No. 19-7939

In The

Supreme Court of the United States

ROBERT JAMES POPE, JR.,

Petitioner,

v.

WISCONSIN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE WISCONSIN SUPREME COURT

BRIEF IN OPPOSITION

JOSHUA L. KAUL
Attorney General of Wisconsin

DANIEL J. O'BRIEN*
Assistant Attorney General
Wisconsin State Bar #1018324

Attorneys for Respondent

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-9620
(608) 294-2907 (Fax)
obriendj@doj.state.wi.us

**Counsel of Record*

QUESTION PRESENTED

When Pope filed his reinstated direct appeal 21 years after his double-homicide conviction, and the transcript of his trial was no longer available due to the passage of time, was he entitled to automatic reversal of the conviction where the only error alleged was the lack of a trial transcript?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

Other Authorities

INTRODUCTION

Both the Wisconsin Court of Appeals and Wisconsin Supreme Court, after applying Wisconsin law, held that Pope must allege in his motion for a new trial and appeal some arguably meritorious claim of trial error for relief. He is not entitled to automatic reversal when the only "error" alleged is the lack of a transcript. Because Pope did not allege in his new trial motion and direct appeal that any error occurred at his 1996 trial, the Wisconsin Court of Appeals and the Wisconsin Supreme Court properly upheld his conviction. Pope has not provided any compelling reason for this Court to review his conviction.

STATEMENT OF THE CASE

On May 31, 1996, a Milwaukee County, Wisconsin jury found Robert James Pope, Jr., guilty of two counts of first-degree murder, as a party to the crime. He was sentenced on July 2, 1996, to life in prison without the possibility of parole. (Pet-App. A ¶¶ 8–9.)

At sentencing on July 2, 1996, Pope and his attorney both signed an "SM-33" form acknowledging that he had 20 days, to July 22, 1996, to file a formal notice of intent to pursue direct postconviction relief pursuant to Wis. Stat. § (Rule) 809.30(2)(b). (Pet-App. A ¶ 9.) Filing that notice of intent would have triggered the procedures for ordering the trial transcripts and for the appointment of counsel. Wis. Stat. § (Rule) 809.30(2)(c)–(h). Trial counsel did not file the notice of intent within 20 days. "As a result, Pope's direct appeal rights expired and no appeal was initiated." (*Id.*)

Nearly 14 months after the notice of intent was due, Pope filed on September 16, 1997, a pro se motion in the Wisconsin Court of Appeals to extend the time to file the notice of intent to pursue direct postconviction relief. (Pet-App. A ¶ 10.) Pope provided no explanation for waiting 14 months to move for an extension. The motion did not, as required by Wis. Stat. § (Rule) 809.82(2), provide "good cause" to explain the 14-month delay. On September 25, 1997, the court of appeals denied Pope's extension motion for failing to show "good cause." (*Id.* ¶¶ 11–12.) The court of appeals assumed that Pope's attorney failed to file the notice of intent within 20 days of sentencing, as he alleged, but that did not explain or excuse Pope's 14-month delay in filing the extension motion. (*Id.* ¶ 12.)

Pope did not seek review of the order in the Wisconsin Supreme Court. The September 25, 1997, order of the court of appeals thereby became the law of the case and was no longer reviewable when Pope finally petitioned to reinstate his direct appeal rights 17 years later. (Pet-App. A ¶¶ 11–12, 16 n.9.)

Pope filed another extension motion in 1999, but again did not provide "good cause" for the court to revisit its 1997 order. The court of appeals denied the motion and the Wisconsin Supreme Court denied review on the ground that Pope was merely asking it to grant untimely review of the 1997 order denying his first extension motion. (*Id.* ¶ 14.) Four more years passed before Pope filed in 2003 yet another motion to extend the time to file the notice of intent. Once again, Pope failed to provide any valid reason for the court of appeals to revisit its 1997 order and the motion was denied. (*Id.* ¶ 15.)

Pope did nothing for the next 11 years. In the interim, in 2006, the court reporters destroyed their notes of the 1996 trial because no direct or collateral challenges had been properly filed and Wisconsin law required court reporters to retain their notes only for 10 years. (Pet-App. A ¶ 17 n.10.)

On July 21, 2014, exactly 18 years after the notice of intent was due, Pope filed a state petition for a writ of habeas corpus arguing that his trial attorney was ineffective for not preserving his right to direct review when he failed to file the notice of intent in July 1996. (*Id.* ¶ 16.)

