CASE NO. 18-5738

IN THE SUPREME COURT OF THE UNITED STATES

BILL PAUL MARQUARDT,

Petitioner,

v.

JULIE L. JONES, SECRETARY, DEPARTMENT OF CORRECTIONS, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

[Capital Case]

Whether certiorari review should be denied where (1) Petitioner does not provide any compelling reason to grant the writ as required under Rule 10 of this Court's rules; (2) Petitioner filed a *pro se* writ of certiorari when he is represented by counsel; (3) Petitioner's competence to proceed in postconviction has been questioned; and (4) the U.S. Eleventh Circuit Court Appeals correctly ruled in affirming the Middle District of Florida's order denying Petitioner the right to proceed *pro se,* and in finding they lacked jurisdiction to review the order to stay proceedings.

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The decision of the United States Circuit Court of Appeals, Eleventh Circuit, is found at *Marquardt v. Sec'y, Fla. Dept. of Corr.*, 720 F. Appx 550 (11th Cir. 2017).

STATEMENT OF JURISDICTION

The judgment of the Eleventh Circuit was entered on December 28, 2017. (Pet. App. A). Petitioner does not explain what statute he is asserting jurisdiction under, but Respondents would point the Court to 28 U.S. § 1254(1). Respondents agree that this statutory provision sets out the scope of this Court's certiorari jurisdiction, but submit that this case is inappropriate for the exercise of this Court's discretionary jurisdiction.

STATEMENT OF THE CASE

On March 15, 2000, Margarita Ruiz and her daughter Esperanza "Hope" Wells were found murdered in their home in Sumter County. *Marquardt v. State*, 156 So.3d 464, 469 (Fla. 2015). When police arrived pursuant to a 911 call, they discovered that someone had broken in through a screen door. *Id.* at 470. The medical examiner was able to reconstruct how the victims were attacked. *Id.* Ruiz was shot twice in the kitchen, but initially survived and fled through the house into a bedroom. *Id.* There she was tracked down, shot a third time in the spine causing her to collapse, and then was stabbed in the neck. *Id.* Wells was found in the same bedroom and had been shot once in the head from a distance of less than eighteen inches, and then was stabbed in the neck eight times. *Id.* DNA collected at the scene yielded profiles that included the two victims and a third unidentified person. The

police also found a latent palm print at the scene. *Id.* at 470-71.

A separate investigation in Wisconsin into the murder of Mary Marquardt, Petitioner's mother, which occurred on March 13, 2000, eventually led the police to Marquardt. *Id.* When Marquardt was arrested on March 18, 2000 for that murder, Wisconsin police collected a gun, a knife found in his pocket, and the clothes he was wearing and tested them for DNA. *Id.* 471-72. DNA profiles of three individuals were found on the jacket and on the knife, one of whom was Marquardt, the other two consisting of two unidentified females who were most likely mother and daughter. *Id.* The investigation also discovered that Marquardt had traveled from Valdosta, Georgia to Long Key, Florida, between March 14, 2000, and March 15, 2000. *Id.* at 472.

Marquardt was acquitted of the murder of his mother, but an attorney involved in the case sought to identify the sources of DNA found when Marquardt was arrested. *Id.* at 471. His research ultimately led him to the unsolved murders of Ruiz and Wells, and he contacted Sumter County law enforcement. *Id.* Further DNA testing revealed that the unknown DNA sample retrieved from Ruiz's and Wells' home matched Marquardt, and that the unknown DNA contributors found on his clothes and knife matched Ruiz and Wells. *Id.* at 472-73.

On October 12, 2011, Marquardt was convicted by a jury for the first-degree murders of Ruiz and Wells, and burglary of a dwelling with a firearm. *Id.* at 473. Marquardt waived a penalty-phase jury and elected to represent himself. *Id.*

Marquardt then declined to present mitigation; however, appointed standby counsel presented mitigation in his stead. *Id.* at 474.

After the penalty-phase and *Spencer*[1] hearings, the trial court sentenced Marquardt to death for each murder, and to life for the burglary of a dwelling with a firearm. *Id.* at 475. The trial court found that the State had proven beyond a reasonable doubt the existence of four statutory aggravating circumstances: (1) HAC (assigned great weight); (2) CCP (assigned great weight); (3) the capital felonies were committed while Marquardt was engaged in the commission of a burglary (assigned great weight); and (4) Marquardt had previously been convicted of another felony involving the use or threat of violence, based on a conviction for aggravated burglary in Wisconsin (assigned some weight). *Id.* The trial court found two statutory mitigating circumstances: (1) that Marquardt's capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was substantially impaired (assigned some weight); (2) other factors in Marquardt's background that would mitigate against imposition of the death penalty, based on Marquardt being a law abiding citizen who was close to his family before there were reported instances of criminal activity (assigned minimal weight), and the fact that he was never previously violent toward anyone (assigned minimal weight). *Id.* The trial court found two nonstatutory mitigating circumstances: (1) Marquardt's good behavior during the proceedings (assigned minimal weight); and (2) Marquardt's good behavior while in jail (assigned minimal weight). *Id.*

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[1] *Spencer v. State*, 615 So.2d 688 (Fla. 1993).

