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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

# SUPREME COURT OF THE UNITED STATES

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## MILLER-EL *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 01–7662. Argued October 16, 2002—Decided February 25, 2003

When Dallas County prosecutors used peremptory strikes to exclude 10 of the 11 African-Americans eligible to serve on the jury at petitioner's capital murder trial, he moved to strike the jury on the ground that the exclusions violated equal protection. Petitioner presented extensive evidence supporting his motion at a pretrial hearing, but the trial judge denied relief, finding no evidence indicating a systematic exclusion of blacks, as was required by the then-controlling precedent, *Swain* v. *Alabama,* 380 U. S. 202. Subsequently, the jury found petitioner guilty, and he was sentenced to death. While his appeal was pending, this Court established, in *Batson* v. *Kentucky,* 476 U. S. 79, a three-part process for evaluating equal protection claims such as petitioner's. Upon remand from the Texas Court of Criminal Appeals for new findings in light of *Batson,* the original trial court held a hearing at which it admitted all the *Swain* hearing evidence and took further evidence, but concluded that petitioner failed to satisfy step one of *Batson* because the evidence did not even raise an inference of racial motivation in the State's use of peremptory challenges. The court also determined that the State would have prevailed on steps two and three because the prosecutors had proffered credible, race-neutral explanations for the African-Americans excluded—*i.e.,* their reluctance to assess, or reservations concerning, imposition of the death penalty—such that petitioner could not prove purposeful discrimination. After petitioner's direct appeal and state habeas petitions were denied, he filed a federal habeas petition under 28 U. S. C. §2254, raising a *Batson* claim and other issues. The Federal District Court denied relief in deference to the state courts' ac-

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ceptance of the prosecutors' race-neutral justifications for striking the potential jurors, and subsequently denied petitioner's §2253 application for a certificate of appealability (COA). The Fifth Circuit noted that a COA will issue "only if the applicant has made a substantial showing of the denial of a constitutional right," §2253(c)(2); reasoned that a petitioner must make such a "substantial showing" under the standard set forth in *Slack* v. *McDaniel,* 529 U. S. 473; declared that §2254(d)(2) required it to presume state-court findings correct unless it determined that the findings would result in a decision which was unreasonable in light of clear and convincing evidence; and applied this framework to deny petitioner a COA.

Petitioner's extensive evidence concerning the jury selection procedures falls into two broad categories. First, he presented, at the pretrial *Swain* hearing, testimony and other evidence relating to a pattern and practice of race discrimination in the *voir dire* by the Dallas County District Attorney's Office, including a 1976 policy by that office to exclude minorities from jury service that was available at least to one of petitioner's prosecutors. Second, two years later, petitioner presented, to the same state trial court, evidence that directly related to the prosecutors' conduct in his case, including a comparative analysis of the venire members demonstrating that African-Americans were excluded from petitioner's jury in a ratio significantly higher than Caucasians; evidence that, during *voir dire*, the prosecution questioned venire members in a racially disparate fashion as to their death penalty views, their willingness to serve on a capital case, and their willingness to impose the minimum sentence for murder, and that responses disclosing reluctance or hesitation to impose capital punishment or a minimum sentence were cited as a justification for striking potential jurors; and the prosecution's use of a Texas criminal procedure practice known as "jury shuffling" to assure that white venire members were selected in preference to African-Americans.

*Held:* The Fifth Circuit should have issued a COA to review the District Court's denial of habeas relief to petitioner. Pp. 11–24.

(a) Before a prisoner seeking postconviction relief under §2254 may appeal a district court's denial or dismissal of the petition, he must first seek and obtain a COA from a circuit justice or judge, §2253. This is a jurisdictional prerequisite. A COA will issue only if §2253's requirements have been satisfied. When a habeas applicant seeks a COA, the court of appeals should limit its examination to a threshold inquiry into the underlying merit of his claims. *E.g., Slack,* 529 U. S., at 481. This inquiry does not require full consideration of the factual or legal bases supporting the claims. Consistent with this Court's precedent and the statutory text, the prisoner need only demonstrate

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"a substantial showing of the denial of a constitutional right." §2253(c)(2). He satisfies this standard by demonstrating that jurists of reason could disagree with the district court's resolution of his case or that the issues presented were adequate to deserve encouragement to proceed further. *E.g., id.*, at 484. He need not convince a judge, or, for that matter, three judges, that he will prevail, but must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong, *ibid.* Pp. 11–13.

