11-5005

IN THE
SUPREME COURT OF THE UNITED STATES
THIS IS A CAPITAL CASE

MARCELLUS WILLIAMS
Petitioner,

v.

DONALD ROPER,
Warden, Respondent.

Brief in Opposition to Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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THE QUESTIONS PRESENTED ARE

1 Whether Williams is entitled to appeal the denial of his motion for additional DNA testing, that was made as part of his habeas case, even though a certificate of appealability was not granted on any of his habeas claims, and even though the crime scene evidence was tested for DNA before trial and the jury was aware that no DNA evidence linked Williams to the crime, and that DNA was present at the crime scene that did not belong to Williams, or to the victim, or to the victim's husband.

2 Whether it was error for the United States Court of Appeals for The Eighth Circuit to deny Williams' application for a certificate of appealability in a summary order as opposed to writing a "detailed opinion" explaining its reasoning on why each claim did not meet the standard required to receive a certificate of appealability.

3 Whether the Missouri Supreme Court unreasonably applied United States Supreme Court precedent in rejecting three challenges under *Batson v. Kentucky*, 476 U.S. 79 (1986) when the prosecutor

supplied plausible race-neutral reasons supported by the record for the strikes, and the trial court found these reasons were not pretexts.

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STATEMENT OF THE CASE

On August 11, 1998, in University City Missouri, Marcellus Williams in the course of a burglary, murdered Felicia Gayle, whom he discovered to be at home, by stabbing her forty-three times with a butcher knife. The facts of the case, as found by the Missouri Supreme Court, are set out in Petitioner's Appendix at A-2 to A-4. The district court quoted these facts from the Missouri Supreme Court opinion in *State v. Williams*, 97 S.W.3d 462, 466-467 (Mo. banc 2003). These findings, set out below, are entitled to deference under 28 U.S.C. §2254(e).

When Williams picked up his girlfriend, Laura Asaro, after the murder, he was wearing a jacket over a bloody shirt despite summer heat and had scratches on his neck (Appendix A-3). Ms. Asaro also saw a laptop computer in the car William was driving (*Id.*). A day or two after the murder, Williams sold a laptop computer to Glenn Roberts that police later identified as belonging to the murder victim (Appendix A-3 through A-4). The day after the murder, Ms. Asaro found the victim's purse containing the victim's identification in the trunk of the car Williams was driving (Appendix A-3). Williams confessed in detail

to the murder to his girlfriend, Laura Asaro, then grabbed Ms. Asaro by the throat and told her that he would kill her, her children, and her mother, if she told anyone (Appendix A-3).

Williams later confessed to Henry Cole while they were both incarcerated in the St. Louis City workhouse and were roommates from April until June 1999 (Appendix A-3 through A-4). After his release from the St. Louis City workhouse in June 1999, Cole told the University City Police about Williams' confession revealing details of the crime that had not been publicly reported (Appendix A-4).

The University City police approached Ms. Asaro who told them that Williams had confessed to the murder (Appendix A-4). The University City police searched the car Williams was driving on the day of the murder and found a ruler and calculator that had belonged to the victim and been in her purse (Appendix (A-4).

Following a jury trial in the Circuit Court of St. Louis County, a jury assessed the punishment of death for first degree murder, finding ten aggravating circumstances (Appendix A-5). The trial court also sentenced Williams to various terms of imprisonment for first degree burglary, first degree robbery, and two counts of armed criminal action

(Appendix A-5). The Missouri Supreme Court affirmed the judgment of conviction and sentence in *State v. Williams*, 97 S.W.3d 462 (Mo. banc 2003) (Appendix A-5). Williams also unsuccessfully litigated a state post-conviction relief motion, the denial of which was affirmed by the Missouri Supreme Court in *Williams v. State*, 168 S.W.3d 433 (Mo. banc 2005) (Appendix A-6).

Williams filed a habeas petition under 28 U.S.C. §2254 in the United States District Court for the Western District of Missouri, raising thirteen grounds for relief (Appendix A-6 to A-7). The district court granted relief on one penalty phase claim and remanded the case for resentencing (Appendix A46 to A47). That penalty phase claim is currently on appeal. The United States Court of Appeals for the Eighth Circuit denied an application for a certificate of appealability, after reviewing the district court file (Appendix A1).

