

No. 20-5086

IN THE
Supreme Court of the United States

JOHNNY MACK SKETO CALHOUN,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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

REPLY BRIEF OF PETITIONER

THIS IS A CAPITAL CASE

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I. If this Court agrees with Respondent's argument that Petitioner's petition for writ of certiorari is premature, this Court should dismiss his petition without prejudice.

Respondent argues that Petitioner's petition for writ of certiorari is premature and this Court lacks jurisdiction consider his questions presented. BIO at 1. Petitioner concedes that although the Florida Supreme Court issued an opinion denying his guilt phase claims, the State filed a motion to recall the mandate and reinstate Petitioner's death sentence based on the Florida Supreme Court's recent decision in *State v. Poole*, No. SC 18-245, 2020 WL 3116597 (Fla. Jan. 23, 2020), *reh'g denied, clarification granted*, NO. SC18-245, 2020 WL 3116598 (Fla. Apr. 2, 2020). The Florida Supreme court stayed its decision below and Petitioner's state-court proceedings pending the dispensation of *State v. Jackson* (SC20-257) and *State v. Okafor* (SC20-323). This is an unusual situation, obviated by the fact that the only case Respondent cited supporting denial of Petitioner's certiorari petition is from 1936. BIO at 2.

No matter what the Florida Supreme Court decides in *Okafor* and *Jackson*, the court's decision regarding Petitioner's guilt phase claims is final, and will not be affected by any additional proceedings related to Petitioner's penalty phase. However, if this Court is inclined to agree with Respondent's argument of lack of jurisdiction, Petitioner does not object to dismissal without prejudice to allow him to re-file his petition for writ of certiorari within 90 days after the Florida Supreme Court decides the State's pending motion to reinstate Petitioner's death sentence.

II. Petitioner was not required to “preserve” his cumulative error argument in his appeal below to the Florida Supreme Court.

Respondent argues that this Court should decline review of Petitioner’s second question presented regarding a cumulative-prejudice analysis of *Brady*, *Giglio*, and *Strickland* claims because Petitioner never raised this issue before the Florida Supreme Court. BIO at 22.

Petitioner was not required to preserve his cumulative error argument in his appeal to the Florida Supreme Court. The Florida Supreme Court bungled the legal *Strickland / Kyles* standards in its analysis and did that all on its own. Those errors are properly challenged in a certiorari petition because Petitioner is not required to predict how the Florida Supreme Court will misapply legal standards, and a certiorari petition is the proper forum to raise the error.

Respondent notes that the Florida Supreme Court already performs the analysis Petitioner seeks when it is properly raised. BIO at 26. Respondent concedes the analysis Petitioner seeks is the correct analysis, yet also argues that Petitioner is required to tell the Florida Supreme Court to perform the correct analysis. Respondent’s argument is nonsensical, and Petitioner should not be procedurally barred because he did not instruct the Florida Supreme Court to perform an analysis the Court should be performing anyway.

CONCLUSION

Petitioner, Johnny Mack Sketo Calhoun, requests that certiorari review be granted, or in the alternative, his petition be dismissed without prejudice to allow him to re-file his petition for writ of certiorari within 90 days after the Florida

Supreme Court decides the State’s pending motion to reinstate Petitioner’s death sentence.

Respectfully submitted,

/s/ Stacy R. Biggart
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