

NO. 22-6593

PROVIDED TO
CROSS CITY C.I. ON

JUN 02 2023

FOR MAILING

IN THE
SUPREME COURT OF THE UNITED STATES

STEVEN C. HEISER,
Petitioner,

v.

RICKY D. DIXON,
Secretary, Florida Department of Corrections,
Respondent.

ON Petition For writ of Certiorari
to the United States Court of Appeals
For the Eleventh Circuit

REPLY BRIEF FOR PETITIONER



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The three points raised in Respondent's
brief in opposition to Steven Heiser's petition
for a writ of certiorari warrant brief reply.

MAY it please the Court, greetings Mr.

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Chief Justice And presiding quorum, IN Reply to Respondent's brief in opposition, Heiser would first Request permission For leave of the Court in order to Allow him this moment to extend his Sincere gratitude to ALL interested parties, both For And Against.

Specifically, to Miss Carla Suzanne Bechard, Counsel of Record on behalf of Respondent, For her gracious Candor And commendable presentation. THANK you. MADAM.

Of course, Heiser is ALSO very grateful to each Attending Justice of the Six member quorum For Allowing him this extremely RARE, but indeed humbly honored opportunity to be heard.

So, with uttermost Respect THANK you For extending Judicial discretion And grace to the potential merits of Heiser's petition For writ of Certiorari.

1. To open his traverse, Heiser Respectfully would first disagree with Ms. Bechard's opposing Request Asking this Court to deny his petition on the issue of Jurisdiction And/or on the merits.

Secondly, Heiser ALSO would interpose An objection to the UNFAIR And UNREASONABLE Argu-

ment Ms. Bechard Advocated when She Addressed the timeliness issue on the question of waiver.

For instance, From on or About August 20, 2018, Assistant Attorney General, Ms. Sonya Roebuck Horbelt, on behalf of Mr. Ricky Dixon, (Respondent) Filed with the U.S. Middle District Clerk her Notice of Appearance As Counsel of Record, And Ms. Horbelt has been Assigned to Heiser's Federal 28 § 2254 petition up until Ms. Bechard enter the proceedings Sometime in April of 2023.

Heiser, on this Record, Submits that Ms. Bechard Appears to have undermined her colleague Ms. Horbelt in At Least Four instances.

Notably, in Section III., the First instance Located on page 17, paragraph 2 And page 18, paragraph 2, Ms. Bechard Stated, "In this case, Respondent [Ms. Horbelt] did not deliberately waive a limitations defense. Rather, Respondent [Ms. Horbelt] Advised the district Court that it believed the timeliness issue was controlled by the Eleventh Circuit's 2007 decision in FERREIRA."

...
"[O]n that basis, Respondent wrote that because Petitioner's Sentence was corrected in 2016,
..."

Then Ms. Bechard writes: "The district Court

properly Rejected that Analysis As INCORRECT based ON MORE RECENT ELEVENTH CIRCUIT CASE LAW."

HEISER ASKS this Court, how CAN MS. BECHARD TAKE AND ADVOCATE A position that UNETHICALLY undermines her COLLEAGUE, MS. HORBELT, by STATING the district Court properly REJECTED MS. HORBELT'S LEGAL INTERPRETATION OF LAW AND FACT AS BEING INCORRECT.

NOTWITHSTANDING the BLATANT DISRESPECT, MS. BECHARD OVERLOOKS the FACT that both PATTERSON AND OSBOURNE were both decided in 2017 AND AVAILABLE OVER A ENTIRE YEAR prior to MS. HORBELT'S Response to HEISER'S HABEAS petition ON December 10, 2018.

While it is true, the ELEVENTH CIRCUIT AFFIRMED the UNITED STATES DISTRICT COURT FOR the Southern district, order dismissing OSBOURNE'S 28 § 2254 HABEAS petition IN 2020, The deciding FACTOR IN OSBOURNE IS distinguishable IN COMPARISON to HEISER.

FOR EXAMPLE, HEISER CLAIMS that his RESENTENCING WAS NOT A MINISTERIAL ACT UNLIKE OSBOURNE where the TRIAL COURT Just Amended his Sentence by deleting the UNAUTHORIZED MANDATORY MINIMUM.

IN FLORIDA, it is well Settled that "where

A trial Court grants A motion to correct An illegal Sentence," pursuant to FLA. R. CRIM. P., 3.800(a), the trial Court has the discretion to impose A corrected Legal Sentence, And, therefore, A defendant has "the Right to be present" And represented by Counsel since Florida Courts consider this A critical Stage of the Criminal proceedings."

STATE V. COLLINS, 985 So. 2d 985 (FLA. 2008)

It is true that granting Heiser's Rule 3.800(a) motion did not alter the original conviction, nor did it lessen the term of his imprisonment, but it was not, As District Court Judge Barber And now, Ms. Bechard suggests, A "ministerial Act" According to State Law. See JORDAN V. STATE, 143 So. 3d 335, 339-40 (FLA. 2014)

Additionally, it is also well settled in the Florida Courts that A Courts oral pronouncement of A sentence controls over the written sentencing document. Accord, WILLIAMS V. STATE, 957 So. 2d 600 (FLA. 2007).

For instance, once A final decision has been announced unequivocally, the Court lacks jurisdiction to retract it by entering A subsequent written order that is not in compliance with the orally announced final order. SCANTLING V. STATE, 711 So. 2d 524 (FLA. 1998)

Based on the foregoing premise, Heiser

Submits the trial Court's Resentencing pronouncement did not condition Amending his Life Sentence by imposing the Addition of the three-year Mandatory minimum Required pursuant to Statutory Authority on A Nunc pro tunc designation.