During the course of the habeas litigation, the district court denied a motion for additional DNA testing, pointing out that there is no good cause for additional testing of evidence from the crime scene, because the crime scene evidence had already been DNA tested, none of it matched Williams, but some of it also did not match the victim or her

husband, and the jury had been informed of this (Appendix A-68). The district court found that this is not a case in which previously untested evidence could exonerate a defendant (Appendix A-68).

PERCIEVED MISTATEMENTS OF FACT (RULE 15.2)

In his recitation of the facts of the case Williams mentions his confessions to persons whose testimony, he argues, is not credible. But he does not mention additional facts that support the testimony of those witnesses and the verdict: that he sold the victim's laptop computer shortly after the murder, or that police found property that had been in the victim's purse in the car that Williams drives (Compare Petition 6-11 to Appendix A-2 to A-4).

Williams also alleges in a footnote that the state failed to disclose the addresses of Cole and Asaro for over a year (Petition 11 n.1). Respondent refers this Court to the Appendix A-11 stating "[t]he court concluded that the state did not conceal the whereabouts or statements of these two witnesses."

REASONS FOR DENYING THE WRIT

1 No precedent of this Court or of any circuit court of appeals supports the proposition that a habeas petitioner may independently appeal a discovery ruling after all claims to which the ruling could be related have been denied, and after a certificate of appealability has been denied on those claims.

Williams filed a discovery motion asking that trace evidence at the crime scene be retested for DNA (Appendix A51-A54). Williams linked this discovery request to his claim 3 alleging that trial counsel was ineffective for not better investigating and impeaching Williams' girlfriend, who testified that he confessed to her, and to his claim 4 alleging his conviction is unconstitutional because it is based on perjured testimony and he is actually innocent (*Id.*). The district court found that no good cause for discovery, required by Habeas Rule 6(a), had been established (Appendix A-68). The district court found that crime scene evidence had already been DNA tested before trial, and that the jury had been told that DNA had been found at the crime scene that did not match Williams, or the victim, or the victim's husband (Appendix A68). Williams filed a motion for reconsideration, and the

district court again denied the discovery request, finding that the court was still convinced Williams did not meet the good cause standard for discovery in a habeas case (Appendix A71-A74). The district court later found Williams' claims 3 and 4, which were the alleged reason for discovery in the first place, to be without merit, and neither the district court, nor the United States Court of Appeals for the Eighth Circuit, nor this Court has issued a certificate of appealability on those claims or any other claims in the case (*See* Appendix A13 to A21).

Williams now argues that he should be able to appeal the discovery ruling, without a certificate of appealability, despite the fact that the claims the discovery request was meant to support have been denied without a certificate of appealability and are no longer in the case (Petition 16-22). Essentially, he wishes to appeal the discovery ruling itself in a vacuum of sorts unconnected to the claims that were alleged to justify discovery in the first place.

Williams relies on this Court's decision in *Harbison v. Bell*, 556 U.S. 180 (2009), for the proposition that he may appeal a discovery ruling made in the course of review of a habeas claim even though no

certificate of appealability issued on the underlying habeas claim or on any claim in the case (Petition at 16-17).

But in *Harbison* this Court held only that an inmate did not need a certificate of appealability to appeal an order denying the appointment of counsel to represent the inmate in state clemency proceedings. *Harbison* does not stand for the proposition that a litigant may avoid the certificate of appealability requirements in a habeas case by continuing to litigate discovery decisions on appeal, after the underlying claims used to justify discovery in the first place have been denied and are no longer in the case. *Harbison* has nothing to do with that proposition.

Williams argues in the alternative that the district court abused its discretion in denying discovery because additional DNA testing might have allowed him to blame the crime on his girlfriend, Laura Asaro, who testified that he confessed, or on some other unknown person whose DNA might be linked to the crime scene (Petition at 18-21).

Whether a district court abused its discretion in a discovery ruling in a fact-intensive scenario is not an issue appropriate for certiorari

review, were such an issue even reviewable in the abstract detached from the claims that were alleged to be the cause for the discovery request in the first place (*See* Supreme Court Rule 10). But the issue of the alleged discovery violation must necessarily be considered in the context of the claims the discovery would allegedly support, that Williams was an innocent man convicted based on prejudiced testimony, and that counsel was ineffective for not better impeaching Williams' girlfriend (Appendix A13 to A21). Williams alleges no conflict among the circuit courts of appeals caused by the discovery ruling itself, nor by the denial of the claims that providing the discovery would allegedly support. Williams' application for certiorari review on his first question therefore does not fit within any of the categories for which review is appropriate under Supreme Court Rule 10 and should be denied.

