No. _____

In the Supreme Court of the United States

DARRYL SCOTT STINSKI,

Applicant,

v.

WARDEN, GEORGIA DIAGNOSTIC AND CLASSIFICATION PRISON

APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI

To the Honorable Clarence Thomas, Associate Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Eleventh Circuit:

1. Pursuant to Supreme Court Rule 13.5, Applicant Darryl Scott Stinski, respectfully requests a 60-day extension of time, to and including Friday, October 4, 2024, within which to file a petition for a writ of certiorari. The United States Court of Appeals for the Eleventh Circuit issued its opinion on December 20, 2023. A copy of the opinion is attached (Exhibit A). The Eleventh Circuit denied Applicant's timely petition for rehearing en banc on May 7, 2024. A copy of the order is attached (Exhibit B). This Court's jurisdiction would be invoked under 28 U.S.C. § 1254(1).

2. Absent an extension, a petition for a writ of certiorari would be due on Monday, August 5, 2024. This application is being filed more than 10 days in advance of that date, and no prior application has been made in this case.

3. This case concerns an important federal habeas issue: Whether, where a habeas petitioner challenges state court factual findings "based entirely on the state record," a federal court reviews those findings for their reasonableness solely under 28 U.S.C. § 2254(d)(2).

4. Mr. Stinski made a powerful case at an evidentiary hearing on state-postconviction review in Georgia that his attorney in his capital case provided ineffective assistance of counsel at the sentencing phase of his capital trial—potentially resulting in a sentence of death instead of life without parole. *See* Petition for Writ of Habeas Corpus at 4–5, *Stinski v. Sellers*, No. 4:18-cv-66 (S.D. Ga. Mar. 26, 2018), ECF No. 1. Crucial mitigating evidence was simply never presented to the jury that was centrally relevant to the question of whether Mr. Stinski should die for his crimes. *See id.* The Georgia post-conviction court held, based on an unreasonable determination of the facts in light of the evidence presented, that counsel's failures did not rise to the level of constitutional ineffectiveness warranting a new sentencing phase in which the extraordinary mitigating evidence that his ineffective counsel never developed could be presented. *Stinski v. Chatman*, No. 2011-V-942, at 89 (Ga. Super. Ct. Jan. 15, 2017) (Final Order dated Jan. 15, 2017, and filed Jan. 20, 2017). The Georgia appellate courts affirmed that decision. *See Stinski v. Chatman*, No. S17E1093 (Ga. Feb. 5, 2018).

5. Mr. Stinski sought habeas corpus relief in the Southern District of Georgia arguing that the Georgia post-conviction court's denial of post-conviction relief was unreasonable in light of the evidence presented. Petition for Writ of Habeas Corpus, *Stinski*, No. 4:18-cv-66 (S.D. Ga. Mar. 26, 2018). But the federal district court, trying to

make sense of AEDPA's opaque provisions, and over Mr. Stinski's vigorous objection, applied *two layers* of deference to the state court's factual determinations. *See Stinski v. Ford*, No. 4:18-cv-66, 2021 WL 5921386 (S.D. Ga. Dec. 15, 2021), ECF No. 72. The district court first applied 28 U.S.C. § 2254(e)(1), which requires federal district courts in certain habeas corpus proceedings to "presume[]" that determinations of factual issues made by state courts are "correct" and imposes on habeas applicants the "burden of rebutting the presumption of correctness by clear and convincing evidence." 28 U.S.C. § 2254(e)(1); *see Stinski*, 2021 WL 5921386, at *8. The district court next *also* applied 28 U.S.C. § 2254(d)(2), which requires the district court to defer to the decision of a state post-conviction court unless its decision "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d)(2); *see Stinski*, 2021 WL 5921386, at *8.

6. Given the exceptional double deference the district court felt constrained to apply, the district court denied Mr. Stinski habeas relief. *Stinski*, 2021 WL 5921386, at *36. But, recognizing that the application of that two-layer standard to Mr. Stinski's case was outcome-determinative here, the district court granted Mr. Stinski a certificate of appealability "on the issue of whether the Court properly applied Sections 2254(d)(2) and 2254(e)(1) of the AEDPA in the Habeas Order when evaluating Petitioner's ineffective assistance of counsel claim." *Stinski v. Ford*, No. 4:18-cv-66, at 1–2 (S.D. Ga. July 28, 2022), ECF No. 75.