In 2016, after the court of appeals on habeas review remanded to the circuit court for a fact-finding hearing on the ineffective assistance claim, the State and Pope stipulated to reinstatement of Pope's right to file either a direct postconviction motion or a direct appeal. (*Id.* ¶¶ 16–17.)[1] Pope then filed his notice of intent to pursue direct postconviction relief in circuit court on October 4, 2016. (*Id.* ¶ 17.)

Finally, on March 7, 2017, Pope filed a direct postconviction motion for a new trial pursuant to Wis. Stat. § (Rule) 809.30. (*Id.* ¶ 18.) Pope raised but one claim of error: he was entitled to automatic reversal because the trial transcript was no longer available. (*Id.*) The State of Wisconsin opposed the motion on two grounds: (1) Pope was guilty of laches; and (2) the motion was deficient on its face because, as required by Wisconsin law, it failed to allege that any arguably prejudicial error(s) occurred at

[1] The stipulation provided that the parties agreed to "reinstatement of Mr. Pope's direct appeal deadlines under Wis. Stat. § 809.30, and for an order extending the deadline for filing a notice of intent to pursue postconviction relief to 20 days following issuance of the court's order with concomitant dismissal of the petition for writ of habeas corpus as moot." (R. 60.)

his trial. The circuit court rejected the State's arguments and ordered a new trial. (*Id.*) The State appealed.

The Wisconsin Court of Appeals reversed. (Pet-App. A ¶ 18.) It held that Wisconsin law required Pope to allege in his postconviction motion that some arguably prejudicial error(s) occurred at his trial that the transcript would have supported. "Pope had the initial burden in his postconviction motion of claiming some facially valid claim of error." (*Id.*; *see* Pet-App. B ¶¶ 32, 38.)

Pope petitioned for review. On December 17, 2019, the Wisconsin Supreme Court affirmed the court of appeals in a 4–3 decision. (Pet-App. A.) The supreme court agreed with the court of appeals that Pope had to allege in his motion a "facially valid claim of arguably prejudicial error." (Pet-App. A ¶ 2.) The Court rejected Pope's request that it create an exception to the established rule in Wisconsin that when a portion of the trial transcript is missing, even a significant portion, the defendant still must identify "a facially valid claim of arguably prejudicial error." (*Id.* ¶ 3.) "We decline to presume prejudice when the entire transcript is missing." (*Id.*; *see id.* ¶¶ 31–38.)

The court clarified that it was reviewing only the 2018 decision of the Wisconsin Court of Appeals rejecting Pope's argument that he need not allege trial error when the entire trial transcript is missing. It was not reviewing the September 25, 1997, decision of the Wisconsin Court of Appeals denying Pope's pro se motion to extend the time to file his notice of intent to pursue direct postconviction relief. (*Id.* ¶¶ 11–12.) That 1997 decision became "the law of Pope's case" when issued. (*Id.* ¶ 16 n.9.)

REASONS FOR DENYING THE PETITION

This Court Should Not Grant Certiorari Because Pope Presents No "Compelling Reasons" To Do So.

Pope's argument for automatic reversal of his double-homicide conviction is two-fold: prejudice is presumed because (1) trial counsel forfeited his right to appeal when he did not file the notice of intent in 1996, (Pet. 9–13); and (2) the trial transcript is missing. (Pet. 13–16.) Both arguments are neither compelling nor meritorious.

This Court will exercise its discretion to grant certiorari review only for "compelling reasons." Sup. Ct. R. 10.

Pertinent here, a compelling reason is when a state court "has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court." Sup. Ct. R. 10(c).

"A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." Sup. Ct. R. 10.

There is no split of lower court authority here. *Cf. Garza v. Idaho*, 139 S. Ct. 738, 743 (2019) (certiorari granted due to the "split of authority" regarding whether an ineffective assistance challenge for counsel's failure to file an appeal requested by the defendant survives when the defendant signed an appeal waiver as part of a plea agreement).

As explained below, there is no conflict with any relevant decisions of this Court.

Pope's disagreement is, at bottom, with how the Wisconsin Supreme Court applied *Wisconsin* law when it: (a) extended Wisconsin's long-established rule requiring an appellant to identify arguably prejudicial trial error(s) if a portion of a trial transcript is missing to the situation where the entire transcript is missing; and (b) refused to revisit the correctness of the court of appeals' September 25, 1997, order denying Pope's first motion to extend the time to file the notice of intent to pursue direct postconviction relief. Pope's disagreement with how that court applied Wisconsin law does not present a compelling federal question.

