No. 15-8753

IN THE SUPREME COURT OF THE UNITED STATES

DOYLE LEE HAMM,

Petitioner,

v.

COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS,

Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

REPLY OF PETITIONER

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CAPITAL CASE

QUESTIONS PRESENTED

In this death penalty case, the postconviction court signed the Alabama Attorney General's 89-page "PROPOSED MEMORANDUM OPINION" without making a single modification and without even striking the word "PROPOSED" from the caption of its judicial opinion, one business day after receiving it. The first question presented is:

> 1. Does federal court deference to a judicial opinion adopted under circumstances where there is grave reason to doubt the postconviction court even read it violate AEDPA or the Due Process clause?

Also presented are the following questions:

> 2. Does *Martinez v. Ryan* apply to claims of ineffective assistance of trial counsel where the key evidence supporting the claim was precluded from consideration in state court due to the incompetence of state post-conviction counsel?
>
> 3. In the limited circumstance where a capital defendant has meticulously followed the *Lackawanna v. Coss* procedures to challenge an invalid prior conviction used as an aggravating circumstance, but at every step of the way was procedurally barred, should this Court allow the capital defendant to challenge the prior conviction in his capital post-conviction proceedings under *Johnson v. Mississippi*?
>
> 4. Should this Court grant, vacate and remand this death penalty case in light of its recent decision in *Hurst v. Florida*, where the judge made factual findings unsupported by the jury, who was impermissibly told that Mr. Hamm had been previously charged with "*armed* robbery" when he was in fact only convicted of *simple* robbery?

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REPLY OF PETITIONER

The State of Alabama responds to Mr. Hamm's petition with a litany of minor inaccurate procedural arguments—which Petitioner will address shortly. There is one contention, however, that Mr. Hamm must rebut immediately. The State contends that Mr. "Hamm is not entitled to relief on [the first question presented regarding the sham "PROPOSED MEMORANDUM OPINION"] because he has yet to show that any of the findings of fact or conclusions of law adopted by the circuit court are clearly erroneous." *Brief of Respondent* at 12. That assertion is both factually wrong and displays a misunderstanding of the applicable judicial standard of review in this death penalty case.

The correct standard of review on the first question presented is whether the procedure of the state court's verbatim adoption of the proposed opinion, without even reviewing it, is an *unreasonable* determination of fact or law. The question presented involves the *reasonableness* of state court fact-finding procedures under AEDPA in a context where there is (1) a circuit split on how unreasonable the state process must be to strip it of AEDPA deference and (2) ongoing abuse of sham opinions documented by former Alabama Supreme Court Justices and Presidents of the Alabama State Bar in their *amicus* brief filed in Mr. Hamm's case. Besides *Brumfield v. Cain*, 135 S.Ct. 2269 (2015), the circuits are divided on whether some state court fact-finding procedures are so defective as to call for the withholding of AEDPA deference and instead for the application of *de novo* review. *See Landers v. Warden,* 776 F.3d 1288, 1297 (11th Cir. 2015) ("Nevertheless, we do not foreclose

the possibility that a state court's fact-finding procedure could be so deficient and wholly unreliable as to result in an unreasonable determination of the facts under § 2254(d) and to strip its factual determinations of deference."); *Taylor v. Maddox*, 366 F.3d 992, 1001 (9th Cir. 2004) (describing types of defective procedures that should meet § 2254(d)'s unreasonableness threshold); *Lambert v. Blackwell*, 387 F.3d 210 (3d Cir. 2004) (discussing effect of state procedures on how much deference to apply); *but see, e.g.*, *Saiz v. Ortiz*, 392 F.3d 1166 (10th Cir. 2004) (in reviewing state court factual findings, "our concern is only whether the state court's result, not its rationale, is clearly contrary to or unreasonable under federal law."). Determining the boundaries of how *unreasonable* a judicial process must be before it becomes exempt from deference under § 2254(d) calls for this Court's attention.

In Mr. Hamm's case, however, the findings and conclusions in the sham "PROPOSED MEMORANDUM OPINION" (Vol.11-PCR-29 et seq.) are so clearly erroneous, that Petitioner is happy to address the issue under that incorrect standard anyway. The defective procedure here clearly led to a grossly defective result. The sham judicial opinion is truffled with very specific clearly erroneous findings and conclusions, including:

> 1. "Further, the documents introduced at the Rule 32 hearing were cumulative of the evidence presented at the penalty phase of the trial." PROPOSED MEMORANDUM OPINION at 82.

