

**09-158 MAGWOOD V. CULLIVER**

DECISION BELOW:555 F.3d 968

LOWER COURT CASE NUMBER: 07-12208

**QUESTIONS PRESENTED:**

1. When a person is resentenced after having obtained federal habeas relief from an earlier sentence, is a claim in a federal habeas petition challenging that new sentencing judgment a "second or successive" claim under 28 U.S.C. § 2244(b) if the petitioner could have challenged his previously imposed (but now vacated) sentence on the same constitutional grounds?
2. Did petitioner's attorney provide ineffective assistance of counsel warranting federal habeas relief by failing to raise an argument at petitioner's resentencing proceedings that would have made clear that petitioner was constitutionally ineligible for the death penalty?

CERT. GRANTED 11/16/2009