

DOCKET NO. 18-5442

IN THE SUPREME COURT OF THE UNITED STATES

CRAIG ALAN WALL, SR.,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF
CERTIORARI TO THE FLORIDA SUPREME COURT

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QUESTIONS PRESENTED FOR REVIEW

[Capital Case]

1. Whether this Court should review a decision of the Florida Supreme Court interpreting state procedural and evidentiary matters?
2. Whether this Court should review a decision of the Florida Supreme Court that allowed Wall to file a pro se brief, but denied appellate counsel's motion to withdraw where neither the federal nor state constitutions provide a right to self-representation on appeal?

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CITATION TO OPINION BELOW

The decision of the Florida Supreme Court is reported at *Wall v. State*, 238 So. 3d 127 (Fla. 2018).

STATEMENT OF JURISDICTION

The judgment of the Florida Supreme Court was entered on February 22, 2018. (Pet. App. A). Petitioner asserts that this Court's jurisdiction is based upon 28 U.S.C. § 1257(a). Respondent agrees that this statutory provision sets out the scope of this Court's certiorari jurisdiction, but submits that this case is inappropriate for the exercise of this Court's discretionary jurisdiction.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Respondent accepts Petitioner's statement regarding the applicable constitutional and statutory provisions except for Petitioner's reference to the Rules Regulating the Florida Bar and Federal Rules of Criminal Procedure. The Rules Regulating the Florida Bar are not subject to this Court's jurisdiction. The rules of federal procedure are inapplicable to Petitioner's state conviction.

STATEMENT OF THE CASE

Petitioner was charged with first-degree murder for the stabbing death of his girlfriend, Laura Taft, and first-degree felony murder for the death of his and Laura's 5-week-old son, Craig Alan Wall, Jr., who was known as C.J. After years of various court proceedings where Appellant vacillated between having counsel and proceeding *pro se*, Appellant eventually pleaded guilty to Count One – the murder of Laura Taft, and no contest to Count Two – the felony murder of C.J.. He waived a penalty phase jury and represented himself during the penalty phase where he offered limited mitigation. The court appointed independent counsel for purposes of presenting additional mitigation. Appellant was sentenced to death on both counts on June 3, 2016.

The Florida Supreme Court affirmed Petitioner's convictions and sentences. *Wall*, 238 So. 3d 127. The court addressed four issues: (1) whether the trial court erred in failing to order a competency evaluation prior to accepting the plea; (2) whether the trial court erred by failing to recuse itself upon a motion to disqualify; (3) the voluntariness of the plea; and (4) the proportionality of the death sentences. Additionally, the Florida Supreme Court acknowledged Wall's *pro se* brief and found that the issues raised therein were non-meritorious stating:

"Despite our general prohibition on pro se filings in cases such as this, we granted Wall the opportunity to set forth his personal positions in a supplemental pro se brief. See *Davis v. State*, 789 So. 2d 978, 981 (Fla. 2001). This request was granted due to the unique nature of this case as fitting within an extremely limited exception to our general prohibition. See *id.* at 981 n.3; see also *Doty v. State*, 170 So. 3d 731, 737 (2015). We have reviewed Wall's supplemental pro se brief, concluding that his claims are meritless and warrant no further discussion." *Wall*, 238 So. 3d at 145-46.

Wall filed a pro se petition for writ of certiorari in this Court. This is the State's brief in opposition.

REASONS FOR DENYING THE WRIT

THERE IS NO BASIS FOR CERTIORARI REVIEW OF THE FLORIDA SUPREME COURT'S DECISION BECAUSE THERE IS NO CONFLICT BETWEEN STATE COURTS OF LAST RESORT OR UNITED STATES COURTS OF APPEAL NOR DOES THE CASE PRESENT AN IMPORTANT UNSETTLED QUESTION OF FEDERAL LAW.

