No. 20-5760

In the Supreme Court of the United States

DANIEL FREDERICKSON,

Petitioner,

v.

STATE OF CALIFORNIA,

Respondent.

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

BRIEF IN OPPOSITION

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CAPITAL CASE
QUESTION PRESENTED

Petitioner Daniel Frederickson was convicted of first degree murder and sentenced to death. Before the California Supreme Court, he argued that the conviction violated his right under the federal Constitution to control his defense at trial because California Penal Code Section 1018 prevented him, as a self-represented defendant, from pleading guilty to a capital offense. The California Supreme Court rejected Frederickson's "constitutional challenge to section 1018 on the ground that the trial court never made a ruling under section 1018, and his claim is therefore forfeited." Pet. App. A27. The question Frederickson seeks to present is:

Whether Section 1018 violates the federal Constitution.

DIRECTLY RELATED PROCEEDINGS

California Supreme Court:

People v. Frederickson, No. S067392, judgment entered February 3, 2020 (this case below).

California Superior Court, Orange County:

People v. Frederickson, No. 96CF1713, judgment entered January 9, 1998 (this case below).

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STATEMENT

1. On June 13, 1996, petitioner Daniel Frederickson entered the HomeBase store in Santa Ana and fatally shot customer service manager Scott Wilson in the head in the course of an attempted robbery. Pet. App. A10. Within two or three hours of the shooting, Frederickson called the HomeBase store and told a police officer posing as an employee, "I've never killed or shot anyone before," and "you need to tell your employees that money is not worth getting killed over." *Id.* Frederickson explained that he followed Wilson to the safe, and became frustrated and shot Wilson when Wilson started counting money instead of putting it in a bag or box as directed. *Id.*

The following day, police officers arrested Frederickson, searched his residence, and found a .32-caliber revolver loaded with five live rounds and one spent round of ammunition. Pet. App. A10. After police advised Fredrickson of his rights to silence and counsel and he waived those rights, he told investigators that he entered the HomeBase with "a game plan," waited until Wilson retrieved change for a customer, followed Wilson to the safe, and asked Wilson to place the money from the safe in a box. *Id.* Wilson started counting five-dollar bills instead of handing over the money, which made Frederickson feel Wilson was ignoring him. *Id.* Surprised and "pissed off" by Wilson's actions, Frederickson pointed the gun at Wilson's head, fired the gun, ran out of the store to his van, and drove away. *Id.*

2. In June 1996, at Frederickson's arraignment in municipal court, in accordance with Frederickson's request, the Court appointed the public

defender to represent him. Pet. App. A15. Four months later, Frederickson moved to represent himself. *Id.* The municipal court granted that motion and, with Frederickson's consent, appointed advisory counsel. *Id.* Under then-governing California law, the case remained in municipal court until a preliminary hearing had been held, at which point it would be transferred to superior court. *Id.* at A23, A27.

On January 23, 1997, the superior court held a hearing to address Frederickson's request to replace his investigator. Pet. App. A16.[1] At that superior court hearing, Frederickson announced that he wanted to plead guilty. *Id.* at A17. The Court acknowledged that request but informed Frederickson that it could not accept his plea because "the issue as to whether or not you're going to plead guilty or waive a preliminary hearing is really not before me today." *Id.* The Court informed Frederickson that it would attempt to assist in scheduling a hearing at which he could seek to waive his preliminary hearing and plead guilty. *Id.*

Four days later, on January 27, Frederickson appeared at a hearing in municipal court, where he renewed his request to plead guilty. Pet. App. A18. The Court informed Frederickson that his request to plead guilty was premature, that his preliminary hearing would be held on February 5, and that he could seek to waive the hearing on that date. *Id.*; *see id.* at A26. The Court

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[1] Although the case remained in municipal court because the preliminary hearing had not yet occurred, the superior court was responsible for disbursing investigative funds. Pet. App. A16.

explained to Frederickson that, by that time, "[y]ou will have had another nine days to think about this and decide whether or not you truly want to waive the preliminary hearing or not." *Id.* at A18 (alteration omitted). Frederickson agreed with that approach. *Id.*

The preliminary hearing occurred as scheduled on February 5. Pet. App. A19. Frederickson did not seek to waive the hearing, and the hearing proceeded. *Id.* On February 24, Frederickson appeared in superior court with his advisory counsel and entered pleas of not guilty and not guilty by reason of insanity. *Id.* Frederickson represented himself at trial with the assistance of advisory counsel. *Id.* at A10.