Marquardt's conviction and sentence were upheld on direct appeal on January 22, 2015. *Marquardt v. State*, 156 So.3d 464 (Fla. 2015). This Court denied his writ of certiorari on October 5, 2015, and his sentence and conviction became final. *Marquardt v. Florida*, 136 S. Ct. 213 (2015).

Thereafter, postconviction proceedings in Marquardt's case commenced in state court, and Marquardt was represented by the Office of Capital Collateral Regional Counsel (CCRC-M). On September 21, 2016, Marquardt's counsel filed a motion for postconviction relief in state court pursuant to Florida Rule of Criminal Procedure 3.851, along with a motion to determine competency. The issue relating to Marquardt's competency is still being litigated in the state postconviction court.

Also, in September 2016, Marquardt filed a *pro se* petition for habeas corpus pursuant to 28 U.S.C. § 2254 in the Middle District of Florida. *Marquardt v, Sec'y*, 720 Fed. Appx. at 551. In the district court, Marquardt filed, among other motions, a motion to represent himself and to appoint standby counsel. *Id.* at 552. The motion was opposed both by the State of Florida and his appointed counsel, CCRC-M. *Id.* CCRC-M told the court that they had been representing Marquardt in state court since May 4, 2015, and had motions currently pending in state court. *Id.* They claimed that Marquardt had several meritorious claims not included in his *pro se* petition, and which have not been exhausted in state court, and therefore requested a stay and abeyance of Marquardt's § 2254 proceeding. *Id.* On December 20, 2016, a magistrate judge denied Marquardt's motion to proceed *pro se* and have standby

counsel, and granted CCRC-M's motion to hold the case in abeyance. *Id.* On February 22, 2017, the district court denied Marquardt's motion to reconsider the magistrate judge's order and granted again CCRC-M's request to hold the case in abeyance. *Id.*

Marquardt then appealed the February order to the Eleventh Circuit Court of Appeals, specifically challenging the district court's decision holding his petition in abeyance and denying standby counsel and self-representation. *Id.* at 553. The Eleventh Circuit held that the district court did not abuse its discretion in denying Marquardt's motion to proceed *pro se*. The circuit court also found that Marquardt lacked standing to challenge the order granting a stay in his case; therefore, the Eleventh Circuit had no jurisdiction to review that order. Marquardt filed this *pro se* petition for writ of certiorari challenging the Eleventh Circuit Court of Appeals conclusions.

REASONS FOR DENYING THE WRIT

Certiorari Review Should Be Denied Because: (1) Petitioner does not provide any compelling reason to grant the writ as required under Rule 10 of this Court's rules; (2) Petitioner filed a *pro se* writ of certiorari when he is represented by counsel; (3) Petitioner's competence to proceed in postconviction has been questioned; and (4) the U.S. Eleventh Circuit Court Appeals correctly ruled in affirming the Middle District of Florida's order denying Petitioner the right to proceed *pro se,* and in finding they lacked jurisdiction to review the order to stay proceedings.

The Eleventh Circuit's ruling and Marquardt's writ challenging it provide this Court with no "compelling reason" that would justify granting discretionary jurisdiction. *See* U.S. Sup. Ct. R. 10. The primary purpose for which this Court uses its certiorari jurisdiction is to resolve conflicts among the United States courts of appeals and state courts "concerning the meaning and provisions of federal law." *Braxton v. United States*, 500 U.S. 344, 348 (1991). 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).

Marquardt has not and cannot point to any decision from this Court or the circuit courts that conflicts with the Eleventh Circuit's ruling below. On the contrary, the Eleventh Circuit applied the principles of law handed down by this Court and other circuits in reaching its ruling. *See Martinez v. Court of Appeal of California, Fourth Appellate Dist.,* 528 U.S. 152 (2000); *Myers v. Johnson*, 76 F.3d 1330 (5th Cir. 1996). The Eleventh Circuit held, as this Court has before, that there is no right to self-representation in appellate matters. Marquardt's argument that

he is being denied his constitutional rights due to being assigned an appellate attorney is not supported by any precedent. Marquardt does not identify any conflict with any federal courts, and presents no unresolved, pressing federal question. He instead is merely disagreeing with the Eleventh Circuit's application of relevant federal precedent. Therefore, he has failed to provide any reason, let alone a compelling one, necessary for this Court to exercise its discretionary jurisdiction.

