

****THIS IS A CAPITAL CASE****
****EXECUTION SET FOR DECEMBER 3, 2024, AT 6:00 PM CENTRAL****

No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

Christopher Collings, Petitioner,

v.

David Vandergriff,
Warden, Potosi Correctional Center, Respondent.

On Petition for Writ of Certiorari
to the Supreme Court of Missouri

APPLICATION FOR STAY OF EXECUTION

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APPLICATION FOR STAY OF EXECUTION

To Associate Justice Brett M. Kavanaugh and the Justices of the Court, Petitioner Christopher Collings respectfully requests this Court to issue a stay of his execution, which is currently scheduled for December 3, 2024.

PROCEDURAL BACKGROUND

The State built its death penalty case against Mr. Collings on the credibility of its primary law enforcement witness, Wheaton Police Chief Clinton Clark, regarding incriminating statements Clark obtained from Collings. Clark's testimony was the only evidence suggesting—contrary to all other available evidence—that Collings received a *Miranda* warning prior to his interrogation by Clark, and the statements Clark obtained directly contradicted the victim's stepfather's confession admitting to being the only person who committed the fatal act. However, although Clark had four prior criminal convictions for AWOL, the State did not disclose Clark's convictions during Collings's trial, direct appeal, or initial-review post-conviction proceedings. Instead, the State did not disclose them until *after* the conclusion of these proceedings.

The State's failure to disclose Chief Clark's prior criminal convictions prevented Collings's trial counsel from using the convictions to impeach Clark at the suppression hearing and trial proceedings, including that the convictions may have disqualified Clark from serving as a police officer at all. Similarly, the State's failure to disclose prevented post-conviction counsel from investigating the relationship of Clark's convictions to his service as a police officer as well as any due

process claims under *Brady v. Maryland*, 373 U.S. 83 (1963), stemming from the State’s failure to disclose the convictions.

Once the State finally disclosed the convictions, Collings sought federal habeas review in federal district courts. He also sought permission to return to state court during the pendency of his federal habeas action to present his *Brady* claims, but the State opposed this request, and the district court sided with the State. *Collings v. Griffith*, No. 18-CV-08000-MDH, 2022 WL 4677562, at *1 n.1 (W.D. Mo. Sept. 30, 2022). He then sought appellate review of both the district court’s denial of this request and the denial of habeas relief. *Collings v. Griffith*, No. 23-1064, 2023 WL 9231488, at *1 (8th Cir. June 28, 2023); *Collings v. Vandergriff*, 144 S. Ct. 1123 (2024).

After these appellate proceedings concluded, Collings timely sought state habeas relief. App. 4a. This action required Collings to establish “cause and prejudice.” *State ex rel. Engel v. Dormire*, 304 S.W.3d 120, 125 (Mo. banc 2010). “Cause is established where there is a factor at issue external to the defense or beyond its responsibilities.” *Engel*, 304 S.W.3d at 125-26 (citing *Strickler v. Greene*, 527 U.S. 263, 283 n.24 (1999)). “[Prejudice is identical to] that necessary to warrant relief under *Brady*. *Id.* at 126. Accordingly, “[c]ause and prejudice parallel two of the three components of the alleged *Brady* violation itself.” *Strickler*, 527 U.S. at 282; *see also Banks v. Dretke*, 540 U.S. 668, 691 (2004) (recognizing that a petitioner shows cause when the reason for his failure to develop facts in state-court proceedings was the State's suppression of the relevant evidence and prejudice

when the suppressed evidence is material under *Brady*). Once the state habeas court denied relief on these federal questions, App. 1a-3a, Collings timely requested this Court's review.

REASONS FOR GRANTING THE STAY

A stay of execution is warranted where there is a "presence of substantial grounds upon which relief might be granted." *See Barefoot v. Estelle*, 463 U.S. 880, 895 (1983). To decide whether a stay is warranted, the federal courts consider the petitioner's likelihood of success on the merits, the relative harm to the parties, and the extent to which the prisoner has delayed his or her claims. *See Hill v. McDonough*, 547 U.S. 573, 584 (2006); *Nelson v. Campbell*, 541 U.S. 637, 649-50 (2004). In certiorari proceedings, a petitioner must show a reasonable probability that four members of this Court would consider the underlying case worthy of the grant of certiorari, that there is a significant likelihood of reversal of the lower court's decision, and a likelihood of irreparable harm absent a grant of certiorari. *See Barefoot*, 463 U.S. at 895.

