

No. 18-6044

In the Supreme Court of the United States

RICHARD JAMES BEASLEY,

Petitioner,

v.

STATE OF OHIO,

Respondent.

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

BRIEF IN OPPOSITION

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CAPITAL CASE – NO EXECUTION DATE SET

QUESTION PRESENTED

Should the Court review the Petitioner's federal question despite his failure to raise it at the appropriate time in his Ohio state-court proceedings?

LIST OF PARTIES

The Petitioner is Richard James Beasley, an inmate at the Chillicothe Correctional Institution. Beasley is a capital prisoner, but has no currently scheduled execution.

The Respondent is the State of Ohio, represented by Sherri Bevan Walsh, the Summit County Prosecutor, and a court-appointed Special Assistant Summit County Prosecutor from the Ohio Attorney General's Office.

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INTRODUCTION

Petitioner Richard Beasley, posing as a potential employer, lured several homeless or otherwise down-on-their-luck men to a remote area of southeastern Ohio and shot them, killing three and injuring a fourth. Beasley then stole the victims' identity or vehicles and belongings. An Ohio jury convicted Beasley of three counts of aggravated murder for the deaths of the three men, along with several other crimes. During the sentencing phase, the jury recommended the death sentence for each count of aggravated murder, and an Ohio judge sentenced Beasley to death. The Ohio Supreme Court affirmed Beasley's convictions and death sentence.

Beasley now asks this Court to review one federal constitutional question: whether the Ohio Supreme Court violated Beasley's due process rights under the Fifth and Fourteenth Amendments when Ohio Supreme Court Justice Patrick DeWine, the son of the current Ohio Attorney General, Mike DeWine, participated in deciding Beasley's case. But Beasley did not assert this question until his Motion for Reconsideration in the Ohio Supreme Court, and this Court declines review over federal constitutional questions that parties first present to state courts in a motion to reconsider in the state supreme court. And even if that was not so, this case is a poor vehicle to review the federal question Beasley belatedly asserted below. This court should therefore deny Beasley's petition.

COUNTERSTATEMENT

A. Richard Beasley posted fake job listings on Craigslist.com and murdered three—and attempted to murder a fourth—homeless or otherwise down-on-their-luck men who applied for the “job.”

On the evening of November 6, 2011, in rural southeastern Ohio, Noble County Sheriff Stephen Hannum responded to a 9-1-1 call. *See State v. Beasley*, No. 2014-0313, 2018 Ohio LEXIS 341, at *10, *15 (Ohio Jan. 16, 2018). A local resident had called about a stranger, Scott Davis, who had just arrived on his doorstep “pale and shaking, his right elbow and pant leg bloody.” *Id.* at *11. Davis told Sheriff Hannum that he had just moved from South Carolina to begin working for a man who had posted a job listing on Craigslist.com seeking a cattle caretaker. *Id.* at *9. Upon Davis’s arrival in southeastern Ohio, the would-be “employer” and a younger man took Davis to a remote wooded location to look at what was supposed to be the 688-acre cattle farm where he would work; once there, the would-be “employer” shot at Davis. *Id.* at *10, *15. Luckily for Davis, the gun misfired on the first attempt, the next four shots missed him, and the shot that did hit him struck only his elbow. *Id.* at *10. Davis said he had hidden in the woods for seven hours, bleeding badly and waiting for darkness, before seeking help at the nearby home. *Id.* at 11.

Sheriff Hannum did not initially believe Davis’s account, partly because there was no 688-acre cattle farm in the county. *Id.* Further investigation, however, corroborated parts of Davis’s story. For example, police found Davis’s ball cap in the area where he claimed to have been shot. *Id.* at *17. Close by, police also found a shallow and unused grave-sized hole. *Id.* at 18–19. And after returning with search dogs, police found the bodies of two men buried nearby. *Id.* at *19. Police

ultimately arrested the Petitioner, Richard Beasley, whom Davis identified as the shooter. *Id.* at *19, *88. Beasley at the time lived in Akron, Ohio. *Id.* at *4–5, *11.

