

Appendix D



AlaFile E-Notice

38-CC-2005-000299.60

Judge: M. JOHN STEENSLAND III

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NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT CRIMINAL COURT OF HOUSTON COUNTY, ALABAMA

STATE OF ALABAMA V. GOBBLE TIERRA CAPRI
38-CC-2005-000299.60

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STATE'S REPLY TO GOBBLE'S RESPONSE
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IN THE CIRCUIT COURT OF HOUSTON COUNTY, ALABAMA

TIERRA CAPRI GOBBLE,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. CC-2005-299.60
	)	
STATE OF ALABAMA,	)	
	)	
Respondent.	)	

STATE'S REPLY TO GOBBLE'S RESPONSE

COMES NOW the State of Alabama, Respondent in the above-styled cause, and respectfully replies to Petitioner's Tierra Gobble's Response to the State's Answer and Motion to Dismiss. (Doc. 166.) The State maintains that Gobble's second amended Rule 32 petition is due to be dismissed for the reasons set forth in the State's Answer and Motion to Dismiss. (Doc. 156.) This reply specifically addresses Gobble's general arguments raised, claims not addressed by Gobble, Gobble's claim-specific responses, as well as her request for discovery, which should be denied as a matter of law. In support, the State offers the following:

I. Reply to Gobble’s General Arguments

1. **First.** At the outset, Gobble’s claim that “this Court has already determined that Ms. Gobble’s prior petition set forth facially meritorious claims, by setting the case for an evidentiary hearing[] (Doc. 28),” overstates the record. The cited Court order was issued July 7, 2014, the same day as an order setting hearing on a motion for discovery (Doc. 27.) Upon Gobble’s motion to continue the evidentiary hearing as premature (Doc. 30), the Court ordered that the same would be heard at the August 21 hearing (Doc. 31.) At that hearing, the Court withheld judgment on the State’s motion to dismiss, ordered the parties to submit supplemental briefing, and noted that the evidentiary hearing set for October 22, 2014, would be continued. (Doc. 64.) It is clear from the record that the Court’s order setting the October 22 “Rule 32 Petition hearing” was not a determination on the merits of Gobble’s petition, but rather a tentative date.

2. Additionally, Gobble’s assertion that “the appropriate inquiry to determine whether Ms. Gobble’s claims are ‘facially meritorious’ is an assessment of whether Ms. Gobble has provided a full factual basis for her claims—not whether these claims will ultimately be meritorious,”

(Doc. 166, ¶ 2), mischaracterizes Rule 32. The decisions *Gobble* relies upon, *Young v. State*, 407 So. 3d 1139 (Ala. Crim. App. 2023), and *Woodward v. State*, 276 So. 3d 713 (Ala. Crim. App. 2018), establish what a petitioner must plead; they do not hold that factual specificity is the only thing a circuit court may consider. Rule 32.7(d) authorizes summary dismissal where “no material issue of fact or law exists” and “no purpose would be served by any further proceedings.” Ala. R. Crim. P. 32.7(d) (emphasis added). A claim foreclosed by controlling authority presents no material issue of law, and no quantity of factual detail can cure it. Indeed, *Woodward* itself states the requirement conjunctively: a claim must be sufficiently pleaded under Rules 32.3 and 32.6(b), must not be precluded under Rule 32.2, and must contain factual allegations that, if true, would entitle the petitioner to relief. 276 So. 3d at 734. *Gobble* quotes that formulation and then presses only its first element. Her construction would read the words “or law” out of Rule 32.7(d).

3. **Second.** As to *Gobble*’s assertion that the State conflates a Rule 32 petitioner’s burden of pleading vis a vis her burden of proof, (Doc. 166, ¶ 3), she is mistaken. The Alabama Court of Criminal Appeals has

explained the full pleading and specificity requirements of Rules 32.3 and 32.6(b):

An evidentiary hearing on a [Rule 32] petition is required only if the petition is “meritorious on its face.” A petition is “meritorious on its face” only if it contains a clear and specific statement of the grounds upon which relief is sought, including full disclosure of the facts relied upon (as opposed to a general statement concerning the nature and effect of those facts) sufficient to show that the petitioner is entitled to relief if those facts are true.

Van Pelt v. State, 202 So. 3d 707, 732-33 (Ala. Crim. App. 2015) (emphasis added) (citation modified). Gobble’s conception of her pleading burden downplays her burden to plead facts that, if true, would entitle her to relief. The State’s recognition of this aspect of Gobble’s pleading burden is not “making an argument as to the required burden of proof,” (Doc. 166, ¶3), but rather highlighting the Strickland test’s “strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” Van Pelt, 202 So. 3d at 725.

