No. 20-6712

IN THE

United States Court of Appeals

FOR THE FOURTH CIRCUIT

ARTHUR LEE SANFORD,

Appellant,

v.

HAROLD W. CLARKE,

Appellee.

On Appeal from the United States District Court
For the Eastern District of Virginia (1:18-cv-00303-LMB-TCB)

REPLY BRIEF

Daniel S. Harawa
Counsel of Record

Sara Hubaishi
Drew Smith
Lauren Speer
Student Counsel

Counsel for Appellant

WASHINGTON UNIVERSITY
SCHOOL OF LAW
Appellate Clinic
One Brookings Dr.
Campus Box 1120
St. Louis, MO 63130
314-935-4689
dharawa@wustl.edu

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

RULES

INTRODUCTION

Arthur Lee Sanford is before this Court requesting nothing more than what Habeas Rule 5 and due process entitle him to: access to a complete answer to his habeas petition by the State, and the records filed by the State in the district court. The State has admitted that it did not meet the requirements of Habeas Rule 5 when it filed its answer without attaching transcripts and without including Mr. Sanford's complete brief appealing the dismissal of his state habeas petition. *See* Appellee's Br. 26, 30.

Yet the State comes up with multiple arguments in an attempt to convince the Court that these failures should not result in remand. None are meritorious. Its first argument, that the district court did not abuse its discretion by relieving the State of its compliance obligations, is a red herring. The district court never exercised its discretion because it never recognized the State violated Habeas Rule 5. Moreover, it *would* have been an abuse of discretion given that compliance with Habeas Rule 5 is mandatory.

The State's next arguments are easily dispatched by this Court's decision in *Thompson v. Greene*, 427 F.3d 263 (4th Cir. 2005). While the State argues that its violation of Habeas Rule 5 should be forgiven because it "substantially complied" with the Habeas Rules and that its failure to comply with the rules is harmless, *Thompson* dictates that any failure of compliance necessarily makes an answer

incomplete and thus requires remand. *Id.* at 268. And *Thompson* makes clear that a petitioner does not have to show that he was harmed by a respondent's failure to comply with Habeas Rule 5. *Id.* at 271.

The State next argues that Mr. Sanford's claims are subject to plain-error review because he never before argued that he was entitled access to the complete state court record. Appellee's Br. 25. This is correct; Mr. Sanford has not made this argument, and he does not do so now. Mr. Sanford has consistently argued that Habeas Rule 5 and due process entitle him to service of the complete answer mandated by the Habeas Rules. That the State *chose* to provide the complete record as part of its answer does not change this fact.

Finally, the State admits that the records from the state habeas proceedings are missing, and that when the district court sent this Court all that it had received from the state courts, the state habeas records were not among them. The State does not seriously contest the fact that Mr. Sanford's due process rights would have been violated had the district court not possessed the state post-convictions records when issuing its ruling dismissing Mr. Sanford's federal habeas petition. Instead, the State argues that the district court *did* have the now-missing records before it by attempting to transform a single sentence in the district court's order[1] into a finding

[1] The sentence states the court "was in possession of and considered all of the records of the petitioners' state trial, appellate, and habeas proceedings before ruling on the motion to dismiss." J.A. 286.

of fact entitled to a "presumption of regularity." Appellee's Br. 35. Even assuming this qualified as a finding of fact, such a presumption is rebutted if a defendant produces evidence of procedural irregularities. *Parke v. Raley*, 506 U.S. 20, 24 (1992). The procedural irregularities here are so profound that to this day no one can state with certainty whether the district court was ever in possession of the state habeas records when it dismissed Mr. Sanford's federal habeas petition. And the district court contradicted itself when it affirmed to this Court that it had sent all that it had received from the state courts, and yet records from the state post-conviction proceedings were missing. This is a paradigmatic example of a reason to rebut the presumption of regularity. Thus, on top of the State not complying with Habeas Rule 5 and Mr. Sanford not having access to all the records that the State had served on the district court, because it is not even clear that the district court had a complete record before it when dismissing Mr. Sanford's petition, and because this Court lacks access to those records now, the proceedings violated Mr. Sanford's due process rights.