Police discovered that Davis was just one of many down-on-their-luck men whom Beasley had attempted to lure to southeastern Ohio with promises of work on a cattle farm. Beasley had rejected some applicants who would not be easy victims. One told Beasley through email that he planned to bring a pistol along, expressing concern that “when I get down there” somebody would “shoot me and take my stuff.” *Id.* at *5–6. Another mentioned his “lifelong involvement in martial arts.” *Id.* at *6. A third mentioned his fiancée. *Id.* at *7. Beasley rejected each of these applicants.

Beasley offered the “job” to other applicants who seemed like easier victims, and murdered them when they arrived in southeastern Ohio. These included the two men whose bodies the police found where Beasley shot Davis. *See id.* at *19. The first, Ralph Geiger, was a homeless man from Akron, Ohio, who formerly owned a successful construction business but had fallen on hard times. *Id.* at *2. Geiger traveled to southeastern Ohio in August 2011, to start a job on a farm, but was never heard from again. *Id.* After murdering Geiger, Beasley—who had violated a term of parole for burglary and “did not want to go back to jail”—assumed Geiger’s identity and applied for jobs, opened a bank account, rented housing, and obtained medical treatment, all as “Ralph Geiger.” *Id.* at *3–5, *27–28, *71. The second murder victim, David Pauley, from Norfolk, Virginia, had been unemployed for two years when he responded to Beasley’s Craigslist ad. *Id.* at *7. In October 2011, Pauley traveled to Ohio in his blue pickup truck and pulling a U-Haul trailer with

all of his possessions. *Id.* at *7–8. After murdering Pauley, Beasley stole some of his possessions and stored the rest in a friend’s garage. *Id.* at *8–9. Beasley then returned the U-Haul trailer to a U-Haul location in Akron, Ohio. *Id.* at *9.

In the days between November 6, 2011, when Beasley shot Davis, and November 16, 2011, when Beasley was ultimately arrested, he struck again. His third murder victim, Tim Kern, was divorced, staying with friends or living out of his car, and working part-time at a local gas station. *Id.* at *17. On November 12, Kern had his ex-wife notarize a transfer of title for his Buick so it could be titled in his new employer’s name. *Id.* Kern left to his new “job” the next day, and his ex-wife and sons never heard from him again. *Id.* at *17–18. After murdering Kern, Beasley buried him in the Akron, Ohio area. *See id.* at *22. Beasley then showed his friend Kern’s broken-down Buick in nearby Canton, Ohio, and, on the day before his arrest, left his friend four voicemail messages imploring him to move the car before it was towed and to scrap it using the friend’s name and identification. *Id.* at *18. After the friend scrapped the Buick, Beasley promised he would show his friend a farm he said he had in Noble County. *Id.*

B. The Summit County Prosecutor successfully prosecuted Beasley and obtained death sentences for the three murders and prison sentences for Beasley’s other crimes.

A Summit County grand jury returned a 27-count indictment against Beasley. *Id.* at *34–35. The State of Ohio was represented in the trial court by the elected Summit County Prosecutor, Sheri Bevan Walsh, and an Assistant Summit County Prosecutor, with the assistance of two Special Assistant Summit County Prosecutors from the Ohio Attorney General’s Office. A jury convicted Beasley of

three counts of aggravated murder with prior calculation and design, in violation of Ohio Revised Code § 2903.01(A), for the deaths of Geiger, Pauley, and Kern. *Id.* at *35–36. For each count, the jury also convicted Beasley of four separate death-penalty specifications and a separately punishable firearm specification. *Id.* The jury further convicted Beasley of attempted murder and kidnapping, identity fraud, grand theft, petty theft, and a number of firearm violations. *Id.* The jury unanimously recommended a death sentence for each count of aggravated murder. *Id.* at *36–37. The trial court accepted the jury’s recommendations and imposed three death sentences, along with prison sentences for each of Beasley’s other crimes and firearm specifications, to be served consecutively. *Id.* at *37.

