

No. 20-6970

In the Supreme Court of the United States

CHARLES MAXWELL, *Petitioner,*

v.

STATE OF OHIO,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO

RESPONDENT'S BRIEF IN OPPOSITION

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CAPITAL CASE-*NO EXECUTION DATE SET*

QUESTIONS PRESENTED

Should the Court expand the constitutional rights afforded pre-conviction and on direct appeal to criminal defendants who seek collateral review of their conviction?

Whether Ohio's postconviction relief statute provides an adequate corrective process?

LIST OF PARTIES

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INTRODUCTION

Charles Maxwell argues that the Court should overturn decades worth of precedent and hold that criminal defendants are entitled to the same constitutional rights in collateral proceedings that they enjoy in a direct appeal. Notably, Maxwell *was* afforded the rights he advocates for. Maxwell was represented by at least two attorneys during every stage of his proceeding-trial, direct appeal, and postconviction. Even if the Court were inclined to adopt Maxwell's expansive proposition, it does nothing for his case.

The "notion that different standards should apply on direct and collateral review runs throughout" the Court's jurisprudence. *Wright v. West*, 505 U.S. 277, 292 (1992) (plurality opinion). That makes sense. Criminal defendants who avail themselves of collateral review are no longer cloaked with a presumption of innocence. *Herrera v. Collins*, 506 U.S. 390, 399 (1993). Maxwell is no longer presumed innocent. He exercised his right to a jury trial and was found guilty. He exercised his right to a direct appeal and his convictions were affirmed. Unhappy with the outcome, Maxwell advocates for the Court to change the rules. He argues that the standard results in "unconstitutional discrimination against the poor...when indigents are denied counsel in collateral review," *Petition* at 13, but fails to recognize that he was (and is) represented by counsel in collateral review.

Contrary to Maxwell's assertion, the "time has [not] come," *Petition* at 14, for the Court to overturn precedent and expand constitutional rights in a manner it has never done before. Criminal defendants are not entitled to the same constitutional guarantees on collateral review for good reason, and Maxwell does not present the Court with any compelling argument why it should make such a remarkable

departure in this case.

The Court should deny certiorari.

COUNTERSTATEMENT

Petitioner Charles Maxwell killed Nichole McCorkle in front of their nearly four-year-old child. Less than two months before the homicide, Nichole had to get stitches after Maxwell struck her in the head. *State v. Maxwell*, 139 Ohio St.3d 12, 13 (2014). The state pursued felonious assault charges against Maxwell and subpoenaed Nichole to testify at the grand jury. Maxwell, through a friend, tried to convince Nichole to lie to the grand jury so he would face less serious charges. On November 23, 2005, Nichole presented testimony to the grand jury, and Maxwell was indicted with felonious assault. *Id.* at 14. Maxwell killed Nichole four days later. *Id.*

I. The trial court proceedings.

Maxwell was indicted with multiple counts including aggravated murder. The indictment contained specifications alleging that Maxwell committed the murder in retaliation for Nichole's grand jury testimony and to escape accounting for a crime. *Id.* at 16. The jury found Maxwell guilty of aggravated murder with the retaliation and accounting specifications, as well as a charge of retaliation. The trial court separately found Maxwell guilty of having a weapon while under disability. Following a penalty phase hearing, the jury unanimously recommended that Maxwell be sentenced to death. *Id.* at 17. The trial court adopted the jury's recommendation and sentenced Maxwell to death.

II. Maxwell sought an appeal of right to the Supreme Court of Ohio.

Maxwell, represented by two highly experienced defense attorneys, pursued a

direct appeal in the Supreme Court of Ohio. Each of Maxwell's 19 propositions of law were denied. *Id.* at 17. The Court declined certiorari. *Maxwell v. Ohio*, 547 U.S. 1160 (2015). The Supreme Court of Ohio also denied Maxwell's application to reopen his appeal. *State v. Maxwell*, 144 Ohio St.3d 1502 (2016).

III. Maxwell availed himself of Ohio's postconviction relief statute.

While his direct appeal was pending, Maxwell filed a petition for postconviction relief. At that time, Maxwell was represented by attorneys Rachel Troutman (who filed Maxwell's instant *Petition*) and Benjamin Zober of the Ohio Public Defender's Office. Maxwell twice moved to amend his petition and filed a motion for leave to conduct discovery. The state filed its opposition to the petition as well as proposed findings of fact and conclusions of law. Maxwell filed a reply. And rather than provide his own proposed findings of fact and conclusions of law, Maxwell asked the trial court to "draft its own." The trial court denied Maxwell's petition. App. C. The trial court ultimately adopted the state's later-filed proposed findings of fact and conclusions of law. App. D.

Maxwell appealed the denial of his postconviction petition, and the Ohio Eighth District Court of Appeals affirmed. *State v. Maxwell*, Ohio 8th Dist. Court of Appeals, No. 107758, 2020-Ohio-3027; App. B. The Supreme Court of Ohio declined further review. *State v. Maxwell*, 160 Ohio St.3d 1438 (2020); App. A.

REASONS FOR DENYING THE WRIT

I. The Court has never held, and should not hold, that pre-conviction trial rights apply to postconviction collateral review.

In his first question, Maxwell states that there is "no justifiable rationale for treating constitutional claims differently if they are raised in collateral review as

opposed to direct review.” The rationale is both obvious and justifiable: there is no longer a presumption of innocence. A “trial is the paramount event for determining the guilt or innocence of the defendant.” *Herrera v. Collins*, 506 U.S. 390, 416 (1993). Once a “defendant has been afforded a fair trial and convicted of the offense for which he was charged, the presumption of innocence disappears.” *Id.* at 399. Maxwell would have the Court turn those fundamental principles on their head and have trial be merely a starting point in the process.

