

No. 22-7136

In the Supreme Court of the United States

TERRY FROMAN,

Petitioner,

v.

OHIO,

Respondent.

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

**BRIEF IN OPPOSITION TO THE
PETITION FOR WRIT OF CERTIORARI**

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CAPITAL CASE

QUESTIONS PRESENTED

1. Whether this Court should grant a writ of certiorari to review Petitioner's post-conviction claims of "juror bias" and ineffective assistance of counsel in voir dire under the Sixth and Fourteenth Amendments when this Court has already denied certiorari to Defendant on the same constitutional challenge as to Jurors 5, 13, 46, and 49 in Case No. 20-7865.
2. Whether this Court should grant a writ of certiorari to review Petitioner's post-conviction claims of "juror bias" and ineffective assistance of counsel in voir dire under the Sixth and Fourteenth Amendments when the state court of appeals' decision rests on a state-law ground that is independent of the merits of the federal questions presented and adequate to support the court's judgment.

LIST OF PARTIES

The Petitioner is Terry Froman, an inmate at the Chillicothe Correctional Institution in Chillicothe, Ohio.

The Respondent is the State of Ohio.

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**CITATIONS OF OFFICIAL AND UNOFFICIAL REPORTS
OF THE OPINIONS AND ORDERS ENTERED IN THE CASE**

State of Ohio v. Froman, 2022 OH 4617, 200 N.E.3d 257 (Dec. 27, 2022 Decision of Supreme Court of Ohio denying discretionary appeal)

State of Ohio v. Froman, 2022 OH Ct. App. 2726U (Aug. 8, 2022 Opinion of Court of Appeals of Ohio, Twelfth District, affirming denial of Post-Conviction Petition)

State of Ohio v. Froman, No. 14CR30398 (Nov. 4, 2020) (Warren County Common Pleas Court, Decision/Entry Denying Defendant's Post-Conviction Petition and Granting State's Motion to Dismiss and Motion for Summary Judgment)

Froman v. Ohio, 141 S.Ct. 2869, 210 L.Ed.2d 969 (2021) (June 28, 2021 Decision of United States Supreme Court denying Petition for writ of certiorari)

State of Ohio v. Froman, 2021 OH 1606, 167 N.E.3d 980 (May 11, 2021 Decision of Supreme Court of Ohio denying Motion for Reopening)

State of Ohio v. Froman, 2020 OH 5332, 157 N.E.3d 800 (Nov. 24, 2020 Decision of Supreme Court of Ohio denying Motion for Reconsideration)

State of Ohio v. Froman, 2020 OH 4523, 165 N.E.3d 1198 (Sept. 24, 2020 Opinion of Supreme Court of Ohio affirming conviction and sentence)

State of Ohio v. Froman, No. 14CR30398 (June 22, 2017) (Warren County Common Pleas Court, Judgment Entry of Sentencing Opinion on Aggravated Murder with Death Specifications Pursuant to R.C. §2929.03(F))

STATEMENT OF JURISDICTION

This Court has jurisdiction to review decisions from the highest court of a State involving a federal question. 28 U.S.C. § 1257; *Pieper v. American Arbitration Ass'n, Inc.*, 336 F.3d 458, 461 (6th Cir. 2003). Section (a) of 28 U.S.C. § 1257 provides:

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

Respondent agrees that this statutory provision sets out the scope of this Court's certiorari jurisdiction. It is Respondent's position, however, that this Court lacks jurisdiction to review the federal questions presented in Petitioner's petition for a writ of certiorari. This Court has long held that "it will not consider an issue of federal law on direct review from a judgment of a state court if that judgment rests on a state-law ground that is both 'independent' of the merits of the federal claim and an 'adequate' basis for the court's decision." *Harris v. Reed*, 489 U.S. 255, 260, 109 S.Ct. 1038, 103 L.Ed.2d 308 (1989). This rule applies whether the state law ground is substantive or procedural. *Id.* at 260-261. The Twelfth District Court of Appeals of Ohio concluded that Petitioner's post-conviction assertions of "juror bias" and ineffective assistance of counsel in voir dire were barred by res judicata. The state court of appeals did not reach the merits of Petitioner's Sixth and Fourteenth Amendment claims. Consequently, the court of appeals' decision rests on a state-law ground that is independent of the merits of the federal questions presented and adequate to support the court's judgment.

