No. 16-395

In the Supreme Court of the United States

PERVIS TYRONE PAYNE,
Petitioner,

v.

TENNESSEE,
Respondent.

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

RESPONDENT'S BRIEF IN OPPOSITION

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CAPITAL CASE

QUESTION PRESENTED

Must this Court's decision in *Hall v. Florida* be applied on collateral review?

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The opinion of the Supreme Court of Tennessee affirming the denial of error coram nobis relief is reported at *Payne v. State*, 493 S.W.3d 478 (Tenn. 2016). (Pet. App. at 1a.) The order denying the petition for rehearing is unreported. (Pet. App. at 88a.) The decisions of the trial court and the Tennessee Court of Criminal Appeals denying relief are unreported, but the latter is available at *Payne v. State*, No. W2013-01248-CCA-R3-PD, 2014 Tenn. Crim. App. LEXIS 1005 (Oct. 30, 2014). (Pet. App. at 81a, 32a.)

JURISDICTIONAL STATEMENT

The Supreme Court of Tennessee entered judgment on April 7, 2016, and denied a timely petition for rehearing on April 29, 2016. (Pet. App. at 1a, 88a.) Justice Kagan extended the time for filing a petition for writ of certiorari until September 26, 2016, and the petition was filed on that date. The petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1257. (Pet. App. at 3.)

CONSTITUTIONAL PROVISIONS AND STATUTES

The Eighth Amendment to the United States Constitution prohibits the infliction of "cruel and unusual punishments . . . ."

STATEMENT OF THE CASE

In 1988, a Shelby County jury convicted the petitioner, Pervis Tyrone Payne, of two counts of first-degree murder for killing Charisse Christopher and her two-year-old daughter, Lacie. *State v. Payne*, 791

S.W.2d 10, 11 (Tenn. 1990). The jury also convicted the petitioner of assault with intent to commit first-degree murder of Christopher's three-year-old son, Nicholas. *Id*. The petitioner received a capital sentence for each of the murders and a 30-year sentence for the assault. *Id*.

During sentencing proceedings, the petitioner presented testimony from Dr. John T. Hutson, a clinical psychologist. *Payne v. State*, No. 02C01-9703-CR-00131, 1998 Tenn. Crim. App. LEXIS 68, at *11 (Jan. 15, 1998), *perm. app. denied* (Tenn. June 8, 1998). Dr. Hutson testified that the petitioner had "a full scale IQ of 78 with a variance of plus or minus three, with a verbal IQ of 78, plus or minus 3, and a performance IQ of 82, plus or minus 4," which placed him "approximately one standard deviation below the norm of average intelligence." *Id*. at *42. The Supreme Court of Tennessee and this Court affirmed the petitioner's convictions and sentences on direct appeal. *Payne*, 791 S.W.2d at 21; *Payne v. Tennessee*, 501 U.S. 808, 830 (1991).

In 1992, the petitioner filed a petition for post-conviction relief and a petition for a writ of error coram nobis. *Payne*, 1998 Tenn. Crim. App. LEXIS 68, at *2-3 n.3. He argued, among other things, that trial counsel was ineffective for failing to investigate and present certain mitigation evidence during sentencing. *Id*. at *28. At the post-conviction hearing, the petitioner presented testimony from Dr. George Baroff, another clinical psychologist. *Id*. at *47. Dr. Baroff had examined the petitioner and "confirmed Dr. Hutson's evaluation of the [petitioner], *i.e.*, an IQ of 78, which placed the [petitioner] in a category of borderline

intelligence." *Id*. The trial court denied the petition for post-conviction relief and the petition for a writ of error coram nobis. *Id*. at *2. In a consolidated appeal, the Tennessee Court of Criminal Appeals affirmed both denials. *Id*. at *59. The Supreme Court of Tennessee denied further review.

In 1998, the petitioner filed a petition for a writ of habeas corpus in federal district court, which was denied. *Payne v. Bell,* 418 F.3d 644, 652 (6th Cir. 2005), *cert. denied*, 548 U.S. 908 (2006). The United States Court of Appeals for the Sixth Circuit affirmed the denial. *Id*. at 646.