Mr. Collings unquestionably will suffer irreparable harm absent this Court entering a stay of execution. *See Wainwright v. Booker*, 473 U.S. 935, 935 n.1 (1985) (Powell, J., concurring) (irreparable harm is "necessarily present in capital cases"). In contrast, the State will not suffer any tangible harm. Although the State has a recognized interest in the enforcement of criminal judgments, it "also has an interest in its punishments being carried out in accordance with the Constitution of the United States." *Harris v. Vasquez*, 901 F.2d 724, 727 (9th Cir. 1990). This Court

recently granted certiorari in *Glossip v. Oklahoma*, 144 S. Ct. 691, 692 (2024) (Mem.), which, as in this case, involves due process concerns arising out the State’s failure to disclose the prior convictions of its star witness until after the conclusion of the ordinary course of review in state court. This Court’s grant of a stay in light of *Glossip* serves the State’s interest in ensuring the constitutionality of Collings’s sentence. Furthermore, to the extent the State claims any harm due to the timing of this request, the State—as in *Glossip*—has self-inflicted such harm. Had the State timely disclosed the impeachment material, as it had a constitutional duty to do, the grounds for the claims before this Court would not exist.

The remaining stay considerations also weigh heavily in favor of a stay. This application addresses each in turn.

A. Likely Success on the Merits

A reasonable probability exists that at least four members of this Court would consider the underlying case worthy of a certiorari grant. The questions presented in *Glossip*, on which at least four members of this Court deemed worthy of this Court’s review, are the same as those presented in this case.

In both *Glossip* and this case, the State did not disclose impeachment evidence of the State’s “star witness” until after the conclusion of Glossip’s initial state-court trial, direct appeal, and post-conviction proceedings. Pet. Brief at 8, *Glossip v. Oklahoma*, No. 22-7466. Thus, both cases present the same question of whether the State’s failure to disclose the impeachment evidence constitutes cause for the petitioner not having presented his *Brady* claims earlier.

Similarly, in both *Glossip* and this case, the prosecution's case hinged on the credibility of its star witness, but the state court made its prejudice finding in isolation without holding any kind of evidentiary hearing or considering the entirety of the suppressed evidence. Pet. Brief at 36-38, *Glossip v. Oklahoma*, No. 22-7466. Both cases thus present the same question of whether a court reviewing a *Brady* claim must consider the entirety of the suppressed evidence.

Due to the similarities of this case and *Glossip*, a reasonable probability exists that at least four members of this Court likewise would find that the questions presented in this case warrant this Court's review. Furthermore, because the lower court decision in this case conflicts with this Court's precedent, there is a significant likelihood of reversal of the lower court's decision.

On the question of cause, this Court has held that "defense counsel has no 'procedural obligation to assert constitutional error on the basis of mere suspicion that some prosecutorial misstep may have occurred.'" *Banks*, 540 U.S. at 696 (2004) (quoting *Strickler*, 527 U.S. at 286-87). Instead, the "cause" inquiry "turns on events or circumstances 'external to the defense.'" *Id.* (citing *Amadeo v. Zant*, 486 U.S. 214, 222 (1988) (quoting *Murray v. Carrier*, 477 U.S. 478, 488 (1986))). These circumstances include the State's suppression of relevant evidence. *Id.* at 691.

Here, as in *Banks*, the prosecution withheld impeachment information from the defense, (Supp. App. 1sa-20sa), asserted that it had provided all impeachment information concerning Clark (App. 112a-114a), and later confirmed that it had disclosed all relevant *Brady* information, (Trial Supp. L.F. Vol. 2, p. 235). Under

Banks, a defendant is entitled to rely on the prosecutor’s duty to be truthful, not to “stoop to improper litigation conduct to advance prospects for gaining a conviction,” and properly discharge prosecutorial duties regarding discovery. 540 U.S. at 694. When it later comes to light that the prosecutor did not fulfill this duty, the defendant has established cause for not presenting the *Brady* material earlier. *Id.* The decision below conflicts with this precedent.

On the prejudice question, this Court has held that assessing prejudice must consider the entirety of the suppressed evidence. *Kyles v. Whitley*, 514 U.S. 419, 441 (1995). Thus, any impeachment evidence is relevant to the prejudice inquiry. *See id.*; *Strickler*, 527 U.S. at 281-82. Suppressed impeachment evidence of a law enforcement witness particularly undermines confidence in a defendant’s conviction or sentence when the State’s case was “built on the jury crediting [the State’s witness’s] account rather than [the defense account.]” *Wearry v. Cain*, 577 U.S. 385, 392-93 (2016).