**STATEMENT OF STATUTES, RULES, AND CONSTITUTIONAL
PROVISIONS INVOLVED IN THE CASE**

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

U.S. Const. amend. XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

STATEMENT OF THE CASE

On September 12, 2014, Defendant-Petitioner Terry Froman (“Defendant”) murdered Kimberly Thomas, whom he had dated for approximately four years, and Thomas’ 17-year-old son, E.M. *State v. Froman*, 2020 OH 4523, 165 N.E.3d 1198, ¶¶1, 3. Thomas had ended her relationship with Defendant on August 20, 2014. *Id.* ¶3. The following day, Defendant told Thomas’ supervisor at work, “Kim has made me lose everything, now I will make her lose everything no matter the cost.” *Id.* ¶5.

Around 5:00 a.m. on September 12, 2014, Defendant went to Thomas’ house in Mayfield, Kentucky with a Hi-Point .40 caliber semiautomatic pistol, got Thomas out of her room, and “tried to * * * get her to walk out the door” with him. *Id.* ¶¶16, 23. Thomas started screaming E.M.’s name. *Id.* ¶16. When E.M. came to his mother’s aid, “[t]hat was it” according to Defendant. *Id.* ¶16. He shot E.M. in the abdomen at close range and in the back of the head. *Id.* ¶¶11, 13, 25. The gunshot wounds were fatal. *Id.* ¶25.

Defendant forced Thomas into his SUV and drove north. *Id.* ¶8. Just after 7:00 a.m., a 911 caller reported that a woman had been abducted at a gas station in Paducah, Kentucky. *Id.* Surveillance video from the gas station showed Defendant inside the gas station’s store, and his white GMC Yukon with Illinois license plate bearing the name “TRICKE1” parked at a gas pump. *Id.* The video showed Thomas, who was naked, exit the vehicle and start to run away. *Id.* Defendant rushed out of the store, grabbed Thomas by the hair, dragged her back to the SUV, and forced her back inside. *Id.* He then drove away. *Id.*

Police crews started looking for Defendant. *Id.* ¶9. They pinged his cell phone to determine his location. *Id.* ¶12. The information they obtained showed that he was heading into Ohio. *Id.*

As he drove, Defendant called his good friend, David Clark. *Id.* ¶13. He told Clark that he

had killed E.M. and that he (Defendant) was “a couple of hours away.” *Id.* ¶13. Clark, who was a police informant, contacted a Paducah officer with whom he had worked, and subsequently met the officer at the police station, where Clark’s calls to and from Defendant were videotaped. *Id.* ¶16.

In those videotaped calls, Defendant told Clark that Thomas was sleeping “off and on” in the back of the SUV. *Id.* ¶17. Clark implored Defendant to surrender himself. *Id.* In response to Clark’s suggestion that he let Thomas go, Defendant said, “It’s too late. I mean it ain’t too late, but, I just can’t, I can’t, I can’t, I can’t. I just got to. No if, ands, or buts about it.” *Id.* He stated, “I know you’re trying to talk me down, baby I appreciate it and all. But like I said, I mean it’s just not going to happen.” *Id.* He advised Clark, “I already took one life, and I’m about to go ahead and take two [more].” *Id.*

In another phone call, Defendant told Clark that he was in Ohio, and the police were behind him. *Id.* ¶18. Defendant repeated that he intended to kill Thomas.: “I’m gonna kill her dude.” *Id.* As Clark begged Defendant to pull over and “[d]on’t do nothing,” Defendant stated, “I can’t do it man,” and the call was disconnected. *Id.* A short time later, Clark called Defendant back. *Id.* ¶19. At that time, Defendant advised Clark, “She dead. * * * I shot myself, and I shot her three times.” *Id.*

Ohio law enforcement officers had pulled Defendant over on the side of I-75 in Warren County, Ohio when they heard gunshots. *Id.* ¶20. They moved in and apprehended Defendant, who was sitting in the driver’s seat of his car with a gun in his hand. *Id.* ¶¶20-21. Defendant had a bullet wound in his left upper chest near his shoulder. *Id.* ¶21. Thomas’ dead body was in the back seat of the SUV. *Id.* Thomas had sustained gunshot wounds to the back of the head, right upper chest, right breast, and right upper abdomen. *Id.* ¶26. She also had a broken jaw, one of her teeth had been knocked out, and she had blunt force injuries, lacerations, and abrasions to her head, face,

torso, inner thighs, and extremities. *Id.*

A Warren County Grand Jury indicted Defendant with the aggravated murder of Thomas with prior calculation and design, the aggravated murder of Thomas while committing a kidnapping, and two counts of kidnapping Thomas, all of which included a firearm specification. *Id.* ¶27. Each of the aggravated murder counts had the same two death-penalty specifications: (1) committing aggravated murder as part of a course of conduct involving the purposeful killing of two or more persons (Thomas and E.M.); and (2) committing aggravated murder during the commission of a kidnapping. *Id.*