As stated in Rule 10 of the Rules of the Supreme Court of the United States certiorari review "will be granted only for compelling reasons." Additionally, consideration of a decision by a state court of last resort should involve an "important question of federal law that has not been, but should be, resolved by this Court" or should involve cases that decide a federal question in a way that conflicts with other state high courts or federal courts of appeal. Cases that do not divide the federal or state courts or that do not present important, unsettled questions of federal law usually do not merit certiorari review. *Rockford Life Insurance Co. v. Illinois Dept. of Revenue*, 482 U.S. 182, 184, n. 3 (1987); *Braxton v. United States*, 500 U.S. 344, 348 (1991).

This Court has repeatedly recognized that where a state court judgment rests on non-federal grounds, where the non-federal grounds are an adequate basis for the ruling independent of the federal grounds, "our jurisdiction fails." *Fox Film Corp. v. Muller*, 296 U.S. 207, 210 (1935); *Michigan v. Long*, 463 U.S. 1032, 1038 (1983). See also *Cardinale v. Louisiana*, 394 U.S.

437, 438 (1969) (reaffirming that this Court has no jurisdiction to review a state court decision on certiorari review unless a federal question was raised and decided in the state court below); *Street v. New York*, 394 U.S. 576, 581-82 (1969) (same). If a state court's decision is based on separate state law, this Court "of course, will not undertake to review the decision." *Florida v. Powell*, 559 U.S. 50, 57 (2010).

Additionally, "this Court has stated that when . . . the highest state court has failed to pass upon a federal question, it will be assumed that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in this Court can affirmatively show the contrary." *Street*, 394 U.S. at 582. Petitioners before this Court bear the burden of establishing that their federal claim was raised "at a time and in the manner required by the state law" and with "fair precision and in due time." *Adams v. Robertson*, 520 U.S. 83, 87 (1997) citing *Bankers Life & Casualty Co. v. Crenshaw*, 486 U.S. 71, 77-78 (1988) quoting *Webb v. Webb*, 451 U.S. 493, 501 (1981); *New York ex. Re. Bryant v Zimmerman*, 278 U.S. 63, 67 (1928). A petitioner's failure to comply with state procedural rules for raising a federal claim is an adequate and independent ground for the state court to have disregarded the federal claim. *Adams*, 520 U.S. at 88-89.

WALL HAS NO STATE OR FEDERAL CONSTITUTIONAL RIGHT TO SELF-REPRESENTATION ON APPEAL.

Wall did not raise the issue of self-representation in his pro se appellate brief. Instead, Wall took issue with the matters raised by appellate counsel in the Initial Brief. Wall also argued that the Florida Supreme Court should rule on whether a capital defendant can plead to the death penalty, without restriction and alleged various misdeeds on the part of the sentencing judge. Wall also argued that if the court overturned his death sentence, it should also rule on the severance issue.

Relatively early in the appellate proceedings, Wall's appellate attorney filed a motion to withdraw, which the Florida Supreme Court denied as a matter of state law. Subsequently, Wall filed various motions related to his appellate counsel seeking removal or counsel, or appointment of another attorney to represent Wall's views, or to allow him to proceed pro se. Most of these motions were stricken, but the Florida Supreme court eventually did accept Wall's pro se brief, which raised the issue noted above. That said, the opinion below did not address the federal claim Wall attempts to raise in this Court. Therefore, this Court is without jurisdiction to review the opinion below.

Furthermore, this Court has concluded that "[t]he Sixth Amendment does not include any right to appeal." *Martinez v. Court of Appeal of California, Fourth Appellate Dist.*, 528 U.S. 152, 160 (2000). This court noted that "'[t]he right of appeal, as we presently know it in criminal cases, is purely a creature of statute.' (citation omitted) It necessarily follows that the Amendment itself does not provide any basis for finding a right to self-representation on appeal." *Martinez*, 528 U.S. at 160; quoting *Abney v. United States*, 431 U.S. 651, 656 (1971).

Likewise, the Florida Supreme Court has determined that capital appellants do not have a right to represent themselves on appeal. *Hill v. State*, 656 So. 2d 1271, 1272 (Fla. 1995) (stating "The Court is concerned that it cannot properly carry out its statutory responsibility to review Hill's conviction and sentence of death without the skilled adversarial assistance of a lawyer acting on Hill's behalf, particularly as it concerns the sufficiency of the evidence to convict and the proportionality of the death sentence.")