4. Gobble’s caselaw support for this blanket assertion does not indict the State. Ex Parte Hodges, 147 So. 3d 973 (Ala. 2011), involved a juror misconduct claim that the State asserted a procedural bar against. The Court of Criminal Appeals held that because the petitioner asserted in response to the State’s preclusion defense that his counsel could not

have known about the alleged juror misconduct in time to raise it at trial or on appeal and that the case featured a cold record, the petitioner had met his pleading burden. Id. at 977.

5. Ford v. State, 831 So. 2d 641, likewise does not support Gobble’s blanket assertion that the State has conflated her burdens of pleading and proof. In Ford, the Court of Criminal Appeals reviewed an involuntary guilty plea claim and the effect of the Court’s holding in Ex parte Blackmon, 734 So. 2d 995 (Ala. 1999) on such claims. Id. The State argued that the petitioner’s guilty plea colloquy and Ireland form indicating a voluntary plea refuted the claim. Id. at 643. The Court held that the petitioner’s allegation that his counsel misinformed him by advising that he would receive a split sentence upon pleading guilty satisfied his pleading burden and entitled him to an evidentiary hearing on the claim. Id. at 644. The Court clarified the impact of Ex parte Blackmon as holding that “*in the absence of testimony from counsel*, those documents are sufficient to refute such claims.” Id. at 644 (emphasis original). Whereas the defendant in Ex parte Blackmon had the opportunity to present evidence in a hearing on his motion to withdraw,

and failed to do so, the petitioner in Ford could only present such evidence at a Rule 32 evidentiary hearing.

6. In both cases, the Court determined that the petitioner's allegations, if true, would warrant relief. Gobble's assertion that the State has misconstrued her pleading burden under Strickland is incorrect.

7. **Third.** Gobble's third argument—that the State's Answer asserts “counter-allegations” inviting this Court to resolve factual disputes (Doc. 166, ¶ 4)—rests on a conflation the record does not support. There is a difference between facts outside the record and facts within it. The State submitted no affidavits, tendered no exhibits, and offered no evidence outside the record. Every factual assertion in its Answer and motion to dismiss is drawn from the trial transcript, the clerk's record, the opinion of the Court of Criminal Appeals, or the exhibits Gobble herself attached to her petition. Gobble does not contend that any of those materials are inaccurate, incomplete, or in dispute. Where the State has reasoned from that material, it has offered argument—which is what a responsive pleading consists of—not

evidence, and argument creates no factual dispute for this Court to resolve.

8. Record facts bear on a Rule 32 petition in two distinct ways, neither of which requires this Court to weigh evidence. First, a claim contradicted by the record presents no material issue of fact and is subject to summary dismissal under Rule 32.7(d). The principle that well-pleaded allegations are assumed true does not extend to allegations the record refutes. Second, and independently, record facts bear on whether Gobble has carried her pleading burden at all. Rule 32.6(b) requires “a clear and specific statement of the grounds upon which relief is sought, including full disclosure of the factual basis of those grounds.” A petitioner does not make full disclosure of the factual basis of a claim by reciting the facts that favor her while omitting the record facts that bear directly on it. Pleading around the record is not pleading.

9. **Fourth.** Gobble’s fourth argument—that the State’s Answer relies on witness credibility as a basis for summary dismissal (Doc. 166, ¶ 5)—misdescribes both the Answer and the authority she cites. The State submitted no affidavits and no evidence, and it asks this Court to disbelieve no one. This Court may assume that every witness identified

in the second amended petition would testify precisely as Gobble's exhibits describe, and would testify truthfully. The claims fail regardless—because the proffered testimony is cumulative of what the jury heard, because it does not bear on any disputed issue, because it would have been inadmissible, or because its inclusion creates no reasonable probability of a different outcome as a matter of law. Each of those determinations is made on the assumption that the allegations are true, not against it. Determining that Tina McGuire's account covers ground already covered by Dallas and Carmen Gobble requires no view of whether McGuire is truthful; determining that Walter Jordan's proposed testimony neither exculpates nor inculpates anyone is a statement about what that testimony establishes if believed. Postconviction courts are readily capable of assessing the weight and probative force of pleaded facts against record facts in the context of Strickland. See e.g., Woods v. State, 221 So. 3d 1125, 1134 (Ala. Crim. App. 2016); Mashburn v. State, 148 So. 3d 1094, 1107 (Ala. Crim. App. 2013) (affirming circuit courts' summary dismissals of extensive Rule 32 petitions and recognizing that the circuit courts properly applied

Strickland's heavy pleading burden and did not confuse it with the burden of proof.)

