

DOCKET NO. 20-5954

IN THE SUPREME COURT OF THE UNITED STATES

MERYL MCDONALD,

*Petitioner,*

vs.

STATE OF FLORIDA,

*Respondent.*

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF  
CERTIORARI TO THE FLORIDA SUPREME COURT

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Meryl McDonald is a death-sentenced Florida prisoner whose conviction and sentence became final in 1999. Since that time, McDonald has filed a series of unsuccessful postconviction challenges; denial of his fourth successive postconviction motion was recently affirmed by the Florida Supreme Court. His present claim arises out of his flawed belief that Florida is improperly preventing him from advancing claims that his attorneys have rejected as lacking merit.

Florida appoints counsel to all capital defendants who wish to pursue postconviction claims<sup>1</sup> and does not permit *pro se* postconviction filings by any defendant who is also represented.<sup>2</sup> Nevertheless, in the course of its review of his fourth successive postconviction motion, McDonald filed a number of *pro se* motions, one of which asked Florida's high court to declare the rule unconstitutional. McDonald now seeks certiorari review of the Florida Supreme Court's order striking his *pro se* pleadings as unauthorized and more generally challenges the constitutionality of Florida's approach to capital postconviction claims.

McDonald's argument gives rise to the following question before this Honorable Court:

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<sup>1</sup> See Florida Rules of Criminal Procedure 3.851(b) and (i).

<sup>2</sup> See Logan v. State, 846 So. 2d 472 (Fla. 2003).

QUESTION PRESENTED FOR REVIEW

[Capital Case]

Whether this Court should grant certiorari review to consider the constitutionality of Florida's rule of procedure which provides counsel to all death-sentenced defendants and requires counsel to file all postconviction claims?

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**PARTIES TO THE PROCEEDINGS**

The following were parties in the proceedings below:

- 1) Meryl McDonald, Petitioner in this Court, was the appellant below.
- 2) State of Florida, Respondent in this Court, was the appellee below.

**CITATION TO OPINION BELOW**

The unpublished per curiam opinion of the Florida Supreme Court was released on June 4, 2020 in Florida Supreme Court Case No. SC19-635 (Resp. App. A). The Order which is the subject of the instant petition was rendered May 20, 2020. (Resp. App. B).

**STATEMENT OF JURISDICTION**

The opinion of the Florida Supreme Court affirming the summary denial of Petitioner's Fourth Successive Motion to Vacate Judgments of Conviction and Sentence was entered on June 4, 2020. (Resp. App. A). Petitioner's pro se motion for rehearing was stricken by order on June 25, 2020. (Resp. App. C). Respondent agrees that any jurisdiction this Court may have over the Florida Supreme Court arises out of 28 U.S.C. § 1254(1). However, this Court's jurisdiction is limited to federal constitutional issues which were properly presented and considered by the Florida Supreme Court below. Illinois v. Gates, 462 U.S. 213, 217-19 (1983); Webb v. Webb, 451 U.S. 493, 496-97 (1981). As will be addressed more fully in the argument

section of this brief, this Court does not have jurisdiction over the question presented in McDonald's petition because the order in question arises entirely out of Florida law governing postconviction proceedings. In addition, there is no valid constitutional dimension to the issue raised by Petitioner.

**CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

Respondent accepts Petitioner's statement regarding the applicable constitutional and statutory provisions involved.



## STATEMENT OF THE CASE

Petitioner, Meryl McDonald, is a counseled Florida prisoner under sentence of death for the contract killing of Dr. Louis Davidson. He seeks certiorari review of the Florida Supreme Court's order striking his *pro se* postconviction pleadings because he is represented by counsel as mandated by Florida law in all capital cases. The motion in question asked the Court to declare Florida Rule of Criminal Procedure 3.851 unconstitutional to the extent that it mandates appointment of counsel in all capital postconviction proceedings, and effectively forbids any capital defendant from advancing postconviction claims which have not been adopted by counsel.

### Direct Appeal

The Florida Supreme Court affirmed his conviction and death sentence in McDonald v. State, 743 So. 2d 501 (Fla. 1999). McDonald did not file a Petition for Writ of Certiorari.