In 2006, the petitioner filed a motion to compel testing of various physical evidence under Tennessee's Post-Conviction DNA Analysis Act of 2001. *Payne v. State*, No. W2007-01096-CCA-R3-PD, 2007 Tenn. Crim. App. LEXIS 927, at *2 (Dec. 5, 2007). The trial court denied the motion, and the Court of Criminal Appeals affirmed, noting that "[t]his case has been the subject of extensive appellate review." *Id*. The Supreme Court of Tennessee denied permission to appeal. *Payne v. State*, No. W2007-01096-SC-R11-PD, 2008 Tenn. LEXIS 293 (Apr. 14, 2008).

In 2012, the petitioner filed a motion to reopen post-conviction proceedings under Tenn. Code Ann. § 40-30-117(a)(1), (2). (Pet. App. at 83a.) He argued that *Coleman v. State*, 341 S.W.3d 221 (Tenn. 2011),[1]

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[1] *Coleman* held that "experts [formulating an opinion regarding a defendant's I.Q.] may bring to bear and utilize reliable practices, methods, standards, and data that are relevant in their particular fields," including consideration of "standard error of measurement, the Flynn Effect, and the practice effect." *Id*. at 242 n.55.

established a new and retroactive constitutional right that was not recognized at the time of his trial.[2] (Pet. App. at 83a-84a.) Later that year, the petitioner filed an "Amended Petition For Relief From Death Sentences," requesting relief under the coram nobis statute, Tenn. Code Ann. § 40-26-105, and the intellectual disability statute, Tenn. Code Ann. § 39-13-203. (Pet. App. at 83a-84a.) He argued that a report prepared by Dr. Daniel Reschly, Ph.D, was new and previously unavailable scientific evidence that he is intellectually disabled[3] and, thus, actually innocent of capital murder and not subject to a capital sentence. (Pet. App. at 84a.)

According to Dr. Reschly's report, the petitioner took the Wechsler Adult Intelligence Scale-Revised (WAIS-R) in 1987 and achieved a full-scale I.Q. score of 78. (Pet. App. at 94a.) He took the same test again in 1996 and achieved a full-scale I.Q. score of 78. (Pet. App. at 94a.) In 2010, he took the fourth edition of the Wechsler Adult Intelligence Scale (WAIS-IV) and achieved a full-scale I.Q. score of 74. (Pet. App. at 94a.)

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[2] This claim targeted one of the three narrow avenues for reopening post-conviction proceedings under Tenn. Code Ann. § 40-30-117(a)(1). Tennessee's coram nobis statute, under which this application arises, has no provision for considering claims based on a newly recognized constitutional right. Tenn. Code Ann. § 40-26-105(b).

[3] Tenn. Code Ann. § 39-13-203(a)(1)-(3) defines intellectual disability as: (1) Significantly subaverage general intellectual functioning as evidenced by a functional intelligence quotient ("I.Q.") of 70 or below; (2) Deficits in adaptive behavior; and (3) The intellectual disability must have been manifested during the developmental period, or by 18 years of age.

Dr. Reschly applied the Flynn Effect[4] to adjust these I.Q. scores to 75.4, 72.4, and 73.7 respectively. (Pet. App. at 93a.) Dr. Reschly's report noted that the Flynn Effect was acknowledged in the manual for the 1997 Wechsler Adult Intelligence Scale. (Pet. App. at 93a.) Based on his clinical judgment and consideration of the Flynn Effect, estimation of error, practice effect, and cultural differences, Dr. Reschly found that the petitioner's "functional intelligence clearly is at or below 70." (Pet. App. at 95a.) He also found that the petitioner has significant deficits in adaptive behavior due to substantial limitations in the conceptual skills and practical skills domains. (Pet. App. at 92a.) Finally, he found that the petitioner's functional intelligence and significant deficits in adaptive behavior were present before the age of 18. (Pet. App. at 93a.) Based on these findings, Dr. Reschly opined that the petitioner is intellectually disabled. (Pet. App. at 92a.)

The trial court denied the motion to reopen, concluding that "[t]his is not a situation involving a new constitutional right." (Pet. App. at 81a-87a.) The Court of Criminal Appeals denied the petitioner's application to appeal. *Payne v. State*, No. W2013-01215-CCA-R28-PD, 2013 Tenn. Crim. App. LEXIS 1159, at *6 (July 29, 2013). The Supreme Court of Tennessee denied further review. *Payne v. State*, No. W2013-01215-SC-R11-PD, 2013 Tenn. LEXIS 956 (Nov. 14, 2013). The petitioner did not seek further review

[4] "The Flynn Effect refers to the observed phenomenon that I.Q. test scores tend to increase over time." *Coleman*, 341 S.W.3d at 242 n.55.

from this Court, as to the denial of his claims under the reopening statute.

