

No. 22-5851

IN THE SUPREME COURT OF THE UNITED STATES

November 16, 2022

SIAOSI VANISI, *Petitioner*,

v.
WILLIAM REUBART, WARDEN,
AARON FORD, ATTORNEY GENERAL,
THE STATE OF NEVADA,
Respondents.

*ON PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF NEVADA*

RESPONDENT'S BRIEF IN OPPOSITION

CAPITAL CASE

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QUESTION PRESENTED

CAPITAL CASE

In 1998, Sioasi Vanisi (hereafter “Vanisi”) was convicted of first-degree murder and sentenced to death. His first state court petition for writ of habeas corpus was denied by the district court, and that denial was affirmed by Nevada Supreme Court in 2010. In 2011, he filed his second state court petition for writ of habeas corpus. Following an evidentiary hearing, the district court dismissed the second petition, finding that Vanisi’s allegations were insufficient to overcome state procedural bars. The Nevada Supreme Court affirmed the dismissal of the bulk of Vanisi’s claims, but it remanded the matter for a limited evidentiary hearing regarding ineffectiveness of post-conviction counsel with respect to mitigation during the penalty phase. The limited hearing was set to occur in 2018, but Vanisi disagreed with his federal public defenders’ (hereafter “FPD”) strategy to continue pursuit of mitigation claims. Following competency evaluations, and over the FPD’s objections, the district court accepted Vanisi’s waiver of the limited evidentiary hearing. The FPD appealed the district court’s decision regarding the waiver, and also re-asserted several previously rejected, procedurally barred claims for relief. The Nevada Supreme Court affirmed the decision.

- 1) Vanisi’s latest petition for writ of habeas corpus and corresponding appeal did not allege that his motion for mistrial was improperly decided. Should this Court grant certiorari regarding a question that was not before district court or the Nevada Supreme Court?

2) Vanisi's claim regarding self-representation was rejected by the Nevada Supreme Court in 2001, and this Court denied certiorari regarding this claim the same year. His self-representation claim was not part of the Nevada Supreme Court's remand, and not presented to the district court in the proceedings below. Should this Court grant certiorari regarding a previously rejected claim that was not considered by the lower courts?

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RESPONDENT'S BRIEF IN OPPOSITION

STATEMENT OF THE CASE

Petitioner Siaosi Vanisi seeks certiorari of the Nevada Supreme Court's denial of his appeal regarding his most recent post-conviction petition for writ of habeas corpus. Prior to the Nevada Supreme Court's denial of post-conviction relief, this case has been the subject of substantial trial, appellate, and post-conviction litigation.

Two decades ago, Vanisi was convicted by a jury of murdering University of Nevada Police Sergeant George Sullivan. Vanisi was also convicted of three counts of Robbery with the Use of a Deadly Weapon and one count of Grand Larceny.

Vanisi v. State, 117 Nev. 330, 336, 22 P.3d 1164, 1168 (2001). Vanisi was

subsequently sentenced to death. He appealed his conviction and this Court affirmed both the conviction and death sentence, noting that “[t]he evidence of Vanisi’s guilt in this case is overwhelming.” *Vanisi*, 117 Nev. at 334, 22 P.3d at 1167.

Vanisi subsequently sought post-conviction relief via a Petition for Writ of Habeas Corpus filed on January 18, 2002. The district court denied the First Petition in its Findings of Fact, Conclusions of Law and Judgment filed on November 8, 2007. Vanisi appealed, and the Nevada Supreme Court affirmed the denial of his First Petition. *Vanisi v. State*, 126 Nev. 765, 367 P.3d 830 (table), 2010 WL 3270985 (2010) (unpublished). Vanisi sought certiorari, which this Court denied. *Vanisi v. Nevada*, 534 U.S. 1024, 122 S. Ct. 555 (2001)

Vanisi filed a second petition for writ of habeas corpus, which was denied by the district court. The Nevada Supreme Court again affirmed. *Vanisi v. State*, 126 Nev. 765, 367 P.3d 830 (Table), 2010 WL 3270985 (2010)(unpublished). Vanisi filed a third petition for a writ of habeas corpus. Following an evidentiary hearing, the district court declined to grant relief. Vanisi appealed. On September 28, 2017, this Nevada Supreme Court entered its Order Affirming in Part, Reversing in Part and Remanding. The Court explained the singular purpose for which the case was remanded: to evaluate whether Vanisi was prejudiced by first post-conviction counsel’s failure to substantiate their claim of ineffective assistance of trial counsel for failure to introduce additional mitigation evidence. *Vanisi v. Baker*, 133 Nev. 1086, 405 P.3d 97 (Table), 2017 WL 4350947 (2017).