### State Postconviction Proceedings

Denial of McDonald's subsequent motions for postconviction relief were affirmed by the Florida Supreme Court. McDonald v. State, 952 So. 2d 484, 489 (Fla. 2006); McDonald v. State, 117 So. 3d 412 (Fla.), cert. denied, McDonald v. Florida, 134 S. Ct. 438 (2013); McDonald v. State, \_\_\_\_ So. 3d \_\_\_\_, 2017 WL 2709773 (Fla. June 23, 2017), reh'g denied, \_\_\_\_ So. 3d \_\_\_\_, 2017 WL

3764370 (Fla. Aug. 31, 2017), cert. denied, McDonald v. Florida, 138 S. Ct. 746 (2018); McDonald v. Jones, \_\_\_ So. 3d \_\_\_, 2018 WL 4293371 (Fla. Aug. 31, 2018), reh'g denied, \_\_\_ So. 3d \_\_\_, 2018 WL 6729873 (Fla. Oct. 26, 2018), cert. denied, McDonald v. Inch, 139 U.S. 1554 (2019). It is noteworthy that McDonald has consistently sought to exclude argument advanced by counsel in preference to his own. On those occasions where he was permitted to advance his own claims, they were rejected by every court that was in a position to consider them.

In the course of reviewing the lower court's denial of his most recent postconviction motion, Petitioner, who is counseled, sought to file his own *pro se* brief which would have asked the court to address a procedurally barred claim regarding allegedly flawed hair comparison testimony that appellate counsel in a previous proceeding had declined to advance because, in counsel's view, it lacked merit.<sup>3</sup> Florida's high court struck McDonald's proposed *pro se* brief as unauthorized because Florida law requires that all capital postconviction pleadings must be filed through counsel. McDonald's motion seeking to have the applicable rule deemed unconstitutional was stricken as well, a decision that is the subject of the instant certiorari petition.

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<sup>3</sup> McDonald v. State, \_\_\_ So. 3d \_\_\_, 2017 WL 2709773 (Fla. June 23, 2017). This Court denied certiorari. McDonald v. Florida, 138 S. Ct. 746 (2018).

The lower court ultimately denied McDonald's postconviction motion, although that decision is not the subject of the instant certiorari request. McDonald v. State, 296 So. 3d 382 (Fla. 2020).

### REASON FOR DENYING THE WRIT

**This Court should decline to exercise its certiorari jurisdiction to address the constitutionality of Florida's rule requiring appointment of postconviction counsel for all death-sentenced defendants.**

McDonald once again challenges Florida's rule mandating appointment of counsel to all death-sentenced defendants.<sup>4</sup> McDonald's complaint is that Florida effectively forbids any capital defendant from advancing *pro se* postconviction claims which have not been adopted by counsel. His attempts to do so have been stricken by the Florida Supreme Court as unauthorized. Petitioner's assertion that Florida's refusal to consider his *pro se* arguments violates his Fourteenth Amendment rights to due process and equal protection lacks merit.<sup>5</sup>

Petitioner seeks review of state procedures governing the appointment of counsel and restricting *pro se* pleadings in capital postconviction cases. However, since state collateral

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<sup>4</sup> Petitioner's 2017 certiorari petition, advancing a similar claim challenging Florida's rule requiring appointment of counsel to all capital defendants for postconviction purposes, was denied. McDonald v. Florida, 138 S. Ct. 746 (2018).

<sup>5</sup> Such a restriction is not unusual. For example, Federal courts also restrict *pro se* pleadings when represented by counsel. See Fed. R. 2.03(d) (M.D. Fla.):

Any party for whom a general appearance of counsel has been made shall not thereafter take any step or be heard in the case in proper person, absent prior leave of Court; nor shall any party, having previously elected to proceed in proper person, be permitted to obtain special or intermittent appearances of counsel except upon such conditions as the Court may specify.

proceedings are not constitutionally required, state procedures and rules governing such review do not raise federal constitutional questions. See Murray v. Giarratano, 492 U.S. 1, 10 (1989) (“State collateral proceedings are not constitutionally required as an adjunct to the state criminal proceedings and serve a different and more limited purpose than either the trial or appeal.”); Pennsylvania v. Finley, 481 U.S. 551, 557-59 (1987) (states are not obligated to provide an avenue for collateral relief and “have substantial discretion to develop and implement programs to aid prisoners seeking to secure postconviction review.”). Accordingly, certiorari should be denied. See Webb v. Webb, 451 U.S. 493, 496-97 (1981) (Court does not have jurisdiction to review question of state law).