In the same order, the trial court also denied the coram nobis claims from the "Amended Petition For Relief From Death Sentences." (Pet. App. at 84a-87a.) The court found that the new-evidence claims were barred by the one-year statute of limitations and that the issue surrounding the petitioner's I.Q. did not excuse this procedural bar. (Pet. App. at 84a-87a.) The court further noted, "it is unclear why [p]etitioner did not proceed to inquire into this issue after the decision in *Van Tran* in 2001."[5] (Pet. App. at 86a.) The court concluded that "a Writ of Error Coram Nobis will not be granted where [p]etitioner waited over ten years to explore the issue of his intellectual capacity." (Pet. App. at 87a.)

The Court of Criminal Appeals affirmed the denial of coram nobis relief as time barred under Tenn. Code Ann. § 27-7-103, finding that the petitioner's 23-year delay in seeking relief was unreasonable. *Payne v. State*, No. W2013-01248-CCA-R3-PD, 2014 Tenn. Crim. App. LEXIS 1005, at *32-33, 41, 43 (Oct. 30, 2014). The court also acknowledged this Court's intervening opinion in *Hall v. Florida*, 134 S. Ct. 1986 (2014), noting that unlike Hall, "the petitioner has not been precluded during his original trial or during post-

[5] In 2001, the Supreme Court of Tennessee ruled that imposing capital punishment on persons who were intellectually disabled at the time of the offense violates the prohibition against cruel and unusual punishment under the Eighth Amendment of the United States Constitution and article I, § 16, of the Tennessee Constitution. *Van Tran v. State*, 66 S.W.3d 790, 798-99, 812 (Tenn. 2001).

conviction proceedings from presenting evidence, other than his raw I.Q. test scores, to establish that his 'functional intelligence quotient' when he committed the murder was 70 or below." *Payne*, 2014 Tenn. Crim. App. LEXIS 1005, at *39.

After the Supreme Court of Tennessee granted the petitioner's application for further review, he filed a new motion to reopen post-conviction proceedings in the trial court, arguing that *Hall* established a new retroactive constitutional right not recognized at the time of his trial. The trial court denied the motion, and that decision is pending review in the Court of Criminal Appeals. *Payne v. State*, W2016-02326-CCA-R28-PD (Tenn. Crim. App. 2016).

The Supreme Court of Tennessee affirmed the denial of coram nobis relief, passing on the statute of limitations question and finding instead that the petitioner failed to state a cognizable claim under Tenn. Code Ann. § 40-26-105(b). *Payne v. State*, 493 S.W.3d 478, 486 (Tenn. 2016). While acknowledging that the post-conviction reopening proceedings were outside the scope of review, the court also rejected the petitioner's argument that the intervening decision in *Hall v. Florida*, 134 S. Ct. 1986 (2014), applies retroactively within the meaning of Tennessee's post-conviction reopening statute. *Payne*, 493 S.W.3d at 491. The Court denied rehearing on April 29, 2016. (Pet. App. at 88a.)

REASONS FOR DENYING THE WRIT

THIS CASE IS A POOR VEHICLE FOR ADDRESSING THE FEDERAL QUESTION PRESENTED BECAUSE THE STATE COURT DECISION RESTS ON INDEPENDENT STATE-LAW GROUNDS.

The Tennessee Supreme Court's opinion rests solely on the conclusion—as a matter of state law—that Tennessee's coram nobis statute is not the appropriate procedural mechanism for pursuing a claim of intellectual disability. *Payne*, 493 S.W.3d at 486. The coram nobis statute of limitations is another formidable state-law barrier to relief in this case, even though the Tennessee Supreme Court passed on that issue. The petitioner therefore concedes that this case presents a "vehicle concern" rendering it a "weak[] candidate" for considering *Hall*'s retroactivity. (Pet. App. at 1-2.) But this vehicle concern is not "difficult and quirky" as the petitioner suggests. (Pet. App. at 31-32.) Rather, it raises fundamental doubts about this Court's jurisdiction and the justiciability of the federal question proposed. *Hall*'s retroactive application simply has no bearing on the Tennessee Supreme Court's conclusion that the petitioner's intellectual-disability claim is not a cognizable basis for coram nobis relief under state law. This Court has no jurisdiction to review that conclusion about a matter of state law, and consideration of the question about *Hall* could only result in an advisory decision. Thus, certiorari should be denied.