After remand to the district court, a four-week long evidentiary hearing was scheduled to begin on October 1, 2018. On July 24, 2018, the district court filed a Request From Defendant that consisted of a handwritten letter from Vanisi that purported to be written on July 20, 2018. In his Request, Vanisi told the court that he was “writing you to see if I can waive my evidentiary hearing.”

The next day, the State filed a Motion to Set Hearing Regarding Vanisi’s Request to Waive Evidentiary Hearing. That same day, shortly after allowing Vanisi to sign a document waiving his right to be present at a critical proceeding, the FPD filed a Suggestion of Incompetency and Motion for Evaluation making the bare allegation that there was a good faith doubt about Vanisi’s competency. The State filed a Response on July 30, 2018, requesting additional information for the good faith belief that Vanisi was not competent. On August 20, 2018, the State filed an Addendum and provided the court with a letter that Vanisi wrote to the State’s attorneys dated August 13, 2018. In that letter, Vanisi indicated that he is “trying to waive my evidentiary hearing” and that he has “made repeated attempts to go through my attorney but they have rebuffed my request.”

The district court took up the competency and evaluation issue at a status conference on September 5, 2018. The court spoke to Vanisi directly who requested that the court “shoot down my lawyers’ request for competency evaluation” as he believed they only wanted him evaluated “[b]ecause I said something contrary to what my lawyers were thinking.” Vanisi astutely predicted that “if I were to see a doctor again, I am quite sure they would find me competent. It would be a waste of

resources, a waste of time on the Court's behalf if I were to see a doctor again."

Vanisi clarified that he wanted to waive the hearing as a "tactical decision" because he did not want to pursue "any guilt phase penalty claim issues" but that his attorneys "are doing it anyway against my wishes." The court decided that competency evaluations were appropriate to determine whether Vanisi was competent to waive the evidentiary hearing.

On September 24 and 25, 2018, the court conducted a hearing on the competency evaluations. Drs. Steven Zuchowski and John Moulton both testified in support of their evaluations of Vanisi's competency. Dr. Zuchowski concluded that Vanisi had the ability to appreciate his position to make a rational choice as to waiving his hearing, and that Vanisi's mental illness was in remission and did not affect his ability to engage in the process and make a rational decision. Dr. Moulton similarly testified that Vanisi "has the capacity to waive the hearing," his thinking is not inherently irrational, and that he did not "see evidence that that mental illness is active to the degree that it would impair his ability to make this decision." After hearing the testimony of both doctors, the court ruled that Vanisi was competent to make the decision as to whether he wanted to waive his evidentiary hearing.

Upon finding Vanisi was competent, the district court canvassed Vanisi to determine whether he fully understood the consequences of his decision to waive the evidentiary hearing. The court concluded that Vanisi was competent, aware of his position, and able to make the rational choice to waive the evidentiary hearing.

The court later entered a written Order Granting Waiver of Evidentiary Hearing on February 6, 2019. The court also entered a written Order Denying Relief. The FPD filed a timely Notice of Appeal on February 25, 2019. The Nevada Supreme Court affirmed the district court's orders. *Vanisi v. Gittere*, 502 P.3d 1088 (Table), 2022 WL 263342 (2022). Vanisi has sought certiorari with this Court.