10. Gobble's authorities do not hold otherwise. She quotes Bryant v. State, 181 So. 3d 1087, 1132 (Ala. Crim. App. 2011), for the proposition that "[t]he credibility of witnesses is for the trier of fact," but that passage states the standard governing appellate review of a circuit court's findings following an evidentiary hearing. It says nothing about what a circuit court may determine on the pleadings, and Gobble transplants it from a materially different posture. Ex parte Coleman, 71 So. 3d 627 (Ala. 2010), and Ex parte Hodges, 147 So. 3d 973 (Ala. 2011), are likewise inapposite because neither case discusses credibility; Coleman deals with a claim of ineffective assistance concerning his guilty plea and Hodges concerns a juror misconduct claim.

11. Gobble's rule would also gut Strickland's prejudice prong which requires a court to assess the likely effect of the pleaded evidence on the factfinder; that probability judgment is built into the standard. If assessing the probable effect of proffered testimony were an impermissible credibility determination, no ineffective-assistance claim could ever be summarily dismissed for want of prejudice—a result

irreconcilable with Rule 32.7(d), which authorizes dismissal where no purpose would be served by further proceedings. Predicting how a jury would likely have received evidence is the inquiry Strickland mandates. It is not this Court weighing witness credibility, and Gobble’s argument conflates the two.

12. **Fifth.** Gobble’s fifth argument—that the admissibility of her proffered evidence “is a question about whether a Petitioner can meet their burden of proof” and therefore cannot support summary dismissal (Doc. 166, ¶ 6)—rests on a conflation of two distinct questions. The first is whether evidence would be admissible at a Rule 32 evidentiary hearing. That question, as Gobble says, is for the hearing. The second is whether the evidence would have been admissible at her 2005 trial. That question is not a matter of proof at all; it is an element of the claim she has pleaded. A claim of ineffective assistance premised on counsel’s failure to offer evidence necessarily assumes that counsel could lawfully have offered it. It is unlikely that no competent attorney would decide against introducing evidence of questionable admissibility, and, in any event, no prejudice can flow from the absence of evidence the jury could never have heard. Where the evidentiary predicate of a claim was

categorically inadmissible, the petition fails to allege facts that, if true, would entitle Gobble to relief—and that determination requires no evidence, no hearing, and no resolution of any factual dispute.

13. Gobble's reliance on the assumption-of-truth principle does not bridge the gap, because truth and admissibility are independent. Ex parte Boatwright, 471 So. 2d 1257, 1258 (Ala. 1985), holds that a petition meritorious on its face is entitled to a hearing; it says nothing about whether evidence supporting the petition could have been received at trial. This Court's obligation to assume Gobble's allegations are true is not an obligation to assume they were admissible. Rule 404(b) excludes prior bad acts precisely because a jury may credit them. Rule 606(b) excludes juror testimony about deliberations however accurate that testimony may be. Alabama's rule governing evidence of third-party guilt excludes proof that is entirely truthful but fails to connect the third party to the offense. In each instance the exclusion operates on evidence assumed to be true. Assuming the truth of Gobble's exhibits therefore tells this Court nothing about whether the evidence they describe could have been placed before her jury.

14. Under Gobble’s construction, a petitioner could plead that counsel was ineffective for failing to introduce polygraph results, privileged communications, or juror testimony barred by Rule 606(b), and would be entitled to an evidentiary hearing on each—because admissibility, in her view, is never a pleading-stage question. Rule 32.7(d) forecloses that result. It authorizes dismissal where no material issue of fact or law exists and no purpose would be served by further proceedings, and the admissibility of evidence at a trial concluded in 2005 is a question of law resolvable on the existing record. Nor does Ray v. State, 80 So. 3d 965, 992 (Ala. Crim. App. 2011), asserted later in her response at ¶ 81, assist her. Reading the full context of Ray,¹ the Court of Criminal Appeals reiterated that false confession expert testimony was inadmissible, and then went further to find that, even if such testimony was admissible, failing to introduce it was not ineffective assistance. Id. Gobble’s quotation takes the Ray Court’s rhetorical *a fortiori* point—that trial counsel’s decision not to offer a false confession expert ultimately turns on prevailing professional norms, rather than the admissibility of

¹ All of which is dicta regardless because the Court of Criminal Appeals disposed of the petitioner’s claim in the first instance on the basis that it was not raised in the amended petition. Ray, 80 So. 3d at 991.

such an expert—out of context to suggest that the inadmissibility of her alleged false confession expert is irrelevant to her pleading burden. However, admissibility is relevant both to an objective standard of reasonableness measured against prevailing professional norms and also to whether there is a reasonable probability of a different result. See id.