2. No precedent of this Court or of any circuit court of appeals supports the proposition that a habeas petitioner is entitled to a "detailed opinion" when a circuit court of appeals denies an application for a certificate of appealability.

The United States Court of Appeals for the Eighth Circuit denied Williams' application for a certificate of appealability and dismissed his appeal in a three line order (Appendix A-1). The order noted that the Court of Appeals had carefully reviewed the original file of the district court (Appendix A-1).

Williams argues that, at least in a capital case, "a strong argument can be made that *Barefoote v. Estelle*, 463 U.S. 880 (1983), requires a court of appeals to issue a detailed opinion on the merits of constitutional claims and procedural issues presented when it denies a COA in a first capital habeas petition." (Petition at 25)

Williams asserts that the denial of a certificate of appealability without such a detailed opinion conflicts with 28 U.S.C. §2253 and this Court's decisions in *Barefoote v. Estelle*, 463 U.S. 880 (1983), *Slack v. McDaniel*, 529 U.S. 473 (2000), and *Miller-El v. Cockrell*, 537 US 322 (2003). The denial does not conflict with the statute, nor with any precedent of this Court.

In 28 U.S.C. §2253 states that there is no right to appeal from the denial of a habeas petition unless a circuit judge or justice issues a certificate of appealability, states that a certificate may issue only if the

applicant has made a substantial showing of the denial of a constitutional right, and states that if a certificate is issued it shall indicate the specific issue or issues it applies to and that the applicant has made a substantial showing of the violation of a constitutional right. 28 U.S.C §2253. Nothing in the statute requires a detailed opinion explaining the denial of a certificate

The same standard of review under 28 U.S.C. §2253 applies to applications for certificates of appealability made to a circuit justice as to a circuit judge. This Court denies such applications with a one sentence order. *See e.g. Grayson v. Thomas*, 10A917 (August 15, 2011); *Milton v. Thaler*, 10A1246 (June 12, 2011) (denying application for certificate of appealability in a capital case); *Patrick v. United States*, 03A1020 (September 3, 2004). This Court is not required by 28 U.S.C. §2253 to enter detailed opinions denying applications for a certificate of appealability, and neither are the circuit courts of appeals reviewing applications under the same statute. As a practical matter, this Court could do little or nothing else, if it were required as a matter of law to produce a detailed opinion discussing every claim put before it by an inmate in an application for a certificate of appealability, and if the

inmates as a group decided to press the point by filing large numbers of applications containing large numbers of claims.

Barefoote v. Estelle, 463 U.S. 880 (1983) was a case in which a certificate of probable cause (the predecessor to a certificate of appealability) *was issued* in a capital case and the United States Court of Appeals for the Fifth Circuit used expedited procedures to attempt to complete the appeal before a scheduled execution date. This Court held that in a case in which a certificate has issued, a circuit court of appeals must give a petitioner the opportunity to address the merits, must decide the merits, and where necessary should issue a stay of execution to prevent the case becoming moot before the merits can be decided. *Id.* at 893-894. *Barefoote* does not stand for the proposition that there must be a detailed opinion explaining the denial of a certificate.

In *Slack v. McDaniel*, 529 U.S. 473 (2000), this Court held that a certificate of appealability can issue on a claim denied on procedural grounds, if both the procedural issue and the underlying constitutional claim have sufficient merit to be debatable by reasonable jurists. The holding of *Slack* is that a claim denied on procedural grounds is not automatically barred from any possibility of appeal solely because the

basis of the decision was a procedural ruling. *Id.* at 483-485. *Slack* does not hold that the denial of a certificate of appealability must be supported by a detailed opinion.

In *Miller-El v. Cockrell*, 537 U.S. 322 (2003), this Court reversed the United States Court of Appeals for the Fifth Circuit because its decision to deny a certificate of appealability was wrong under the standard in 28 U.S.C. §2253, not because its analysis was not sufficiently detailed. The underlying denial of a certificate in *Miller-El* is supported by a detailed opinion. *See Miller-El v. Johnson*, 261 F.3d 445 (5th Cir. 2001). In fact, this Court criticized the United States Court of Appeals for the Fifth Circuit for fully adjudicating the claim on the merits, then working backwards to make a determination on whether a certificate should be granted. *Miller-El*, 537 U.S. at 336-337. This Court pointed out in *Miller-El* that certificates of probable cause were required starting in 1908 because of concern with growing numbers of frivolous appeals in capital cases, and that in 1996 Congress confirmed the necessity and the requirement of "differential treatment for those appeals deserving of attention and those that plainly do not." *Id.* at 337.

