

Case No.

In The

Supreme Court of the United States

RICHARD BEASLEY, *Petitioner*,

v.

STATE OF OHIO, *Respondent*.

On Petition For A Writ Of Certiorari in a Capital Case
from The Supreme Court of the State of Ohio,
Supreme Court of Ohio case number, 2023-0334

PETITION FOR WRIT OF CERTIORARI

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CAPITAL CASE

QUESTIONS PRESENTED FOR REVIEW

1. If criminal defendant is re-sentenced to, *inter alia*, death in a capital case, should a reviewing court afford all due process rights on direct appeal pursuant to the Fifth and Fourteenth Amendments of the United States Constitution and ensure that the appellate record is complete before requiring counsel to file a merit brief?
2. If a state supreme court determines that appellate appeal in a capital case failed to abide by timelines and dismisses a direct appeal, does that state supreme court violate the Due Process Clause and the Sixth Amendment to the United States Constitution by refusing to appoint replacement counsel for the dismissed capital appeal?
3. Is a litigant's right to procedural due process implicated if a state supreme court "speaks through its journals," and if six of the seven justices of a state supreme court are not included in a dispositive order of that court?

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APPENDIX A – Opinion denying reconsideration for direct appeal;
Supreme Court of Ohio, *State v. Beasley*, Case 2023-0334, April 2, 2024.

APPENDIX B - Order dismissing direct appeal by Chief Justice of the
Supreme Court of Ohio, *State v. Beasley*, Case 2023-0334, January 31, 2024.

PARTIES TO THE PROCEEDING BELOW

Defendant-Petitioner Richard Beasley was the Appellant in the direct appeal to the Supreme Court of Ohio. Plaintiff-Respondent State of Ohio was represented by the Summit County Prosecutor's Office.

LIST OF PROCEEDINGS OPINIONS BELOW

Summit County Common Pleas Court, Case CR 2012-01-0169(A), State of Ohio v. Richard Beasley; sentence of death imposed, April 4, 2013; sentence of death re-imposed, January 18, 2023

Supreme Court of Ohio, Case 2014-0313, sentence of death affirmed, non-capital sentences vacated and remanded for re-sentencing, January 16, 2018.

Supreme Court of Ohio, Case 2023-0334, direct appeal dismissed, January 31, 2024; motion for reconsideration denied, April 2, 2024.

Supreme Court of the United States, Case 18-6044, writ of certiorari declined, January 7, 2019.

TABLE OF AUTHORITIES

United States Supreme Court Opinions

<i>Armstrong v. Manzo</i> , 380 U.S. 545 (1965)	9.
<i>Evitts v. Lucey</i> , 469 U.S. 387 (1985)	7.
<i>Douglas v. California</i> , 372 U.S. 353 (1963)	6.
<i>Griffin v. Illinois</i> , 351 U.S. 12 (1956)	6.
<i>Lockhart v. Fretwell</i> , 506 U.S. 364 (1993)	6.
<i>Matthews v. Eldridge</i> , 424 U.S. 319 (1976)	9.
<i>Strickland v. Washington</i> , 466 U.S. 668 (1984)	7.
<i>United States v. Cronic</i> , 466 U.S. 648 (1948)	7.

Ohio Supreme Court Opinions

<i>State ex rel. Worcester v. Donnellon</i> , 49 Ohio St.3d 117 (1990)	9.
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Constitution of the United States

Fifth Amendment	6, 7, 8, 9.
Sixth Amendment	7.
Fourteenth Amendment	6, 7, 8, 9.

STATEMENT OF JURISDICTION

Petitioner is incarcerated in the State of Ohio on death row. Petitioner was re-sentenced to death after his non-capital sentence were vacated in a prior appeal. After the felony and capital sentences were re-imposed, Petitioner filed a second, direct appeal with the Ohio Supreme Court.

The Supreme Court of Ohio has mandatory jurisdiction as the first and last place for the direct appeal of a case resulting in a death sentence, pursuant to Ohio law. The Supreme Court of Ohio has mandatory jurisdiction as the first and last place for the direct appeal of a case resulting in a death sentence, pursuant to Ohio law.

