

No. 24-7346

IN THE
SUPREME COURT OF THE UNITED STATES

SEAGA EDWARD GILLARD,

Petitioner,

v.

STATE OF NORTH CAROLINA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE NORTH CAROLINA
SUPREME COURT

BRIEF IN OPPOSITION

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CAPITAL CASE
QUESTION PRESENTED

Does Petitioner's sentence of death imposed for the killing of Dwayne Garvey
violate the Eighth Amendment under *Enmund v. Florida* and *Tison v. Arizona*?

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INTRODUCTION

Respondent respectfully asks this Court to deny the petition for a writ of certiorari. In 2016, Petitioner and another man, Brandon Hill, engaged together in a series of violent attacks on prostitutes in North Carolina. The men used a common tactic to effectuate their scheme: one of the men would arrange to meet a prostitute alone at a hotel room, but when the time came to meet, they would show up together armed with guns, force their way into the room, and then rape, beat, and rob the victim at gunpoint. In December 2016, Petitioner arranged such a meeting with April Holland. But Holland's partner, Dwayne Garvey, was at the hotel too; he passed Petitioner and Hill as they approached Holland's door and attempted to intervene after he realized that two men—not one—had shown up for the encounter with Holland. Hill shot Garvey multiple times in the hallway just outside of Holland's hotel room, and seconds later, Petitioner shot Holland, who was twelve weeks pregnant at the time, in the head and chest. The shootings were captured on video by the hotel's security cameras. Garvey and Holland both died as a result of the gunshot wounds.

At trial, the jury convicted Petitioner of two counts of first-degree murder based on theories of both premeditation and deliberation and felony murder as to each victim. And at sentencing, the jury unanimously recommended sentences of death for both murders. At no time did Petitioner ask for an instruction regarding *Enmund v. Florida*, 458 U.S. 782 (1982), or *Tison v. Arizona*, 481 U.S. 137 (1987). On appeal, the North Carolina Supreme Court rejected Petitioner's challenge to his death sentence imposed for the killing of Garvey, concluding both that no *Enmund/Tison*

instruction was required because Petitioner was convicted based on premeditation and deliberation and that, moreover, Petitioner was a major participant in the felony committed and demonstrated a reckless indifference to human life, satisfying any *Enmund/Tison* culpability requirements.

Certiorari review should be denied. The North Carolina Supreme Court's decision affirming Petitioner's death sentence for the killing of Garvey does not violate this Court's decisions in *Enmund* and *Tison*. Nor does Petitioner allege that the decision below implicates a split in authority. Indeed, Petitioner concedes that the Eighth Amendment standard here is "well-settled." Petition p. 17. Additionally, Petitioner is already subject to a separate death sentence for Holland's murder—a sentence that he does not challenge here.

For these reasons, further review is unwarranted, and this Court should deny the petition.

STATEMENT OF THE CASE

A. The Crime

On the morning of December 2, 2016, Dwayne Garvey and April Holland were shot and killed at a hotel in Raleigh, North Carolina. App. 1. Text messages showed that, at approximately 3:30 a.m. that morning, Petitioner contacted Holland seeking sexual services. App. 2. Holland replied with a price and provided Petitioner with the address of a hotel. App. 2. Petitioner messaged Holland when he arrived at 4:38 a.m., and Holland responded with her hotel room number. App. 2.

Video footage captured by the hotel's security cameras showed that Petitioner and Brandon Hill entered the hotel through a side door and proceeded toward Holland's room, pacing in the hallway for a time. App. 2. The video footage also showed that, as Petitioner and Hill approached Holland's door, her partner, Garvey, passed the men in the hallway. App. 2. An extraction report from Garvey's phone showed that he texted Holland: "I saw two dudes. . . . Let me know you good." App. 2. Approximately four minutes later, the video showed, Garvey began banging on the door to Holland's hotel room. App. 2. Hill reentered the hallway and fired multiple shots at Garvey, and seconds later, Petitioner exited Holland's room and fired multiple shots back inside the room from the doorway. App. 2.