Here, the statements Clark obtained and Clark’s testimony about them unquestionably were critical to the State’s case at both phases of Collings’s trial. For example, the *only* evidence the State offered at the suppression hearing to support Clark’s timing of the *Miranda* warnings was Clark’s testimony itself. All the other available evidence regarding the timing of the *Miranda* warnings contradicted Clark’s testimony.

Similarly, at sentencing, given that David Spears—the victim’s own stepfather—confessed to raping and killing the victim, the jury had reason to

question whether the police tactics and investigation implicating Collings were reliable. App. 42a; Trial Tr. Vol. 20, p. 6489. If Spears's confession admitting that he was the sole person who committed the fatal act was true, then Collings's confession to being the sole person committing the fatal act could not also have been true.

Perry v. Rushen, 713 F.2d 1447, 1452 (9th Cir. 1983) (concluding that "third party confessions, if believed, would *necessarily* exonerate the defendant of the primary offense."); *see also Chambers v. Mississippi*, 410 U.S. 284, 302 (1973) (finding that a third-party confession was "critical evidence" on the question of reasonable doubt).

Under this Court's precedent, this Court should have considered Clark's prior convictions in the prejudice inquiry instead of dismissing them as irrelevant due to their age. And given that these convictions should have rendered Clark ineligible to be a police officer in the first place, *see* R.S.Mo. § 590.080.2(2), the lower court also should have considered Clark's law enforcement application records. These records should show that Clark either (1) failed to disclose his convictions on his law enforcement application, which would have been a specific act of dishonesty relevant to his credibility, or (2) special accommodations were made to allow Clark to serve as a police officer due to his prior criminal history.¹ The court's failure to consider these records and the prior convictions themselves conflicts with this Court's precedent.

¹ Collings does not know for certain whether Clark disclosed these convictions or any others on his application because the State has never disclosed this information to Collings.

B. Diligence

Mr. Collings has not been dilatory in bringing the claims at issue. Once the State finally disclosed Clark's prior convictions during federal habeas proceedings, Collings sought federal habeas relief. Soon after this Court issued its decision in *Shinn v. Ramirez*, 596 U.S. 366 (2022), Collings sought a stay of the habeas proceedings in the federal district court under *Rhines v. Weber*, 544 U.S. 269 (2005), so he could return to state court to comply with the new obligations of *Ramirez*. The State opposed the motion.² After the district court denied that motion and the petition for habeas relief, Collings timely sought appellate review in both the Eighth Circuit and this Court. Soon after this Court denied relief, Collings timely sought state habeas relief in the Missouri Supreme Court.

This Court should not credit any suggestion that Collings has been dilatory. To the extent that these *Brady* claims should have been presented to the Missouri state courts sooner, the State only has itself to blame. It is beyond question that during the trial proceedings in this case, the State had the duty to disclose Clark's convictions and any other impeachment evidence. *See, e.g., Strickler*, 527 U.S. at 280 (finding that the prosecution's duty to disclose encompasses impeachment evidence); *United States v. Bagley*, 473 U.S. 667, 676 (1985) ("Impeachment

² The State further contended that, although the State had never previously disclosed Clark's convictions, because the suppressed evidence was not a part of the prior state court record, the district court could not consider it. App. 123a. Thus, not only did the State withhold the material throughout the ordinary course of review in state court, once the State finally disclosed it, it actively sought to prevent earlier review of the impeachment material in both the federal and state courts.

evidence . . . falls within the *Brady* rule.”); *Giglio v. United States*, 405 U.S. 150, 153-54 (1972) (clarifying that *Brady* applies to evidence undermining witness credibility). Had the State timely disclosed all material impeaching Clark, as it had a duty to do, Collings would have used it at trial and would not have had the grounds for his pending *Brady* claims. Moreover, given the importance of Clark’s testimony to the case, had the State timely disclosed Clark’s impeachment material, a reasonable probability exists that Collings would not even have received a death sentence. Thus, this Court should attribute any delay in the resolution of this matter to the State, not Mr. Collings.

CONCLUSION

Especially given this Court’s pending case in *Glossip*, this Court should enter a stay to allow full and fair litigation of Mr. Collings’s petition for writ of certiorari.

Respectfully submitted,



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