

25-7000

No.

In The Supreme Court of the United States

FRANK JAMES NEAL, Petitioner,

v.

PEOPLE OF THE STATE OF MICHIGAN, Respondent.

On Petition for Writ of Certiorari
To The State of Michigan

Petitioner for Writ of Certiorari

FRANK JAMES NEAL, No. 510616
Pro Se Petitioner
Thumb Corr. Facility
3225 John Conley Dr.
Lapeer, MI 48446

FILED

JUN 25 2025

OFFICE OF THE CLERK
SUPREME COURT, U.S.

ORIGINAL

RECEIVED

JUL 15 2025

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTIONS PRESENTED

In *Roe v Flores-Ortega*, this Court said that the decision to appeal rests with the defendant, so counsel has a constitutionally-imposed duty to consult with the defendant about the appeal. In this case, the State court vacated defendant's convictions and sentences, and remand for a new trial. Then the State court vacated the new trial because appellate counsel--without defendant's consent--filed a motion for reconsideration on an undecided issue. Does counsel perform in a professionally unreasonable manner by initiating an appeal without an effort to discover defendant's wishes? and, What remedy is there for defendant's injury from counsel's deficient performance?

In *Smith v Bennett*, 365 US 708 (1961), this Court determined that equal force of review apply to state post-conviction, so does Michigan state courts' summarily denial of constitutional errors without a merit determinations amount to a review under the due process and equal protection clauses?

TABLE OF CONTENTS

OPINION OR JUDGMENT BELOW	1
STATEMENT OF JURISDICTION	1
CONSTITUTIONAL, STATUTORY, AND OTHER PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	2
1. Nature of the Case.	2
2. Trial Evidence.	2
3. Direct Appeal: Court of Appeals vacate Mr. Neal's convictions and sentences, and remand for new trial	3
4. Neal Exhaust Claims in Michigan State Courts.	4
REASON FOR GRANTING THE PETITION	4
ARGUMENT I	4
A. Appellate counsels actions is inconsistent with this Court's decision in Roe v Flores-Ortega.	4
B. Does a bright line exist for appellate counsel to advise Mr. Neal of the advantages or disadvantages warnings about an appeal; and whether a failure to consult amounts an abandonment of counsel for the defendant?	6
C. What remedy is there for a defendant's injury from the objectively unreasonable performance of appellate counsel?	6
ARGUMENT II	7
Contrary to Smith v Bennett, Michigan State Courts' lack of merit determination reflects its continuous failure to enjoin this Courts' binding effective assistance and due process authorities in post-conviction proceedings.	7
CONCLUSION	10

TABLE OF AUTHORITIES

Cases	Page
Anders v California, 386 US 738, 744 (1967)	7
Burns v Ohio, 360 US 252 (1959)	7
California v Trombetta, 467 US 479, 485 (1984)	8
Chambers v Mississippi, 410 US 284, 294, 302 (1973)	8
Evitts v Lucey, 469 US 387 (1985)	7
Griffin v Illinois, 351 US 12 (1958)	8
Holland v United States, 348 US 121, 139-140 (1954)	9
Lewandoswki v Makel, 949 F2d 884, 887-888 (6 th Cir. 1991)	6
Martinano v Booth, 359 Mich 680, 688 (1960)	9
Marbury v Madison, 5 US at 163 (1 Cranch)(1803)	6
McCoy v Court of Appeals of Wisconsin, Dist 1, 486 US 429, 438 (1988)	5
Mullaney v Wilbur, 421 US 684, 700-701 (1975)	9
Padilla v Kentucky, 559 US 356, 369 (2010)	6
People v Brent Marshall, 2020 Mich App LEXIS 2986 at *7-8	7
People v Canales, 243 Mich App, 571, 574 (2000)	8
People v Rajput, 505 Mich 7, 8 (2020)	8
Rodriquez v United States, 395 US 327, 330 (1969)	7
Smith v Bennett, 365 US 708 (1961)	7
Swenson v Bosler, 386 US 258, 260 (1967)	7
Roe v Flores-Ortega, 528 US 470 (2000)	4, 5, 6
Smith v Bennett, 365 US 708 (1961)	6
Strickland v Washington, 466 US 668 (1984)	4, 5, 6, 9
United States v Frady 456 US 152, 163 (1982)	9
United States v Gaudin, 515 US 506, 511 (1995)	9
Constitution	
U.S. Constitution, Amend V	8
U.S. Constitution, Amend VI	8, 9
U.S. Constitution, Amend XIV	2, 9
Michigan Const 1963, art 1, §17	8
Michigan Const 1963, art 1, §20	9

TABLE OF AUTHORITIES CONT.