Both Garvey and Holland sustained multiple gunshot wounds. App. 2. Garvey's autopsy revealed that one of the shots he sustained severed his aorta, causing his death. App. 2. Holland's autopsy revealed that she sustained gunshot wounds to the head and chest, the latter of which caused her death. App. 2. The autopsy also revealed that Holland was twelve weeks pregnant at the time. App. 2.

B. The Trial

In 2017, Petitioner was indicted for two counts of first-degree murder, and the State subsequently announced its intent to seek the death penalty. App. 2. The case proceeded to jury trial in 2019. App. 2. At trial, in addition to evidence concerning the events of December 2, 2016, the State introduced evidence showing that, before the

December shooting, Petitioner and Hill engaged in a series of violent attacks against several other prostitutes in North Carolina. App. 3.

The State's evidence showed that in October 2016, a man arranged to meet a prostitute, Bessie A., at a low-budget hotel in Raleigh, North Carolina. App. 3. When the time for the meeting came, however, two men appeared at Bessie's hotel room. App. 3. The men brandished firearms and forced their way into her room. App. 3. The men then ordered Bessie to remove her clothing, and they stole her purse, bank card, driver's license, tablet, and cell phone. App. 3. One of the men, whom Bessie later identified as Petitioner, then raped her at gunpoint. App. 3. The men tied Bessie's hands and feet together using pillowcases, threw pillows over her, and ultimately fled the scene. App. 3.

The State also presented evidence that, less than two weeks after the attack on Bessie, another prostitute, Rachel B., was contacted by a man who arranged to meet her at a low-budget hotel. App. 3. When Rachel came to the door, however, she was ambushed by two men with guns. App. 3. The men forced her to undress, tied her hands and feet together, went through her personal belongings, and took turns raping her. App. 3. The men then strangled Rachel with a phone cord until she lost consciousness and took turns kicking her in the face. App. 3. The men eventually left the hotel room, stealing Rachel's identification, social security card, birth certificate, cell phone, clothing, and other personal items. App. 3. Rachel identified Petitioner as one of the men, noting the unique spider tattoo on his calf and his accent. App. 3.

The State also presented evidence that in November 2016, another prostitute, Kara L., met Petitioner online while she was advertising sexual services. App. 11. Petitioner brought Kara to his home, where he introduced her to Hill. App. 12. Kara testified at trial that both Petitioner and Hill had guns, and while she was at Petitioner's home, he threatened her with his gun. App. 11-13.

The jury found Petitioner guilty of first-degree murder as to Holland and Garvey under theories of both premeditation and deliberation and felony murder. App. 22-28.

During the capital sentencing proceedings, the State introduced testimony from several additional women—Keyona T., Keyana M., Serena S., and Asia G.—all of whom were also victimized by Petitioner. Keyona T. testified that while she was prostituting herself at a low-budget hotel, she was attacked, tied up, sexually assaulted, and robbed by Petitioner and Hill. App. 32. Keyana M. testified to a similar experience with Petitioner, explaining that she was tied up with a phone cord, raped, and robbed of her personal possessions by Petitioner and his companion. App. 32. Serena S. testified that she was contacted by a single man seeking sexual services but was then attacked by two men at her hotel; the men tied her up, forced her to contact other male clients of hers whom the perpetrators could rob, and the men then robbed Serena herself. App. 32. Asia G. testified that on the same morning Serena S. was attacked, she was tied up and robbed by Petitioner's companion, Hill, while Petitioner remained in a nearby room with Serena. App. 32.

The jury ultimately recommended that Petitioner be sentenced to death for each of his convictions of first-degree murder, and Petitioner was so sentenced. App. 2, 49. At no time during the sentencing proceedings did Petitioner request an instruction regarding *Enmund v. Florida*, 458 U.S. 782 (1982), or *Tison v. Arizona*, 481 U.S. 137 (1987). App. 28.