(b) Since petitioner's claim rests on a *Batson* violation, resolution of his COA application requires a preliminary, though not definitive, consideration of the three-step *Batson* framework. The State now concedes that petitioner satisfied step one, and petitioner acknowledges that the State proceeded through step two by proffering facially race-neutral explanations for these strikes. The critical question in determining whether a prisoner has proved purposeful discrimination at step three is the persuasiveness of the prosecutor's justification for his peremptory strike. *E.g., Purkett* v. *Elem,* 514 U. S. 765, 768 *(per curiam).* The issue comes down to whether the trial court finds the prosecutor's race-neutral explanations to be credible. Credibility can be measured by, among other factors, the prosecutor's demeanor; by how reasonable, or how improbable, the explanations are; and by whether the proffered rationale has some basis in accepted trial strategy. A plurality of this Court has concluded in the direct review context that a state court's finding of the absence of discriminatory intent is "a pure issue of fact" that is accorded significant deference and will not be overturned unless clearly erroneous. *Hernandez* v. *New York,* 500 U. S. 352, 364–365. Where 28 U. S. C. §2254 applies, the Court's habeas jurisprudence embodies this deference. Factual determinations by state courts are presumed correct absent clear and convincing evidence to the contrary, §2254(e)(1), and a decision adjudicated on the merits in a state court and based on a factual determination will not be overturned on factual grounds unless objectively unreasonable in light of the evidence presented in the state-court proceeding, §2254(d)(2). Even in the context of federal habeas, deference does not imply abandonment or abdication of judicial review. In the context of the threshold examination in this *Batson* claim, it can suffice to support the issuance of a COA to adduce evidence demonstrating that, despite the neutral explanation of the prosecution, the peremptory strikes in the final analysis were race based. Cf. *Reeves* v. *Sanderson Plumbing Products, Inc.*, 530 U. S. 133. Pp. 13–16.

(c) On review of the record at this stage, this Court concludes that the District Court did not give full consideration to the substantial evidence petitioner put forth in support of the prima facie case. In-

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stead, it accepted without question the state court's evaluation of the demeanor of the prosecutors and jurors in petitioner's trial. The Fifth Circuit evaluated petitioner's COA application in the same way. In ruling that petitioner's claim lacked sufficient merit to justify appellate proceedings, that court recited the requirements for granting a writ under §2254, which it interpreted as requiring petitioner to prove that the state-court decision was objectively unreasonable by clear and convincing evidence. This was too demanding a standard because it incorrectly merged the clear and convincing evidence standard of §2254(e)(1), which pertains only to state-court determinations of factual issues, rather than decisions, and the unreasonableness requirement of §2254(d)(2), which relates to the state-court decision and applies to the granting of habeas relief. More fundamentally, the court was incorrect in not inquiring whether a "substantial showing of the denial of a constitutional right" had been proved, as §2253(c)(2) requires. The question is the debatability of the underlying constitutional claim, not the resolution of that debate. In this case, debate as to whether the prosecution acted with a race-based reason when striking prospective jurors was raised by the statistical evidence demonstrating that 91% of the eligible African-Americans were excluded from petitioner's venire; by the fact that the state trial court had no occasion to judge the credibility of the prosecutors' contemporaneous race-neutral justifications at the time of the pretrial hearing because the Court's equal protection jurisprudence then, dictated by *Swain*, did not require it; by the fact that three of the State's proffered race-neutral rationales for striking African Americans—ambivalence about the death penalty, hesitancy to vote to execute defendants capable of being rehabilitated, and the jurors' own family history of criminality—pertained just as well to some white jurors who were not challenged and who did serve on the jury; by the evidence of the State's use of racially disparate questioning; and by the state courts' failure to consider the evidence as to the prosecution's use of the jury shuffle and the historical evidence of racial discrimination by the Dallas County District Attorney's Office. Pp. 16–24.

261 F. 3d 445, reversed and remanded.

KENNEDY, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, O'CONNOR, SCALIA, SOUTER, GINSBURG, and BREYER, JJ., joined. SCALIA, J., filed a concurring opinion. THOMAS, J., filed a dissenting opinion.