petitioner's ability to amend his petition and supplement the record at this stage of the litigation." To that end, Woodall moves to remand these cases to the district court to amend the intellectual disability claim (ground 14).

The Warden's Motion to Remove Abeyance

We held these cases in abeyance pending the state court's review of Woodall's intellectual disability claim under *Hall v. Florida*, 572 U.S. 701 (2014). The state court denied relief for that claim. *See Woodall v. Commonwealth*, 709 S.W.3d 71 (Ky. 2024), *cert. denied*, *Woodall v. Kentucky*, __S. Ct. __ 2026 WL 135633 (U.S. Jan. 20, 2026) (mem.). The parties therefore agree that these cases should be removed from abeyance.

Motions Concerning the Intellectual Disability Claim

In his § 2254 habeas petition, Woodall raised the intellectual disability claim under *Atkins v. Virginia*, 536 U.S. 304 (2002). The district court denied the claim on the merits and denied a COA. Woodall included this claim in his motion to expand the COA, which we denied. Because Woodall now moves for additional review of a claim that the district court previously denied on the merits, we construe his motion as an application for leave to file a second or successive habeas petition under 28 U.S.C. § 2244(b). *See Rivers v. Guerrero*, 605 U.S. 443, 451 (2025). The application cannot be granted. "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); *see also In re Bowling*, 422 F.3d 434, 440 (6th Cir. 2005).

The Warden's Motion to Narrow the COA

In his § 2254 habeas petition, Woodall argued in ground 5 that the jury instructions required the jury to find unanimously the existence of mitigation circumstances, a constitutional violation under *Mills v. Maryland*, 486 U.S. 367 (1988). The district court denied the claim. But,

given the dissenting opinions in *Kordenbrock v. Scroggy*, 919 F.2d 1091 (6th Cir. 1990) (en banc), and dicta in *Mapes v. Coyle*, 171 F.3d 408 (6th Cir. 1999), the district court concluded that reasonable jurists could disagree with its ruling and accordingly issued a COA. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000). The district court adequately explained its rationale in finding that Woodall satisfied the COA standard. *Cf. Moody v. United States*, 958 F.3d 485, 488 (6th Cir. 2020). The warden provides no basis for narrowing the COA.

For the foregoing reasons, we **GRANT** the warden's motion to remove these cases from abeyance, **DENY** the motions related to the intellectual disability claim, and **DENY** the motion to narrow the COA. The Clerk's Office should prepare a supplemental briefing schedule addressing the two claims remaining after the Supreme Court's remand, claims that this court has yet to address: Specifically, (1) that the trial court failed to ensure that the prosecution had a race-neutral reason for exercising a peremptory challenge during jury selection (ground 2); and (2) that the trial court improperly instructed the jury that it must unanimously find mitigating circumstances (ground 5). *See Woodall*, 685 F.3d at 577–78.

JANE B. STRANCH, Circuit Judge, concurring in part and dissenting in part. I concur in the Order except for the majority's resolution of the § 2254 petition. In my view, construing Woodall's § 2254 petition as a second or successive petition improperly bars him from presenting his intellectual disability claim in federal court under a standard that is constitutional. Precedent demonstrates that where, as here, a petition challenges a procedural defect that prevented a claim from being adjudicated on the merits, it should not be construed as a second or successive petition. Therefore, I respectfully dissent from the denial of Woodall's motion to remand so he can amend his intellectual disability claim.

In 1998, following Woodall's guilty plea, the jury returned a verdict of death. *Woodall v. Commonwealth*, 63 S.W.3d 104, 114 (Ky. 2001). On December 28, 2006, Woodall filed a § 2254 habeas petition in the U.S. District Court for the Western District of Kentucky, asserting that he is intellectually disabled and thus is not eligible for the death penalty pursuant to *Atkins v. Virginia*, 536 U.S. 304 (2002). *Woodall v. Simpson*, No. 5:06CV-P216, 2009 WL 464939, at *3 (W.D. Ky.

Feb. 24, 2009). In February 2009, the district court denied the intellectual disability claim, using Kentucky's strict IQ cut-off standard, and found that Woodall "ha[d] not presented any credible evidence of an intelligence score below [that cut-off]." *Id.* at *44. Woodall appealed, and we affirmed. *Woodall v. Simpson*, 63 S.W.3d 104 (6th Cir. 2012). But, in April 2014, the United States Supreme Court reversed and remanded the case to this court on grounds other than his intellectual disability claim. *White v. Woodall*, 572 U.S. 415 (2014). While those claims were pending before us, the Supreme Court invalidated a state law—similar to Kentucky's—because it determined intellectual disability based solely on the defendant's IQ score. *Hall v. Florida*, 572 U.S. 701 (2014). Woodall then moved to hold his case in abeyance while he pursued his post-*Hall* intellectual disability claim in Kentucky state court. We granted Woodall's request. In state court, Woodall presented expert testimony from a forensic neuropsychologist who conducted a neuropsychological evaluation of Woodall under the new intellectual disability standard established in *Hall*. Kentucky, however, rejected Woodall's claim, *Woodall v. Commonwealth*, 709 S.W.3d 71 (2024), and the Supreme Court denied certiorari, *Woodall v. Kentucky*, No. 25-5459, 2026 WL 135633 (Jan. 20, 2026). Now, Woodall requests that we remand his case to the district court to allow him an opportunity to amend his § 2254 petition to include evidence of intellectual disability consistent with the *Hall* framework. Plappert opposes this request, contending that allowing the amendment would effectively turn the petition into a second or successive § 2254 petition, and that Woodall does not have the requisite authorization to file such a petition.