This Court should reverse and remand for further proceedings that comply with the Habeas Rules and due process.

ARGUMENT

I. The State's Admitted Violation of the Mandatory Habeas Rules Requires Reversal.

Habeas Rule 5(c) specifically requires a respondent to attach to an answer the "parts of the transcript that the respondent considers relevant." Habeas Rule 5(c). Habeas Rule 5(d) specifically requires the respondent to attach to an answer "any brief that the petitioner submitted in an appellate court contesting the conviction or sentence." Habeas Rule 5(d)(1). The State now admits that it flouted the mandatory requirements of Habeas Rules 5(c) and (d).

First, the State "admits that [it] did not attach transcripts to the responsive pleading filed in the district court, as required by [Habeas] Rule 5(c)." Appellee's Br. 26. Then, the State "admits that [it] attached only a portion of [Mr.] Sanford's petition for habeas appeal as an exhibit to the answer filed in the district court," rather than the whole brief, including the exhibits, as required by Habeas Rule 5(d). Appellee's Br. 30. These admissions are fatal.

This Court held in *Thompson v. Greene* that when the State violates Habeas Rule 5, which "describes the *mandatory* contents of an answer," the answer "*must* be deemed incomplete." 427 F.3d at 268 (emphasis added). Thus, as in *Thompson*, this Court should vacate the district court's order and remand for further

proceedings, during which the State must comply with the Habeas Rules. *See id.* at 271.[2]

Despite admitting that it did not comply with Habeas Rule 5, the State argues that reversal is not required for three reasons. First, the State contends "the district court did not abuse its discretion in relieving the [State] of strict compliance with Habeas Rule 5(c) and (d)." Appellee's Br. 12. Second, the State asserts that it "substantially complied" with Habeas Rule 5(d) when it attached only part of Mr. Sanford's petition to appeal (and none of the exhibits), and thus its failure to comply with the rule is harmless. Appellee's Br. 30. Third, the State argues that because Mr. Sanford cited transcripts in his habeas petition and knew of the contents of his petition to appeal as its author, he was not harmed by the State's failure to comply with Habeas Rule 5. *See* Appellee's Br. 29–30, 32–33. Each contention is meritless.

The State maintains throughout its brief that the district court did not abuse its discretion by relieving the State of "strict compliance" with the Habeas Rules. This is a red herring. The district court never acknowledged the State's failure to comply with the Habeas Rules, despite Mr. Sanford's repeated protestations, *see, e.g.*, J.A. 213, 277–80, and thus there is no discretionary ruling at issue.

[2] The State concedes elsewhere in its brief that a remand "would be appropriate for this Court," and that the State "would [then] follow this Court's guidance about compliance with Habeas Rules 5(c) and (d) and [Mr.] Sanford would receive *de novo* review of his federal habeas corpus petition by the district court." Appellee's Br. 45.

Beyond that, it *would* be an abuse of discretion *if* the district court had "relieved" the State of having to comply with Habeas Rule 5. Habeas Rule 5(c) dictates that a respondent "*must* attach to the answer parts of the transcript the respondent considers relevant," and Habeas Rule 5(d) dictates that a respondent "*must* also file with the answer a copy of . . . any brief that the petitioner submitted in an appellate court contesting the conviction or sentence." Habeas Rule 5(c), (d)(1) (emphasis added). Habeas Rule 5 leaves no wiggle room. Compliance is mandatory.