Statues

28 USC §1241(1)

2

Court Rules

Michigan Court Rule, 6.508(D)

4

INDEX TO APPENDICES

APPENDIX A	1
Order vacate convictions and sentences, and remand for a new trial Court of Appeals, April 16, 2020	
APPENDIX B	1
Order on Reconsideration Court of Appeals, October 22, 2020	
APPENDIX C	1
Order on Reconsideration, Beckering, J. concurring opinion Court of Appeals, October 22, 2020	
APPENDIX D	1
Order denying application for leave to appeal Michigan Supreme Court, October 27, 2021	
APPENDIX E	1
Order Denying Defendant's Motion for Relief from Judgment Circuit Court Judge Celeste D. Bell, February 23, 2024	
APPENDIX F	1
Order denying application for leave to appeal motion for relief from judgment Court of Appeals, October 16, 2024	
APPENDIX G	1
Order denying application for leave to appeal the Court of Appeals' October 16, 2024 Michigan Supreme Court, March 28, 2025	
APPENDIX H	3
Motion for Relief from Judgment filed in trial court	
APPENDIX I	3
Affidavit of Frank James Neal, submitted with Motion for Relief from Judgment filed in the trial court	
APPENDIX J	3, 6
Affidavit of Frank James Neal submitted with Writ of Certiorari	

IN THE SUPREME COURT OF THE UNITED STATES

No.

FRANK JAMES NEAL, Petitioner

v.

PEOPLE OF THE STATE OF MICHIGAN, Respondent.

Petitioner Frank James Neal respectfully petitions for a writ of certiorari to review the judgement of Michigan's state courts.

OPINION OR JUDGMENT BELOW

The opinions and orders in this case are all unreported, including Court of Appeals April 16, 2020, decision which vacated Mr. Neal's convictions and sentences, and remand for a new trial. (App. A); the Court of Appeals on Reconsideration, October 22, 2020, after granting a new trial (App. B); the Court of Appeals' on Reconsideration, Beckering, J. concurring opinion, issued October 22, 2020 (App. C); October 27, 2021, Order of the Michigan Supreme Court denying application for leave to appeal (App. D); Circuit Court Judge Celeste D. Bell Order Denying Defendant's Motion for Relief from Judgment on February 23, 2024 (App. E); Court of Appeals, October 16, 2024, Order denying application for leave to appeal motion for relief from judgment (App. F); and the Michigan Supreme Court's March 28, 2025, Order denying application for leave to appeal the Court of Appeals October 16, 2024. (App. G).

STATEMENT OF JURISDICTION

In an order on March 28, 2025, the Michigan Supreme Court denied leave to

appeal a Court of Appeals order affirming the denial of Mr. Neal's motion for relief from judgment. This Court may take jurisdiction under 28 USC §1241(1)

CONSTITUTIONAL, STATUTORY, AND OTHER PROVISIONS INVOLVED

U.S. Constitution, Amend XIV

No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.

U.S. Constitution, Amend XIV

[N]or shall any State deprive any person of life, liberty, or property, without due process of law

STATEMENT OF THE CASE

1. Nature of the Case.

Mr. Neal was charged with four counts of assault with intent to murder and four counts of felony firearm. Neal was represented by counsel and found guilty as charged. On September 17, 2018, he was sentenced to 15 to 22-years on assault counts and consecutive two-year terms on the firearm counts.

2. Trial Evidence.

Deontae Davis had a loud argument with Mr. Neal's sister, Shamekea, outside Shamekea's home. Shamekea's young children were present. Neal knew Davis had a violent past. He got between Davis and Shamekea and a fistfight occurred. Davis left, only to return 15-20 minutes later with four more men. Davis' men surrounded Neal's sisters who were on their front porch. Davis' men described him as a "hot head" who "snapped" and tried to jump onto the porch. Neal then fired a rifle, shooting a rifle in the air. Neal described feeling outnumbered and in fear for the safety of himself and his family. He remained at the scene and flagged down an ambulance. Trial counsel had requested self-defense and defense-of-others jury instructions yet said nothing when those instructions were not read.