The Wisconsin Supreme Court's decision is consistent with this Court's precedent. It is also bound up in idiosyncratic facts and Wisconsin appellate procedure law, greatly limiting its national impact.

A. Pope was entitled only to reinstatement of his right to direct review, not also to automatic reversal of his conviction.

Pope insists that the Wisconsin Supreme Court acted contrary to this Court's precedent which holds that prejudice is presumed when an indigent defendant is denied a direct appeal due to ineffective counsel. (Pet. 9–13.) He maintains that trial counsel's failure to file the notice of intent in 1996 worked to deny him the right to the effective assistance of counsel on his 2017 reinstated direct appeal guaranteed by *Evitts v. Lucey*, 469 U.S. 387, 396–97 (1985), because there was no longer a transcript for counsel to review. (Pet. 13–14.) There are five fundamental flaws in his argument:

(1) The presumption of prejudice means only that Pope was entitled to reinstatement of his right *to seek direct review* once it was determined that his trial

counsel was ineffective for not filing the notice of intent in 1996. *Garza*, 139 S. Ct. at 747 (2019); *Roe v. Flores-Ortega*, 528 U.S. 470, 484 (2000). The remedy is only reinstatement of the right to an appeal with the assistance of counsel. *Rodriquez v. United States*, 395 U.S. 327, 330 (1969).

(2) Pope received the benefit of the presumption of prejudice here. He was given a "new opportunity to appeal" assisted by counsel. *Garza*, 139 S. Ct. at 749. His right to pursue direct review was reinstated in 2016 on stipulation of the parties and counsel was appointed to represent him. Pope litigated that direct challenge to completion through the Wisconsin circuit and appellate courts ably assisted by appointed counsel.

(3) There is no additional presumption of *reversible trial error* just because the trial transcript is missing. The legal presumption is the opposite: in the interest of protecting "the profound importance of finality in criminal convictions," *Strickland v. Washington*, 466 U.S. 668, 693 (1984), there is a "strong presumption of reliability" in the outcome of the trial. *Id.* at 696. The presumption is that "the judge or jury acted according to law." *Id.* at 694. Pope presented nothing in his state court pleadings to overcome that presumption.

(4) As the Wisconsin Supreme Court correctly held, there was no corresponding guarantee that Pope's reinstated direct appeal would succeed with or without a transcript. (Pet-App. A ¶ 45 n.12.) There was no guarantee as to the completeness of the trial record. No one knew in 2016 that the trial transcript could no longer be produced because the court reporters had lawfully destroyed their notes ten years

earlier when nothing was pending. Counsel on any reinstated direct appeal may indeed end up submitting a no-merit report because there were no arguably meritorious issues to pursue regardless of the state of the record. *Penson v. Ohio*, 488 U.S. 75, 80–81, 85–88 (1988); *Betts v. Litscher*, 241 F.3d 594, 596–97 (7th Cir. 2001). *See also Garza*, 139 S. Ct. at 756 (Thomas, J., dissenting) ("The majority offers Garza an appeal he is certain to lose.").

(5) Pope cannot revisit the Wisconsin Court of Appeals' denial of his 1997 extension motion to support his quest for automatic reversal because it went unchallenged then, and it is the law of the case now.

In arguing that he does not have to allege or prove trial error, Pope latches on to language in this Court's decisions to the effect that a defendant whose appeal was forfeited by counsel's inaction does not have to make a "further showing . . . of the merits of his underlying claims." *Garza*, 139 S. Ct. at 747 (citing *Flores-Ortega*, 528 U.S. at 484); *see id.* at 750. (Pet. 9–10.)

Pope reads that language far too broadly. This Court employed that language in the context of rejecting the argument that, before a defendant whose appeal was forfeited by counsel's inaction could have *his right to appeal reinstated*, he must show that the issues he intends to raise have arguable merit. This Court "decline[d] to place a pleading barrier between a defendant and an opportunity to appeal that he never should have lost." *Garza*, 139 S. Ct. at 748. "This Court has already rejected attempts to condition the restoration of a defendant's appellate rights forfeited by ineffective counsel on proof that the defendant's appeal had merit." *Id*. This Court did not also

relieve the defendant of the obligation, *once the appeal has been reinstated*, to allege and prove like any other appellant that reversible trial error occurred.

