No. 24-6942

In the Supreme Court of the United States

JOHN SEXTON,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

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Capital Case

QUESTION PRESENTED

Whether this Court should grant review of the Florida Supreme Court's decision applying harmless error that is not in conflict with any other decision, when there is no important federal question at issue, and when granting certiorari review will benefit no other case due to the unique circumstances and posture of this case.

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OPINION BELOW

The Florida Supreme Court's opinion is published at *Sexton v. State*, 402 So. 3d 270 (Fla. 2024).

STATEMENT OF JURISDICTION

Petitioner invokes the jurisdiction of this Court based upon 28 U.S.C. § 1257(a). Respondent agrees that this statutory provision sets out the scope of this Court's certiorari jurisdiction but submits that this case is inappropriate for the exercise of this Court's discretionary jurisdiction.

STATEMENT OF THE CASE AND FACTS

In 2010, John Sexton brutally murdered a 94-year-old woman that had befriended him after hiring him to cut her lawn. *Sexton v. State*, 221 So. 3d 547, 550 (Fla. 2017). Sexton bludgeoned her to death and left her nearly unrecognizable and naked body in her home with her breast sliced off and a ceramic vase protruding from her rectum. *Id.* Her cheek bones and chin were crushed, bones around the eyes broken, brain bruised, and spine dislocated. *Id.* Sexton bludgeoned and sexually battered her while she was alive, and he continued inflicting injuries to her body after she died—he tore her rectum, removed her breast, burned her vaginal area, and stabbed her. *Id.*

There was overwhelming evidence linking Sexton to the murder, including eyewitnesses observing Sexton in the victim's home and his vehicle in her driveway around the time she was murdered as well as forensic expert testimony that the

victim's DNA was on Sexton's clothing with a 1 and 69 trillion frequency. *Id* at 552. Sexton also had the victim's DNA on his hand with a 1 and 76 million frequency. *Id.* Sexton was found guilty of first-degree murder and sentenced to death by the trial judge after the jury recommended death by a ten-to-two vote. *Id.* at 553.

The Florida Supreme Court affirmed Sexton's conviction on direct appeal but vacated his death sentence and remanded the case back to the trial court for a resentencing pursuant to *Hurst v. Florida*, 577 U.S. 92 (2016). *Sexton v. State*, 221 So. 3d 547, 559 (Fla. 2017).

Despite the case being remanded for a *Hurst* error, Sexton chose to waive his penalty-phase jury. *Sexton v. State*, 402 So. 3d 270, 274 (Fla. 2024). Further, Sexton only permitted his counsel to present "selective mitigation" rather than all the mitigation that was available. *Id.* at 276. After Sexton's counsel presented the "super soft mitigation," Sexton's counsel rested. The trial court, against Sexton's objection, chose to call Sexton's mitigation specialist as a court witness to testify about the mitigation that she had found. *Id.* Sexton objected based on her testimony being "concessionary by nature" that would go toward "conceding the guilt of a crime that [he] did not commit." *Id.*

The trial court ultimately sentenced Sexton to death. On the direct appeal of his resentencing proceeding, Sexton raised numerous claims, including that the trial court violated his Sixth Amendment right to counsel and to control his defense by calling his defense mitigation specialist as a court witness. The Florida Supreme Court held that it was an error to call the mitigation specialist, who was part of the

defense team, as a witness over Sexton's objection, but the court found the error harmless. *Id.* at 279.

The Florida Supreme Court specifically rejected Sexton's argument that the trial court's calling of the mitigation specialist constituted a structural error under *McCoy v. Louisiana*, 584 U.S. 414 (2018). The court distinguished Sexton's case where *McCoy* dealt with the defense counsel's concession of guilt, and Sexton's guilt was not at issue during his penalty phase. *Id.* at 279.

In finding the error in Sexton's case harmless, the Florida Supreme Court emphasized that the lower court did not rely on the testimony at issue when analyzing the mitigating circumstances, nor did the court consider the testimony when finding the aggravating factors. *Id.* at 280. Further, the trial court determined that the murder was highly aggravated, and it gave the aggravating factors great weight. *Id.* Thus the Florida Supreme Court found that there was no reasonable probability that the error contributed to Sexton's death sentence.