15. The claims at issue rest on categorical bars—Rule 606(b) as to the juror affidavits at Exhibits FF, GG, and L; Rule 404(b) and Alabama’s third-party guilt standard as to the proposed testimony concerning Edgar Parrish’s and Samuel David Hunter’s unrelated conduct; and the unavailability of a diminished-capacity defense in Alabama as to the proposed guilt-phase psychological testimony. None of those bars depends on a fact this Court would need a hearing to find.

16. **Sixth.** Gobble’s sixth argument—that the State incorrectly asserts that to “adequately plead deficient performance in trial counsel’s argument, a Petitioner must offer superior alternative arguments”—is a distinction without a difference. The State cited Van Pelt v. State with an explanatory quotation for this proposition: “Van Pelt fails to allege with any specificity what counsel should have argued and how those particular arguments would have changed the result of his trial.” 202 So.

3d at 735 (emphasis added). A pleaded argument that changes the result of the trial to the benefit of the petitioner is by nature a superior argument. In other words:

To sufficiently plead an allegation of ineffective assistance of counsel, a Rule 32 petitioner not only must identify the [specific] acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment, but also must plead specific facts indicating that he or she was prejudiced by the acts or omissions, i.e., facts indicating that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.

Id. at 724 (alterations original) (citation modified). This is part of Strickland's prejudice prong and is a burden that Gobble is obliged to satisfy for a well-pleaded ineffectiveness claim.

17. **Seventh.** Gobble's final argument—that the State improperly treated her ineffective-assistance allegations as “separate” and “distinct” claims (Doc. 166 ¶ 8)—is answered by the language she quotes. Under Strickland, a petitioner “must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment,” and only then does a court “determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent

assistance.” 466 U.S. at 690. The identification comes first, and Rules 32.3 and 32.6(b) give that requirement procedural effect in Alabama’s postconviction scheme: Strickland governs what must be ultimately proved, while 32.6(b) governs what must be pleaded—a “clear and specific statement of the ground upon which relief is sought, including full disclosure of the factual basis of those grounds”—before a petitioner is entitled to attempt that proof at an evidentiary hearing.

18. That the Sixth Amendment right is unitary—which the State does not dispute—says nothing about whether each alleged act or omission must independently satisfy Alabama’s pleading rules. It must. Were it otherwise, a single adequately pleaded allegation would carry an entire petition past Rule 32.7(d), and no ineffectiveness claim could ever be dismissed in part. Wiggins v. Smith, 539 U.S. 510 (2003), and Rompilla v. Beard, 545 U.S. 374 (2005), do not support that result: each involved a single failure to investigate mitigation claim, resolved after evidentiary hearings, and neither addressed pleading standards at all.

19. Gobble’s cumulative-error argument fares no better, because the authority she cites supports the State’s position. She quotes United States v. Murray, 154 F. App’x 740, 745 (11th Cir. 2005), for the

proposition that “cumulative error is not an independent ground for relief separate from the underlying constitutional errors, such as . . . ineffective assistance of counsel.” That is precisely the State’s contention. Her Murray quotation also concedes the necessary predicate: aggregation is available only where “each alleged incident . . . constitute[s] error in itself.” Id. Where no individual allegation satisfies Rules 32.3 and 32.6(b), there is nothing to aggregate; the sum of insufficiently pleaded allegations is not a sufficiently pleaded claim. In any event, Alabama law is settled that “Alabama does not recognize a ‘cumulative effect’ analysis for ineffective-assistance of counsel claims.” Carruth v. State, 165 So. 3d 627, 651 (Ala. Crim. App. 2014).