Indeed, this Court said just that in *Thompson*, when holding that "Habeas Rule 5 describes the mandatory contents of an answer . . . The Habeas Rules thus view the exhibits contained in a habeas corpus answer to be a *part* of the answer itself, without which a habeas corpus answer must be deemed incomplete." *Thompson*, 427 F.3d at 268. And *Thompson* reiterated that "[i]t is obvious that the mandatory language of Rule 5 places the burden upon the State . . . to *attach* all relevant sections [of the transcripts] to its answer." *Id.* at 268 n.4 (citing *Sizemore v. Dist. Ct., 50th Jud. Dist.*, 735 F.2d 204, 207 (6th Cir. 1984)). Because Habeas Rule 5 is mandatory, it would indeed be an abuse of discretion for the district court to "relieve" the State of its obligations, and the State cites no precedent suggesting otherwise.[3]

[3] In other contexts, this Court has held that it is an abuse of discretion for a district court to relieve a party of compliance with mandatory procedural rules. *See, e.g.*, *Brickwood Contractors, Inc. v. Datanet Engineering, Inc.*, 369 F.3d 385, 390 (4th Cir. 2004) (en banc) (holding that when a party failed to comply with mandatory

The State next argues that it "substantially complied" with Habeas Rule 5(d) when it attached to its answer only part of Mr. Sanford's petition to appeal the state court's denial of his habeas petition. First, the district court never made any "substantial compliance" finding. Second, the State does not cite a single case suggesting that it is satisfactory to only "substantially comply" with Habeas Rule 5 when its language is mandatory. Third, it is not even clear what "substantial compliance" means in this context: The State does not define the term, nor does it point to anything in the rules or case law about how one can only "substantially comply" with a mandatory rule. Fourth, it is impossible for this Court to gauge whether the State in fact "substantially complied" with Habeas Rule 5(d) given that we do not know the contents of Mr. Sanford's petition for appeal or the exhibits to the petition for appeal that the State failed to attach to the answer, as this Court is not in possession of any of the state court habeas records.[4] Thus, when the State failed to meet Habeas Rule 5's mandatory requirements, it necessarily *defied*, rather than complied with the rule.

"procedural requirements" of Rule 11 when asking for sanctions, it would "require reversal" if the district court nevertheless imposed sanctions despite the party's failure to comply with the rule).

[4] The State concedes that the exhibits to the petition for appeal should have been attached under Habeas Rule 5(d). Appellee's Br. 31; *see Thompson*, 427 F.3d at 268 (making clear that "exhibits to any pleading are a part of the pleading").

The State continues by arguing that there was no harm to Mr. Sanford because Mr. Sanford cited transcripts, knew what was in his petition to appeal, and has not shown why he needed the records. This argument fails for two reasons.

First, this same argument was made and rejected in *Thompson* as borderline "frivolous." *Thompson*, 427 F.3d at 271. This Court said unequivocally in *Thompson* that "[i]t is *irrelevant* whether a petitioner can demonstrate need to the court, or whether he already has the documents." *Id.* (emphasis added). *Thompson* makes clear that remand is not contingent on whether Mr. Sanford independently had access to the transcripts or knew of the contents of the missing documents. And *Thompson*'s holding tracks decades of Supreme Court precedent, because if it were enough for defendants to understand what happened in their case, then it is curious as to why the Court has repeatedly reiterated that criminal defendants have a right to transcripts or adequate alternatives. *See, e.g.*, *Griffin v. Illinois*, 351 U.S. 12, 19 (1956) ("Destitute defendants must be afforded as adequate appellate review as defendants who have money enough to buy transcripts."); *see also Long v. District Court of Iowa*, 385 U.S. 192, 194 (1966) (same); *Lane v. Brown*, 372 U.S. 477, 483 (1963) (same); *Smith v. Bennett*, 365 U.S. 708, 709 (1961) (same); *Eskridge v. Washington Prison Board*, 357 U.S. 214 (1958); *Burns v. Ohio*, 360 U.S. 252 (1959). Therefore, as *Thompson* makes clear, once it is determined that the State violated Habeas Rule 5, a showing of harm is unneeded. The solution is a remand.

Second, there is no finding that Mr. Sanford in fact had access to all the records that the State (1) cited in its answer and (2) admitted it should have included, and therefore that cannot be a basis for affirmance. In fact, there could be no such finding given that Mr. Sanford specifically moved the district court for a copy of the records to fully litigate his habeas claims, proving he *could not* access the records, *see* J.A. 224–25, and the district court denied the motion, s*ee* J.A. 234. The State's violations of Habeas Rule 5 compel reversal.