The case proceeded to trial on June 5, 2017. Defendant's trial counsel questioned prospective jurors on the issue of race, some of which are jurors he now challenges as racially biased. (6/6/17 Tr. 44-45; 6/7/17 Tr. 132.) Counsel questioned some prospective jurors extensively about racial bias and their answers on the questionnaire that were related to race. (6/7/17 Tr. 119-20, 157-58.) Counsel challenged those who demonstrated racial bias. (6/5/17 Tr. 75-77, 153; 6/7/17 Tr. 119-20, 138-39.) To the extent that counsel did not specifically question some of the challenged jurors about race, the prosecutor inquired of them on the topic of race, and their answers revealed that they were not racially biased. (6/5/17 Tr. 227-30; 6/6/17 Tr. 36-38, 92-94.) They agreed that race should not play any role in the decisionmaking process. (6/5/17 Tr. 230; 6/6/17 Tr. 36-38, 94.) One of the jurors seated in Defendant's case specifically characterized the decision as being "colorblind." (6/6/17 Tr. 44-45.)

The jury found Defendant guilty on all counts and specifications. *State v. Froman*, 2020 OH 4523, 165 N.E.3d 1198, ¶28. Following testimony presented in the sentencing phase of trial, the jury recommended a sentence of death, and the trial court subsequently sentenced Defendant to death. *Id.* ¶29. As to the noncapital offenses, the trial court merged the kidnapping counts,

sentenced Defendant to eleven years for the kidnapping and six years for the remaining specifications, for a total of seventeen years on the noncapital offenses. *Id.* ¶30.

Defendant filed a direct appeal in the Supreme Court of Ohio. *Id.* ¶1. The Supreme Court of Ohio affirmed his convictions and sentence on September 24, 2020. *Id.* ¶187. In its opinion, the Supreme Court of Ohio addressed Defendant’s claim that Jurors 5, 13, 46, and 49 were racially biased and that his trial counsel were ineffective for failing to question or remove Juror 49 from the panel during voir dire. *Id.* ¶¶48-61. As to Juror 49, after a careful review of the record, which it cited extensively in its opinion, the Supreme Court of Ohio concluded:

[J]uror No. 49’s responses on her general questionnaire do not show her inability to be impartial in this case, based on her assurance during voir dire that she could set aside her opinions on race and decide the case based on the evidence. When the prosecutor asked juror No. 49 if she agreed that race should not play any role in the decisionmaking process whatsoever, she responded, “I totally agree.” In light of this assurance of impartiality, the record does not support Froman’s argument that juror No. 49 was actually biased against him. Thus, we reject Froman’s claim in proposition of law No. 3 that he was denied his right to an impartial jury due to the seating of juror No. 49. For the same reason, we reject Froman’s ineffective-assistance claim in proposition of law No. 4 with respect to juror No. 49.

Id. ¶57.

As to Jurors 5, 13, and 46, the Ohio Supreme Court stated:

We do not agree that, as Froman argues, the questionnaire responses of juror Nos. 5, 13 and 46 demonstrate “blatantly expressed racial views.” The record does not demonstrate that the jurors were unable to be impartial, and Froman has not established that they were actually biased against him. We reject Froman’s arguments under proposition of law No. 3 with respect to juror Nos. 5, 13, and 46.

Id. ¶61. The Supreme Court of Ohio subsequently denied Defendant’s motions for reconsideration and for reopening. *State v. Froman*, 2021 OH 1606, 167 N.E.3d 980; *State v. Froman*, 2020 OH 5332, 157 N.E.3d 800.