20. Furthermore, Gobble’s reliance on Ex parte Woods, 789 So. 2d 941, 943 n.1 (Ala. 2001), throughout the rest of her response is misplaced. While she asserts that “even if one witness testimony, standing alone, would not reasonably have altered the outcome of the proceeding, it must be viewed in the light of all the information that could have been, but was not, provided due to counsel’s deficient performance” (Doc. 166 n.15), this is not what Ex parte Woods instructs. The footnote in Ex parte Woods addresses the cumulative effect of improper prosecutorial arguments, not

ineffective assistance of counsel. Ex parte Woods, 789 So. 2d at 943 n.1. Even in that context, the Alabama Supreme Court stated that “when no one instance amounts to error at all (as distinguished from error not sufficiently prejudicial to be reversible), the cumulative effect cannot warrant reversal. In other words, multiple nonerrors obviously do not require reversal.” Id. Regardless, the Alabama Court of Criminal Appeals has recognized that even if Alabama appellate courts applied a cumulative effect analysis to ineffective assistance, such an analysis would “not eliminate the pleading requirements established in Rule 32.” Mashburn v. State, 148 So. 3d 1094, 1117 (Ala. Crim. App. 2013) (emphasis added) (citation modified). Either way, Gobble cannot lighten her pleading burden under Rule 32 by appealing to the “cumulative effect” of alleged errors by counsel.

21. **Eighth.** Separate from the seven arguments identified in her introduction, Gobble asserts that because “the State’s Answer does not address the evidence—its strength or lack thereof,” her “claims regarding the impact the lack of direct evidence has on the Strickland analysis remain un rebutted.” (Doc. 166, ¶ 9.) The assertion is inaccurate. The State’s Answer addressed the trial evidence claim by claim, as the

prejudice inquiry requires: it identified what the jury heard, measured Gobble’s proffered evidence against it, and explained why the omission of that evidence created no reasonable probability of a different result. Gobble’s own Response quotes several of those passages in the course of disputing them. In any event, the State’s burden is not to rebut; Gobble bears the burden of pleading and proof at all times. Ala. R. Crim. P. 32.3.

22. McWhorter v. State, 142 So. 3d 1195 (Ala. Crim. App. 2011), does not assist her. That decision confirms that a court considers the strength of the evidence when determining whether Strickland prejudice has been established—a determination made by the court, on the record before it, after the petitioner has carried her pleading burden. It imposes no obligation on the State to plead the strength of its own case, and Gobble still bears her full burden of pleading under Rules 32.3 and 32.6(b). McNabb v. State, 991 So. 2d 313, 318 (Ala. Crim. App. 2007)

23. **Ninth.** Throughout her Response, Gobble asserts that the State ‘fails to address’ particular factual allegations and urges that those allegations must therefore be accepted as sufficiently pleaded. (Doc. 166, ¶¶ 9, 15, 23, 25, 29, 30, 45, 47, 50, 55, 61, 62, 65, 69, 120, 140, 143, 161, 163.) At ¶ 120 she states the premise outright: “Because the State does

not deny this was deficient performance that prejudiced Ms. Gobble, it should be taken as admitted.”

24. There is no such rule in Rule 32 practice. Rule 32.3 places the burden of pleading and proving the facts necessary to establish an entitlement to relief on Gobble. The State’s Answer denied Gobble’s claims and moved for their dismissal, which places every allegation at issue; the State was not obliged to catalogue each individual factual assertion contained in 705 numbered paragraphs across a 289-page petition in order to preserve its position. Nor is this Court’s authority limited to the grounds the State elected to emphasize. Rule 32.7(d) permits summary dismissal wherever the petition is insufficiently specific, is precluded, fails to state a claim, or presents no material issue of fact or law—and this Court may so find on the basis of the petition and the record whether or not the State addressed a particular allegation in its Answer. Gobble’s approach would invert Rule 32.3, converting the State’s responsive pleading into the measure of her own burden.

25. **Tenth.** The State notes that Gobble has withdrawn the factual allegation that trial counsel conceded at judicial sentencing that Gobble “never denied her abuse of the children,” acknowledging that the

“mother” referenced by counsel was Lori Gobble rather than Gobble herself. (Doc. 166, ¶ 43 n.10.) The State accepts the withdrawal. It requires no leave of court, and it is not an “amendment” of the kind contemplated by Rule 32.7(b). To the extent that Gobble characterizes that withdrawal as among “the minor amendments proposed” (Doc. 166, ¶ 192), such characterization therefore no support for her request for leave to amend.