II. The State Cannot Skirt Its Obligations Under the Habeas Rules By Having the State Court Records Sent Directly to the District Court.

The State also argues its failure to comply with Habeas Rule 5 is "harmless" because "the district court had before it the complete record of the proceedings below." Appellee's Br. 29–30. The district court had the state court records because the State, at the district court's direction, had the records forwarded by the state courts directly to the district court. Appellee's Br. 5–6. The State then contends that Mr. Sanford is arguing that he is entitled to all of the state court records that the State had filed with the district court, and that he is making this argument for the first time on appeal. Appellee's Br. 24–25. These arguments are unavailing.

First, it cannot be that the State's failure to comply with Habeas Rule 5 was harmless simply because it had the entire state court records sent to the district court.[5] In *Thompson*, there was no question that the State filed a Habeas Rule 5-compliant appendix with the district court. Still, *Thompson* made clear that the Habeas Rule 5-compliant appendix must be served *on the petitioner*. *Thompson*, 427 F.3d at 270. Indeed, the State cannot escape its obligations under Habeas Rule 5 by characterizing the state court records at issue as somehow completely separate from its answer, while at the same time arguing that the state court records make up for its incomplete answer. As the Eleventh Circuit, building on *Thompson*, reasoned in *Rodriguez v. Florida Department of Corrections*: "any exhibits or documents that are referenced in the answer and filed with the Court are part of the answer, whether the filings are made together or at different times." 748 F.3d 1073, 1075 (11th Cir. 2014). Once the State cited the state court records in its answer, it "trigger[ed] a service requirement the State did not meet and that the District Court failed to enforce." *Id.*

Further, the State cites no authority that supports the proposition that Mr. Sanford needed to make a "particularized showing that he required a copy of the entire state court record." Appellee's Br. 24. It is an elementary fact of litigation that

[5] As explained *infra* pp. 13–14, it is not even clear whether the district court had the entire state court record.

once a party serves or has served documents upon a court, then the other party must be served (or at a minimum have access to) those documents too. *Thompson* made this point: "to read the Habeas Rules as permitting a respondent to file exhibits that he fails to serve upon a habeas corpus petitioner would essentially allow him to communicate ex parte with the court, contrary to one of the basic tenets of our adversary system." *Thompson*, 427 F.3d at 269 n.7. Thus, contrary to what the State suggests, *see* Appellee's Br. 23 (and the cited cases), Mr. Sanford is not similarly situated to an indigent petitioner requesting a free transcript for use in a collateral proceeding. He is a party whose liberty is on the line, requesting that the State serve him and the court with a full answer as required by the Habeas Rules, and requesting that he have access to all the documents that the State served on the district court but not him.

The State claims that Mr. Sanford is arguing for the first time on appeal that he is "entitled to a copy of the complete state court record pursuant to Habeas Rule 5 and *Thompson*." Appellee's Br. 24. The State mischaracterizes Mr. Sanford's argument. Mr. Sanford argued below and continues to argue that Habeas Rule 5 and the case law interpreting the Rule entitle him to be served with a *complete answer* by the State, including the supporting documents. J.A. 213, 277–80, 286, 298.[6] Mr.

[6] As a pro se petitioner, this Court must construe his pleadings liberally. *Erickson v. Pardus*, 511 U.S. 89, 94 (2007) ("A document filed *pro se* is 'to be liberally

Sanford has never argued that either the Constitution or Habeas Rule 5 require the State to serve him the complete record. But if the State chooses to file with the court the state court record in support of its answer and in lieu of attaching the necessary documents in support of its answer, *then* the State has to provide the complete record to Mr. Sanford—not because the complete record is itself always an entitlement of a habeas petitioner, but because in this particular instance, the complete record constitutes part of the respondent's answer to which the petitioner is entitled. Once the state court records are properly understood as part of the State's answer, the State's arguments about whether Mr. Sanford made a particularized showing of need for the documents are irrelevant, as that is not, nor ever has been, a requirement for a party to receive pleadings filed by the opposing party.