This Court's decisions in *Garza* and *Flores-Ortega* are, therefore, properly understood as requiring automatic reinstatement of the right to an appeal forfeited by ineffective counsel, but not also requiring automatic reversal of the underlying conviction once the appeal is reinstated. This Court in *Flores-Ortega* held "that when counsel's constitutionally deficient performance deprives a defendant of an appeal that he otherwise would have taken, the defendant has made out a successful ineffective assistance of counsel claim *entitling him to an appeal*." *Flores-Ortega*, 528 U.S. at 484 (emphasis added). "When counsel's deficient performance forfeits an appeal that a defendant otherwise would have taken, the defendant gets a new opportunity to appeal." *Garza*, 139 S. Ct. at 749.

This Court indeed understood that the defendant in *Garza* still had to allege and prove reversible error on the reinstated appeal when it acknowledged that, because Garza had signed an appeal waiver as part of his plea agreement, "he simply had fewer possible claims than some other appellants." *Id*. at 748. *See also id*. at 747 ("[A] guilty plea reduces the scope of potentially appealable issues." (quoting *Flores-Ortega*, 528 U.S. at 480)).

The Wisconsin Supreme Court was correct, therefore, in holding that Pope had to allege and eventually prove reversible trial error in his reinstated direct challenge and appeal. Pope was afforded the "opportunity to appeal" but without any guarantee

as to the state of the record or the likelihood of success on that appeal, commenced as it was two decades after his conviction.

Pope also seems to be arguing that he is entitled to automatic reversal because he relied on trial counsel to timely file the notice of intent in 1996. This argument assumes that the Wisconsin Court of Appeals was wrong when it denied his first pro se extension motion in September 1997. But, again, that 1997 order was not directly challenged by Pope when he sought automatic reversal on his 2017 appeal due only to the lack of a trial transcript. The 1997 decision became the immutable law of the case long before then. That is why the Wisconsin appellate courts did not revisit it over two decades later. (Pet-App. A ¶¶ 11–12, 16 n.9.)

Pope had a constitutional right to reinstatement of his direct challenge to his conviction in 2016, which was granted, but he had no corresponding constitutional right to turn back the clock to 1996 and automatically void that conviction.

B. The Wisconsin Supreme Court properly required Pope to allege and prove reversible error even when some or all of the trial transcript is missing.

Pope's second argument is for this Court to adopt a rule that a criminal appellant is entitled to automatic reversal of his conviction if the trial transcript is missing. (Pet. 13–16.) This Court has never adopted such a rule and it should not do so here.

In Wisconsin, when part of a trial transcript is missing, the defendant still must allege that arguably prejudicial error occurred at his trial. After doing so, he is then afforded the opportunity to reconstruct what transpired during the portion of the trial

for which there is no transcript by using what is in the record and any other available relevant information to sustain his identified claim(s) of trial error. *State v. Perry*, 136 Wis. 2d 92, 401 N.W.2d 748, 752–53, 755 (1987); *State v. DeLeon*, 127 Wis. 2d 74, 377 N.W.2d 635, 638–39 (Ct. App. 1985); *see State v. Raflik*, 2001 WI 129, 248 Wis. 2d 593, 638 N.W.2d 690, ¶ 40 ("[T]he appellant has the burden to demonstrate that there is a 'colorable need' for the missing portion of the record. The appellant is not required to show prejudice, but the error cannot be so trivial that it is clearly harmless." (citation omitted)). The Wisconsin Supreme Court logically extended that rule in Pope's case to the situation where the entire transcript is no longer available. (Pet-App. A ¶¶ 2–3, 21–30.)

Wisconsin's judicially-adopted rule is based on Federal Rule of Appellate Procedure 10(b) and (c). (Pet-App. A ¶¶ 34–35.) As in Wisconsin, the appellant in federal court is responsible for compiling a complete record for the appeal including, if needed, the trial transcript. Fed. R. App. P. 10(b)2. If the federal appellant believes that only a portion of the trial transcript is necessary, he may provide only that portion but must then identify the specific claim(s) of error that the portion is relevant to proving. Fed. R. App. P. 10(b)3.