II. Claims Not Addressed in Gobble’s Response

26. Gobble’s Response does not address the State’s Answer and Motion to Dismiss three claims raised in her second amended petition. She offers no response to the State’s Answer to Claim V pleaded across paragraphs 696 through 699 of the petition, that her death sentence is unconstitutional under Ring v. Arizona, 536 U.S. 584 (2002). She offers no response to the State’s Answer to Claim I(A)(7)(a), pleaded across paragraphs 437 through 462 of the petition, that trial counsel were ineffective for failing to object to the State’s arguments during voir dire. She offers no response to the State’s Answer to Claim I(A)(2)(k), pleaded across paragraphs 340 through 350 of the petition, that trial counsel were ineffective for failing to present expert testimony substantiating the

assertion that her confession was false. Each of these claims fails on the grounds set forth in the State’s Answer and Motion to Dismiss, and each is due to be dismissed under Rules 32.3, 32.6(b), and 32.7(d)

III. Gobble’s Claim Specific Responses

27. In addition to what is set forth below, the State relies on its Answer and Motion to Dismiss and preserves all bases for dismissal argued therein. Gobble’s responses to the individual claims largely restate the general arguments addressed above, and the State does not repeat its answers to those arguments claim by claim. The State addresses the following claims that warrant clarification.

A. The Penalty Phase Pediatric Forensic Specialist, Claim I(B)(5)

28. Gobble contends that this claim is adequately pleaded because her petition “explicitly incorporates the detailed allegations regarding the pediatric forensic specialist from the guilt phase discussion, into the penalty phase.” (Doc. 166, ¶ 170; see Doc. 129, ¶ 614.) That is precisely the defect. Rule 32.6(b) requires that “[e]ach claim in the petition . . . contain a clear and specific statement of the grounds upon which relief is sought, including full disclosure of the factual basis of those grounds.” (Emphasis added). The full factual basis “must be

included in the petition itself,” McNabb v. State, 991 So. 2d 313, 318 (Ala. Crim. App. 2007). A cross-reference directing this Court to allegations pleaded elsewhere, in support of a different claim and a different theory of prejudice, is not the clear and specific statement the rule demands. Guilt-phase prejudice and penalty-phase prejudice are distinct inquiries measured against different evidence and a different decision; allegations pleaded to establish the former do not, by incorporation, establish the latter. Gobble was required to plead what a pediatric forensic specialist would have testified to at the penalty phase—after the jury had already found Gobble guilty of capital murder—and how that testimony specifically bore on the aggravating and mitigating circumstances before the jury and this Court. She did not.

29. In the alternative, if the incorporated allegations are considered, the claim still fails. The expert Gobble identifies is Dr. Matthew Seibel (Doc. 166, ¶ 170; Doc. 129 at 55.) Her petition concedes that Dr. Seibel did not review the radiographic evidence in this case. (Doc. 129, ¶ 163 n.13.) Dr. Salne’s testimony concerning the mechanism of the wrist injuries rested on the x-rays he personally reviewed. (Vol. 15, R. 440-41.) An expert who has not examined that evidence supplies no basis

for contradicting an opinion drawn from it, and Gobble pleads no facts establishing a reasonable probability that his testimony would have altered either the jury's advisory verdict or this Court's sentence.

30. On remand from the Court of Criminal Appeals, this Court entered specific findings supporting the aggravating circumstance that the offense was especially heinous, atrocious, or cruel. (Record on Remand, pp. 123-24.) Those findings rest on the manner of the fatal injury—striking a four-month-old child's head against a hard surface, producing bleeding between the scalp and skin and between the skull and brain—on the fractures of the victim's fourth, fifth, and sixth ribs, and on the infliction of a brutal beating causing tremendous pain and suffering upon a child who was “helpless and unable to defend himself.” (*Id.* at 123-24.) The fractured ribs are injuries of a different nature than, and in addition to, the injury proximately causing death, which independently establishes the aggravating circumstance. Norris v. State, 793 So. 2d 847, 854 (Ala. Crim. App. 1999).

31. Nothing in Dr. Seibel's proposed testimony touches those findings. He would opine that the injuries were inflicted on a single occasion rather than over time. The findings supporting the aggravating

circumstance make no reference to the timing of the injuries, to any healing process, to the mechanism of the wrist fractures, or to the torn frenulum. Gobble's proposed expert testimony would therefore have left the aggravating circumstance intact, and she pleads no facts suggesting otherwise.