C. On direct appeal, the Ohio Supreme Court upheld Beasley’s convictions and death sentence.

Beasley appealed his conviction and sentences directly to the Ohio Supreme Court. Throughout the appeal, the State of Ohio was again represented by Summit County Prosecutor Sheri Bevan Walsh, with the assistance of two other court-appointed Special Assistant Summit County Prosecutors from the Ohio Attorney General’s Office. *See* Appellee’s Brief, *State v. Beasley*, No. 2014-0313 (Ohio Feb. 6, 2015), *available at* http://supremecourt.ohio.gov/pdf_viewer/pdf_viewer.aspx?pdf=761636.pdf. The Ohio Supreme Court affirmed Beasley’s convictions and his sentence of death. *See Beasley*, 2018 Ohio LEXIS 341, at *100. But because the trial court failed to make the necessary findings to impose *consecutive* sentences for Beasley’s other crimes, the Ohio Supreme Court vacated those sentences and

remanded to the trial court to resentence Beasley on those counts and to consider a court-costs issue. *See id.* at *94–100.

D. Beasley filed a Motion for Reconsideration, arguing for the first time that Justice Patrick DeWine should have recused himself, which the Ohio Supreme Court denied.

After the Ohio Supreme Court affirmed Beasley’s convictions and death sentence, Beasley filed a motion for reconsideration. *See* Motion for Reconsideration, *State v. Beasley*, No. 2014-0313 (Ohio Feb. 20, 2018), available at http://supremecourt.ohio.gov/pdf_viewer/pdf_viewer.aspx?pdf=840457.pdf. In this Motion, Beasley argued for the first time that Justice Patrick DeWine should have recused from Beasley’s case “because Attorney General [Mike] DeWine’s office represented [the State.]” *Id.* at 2–5. Justice Patrick DeWine is the son of the current Ohio Attorney General, Mike DeWine. Attorney General Mike DeWine will be succeeded in office on January 14, 2019 by Attorney General-elect Dave Yost.

The Ohio Supreme Court denied Beasley’s motion in a two-word order: “Motion Denied.” *See* Order Denying Motion for Reconsideration, *State v. Beasley*, No. 2014-0313 (Ohio May 9, 2018), available at <https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2018/2018-Ohio-1796.pdf>. Two Ohio Supreme Court Justices concurred with a written opinion. *See id.*

REASONS FOR DENYING THE WRIT

I. FEDERAL QUESTIONS ASSERTED FOR THE FIRST TIME IN A PETITION FOR REHEARING TO A STATE SUPREME COURT ARE NOT SUFFICIENTLY RAISED TO ALLOW FOR SUPREME COURT REVIEW OF THE STATE COURT JUDGMENT.

This Court has long refused to consider federal constitutional questions that were not pressed or passed upon below, particularly in cases arising from the state

courts. *See, e.g., Cardinale v. Louisiana*, 394 U.S. 437, 438 (1969); *McGoldrick v. Compagnie Generale Transatlantique*, 309 U.S. 430, 434 (1940).

It is therefore “essential” that the federal question “be raised, presented, and pursued in a timely and proper manner at the appropriate point or points in the state court proceedings.” STEPHEN E. SHAPIRO, ET AL., SUPREME COURT PRACTICE 187 (10th ed. 2013). Parties who wait to raise their federal question until a motion for reconsideration in a state supreme court fail this requirement. *See id.* at 193–94; *see also Adams v. Robertson*, 520 U.S. 83, 89 n.3 (1997) (“[W]e have generally refused to consider issues raised clearly for the first time in a petition for rehearing”); *accord Bd. of Dirs. of Rotary Int’l v. Rotary Club of Duarte*, 481 U.S. 537, 550 (1987); *Hanson v. Denckla*, 357 U.S. 235, 243–44 (1958); *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120, 128 (1945) (“Questions first presented to the highest State court on a petition for rehearing come too late for consideration here”); *Am. Sur. Co. v. Baldwin*, 287 U.S. 156, 163–64 (1932); *Forbes v. St. Council of Va.*, 216 U.S. 396, 399 (1910) (“It has been many times held in this court that an attempt to introduce a Federal question into the record for the first time by a petition for rehearing is too late.”); *Simmerman v. Nebraska*, 116 U.S. 54, 54 (1885). This general rule applies unless language in the state supreme court’s order “indicat[es] that the federal question was considered and disposed of.” *See* SHAPIRO, ET AL., at 194. “There is an exception to this rule when it appears that the court below entertained the motion for rehearing, and passed upon the Federal question. But it must appear that such Federal question was in fact passed upon in considering the motion