On April 22, 2021, Defendant filed a petition for a writ of certiorari in this Court in Case No. 20-7865. His petition argued the same claims that he raises in his current petition for a writ of certiorari: whether Defendant was denied his rights to a fair and impartial jury and the effective assistance of counsel under the Sixth and Fourteenth Amendments. Defendant's petition in Case No. 20-7865 argued that Jurors 5, 13, 46, and 49 indicated the presence of racially biased views, defense counsel were ineffective in their questioning of (or failure to question) Jurors 5, 13, 46, and 49 about their alleged racial bias, and the trial court erred in seating them on the jury. His current petition adds claims as to Jurors 19 and 23, but otherwise repeats the claims as to Jurors 5, 13, 46, and 49. On June 28, 2021, this Court denied Defendant's petition for a writ of certiorari in Case No. 20-7865. *Froman v. Ohio*, 141 S.Ct. 2869, 210 L.Ed.2d 969 (2021).

In October 2018, while his direct appeal was still pending in the Supreme Court of Ohio, Defendant filed a Post-Conviction Petition to Vacate or Set Aside Judgment and/or Sentence ("PCR petition"), which claimed, among other things, that his rights to a fair and impartial jury and the effective assistance of counsel under the Sixth and Fourteenth Amendments were violated. *State v. Froman*, 2022 OH Ct. App. 2726U, ¶¶20, 43, 123. He challenged the voir dire and empaneling of Jurors 5, 13, 19, 23, 46, and 49. *Id.* ¶43. The State responded. *Id.* ¶21. The trial court dismissed the PCR petition without a hearing. *Id.* The trial court applied res judicata to Defendant's Sixth and Fourteenth Amendment claims of juror bias and ineffective assistance of counsel in voir dire. *Id.* ¶46.

Defendant appealed the trial court's decision to the Twelfth District Court of Appeals of Ohio. *Id.* The court of appeals affirmed the trial court's dismissal of the PCR petition. *Id.* ¶1, 207. On the issues of juror bias and ineffective assistance of counsel in voir dire, the court of

appeals found that those post-conviction claims were barred by res judicata. *Id.* ¶¶43-49, 66, 123. On December 27, 2022, the Supreme Court of Ohio subsequently declined to accept Defendant’s discretionary appeal from the court of appeals’ decision. *State v. Froman*, 2022 OH 4617, 200 N.E.3d 257.

On March 27, 2023, Defendant filed a petition for a writ of certiorari (“Petition”) and a motion for leave to proceed *in forma pauperis* in this Court. The State of Ohio hereby responds.

ARGUMENT

Reasons for Denying the Writ

- I. Defendant's First and Second Questions Presented should be denied because this Court has already denied certiorari to Defendant on the same Sixth and Fourteenth Amendment challenge as to Jurors 5, 13, 46, and 49, and the decision of the state court of appeals rests on a state-law ground that is independent of the merits of the federal questions and adequate to support the court's judgment.**

Defendant challenges his conviction and death sentence under the Sixth and Fourteenth Amendments to the United States Constitution. In Grounds for Relief 7-13 and 44 in his PCR petition, Defendant claimed that his trial counsel were ineffective for failing to voir dire Jurors 5, 13, 19, 23, 46, and 49 about their alleged "expressed racial bias." In Grounds for Relief 14 and 45, he argued error in the empaneling of "biased" jurors. He asks this Court for a writ of certiorari to review those questions.

Respondent State of Ohio asks this Court to deny his petition. First, this Court has already denied a writ of certiorari to Defendant on claims that Jurors 5, 13, 46, and 49 were allegedly racially biased and that his trial court were ineffective in questioning them during voir dire. Second, the Twelfth District Court of Appeals of Ohio did not reach the merits of the federal questions presented. It affirmed the trial court's dismissal of Defendant's post-conviction claims on procedural grounds of res judicata. Because the court of appeals' decision rests on a state-law ground that is independent of the constitutional questions and wholly adequate to support the judgment, this Court is without jurisdiction to review the federal questions presented. Resolution by this Court of Defendant's Sixth and Fourteenth Amendment claims would not affect the judgment and would be advisory in nature.

A. This Court has already denied a writ of certiorari to Defendant on claims that Jurors 5, 13, 46, and 49 were allegedly racially biased and that his trial court were ineffective in questioning them during voir dire.