B. The Terrell Declaration Allegation in Claim I(A)(2)(b)

32. Gobble relies on the declaration of mitigation specialist Joanne Terrell in support of her claim that trial counsel were ineffective for calling her to testify (Claim I(A)(2)(b)), asserting that Terrell advised counsel against doing so and that counsel offered no reasoned basis for the decision. (Doc. 166, ¶¶ 55-56.) Assuming both allegations true, the claim fails on prejudice. Gobble's defense was that she did not kill Phoenix. She was the only witness who could testify to that, and her account of the interrogation supplied the evidentiary basis for the argument that her statements to investigators were unreliable—an argument trial counsel made in closing. (Vol. 17, R. 796-97.) Gobble pleads no facts establishing a reasonable probability that a jury which heard neither her denial nor her explanation of the confession had she not testified in her own defense would have reached a different verdict.

As set out in the State's Answer, her separate allegation of prejudice rests on a juror's assessment of the effect of her testimony on deliberations, which Rule 606(b), Ala. R. Evid., does not permit.

C. The Dr. Ghostley Declaration Allegation in Claim I(B)(3)

33. Gobble further contends that the State has mischaracterized her claim regarding Dr. Ghostley as one seeking “a better, more qualified psychologist,” and asserts that Dr. Ghostley himself acknowledges he performed only a limited evaluation and would have recommended additional experts. (Doc. 166, ¶ 166.) The characterization does not change the analysis. Counsel retained two clinical psychologists, and the expert Gobble now offers is a third located years after trial. Whether the claim is framed as counsel having hired an inadequate expert or as counsel having failed to elicit a recommendation for a different one, Gobble must plead facts showing a reasonable probability of a different sentence. The jury heard, through Dr. Ghostley and Ms. Terrell, that Gobble endured “severe and pervasive neglect and abuse” throughout her childhood and that her mental state was affected by the “deplorable and highly stressed conditions” in which she was raised. (R. 867-68, 870-71, 885, 920, 931.) Gobble pleads no facts showing that a different expert's

presentation of that same history would have altered this Court's weighing of the single aggravating circumstance against the twenty-one mitigating circumstances it found.

D. Gobble's Responses Do Not Address the State's Arguments that Gobble Failed to Plead Prejudice

34. A recurring feature of Gobble's Response warrants reply. As to a number of claims, the State's Answer established both that Gobble failed to plead deficient performance and, independently, that she failed to plead prejudice. Gobble's Response engages the former and passes over the latter. The pattern is clearest in four instances:

35. As to trial counsel's failure to interview Dr. Song Wong, Gobble argues only that the State cannot characterize counsel's conduct as reasonable where counsel never spoke with him. (Doc. 166, ¶ 42.) She does not respond to the State's answer that testimony characterizing all of the victim's wounds as fresh would itself have been damaging to her defense, that testimony disputing the precise mechanism of the wrist and arm injuries would not have changed the result, and that in either case the jury would have been left with evidence that Gobble alone inflicted violent and painful injuries on her son. (Doc. 156 at 28.)

36. As to the Florida Department of Children and Families records, she does not respond to the State's answer that the specific page citations she says counsel should have supplied were cumulative to her own testimony and added nothing material to the facts before the jury. (Doc. 156 at 34; Doc. 166, ¶¶ 43-47.)

37. As to the allegations concerning Samuel David Hunter, she does not respond to the State's answer that the records were already before the jury and that she identifies no specific new fact further investigation would have produced. (Doc. 156 at 35-36; Doc. 166, ¶¶ 48-52.)

38. Likewise, Gobble does not respond to the State's answers that she failed to plead prejudice as a matter of law. For example, the State's Answer to Claim I(A)(4)(b) established that Gobble was never entitled to an instruction under § 13A-6-2(a)(2), because that provision "requires conduct which manifests an extreme indifference to human life and not to a particular person only." Northington v. State, 413 So. 2d 1169, 1170 (Ala. Crim. App. 1981); accord Sheffield v. State, 87 So. 3d 607, 625 (Ala. Crim. App. 2010). (Doc. 156 at 73-74.) Gobble's Response argues the plain language of § 13A-6-2(a)(2), the trial court's stated reasoning, and the

rational-basis standard of § 13A-1-9(b). (Doc. 166, ¶¶ 95-100.) It does not mention Northington, Sheffield, or the universal-malice requirement on which the State's answer to this claim rests. Counsel cannot be ineffective for failing to request an instruction to which Gobble was not entitled. Hall v. State, 979 So. 2d 125, 150 (Ala. Crim. App. 2007).