C. The North Carolina Supreme Court's Opinion

On appeal, Petitioner argued for the first time that the trial court erred and violated his Eighth Amendment rights when it did not instruct the jury regarding the culpability requirements of *Enmund* and *Tison* at sentencing as to the killing of Garvey. App. 28. Because Petitioner failed to request this instruction, the North Carolina Supreme Court reviewed Petitioner's claim for plain error. App. 28. After summarizing this Court's opinions in *Enmund* and *Tison*, App. 28-30, the North Carolina Supreme Court first explained that, under state caselaw, an instruction regarding *Enmund/Tison* is not required when a defendant is convicted of first-degree murder based on either "premeditation and deliberation under the theory that he committed all the elements or that he acted in concert," or based on "the theory of premeditation and deliberation in addition to the felony murder theory." App. 30 (quotation marks, citations, and brackets omitted). In this case, the court noted, Petitioner was convicted of first-degree murder based on the theory of premeditation and deliberation in addition to the felony murder theory, so *Enmund* and *Tison* did not apply. App. 30.

The North Carolina Supreme Court next ruled that, even if *Enmund* and *Tison* applied, Petitioner easily satisfied the culpability requirements under these decisions. The court explained:

Unlike the defendant in *Enmund*, here, [Petitioner] was not a minor participant. Rather, like the brothers in *Tison*, he was a major participant in criminal conduct known to carry a grave risk of death. [Petitioner] was actively involved in planning, arranging, and perpetrating an armed, violent felony that was likely to result in the loss of life. In addition to possessing and using a firearm, [Petitioner] was physically present throughout the commission of these violent crimes, and his conduct was part of a prolonged criminal scheme.

App. 30.

The North Carolina Supreme Court further concluded that Petitioner could not show the requisite prejudice to support reversal under North Carolina's plain-error standard, given his major participation in the underlying violent felonies:

The United States Supreme Court in *Tison* noted that there was "apparent consensus that substantial participation in a violent felony under circumstances likely to result in the loss of innocent human life may justify the death penalty even absent an 'intent to kill.'" 481 U.S. at 154 (cleaned up). As stated above, [Petitioner] was "a major participa[nt] in the felony committed" and demonstrated "a reckless indifference to human life, [which] is sufficient to satisfy the *Enmund* culpability requirement." *Id.* at 158. "[T]he reckless disregard for human life implicit in knowingly engaging in criminal activities known to carry a grave risk of death represents a highly culpable mental state, a mental state that may be taken into account in making a capital sentencing judgment . . ." *Id.* at 157-58. [Petitioner's] actions underscore the notion that "the more purposeful is the criminal conduct, the more serious is the offense, and, therefore, the more severely it ought to be punished." *Id.* at 156.

App. 30. The North Carolina Supreme Court thus rejected Petitioner's challenge under *Enmund* and *Tison* to his sentence of death for the killing of Garvey. App. 31.

REASONS FOR DENYING THE WRIT

I. The North Carolina Supreme Court's decision affirming Petitioner's death sentence for the killing of Garvey does not violate this Court's decisions in *Enmund v. Florida* and *Tison v. Arizona*.

In *Enmund v. Florida*, 458 U.S. 782, 787 (1982), this Court addressed whether the Eighth Amendment prohibits imposition of the death penalty on a non-triggerman defendant who did not kill, attempt to kill, or intend to kill. This Court held that the Eighth Amendment prohibition against grossly disproportionate punishment forbids imposition of the death penalty on a defendant who aids and abets in the commission of a felony in the course of which a murder is committed by others, when that defendant does not himself kill, attempt to kill, or intend that a killing take place or that lethal force will be employed. *Id.* at 788.