The direct appeal was dismissed on January 31, 2024 by the Supreme Court of Ohio. A timely motion for reconsideration was filed, but the Supreme Court of Ohio overruled the motion on April 2, 2024. This Petition is being filed with this Supreme Court of the United States within 90 days of this final order denying reconsideration.

Petitioner asserts that he suffered a deprivation of his Fifth, Sixth, and Fourteenth Amendment rights to due process and the right to effective assistance of counsel, as counsel was either forced to either file a merit brief with an incomplete record, or allow the direct appeal to be dismissed for

failure to file a brief while the motion to supplement was pending. As the Ohio Supreme Court dismissed the direct appeal before the filing of a complete record and prior to the filing of a merit brief, the substantive issues had not yet been proffered.

This Court has jurisdiction for the controversy at bar pursuant to Article III, Section 2 of the Constitution of the United States.

Petitioner asserts that the instant controversy involves Constitutional questions of the right to counsel and procedural and substantive due process, as protected by the Fifth, Sixth, and Fourteenth Amendments of the Constitution of the United States.

CONSTITUTIONAL ISSUES INVOLVED

This case concerns the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution.

The Fifth Amendment states:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Sixth Amendment states, in pertinent part:

In all criminal prosecutions, the accused shall enjoy the right... inter alia... to have the Assistance of Counsel for his defense.

The Fourteenth Amendment, Section 1 states in pertinent part:

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.

STATEMENT OF THE CASE

Petitioner Richard Beasley (Beasley) was first sentenced to death on April 4, 2013. On January 16, 2018, the Supreme Court of Ohio upheld the death sentence, but vacated all other parts of the sentence and remanded the matter to the trial court for resentencing.

Beasley appealed the decision to uphold the death sentence to this Supreme Court of the United States. On January 7, 2019, in case 18-6044, this Supreme Court declined to issue a writ of certiorari. After January 7, 2019, the matter was remanded back to the trial court, pursuant to the January 16, 2018 mandate from the Supreme Court of Ohio.

The trial court imposed the new sentence of death and non-capital sentences on September 23, 2020 and filed a journal entry of that resentencing on January 18, 2023. Petitioner filed a direct appeal, ("Beasley II"), with the Ohio Supreme Court. Counsel learned that items were missing in the appellate record. They filed a motion to supplement the incomplete

record in lieu of a merit brief. The resentencing transcript had also not been filed, despite the clerk's filing a notice of a complete record.

On January 31, 2024, the Chief Justice of the Supreme Court sua sponte dismissed the direct appeal for failure " * * * to prosecute this cause with the requisite diligence." the Chief Justice also denied the pending "motion to supplement the incomplete record" as moot. (Exhibit A)

Counsel filed a timely motion for reconsideration asking the seven Ohio Supreme Court Justices to consider if there would be a due process deprivation to file a merit brief in a direct, capital appeal if there was an incomplete record; moreover counsel noted that they followed the exact same procedure in another capital case where a clerk of courts failed to transmit the full record. Finally, the motion for reconsideration asked -- in the alternative -- to appoint replacement counsel if the Justices maintained that Beasley's lawyers mishandled the direct appeal.

On April 2, 2024, the Chief Justice of the Supreme Court denied the reconsideration without comment. (Exhibit B)

REASONS FOR GRANTING THE WRIT

First Question Presented:

Is a capital defendant deprived of Fifth and Fourteenth Amendment Rights if a state supreme court dismisses a direct appeal after appellate counsel moves to compel filing of a complete record? Does a chief justice of a state supreme court violate the United States Constitution if she sua sponte dismisses the direct appeal by a despite prior death penalty appeals where counsel did not file a merit brief until a complete appellate record was filed?

Argument:

This Supreme Court has long prohibited unfair application of barriers to appeals in indigent capital cases. *Douglas v. California*, 372 U.S. 353, 357 (1963), *Griffin v. Illinois*, 351 U.S. 12, 18-19 (1956).