for rehearing; if not, the general rule applies.” *Forbes*, 216 U.S. at 399; *see Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 476 (1975) (reviewing First Amendment challenge to a statute that was first raised in a petition for rehearing in the Georgia Supreme Court where the court’s order denying the petition stated “[a] majority of this court does not consider this statute to be in conflict with the First Amendment”).

Beasley asks this Court to review only one federal constitutional question: whether the Ohio Supreme Court violated Beasley’s due process rights under the Fifth and Fourteenth Amendments when Ohio Supreme Court Justice Patrick DeWine, the son of the current Ohio Attorney General, Mike DeWine, participated in deciding Beasley’s case. But Beasley did not raise, present, and pursue this question at the appropriate point in the state proceeding. *See SHAPIRO, ET AL.*, at 187. The Ohio Supreme Court’s Rules of Practice give parties the opportunity to “request the recusal of a justice by filing a request with the Clerk of the Supreme Court.” *See Ohio S. Ct. Prac. R. 4.04(B)(1)*. Such a request “shall be filed promptly when a party or party’s counsel becomes aware of the existence of a basis for recusal,” but must be submitted “no later than fifteen days before the date of oral argument, except with leave of court.” *Id.* at 4.04(B)(2). Justice DeWine began his term on the Ohio Supreme Court on January 2, 2017. The oral argument in Beasley’s case occurred on September 26, 2017, and Beasley was notified of the scheduled oral argument date on July 17, 2017. *See Docket, State v. Beasley*, No. 2014-0313, *available at* <http://supremecourt.ohio.gov/Clerk/ecms/#/caseinfo/2014/0313>. Beasley therefore had more than eight months during which he could

have requested Justice DeWine’s recusal in this case, and his failure to do so “at the earliest available opportunity” resulted in his waiver of that privilege as a matter of state law. *See* 1 OHIO JURISPRUDENCE, PLEADINGS AND PRACTICE FORMS § 2:32 (2017); *In re Disqualification of Pepple*, 546 N.E.2d 1298, 1298 (Ohio 1989). The Ohio Supreme Court also rejects arguments raised for the first time in motions for reconsideration. *See, e.g., City of E. Liverpool v. Columbiana Cty. Budget Comm’n*, 876 N.E.2d 575, 575 (Ohio 2007). The Ohio Supreme Court followed its consistent practice by denying Beasley’s Motion for Reconsideration without considering Beasley’s federal constitutional claim. What is more, Ohio’s waiver rule is arguably an independent and adequate state ground depriving this Court of jurisdiction. *Cf.* RICHARD H. FALLON, JR., ET AL., HART AND WECHSLER’S THE FEDERAL COURTS AND THE FEDERAL SYSTEM 526 (7th ed. 2015) (“it is unsettled whether the rule [that a federal question must be raised, preserved, or passed upon in the state courts below] is a jurisdictional requirement or is merely prudential”).

Whether or not Ohio’s waiver rule is an independent and adequate state ground depriving this Court of jurisdiction, this Court’s cases confirm that Beasley raised his federal question “too late” to obtain review in this Court, *see Forbes*, 216 U.S. at 399, because he waited until his Motion for Reconsideration to raise the question and because there is no language in the Ohio Supreme Court’s order denying Beasley’s motion for reconsideration indicating that the question was considered and disposed of. This Court should therefore deny Beasley’s petition.