In *Enmund*, the defendant was convicted of felony murder after acting as a getaway driver for co-defendants who shot and killed two victims during the robbery of a dwelling. *Id.* at 784. It was undisputed that the defendant was not present in the house at the time of the robbery and murder. *Id.* This Court held that imposition of the death penalty on those who had not killed or manifested an intent to kill violates the Eighth Amendment. *Id.* at 798. This Court in *Enmund* further explained that the pertinent question is "not the disproportionality of death as a penalty for murder, but

rather the validity of capital punishment for [a defendant's] own conduct. The focus must be on *his* culpability, not on . . . those who . . . shot the victims . . ." *Id.*

A few years later, this Court further construed its holding from *Enmund*, in *Tison v. Arizona*, 481 U.S. 137 (1987). In *Tison*, this Court clarified that major participation in the felony committed, combined with reckless indifference to human life, is sufficient grounds for the imposition of the death penalty. *Id.* at 158. In *Tison*, three brothers were convicted of felony murder after they helped their father and another inmate escape from prison and armed them both with weapons. *Id.* at 139. The group robbed and abducted a family in a highway encounter in the Arizona desert. *Id.* at 139-40. The father and second inmate then killed the family of four, while the brothers watched but declined to intervene or to aid the victims. *Id.* at 141.

This Court held that merely looking at a defendant's "intent to kill" for Eighth Amendment purposes

is a highly unsatisfactory means of definitively distinguishing the most culpable and dangerous of murderers. Many who intend to, and do, kill are not criminally liable at all—those who act in self-defense or with other justification or excuse. . . . On the other hand, some nonintentional murderers may be among the most dangerous and inhumane of all—the person who tortures another not caring whether the victim lives or dies, or the robber who shoots someone in the course of the robbery, utterly indifferent to the fact that the desire to rob may have the unintended consequence of killing the victim as well as taking the victim's property. This reckless indifference to the value of human life may be every bit as shocking to the moral sense as an "intent to kill."

Id. at 157. This Court explained that "*Enmund* held that when 'intent to kill' results in its logical though not inevitable consequence—the taking of human life—the

Eighth Amendment permits the State to exact the death penalty after a careful weighing of the aggravating and mitigating circumstances.” *Id.* The *Tison* Court then expanded on its holding from *Enmund*: “Similarly, we hold that the reckless disregard for human life implicit in knowingly engaging in criminal activities known to carry a grave risk of death represents a highly culpable mental state, a mental state that may be taken into account in making a capital sentencing judgment when that conduct causes its natural, though also not inevitable, lethal result.” *Id.* at 157-58.

Enmund and *Tison* thus establish the culpability requirements necessary to impose a death sentence on a non-triggerman felony murder defendant under the Eighth Amendment. *Enmund* addresses the two ends of the spectrum of felony murder cases, holding that the Eighth Amendment *does not* bar the imposition of the death penalty on a defendant who actually kills, attempts to kill, or intends to kill, and *does* bar the imposition of the death penalty for a non-triggerman, minor actor who was not on the scene and who did not intend to kill or for whom a culpable mental state could not be imputed. 458 U.S. at 798-801. *Tison* dealt with circumstances falling between those two poles, clarifying that the permissible category of death eligible felony murder defendants includes those who were major participants in the underlying felony and whose conduct exhibited reckless indifference to human life. 481 U.S. at 158.

Here, the jury found Petitioner guilty of first-degree murder on *both* the basis of premeditation and deliberation under the theory that he either committed all of the elements or that he acted in concert with Hill, and on the theory of felony murder. App. 30. The North Carolina Supreme Court explained that, under state precedent, a conviction of first-degree murder on the theory of premeditation or deliberation, even when the defendant acted in concert, provides proof of a specific intent to kill on the part of the defendant, bringing the case entirely outside of the *Enmund/Tison* line of felony-murder-only cases. App. 30. *See also Tison*, 481 U.S. at 150 (“[W]hen ‘intent to kill’ results in its logical though not inevitable consequence—the taking of human life—the Eighth Amendment permits the State to exact the death penalty[.]”).

Moreover, even viewing the case as a felony-murder-only case, the North Carolina Supreme Court held that Petitioner’s sentence of death for the killing of Garvey was constitutionally permissible under *Tison* because, although Petitioner was not the triggerman as to Garvey, he was a major participant in the underlying felony and his conduct, which included carrying a firearm and using that weapon to kill a pregnant woman at the scene, demonstrated a reckless indifference to human life. App. 30. The court further explained:

Defendant was actively involved in planning, arranging, and perpetrating an armed, violent felony that was likely to result in the loss of life. In addition to possessing and using a firearm, defendant was physically present throughout the commission of these violent crimes, and his conduct was part of a prolonged criminal scheme.