Federal Rule of Appellate Procedure 10(c) provides the following procedure when all or part of the transcript is unavailable:

> If the transcript of a hearing or trial is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement must be served on the appellee, who may serve objections or proposed amendments within 14 days after being served. The statement and any objections or proposed amendments must then be submitted to the district

> court for settlement and approval. As settled and approved, the statement must be included by the district clerk in the record on appeal.

Pope would not have prevailed in federal court because he did not allege that reversible trial error occurred and did not try to reconstruct what occurred at trial.[2]

> Courts of appeals have consistently held that when an appellant chooses not to avail him or herself of the procedure available in Rule 10(c) for recreating the trial record, he or she cannot then claim on appeal that the loss of the trial records, without more, necessitates a new trial. This is so primarily because the appellant is responsible for ensuring that the record is sufficiently complete on appeal.

Roberts v. Ferman, 826 F.3d 117, 124 (3rd Cir. 2016); *see Herndon v. City of Massillon*, 638 F.2d 963, 965 (6th Cir. 1981) (per curiam) ("[A] new trial is not appropriate where the lack of a record is the only error charged.").

Wisconsin's procedure also is consistent with similar procedures used in most states.[3]

There is no authority in this Court or elsewhere requiring automatic reversal when the only error alleged on direct appeal is the loss of the trial transcript.

There also is no authority in this Court or elsewhere requiring automatic reversal when the appellant does not first try to reconstruct what happened at trial by using what is in the record, along with any exhibits, documents, witnesses (including

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[2] *E.g., Roberts v. Ferman*, 826 F.3d 117, 124–25 (3rd Cir. 2016); *United States v. Brody*, 705 F.3d 1277, 1280–81 (10th Cir. 2013); *Birchler v. Gehl Co.*, 88 F.3d 518, 520–21 (7th Cir. 1996); *Fisher v. Krajewski*, 873 F. 2d 1057, 1061 (7th Cir. 1989) (and cases cited therein); *Hall v. Whitley*, 935 F.2d 164, 165 (4th Cir. 1991); *Herndon v. City of Massolin*, 638 F.2d 963, 965 (6th Cir. 1981); *United States v. Smaldone*, 583 F.2d 1129, 1133–34 (10th Cir. 1978); *Murphy v. St. Paul Fire & Marine Ins.*, 314 F.2d 30, 31–32 (5th Cir. 1963).

[3] *E.g., Knoll v. Allstate Fire & Cas. Ins.*, 216 P.3d 615, 617–18 (Colo. App. 2009) (and cases cited therein); *Bradley v. Hazard Tech. Co.*, 665 A.2d 1050, 1054–55 (Md. 1995) (and cases cited therein); 5 Am. Jur. 2d *Appellate Review* §§ 424, 428 (2019).

the appellant), and other information about the trial that may still be available. *Roberts*, 826 F.3d at 123–25.

Pope's proposed automatic reversal rule is unworkable because there is no stopping point. It would presumably apply on a timely direct appeal where the entire trial transcript is missing, even though everyone agrees based on their collective fresh recollection of the recent trial that no arguably prejudicial error occurred or, if error did occur, it was only at sentencing or at a pretrial suppression hearing. It would presumably apply when the transcript of a small portion of the trial is missing, three hours of a three-week trial for instance, or of a pretrial proceeding, if the defendant deems the missing testimony to be "significant." That has never been the law. Pope's automatic reversal rule also invites mischief given that, like Pope, the ones most likely to benefit are the most dangerous offenders with the longest sentences who hope to reap a windfall reversal created by the mere passage of time. (Pet-App. A ¶ 36.)

Pope believes the Wisconsin Supreme Court's decision is unfair because "counsel on appeal had no record of the trial to review." (Pet. 15.) Pope is wrong. Pope's counsel had a substantial record to work with even at this late date to help reconstruct what happened at trial and to evaluate whether reversible error likely occurred.[4]

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[4] Alternative methods of reporting trial proceedings are permissible if they place before the appellate court an equivalent report of the events at trial from which the appellant's contentions arise. A statement of facts agreed to by both sides, a full narrative statement based perhaps on the trial judge's minutes taken during trial or on the court reporter's untranscribed notes, or a bystander's bill of exceptions might all be adequate substitutes, equally as good as a transcript.

Draper v. Washington, 372 U.S. 487, 495 (1963).