After the Supreme Court of Ohio affirmed his conviction and his death sentence on direct appeal, Defendant filed a petition for a writ of certiorari in this Court on April 22, 2021 in Case No. 20-7865. He asked this Court to grant certiorari to review his claims of alleged juror bias and ineffective assistance of counsel in questioning jurors in voir dire about their alleged racial bias. His arguments specified Jurors 5, 13, 46, and 49 as expressing racially biased views. This Court denied Defendant's petition on June 28, 2021. *Froman v. Ohio*, 141 S.Ct. 2869, 210 L.Ed.2d 969 (2021). Defendant's current petition for a writ of certiorari in this case repeats the same arguments as to Jurors 5, 13, 46, and 49. In his current petition, Defendant merely adds claims of juror bias and ineffective assistance of counsel as to Jurors 19 and 23.

B. The state court of appeals' decision rests on a state-law ground that is independent of the merits of the federal questions presented and adequate to support the court's judgment.

This Court has long held that "it will not consider an issue of federal law on direct review from a judgment of a state court if that judgment rests on a state-law ground that is both 'independent' of the merits of the federal claim and an 'adequate' basis for the court's decision." *Harris v. Reed*, 489 U.S. 255, 260, 109 S.Ct. 1038, 103 L.Ed.2d 308 (1989). *See also Ylst v. Nunnemaker*, 501 U.S. 797, 801, 111 S.Ct. 2590, 115 L.Ed.2d 706 (1991). This rule applies whether the state law ground is substantive or procedural. *Harris*, 489 U.S. at 260-261. This Court explained its reasoning for the rule in *Herb v. Pitcairn*, 324 U.S. 117, 125-26, 65 S.Ct. 459, 89 L.Ed. 789 (1945):

This Court from the time of its foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds. The reason is so obvious that it has rarely upon thought to warrant statement. It is found in the partitioning of power between the state and federal

judicial systems and in the limitations of our own jurisdiction. Our only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. And our power is to correct wrong judgments, not to revise opinions. We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of federal laws, our review could amount to nothing more than an advisory opinion.

To deprive this Court of jurisdiction, “the state court must actually have relied on the procedural bar as an independent basis for its disposition of the case.” *Harris*, 489 U.S. at 261-262, quoting *Caldwell v. Mississippi*, 472 U.S. 320, 327, 105 S. Ct. 2633, 86 L. Ed. 2d 231 (1985). Furthermore, where the last reasoned state court opinion on the claim explicitly imposes a procedural default, it is presumed that a later unexplained decision rejecting the claim “did not silently disregard that bar and consider the merits.” *Ylst*, 501 U.S. at 803. The presumption is that the later court, in issuing its unexplained decision, agreed with the reasons given below. *Id.* at 804.

As Defendant recognizes at pages 7 and 10 of his petition, the Twelfth District Court of Appeals of Ohio, the last state court to issue a reasoned decision, clearly and expressly relied on a procedural bar to affirm the trial court’s dismissal of the grounds in Defendant’s PCR petition which raised the Sixth and Fourteenth Amendment claims of the empaneling of allegedly biased jurors and ineffective assistance of counsel in questioning jurors in voir dire about alleged racial bias. The issue before the court of appeals was whether the trial court abused its discretion in dismissing Defendant’s PCR petition without an evidentiary hearing. In determining that issue, the court of appeals stated:

The trial court dismissed Grounds 7 through 13 and 44. The trial court held that res judicata barred Froman’s arguments about the six jurors at issue in Grounds 7 through 13 and about implicit bias in Ground 44 because Froman could have raised those arguments in his direct appeal. Froman appeals, arguing that the trial court abused its discretion.

a. Res Judicata

We agree with the trial court that res judicata barred Grounds 7 through 13 and 44. Froman's claims of ineffective assistance related to alleged racial bias are primarily based on (1) jurors' answers to questions in the long form juror questionnaire and (2) questions asked (or not asked) by counsel and answers given by jurors during voir dire. The juror questionnaires and the voir dire transcript were within the trial record. Froman therefore could have raised during his direct appeal the very same ineffective assistance arguments he raised in Grounds 7 through 13 and 44 of his PCR Petition.

In fact, Froman *did*, on direct appeal, argue that his trial counsel provided ineffective assistance by failing to question or remove Juror 49 based on the very same juror questionnaire answers that Froman pointed to in his PCR petition. The Ohio Supreme Court rejected Froman's argument and held that because Juror 49 promised that she could set her opinions aside and decide the case based on the evidence, Froman's counsel did not provide ineffective assistance and that "the record does not support Froman's argument that [Juror 49] was actually biased against him." Because the supreme court has already rejected Froman's ineffective assistance arguments related to Juror 49, we may not reach a different result now, when Froman is attempting to take a second bite at the apple.