Petitioner asserts that the Fifth and Fourteenth Amendments of the United States Constitution were disregarded by the Ohio Supreme Court by failing to follow prior procedure in direct capital appeals where the clerk failed to file a complete record. The sua sponte dismissal failed to proffer any legal reasoning as why a new procedure was in place -- or even what this new procedure is.

Should this Supreme Court not resolve this issue, it is likely to reoccur in future capital litigation where a voluminous record is inaccurately reported as complete by the clerk, and counsel will have no clear guidelines as how to protect the due process rights of their clients.

This demonstrates a fundamentally unfair system which violates the right to due process, as explained by *Lockhart v. Fretwell*, 506 U.S. 364 (1993).

Second Question Presented:

If a chief justice of a state supreme court declares appellate counsel has failed to diligently pursue a direct appeal and dismisses the death penalty appeal, is it a deprivation of the right to effective assistance of counsel to deny a request to appoint new appellate counsel in a timely motion for reconsideration?

Argument:

This Supreme Court holds that all criminal defendants enjoy a Sixth Amendment right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984), *United States v. Cronic*, 466 U.S. 648 (1948). The Ohio Supreme Court found that counsel failed by not filing a merit brief and waiting for a complete appellate record, but also denied a request in the motion for reconsideration to appoint new appellate counsel for the direct appeal -- this appears to be a Sixth Amendment violation per se.

If this Supreme Court finds that Beasley's current appellate attorneys failed to understand proper procedure to effectuate this direct appeal, it should then find a Constitutional deprivation of the Ohio Constitution's right to due process, and also a deprivation of the Fifth and Fourteenth Amendments pursuant to *Evitts v. Lucey*, 469 U.S. 387 (1985).

The Ohio Supreme Court, by and through its Chief Justice, declared a capital defendant's counsel to be ineffective, but paradoxically refused to appoint new counsel. This is a *per se* Sixth Amendment deprivation which should be addressed by this Supreme Court.

Third Question Presented:

Does a capital defendant suffer a deprivation of procedural and substantive Due Process, per the Fifth and Fourteenth Amendments if a state supreme court dismisses a death penalty appeal without seeking input from all of the justices who sit on that state supreme court?

Argument:

A review of the January 31, 2024 order of dismissal, and the April 2, 2024 order denying reconsideration, (attached herein), will show that both orders were solely signed by the Chief Justice. The names of the six associate justices of the Ohio Supreme Court will not be found on either order.

Petitioner notes that this Supreme Court has long held that procedural due process, as guaranteed by the Fifth and Fourteenth Amendments of the United States Constitution require an opportunity to be heard at "meaningful time and in a meaningful manner* * *". *Matthews v. Eldridge*, 424 U.S. 319, 333 (1976), citing *Armstrong v. Manzo*, 380 U.S. 545 (1965).

Did Petitioner receive procedural due process if his direct appeal was dismissed solely by the Chief Justice of the Ohio Supreme Court and if the motion for reconsideration was denied by a single member of a state supreme court? It is well-settled law that Ohio courts speak through its journals. *State ex rel. Worcester v. Donnellon*, 49 Ohio St.3d 117, 118 (1990).

The two journals proffered here show that the other six members of the Ohio Supreme Court failed to sign their name to either order.

CONCLUSION

There is nationwide implications concerning the deprivation of effective assistance of counsel and due process in death penalty cases; moreover the controversy at bar, if not resolved will encourage future litigants to disregard an incomplete record in a capital case.

Finally, this case affords an opportunity for this Supreme Court to speak on the Constitutional issues that arise when a state supreme court lacks interest in reviewing a complete record, issues orders without benefit of all of the justices, and refuses to appoint new counsel even after declaring the current counsel to be ineffective.

Petitioner moves this Supreme Court to grant certiorari over these legal issues and afford an opportunity to issue legal guidance to trial courts throughout the nation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of this Re-submitted Petition for a Writ of Certiorari was sent by regular U.S. mail to the Summit County Prosecutor's Office at 53 University Avenue, Akron, Ohio 44308 on this twenty-eighth day of August, 2024.



DONALD GALLICK (Ohio Bar #0073421)