3. Direct Appeal: Court of Appeals vacate Mr. Neal's convictions and sentences, and remand for new trial.

Mr. Neal pursued a direct appeal through the State Appellate Defenders Office and won a new trial. In April 2020, the Court of Appeals vacated Mr. Neal's conviction and sentences because of his prosecutorial misconduct claims, without an adjudication of his insufficient evidence claim. Appellate counsel then conveyed to Mr. Neal the Court of Appeals decision. According to Mr. Neal's affidavit, he was happy when informed with the new trial (App. I). But counsel, without further consult with Mr. Neal, proceeds with a motion for reconsideration of the insufficient evidence claim. Counsel, put at risk Mr. Neal's new trial without his consent. Mr. Neal attest that at no time did counsel consult with him about the reconsideration motion; has she done so, he would have undoubtedly proceeded with the new trial. (App. I, J).

Next, the Court of Appeals granted the reconsideration motion, and upon consideration of the insufficient claim, reversed its decision granting a new trial. Appellate counsel argued in the direct appeal, and then later to the Michigan Supreme Court, that the decision to sua sponte withdraw the grant of a new trial violated Mr. Neal's state and federal right to due process, which included the right to notice and opportunity to be heard, and the claim of ineffective assistance upon herself (appellate counsel).

4. Neal Exhaust Claims in Michigan State Courts.

As for the self-imposed effective assistance claim, the trial court appointed new counsel for Mr. Neal, Michael A. Faraone. Mr. Faraone move the trial court for relief from judgment. (App. H). He raised two claims:

Issue One: Trial Counsel was Strickland-Ineffective in Failing to Object when the requested Defense-of-Others and Self-Defense Instructions were not read to the jury.

Issue Two: Appellate Counsel committed Strickland error when it put Defendant's new trial at risk without his consent in order to pursue an insufficient evidence claim which he had no likelihood of prevailing on. That appellate counsel could not raise this claim against itself in the direct appeal satisfies the "good cause" requirement of the court rule. MCR 6.508(D).

The trial court simply denied relief from judgment without any review or explanation of the claims presented. Both the Court of Appeals and Michigan Supreme Court denied leave to appeal.

REASON FOR GRANTING THE PETITION

The Michigan State Courts' absence of decision warrants a grant of writ of certiorari for several reasons. First, the decision reflects Michigan courts continuing failure to apply force of review to state post-conviction proceedings as held in *Smith v Bennett*, 365 US 708 (1961). Second, the decision reflects fundamental misunderstanding about this Court's decision in *Roe v Flores-Ortega*, 528 US 470 (2000), which settled a constitutional question about what circumstances does counsel have an obligation to consult with the defendant about an appeal. Due to heightened concerns regarding a court's corrected error, which implicates law of the case doctrine, does the correction stand even though appellate counsel's choice--without defendant's consent--was constitutionally unreasonable. Third, the State failed to engage in the circumstances-specific reasonableness inquiry required by *Strickland v Washington*, 466 US 668 (1984). Lastly, what is the remedy for the injury (grant of a new trial) caused by an appellate counsel's objectively unreasonable choice?

ARGUMENT I

- A. Appellate counsel's actions is inconsistent with this Court's decision in *Roe v Flores-Ortega*.

This Court's decision in *Roe v Flores-Ortega*, 528 US 470 (2000), held that

"counsel has a constitutionally-imposed duty to consult with the defendant about an appeal when there is reason to think ... (1) that a rational defendant would want to appeal." Id. at 480. But with Neal, the State courts failed to heed these instructions, especially when considering that appellate counsel admits that her decision was incorrect. Also see, *McCoy v Court of Appeals of Wisconsin, Dist 1*, 486 US 429, 438 (1988)(counsel has a duty to serve the defendant's interests to the best of counsel's ability). The Michigan State courts decision thus mocks any hope for review of constitutional safeguards in appellate counsel's performance.

In Roe, this Court observed that "the decision to appeal rests with the defendant." Id. at 479, such that counsel should routinely consult with the defendant regarding the possibility of an appeal. Id. This Court further noted that to ensure that criminal defendants are properly represented, the Federal Constitution imposes one general requirement: that counsel make objectively reasonable choices (citing *Strickland* at 688). Id.