II. EVEN IF BEASLEY HAD ASSERTED HIS FEDERAL QUESTION SOONER, THIS CASE IS A POOR VEHICLE TO REVIEW IT AND BEASLEY HAS PRESENTED NO COMPELLING REASON WHY THIS COURT SHOULD GRANT REVIEW.

A. Contrary to Beasley's assertion, Summit County Prosecutor Sheri Bevan Walsh, not Ohio Attorney General Mike DeWine, represented the State of Ohio in this case.

Beasley's case is a poor vehicle to review his late-raised federal question primarily because his case does not in fact present that question at all. Contrary to Beasley's assertion, the State of Ohio was not "represented by the Ohio Attorney General's Office as lead counsel" in either the trial court or in the Ohio Supreme Court. *See* Petition for Cert., at iii. The State was instead represented throughout the case by Summit County Prosecutor Sheri Bevan Walsh. After early discussions between the Summit County Prosecutor's Office, the Ohio Attorney General's Office, and the U.S. Attorney's Offices for the Northern and Southern Districts of Ohio, it was decided that Summit County would handle Beasley's prosecution. *See* Press Release, Summit County Prosecutor's Office, Summit County to Handle Prosecution of Craigslist Killer (Dec. 5, 2011), *available at* <http://co.summit.oh.us/PROSECUTOR/jdownloads/MediaRoom/News%20Releases/2011/December/Summit%20County%20to%20Handle%20Craigslist%20Prosecution.pdf>. And although it is true that attorneys from the Ohio Attorney General's office assisted Prosecutor Walsh throughout the trial and appeals process, they did so as Special Summit County Assistant Prosecutors acting under Prosecutor Walsh's authority. *See* Motion Requesting That Special Prosecutors Be Appointed For Appeal, *State v. Beasley*, No. CR-2012 01 0169(A) (Summit Cty. Ct. of Common Pleas June 2, 2013); Order, *State v. Beasley*, No. CR-2012 01 0169(A) (Summit Cty. Ct. of Common Pleas

June 3, 2013); Appellee’s Merit Brief, *State v. Beasley*, No. 2014-0313 (Ohio Feb. 6, 2015), *available at* http://supremecourt.ohio.gov/pdf_viewer/pdf_viewer.aspx?pdf=761636.pdf (listing Summit County Prosecutor Sherri Bevan Walsh and two Special Assistant Summit County Prosecutors as counsel for the State of Ohio); Order Denying Motion for Reconsideration, *State v. Beasley*, No. 2014-0313, at 1–2 (Ohio May 9, 2018) (Fischer and O’Donnell, JJ., concurring), *available at* <https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2018/2018-Ohio-1796.pdf> (“As an initial matter, the Office of the Attorney General did not represent the state in this case. The county prosecutor represented the state, and two assistant attorneys general were appointed as special prosecutors to assist the county.”). *Beasley* is therefore mistaken that Ohio Attorney General Mike DeWine and the Ohio Attorney General’s Office represented the State of Ohio in this case. As a result, this case does not present the federal question that *Beasley* asks this Court to decide.

B. *Beasley* presents no circuit split or disagreement among state courts on this or any issue and does not assert that the Ohio Supreme Court misapplied any Supreme Court precedent.

“A petition for a writ of certiorari will be granted only for compelling reasons,” *see* S. CT. RULE 10, but *Beasley* has presented no circuit split in the lower federal courts on this or any other issue, no disagreement among the state courts on this or any other issue, and no argument that the Ohio Supreme Court misapplied any Supreme Court precedent in its decision upholding *Beasley*’s convictions and death sentence or in its order denying *Beasley*’s Motion for Reconsideration. *Beasley* has therefore failed to present any compelling reason why this Court should grant review in his case.

CONCLUSION

For the foregoing reasons, the State of Ohio respectfully requests this Court to deny Beasley's petition.

Respectfully submitted,
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