7. On appeal, Mr. Stinski argued to the Eleventh Circuit that § 2254(e)(1) of the AEDPA has no role to play in cases where a habeas applicant challenges a state court's

determination based entirely on the state record. Petitioner-Appellant's Opening Brief at 24, 32-33, *Stinski v. Warden*, No. 22-12898 (11th Cir. Nov. 23, 2022), ECF No. 15. But the Eleventh Circuit panel, constrained by recent, binding, en banc Circuit precedent, *Pye v. Warden*, 50 F.4th 1025, 1034 (11th Cir. 2022) (en banc), affirmed in an unpublished opinion. Slip op. at 15-19. *Pye* held that in every case where a petitioner challenges a state court decision under § 2254(d)(2), the deference under § 2254(e)(1) must be applied as well—*double*-insulating state court factual determinations from federal habeas review. Slip op. at 17-18 (citing *Pye*, 50 F.4th at 1035).

8. The question whether § 2254(e)(1) applies in habeas cases based entirely on the state record is a nationally important question that has vexed the federal courts and that this Court has (at least) twice granted certiorari to resolve but has twice escaped this Court's resolution. *See Wood v. Allen*, 558 U.S. 290, 293 (2010); *Rice v. Collins*, 546 U.S. 333, 339 (2006).

9. Although AEDPA is now almost 30 years old, "commentators[] and practitioners all continue to struggle to make sense of [these two] provisions dealing with questions of fact in federal habeas proceedings." Justin F. Marceau, *Deference and Doubt: The Interaction of AEDPA § 2254(d)(2) and (e)(1)*, 82 Tul. L. Rev. 385, 387 (2007); *see Teti v. Bender,* 507 F.3d 50, 57 (1st Cir. 2007) ("The relationship between § 2254(d)(2) and § 2254(e)(1), both of which apply to state court fact determinations, has caused some confusion."), *cert. denied*, 128 S. Ct. 1719 (2008); *Lambert v. Blackwell,* 387 F.3d 210, 235 (3d Cir. 2004) ("Despite the Supreme Court's pronouncements in *Miller-El* and *Wiggins*, a comprehensive interpretation of AEDPA's factual review scheme has yet to emerge from

the federal courts."), *cert. denied*, 544 U.S. 1063 (2005); 17B Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure: Jurisdiction* § 4265.2 (3d ed. 2024) ("It is not clear how this invitation to decide whether the state fact determinations were reasonable will fit with the presumption that the state fact determinations are correct.").

10. In *Taylor v. Maddox*, the Ninth Circuit held that where a habeas petitioner challenges state court factual findings "based entirely on the state record," a federal court only reviews those findings for their reasonableness under § 2254(d)(2). 366 F.3d 992, 999 (9th Cir. 2004) (Kozinski, J.), *cert. denied*, 543 U.S. 1038 (2004). Writing for that court, Judge Kozinski explained that the additional requirements of 2254(e)(1) do not apply in that situation, because the "challenge … is governed by the deference implicit in the 'unreasonable determination' standard of section 2254(d)(2)." *Id.* at 1000. If, however, a habeas petitioner challenges state court factual findings based in part on evidence that was extrinsic to the state court record, 2254(e)(1)'s requirements "come into play once the state court's fact-findings survive any intrinsic challenge" under 2254(d)(2). *Id.*

11. The Third Circuit likewise has held that "the language of § 2254(d)(2) and § 2254(e)(1) implies an important distinction: § 2254(d)(2)'s reasonableness determination turns on a *consideration of the totality of the 'evidence presented in the state-court proceeding,'* while § 2254(e)(1) contemplates a challenge to the state court's individual factual determinations, including a challenge based wholly or in part on evidence outside the state trial record." *Lambert*, 387 F.3d at 235 (emphasis added).

12. Mr. Stinski respectfully requests an extension of time to file a petition for a writ of certiorari. A 60-day extension would allow counsel sufficient time to fully examine

the decision's consequences, research and analyze the issues presented, and prepare the petition for filing. Additionally, the undersigned counsel have a number of other pending matters that will interfere with counsel's ability to file the petition on or before August 5, 2024.

Wherefore, Mr. Stinski respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari to and including Friday, October 4, 2024.

Dated: June 13, 2024

Respectfully submitted,

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