This finding of fact is clearly erroneous. To give but one example, during the 19-minutes of mitigation testimony, the only real mitigation witness (Mr. Hamm's sister, Ruthie) was asked whether Mr. Hamm had any problems at school, and she

responded, "No, sir, not that I can remember." Vol.7-TR-1226. As a result, there was *no* mitigation evidence introduced regarding Mr. Hamm's education—which would have revealed profound mental health mitigation. The documents introduced at the Rule 32 hearing (Vol.11-PCR-124 through Vol.20-PCR-1881)[1]—which had never been obtained, nor known to exist by trial counsel—include school, medical, and correctional records that were *surely not cumulative*. The school records introduced at the Rule 32 hearing, for instance, document that: (1) Mr. Hamm was determined to be borderline mentally retarded with an IQ of 66 in grade 6 in 1969 (Vol.17-PCR-1295)—*note that no evidence of mental retardation was introduced at Mr. Hamm's trial*; (2) Mr. Hamm was illiterate; in fifth grade, he was tested and found to have a reading level of grade 1.5 (Vol.17-PCR-1300); (3) Mr. Hamm was consistently determined to be in the bottom first percentile in reading and in the second percentile for math: there are at least 10 standardized tests in the school records that establish this, including for instance one in 1971-72, when he was in eighth grade and determined to be in the first percentile in reading (Vol.17-PCR-1299); (4) Mr. Hamm failed entirely a number of school years; he did his first grade three times (Vol.17-PCR-1295); he failed multiple grades but was socially promoted for sixth and eighth grade; Mr. Hamm missed school all the time: in sixth grade, for instance, he had 31 unexplained absences (Vol.17-PCR-1295); throughout his schooling, his self-control consistently worsened, from S (satisfactory) to S-

[1] The PROPOSED MEMORANDUM OPINION explicitly recognizes that these records were properly in evidence. *See* PROPOSED MEMORANDUM OPINION at 27-28.

(satisfactory minus) to Unsatisfactory (Vol.17-PCR-1295); and (5) these facts in the school records introduced at the Rule 32 hearing are confirmed by facts in the correctional records that were also admitted at the Rule 32 hearing, especially documentary evidence from the Department of Corrections in Tennessee showing that Mr. Hamm received an average of only 3.6 on a CAT evaluation indicating academic deficiency, poor self-concept, and impulsivity. (Vol.17-PCR-1368). *None of this information is cumulative because none of it was presented at trial.* Instead, it is strongly mitigating and would have been far better than the misleading comment by Ruthie that her brother had no problems in school.

> 2. "There is no evidence in the record that Hamm did not know what he was doing when he pleaded guilty to these charges [in Tennessee in 1978]." PROPOSED MEMORANDUM OPINION at 33.

This finding is clearly erroneous. The documents introduced at the Rule 32 hearing include an affidavit by Mr. Hamm in which he clearly states, concerning his plea in the Tennessee case in 1978: "I didn't know all the rules about me not having to testify, about my lawyer being able to ask questions of the witnesses, and about me having the right to have my witnesses testify." Vol.13-PCR-552 (Doyle Hamm Affidavit at paragraph 22). Mr. Hamm clearly states in that document: "I didn't even know that I didn't have to testify at trial, and that alone made me want to take a deal because I knew I would have to tell about the marijuana and the fight and so I figured that the jury was going to vote against me for that reason." Vol.13-PCR-552. The documents also clearly reflect Mr. Hamm stating: "If I had known . . . that I could have this whole trial with cross-examination and arguments, I never

would have done what Travis Gobble told me to do (plead guilty). I did not rob anybody and I know now that I could have proven that at trial." Vol.13-PCR-552 (Doyle Hamm Affidavit at paragraph 23). This is also fully corroborated by other documents, including for instance the affidavit of his Tennessee lawyer, Travis Gobble. See especially Vol.13-PCR-576.

> 3. "A review of the records filed by Hamm in the Rule 32 proceeding show that a challenge to these guilty pleas was unsuccessful in 1995 and would have been unsuccessful in 1986. (Rule 32 transcript, Hamm's Exhibit 6)" PROPOSED MEMORANDUM OPINION at 33.