A. Review of a Decision Resting on Independent State-Law Grounds Could Only Result in an Advisory Opinion on the Federal Question Presented.

The "vehicle concern" acknowledged by the petitioner raises fundamental doubts about this Court's jurisdiction and the justiciability of the question presented. It is well established that "[t]his Court will not review a question of federal law decided by a state court if the decision of that court rests on a state law ground that is independent of the federal question and adequate to support the judgment." *Coleman v. Thompson*, 501 U.S. 722, 729 (1991). "In the context of direct review of a state court judgment, the independent and adequate state ground doctrine is jurisdictional." *Id*. Moreover, principles of comity require federal courts to defer to a state's judgment on issues of state law. *Bradshaw v. Richey*, 546 U.S. 74, 76 (2005) ("[A] state court's interpretation of state law . . . binds a federal court . . . ."). "Because this Court has no power to review a state law determination that is sufficient to support the judgment, resolution of any independent federal ground for the decision could not affect the judgment and would therefore be advisory." *Coleman*, 501 U.S. at 729. "[T]he oldest and most consistent thread in the federal law of justiciability is that the federal courts will not give advisory opinions." *Flast v. Cohen*, 392 U.S. 83, 96 (1968). Thus, certiorari should be denied to avoid an advisory decision on a federal question with no consequence to a state-court judgment resting on a state court's sacrosanct conclusion about a matter of state law.

B. The Decision that Tennessee's Coram Nobis Statute Does Not Accommodate Intellectual Disability Claims Does Not Depend on *Hall*'s Retroactivity.

The petitioner argues that "concerns about a possible independent state ground of a decision do not prevent this Court from issuing a GVR" because "the Tennessee Supreme Court 'may determine' the petitioner's case differently if its premise about *Hall* is rejected by this Court." (Pet. App. at 32-33.) But this misunderstands the state court's decision and the potential impact of a holding by this Court that *Hall* should apply retroactively. If this Court expressly required *Hall*'s retroactive application, it would open a path for the petitioner to reopen post-conviction proceedings under Tennessee law. *See* Tenn. Code Ann. § 40-30-117(a)(1). But it would not undermine the state court's "commit[ment] to not contort[] Tennessee's [coram nobis] statute[] . . . to provide convicted felons a second trial due to subsequent changes in the law." *Payne*, 493 S.W.3d at 486. As the Tennessee Supreme Court acknowledged, "[i]ssues regarding whether a change in the law should apply post-trial relate to retroactivity and are more properly addressed in post-conviction proceedings or a motion to reopen post-conviction proceedings." *Id*. Indeed, the petitioner has asserted *Hall*'s retroactivity as a basis for reopening his state post-conviction proceedings in a motion filed May 21, 2015. That case is pending before the Court of Criminal Appeals. *See Payne v. State*, W2016-02326-CCA-R28-PD (Tenn. Crim. App. 2016).

The petitioner also cites this Court's order in *Adams v. Alabama*, 136 S. Ct. 1796, 195 L. Ed. 2d 251 (2016)

to argue that a hold or GVR is appropriate "even if a possible independent and adequate state ground is argued." (Pet. App. at 33.) But an independent state ground is not just argued or arguable here. It was actually found and applied by the Tennessee Supreme Court as the sole basis for denying coram nobis relief. This Court lacks jurisdiction to revisit that issue.

C. The Supreme Court of Tennessee Correctly Decided that *Hall* Does Not Entitle the Petitioner to a Hearing under the Given Facts and Procedural History.