The State misreads *Sixta v. Thaler*, 615 F.3d 569 (5th Cir. 2010) to argue otherwise. In *Sixta*, the respondent "filed a complete set of state court records" with the district court "*on his own initiative*" weeks before filing his answer. *Id.* at 570 (emphasis added). The State asserts that "the Fifth Circuit implicitly ruled that filing the state court record in the district court did not require service of the record on the petitioner under Habeas Rule 5." Appellee's Br. 17. But as the State later concedes in a footnote, *Sixta* did not reach the question of whether *any* records are required to

---

construed,' and 'a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.'") (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)).

be attached to a respondent's answer. *See* Appellee's Br. 17 n.6. In fact, flatly contradicting the State, the Fifth Circuit expressly left "open the possibility that the respondent was procedurally or constitutionally required to attach some portion of the state court records as exhibits to the answer, and then to serve those exhibits together with the answer pursuant to the applicable procedural rules." *Sixta,* 615 F.3d at 573. Thus, *Sixta* does not undermine Mr. Sanford's position and does not provide the footing necessary for the State to argue that the state court records were not part of its answer and did not have to be served on Mr. Sanford. The more apposite case is *Rodriguez,* which shows that once the records were cited by the State in its answer they must be considered part of that pleading and thus had to be served on Mr. Sanford. *See Rodriguez,* 748 F.3d at 1075. Tellingly, the State does not even attempt to distinguish *Rodriguez.*

The State finally argues that it is in the practice of sending the entire state court record to the district court as "a matter of course," and makes prudential arguments suggesting that it would be too burdensome for the district court to have to docket the documents or for the State to comb through the documents to make the necessary redactions. *See* Appellee's Br. 20–21, 42–43.

To be clear, the State *chose* to provide the complete state court records in response to the district court's order that it produce "pertinent" records. J.A. 60. In so doing, it was the *State* that designated the entire state court record as "pertinent"

to resolving Mr. Sanford's habeas petition. It is therefore entirely reasonable that Mr. Sanford be provided access to those records.

Any burden is thus one of the State's own making. The State argues that when the district court ordered it to file the "pertinent" state court records with the court, it was "merely echo[ing] the statutory requirement that the records be transmitted." Appellee's Br. 20. But the habeas statute does not expect that respondents will just send the entire state court record. To the contrary, the statute makes clear that a record is only "pertinent" if relevant "to a determination of the sufficiency of the evidence." 28 U.S.C. § 2254(f). Beyond that, Habeas Rule 5 makes clear that "relevant" transcripts and certain state court pleadings must be attached to the answer even if the state sent them to the court some other way. Habeas Rule 5(c). These provisions are meant to streamline the records so that the district court may efficiently resolve a petition. Nothing in the habeas statute or rules countenance the State's practice of sending a complete case file rather than identifying which records are "pertinent" and "relevant" to adjudicating the habeas petition.

At bottom, the State cannot choose to do less work by deciding to send the entire case file rather than selecting only the relevant portions, and then parlaying that choice into absolution from having to properly serve the petitioner because preparing the documents would be too bothersome. It is hardly a "far-reaching

argument," *see* Appellee's Br. 25, to claim that a petitioner has a right to know the complete contents of what the respondent files in response to their petition.

III. The Proceedings Below Violated Due Process

The proceedings below violated Due Process because the State served records on the district court but not Mr. Sanford, in effect communicating ex parte with the court. Furthermore, because of this ex parte communication, Mr. Sanford could not effectively respond to the State's arguments or the district court's rulings. And on top of that, it is unclear whether the district court even had a full or accurate record before it when dismissing Mr. Sanford's habeas petition and denying his motion for reconsideration. *See* Appellant's Br. 27–33.

The State admits that it had documents served directly on the district court and that it did not have a copy of those documents served on Mr. Sanford. *See, e.g.*, Appellee Br. 5–7. The State also concedes the district court marked the documents "court only." Appellant's Br. 43. But the State nevertheless argues that "the *entry captions* were viewable by the 'court only,' as the captions are not viewable on the docket sheet," and that the records were "open to the public and to [Mr. Sanford]." Appellee's Br. 41, 43.