These findings of fact and conclusions of law are clearly erroneous: in 1987, there would have been *no* statute of limitations precluding review of the challenge to the underlying conviction in Tennessee. The three-year statute of limitations—which ultimately precluded review on February 12, 1997 (see Vol.20-PCR-1818, where the Tennessee Court of Criminal Appeals held that "the statute for post-conviction relief had run, Tenn. Code. Ann. §40-30-102 (1990)")—was only passed by the Tennessee legislature in 1986 and took effect on July 1, 1986. See T.C.A. § 40-30-102 (originally enacted as Acts 1986, Ch. 634, § 1). Mr. Hamm would not have been time barred on any post-conviction challenge until July 1, 1989—two years *after* his capital murder conviction in Alabama. In other words, at the time of his penalty phase trial in Alabama, Mr. Hamm's trial counsel *could have* properly challenged the prior conviction with no time bar.

> 4. "Hamm did not produce any new evidence at the Rule 32 hearing that would have been a reason for the jury or the trial court to have changed the sentence." PROPOSED MEMORANDUM OPINION at 82.

This finding is also clearly erroneous. Remarkably, in this case, Mr. Hamm can actually show that he produced new evidence at the Rule 32 hearing that *would* have changed the jury's and the judge's death sentence. At the Rule 32 hearing, trial counsel (Hugh Harris) testified that the reason the jury voted 11-to-1 for death was because Mr. Hamm's two sisters were able to overcome their similar background. Hr. Harris testified:

> "I will never forget that in discussions with the jury after the case was over, them talking about his history … they indicated that they felt like that if Ruthie and her sister could have gone through life without being involved in crime that the boys could have too." Vol.21-PCR-41 (Transcript of Rule 32 Hearing at 41).

The sentencing judge sentenced Mr. Hamm to death for the same reason:

> Ruthie is slightly older than the Defendant and has no record of criminal activity. She is married and is a housewife…. Defendant has another Sister, Linda Hamm Murphree, age 29, who is married to Johnny Murphree and who appears to be a nice person who has never been in trouble…. The fact that the Defendant and all his Brothers have prison records is certainly an indication that their Father was a terrible influence on his children…. *It is to be noted, however, that the two girl children were able to rise above this influence and appear to be good citizens.* (*Hamm v. State*, 913 So. 2d at 487; italics added).

The documents admitted at the Rule 32 hearing, however, tell a different story. The voluminous criminal records (see Vol.15-PCR-978 through Vol.17-PCR-1275) establish that *everyone* in the Hamm family was affected by their violent upbringing, *including the two sisters, Ruthie and Linda.* In those records, there is evidence that Ruthie Murphy was charged, in case # CC-77-132, in Colbert County, Alabama, with *Assault with Intent to Murder* on June 14, 1977, *see* Vol.11-PCR-200, and that Linda was charged on June 16, 1978, with public drunkenness in case #

4,021 in the City of Boonville, Mississippi. *See* Vol.12-PCR-202. This represents "new evidence at the Rule 32 hearing that would have been a reason for the jury or the trial court to have changed the sentence."

As evidenced by these rapid illustrations, the sham "PROPOSED MEMORANDUM OPINION" contains a number of findings that are *clearly erroneous* on their face. But the larger point is that the existence of such blatant errors only confirms that the defective process cannot be trusted on any of the findings, which at times explicitly rest on "credibility determinations." As a result, the opinion's central conclusions of law, regarding the effectiveness of trial counsel at the penalty phase, are themselves both clearly erroneous and unreasonable.

It is important to emphasize that the underlying claims here are strongly supported by precedent such as *Strickland v. Washington*, 466 U.S. 668 (1984) and *Rompilla v. Beard*, 545 U.S. 374 (2005). Mr. Hamm's trial counsel called only two witnesses at his death sentencing—Mr. Hamm's sister and a bailiff—who presented in their combined testimony the equivalent of 25 pages of typed transcript, *see* Vol.7-TR-1214 to 1240. *Their testimony takes 19 minutes to read!* Counsel's representation clearly fell below *Strickland*, given that post-conviction counsel discovered more than 2,000 pages of mental health, medical, educational, family and criminal mitigation records that independently corroborate a psychologist's findings that Doyle Hamm suffers from brain damage and impaired judgment. *See Rompilla*, 545 U.S. at 378. It is also clear that counsel's failure to investigate the prior conviction was ineffective assistance of counsel under *Rompilla, id.* at 384.