This Court granted Hall a new intellectual-disability hearing because, by operation of the Florida courts' "rigid" interpretation of that state's intellectual-disability statute, he had been denied a "fair opportunity" to present evidence beyond his I.Q. scores. *Hall*, 134 S. Ct. at 2001. The Court acknowledged that "Florida is one of just a few States to have this rigid rule," noting that "at most nine States mandate a strict IQ score cutoff at 70." *Id*. at 1997, 2001. Tennessee was not among those nine states, no doubt, on account of the ruling in *Coleman*, requiring trial courts to consider all relevant and reliable practices, methods, standards, and data in assessing a defendant's functional intelligence quotient, including any factor that affects the accuracy, reliability, or fairness of the instruments used to measure the same. *See Coleman*, 341 S.W.3d at 242 n.55.

The petitioner, unlike Hall, was not denied the opportunity to present comprehensive evidence to establish that his "functional intelligence quotient" is 70 or below. *See Payne*, 2014 Tenn. Crim. App. LEXIS 1005, at *39. He could have reopened post-conviction

proceedings on the basis of *Van Tran v. State*, 66 S.W.3d 790, 798-99, 812 (Tenn. 2001), or *Atkins v. Virginia*, 536 U.S. 304, 321 (2002), but failed to do so. *Hall* simply does not apply here because it does not address whether a state law ground may preclude an intellectual-disability claim or hearing where the State previously provided a "fair opportunity" to present comprehensive evidence in support of that claim but where the petitioner utterly failed to pursue the claim in a timely manner. *See Hall*, 134 S. Ct. at 2001 ("Persons facing that most severe sanction must have a *fair opportunity* to show that the Constitution prohibits their execution." (emphasis added)).

D. The Supreme Court of Tennessee Correctly Declined to Hold that *Hall* Must Be Applied Retroactively to Cases on Collateral Review.

Hall did not announce a new rule protecting any new class apart from the rule announced in and class protected by *Atkins*. While *Atkins* "[left] to the States the task of developing appropriate ways to enforce the constitutional restriction upon its execution of sentences," *Hall* notes that *Atkins* "itself acknowledges the inherent error in IQ testing." *Hall*, 134 S. Ct. at 1998. Indeed, *Atkins* "twice cited definitions of intellectual disability which, by their express terms, rejected a strict IQ test score cutoff at 70." *Id*. (citing *Atkins*, 536 U.S. at 308, n.3, 309 n.5.) In *Hall*, the Court further observed:

> *Atkins* itself not only cited clinical definitions for intellectual disability but also noted that the States' standards, on which the Court based its own conclusion, conformed to those definitions.

> In the words of *Atkins*, those persons who meet the "clinical definitions" of intellectual disability "by definition . . . have diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions of others." *Id*., at 318, 122 S. Ct. 2242, 153 L. Ed. 2d 335. Thus, they bear "diminish[ed] . . . personal culpability." *Ibid*. The clinical definitions of intellectual disability, which take into account that IQ scores represent a range, not a fixed number, *were a fundamental premise of Atkins*.

Hall, 134 S. Ct. at 1999 (emphasis added). *Hall* merely held that "Florida's rule misconstrues the Court's statements in *Atkins* that intellectually dis-ability is characterized by an IQ of 'approximately 70.'" *Id*. at 2001. Thus, "*Hall* did not announce a new rule insofar as the result was dictated by *Atkins*." *In re Henry*, 757 F.3d 1151, 1165 (11th Cir. 2014) (Martin, J., dissenting).

Hall does not universally apply to cases on collateral review. In *Tyler v. Cain*, 533 U.S. 656, 663 (2001), this Court held that even "a new rule is not 'made retroactive to cases on collateral review' unless the Supreme Court holds it to be retroactive." Nothing in the *Hall* opinion indicates that it was intended to be retroactive.

The petitioner relies on *Penry v. Lynaugh*, 492 U.S. 302, 330 (1989), which held that retroactivity applies to "rules prohibiting a certain category of punishment for a class of defendants because of their status or offense."

(Pet. App. at 28.) But *Penry* does not apply here because "*Hall* merely concerns procedures for ensuring that states do not execute members of an already protected group." *Henry*, 757 F.3d at 1161. In *Hall*, the Court made clear that the class affected by its holding—those with an intellectual disability—is identical to the class protected by *Atkins*. *See Hall*, 134 S. Ct. at 1990. *Hall* did not expand this already protected class. It only limited Florida's power to define the class where the Florida courts' interpretation of a state statute did not protect the intellectually disabled as understood in *Atkins*. *See Hall*, 134 S. Ct. at 1986; *accord Henry*, 757 F.3d at 1161. And "even if *Hall* expanded the class of individuals described in *Atkins*, it did not categorically place them beyond the power of the state to execute." *Henry*, 757 F.3d at 1161. Instead, "*Hall* created a procedural requirement that those with IQ test scores within the test's standard of error would have [a fair] opportunity to otherwise show intellectual disability." *Id*. Thus, "*Hall* guaranteed only a chance to present evidence, not ultimate relief." *Id*.