As this Court has recognized, there is no Sixth Amendment right to self-representation on direct appeal. Martinez v. Court of Appeal of California, Fourth Appellate Dist., 120 S. Ct 684 (2000). Following Martinez, the Florida Supreme Court held that a death-sentenced defendant has no constitutional right to represent himself while pursuing postconviction relief. In Gordon v. State, 75 So. 3d 200 (Fla. 2011), Florida’s high court explained its reasoning. Aside from the fact that a convicted death row inmate has no Sixth Amendment right to represent himself, there are additional factors justifying Florida’s rule.

Postconviction proceedings in death cases are inherently complex. Appointment of counsel counterbalances the limited resources available to death row inmates, enhances the quality of review and the court's confidence in the outcome, and minimizes delay. Id. at 202-203. And while not its primary concern, the Gordon court also mentioned the benefit of the rule's impact on the judiciary; requiring all postconviction claims to be reviewed by counsel ensures a higher quality of argument and relieves the court from the onerous task of addressing those that are purely frivolous. It is noteworthy that McDonald is not suggesting that counsel is ineffective.<sup>6</sup> Rather, McDonald objects to being represented because appointed counsel refuses to adopt his meritless postconviction claims.

McDonald's belief that Florida's rule requiring representation for all capital defendants violates his right to Due Process and Equal Protection reveals a basic misunderstanding regarding the nature of those terms. Receiving the benefit of experienced counsel is not forbidden by any

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<sup>6</sup>Nor has Petitioner alleged a conflict of interest such as that addressed by this Court in Christeson v. Roper, 574 U.S. \_\_\_, 135 S. Ct. 891, 894-895 (2015). In Christeson, the defense attorneys who missed the one year AEDPA deadline for filing the defendant's initial habeas petition would be required to argue their own serious misconduct in an effort to obtain equitable tolling under Holland v. Florida, 560 U.S. 631, 651-652 (2010). Petitioner has not alleged, much less established, that his appointed counsel operates under any similar conflict as that addressed by this Court in Christeson.

decision of this Court, and violates neither due process nor equal protection.

McDonald erroneously asserts that Florida's rule forbidding *pro se* filings by death sentenced defendants violates this Court's jurisprudence. For example, his reliance on Martel v. Clair, 565 U.S. 648 (2012) is misplaced. Rather than supporting his position that he has a constitutional right to present his own postconviction claims *pro se*, Martel instead notes the improved quality of postconviction claims where the defendant has the benefit of counsel. Moreover, Martel says nothing about any alleged constitutional right to postconviction self-representation; rather, the case interprets a federal statute mandating appointment of counsel in certain cases.<sup>7</sup>

McDonald seems to believe that the assistance of counsel is a hindrance rather than a boon; Martel does nothing to support that position and fails to establish a due process violation. A defendant, regardless of the offense, has a significant advantage where postconviction challenges are advanced through the assistance of experienced legal counsel. Id. at 659. In Jones v. Barnes<sup>8</sup> the Court spoke to this very issue in quoting a

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<sup>7</sup> See generally Harbison v. Bell, 556 U.S. 180, 183 (2009) (discussing the appointment of federal postconviction counsel in capital cases under 18 U.S.C. § 3599).

<sup>8</sup> Jones v. Barnes, 463 U.S. 745, 752 (1983).

law review article authored by Justice Robert Jackson:

The mind of an appellate judge is habitually receptive to the suggestion that a lower court committed an error. But receptiveness declines as the number of assigned errors increases. Multiplicity hints at lack of confidence in any one.... [E]xperience on the bench convinces me that multiplying assignments of error will dilute and weaken a good case and will not save a bad one.

The fact that McDonald has failed to persuade any lawyer to adopt his preferred arguments is perhaps the best justification for Florida's rule. McDonald is simply incapable of recognizing when an argument is weak or lacks merit. Florida's rule mandating appointment of postconviction counsel violates neither McDonald's right to equal protection nor his right of access to the courts. It is instead based on a reasoned application of Florida law and a desire to enhance the quality of argument the courts are called upon to hear; merely because McDonald does not like that outcome fails to establish a constitutional violation. See, e.g., City of Cleburne, Tex. v. Cleburne Living Center, 473 U.S. 432, 439 (1985) ("The Equal Protection Clause of the Fourteenth Amendment commands that no State shall 'deny to any person within its jurisdiction the equal protection of the laws,' which is essentially a direction that all persons similarly situated should be treated alike.") (quoting Plyler v. Doe, 457 U.S. 202, 216 (1982)).



