

No. 20-5117

IN THE
Supreme Court of the United States

JEREMIAH (“JENNA”) RODGERS,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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

REPLY BRIEF FOR PETITIONER

THIS IS A CAPITAL CASE

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I. The Florida Supreme Court’s State-Law Timeliness Ruling Should Not Prevent This Court From Reaching the Important Federal Questions Presented in the Petition

Respondent wrongly argues that the Florida Supreme Court’s ruling that Petitioner’s claim was untimely under state law bars this Court’s review because that state ruling was both independent and adequate to sustain the judgment. Brief in Opposition (“BIO”) at 11-12. It is true that “[t]his Court will not review a question of federal law decided by a state court if the decision of that court rests on a state law ground that is independent of the federal question and adequate to support the judgment.” *Coleman v. Thompson*, 501 U.S. 722 (1991). But Respondent is incorrect that the independent-and-adequate-state-ground doctrine should be applied here. Instead, the Court can reach the important federal questions presented in the Petition.

The independent-and-adequate-state-ground doctrine should not be applied as rigidly as Respondent suggests. There are important exceptions to the doctrine that allow this Court to grant certiorari on the federal constitutional issues without running afoul of federalism principles. For instance, courts have held that where there is reason for confusion or uncertainty with respect to a state procedural rule, that rule can be inadequate to bar federal review. *Cf. Williams v. Lockhart*, 873 F.2d 1129, 1132 (8th Cir. 1989) (state procedural rule is not adequate to bar review if the state procedural rule is unclear); *Ashby v. Wyrick*, 693 F.2d 789, 793-94 (8th Cir. 1982) (review is not barred when state law was “at least arguably confusing”). This Court also has the authority to grant review in a “small category” of “exceptional

cases in which exorbitant application of a generally sound rule renders the state ground inadequate to stop consideration of a federal question.” *Lee v. Kemna*, 534 U.S. 362, 376 (2002). In these cases, adequacy of a state rule depends on the “particular application” of the rule under “the circumstances of a particular case”—not whether the rule “generally serves a legitimate state interest.” *Id.* at 381-85, 387.

Here, Petitioner’s case is a perfect procedural storm that should serve as an exception to the general rule regarding independent and adequate state timeliness decisions. She faces the ultimate punishment due to involuntary and incompetently rendered waivers resulting from a condition that was not even a recognized diagnosis at the time of her waivers. By the time gender dysphoria emerged as a diagnosis in 2013, Petitioner was, by virtue of her invalid waivers, without access to counsel or other expert resources to discover this condition. And, although Dr. Kessel’s initial evaluation of Petitioner occurred in 2016, she could not diagnose Petitioner with gender dysphoria at that time. Gender dysphoria “is an uncommon diagnosis with which few otherwise experienced clinicians have any expertise.” Petition at 29. The diagnostic process is gradual and requires special procedures, as it is particularly likely that “otherwise competently trained, experienced clinicians [will] miss this diagnosis, especially in the context of an evaluation where the evaluatee is impaired by shame, guilt, and fear about expressing severe gender dysphoric feelings and is motivated to seek death as a solution to untreated gender dysphoria.” SPCR 118. And, these inherent diagnostic difficulties were exacerbated by Petitioner’s comorbid

mental health and trauma history, and the danger she faces as a result of acknowledging her transgender identity while incarcerated in a male prison.

As detailed in the Petition, it was not until October 2018 that Petitioner could be diagnosed with gender dysphoria to a reasonable degree of medical certainty. Her state post-conviction motion was filed in December 2018, which was well within one year of her diagnosis. Petitioner maintains that her state filing was timely, and that any uncertainty over when the one-year newly discovered evidence should have been triggered should render the state procedural ground inadequate to bar federal review. Although the Florida Supreme Court disagreed with Petitioner's timeliness arguments, this Court need not second-guess that state-law ruling in order to grant certiorari review. The Court should instead, taking into account all the particularities of this case and its procedural history, review the federal issues presented notwithstanding the state-law rulings below.

II. Respondent is Confused About Petitioner's Underlying Federal Constitutional Claim and the Role of *Hurst v. Florida* in This Case

Respondent's focus on *Hurst* as the underlying substantive claim is misplaced. While *Hurst* is germane to Petitioner's substantive arguments because Petitioner would have received sentencing relief under *Hurst's* partial retroactivity framework had it not been for her waivers, the crux of Petitioner's underlying claim is competency. Put simply, Petitioner's waivers at the trial and post-conviction stages are unconstitutional because they were not competently rendered. The prior determinations of competency that Respondent relies on did not take into account the effect of Petitioner's gender dysphoria, and are undermined by the newly discovered

evidence of its impact. Petitioner’s competency claims have bearing on Petitioner’s *Hurst* claim, but are also broader federal constitutional claims implicating the Eighth and Fourteenth Amendments as laid out in the Petition and including a substantive competency claim.¹ Petitioner would have received *Hurst* relief had it not been for her waivers, but she is also entitled to relief on the basis of her competency claims notwithstanding *Hurst*.

Furthermore, this Court’s certiorari review would not simply result in an advisory opinion, as Respondent alleges. A favorable opinion from this Court on the questions presented would—at minimum—entitle Petitioner to a remand for an evidentiary hearing in which she could fully present evidence to show that her waivers were invalid, thus necessitating that her death sentence be vacated.

¹ Federal circuit courts have split over whether a substantive competency claim can be barred at all. *Compare, e.g., Battle v. U.S.*, 419 F.3d 1292, 1298 (11th Cir. 2005), cert denied 127 S. Ct. 2030 (2007) (substantive competency claim cannot be barred) with *Hodges v. Colson*, 727 F.3d 517, 540 (6th Cir. 2013) (substantive competency claim can be barred).

CONCLUSION

This Court has jurisdiction to review Petitioner's substantive claims and should grant a writ of certiorari and review the decision of the Florida Supreme Court.

Respectfully submitted,

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