Moreover, *Hall* did not create the type of watershed rule of criminal procedure ordinarily subject to retroactive application. In *Saffle v. Parks*, 494 U.S. 484, 495 (1990), this Court pointed to *Gideon v. Wainright*, 372 U.S. 335 (1963), and its recognition of the Sixth Amendment right to appointed counsel in a felony trial as the "usually cited" example of a retroactively applicable "watershed rule[] of criminal procedure." To qualify as a "watershed rule[] of criminal procedure," the rule must be necessary to prevent an impermissibly large risk of an inaccurate conviction, and it must "alter our understanding of the

bedrock procedural elements essential to the fairness of a proceeding." *Whorton v. Bockting*, 549 U.S. 406, 418 (2007) (quoting *Schriro v. Summerlin*, 542 U.S. 348, 356 (2004)). As the Court further explained in *Whorton*:

> This exception is "extremely narrow," *Schriro v. Summerlin*, 542 U.S. 348, 352, 124 S.Ct. 2519, 159 L.Ed.2d 442 (2004). We have observed that it is "'unlikely'" that any such rules "'ha[ve] yet to emerge,'" *ibid.* (quoting *Tyler v. Cain*, 533 U.S. 656, 667, n.7, 121 S.Ct. 2478, 150 L.Ed.2d 632 (2001); internal quotation marks omitted); *see also O'Dell v. Netherland*, 521 U.S. 151, 157, 117 S.Ct. 1969, 138 L.Ed.2d 351 (1997); *Graham, supra*, at 478, 113 S.Ct. 892; *Teague, supra*, at 313, 109 S.Ct. 1060 (plurality opinion). And in the years since *Teague*, we have rejected every claim that a new rule satisfied the requirements for watershed status. *See, e.g., Summerlin, supra* (rejecting retroactivity for *Ring v. Arizona*, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002)); *Beard v. Banks*, 542 U.S. 406, 124 S.Ct. 2504, 159 L.Ed.2d 494 (2004) (rejecting retroactivity for *Mills v. Maryland*, 486 U.S. 367, 108 S.Ct. 1860, 100 L.Ed.2d 384 (1988)); *O'Dell, supra* (rejecting retroactivity for *Simmons v. South Carolina*, 512 U.S. 154, 114 S.Ct. 2187, 129 L.Ed.2d 133 (1994)); *Gilmore v. Taylor*, 508 U.S. 333, 113 S.Ct. 2112, 124 L.Ed.2d 306 (1993) (rejecting retroactivity for a new rule relating to jury instructions on homicide); *Sawyer v. Smith*, 497 U.S. 227, 110 S.Ct. 2822, 111 L.Ed.2d 193 (1990) (rejecting

> retroactivity for *Caldwell v. Mississippi*, 472 U.S. 320, 105 S.Ct. 2633, 86 L.Ed.2d 231 (1985)).

Id. at 417-18.

"Unlike the sweeping rule of *Gideon*, . . . the narrow right . . . that [*Hall*] affords to defendants in a limited class of capital cases has hardly altered our understanding of the bedrock procedural elements essential to the fairness of a [capital sentencing] proceeding." *Cf. O'Dell v. Netherland*, 521 U.S. 151, 167 (1997) (quotations omitted) (rejecting the retroactive application of *Simmons v. South Carolina*, 512 U.S. 154, 167 (1994), which required that a capital defendant be allowed to inform his sentencing jury that he is parole-ineligible if the prosecution argues that he presents a future danger). Because *Hall* did not announce a watershed rule comparable to *Gideon*, it does not require retroactive application or provide an avenue for reopening state post-conviction proceedings. But more importantly, and regardless of its retroactive application, *Hall* creates no avenue for relief in the state coram nobis proceedings underlying this request for certiorari.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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