

No. 18-5738 (17-11029)

IN THE SUPREME COURT OF THE UNITED STATES

BILL PAUL MARQUARDT,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent

On Petition for a Writ of Certiorari to the Florida Supreme Court

NOTICE OF STATE COURT STATUS BY APPOINTED COUNSEL

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**NOTICE TO THE SUPREME COURT OF THE UNITED STATES
OF PENDING STATE COURT CLAIM**

The undersigned counsel, on behalf of Petitioner Bill P. Marquardt, hereby files this Notice of State Court Status by Appointed Counsel for the purpose of notifying this Honorable Court that Mr. Marquardt is represented by the undersigned, who have been appointed by the State of Florida pursuant to Section 27.710, Florida Statutes (2013), and request that this Court deny Petitioner's *pro se* Petition. In support thereof, the undersigned, on behalf of Petitioner, advises the Court as follows:

STATEMENT OF CASE

The Circuit Court of the Fifth Judicial Circuit, Sumter County, Florida, entered the judgments of convictions and sentences under consideration. Bill P. Marquardt was charged by indictment, dated December 15, 2006, with two counts of first degree premeditated murder with a firearm, as well as burglary with a firearm, which occurred on March 15, 2000. In May of 2009, Mr. Marquardt was transported to Florida from the Mendota Mental Health Institute in Wisconsin, where he had been involuntary committed after a 2003 finding of not guilty by reason of mental disease or defect (Hereinafter "NGRI"). Commitment Order attached as Appendix 1. Once in Sumter County, Mr. Marquardt was permitted to waive counsel and represent himself at his capital trial. He filed a series of nonsensical pleadings prior to and during his trial. He was ultimately convicted and sentenced to death.

On direct appeal, the Florida Supreme Court affirmed Mr. Marquardt's convictions and sentences of death. *Marquardt v. State*, 156 So. 3d 464 (Fla. 2015). This Court denied certiorari on October 5, 2015. *Marquardt v. Florida*, 136 S. Ct. 213 (2015). Mr. Marquardt's state post-conviction proceedings are ongoing.

POSITION OF POST-CONVICTION COUNSEL

Petitioner's state remedies have not been exhausted and he is represented by post-conviction counsel; he should not be permitted to proceed *pro se*.

Counsel for Mr. Marquardt agree with the respondent that the writ should be denied at this time.

In May of 2015, Law Office of the Capital Collateral Regional Counsel – Middle Region (“CCRC-M”) was appointed to represent Petitioner. Thereafter, post-conviction proceedings commenced in state court. On September 21, 2016, CCRC-M filed a motion for post-conviction relief and motion to determine Petitioner's Competency in state court. The issue related to Mr. Marquardt's competency is still pending in state court.

In September 2016, Petitioner filed a *pro se* petition for habeas corpus relief in the United States District Court for the Middle District of Florida pursuant to 28 U.S.C. § 2254. *Bill Paul Marquardt v. Sec., Fla. Dep't of Corrections and Fla. Atty Gen.*, 5:16-cv-590-OC-10PRL, ECF No. 1. Petitioner sought to represent himself in his federal proceedings, which was opposed by both the State and CCRC-M. *Id.* at ECF No. 15, 23. Mr. Marquardt had several meritorious claims not included in his *pro se* petition in the Middle District, which had not been exhausted in state court. Therefore, CCRC-M filed a Motion to Stay and Hold Proceedings in Abeyance Pending Restoration of Competency and Exhaustion of Remedies and an Amended Petition for Writ of Habeas Corpus. *Id.*, ECF Nos. 46 and 52. On April 6, 2017, the United States Court of Appeals for the Middle District granted Mr. Marquardt's Motion to Stay and Hold Proceedings in Abeyance Pending Restoration of Competency and Exhaustion of Remedies. *Id.* ECF No. 51, attached hereto as Appendix B. The Eleventh Circuit affirmed this ruling. *Marquardt v. Sec'y, Fla. Dep't of Corr.*, 72 F. Appx 550 (11th Cir. 2017).

After the filing of Mr. Marquardt's Amended Petition for Writ of Habeas Corpus by CCRC-M, *Id.* ECF No. 52, three doctors appointed by the state court to evaluate Mr. Marquardt for competency opined that he is incompetent to proceed. On January 23, 2018, with the agreement of both parties, the circuit court ordered a new round of competency evaluations. *Id.* ECF No. 70-1. Again, all three doctors opined that Mr. Marquardt is incompetent to proceed.

On July 30, 2018, a status hearing was held in the circuit court. At that time, the parties agreed that Mr. Marquardt was incompetent to proceed. No decision was made regarding what treatment Mr. Marquardt would receive, as representatives for the Florida Department of Corrections and Florida Department of Children and Families were not present. On September 18, 2018, another hearing was held, wherein the court was advised that Mr. Marquardt was going to begin a regimen of anti-psychotic medication. Therefore, a continuance was granted on the competency hearing pending a determination of how to obtain the appropriate medication for Mr. Marquardt.

A hearing to determine the proper treatment plan for Mr. Marquardt is currently scheduled for November 20, 2018. At that time, it is anticipated that the state court will permit Mr. Marquardt to begin a regimen of antipsychotic medication and treatment at either the county jail, a forensic treatment center, or the custody of the Florida Department of Corrections. It is likely that Mr. Marquardt will need to be re-evaluated for competency after a sufficient period of time on the medication has passed. More than one doctor has indicated that Mr. Marquardt's restorability is questionable at best.

CONCLUSION

This Court should decline to exercise its jurisdiction to grant certiorari to Petitioner, as his state court remedies have not been exhausted and there are competency proceedings pending in

that Court. Further, the Middle District of Florida has stayed Petitioner's pending federal habeas petition based on the pending competency proceedings in state court. Moreover, Petitioner is represented by post-conviction counsel and should not be permitted to proceed *pro se*. Based on the foregoing, the undersigned respectfully request that this Court deny the Petitioner's *pro se* petition for writ of certiorari.

Respectfully submitted,

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