Marquardt contends that the district court violated his constitutional rights by denying his request to represent himself, denying his request to discharge his attorneys by declaring his attorneys as opposing parties in his petition, and by holding his petition in abeyance. There is no constitutional right to hybrid representation. Moreover, there is no evidence to suggest that Marquardt's attorneys are deficient in their performance or have divided loyalties.

In *Faretta v. California*, 422 U.S. 806 (1975), the Supreme Court held that a defendant "has a constitutional right to proceed without counsel when he voluntarily and intelligently elects to do so." *Id.* at 807. Still, "the right to self-representation is not absolute. . ." *Martinez*, 528 U.S. at 161 (2000). In fact, the right to self-representation does not apply to postconviction proceedings. *Id.* at 160 (explaining that rights presented under the Sixth Amendment "are presented strictly as rights that are available in preparation for trial and at the trial itself.")

Nonetheless, even when there is no right to self-representation, a court has

discretion to allow a lay person to proceed *pro se*. When exercising that discretion, the court must balance the court's "interest in ensuring the integrity and efficiency of the trial" and "the defendant's interest in acting as his own lawyer." On appeal, that balance favors the court's interest. *Id.* at 162-63. Furthermore, the law is well-settled that a criminal defendant does not have a right to self-representation and the simultaneous assistance of counsel. *See Myers*, 76 F.3d at 1335 ("there is no constitutional right to hybrid representation.")

Here, in Marquardt's motion to appoint standby counsel, Marquardt specifically stated that he desired to proceed *pro se*, but he also wanted the assistance of standby counsel in the event he needed help with legal research. In denying Marquardt's request to proceed *pro se* and appoint standby counsel to help with legal research, the district court reasoned that Marquardt is not formally trained in the law, and that the issues governing his case are complex. The court also reasoned that issues existed as to Marquardt's competency to proceed with his postconviction case. The court noted that Marquardt has been appointed counsel to represent him in his state and federal cases. His attorneys are experienced postconviction attorneys who had given the court no reason to doubt the effectiveness of their representation. Thus, based on the balance of competing interests, the district court denied Marquardt's request to appoint standby counsel.

As the Eleventh Circuit found below, the facts make it clear that it was not an abuse of discretion to deny Marquardt self-representation. The facts of his case

are complex, and his currently-pending appeals involve complex issues related to ineffective assistance of counsel and proper exhaustion in state courts before proceeding in federal court. Marquardt has no legal training and three doctors have recently found him not competent to proceed. In addition, he has well-experienced capital attorneys to represent him in both state and federal courts.

As noted above, there are also questions about Marquardt's current competency to proceed in his cases, much less represent himself. This Court has held that the standard of competence for waiving counsel is identical to the standard of competence for standing trial. *See Godinez v. Moran*, 509 U.S. 389, 396-97 (1993). In state court, along with their motion for postconviction relief, CCRC-M filed a motion to determine competency. The trial court appointed three doctors to evaluate Marquardt's competency to proceed, all of whom have opined that he is not competent. There has not been a formal adjudication from the state court on the issue yet, but given the existence of those three reports, there is some reason to doubt Petitioner's competence to waive counsel and represent himself. Even at trial, a defendant, although competent to stand trial, may nonetheless be denied the right to self-representation where mental issues not rising to the level of incompetency would hinder or inhibit exercise of that right. *See Indiana v. Edwards*, 554 U.S. 164, 177–78 (2008)("We consequently conclude that the Constitution permits judges to take realistic account of the particular defendant's mental capacities by asking whether a defendant who seeks to conduct his own defense at trial is mentally

competent to do so.").

Additionally, the Eleventh Circuit correctly determined they had no jurisdiction to rule on the district court's order holding the § 2254 petition in abeyance pending the outcome of his state motions. In reaching this conclusion they held:

> [A]s we have explained, the district court did not abuse its discretion in denying Marquardt's motion to proceed *pro se*. Under these particular circumstances, Marquardt's counsel therefore acted on Marquardt's behalf when counsel moved to stay the federal proceedings pending exhaustion of the state remedies. This type of decision is a strategic one by which Marquardt is bound unless counsel sought the stay in bad faith or with divided loyalty to Marquardt. Nothing in the record allows us to conclude that counsel here acted either in bad faith or with divided loyalty to Marquardt. Marquardt is therefore bound by counsel's decision to seek the stay. And since counsel, representing Marquardt, prevailed on the motion to stay, Marquardt is not an aggrieved party. He therefore lacks standing to appeal the order granting stay.

Marquardt v. Sec'y, 720 Fed. Appx. at 556-57.

Since Marquardt cannot proceed *pro se*, he is bound by the strategic decisions of his attorneys. When their motion to stay the proceedings was granted, both he and his counsel prevailed. Therefore, the Eleventh Circuit correctly concluded that Marquardt lacked standing to appeal a ruling that was in his favor.

CONCLUSION

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

Respectfully submitted,

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