Even though Roe makes clear counsel's duty--to consult with the defendant--during an appeal, the State courts refused to make any determination so as to afford Mr. Neal that protection. Specifically, what information counsel knew or should have known, or the circumstances-specific reasonableness inquiry required under *Strickland* at 688; or whether it was rational for Mr. Neal to want to appeal the grant of a new trial. Michigan state court did nothing. Michigan state court avoidance to rule reflects their continuous failure to comply with this Court's decisions. The errors of law combined to deprive Mr. Neal of his constitutional right to have appellate counsel consult him about **HIS** appeal, which effectively deprived him of a new trial. Because Mr. Neal can show counsel's objectively unreasonable choice under Roe, he meets the standard for relief. Certiorari should be granted because the Michigan State Courts has again failed to follow binding authority from this Court on the effectiveness of counsel.

- B. Does a bright line exist for appellate counsel to advise Mr. Neal of the advantages or disadvantages warnings about an appeal; and whether a failure to consult amounts an abandonment of counsel for the defendant?

During Counsel's initial meeting with Mr. Neal, they both agreed that he was seeking a new trial. (App. J). But when the new trial was granted, Counsel --without new consultation--took a different, irrational and ill-advised path, which took away the new trial.

This case is analogous to *Lewandoswki v Makel*, 949 F2d 884, 887-888 (6th Cir. 1991), where counsel pursued an appeal without consulting with their client after risk in the appeal should have been apparent. On habeas review, the district court determined that Lewandowski had established ineffective assistance of counsel under Strickland. Specifically, the court found that counsel's failure to inform their client of the risk of an appeal fell below an objective standard of reasonableness. The Sixth Circuit affirmed. But, while *Padilla v Kentucky*, 559 US 356, 369 (2010) provides a general proposition that counsel has a responsibility to advise their client of risk when it exist, no bright line prohibits the risk-takers when the appeal rests with the defendant. Roe 528 US at 479. Since Roe observes a defendant right to control his appeal, this Court should settle whether a bright line should be imposed for notice of the risk involved.

- C. What remedy is there for a defendant's injury from the objectively unreasonable performance of appellate counsel?

In determining relief, this Court has held:

It is a settled and invariable principle, that every right, when withheld, must have a remedy, and every injury its proper redress.

The government has been emphatically termed a government of law, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right. *Marbury v Madison*, 5 US at 163 (1 Cranch)(1803)

The analytical framework for ineffective assistance of appellate counsel have been to take defendant to the point at which the injury occurred, a new appeal. Roe, 528 US at 485-486, Evitts v Lucey, 469 US 387 (1985), Rodriguez v United States, 395 US 327, 330 (1969).

In a similar way, Mr. Neal should be returned to the point before counsel's constitutionally imposed injury, a new trial. Even more so since the law of the case doctrine barred any review from the Court of Appeals and trial court. In fact, the Michigan Court of Appeals' remedy for the consequences of the defendant's due process rights held that: "to let Defendant's conviction stand would be to punish Defendant for his appellate counsel's failure to deliver a reasonable performance." People v Brent Marshall, 2020 Mich App LEXIS 2986 at *7-8.

Accordingly, This court should reinstate Mr. Neal's new trial or any equivalent remedy this Court deems fit.

ARGUMENT II

Contrary to Smith v Bennett, Michigan State Courts' lack of merit determination reflects its continuous failure to enjoin this Courts' binding effective assistance and due process authorities in post-conviction proceedings.

Inconsistent with the decision held in Smith v Bennett, 365 US 708 (1961), Michigan state courts' fails to apply equal force of review merit determination to state post-conviction proceedings.

The long established history from this Court has determined that when a State court makes available a means for review, it is held to a "constitutional requirement of substantial equality and fair process" Anders v California, 386 US 738, 744 (1967). It may not discriminate arbitrarily between persons applying for relief (e.g., Burns v Ohio, 360 US 252 (1959), and it must adhere to the requirements of due process. Swenson v Bosler, 386 US 258, 260 (1967). Though the

rules were primarily developed with reference to appellate review, we have held them applicable with equal force to state post-conviction proceedings. Smith, supra; Griffin v Illinois, 351 US 12 (1958).