39. Where Gobble does respond to the State's arguments that she failed to plead prejudice, she responds categorically rather than on the facts of the particular claim—asserting either that prejudice cannot be assessed at the pleading stage, or that any individual shortfall must be viewed cumulatively with every other alleged error. (Doc. 166, ¶ 3; id. at 11 n.6, 27 n.11, 56 n.13.) For the reasons set out in Part I above, neither assertion is correct. Rule 32.7(d) permits summary dismissal where the pleaded facts, assumed true, would not entitle the petitioner to relief, and prejudice is among the facts Rule 32.6(b) required her to plead. Allegations that independently fail to satisfy Rules 32.3 and 32.6(b) do not become sufficient in the aggregate.

IV. Gobble's Lethal Injection Claim Remains Due to Be Dismissed

40. Gobble responds to the State's answer that her lethal-injection claim is moot by invoking a decision issued after the State's

Answer was filed. (Doc. 166, ¶ 191, citing Lee v. Lovelace, No. 2:25-cv-00680-ECM, 2026 WL 1664095 (M.D. Ala. June 9, 2026).) That decision does not revive the claim, which fails for reasons independent of Gobble’s method-of-execution election.

41. First, the claim is not ripe. Gobble elected execution by nitrogen hypoxia in June 2018. The claim she pleaded challenges execution by lethal injection—a method not designated for her—and rests on the contingency that the nitrogen protocol might at some future point be invalidated and that the State might then seek to execute her by another means. She acknowledged as much in pleading the claim. (Pet. at 281, n.28.) Her reliance on Lee does not ripen her claim because the permanent injunction entered by the district court in that case applied only to the plaintiff. Lee, No. 2:25-cv-00680-ECM, 2026 WL 1664095 *11. A claim expressly framed as a hedge against a contingency that has not occurred presents no live controversy for this Court to adjudicate.

42. Second, a method-of-execution claim under federal law requires the pleading of a known and available alternative method that would substantially reduce a substantial risk of serious pain. Glossip v.

Gross, 576 U.S. 863, 877 (2015). Gobble did not plead an alternative. The claim is due to be dismissed under Rules 32.3, 32.6(b), and 32.7(d).

V. Gobble’s Request for Discovery Should Be Denied

43. Gobble asks this Court to afford her time to file discovery motions, to grant discovery and subpoena authority, and to provide funds to present witnesses and experts. (Doc. 166 at 75–76, ¶¶ (a)–(c).) The request should be denied.

44. Postconviction discovery in Alabama is governed by Ex parte Land, 775 So. 2d 847 (Ala. 2000), which Gobble cites herself. (Doc. 166, ¶ 4 n.3.) Land requires a petitioner to show good cause, and it makes clear that good cause is not established by a petitioner who seeks discovery in order to develop facts that Rule 32.6(b) required her to plead in the first instance. 775 So. 2d at 852. Discovery is available to a petitioner who has stated a facially meritorious claim; it is not a mechanism for determining whether such a claim exists.

45. Gobble’s own Response confirms that this is precisely what she seeks. Responding to the State’s answer that her jury-tampering claim fails to identify the person alleged to have communicated with the jury, she does not contend that she has pleaded that fact. She states

instead that she “has sought discovery to obtain the proof needed for this otherwise well-pleaded claim.” (Doc. 166, ¶ 183.) A claim that requires discovery to supply the identity of the alleged wrongdoer is not “otherwise well-pleaded”—it is a claim that fails the specificity requirement of Rule 32.6(b), and Land does not permit a petitioner to cure that failure through discovery. The same is true of her request for funds, which presupposes an evidentiary hearing to which she is not entitled unless and until she has satisfied her pleading burden.

46. Because none of the claims in the second amended petition are sufficiently pleaded or meritorious, no purpose would be served by discovery, and Gobble has shown no good cause for it.

CONCLUSION

47. For the reasons set forth herein and in the State’s Answer and Motion to Dismiss, the State respectfully requests that this Court dismiss Gobble’s second amended Rule 32 petition in its entirety pursuant to Rules 32.3, 32.6(b), and 32.7(d), Ala. R. Crim. P. and deny her request for discovery.

Respectfully Submitted,

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s/ Talmadge Butts
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Assistant Attorney General
Counsel of Record

CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2026, I filed this document with the clerk of court. A copy was served upon counsel for the petitioner via Alafile.

s/ Talmadge Butts
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