

SUPREME COURT OF THE UNITED STATES

PATRICK W. SCHROEDER,

Petitioner,

v.

STATE OF NEBRASKA,

Respondent.

**On Petition for Writ of Certiorari
To the Nebraska Supreme Court**

BRIEF IN OPPOSITION

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CAPITAL CASE

QUESTION PRESENTED

Whether the constitutional right to due process and the constitutional prohibition against cruel and unusual punishment are violated when a defendant's Sixth Amendment right to represent himself is honored, the defendant validly waived his procedural and substantive due process rights to present evidence, validly waived his right to counsel at the sentencing phase in a capital case, and state law provides additional safeguards that are not constitutionally required to provide for fairness and accuracy with a respect to the death penalty.

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STATEMENT OF THE CASE

The Petitioner Patrick Schroeder was convicted of first-degree murder for strangling his prison cellmate Terry Berry in March 2017 while Schroeder was already serving a life sentence for his previous 2007 first-degree murder sentence of a 75-year-old farmer. In 2007, Schroeder beat the farmer to death and tossed the body into a well after having robbed the farmer.

After strangling his cellmate in 2017, Schroeder made the following handwritten statement to prison officials:

My name is Patrick Schroeder. I'm 40 years old and I killed Terry Berry on April 15, 2017. I killed Berry because I wanted to, I knew I was going to kill him the moment staff put him in my cell on April 10, 2017. . . . I'm writing this statement to inform the court that if given another life term I will kill again and we will be right back in court doing this all over again. . . .

(Pet. App. A, p13)

Schroeder's guilty plea to first-degree murder for strangling his cellmate was accepted by the trial court. Schroeder does not challenge the murder conviction of his cellmate. Schroeder is a career criminal who convictions as an adult, prior to his first life sentence in 2007 for murder, have included bank robbery, forgery, escape, theft, assault, contributing to the delinquency of a

child, and various driving offenses such as driving under influence and driving under suspension. Schroeder's adult criminal record followed an extensive juvenile record of violations and misconduct. (Pet. App. A, p12-13)

Schroeder's exercise of his Sixth Amendment right to represent himself was honored. Schroeder waived his right to counsel, after discharging his appointed counsel, for both his underlying guilty plea and the death penalty sentencing phase with the trial court appointing standby counsel. Schroeder does not challenge the validity of his waivers of right to counsel.

Schroeder waived his right to a jury for the death penalty aggravating sentencing phase and waived his rights to present evidence for both the aggravating and mitigating phases of the death penalty sentencing hearing. Schroeder does not challenge the validity of those waivers.

Schroeder's certiorari petition contains the repeated factual misstatements and characterizations that he volunteered to be sentenced to death. The Nebraska Supreme Court explained, with considerable analysis, why "Nebraska's capital sentencing scheme provides additional statutory steps and considerations to ensure fairness and accuracy" so that "a defendant cannot 'choose' the death penalty". (Pet. App. A, p22) Schroeder's certiorari petition attempts to mislead this Court into believing his death sentence was the result of his choosing or volunteering to be sentenced to death. Schroeder's

certiorari petition otherwise makes additional factual misstatements and mischaracterizations that are contrary to the factual summary, explanations, and decision of the Nebraska Supreme Court, which are apparent by reading the Nebraska Supreme Court's opinion. (Pet. App. A)

ARGUMENT: REASONS FOR DENYING THE PETITION

1. No Rule 10 conflict among courts.

There is no Rule 10(b) conflict among the Circuit Courts nor has any “state court of last resort decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals”.

Any attempt by Schroeder to create a conflict involves citing only general principles stated by the courts with no actual conflict showing that the Circuit Courts or any state courts of last result have reached different results when addressing the very same issue.

Rule 10(c) further provides for certiorari consideration when “a state court . . . has decided an important federal question in a way that conflicts with relevant decisions of this Court.” Schroeder’s petition acknowledges the lack of conflict by stating that, “this Court has not squarely addressed the question of how to reconcile these competing interests [Sixth Amendment right to control one’s defense and Eighth Amendment right to “individualized sentencing” and

“need for reliable and non-arbitrary capital sentencing”].” (Cert. Pet., p16) Schroeder’s petition generally stands for the proposition that when a capital defendant’s Sixth Amendment right to represent himself has been honored, his Eighth Amendment protection against cruel and unusual punishment is violated. Since the answer to that question should be self-evident, this Court need not squarely address the obvious.

2. No merit: Nebraska Supreme Court decision was correct.

The Nebraska Supreme Court’s decision was correct concerning the due process and Eight Amendment constitutional issues raised by Schroeder’s petition. The reasons why include the Nebraska Supreme Court’s explanations:

- Nebraska’s capital sentencing scheme has additional safeguards, which are not constitutionally required, as construed and applied by the Nebraska Supreme Court.
- A defendant cannot “choose” the death penalty.
- Schroeder did not dispute the validity of his waivers of the right to counsel, to a jury at the aggravation sentencing hearing, or the right to present evidence.
- Schroeder did not dispute the existence of the aggravating factor for the death penalty.

- Schroeder had the Sixth Amendment right to represent himself, which he exercised and the exercise of which was not disputed.
- The sentencing court is required to order and consider the contents of independent information in a presentence investigation report when reaching its sentence, which requirement was satisfied in Schroeder's case even when the defendant declines to offer evidence.
- The factor of mitigating circumstances, unlike the beyond a reasonable doubt standard imposed on the State for statutory aggravating factors, does not have a burden of proof. This results in a "less restrictive mitigation standard and provides another safeguard to ensure fairness and accuracy in a death penalty determination."
- Although Schroeder presented no mitigating evidence, the sentencing panel found two nonstatutory mitigating factors, which were that Schroeder's childhood and family were dysfunctional and Schroeder's guilty plea spared the victim's family the trauma of a trial and the State's expense of a trial. The presentence investigation provided considerable background information on Schroeder for consideration of mitigating factors. The mitigating factors were determined not to approach or exceed the weight of the aggravating circumstance (prior

murder conviction, substantial history of serious or terrorizing criminal activity).

- The trial court sentencing panel and the Nebraska Supreme Court both must conduct a proportionality review, which is not constitutionally required, to determine whether a sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.
- The proportionality review spans all previous cases in which a sentence of death is imposed and is not dependent on which cases are put forward by the parties.
- The sentencing panel and Supreme Court are required to put in writing their consideration of (1) whether the determined aggravating circumstance justifies the imposition of a sentence of death, (2) whether mitigating circumstances exist, and (3) whether a sentence of death would be excessive or disproportionate to penalties imposed in similar cases.
- Even if a defendant waives counsel and elects to represent himself, the above ensure fairness and accuracy in the resulting sentence, regardless of the defense strategy an individual defendant implements.

(Pet. App. A, p12-23)

CONCLUSION

The Respondent State of Nebraska requests that the petition for a writ of certiorari be denied.

Respectfully submitted,

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