

No. 23-7023

**In The
Supreme Court of the United States**

JOHNNY MACK SKETO CALHOUN,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

WAIVER OF RESPONSE IN NON-CAPITAL CASE

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WAIVER OF RESPONSE

The State of Florida waives its right to file a response to the non-capital petition in this case unless requested to do so by this Court. *See* Sup. Ct. R. 15.1. Although Petitioner styles this a capital case, he is incorrect to do so. *See* Sup. Ct. R. 14.1(a) (“If the petitioner . . . is *under a death sentence* that *may be affected by the disposition of the petition*, the notation ‘capital case’ shall precede the questions presented.”) (Emphases added). The state postconviction court vacated Petitioner’s capital sentence and that decision was *not* reversed on appeal. *See Calhoun v. State*, 376 So. 3d 583, 585 (Fla. 2023) (noting the state postconviction court previously “vacated Calhoun’s death sentence and ordered a new penalty phase,” a decision that was “affirmed on appeal”). The docket in Petitioner’s trial-level case shows that his new penalty phase is scheduled for January 20, 2025. *See State v. Calhoun*, 2011-CF-11 (Fla. 14th Jud. Cir. Ct.) (Holmes Cnty).


This is not a capital case. Petitioner presently has no sentence¹ whatsoever that can be affected by this petition’s disposition, much less a capital one. And the issue he raises in his petition is based on credibility findings and correctly decided questions which merit neither this Court’s review nor any response. Therefore, the

¹ The State of Florida notes that this Court’s jurisdiction is unaffected by the fact that petitioner has no sentence. *See Brady v. Maryland*, 373 U.S. 83, 85 n.1 (1963) (fact that court below had vacated petitioner’s sentence did not deprive this Court of jurisdiction to deal with guilt-phase issues); *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 481 n.9 (1975) (explaining *Brady*’s jurisdictional holding); *N. Dakota State Bd. of Pharmacy v. Snyder’s Drug Stores, Inc.*, 414 U.S. 156, 162 n.5 (1973) (same).

State of Florida waives its right to file a response under this Court's rules permitting such a waiver in noncapital cases, subject to any request by this Court for a response.²

Respectfully submitted,

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² This Court has accepted a waiver in an incorrectly styled "capital case." *See Smith v. Florida*, 142 S. Ct. 2729 (May 16, 2022) (No. 21-7610) (waiver filed April 15, 2022).