Even though this Court gives deference to state court decisions, there is none. The state courts completely abdicate its factfinding/review, after MR. Neal's repeated request for an evidentiary hearing were denied. The state court wholly ignored the evidence proffered by Mr. Neal and his appellate counsel's admission.

The state made no determination whatsoever during post-conviction, nor the two tiers of appellate review to Michigan courts into Mr. Neal's collective constitutional claims. The errors of law combined to deprive Mr. Neal of his constitutional right of review on: (1) effective assistance of trial and appellate counsel, particularly the latter's unreasonable decision to not consult him about an appeal, (2) a meaningful opportunity to present a complete defense, (3) a proper jury instruction on the sole theory of the case, and (4) equitable due process of review.

Clearly, a defendant has a right under the Fifth and Sixth Amendments to a meaningful opportunity to present a complete defense. U.S. Const Ams. V, VI, XIV; Const 1963, art 1, §17; California v Trombetta, 467 US 479, 485 (1984); Chambers v Mississippi, 410 US 284, 294, 302 (1973). To that end, a defendant is entitled to have a properly instructed jury consider the evidence against him. People v Rodiriguez, 463 Mich 466, 472 (2000). Jury instructions must include all charged offenses and must not exclude material issues, defenses, and theories if the evidence supports them." People v Canales, 243 Mich App, 571, 574 (2000), People v Rajput, 505 Mich 7, 8 (2020).

In addition to the right to present a complete defense, defendants also have

the right to effective assistance of counsel. The right to effective assistance of counsel is well-established in Michigan and federal jurisprudence. U.S. Const Ams VI, XIV; Strickland v Washington, 466 US 668, 686 (1984) Const 1963, art 1, §20.

Likewise, the trial court's failed to instruct the jury on the law, failed to relate specific facts material to Mr. Neal's case before the jury. Martinano v Booth, 359 Mich 680, 688 (1960)(holding that the law applicable to jury trials requires the court to instruct the jury as to the law of the case, regardless of whether there has been a timely and proper request. See United States v Gaudin, 515 US 506, 511 (1995), Mullaney v Wilbur, 421 US 684, 700-701 (1975) and Holland v United States, 348 US 121, 139-140 (1954).

In this case, Mr. Neal was denied both his right to effective assistance of counsel and a properly instructed jury because his trial attorney failed to object to the absence of a jury instruction on the sole theory of the case. Mr. Neal does not deny shooting the assailants, so his entire defense theory rested upon the argument that the individual who initially fought him, and returned with four angry men, who jumped on his porch had intent to harm him and his family. Counsel dropped the ball concerning the self-defense instruction, and Mr. Neal's conviction was outcome determinative.

Counsels' objectively unreasonable decision deprived Mr. Neal of a defense and effective appeal. There is no conceivable strategic purpose that would warrant foregoing this instruction, an objection to its absence or seeking reconsideration of a new trial.

In addition, trial court's omission of complete instruction was grave error since the case was supported only by evidence of self-defense, which offends due process. United States v Frady 456 US 152, 163 (1982).

This Court should grant certiorari to remedy the series of constitutional violations which undermines Mr. Neal's conviction and sentence.

CONCLUSION

For the reasons set forth above, Petitioner FRANK JAMES NEAL, respectfully prays that this Court grant a writ of certiorari to review of Michigan lack of post-conviction review.

Respectfully submitted

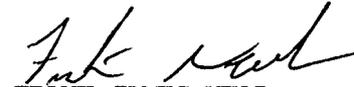


FRANK JAMES NEAL, #510616
Pro Se Petitioner
Thumb Corr. Facility
3225 John Conley Dr.
Lapeer, MI 48446

DATED June 25, 2025

DECLARATION OF MAILING

Plaintiff, Frank James Neal, declare under the penalty of perjury that the following is true and correct, that on the 25th day of June, he handed the prison counselor an original of: PETITION FOR WRIT OF CERTIORARI, and PETITION TO PROCEED IN FORMA PAUPERIS to be mailed to: Genesee County Prosecutor's Office, 900 S. Saginaw St., Flint, MI 48502; and, United States Supreme Court, Washington, DC



FRANK JAMES NEAL

DATED June 25, 2025