

No. 21-7015

---

---

IN THE  
**Supreme Court of the United States**

---

EDWARD THOMAS JAMES,

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**

---

KARIN L. MOORE

*Counsel of Record*

Capital Collateral Regional Counsel –  
Northern Region

1004 DeSoto Park Drive

Tallahassee, Florida 32301

(850) 487-0922

Karin.Moore@ccrc-north.org

---

---

## TABLE OF CONTENTS

I.	Respondent’s Characterizations of This Case’s Procedural History are Incorrect, and the Florida Supreme Court’s Timeliness Ruling Should Not Prevent This Court From Reaching the Important Federal Questions Presented in the Petition .....	1-2
II.	To Resolve a Circuit Split and Reach the Federal Question Regarding Whether a Substantive Incompetency Claim May Be Time Barred, This Court Need Not Determine the Underlying Merits of the Claim.....	3-4
.		
	Conclusion.....	4

## TABLE OF AUTHORITIES

### Cases:

<i>Garza v. Idaho</i> , 139 S. Ct. 738 (2019) .....	3
<i>Hurst v. Florida</i> , 577 U.S. 92 (2016) .....	3
<i>Lee v. Kemna</i> , 534 U.S. 362, 376 (2002) .....	2
<i>Medina v. Singletary</i> , 59 F.3d 1095 (11th Cir. 1995) .....	3
<i>Pardo v. Sec’y, Fla. Dep’t of Corr.</i> , 587 F.3d 1093 (11th Cir. 2009) .....	3
<i>Thomas v. Wainwright</i> , 788 F.2d 684 (11th Cir. 1986) .....	1

**I. Respondent’s Characterizations of This Case’s Procedural History are Incorrect, and the Florida Supreme Court’s Timeliness Ruling Should Not Prevent This Court From Reaching the Important Federal Questions Presented in the Petition.**

Respondent incorrectly asserts that Petitioner has proposed a “sweeping rule” that under no circumstances may a substantive retrospective competency claim be barred. Brief in Opposition at 18. Far from doing so, Petitioner has simply pointed out that a circuit split exists over whether and how substantive competency claims may be barred. And, Petitioner’s case is distinguishable from *Thomas v. Wainwright*, 788 F.2d 684, 688 (11th Cir. 1986), because Petitioner indeed provided reason for the delay in raising his substantive competency claims: incompetently rendered waivers at the time of his guilty plea, subsequent penalty phase, *and postconviction proceedings*; as well as ineffective assistance of counsel for failing to ensure the competency and validity of Petitioner’s waivers.

By virtue of these invalid waivers, Petitioner was left without access to counsel or other expert resources for approximately fifteen years. As the petition argued, Petitioner—who was incompetent at several crucial junctures in his litigation history—cannot be faulted for failing to raise a claim of his own incompetence *pro se*. His state postconviction motion raising the substantive incompetency claim was filed in November 2018, which was well within one year of gaining access to counsel.

Although the Florida Supreme Court disagreed with Petitioner’s timeliness arguments, this Court need not second-guess the state-law ruling in order to grant certiorari review. This Court has 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, under the influence of significant cognitive impairments and the ineffective assistance of his appointed counsel, Petitioner pleaded guilty to a crime he lacked memory of. Operating under similar impairments, he waived the right to postconviction review of his plea and sentence. His attempt to reobtain counsel shortly after his postconviction waiver was denied by the Florida state courts. As a result, for a decade and a half he languished without access to counsel or expert resources.<sup>1</sup> At no point prior to 2018 did Petitioner have access to federal counsel; once he had that access, he sought to raise appropriate claims in federal court. And, upon the appointment of undersigned counsel in 2019 for purposes of exhausting state remedies, Petitioner promptly filed his substantive incompetency claim in state court. This Court should consider all the particularities of Petitioner’s case and its procedural history, and review the federal issue presented notwithstanding the state-law rulings below.

---

<sup>1</sup> Although Mr. James was represented on appeal of denial of his request to reinstate postconviction proceedings, this was a limited appointment that did not allow for investigation or litigation regarding competency.

## **II. To Resolve a Circuit Split and Reach the Federal Question Regarding Whether a Substantive Incompetency Claim May Be Time Barred, This Court Need Not Determine the Underlying Merits of the Claim.**

Certiorari review of this case would not, as Respondent suggests, result in an advisory opinion. The issue here is whether a court may refuse to review a substantive incompetency claim based on a procedural bar—not whether the claim would ultimately prevail in that court. As detailed in the petition, Petitioner presented the state courts with numerous factual allegations that create a “real, substantial, and legitimate doubt” [regarding] his competence.” *Pardo v. Sec’y, Fla. Dep’t of Corr.* 587 F.3d 1093, 1101 (11th Cir. 2009) (quoting *Medina v. Singletary*, 59 F.3d 1095, 1106 (11th Cir. 1995). To the extent Respondent disputes this, it only emphasizes the need for a state court evidentiary hearing.

Further, to the extent Respondent touts federal habeas corpus review as making the Florida Supreme Court’s refusal to review Petitioner’s incompetency claim “unimportant in the context of this case”, Brief in Opposition at 16, such a statement is unavailing. The possibility for future federal review—which Respondent admits requires federal courts to address state procedural bars under the extremely deferential AEDPA standard—existed in a variety of cases this Court has deemed important enough for review. *See, e.g., Hurst v. Florida*, 577 U.S. 92 (2016); *Garza v. Idaho*, 139 S. Ct. 738 (2019).

Whether or not Petitioner will prevail on the merits of his substantive incompetency claim—and in which specific court—is irrelevant to the core fact that the Florida Supreme Court erred in refusing to review Petitioner’s claim of substantive

incompetency. This erroneous procedural bar contravened this Court's precedent as well as Eleventh Circuit precedent, justifying this Court's intervention. To the extent other states and circuits allow such a bar, it is appropriate for this Court to resolve the split.

### CONCLUSION

This Court should grant a writ of certiorari to review the Florida Supreme Court's decision.

Respectfully submitted,

/s/ Karin L. Moore

KARIN L. MOORE

*Counsel of Record*

Capital Collateral Regional Counsel –  
Northern Region

1004 DeSoto Park Drive

Tallahassee, Florida 32301

(850) 487-0922

Karin.Moore@ccrc-north.org

MARCH 23, 2022