FACTS UNDERLYING THE CONVICTION

The following facts were recognized by the Nevada Supreme Court's 2001 decision denying Vanisi's direct appeal. *See Vanisi v. State*, 117 Nev. 330, 334-336, 22 P.3d 1164 (2001). During a visit to Reno in January 1998, Vanisi told several people that he wanted to murder and rob a police officer and take his badge, radio, gun, and belt. Vanisi elaborated that he would kill the officer with an axe. *Id.* He bought gloves and a hatchet, and told family members he wanted to kill police officers. *Id.*

Early on January 13, 1998, Vanisi murdered and robbed University of Nevada Reno Police Sergeant George Sullivan on the UNR campus. At least two witnesses, including a police officer, observed Vanisi near the murder site shortly before the time of the killing. One officer testified that he observed Vanisi in the same area as Sullivan, who had recently made a traffic stop. Vanisi had dreadlocks and was wearing a dark jacket. Subsequently, Sullivan was seen heading towards the area of a kiosk, a fairly well-lit area where officers wrote reports. *Id.*

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Soon after, Sullivan's body was found lying under his police car near the kiosk. Sullivan's gun and gun belt were missing. The cause of death was multiple injuries to the skull and brain due to blunt impact trauma. *Id.*

Shortly after killing Sullivan, Vanisi proceeded to an apartment occupied by some of his relatives. He entered the apartment between 1:00 and 1:15 a.m. wearing a jacket and gloves and carrying a plastic grocery bag. Police found a hatchet in the apartment, as well as a pair of gloves, a jacket, and plastic bags containing items belonging to Sullivan. Vanisi's fingerprints were found on one of the bags. Stains on the hatchet and jacket contained Sullivan's DNA. The gloves contained DNA from both Sullivan and Vanisi. *Id.*

Vanisi told people he had killed a police officer after the officer completed a traffic stop. He bragged that he had worn a disguise to make himself look "Jamaican" when he knocked the officer unconscious and murdered him. A hat and wig were found discarded in a ditch not far from Sergeant Sullivan's body. *Id.* When Vanisi was finally apprehended in Utah, Sullivan's gun was found with him. *Id.*

REASONS FOR DENYING THE PETITION

A. The Claims of Mistrial and Double Jeopardy Were Not Raised in the District Court, and Are Barred on State Law Grounds.

Vanisi's current petition for writ of certiorari contains a great deal of factual assertions and legal claims regarding his 1995 trial, which ended in mistrial. Critically, these arguments were not raised in the district court proceedings or on appeal. In order to be considered by the lower courts, these claims would be subject

to mandatory procedural time bars, unless Vanisi could show good cause to overcome them. Because they were not raised in the proceedings giving rise to the current writ, this Court should decline to grant certiorari.

B. The Claim Regarding Self-Representation Has Been Previously Raised by Vanisi, Is Barred By State Law Grounds, and Has Previously Been Denied Certiorari.

Despite vociferously questioning Vanisi's capacity to waive his penalty-phase claims in the prior proceedings, Vanisi argued on appeal that his right to self-representation was violated during trial. In affirming the district court's decision, the Nevada Supreme Court found that this claim was not part of the limited remand, and not considered by the district court in the latest post-conviction proceedings. *Vanisi v. Gittere*, 502 P.3d 1088 (Table), 2022 WL 263342 (2022). It further found that the same claim was rejected as unmeritorious on direct appeal, rejected as barred by the law of the case doctrine, and rejected a third time in the context of the second post-conviction appeal. *Id.*, citing *Vanisi v. State*, 117 Nev. 330, 22 P.3d 1164 (2004); *Vanisi v. State*, 126 Nev. 765, 367 P.3d 830 (Table), 2010 WL 3270985 (2010); *Vanisi v. Baker*, 133 Nev. 1086, 405 P.3d 97 (Table), 2017 WL 4350947 (2017).

Because this claim has previously been raised and rejected since 2004, was not raised in the district court proceedings below, and is an attempt to avoid mandatory state procedural bars, this Court should decline to grant certiorari.

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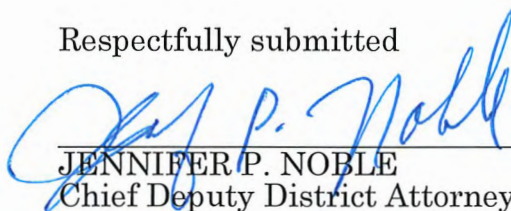
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CONCLUSION

This Court should deny the petition for writ of certiorari because: 1) Vanisi's mistrial claim was not raised in the district court or in the appeal preceding the current writ; and 2) the Nevada Supreme Court correctly declined to consider his claims regarding self-representation, because they were not raised in the district court proceedings below, and had previously been rejected by the Nevada Supreme Court and the United States Supreme Court.

DATED this 16th day of November, 2022.

Respectfully submitted



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