Froman did not argue in his direct appeal that his trial counsel provided ineffective assistance related to Jurors 5, 13, 19, 23, and 46.^[1] However, Froman could have brought such arguments in his direct appeal as such arguments rely on information in the trial record. Therefore, res judicata barred Froman's ineffective assistance arguments related to Jurors 5, 13, 19, 23, and 46, just as res judicata barred Froman's ineffective assistance argument as to Juror 49. We affirm the trial court as to its denial of Grounds 7 through 13 and 44, *and we need not review those grounds further.*

¹ Footnote 5 of the court of appeals' opinion stated:

While Froman did not argue *ineffective assistance* related to Jurors 5, 13, 19, 23, and 46 in his direct appeal, he did argue in his direct appeal that the seating of three of those five jurors – that is, Jurors 5, 13, and 46 – violated his rights under the Sixth and Fourteenth Amendments to the United States Constitution. The supreme court analyzed Froman's arguments related to those jurors and concluded, "We do not agree that, as Froman argues, the questionnaire responses of juror Nos. 5, 13, and 46 demonstrate 'blatantly expressed racial views.' The record does not demonstrate that the jurors were unable to be impartial, and Froman has not established that they were actually biased against him." [*State v. Froman*, [2020 OH 4523, 165 N.E.3d 1198,] at ¶ 61. In reaching this conclusion, the supreme court noted that Froman had omitted from his description of the questionnaire answers given by those three jurors certain answers that undermined his claim that they were racially biased.... Because the supreme court has already rejected Froman's racial bias arguments related to Jurors 5, 13, and 46, we could not re-decide this issue and find that Froman's trial counsel were ineffective in failing to question those jurors further without some new evidence unavailable on direct appeal.

State v. Froman, 2022 OH Ct. App. 2726U, ¶49 n.5 (emphasis in original)(citation omitted).

State v. Froman, 2022 OH Ct. App. 2726U, ¶46-49 (first emphasis in original)(second emphasis added)(citations omitted). In affirming the trial court’s dismissal of Grounds 14 and 45, which challenged the empaneling of Jurors 5, 13, 19, 23, 46, and 49, the court of appeals likewise relied on res judicata, stating:

For the reasons set forth in our response to the third assignment of error, res judicata bars Froman’s claim that racially biased jurors convicted him. Froman could and did raise claims related to racially biased jurors in his direct appeal to the Ohio Supreme Court. The supreme court rejected these claims. For the same reasons discussed in response to the third assignment of error, the extra-record materials about alleged racial bias that Froman submitted with his PCR petition are not significant and do not advance Froman’s claim beyond the bar of res judicata. We therefore overrule Froman’s fourth assignment of error.

Id. ¶123 (citations omitted).

As set forth in the above passages from the state court of appeals’ opinion, the court of appeals clearly and expressly relied on res judicata as a procedural bar to Defendant’s post-conviction claims of an allegedly biased jury and ineffective assistance of counsel in voir dire. Res judicata is a proper basis for dismissal of a petition for post-conviction relief. *State v. Perry*, 10 Ohio St. 2d 175, 226 N.E.2d 104 (1967), at paragraph nine of the syllabus. “Under the doctrine of res judicata, a final judgment of conviction bars a convicted defendant who was represented by counsel from raising and litigating in any proceeding except an appeal from that judgment, any defense or any claimed lack of due process that was raised or could have been raised by the defendant at the trial, which resulted in that judgment of conviction, or on an appeal from that judgment.” *Id.* This procedural bar is an adequate and independent state-law ground which deprives this Court of jurisdiction to review Defendant’s Sixth and Fourteenth Amendment claims. The State asks this Court to deny Defendant’s petition for a writ of certiorari.

CONCLUSION

This Court has already denied a writ of certiorari to Defendant on claims that Jurors 5, 13, 46, and 49 were allegedly racially biased and that his trial court were ineffective in questioning them during voir dire. Additionally, this Court is without jurisdiction to review the federal claims presented because the court of appeals' decision rests on a state-law ground that is independent of the merits of the federal questions presented and adequate to support the court's judgment. For the reasons set forth in the above argument, Respondent asks this Court to deny Defendant's petition for a writ of certiorari.

Respectfully Submitted,



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