The lower court opinions holding counsel adequate rest on an edifice of factual findings made by the Attorney General that no Court can have any confidence in.

Let us now turn to the litany of minor inaccurate procedural arguments that Respondent raised in its brief in opposition.

I. The State's Vehicle Objections to Consideration of Mr. Hamm's First Question Are Without Merit.

Mr. Hamm's argument regarding his first question presented was clearly passed on below by the Eleventh Circuit, in response to points made in Mr. Hamm's brief, and therefore qualifies for review in this Court.

A. The Eleventh Circuit's Express Holding Was That State Court Adoption of an Attorney General Office's Factual Findings Does Not Present Issues Under 28 U.S.C. § 2254(d).

This Court's practice is to review issues when they have *either* (1) been pressed *or* (2) been passed upon in the court below. *United States v. Williams*, 504 U.S. 36, 41 (1992). As *Williams* notes, "this rule operates (as it is phrased) in the disjunctive, permitting review of an issue not pressed so long as it has been passed upon." *Id.* And the Eleventh Circuit unambiguously passed on this issue in the decision below. In full, the holding of the Eleventh Circuit as to the proposed memorandum opinion was that:

> The Rule 32 Court's order, entered on Monday, December 6, 1999, was apparently a verbatim adoption of the state's "Proposed Memorandum Opinion" that was filed on Friday, December 3, 1999. The Rule 32 Court did not even strike the word "Proposed" from the order. Although this procedural shortcut has no bearing on our disposition of Hamm's federal habeas appeal, *see Jones v. GDCP Warden*, 753 F.3d 1171, 1182-83 (11th Cir. 2014), we take this opportunity to once again strongly

> criticize the practice of trial courts' uncritical wholesale adoption of the proposed orders or opinions submitted by a prevailing party. *See, e.g., Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 571-73, 105 S. Ct. 1504, 1510-11, 84 L. Ed. 2d 518 (1985); *Colony Square Co. v. Prudential Ins. Co. of Am. (In re Colony Square Co.)*, 819 F.2d 272, 274-75 (11th Cir. 1987). [*Hamm v. Commissioner*, Pet. App. at 89a.]

The State in its *Brief in Opposition* quotes the Eleventh Circuit's "no bearing" language, but uses "(citation omitted)" at the end of its quote. (Brief in Opposition at 11). It is the omitted citation, however, that makes it crystal clear that the Eleventh Circuit used the "no bearing" language *because its own precedent required AEDPA deference in these circumstances. Jones v. GDCP Warden*, the cited case, stands for the proposition that verbatim adoption does not present issues under AEDPA, and specifically holds that state court factual findings, even those drafted by the Attorney General, are entitled to deference. 753 F.3d 1171, 1182-83 (11th Cir. 2014). The language of the Eleventh Circuit's opinion, by citing *Jones*, can only be interpreted as following that holding. Mr. Hamm also argued in his brief below that the factual findings should receive no deference. *Brief of Appellant* at 17, *Hamm v. Commissioner*, 620 F. App'x 752 (11th Cir. Aug. 3, 2015) (No. 13-14376). The issue was therefore both raised and passed on below, although either would be sufficient for this Court to review the Eleventh Circuit's determination.

To the extent the state argues that Mr. Hamm's failure to obtain a certificate of appealability on this issue prevents this Court from reviewing it, that is unavailing. The Eleventh Circuit passed on this issue below, and it was necessary to the decision on Mr. Hamm's claims. As Mr. Hamm obtained a certificate of

appealability as to his substantive claims, the Eleventh Circuit had jurisdiction to decide this issue, *see Gonzales v. Thaler*, 132 S.Ct. 641 (2012), and this Court has jurisdiction to review on certiorari.

B. Mr. Hamm's Argument Here Is Not Itself a Substantive Claim For Habeas Relief, But Instead Is Primarily a Question of Statutory Interpretation of AEDPA.

Much of the State's argument on the merits appears to treat Mr. Hamm's argument as a substantive claim for relief, suggesting in effect that this Court should apply AEDPA deference to the very question of whether AEDPA deference should apply at all. That, of course, badly misunderstands Mr. Hamm's argument, which goes instead to the question of whether AEDPA deference or *de novo* review should apply in this death penalty case—as a matter of statutory interpretation or constitutional due process.