Additionally, pursuant to Florida law, "The judgment of conviction and sentence of death shall be subject to automatic review by the Supreme Court of Florida and disposition rendered within 2 years after the filing of a notice of appeal. Such review by the Supreme Court shall have priority over all other

cases and shall be heard in accordance with rules adopted by the Supreme Court." § 921.141 (5), Fla. Stat.

The Florida Supreme Court has interpreted the statute and the state constitution as requiring review of all death sentenced defendants. *Robertson v. State*, 143 So. 3d 907, 908 (Fla. 2014) (stating "our mandatory review of both the validity of the judgment and the propriety of the death sentence is 'automatic' and does not depend upon the acquiescence of the death-sentenced defendant.") See also Art. V, § 3 (1), Fla. Const. (stating the Florida Supreme Court "[s]hall hear appeals from final judgments of trial courts imposing the death penalty and from decisions of district courts of appeal declaring invalid a state statute or a provision of the state constitution.")

It does not appear that Wall wished to waive his appeal. Rather, he expressed unhappiness with his appointed counsel and wished to represent himself. The Florida Supreme Court, while denying his request to represent himself, did allow Wall to file a pro se brief. The extent the Florida Supreme Court permits (or not) pro se briefing in limited cases is a matter of state law and not subject to this Court's review. *Huddleston v. Dwyer*, 322 U.S. 232, 237 (1944) (stating that the decision of the highest court of a state on matters of state law are conclusive.)

Additionally, this case does not present this Court with an important, unsettled question of federal law. Therefore, this Court should deny the writ.

PROCEDURAL AND EVIDENTIARY RULINGS ARE MATTERS OF STATE LAW AND NOT SUBJECT TO THIS COURT'S REVIEW.

"In most cases, comity and respect for federalism compel [this Court] to defer to the decisions of state courts on issues of state law. That practice reflects our understanding that the decisions of state courts are definitive pronouncements of the will of the States as sovereigns." *Bush v. Gore*, 531 U.S. 98, 112 (2000) citing *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938). See also *Mullaney v. Wilbur*, 421 U.S. 684, 691 (1975) ("This Court, however, repeatedly has held that state courts are the ultimate expositors of state law, (internal citations omitted) and that we are bound by their constructions except in extreme circumstances not present here.")

Wall argues that the Florida Supreme Court erred by relying on hearsay testimony from Ms. Taft to write the "Factual and Procedural Background" portion of the opinion. Wall asserts that Ms. Taft's statements about C.J.'s condition after the near-miss car collision are hearsay. He points out that he objected to the statements as hearsay during the penalty phase. The state responded by pointing out, among other things, that Wall's

murder of Ms. Taft, which he had already pleaded guilty of, caused Ms. Taft to be unavailable. The State relied, in part, on Florida's forfeiture by wrongdoing hearsay exception. § 90.804(2)(f), Fla. Stat.

In his pro se brief to the Florida Supreme Court, and in the context of his severance argument, Wall argued that the forfeiture by wrongdoing as well as other hearsay cannot be used to provide the nexus necessary for joinder of the two murder charges. Wall also argued that the application of the statute in his case was an *ex post facto* violation. The state court found all of Wall's arguments lacked merit.¹ Additionally, the Florida Supreme Court's reference to Ms. Taft's statement in the "background" portion of its opinion does not present this Court with an important question of unsettled federal law.

The evidentiary and procedural issues Wall raises in his petition are matters state law. This Court lacks jurisdiction to review any decision of the Florida Supreme Court regarding state procedure or rules of evidence unless those procedures or rules violate the federal constitution. Therefore, the Court should deny the writ.

Pursuant to § 921.141 (1), Fla. Stat. hearsay is admissible in the penalty phase so long as the defendant has an opportunity to rebut it. To the extent Wall could not rebut Ms. Taft's statement about the near-miss car accident any error was harmless. There was ample evidence that C.J.'s death was not a result of any injury he may have sustained days earlier.

CONCLUSION

Based on the foregoing, Respondent respectfully requests that this Court deny the petition for writ of certiorari.

Respectfully submitted,

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