Heiser contends that he would have had legal Standing under the Law to interpose An objection to the oral pronouncement Nunc pro tunc.

To be certain, IN *Luhres v. State*, 394 So. 2d 137, 139 (N.I.) (FLA. 5th DCA 1981) the Florida district Court explained when a Nunc pro tunc designation is appropriate: "[Nunc pro tunc means 'now for then' And when Applied to the entry of a legal order or Judgment it normally does not refer to a new or fresh decision, as when a decision is made after the death of a party, but relates to a ruling or action actually previously made or done but concerning which for some reason the record thereof is defective or omitted. The later record making does not itself have a retroactive effect but it constitutes the later evidence of a prior effectual act." *Id.* at 139.

In further support, see also, *St. Moritz Hotel v. Daughtry*, 249 So. 2d 27 (FLA. 1971).

Heiser further avers had he been provided fair notice and an opportunity to address the timeliness issue before Judge Barber entered

Judgment Against him, he would have presented his position in this way, And in conjunction with the legal premise that, "State Courts are the ultimate expositors of State Law." *MULLANEY V. WILBUR*, 421 U.S. 684, 691, 95 S.Ct. 1881, 44 L.Ed.2d 508 (1975), so that a State Court's interpretation of State Law binds a Federal Court sitting in habeas corpus. See *BRADSHAW V. RICHEY*, 546 U.S. 74, 76, 126 S.Ct. 602, 163 L.Ed.2d 407 (2005); *HERRING V. SEC'y, DEP'T OF CORR.*, 397 F.3d 1338, 1355 (11th Cir. 2005)

So, on the question of *WAINER*, it stands to reason that there is a reasonable probability Ms. Horbelt was already aware of these deciding factors when she at least implicitly agreed with the applicable law after taking into consideration the relative facts on the record of Heiser's resentencing and rightly applied the controlling precedent of *Ferreira* and progeny, when she went forward by addressing the merits of Heiser's 28 § 2254 habeas petition.

Ms. Bechard does not make mention of the clearly establish binding precedent where this Court held that Federal Courts do not have "carte blanche to depart from the principle of party presentation basic to our Adversary System," because it is an "Abuse of discretion"

For A Court "to OVERRIDE A [party's] DELIBERATE WAIVER." Wood v. Milyard, 566 U.S. 463, 472-73, 132 S.Ct. 1826, 182 L.Ed. 2d 733 (2012) (quotations omitted).

Heiser poses the following question: IF A WAIVER, pursuant to Wood, directly implicates the power of the parties to control the course of the litigation; And as in this case, a party affirmatively and intentionally relinquishes the issue, And the Courts must respect that decision, then let's be candid, How can Ms. Bechard stand against her colleague Ms. Horbelt by advocating a contrary position than the one Ms. Horbelt initially advanced?

For example, Ms. Bechard makes claims of error, while taking the position of Judge Barber, by implicitly insinuating that Ms. Horbelt's analysis was properly and freely rejected by the court without presenting any evidence or affidavit from Ms. Horbelt stating or confirming that she would now concede to error and stand in agreement to her analysis being rejected. See Brief in opposition, page 18, paragraph 3, And also page 19, paragraph 1, respectively.

So, with those things presented, Heiser turns BRIEFLY to Subsection 1, IN ORDER TO Address MS. Bechard's contention that the Eleventh Circuit LACKED Jurisdiction due to the untimely NOTICE OF APPEAL.

Heiser contends that MS. Bechard MAY HAVE possibly INADVERTANTLY OVERLOOKED the complete Appellate Record IN RELATION to the procedural FACTS Heiser properly presented.

FOR INSTANCE, Heiser INITIALLY provided basis FOR RELIEF under FEDERAL Rules OF Appellate Procedure 4(a)5 or 4(a)6 when he timely FILED Rule 4(a)5 Motion, AS the Record indicates, Alleging that he did NOT RECEIVE NOTICE OF the entry OF the order denying his Request FOR extension OF time ENTERED ON October 20, 2021, AND Subsequently RECEIVED VIA INSTITUTIONAL LEGAL MAIL ON November 18, 2021, 29-DAYS LATER AND outside the Rules 21 day Requirement.

See 28 U.S.C. 2107(c); Fed. R. App. 4(a)5-6; Sanders v. United States, 113 F.3d 184, 186-87 (11th Cir. 1997) (Explaining that we MAY construe A late pro se NOTICE OF APPEAL IN A CIVIL CASE AS A motion to Reopen the APPEAL period under Rule 4(a)(6) IF there IS AN INDICATION that the Appellate did NOT RECEIVE NOTICE OF ENTRY OF AN ORDER OR Judgment within 21 days OF its entry); Brooks v.

BRITTON, 669 F.2d 665, 666-67 (11th Cir. 1982) (holding that pro se litigants are required to move timely for extension of time in order to file a late notice of appeal pursuant to Federal Rule of Appellate Procedure 4(a)(5)).

Wherefore, Heiser submits that he did all these requirements by taking all the appropriate steps in compliance with the rules.

His appeal was transmitted by the district court and accepted by the Eleventh Circuit.

ACOFF v. Sec'y, Dep't of Corr., 2022 U.S. App. LEXIS 20660 (11th Cir. 2022)

CONCLUSION

For the foregoing reasons and those stated in the petition for a writ of certiorari, the petition should be granted.

Respectfully Submitted,
STEVEN Q. HEISER, pro se