Miller–El does not stand for the proposition that the denial of a certificate must be explained in a detailed opinion.

Williams argues that the lack of a detailed opinion shows that the Eighth Circuit failed to conduct a reasoned analysis of Williams' application for a certificate of appealability (Petition at 24). That argument is contrary to the teaching of this Court. *See Harrington v. Richter*, 131 S.Ct. 770, 784 (2011) (rejecting the idea that the denial of a federal claim by a state court requires an opinion, holding that the petitioner still has the burden to show that the decision is wrong even if the decision contains no analysis at all, and noting that the issuance of summary decisions in cases making collateral attacks on convictions allows courts to concentrate their resources where they are most needed). *See also Wood v. Visciotti*, 537 U.S. 19 (2002) (noting the presumption that courts know and follow the law in their decisions).

Williams also alleges that the denial of a certificate of appealability by the United States Court of Appeals without a detailed opinion conflicts with *Murphy v. Ohio*, 263 F.3d 466, 467 (6th Cir. 2001), *Porterfield v. Bell*, 258 F.3d 484, 485-487 (6th Cir 2001), and *Porter v. Gramley*, 112 F.3d 1308, 1311 (7th Cir. 1997) (Petition 24).

Murphy is a decade-old decision in which the United States Court of Appeals for the Sixth Circuit criticized a district court for denying a certificate of appealability in its order denying a habeas petition, without waiting for the petitioner to apply for a certificate and make arguments as to why a certificate should issue on particular claims. The Court of Appeals stated that it wanted the district court to exercise a gate-keeping function by waiting for an application then ruling on it. *Murphy* appears to be a case about internal circuit management, and it was largely rejected by *Castro v. United States*, 310 F.3d 900 (6th Cir. 2000). But *Murphy* does not hold that a circuit court of appeals must write detailed opinions explaining the denial of certificates of appealability.

In *Porterfield* the United States Court of Appeals for the Sixth Circuit rejected a blanket grant of a certificate of appealability on all issues, in a capital case in which the district court distinguished and declined to follow precedent of this Court on what standard must be met to receive a certificate of appealability because the district court felt that "certificates of appealability should not be unduly restricted in capital cases." *Porterfield*, 258 F.3d at 486-487. *Porterfield* does not

stand for the proposition that circuit courts of appeals must write detailed opinions to explain denials of certificates of appealability.

Porter v. Gramley was a case in which a district court issued a certificate of probable cause as opposed to a certificate of appealability, which should have been issued under the then recently effective statute, 28 U.S.C. §2253. *Porter*, 112 F.3d at 1311. The United States Court of Appeals for the Seventh Circuit remanded the case for the limited purpose of determining if a certificate of appealability should issue and if so on what claims. *Id.*

Murphy, *Porterfield,* and *Porter* do not stand for the proposition that a circuit court of appeals must issue a detailed opinion to support its denial of a certificate of appealability, nor do *Barefoote*, *Slack,* and *Miller-El*. In fact no cases stand for that proposition, which would largely defeat the point of requiring certificates of appealability in the first place. There is no conflict with any decision of this Court or with any decision of a circuit court of appeals. Williams' question does not fit in any of the categories in Supreme Court Rule 10 and no writ of certiorari should issue.

3. The Missouri Supreme Court's decision rejecting Williams' *Batson* claim is not contrary to, nor an unreasonable application of, any precedent of this Court, and reasonable jurists cannot disagree on that point.

The district court rejected a claim that the prosecutor had violated *Batson v. Kentucky*, 476 U.S. 79 (1986), by peremptorily striking African-American venire-persons Goodson, Singleton, and Fortson (Appendix A21-A26). The district court found that the prosecutor indicated he struck Goodson because of his appearance, his job as a postal worker, and his views on the death penalty (Appendix A22). Specifically, Goodson wore bookish glasses, jewelry (earrings and a necklace), a goatee, and loud clothing (Appendix A22). The prosecutor also was troubled by Goodson's job in mail processing at the post-office and the prosecutor's experience that mail handlers and mail clerks tend to be very liberal (Appendix A-23). The prosecutor noted that he did not strike another African-American who worked as a mechanic for the Post Office because he did not view mechanics as typical postal workers who, in his view, tend to be liberal (Appendix at A23). The prosecutor also indicated he was uncertain whether Goodson could impose the death

penalty in light of Goodson's answers during voire dire (Appendix at A24).