The court also denied Sexton's remaining claims and affirmed his sentence of death. *Id.* at 284. Sexton filed a motion for rehearing, which was denied. *Sexton v. State*, 399 So. 3d 1102 (Fla. 2025).

Sexton then petitioned this Court for certiorari review.

REASONS FOR DENYING THE PETITION

This Case Presents No Conflict.

Sexton argues that the Florida Supreme's finding of harmless error, rather than structural error, was an "improper rejection" of *McCoy*. Sexton is incorrect. The lower court's holding in no way conflicts with *McCoy*.

The holding in *McCoy* was limited to a situation in which the defendant insisted that he did not engage in the charged offenses and he "adamantly objected" to an admission of guilt during the guilt phase of trial. *McCoy*, 584 U.S. at 417. Despite the defendant's objections, the trial court permitted defense counsel to tell the jury during the guilt phase that the defendant was guilty of committing the three murders he was charged with. *Id.* This Court held "it is the defendant's prerogative, not counsel's to decide on the objective of his defense: to admit guilt in the hope of gaining mercy at the sentencing stage, or to maintain his innocence, leaving it to the State to prove his guilt beyond a reasonable doubt." *Id.* at 417–418.

Unlike *McCoy*, Sexton's argument here does not involve a concession of guilt, a concession to a lesser-inclusive offense, or an admission to an element of an offense. It does not even involve a concession to aggravation or mitigation. Rather, Sexton challenges whether it was a proper for the trial court to call his mitigation expert as a court witness to testify about potential mitigation. In addition, the proceeding at issue here involved the penalty phase, not the guilt phase, and there was no jury. Accordingly, *McCoy* is not controlling.

The error in Sexton's case was an entirely different kind of error than *McCoy*, so the Florida Supreme Court was not required under *McCoy* to deem the error structural. "Structural error affects the framework within which the trial proceeds, as distinguished from a lapse or flaw that is simply an error in the trial process itself." *McCoy,* 584 U.S. at 427 (cleaned up). An error might also count as structural "when its effects are too hard to measure." *Id.* This Court held that the error in *McCoy* was structural because the attorney's admission blocked the defendant's right to make the fundamental choices about his own defense.[1] *Id.* at 428. And this Court determined that the "effects of the admission" would be immeasurable "because a jury would almost certainly be swayed by a lawyer's concession of his client's guilt." *Id.* That is not the case here.

There was no jury to be swayed in Sexton's case because Sexton waived his penalty-phase jury. And unlike *McCoy*, Sexton's counsel never admitted to his guilt or the existence of aggravating factors. The mitigation specialist testified for the court in support of mitigation in the avoidance of a death sentence. The trial court wanted to hear the testimony so she could be apprised of all potential mitigation when considering whether to sentence Sexton to life in prison or death. Nevertheless, there

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[1] It is worth noting that Justice Ginsburg wrote the majority opinion, and in Justice Alito's dissent, he emphasized that the majority created a "newly discovered fundamental right" and "[t]he constitutional right that the Court has now discovered—a criminal defendant's right to insist that his attorney contest his guilt with respect to all charged offenses—is like a rare plant that blooms every decade or so." *McCoy*, 584 U.S. at 430–33 (Alito, J., dissenting).

was no reversible error because the trial court did not ultimately rely on the testimony when sentencing Sexton.

Given how different Sexton's case is from *McCoy*, the Florida Supreme Court's finding of harmless error in no way conflicts with *McCoy*. Nor does the lower court's holding conflict with *United States v. Read*, 918 F. 3d 712, 719 (9th Cir. 2019), which involved an entirely different factual scenario where the defense counsel presented an insanity defense despite the defendant's objection. Sexton has offered no case indicating that harmless error analysis could not be applied here.