Maxwell’s premise is faulty for several reasons-both in general and specific to him. *First*, states “have no obligation to provide” mechanisms for collateral attacks to a conviction. *Pennsylvania v. Finley*, 481 U.S. 551, 557 (1987). And, even when they do provide one, “the fundamental fairness mandated by the Due Process Clause does not require that the state supply a lawyer as well.” *Id.* Indeed, the Court has “never held that prisoners have a constitutional right to counsel when mounting collateral attacks upon their convictions [...]” *Id.* at 555. Put succinctly, a “criminal defendant proved guilty after a fair trial does not have the same liberty interests as a free man.” *Dist. Atty.’s Office for Third Judicial Dist. v. Osborne*, 557 U.S. 52, 68 (2009). *Second*, while Maxwell makes no specific argument as to what process he should be afforded, Maxwell himself was provided counsel to assist his postconviction attack. The state courts finding that Maxwell’s claims are meritless does not mean he was deprived of the ability to seek relief on those claims.

Maxwell was provided a fair trial and received a valid conviction. Maxwell claims that his conviction ineffective assistance of trial counsel rendered his conviction invalid. *Petition* at pg. 10. The Supreme Court of Ohio reviewed and denied

the record-based ineffective assistance of counsel arguments. *State v. Maxwell*, 139 Ohio St.3d 12, 28-32, 46-60 (2014). Maxwell again claimed that trial counsel was ineffective in his petition for postconviction relief. Under Ohio Revised Code §2953.21, a convicted defendant can raise a claim that “there was such a denial or infringement of the person’s rights as to render the judgment void or voidable under the Ohio Constitution or the Constitution of the United States [...]” A postconviction proceeding in Ohio is “not an appeal of a criminal conviction, but, rather, a collateral civil attack on the judgment.” *State v. Calhoun*, 86 Ohio St.3d 279, 281 (1999). The state courts found that some of Maxwell’s postconviction claims were barred by res judicata but then alternatively analyzed the merit of the claims. *State v. Maxwell*, Ohio 8th Dist. Court of Appeals, No. 107758, 2020-Ohio-3027, ¶¶50-67, 76-107; App. B; App. D. The Supreme Court of Ohio declined further review of Maxwell’s postconviction claims. *State v. Maxwell*, 160 Ohio St.3d 1438 (2020); App. A.

Maxwell was afforded an opportunity to raise his claims in both his direct appeal and in collateral review. He was provided counsel at all stages of the proceedings to help him lodge the best challenge possible. To the extent there are differences between the constitutional rights guaranteed pre-conviction and on direct appeal, there are meaningful and important reasons why those same rights do not extend to collateral review. The Court should not deviate from decades of precedent and diminish the role of a criminal trial.

II. Ohio’s postconviction relief statutes provide an adequate corrective process.

Maxwell’s second question is related to the first: whether Ohio’s postconviction processes provide “what he was due.” It bears repeating that Ohio is not required to

have a postconviction process and that, even though it has chosen to offer one, “due process does not dictat[e] the exact form such assistances must assume.” *Osborne*, 557 U.S. at 69 (*citing Finley*, 481 U.S. at 559). The Court has never required states to provide the postconviction rights that Maxwell advocates for.

Federal courts “may upset a State’s postconviction relief procedures only if they are fundamentally inadequate to vindicate the substantive rights provided.” *Osborne*, 557 U.S. at 69. Maxwell was not deprived of his ability to vindicate his right to effective representation. To the contrary, Maxwell raised his claims in both his direct appeal of right and his postconviction petition. He is merely upset that the state courts did not find that the evidence he presented in postconviction warranted an evidentiary hearing.

Maxwell focuses on the fact that he presented an expert report in support of his claim that trial counsel failed to secure a neurological evaluation. In his direct appeal, Maxwell argued that the trial court erred by “failing to appoint a neurologist to help develop mitigation.” *Maxwell*, 2020-Ohio-3027, ¶42. Notably, counsel did request an expert in the context of competency. *Id.* The focus of this request was a 1999 motorcycle accident that Maxwell was involved in. In his postconviction petition, Maxwell attached a report from Dr. Layton that opined that Maxwell suffered “brain impairment” as a result of a “brain injury” sustained in 1986. *Id.* at ¶44. But, as the state court found, the evidence did not warrant a hearing. Dr. Layton’s report was based on speculation-the one-page medical record he relied on only said that Maxwell spent a night in the hospital. Maxwell only told one doctor (out of the multiple doctors to examine him) that he suffered a head injury in the mid-1980s, but that doctor found

that “Maxwell did not reveal results that ‘were conclusive of brain damage.’” *Id.* at ¶46. Ostensibly, any brain impairment sustained in 1986 would have been present when counsel requested a neurological evaluation because of the 1999 accident.

Maxwell’s disagreement aside, he fails to show how Ohio’s procedure is “fundamentally inadequate to vindicate the substantive rights provided.” *Osborne*, 557 U.S. at 69. The state court’s decision not to hold a hearing wasn’t because of impossibility-Ohio law allows for a hearing-it was because Maxwell didn’t present sufficient evidence to warrant one. Maxwell was represented by postconviction counsel, amended his petition multiple times, and had an opportunity to prepare findings of fact and conclusions of law that he chose not to avail himself of.¹ Maxwell seeks review in the Court to challenge the process, but the problem is not the process, it is the lack of proof to support his claims.

The Court should deny certiorari.

¹ Since the filing of Maxwell’s postconviction petition, Ohio has amended its postconviction statute to include more statutory rights to defendants who are sentenced to death.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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