This argument is belied by the record. First, it is hard to see how Mr. Sanford or the public could have meaningful access to these documents if there was no sign that the documents existed other than a notation on an "internal" docket sheet.

Second, it is unclear how Mr. Sanford had "access" to paper documents sitting in the district court when he was incarcerated in a prison hundreds of miles away. Third, Mr. Sanford in fact did *not* have access to the documents given that Mr. Sanford asked the district court "to order [for him] the state's trial records because [of] the respondent's failure to comply fully with [Habeas] Rule 5," J.A. 224, and the court denied his motion, *see* J.A. 234. Thus, just as this Court surmised when issuing the certificate of appealability, by being marked "court only," the state court records "were evidently not available to [Mr. Sanford] or the public." J.A. 313 n.1. Mr. Sanford could not meaningfully litigate his habeas petition without access to the same information available to the district court and the State. *Mathews v. Eldridge*, 424 U.S. 319, 345–46 (1976).

The State acknowledges, as it must, that the records from Mr. Sanford's state post-conviction proceedings were not included with the state court records that the district court filed with this Court. Appellee's Br. 33. And this Court noted that the district court claimed to have "sent all that was received." J.A. 313 n.2. Thus, as Mr. Sanford has consistently maintained, it is fair to deduce that the district court was not in possession of the state post-conviction records when it rendered its ruling. This is especially troubling given that the State did not attach Mr. Sanford's entire petition to appeal the denial of his state habeas ruling, and the fact that Mr. Sanford

was never served the records and thus was never able to confirm that the district court had a complete record. *See* J.A. 280.

Still, the State argues that this evidence "is insufficient to impeach a district court's express finding that it considered [the state habeas records]." Appellee's Br. 33. The "finding" pointed to by the State was a single sentence in the district court's Rule 60(b) order stating it "was in possession of and considered all of the records of the petitioner's state trial, appellate, and habeas proceedings before ruling on the motion to dismiss." J.A. 286. Based on this sole sentence, the State claims that the district court's ruling is entitled to a "presumption of regularity." Appellee's Br. 35.

But a presumption of regularity is rebutted if there is proof of procedural irregularities or if a defendant's rights were infringed. Appellee's Br. 35. *Parke*, 506 U.S. at 24. Once the defendant produces evidence of either, the government must "show that the underlying judgment was entered in a manner that did, in fact, protect the defendant's rights." *Id.*

Here, there is no question that there were procedural irregularities and Mr. Sanford's rights were infringed. The district court informed this Court that it forwarded all of the state court documents that it received, yet documents relating to the state habeas proceedings were not among them. This directly contradicts the district court's earlier statement that it had considered Mr. Sanford's state post-conviction records before dismissing his petition. Both statements cannot be true.

Either the district court did not have all of the necessary information before issuing its ruling or this Court does not have all of the necessary information to review the district court's ruling. In any event, Mr. Sanford's right to have his case adjudicated with a full and accurate record has been frustrated. *See, e.g.*, *Townes v. Alabama*, 139 S. Ct. 18, 20 (2018) (Sotomayor, J., concurring) ("A reliable, credible record is essential to ensure that a reviewing court—not to mention the defendant and the public at large—can say with confidence whether those [due process] rights have been respected.").

Indeed, the irregularity of what happened here is underscored by the State's guessing about what happened to the "now-missing" records. Appellee's Br. 12, 37. At one point, the State suggests that the records were "misplaced." Appellee's Br. 34, 38. Elsewhere, the State hypothesizes that the "file was inadvertently returned to the Newport News Circuit Court *after* the district court's review," Appellee's Br. 38–39 n.16.[7] But the fact that one must guess about what happened is precisely the problem. Even assuming the state courts forwarded *all* of the relevant records to the district court, there is no telling when the records went "missing"—before or after

[7] The State makes this argument in light of counsel for the State's representation that the original records of the state trial post-conviction proceedings are in the possession of the Newport News Circuit Court. Appellee's Br. 38–39 n.16. Notably, counsel for the State makes no similar representations about the whereabouts of the state appellate post-conviction record.