Moreover, a defendant seeking postconviction relief is in a fundamentally different position from a defendant whose guilt has not yet been established. Postconviction proceedings follow a final judgment and sentence that is presumptively valid; because all subsequent challenges are essentially civil in nature, those constitutional rights that protect in a pre-trial setting are substantially diminished once the conviction is final. See e.g., Barbour v. Haley, 471 F. 3d 1222, 1232 (11th Cir. 2006), Williams v. Lockhart, 849 F. 2d 1134, 1139 (8th Cir. 1988). This Court has never held that a death-sentenced defendant has a constitutional right to self-representation in a postconviction setting, has never held that a rule requiring appointment of counsel violates due process, and has never held that equal protection is implicated where a state imposes a rule, like Florida's, that mandates all postconviction claims in capital cases be advanced through counsel.

There is no constitutional violation, therefore, when a state elects to place reasonable limitations on postconviction proceedings, such as requiring McDonald to filter his argument through competent, experienced counsel before presenting it to the reviewing court. Florida's requirement that capital defendants who elect to pursue postconviction remedies may only do so through counsel fails to conflict with any decision from

this Court or any provision of the United States Constitution. It is, instead, a matter of pure state law which, because of considerations of comity and federalism, should be respected and given deference by this Honorable Court.

Respondent notes that McDonald has disagreed with and attempted to fire virtually every attorney appointed to represent him since his conviction in 1995. For example, the Florida Supreme Court in reviewing McDonald's 2002 postconviction motion noted that McDonald, who disagreed with appointed counsel in the lower court, was permitted to file and manage his own postconviction hearing while counsel stood by. The Florida Supreme Court found no error in allowing McDonald to represent himself on postconviction (the rule governing such matters has since changed), but noted that a number of his appellate claims were unpreserved, an omission that might be viewed as the direct and unfortunate consequence of McDonald's decision to proceed *pro se*. McDonald v. State, 952 So. 2d 484 (Fla. 2006).

Undeterred, Petitioner believes in the validity of his own arguments, and complains when counsel disagrees. In the case just referenced, attorney Daphney Gaylord was first appointed as appellate counsel. McDonald objected, claimed there was irreconcilable conflict and that counsel failed to act as his

agent. The court replaced Gaylord with attorney Peter Cannon. McDonald objected to Mr. Cannon on the same grounds, but the court refused to provide him with different counsel and denied McDonald's motion to strike his attorney's initial brief in favor of his *pro se* brief. Review of the Florida Supreme Court's online docket reveals that several subsequent motions to discharge Mr. Cannon were also denied by Florida's high court. (Resp. App. D).

McDonald exhibits a pattern of stubborn disagreement with any attorney who rejects his meritless arguments. One attorney who sought to be removed from the case complained, without disclosing any specifics, that McDonald had demanded that he file claims he could not ethically advance; the State's response suggests that McDonald was abusing the judicial system by filing multiple frivolous motions (Resp. App. E). Since 2016, McDonald has had five different attorneys appointed to represent him. There is no substantive proof that any of them was ineffective; McDonald merely disagreed with the arguments counsel sought to advance in preference to his own. In fairness, two withdrew because of legitimate conflicts of interest; but at least one of them, Attorney Rodriguez, bitterly complained that McDonald had unjustly accused him of failing in his duties as postconviction counsel because he refused to raise the claims McDonald

preferred; counsel concluded that McDonald's claims lacked merit and he could not advance them in good faith. (Resp. App. F). This is precisely why Florida requires appointment of postconviction counsel for death-sentenced inmates and forbids any postconviction claims not adopted by counsel. Competent representation ensures that claims with merit will be pursued; the chaff can be winnowed.

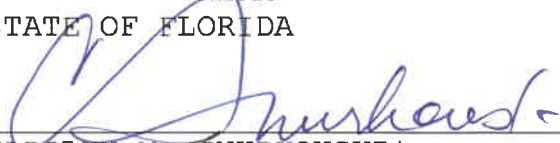
In sum, there is nothing unconstitutional about Florida's rule requiring appointment of counsel for all capital postconviction defendants, even if it precludes the defendant from filing his own substantive claims; McDonald has no right to self-representation now that his trial is complete. There is no basis for granting certiorari review in this case, as there is no conflict between the Florida Supreme Court ruling and any other relevant decision, nor any unsettled question of federal law to be resolved. Accordingly, this Court should decline to accept certiorari review.

**CONCLUSION**

Based on the foregoing, Respondent respectfully requests that this Court deny the petition for writ of certiorari.

Respectfully submitted,

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