The jury convicted Frederickson of first degree murder. Pet. App. A9. It found true a special circumstance that Frederickson committed the murder while engaged in the commission of an attempted robbery as well as an allegation that he personally used a firearm in committing the crime. *Id.*; *see* Cal. Penal Code §§ 187(a), 190.2(a)(17)(A), 1203.06(a), 12022.5(a). In a sanity trial during which Frederickson was assisted by advisory counsel, the jury found Frederickson was sane at the time of the murder. Pet. App. A9, A12.

After a penalty-phase trial, during which the prosecution and defense presented evidence of aggravating and mitigating circumstances, the jury returned a verdict of death. Pet. App. A9. The trial court imposed that sentence. *Id.*

3. In his automatic appeal to the California Supreme Court,

Frederickson asserted that he had tried to plead guilty prior to trial but was prevented from doing so by California Penal Code Section 1018, which requires the consent of counsel for a plea of guilty to a capital offense, and Frederickson was representing himself. Pet. App. A21. Frederickson argued he was therefore denied his right to control his defense under *McCoy v. Louisiana*, 138 S. Ct. 1500 (2018). Pet. App. A21-23.

The California Supreme Court rejected this claim on the ground that it was forfeited; the Court did not reach the merits. Pet. App. A23-27. It held that if Frederickson "wanted to challenge the constitutionality of section 1018, . . . he needed to request to plead guilty in the superior court and ask that court to make a ruling based on section 1018, thus preserving the issue for appeal. He never did so." *Id.* at A23. The Court explained that under then-governing California law, "[t]he municipal court had no jurisdiction in felony cases," and thus "could not convict a defendant on a plea of guilty, because it was not authorized to render a felony judgment." *Id.* "The most the municipal court could do . . . was accept a stipulated waiver of the preliminary hearing and then send the case to the superior court" for the entry of a guilty plea. *Id.* at A27. But "when the day of the preliminary hearing arrived, [Frederickson] did not renew his request to plead guilty." *Id.* "Nor did he renew it in the superior court after he was held to answer." *Id.*

The Court noted that Frederickson "was apparently persuaded" by advice he had received from the prosecutor "that he could not plead guilty." Pet. App.

A26. Nevertheless, Frederickson "still needed to obtain a ruling and thus preserve the issue." *Id.* The Court reasoned that "[s]elf-represented defendants are 'held to the same standard of knowledge of law and procedure as is an attorney,' and that point remains valid even in capital cases." *Id.*[2]

Justice Liu concurred in the judgment with respect to the challenge to Penal Code Section 1018. He would have held that Frederickson had adequately preserved his claim that Section 1018 is unconstitutional in light of *McCoy*, but would have rejected the claim on the merits. Pet. App. A43.

ARGUMENT

This Court lacks jurisdiction to review Frederickson's constitutional challenge to Section 1018 because the California Supreme Court's judgment rested on its forfeiture holding, which is an adequate and independent state law ground. Even if that were not so, this would be an exceptionally poor vehicle for reviewing Frederickson's claim that he should have been allowed to plead guilty, because this Court would be reviewing the merits of that claim in the first instance. In any event, as Justice Liu explained in his opinion concurring in the judgment, the claim is meritless.

1. "This Court lacks jurisdiction to entertain a federal claim on review of a state court judgment if that judgment rests on a state law ground that is both independent of the merits of the federal claim and an adequate basis for the

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[2] The Court struck an improperly imposed restitution fine, affirmed the judgment in all other respects, and denied Frederickson's petition for rehearing. Pet. App. A9, A42, B1.

Court's decision." *Foster v. Chatman*, 136 S. Ct. 1737, 1745 (2016); *see also Michigan v. Long*, 463 U.S. 1032, 1037-1042 (1983). That principle precludes this Court's review of judgments resting on state law rules regarding forfeiture and preservation of issues for appeal. For instance, in *Sochor v. Florida*, 504 U.S. 527 (1992), the Court held that it lacked jurisdiction to review the petitioner's claim that a jury instruction given by the trial court was unconstitutional. *Id.* at 533-534. The Court explained that the opinion of the Florida Supreme Court "indicates with requisite clarity that the rejection of Sochor's claim was based on the alternative state ground that the claim was 'not preserved for appeal[.]'" *Id.* at 534.

The California Supreme Court's opinion here likewise rested squarely on its forfeiture holding. The Court reasoned:

> If defendant wanted to challenge the constitutionality of section 1018, . . . he needed to request to plead guilty in the superior court and ask that court to make a ruling based on section 1018, thus preserving the issue on appeal. He never did so. The claim is therefore forfeited.

Pet. App. A23; *see also id.* at A27 ("We . . . reject defendant's constitutional challenge to section 1018 on the ground that the trial court never made a ruling under section 1018, and his claim is therefore forfeited."). This Court thus lacks jurisdiction to review Frederickson's federal claim.