This Court has long recognized that "most constitutional errors can be harmless." *Neder v. United States*, 527 U.S. 1, 8 (1999) (quoting *Arizona v. Fulminante*, 499 U.S. 279, 309 (1991)). "Indeed, we have found an error to be structural, and thus subject to automatic reversal, only in a very limited class of cases." *Neder*, 527 U.S. at 8 (internal quotations omitted). Sexton has offered no case conflicting with the lower court's decision to apply harmless error.

A principal purpose for certiorari jurisdiction "is to resolve conflicts" "concerning the meaning of provisions of federal law." *Braxton v. United States*, 500 U.S. 344, 347 (1991); *see also* Sup. Ct. R. 10(c) (where a state court has decided an important federal question in a way that conflicts with relevant decisions of this Court). In the absence of such conflict, certiorari is rarely warranted. Sup. Ct. R. 10. As this Court has acknowledged, "there are strong reasons to adhere scrupulously to the customary limitations of [the Court's] discretion." *Illinois v. Gates*, 462 U.S. 213, 232 (1983). Sexton has cited no compelling reason to warrant this Court's review.

Instead, Sexton asks this Court to grant review "to clarify" how the trial court's error should be classified. Petition at 17. Sexton further asks this Court to "clarify" that *McCoy* was implicated. Petition at 24. Merely clarifying a holding is not the same thing as resolving a conflict. This is not a compelling case for certiorari.

This Case Is a Poor Vehicle for Addressing Sexton's Claim that a Sentencing Court's Error in Calling a Defense Mitigation Witness Was Structural Error.

While the Florida Supreme Court found that the trial court violated the Sixth Amendment by calling the mitigation specialist as a court witness, the State maintains that the Sixth Amendment is not at issue here. If this Court were to grant certiorari, the State would contend that the Florida Supreme Court's determination was erroneous, and thus that this Court need not reach the question of whether any such error would be structural. This case is therefore a poor vehicle to address the structural-error question, even if it were otherwise worthy of review.

The Sixth Amendment provides that "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 XI.

In arguing that the Sixth Amendment is implicated, Sexton states that "the trial court usurped the presentation of mitigation[2] and interfered with Sexton's right to counsel by calling his mitigation specialist as a court witness." Petition at 14. But Sexton had the right to the assistance of counsel for his defense. He was not denied counsel. His counsel presented the mitigation that Sexton chose to present, and his counsel limited the mitigation that Sexton did not want to present.

Sexton presented his case during the penalty phase of his trial and he rested. It was not until after his defense rested that the trial court, on its own, called the mitigation specialist as a court witness. Even if the trial court violated Florida law in doing so, as Sexton contends, Petition at 15, that question of state law would not be reviewable by this Court. *See Rockford Life Ins. Co. v. Ill. Dep't of Revenue*, 482 U.S. 182, 184 n.3 (1987) (explaining that issues that have not divided the courts or are not important questions of federal law do not merit this Court's attention).

The Issue Here is Unique and Has No Prospective Impact.

The question in this case is dependent upon such unique and unusual facts that it does not meet this Court's criteria for granting review. *See, e.g., United States v. Johnston*, 268 U.S. 220, 227 (1925) ("We do not grant a certiorari to review evidence and discuss specific facts."). It is hard to conceive another case in which the same set

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[2] Sexton does not appear to be challenging the compulsory process or the Confrontation Clause aspect of the Sixth Amendment. And while Sexton argued on appeal that the attorney-client privilege and work product were implicated, the Florida Supreme Court deemed those arguments unpreserved for not having been raised in the trial court. *Sexton,* 402 So. 3d at 279, n. 4.

of circumstances would exist that would lead a trial court to call a mitigation specialist to testify as a court witness during the penalty phase of trial about potential mitigation that was not presented to the court by the defense. Any such case would be "a rare plant that blooms every decade or so." *McCoy*, 584 U.S. at 430-33 (Alito, J., dissenting). It is fact-specific and unlikely to have widespread impact or importance. In sum, this case is not worthy of this Court's attention.

CONCLUSION

Sexton has not provided any compelling reason for this Court to grant certiorari review. Accordingly, the petition for writ of certiorari should be denied.

Respectfully submitted,

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