The prosecutor indicated that he struck Singleton because Singleton had pleaded guilty to wrongful appropriation of government funds, but continued to maintain that he was innocent of the crime (Appendix A24).

The prosecutor indicated he struck Fortson because Fortson testified that he had been fired from his job for fighting with another employee, and other jurors laughed at his explanation for the fight, possibly offending Fortson, and because Fortson crossed his arms during state questioning on death qualification but not defense questioning on the subject (Appendix A25).

The district court found that the trial court found the reasons to be race-neutral and not pre-textual, that this finding was presumed correct, and that Williams had not overcome the presumption (Appendix A-26).

Williams is putting forward a typical run of the mine meritless *Batson* claim. It was entirely reasonable and prudent to strike a person the prosecutor viewed as outlandishly dressed, who works at a job the

prosecutor viewed as indicating liberality, and who gave what the prosecutor viewed as ambiguous answers on whether he could impose the death penalty. It was also reasonable and prudent to strike a person who had pleaded guilty to a crime involving dishonesty but apparently viewed himself as having been wrongly convicted. It was also reasonable and prudent to strike a man with a history of violence towards a co-worker who had apparently been insulted by the other venire-persons laughing at him, and whose body language appeared to favor the defense.

Williams alleges that the denial of certificate of appealability on this claim is inconsistent with *Batson v. Kentucky*, 479 U.S. 79 (1986); *Miller-El v. Cockrell*, 537 US 322 (2003); *Miller v. Dretke*, 545 U.S. 231 (2005); and *Snyder v. Louisiana*, 552 US 472 (2008) (Petition at 35). It is not. Williams has dredged up cases involving egregious *Batson* violations and then alleged a conflict with those cases, even though all the cases Williams cites are very dissimilar to his own case.

Batson was a case in which a prosecutor was allowed to remove every African American from the venire panel without explanation. *Miller-El* was a case in which the prosecution was allowed to shuffle

jury cards twice to remove African Americans from the front of the venire panel being considered, where testimony indicated the prosecutor's office had a formal policy of excluding minorities from jury service through peremptory challenges regardless of factors such as economic status or education, and where a written prosecutor's manual issued by the office trying the case, advocated and explained reasoning for excluding minorities from juries. *Miller-El*, 537 U.S. at 332-333. *Snyder* involved the striking of an African-American student teacher who indicated he could not miss any more teaching time without jeopardizing his entire semester, even though the Dean who supervised the venire-person refuted this allegation before the strike was made, and even though white venire-persons with more serious conflicts were required to serve. *Snyder*, 552 U.S. at 479-484.

Williams also cites *Flowers v. State*, 947 So.2d 910 (Miss. 2007). In *Flowers,* a prosecutor used all fifteen peremptory challenges to strike African-Americans from the jury. *Id.* at 917-918. Some of these strikes made little sense. For instance the prosecutor said he struck African-American venire person Pittman because "she said on the stand she didn't believe he did it." *Id.* 927. In fact, Pittman had answered "No"

when asked if she had formed an opinion as to guilt or innocence, and had stated that she could be impartial, and that she would base her decision solely on the decision presented in court. *Id.* at 928. But the prosecutor misstated her testimony and struck her anyway.

The Court of Appeals' decision in this case does not conflict with *Batson* or *Miller-El* or *Snyder* or *Flowers*. The decision in this case is a run of the mine rejection of a plainly meritless claim. When reviewed, as it must be, under the deferential standard in 28 U.S.C. §2254(d) and (e), reasonable jurists cannot disagree that the claim was properly denied by the district court, and that no certificate of appealabilty should issue. But even if that were not so there would still be no conflict between circuit courts of appeals or with a decision of this Court that would support certiorari review. Williams' question does not fit within any of the categories in Supreme Court Rule 10 and review on certiorari should be denied.

CONCLUSION

The petition for the writ of certiorari should be denied.

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