the district court's review.[8] And we can only *assume* that the state courts forwarded all the records because, even considering the State's extra-record evidence included in the supplemental appendix, nothing indicates the State *actually* requested the state courts to forward the state post-conviction records. And even if there were such evidence, no evidence indicates the clerks of those courts carefully combed through the records to ensure that the records were accurate and complete before sending them to the district court. *See* Appellee's Br. 36; S.J.A. 19.[9]

It offends due process to simply "conclude" or "assume" that the state habeas records were transmitted by the Newport News Circuit Court and Supreme Court of Virginia to the district court given that this Court does not have the records despite the district court's representation that it sent this Court all it had received. And the State still cannot explain what happened to the records or guarantee the irregularities did not result in a deprivation of Mr. Sanford's due process rights. Simply asserting

[8] It is also unknown whether the records went "missing" before this Court's initial ruling dismissing Mr. Sanford's appeal. Moreover, the district court's ruling does not provide any assurances that it considered the entire state court record given that it only cited the portions of the state court record cited to by the State in its answer.

[9] The State cites *Parke v. Raley*, 506 U.S. 20 (1992) to support its argument that the missing records do not rebut a presumption of regularity. *See* Appellee's Br. 35. But in *Parke*, the defendant asked the court to infer that he was not advised of his rights because the transcript from that proceeding was missing. *Parke*, 506 U.S. at 30. Here, the issue is much more fundamental: it is not even clear whether the district court had the transcripts or other state court records necessary for habeas review, and it is certainly clear that *this* Court does not have them.

with no concrete proof that "[a]ll other records were transferred" is not enough to satisfy due process given that one of "most basic of due process protections" is a "complete record of the proceeding." *Marincas v. Lewis*, 92 F.3d 195, 203 (3d Cir. 1996).[10] Here, because there is no guarantee that "the complete record" was filed with the district court, "all hope of any (adequate and effective) appeal" from his state court conviction "was taken from [Mr. Sanford]." *Entsminger v. Iowa*, 386 U.S. 748, 752 (1967) (quoting *Lane v. Brown*, 372 U.S. 477, 485 (1963)).

In short, the district court undermined itself when it said to this Court that it had sent all the records that it received without sending the state post-conviction records. And just as importantly, it undermined this Court's ability to provide effective review and its ability to have confidence that Mr. Sanford received adequate due process in the proceedings below. Reversal is required.

[10] There would be no confusion if the district court had docketed the documents. And the due process concerns could have been mitigated had the State served Mr. Sanford with a copy of the documents.

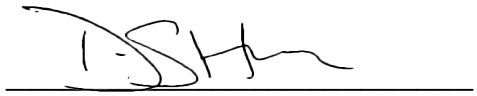
CONCLUSION

For these reasons, this Court should reverse the decision below and remand for further proceedings.

Daniel S. Harawa (Counsel of Record)
Sara Hubaishi (Student Counsel)
Drew Smith (Student Counsel)
Lauren Speer (Student Counsel)
WASHINGTON UNIVERSITY SCHOOL OF LAW
Appellate Clinic
One Brookings Dr.
Campus Box 1120
St. Louis, MO 63130
314-935-4689
dharawa@wustl.edu

CERTIFICATE OF COMPLIANCE

In accordance with Rule 32(a) of the Federal Rules of Appellate Procedure undersigned counsel for appellant certifies that the accompanying brief is printed in Times New Roman 14-point font, and including footnotes, contains no more than 6,500 words. According to the word-processing system used to prepare the brief, Microsoft Word, the relevant sections of the brief under Rule 32(f) contain 5,190 words.



Daniel S. Harawa

CERTIFICATE OF SERVICE

I hereby certify that on January 10, 2022, I electronically filed the foregoing brief with the Clerk of the Court of the United States Court of Appeals for the Fourth Circuit using the CM/ECF system. All participants are registered CM/ECF users and will be served by the appellate CM/ECF system.

Daniel S. Harawa