

IN THE
SUPREME COURT OF THE UNITED STATES

THE PEOPLE OF THE STATE OF MICHIGAN,
Petitioner,

vs.

JUAN T. WALKER
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE MICHIGAN SUPREME COURT

REPLY BRIEF FOR THE PETITIONER

KYM L. WORTHY
Wayne County Prosecuting Attorney

JASON W. WILLIAMS
Chief of Research, Training, and Appeals

TIMOTHY A. BAUGHMAN*
Special Assistant Prosecuting Attorney
11th Floor, 1441 St. Antoine
Detroit, Michigan 48226
Phone: (313) 224-5792
tbaughma@waynecounty.com

* Counsel of Record

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Respondent makes arguments that the retroactivity question now raised was waived in the Michigan Courts, that Petitioner should be “judicially estopped” from its argument, and that Petitioner “lacks candor” for not so informing the Court; there is no question that the questions whether *Lafler v. Cooper* should compel relief under the facts of this case, given Respondent’s insistence of his innocence while under oath at the post-conviction hearing, where he indicated he would take the contrary position in order to gain the plea, which he then did, and under oath as well), and whether it should be overruled, are not waived. While Petitioner disagrees with Respondent, the fact of the matter is that these arguments are wholly beside the point.

The Michigan Supreme Court found error under *Lafler v. Cooper*, 566 U.S. 156 (2012), which the State vigorously contested, and it was the Michigan

Supreme Court itself that then remanded to the Michigan Court of Appeals for consideration of the retroactivity of Lafler on collateral review, which the State again vigorously argued, and then sought review in the Michigan Supreme Court from the Michigan Court of Appeals' finding that Lafler is retroactive on collateral attack. So the retroactivity issue was briefed and argued by direction of the Michigan Supreme Court itself ("we remand this case to [the Michigan Court of Appeals] for consideration of whether *Lafler v. Cooper* . . . should be applied retroactively to this case, in which the defendant's convictions became final in 2005." *People v. Walker*, 919 N.W.2d 401 (2018)).

Whether an issue was waived in the State appellate court is a matter for that court in its consideration of the matter. See *Stewart v. Smith*, 536 U.S. 856, 860 (2002); *Magouirk v. Warden, Winn Corr. Ctr.*, 237 F.3d 549, 553 (CA 5, 2001); *United States ex rel Tonaldi v. Elrod*, 782 F.2d 665, 668 (CA 7, 1986). No waiver was found by either the Michigan Supreme Court or the Michigan Court of Appeals (and how could it, the Michigan Supreme Court itself having directed the issue be considered on remand?). The issue was considered and decided on the merits in the Michigan Court of Appeals, and in denying discretionary review the Michigan Supreme Court said nothing about waiver (nor did the Michigan Court of Appeals). Because that is the case, no question of waiver or "estoppel" is before this Court.

Respondent also says that Michigan is free to have its own rule concerning the retroactivity of even federal constitutional rules. This is true, but the Michigan Court of Appeals analysis is entirely an application of the federal standard under

Teague v. Lane, 489 U.S. 288 (1989). See People v. Walker, 938 N.W.2d 31, 35-42 (2019). The federal claim is properly before this Court. See Michigan v. Long, 463 U.S. 1032 (1983).

Conclusion

Wherefore, the Petitioner requests that certiorari be granted.

Respectfully submitted,

KYM L. WORTHY
Prosecuting Attorney
County of Wayne

JASON W. WILLIAMS
Chief of Research,
Training and Appeals

TIMOTHY A. BAUGHMAN
Special Assistant
Prosecuting Attorney
1441 St. Antoine
Detroit, MI 48226
313 224-5792