The record contains the lengthy sworn criminal complaint. (R. 3.)[5] Its "probable cause" section meticulously laid out the confessions of three of Pope's four accomplices, two of whom testified at trial, each implicating Pope in the planning and execution of the cold-blooded murders while also implicating themselves. (R. 3:3–7.) (Pet-App. A ¶¶ 5–7.) The record contains the extensive docket entries of the trial proceedings. (R. 1.) They reveal who testified for the State and for the defense. The trial witnesses included two of Pope's four co-conspirators, who testified for the State, and Pope who testified in his own defense. (R. 1:5–7.)

The record also contains the transcript of the sentencing hearing. (R. 80.) In 1998, Pope assured the Wisconsin Court of Appeals, long before the court reporters destroyed their trial notes in 2006, that only the sentencing transcript was necessary for his appeal. (R. 34.) (Pet-App. B ¶¶ 33–34, 37.)

Reconstruction of the trial admittedly will not be easy at this point, but it is not impossible. Pope indeed proved that it was not impossible when he identified two arguably meritorious ineffective-assistance-of-trial-counsel challenges in his pro se 2014 state habeas corpus petition that he believes postconviction counsel should have raised: Trial counsel was ineffective for not calling alibi witnesses from Pope's family and for letting Pope reveal to the jury during his own testimony that he was a gang member. (R. 43:18–24.) Pope, however, abandoned those challenges in his 2017 new

[5] Respondent uses the same form of citation to documents from the state court record ("R. __") as does Pope. (Pet. 2 n.1.)

trial motion and appeal in favor of advocating for the automatic reversal rule he espouses here.

Pope had the right to free transcripts on direct review. Those free transcripts were, however, no longer available after 2006 because Pope did not properly file a direct postconviction challenge to his conviction before then. That renders inapposite this Court's decisions cited at page 14 of the Petition where indigent criminal defendants were wrongly *denied* free transcripts that were otherwise available for no reason other than that they were indigent and not likely to succeed on appeal. *See Draper v. Washington*, 372 U.S. 487, 498–500 (1963) (the state court may not deny a free transcript to an indigent just because it concludes that an appeal would be frivolous). Simply put, Pope would have received free transcripts had he properly pursued direct relief before 2006.

Pope has only himself to blame if the reinstatement of his right to direct review more than two decades after his conviction made it more difficult for counsel to effectively represent him. Had Pope not waited 14 months to complain about his attorney's failure to file the notice of intent, or had he provided good cause for a retroactive extension of time to file it, the appeal would have begun then, counsel would have been appointed, and free transcripts would have been provided. Pope then did *nothing* between 2003 and 2014. Pope still would have gotten free transcripts had he acted before 2006.

It is not unfair, then, to ask Pope and his appointed appellate counsel to meet the pleading burden of identifying some arguably prejudicial trial error(s) that the

transcript would have supported, the same as they would have been required to do had this been a timely direct appeal in 1996, but some or all of the trial transcripts also were not then available.

Finally, it is not just legally wrong but also unfair to prevent the State from assisting a defendant in the endeavor to reconstruct what occurred at trial in the absence of a transcript just as Wisconsin case law and Federal Rule of Appellate Procedure 10(c) have always allowed. It is equally unfair to force the State to retry a convicted double-murderer more than two decades after his trial when he has never alleged that anything went wrong at his trial. *See Bradley v. Hazard Tech. Co.*, 665 A.2d 1050, 1053 (Md. 1995) ("We believe it is unfair to the prevailing party and the witnesses, as well as a waste of judicial resources, to automatically grant the losing party a new trial in cases where a full trial transcript is unavailable due to no fault of the litigants.").

Pope had a presumptively fair, error-free trial assisted by competent counsel, but the jury found him guilty beyond a reasonable doubt because the State presented overwhelming evidence of his guilt. Pope offered the State appellate courts nothing over the past two-plus decades to challenge that conclusion. This Court should not second-guess the Wisconsin Supreme Court's legally correct decision upholding Pope's presumed valid 1996 conviction because he never alleged or tried to prove reversible trial error in his 2017 reinstated direct appeal.

CONCLUSION

This Court should deny the writ.

Dated this 8th day of June 2020.

Respectfully submitted,

JOSHUA L. KAUL
Attorney General of Wisconsin

Daniel J. O'Brien

DANIEL J. O'BRIEN*
Assistant Attorney General
Wisconsin State Bar #1018324

Attorneys for Respondent

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-9620
(608) 294-2907 (Fax)
obriendj@doj.state.wi.us

**Counsel of Record*