App. 30.

The Eighth Amendment is satisfied in this case because the jury found Petitioner guilty of first-degree murder under a theory of premeditation and deliberation, which supports that he harbored a specific intent to kill. And even viewing the case as a felony-murder-only case, the culpability requirements of *Enmund* and *Tison* are easily satisfied where Petitioner acted as a major participant in the underlying felony and demonstrated a reckless indifference to human life. The North Carolina Supreme Court's opinion affirming Petitioner's death sentence for the killing of Garvey does not offend this Court's decisions in *Enmund* or *Tison*.

Petitioner asserts that the North Carolina Supreme Court violated *Enmund* and *Tison* because the state high court "rel[ied] on *Mr. Hill's* mental state," and not on Petitioner's mental state, when addressing the Eighth Amendment culpability requirements. Petition pp. 12-13. Petitioner misconstrues the North Carolina Supreme Court's opinion. The court correctly addressed Petitioner's—and not Hill's—mental state and participation in the crime. App. 30 ("As stated above, *defendant* was a major participant in the felony committed and demonstrated a reckless indifference to human life, which is sufficient to satisfy the *Enmund* culpability requirements." (quotation marks, brackets, and citation omitted; emphasis added)).

Petitioner also asserts that the evidence did not support that he demonstrated a reckless disregard for human life at the time of Garvey's killing because, in his string of previous attacks on prostitutes, he left the women alive after raping and robbing them at gunpoint. Petition pp. 14-15. Petitioner's argument is meritless.

Each of the attacks in Petitioner’s scheme involved the use of firearms and extreme violence against his victims. And at the time of Garvey’s killing, Petitioner was once again armed with a firearm and in fact used that weapon to himself kill the second victim at the scene, shooting Holland from a close range in the head and chest. These circumstances unquestionably demonstrate a reckless disregard for human life.

Petitioner has not shown that the decision below violated this Court’s precedents in *Enmund* or *Tison*. This Court’s review is not warranted as a result.

For similar reasons, Petitioner has not shown that the decision below merits summary reversal. Petition pp. 16-17. As Petitioner concedes, summary reversal is “rare.” Petition p. 16. This Court reserves summary reversal for cases where “lower courts have egregiously misapplied settled law,” *Wearry v. Cain*, 577 U.S. 385, 395 (2016) (per curiam), or have made the type of “fundamental errors that this Court has repeatedly admonished courts to avoid,” *Sexton v. Beaudreaux*, 585 U.S. 961, 967 (2018) (per curiam); *accord Parker v. Matthews*, 567 U.S. 37, 49 (2012) (per curiam) (summarily reversing to correct a “plain and repetitive error”). As discussed above, the North Carolina Supreme Court did not err here, much less err in a way that would warrant summary reversal.

II. Petitioner argues only that the North Carolina Supreme Court misapplied settled Eighth Amendment law; he identifies no conflict of authorities or important, unsettled legal questions that warrant further review.

By Petitioner's own admission, the Eighth Amendment claim in his petition involves only rules of law that are already "well-settled." Petition p. 17. Generally, a state court's alleged misapplication of settled law is not a reason to grant a petition for a writ of certiorari. *See* Supreme Court Rule 10(b) and (c). Moreover, the North Carolina Supreme Court did not misapply this Court's clear Eighth Amendment precedents, concluding both that Petitioner's conviction of first-degree murder under a theory of premeditation and deliberation demonstrated that he harbored a specific intent to kill and that any culpability requirements to impose a sentence of death on a non-triggerman felony murder defendant were satisfied where Petitioner was a major participant in the underlying felony and demonstrated a reckless indifference to human life.

Petitioner identifies no conflict of authorities arising from the North Carolina Supreme Court's opinion below, nor does he identify any important, unsettled legal questions that would warrant further review by this Court. Petitioner also does not challenge in any way his separate death sentence imposed at the same time for the killing of Holland. Further review is thus unwarranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted, this the 29th day of August, 2025.

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