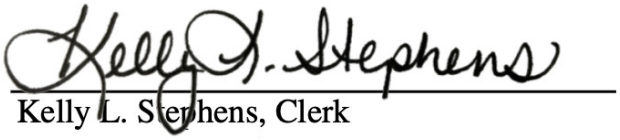
When faced with a motion to amend a habeas petition, "federal courts must determine if it really is such a motion or if it is instead a second or successive application for habeas relief in disguise." *Moreland v. Robinson*, 813 F.3d 315, 322 (6th Cir. 2016). Woodall asserts that his motion is really a motion to amend pursuant to *United States v. Clark*, 764 F.3d 653 (6th Cir. 2014). In *Clark*, the court held that a motion to amend is not a second or successive § 2255 petition until "the plaintiff exhausts her appellate remedies." *Id.* at 660. This ruling, however, conflicted with a prior Sixth Circuit decision determining that a motion to amend was a second or successive

habeas petition where the petition was filed during the pendency of the appeal. *Post v. Bradshaw*, 422 F.3d 419 (6th Cir. 2005). We reconciled the two in *Moreland*, which held that a motion to amend is a second or successive habeas petition where "that motion is filed after the petitioner has appealed the district court's denial of his original habeas petition or after the time for the petitioner to do so has expired." 813 F.3d at 325. But *Moreland* also explained that a petitioner is not making a habeas claim in a successive petition when "he seeks only to lift the procedural bars that prevented adjudication of certain claims on the merits." *Id.* at 322–23. Indeed, we have found that a petitioner's claims should have been construed as a second or successive petition where they "were raised for the first time after judgment had entered, and they [did] not attack a procedural defect in the original denial of [petitioner's] habeas petition." *Jones v. Bradshaw*, 46 F.4th 459, 480 (6th Cir. 2022).

Here, Woodall's post-*Hall* intellectual disability claim is not a claim he is raising for the first time because his § 2254 petition included a pre-*Hall* intellectual disability claim. He now seeks to add evidence of intellectual disability as permitted by *Hall*. Additionally, Woodall's motion to amend attacks a procedural defect in the district court's denial of his petition—namely, that he was unable to fully adjudicate his intellectual disability claim under a standard that is constitutional. When the district court ruled on Woodall's § 2254 petition, it denied his pre-*Hall* intellectual disability claim using Kentucky's strict IQ cut-off which has since been ruled unconstitutional. This strict IQ cut-off "bar[red] consideration of evidence that must be considered in determining whether a defendant in a capital case has [an] intellectual disability." *See Hall*, 572 U.S. 701, 723. And although Woodall has litigated his post-*Hall* intellectual disability claim in state court, he has never had the opportunity to present this claim in habeas proceedings in federal court. *See Woodall*, 2009 WL 464939 (denying Woodall's pre-*Hall* intellectual disability claim based on Kentucky's strict IQ cut-off and not considering evidence of intellectual disability other than Woodall's IQ scores). Given that Woodall is attacking a procedural defect in the denial of his § 2254 petition, I would hold that his motion is "really" a motion to amend and not a second or successive petition.

If Woodall's motion is to be treated as a true motion to amend, he must meet the requirements under Federal Rule of Civil Procedure 15. Rule 15 allows an amendment "after the statute of limitations has run" if the amendment "relates back to the date of the original pleading when . . . the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out . . . in the original pleading.'" In a habeas proceeding, the original pleading is the habeas petition. *Mayle v. Felix*, 545 U.S. 644, 655 (2005). Because Woodall's post-*Hall* intellectual disability claim arose out of the same conduct as set out in his pre-*Hall* intellectual disability claim, I would hold that Woodall can amend his § 2254 petition under Rule 15 to include new evidence of intellectual disability based on the constitutionally valid standard set forth in *Hall*. Therefore, I respectfully dissent from the denial of Woodall's motion to remand for the purpose of amending his intellectual disability claim.

ENTERED BY ORDER OF THE COURT



Kelly L. Stephens, Clerk