To the extent the State argues that the judge may have actually reviewed the proposed order and made it his own, that question is better left to briefing on the merits. But if the merits are considered at this stage, Mr. Hamm would point out that Judge Adalberto Jordan of the Eleventh Circuit did not believe "for a second" that the postconviction court made the findings his own. The *amici* former Alabama Supreme Court Justices and Bar Presidents "don't believe it either." *Brief of Amici* at 20. This Court has already recognized in *Jefferson v. Upton*, 560 U.S. 284 (2010), that there are serious questions as to the fairness of proceedings when the factual findings contain internal evidence that the judge did not read them, and when the petitioner had no opportunity to contest the findings before their adoption. The

combination of the short time between proposal and adoption, the lack of opportunity for Mr. Hamm to respond, and the failure to cross out the word "proposed," constitute serious reason to doubt the judge made the findings his own.

II. Mr. Hamm's *Martinez* Claim Involves A Split, Is Meritorious, and Is Important Enough to Warrant This Court's Review

The State's response to Mr. Hamm's second claim is internally inconsistent. The State first argues that Mr. Hamm "did not present any new facts to support his claim in his federal habeas petition." *Brief in Opposition* at 15. Then, the State claims that Dr. Watson's affidavit cannot be considered on federal habeas because it was precluded by the state court. *Brief in Opposition* at 18-20. Both of these cannot be true at the same time. Because the affidavit and its mental health evidence were precluded from state review, and were not considered there, Mr. Hamm's attempt to have them considered in his federal habeas petition is the functional equivalent of introducing new facts on federal habeas. As a result, the State's attempted distinctions of *Vasquez v. Hillery*, 474 U.S. 254 (1986) and *Dickens v. Ryan*, 740 F.3d 1302 (9th Cir. 2014) (en banc) do not work. In fact, this case is factually very similar to *Dickens*, and the Eleventh Circuit's reasoning below is contrary to *Vasquez*. This Court should take this case to clarify how the principles of *Vasquez* apply to the new context of *Martinez v. Ryan*, 132 S.Ct. 1309 (2012). Moreover, this problem is both important and likely to recur, as two Justices in *Gallow v. Cooper*, 133 S.Ct. 2730 (2013), have already noted. Guidance from this Court on how to handle this situation is necessary.

A. The Eleventh Circuit's Opinion Is Contrary To The Considered Holding of the En Banc Ninth Circuit, and This Court's Reasoning In *Vasquez*

The Eleventh Circuit held that unfavorable evidentiary rulings do not matter for purposes of *Martinez*, and that Mr. Hamm's ineffective assistance of counsel claim was properly raised and not procedurally defaulted. The State agrees that this holding is properly before the Court. Therefore, the sole question is whether—given that the evidence Mr. Hamm attempted to introduce on federal habeas differed substantially from the evidence *actually considered* by the state courts—his claim is sufficiently precluded so as to call for the application of the *Martinez* exception. On that question, *Dickens v. Ryan* is not at all distinguishable.

The State attempts to distinguish *Dickens* by claiming that the petitioner there added new allegations, while Mr. Hamm presented no new facts. But that is essentially wrong on both counts. While it is true that the petitioner in *Dickens* did add some new factual allegations, the primary factor that the *Dickens* court looked to was the addition of new evidence—a mental health examination—to actually support the claim. Specifically, *Dickens* states:

> We conclude that the new allegations and evidence Dickens presented to the federal district court fundamentally altered Dickens's previously exhausted IAC claim. **Indeed, the new evidence creates a mitigation case that bears little resemblance to the naked *Strickland* claim raised before the state courts.** There, Dickens did not identify any specific conditions that sentencing counsel's allegedly deficient performance failed to uncover. He only generally alleged that sentencing counsel did not effectively evaluate whether Dickens "suffer[ed] from any medical or mental impairment." **This new evidence of specific conditions (like FAS and organic brain damage) clearly places Dickens's *Strickland* claim in a**

> **"significantly different" and "substantially improved" evidentiary posture.** As such, the Arizona courts did not have a fair opportunity to evaluate Dickens's altered IAC claim. Therefore, the district court correctly determined that Dickens's newly enhanced *Strickland* claim is procedurally barred. [740 F.3d at 1319 (citations omitted, alterations in original, bold added)].