Frederickson contends that the California Supreme Court misapplied state law in reaching its forfeiture holding. Pet. 26-35. For example, he maintains that "at the time of [his] case, although a defendant was allowed to

plead guilty in a capital case in a municipal court, . . . that plea could not be accepted. There was no statute governing what should be done in these circumstances." *Id.* at 29. Even if Frederickson's analysis of state law were correct (which it is not), a state court's misapplication of state law is not a basis for this Court to grant certiorari. This Court is "bound to accept the interpretation of [a State's] law by the highest court of the State." *Hortonville Joint School Dist. No. 1 v. Hortonville Educ. Ass'n*, 426 U.S. 482, 488 (1976).

Frederickson also argues that this Court has jurisdiction to review his federal claim because the forfeiture rule invoked below is not "firmly established, regularly followed, and consistently applied." Pet. 33 (citing *Ford v. Georgia*, 498 U.S. 411, 423-424 (1991)). That is so, he asserts, because the California Supreme Court's analysis of the procedure required for the entry of a guilty plea in his circumstances relied "sole[ly]" on "a 54-year-old, noncapital, court of appeal case where the defendants waived the preliminary hearing in order to plead guilty in superior court." *Id.*; *see* Pet. App. A24 (citing *In re Van Brunt*, 242 Cal. App. 2d 96, 101-102 (1966)).[3]

But that argument erroneously conflates the state law ground on which the judgment below rests—forfeiture of an issue not preserved in the trial court—with California law governing entry of guilty pleas in municipal court. California courts, like other courts, routinely hold arguments forfeited when

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[3] That assertion is incorrect. In fact, the California Supreme Court cited and discussed numerous statutes and cases on this issue. *See* Pet. App. A23.

they are asserted for the first time on appeal. *See, e.g.*, *People v. Powell*, 6 Cal. 5th 136, 159 (2018). That is the ground on which the California Supreme Court rejected as forfeited Frederickson's claim that Penal Code section 1018 is unconstitutional—that Frederickson failed to secure a trial court ruling that section 1018 barred him, as a self-represented capital defendant, from pleading guilty. Pet. App. A27; *see also id.* at A23. Even if Frederickson were correct that he should have been able to enter a guilty plea in municipal court under a correct interpretation of then-governing state law, that would not undermine the California Supreme Court's forfeiture holding.

Frederickson contends that "the record shows that section 1018 precluded petitioner from pleading guilty," Pet. 29 (capitalization omitted). He cites Justice Liu's opinion concurring in the judgment, which would have held that Frederickson had preserved his *McCoy* claim. *Id.* at 30; *see* Pet. App. A43-45. That argument seeks to re-litigate the state court's interpretation of the trial court record in light of state procedural law. This Court lacks jurisdiction to entertain that argument, and review for that purpose would be unwarranted in any event.

2. Even if this Court had jurisdiction to consider Frederickson's claim that Section 1018 is unconstitutional in light of *McCoy*, review would still be unwarranted. This Court is "a court of review, not of first view." *Arkansas Game & Fish Comm'n v. United States*, 568 U.S. 23, 37 (2012). As this case presents itself, however, the Court would be reviewing Frederickson's

constitutional claim in the first instance. It was never considered by the trial court, because Frederickson raised no objection to Section 1018 there. And it was not addressed by the California Supreme Court majority in light of that court's forfeiture holding. Pet. App. 23, 27. Nor does the petition indicate that any other court has reached the merits of the question Frederickson seeks to present.

In any event, as Justice Liu explained in his opinion concurring in the judgment (Pet. App. A45-48), Frederickson's claim lacks merit. "'[T]he right to self-representation is not absolute,' particularly in capital cases where there are competing constitutional concerns." *Id.* at A45 (quoting *Martinez v. Ct. of Appeal of Cal., Fourth Appellate Dist.*, 528 U.S. 152, 161 (2000)). Among those concerns is the necessity, rooted in the Eighth Amendment, for "'a greater degree of reliability when the death sentence is imposed' because of the 'qualitative difference between death and other penalties.'" *Id.* (quoting *Lockett v. Ohio*, 438 U.S. 586, 604 (1978) (plurality opinion)). And there is no federal constitutional right to enter a guilty plea in the first place. *See North Carolina v. Alford*, 400 U.S. 25, 39 (1970). In light of those considerations, Section 1018 reflects a permissible attempt by the State to reconcile a defendant's right to self-representation with the need to ensure that every death sentence meets a heightened standard of reliability. Nothing in *McCoy*—which involved a defendant's right to insist on his factual *innocence*

in a capital case, not to acquiesce in a death sentence, 138 S. Ct. at 1508—undermines that conclusion.

CONCLUSION

The petition for writ of certiorari should be denied.

Dated: October 13, 2020

Respectfully submitted,

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