

No. 20-8038

In the Supreme Court of the United States

Shawn Grate,

Petitioner,

v.

OHIO,

Respondent.

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

BRIEF IN OPPOSITION

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Ashland County (Ohio) Prosecutor

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QUESTION PRESENTED

1. Is denial of certiorari warranted where Grate's propositions to this Court are factually and legally inaccurate?

LIST OF PARTIES

The Petitioner is Shawn Grate, an inmate at the Chillicothe Ohio Correctional Institution. Grate is a capital prisoner, but has no currently scheduled execution.

The Respondent is the State of Ohio, represented by Ashland County Prosecutor Christopher R. Tunnell, and a court-appointed Special Assistant Ashland County Prosecutor from the Ohio Attorney General's Office.

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COUNTERSTATEMENT

A. Shawn Grate fully confessed to the murder of two adult females and the kidnapping of a third adult female.

Ashland Ohio police were investigating the disappearance of two adult females. A break in the investigation happened when a third adult female escaped captivity by Grate, who had secreted the third adult female in an abandoned house in Ashland, Ohio. The third female told police about the extended sexual assault by Grate, which ended when she escaped while Grate was sleeping. Grate was arrested. Upon a search of the abandoned house, Ashland police recovered the bodies of the two missing adult females. Thereafter, Grate fully confessed to Ashland police, even demonstrating his strangulation technique. Following a jury trial, Grate was convicted and sentenced to death. *State v. Grate*, 2020-Ohio-5584 (2020).

REASONS FOR DENYING THE WRIT

I. WHERE GRATE TAKES ISSUE WITH THE STRATEGIC WITHDRAWAL OF A FORMER PLEA OF NOT GUILTY BY REASON OF INSANITY AND A RUN-OF-THE-MILL RULING THAT EXCLUDED HEARSAY TESTIMONY, FURTHER REVIEW BY THIS COURT IS NOT WARRANTED.

The contention that Grate's trial counsel were ineffective for the strategic withdrawal of an NGRI plea was rejected by the Ohio Supreme Court. In rejecting this contention, the Ohio Supreme Court said "Grate fails to mention that Drs. O'Reilly and Fabian determined that he was not insane. Dr. O'Reilly explained that Grate's behavior was the product of normal criminal motives, not a major mental illness. Dr. O'Reilly said that Grate understood that his behavior was wrong and illegal. Defense counsel could reasonably have decided to withdraw the NGRI plea based on expert findings that Grate was not insane." *Id.*, at P78 - P79.

In his petition to this Court, Grate again “fails to mention” there were two “expert findings that Grate was not insane.” *Id.*, at P78 – P79. This omission of a significant fact on which the Ohio Supreme Court relied to rule against Grate is reason enough to deny this petition.

Grate’s contention that the trial court erred in excluding certain hearsay evidence from mitigation testimony was denied by the Ohio Supreme Court, who applied long-standing hearsay rules to uphold the exclusion of obvious hearsay testimony. *Id.*, at P178 – P190.

Before this Court, Grate erroneously contends that hearsay evidence cannot be excluded in a capital mitigation proceeding. This proposition was most recently rejected by this Court in *Oregon v. Guzek*, 546 U.S. 517, 526 (2006) (“But the *Eighth Amendment* does not deprive the State of its authority to set reasonable limits upon the evidence a defendant can submit, and to control the manner in which it is submitted. Rather, ‘States are free to structure and shape consideration of mitigating evidence ‘in an effort to achieve a more rational and equitable administration of the death penalty.’” [citations omitted.]

Under these circumstances, Grate’s propositions of law to this Court are plainly defective on factual and legal grounds such that further review by this Court is not warranted.

CONCLUSION

For the above reasons, the Court should deny Grate’s petition for writ of certiorari.

Respectfully submitted,

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