The key to the en banc Ninth Circuit's holding was that the *new evidence* put the claim in a substantially stronger *evidentiary* posture. Mr. Hamm's case is essentially identical: Dr. Watson's affidavit was the equivalent of new evidence on federal habeas because the state court explicitly refused to consider it. In his affidavit, Dr. Watson established that Mr. Hamm suffers from the following, none of which was considered by the state court: (1) brain dysfunction, most prominently with "structural damage to the left hemisphere of the brain" (Affidavit of Dale Watson, p. 8; Vol.11-PCR-165); (2) borderline mental retardation, with an IQ of 74, verbal intellectual abilities at the fourth percentile, and "borderline range of measured intellectual ability overall" (Vol.11-PCR-165); (3) illiteracy, testing in the first percentile for reading, spelling, and arithmetic (Vol.11-PCR-166); (4) brain damage (Vol.11-PCR-168); and (5) a significant history of head injuries (Vol.11-PCR-163). For the purposes of federal habeas, this evidence is new. And Dr. Watson's affidavit does fundamentally alter the claim that went to the state courts: instead of naked allegations of brain damage in Rule 32, the allegations at the federal level are now proven and create the missing link between the difficult upbringing Mr. Hamm had, the abuse (including physical violence) that he endured, and the impaired judgment that contributed to his actions that fateful night. This is

exactly the situation where *Martinez* allows for relief.

Similarly, the State's attempted distinction of *Vasquez* fails. Mr. Hamm's ineffective Rule 32 attorney did in fact fail to properly introduce key evidence, but on federal habeas Mr. Hamm has attempted to introduce it, and therefore has brought in new facts that must be analyzed under the *Vasquez* rubric, or another that this Court wishes to adopt. In his Petition for Certiorari, Mr. Hamm suggested that the Court should adopt the rubric of *Strickland* prejudice to analyze these sorts of claims. Regardless, the Eleventh Circuit's holding is incorrect, and this case is the right vehicle to clarify the law in this area.

B. Many *Martinez* Claims Involve New Evidence Supporting an Old Claim, Making The Question Both Important and Recurring

The problem Mr. Hamm identified is important and recurring, and warrants review by this Court. Besides *Dickens* and this case, similar problems have emerged in *Gallow v. Cooper*, 133 S.Ct. 2730 (2013); *Rogers v. McDaniel*, 793 F.3d 1036 (9th Cir. 2015); *Gray v. Zook*, 806 F.3d 783 (4th Cir. 2015); *Escamilla v. Stephens*, 749 F.3d 380 (5th Cir. 2014); *Wessinger v. Cain*, No. 04-637-JJB-SCR, 2015 WL 4527245 (M.D. La. July 27, 2015), *appeal docketed*, No. 15-70027 (5th Cir. 2015); *Witter v. Baker*, No. 2:01-cv-1034-RCJ-CWH, 2015 WL 2082894 (D. Nev. May 4, 2015); and *Row v. Beauclair*, No. 1:98-cv-00240-BLW, 2015 WL 1481416 (D. Idaho Mar. 31, 2015), among others. This should not be surprising. It is probably the rare case when a postconviction claimant does not attempt to bring an ineffective assistance of counsel claim; the more common *Martinez* situation is where, as here, the claim was evidentiarily hindered by incompetent postconviction counsel.

III. This Court Has Begun Granting, Vacating, and Remanding Alabama Death Penalty Cases For Reconsideration in Light of *Hurst v. Florida*, Which Places The Continued Validity of the Alabama Death Penalty In Serious Doubt

Since Mr. Hamm's Petition for Certiorari was filed, this Court has issued GVR orders in three Alabama death penalty cases for reconsideration in light of *Hurst v. Florida*, 136 S.Ct. 616 (2015). *See Johnson v. Alabama*, No. 15-7901 (U.S. May 2, 2016); *Wimbley v. Alabama*, No. 15-7939 (U.S. May 31, 2016); *Kirksey v. Alabama*, No. 15-7912 (U.S. June 6, 2016). The State's confidence that the Alabama Death Penalty is constitutional therefore seems not to be shared by this Court. And as noted in Mr. Hamm's Petition for Certiorari, Mr. Hamm may have a claim under Alabama law if the Alabama Death Penalty is declared to be unconstitutional. These orders present further reason to consider holding Mr. Hamm's petition in abeyance until the validity of the Alabama Death Penalty is finally determined.

CONCLUSION

For the foregoing reasons, Mr. Doyle Hamm prays that this Court grant a writ of certiorari to the United States Court of Appeals for the Eleventh Circuit.

Respectfully submitted,

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