

IN THE SUPREME COURT OF FLORIDA

CRAIG WALL, SR.,

Appellant,

v.

Case No. SC19-1727

L.T. No. 2010-CF-3759

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE CIRCUIT COURT
IN AND FOR PINELLAS COUNTY
STATE OF FLORIDA

ANSWER BRIEF OF APPELLEE

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PRELIMINARY STATEMENT

Citations to the record in this brief will be designated as follows: The record on appeal concerning the postconviction proceedings shall be referred to as (page number) as the record is in electronic format and no delineation between volumes is identified.

STATEMENT REGARDING ORAL ARGUMENT

The State respectfully submits that oral argument is not necessary on this appeal of the order granting Wall's pro se motion to discharge counsel and waive postconviction proceedings. Accordingly, argument will not materially aid the decisional process.

STATEMENT OF THE CASE AND FACTS

The relevant procedural history of the underlying case was accurately described by this Court in Wall v State, 238 So. 3d 127, 130 (Fla. 2018) affirming Wall's convictions and death sentences.

This case has a long, convoluted procedural history, most of which is irrelevant to our decision today. Thus we only include the portions relevant for these proceedings.

Wall initially sought hybrid representation, with trial counsel representing him as to C.J.'s death and Wall representing himself as to Taft's death. At a hearing on February 27, 2013, the trial court denied Wall's request for self-representation.

A defense motion on April 12, 2013, to have Wall transported for a psychological examination was denied. Wall took exception to the State's comment that he might attempt to escape during transport. In response, Wall said, "You people are really idiots." The trial court warned Wall about his behavior and, after a back-and-forth exchange, Wall asked the trial court, "Are you done?" The trial court again warned Wall that he would be removed from the courtroom if he disregarded the rules. The hearing continued and Wall later said, "[Y]our Honor was being, for lack of a more legal term, a dick." As the hearing was ending, the trial court thanked Wall, to which Wall responded, "I tried to spare you." At that point, the trial court stated:

Hopefully, the Supreme Court appreciates the patience that I'm attempting to show in this situation because that's what I'm trying to do every time we're on the record as far as that's concerned. All right. You guys have a good weekend.

On May 1, 2013, Wall again moved for a *Faretta* hearing due to a disagreement with counsel, which the trial

court refused to hear. The trial court then removed Wall from the courtroom due to his behavior. Trial counsel noted that the defense had not requested the appointment of a psychologist because Wall had refused to participate. The trial court stated that Wall should be evaluated, or at least an attempt should be made at an evaluation. Thus the trial court appointed Dr. Poorman, the jail psychologist, to evaluate Wall to determine if he was competent for self-representation. On May 29, 2013, Dr. Poorman's report indicated that Wall was not competent to represent himself, and Wall requested to be transferred to Florida State Hospital for treatment and potential reevaluation. Wall filed a motion to remove counsel, and on July 18, 2013, that motion was denied along with Wall's request to proceed pro se. By a pretrial hearing on August 29, 2013, Wall's security status changed because he threatened to kill his attorneys, so he remained cuffed and shackled in court. Wall claimed it would be easier for him to proceed pro se because counsel was not communicating with him, but the motion was denied.

Again, at a pretrial hearing to remove counsel on December 13, 2013, Wall complained of a disagreement with trial counsel. Specifically, Wall disagreed with counsel's desire to pursue a psychiatric defense and would not cooperate with the psychologist: "[F]irst of all, you know, supposedly I'm this evil white supremacist. I ain't talking to no fu----- Jew. So you stop sending Eisenstein at me." The trial court explained to Wall that his goal of receiving the death penalty was inconsistent with trial counsel's responsibility to mount a defense and the concept of pleading no contest to C.J.'s death was discussed. Then Wall raised case law from Indiana where a court had allowed a defendant to plead guilty in exchange for the death penalty. That offer was presented by Wall to the State but was rejected.

Trial counsel explained that the psychologist's religion would not make a difference as Wall was determined not to cooperate or speak to any psychologist, which Wall confirmed. Wall then suggested that Dr. Poorman evaluate him again, which he would comply with as long as it was an evaluation before a *Faretta* hearing. During the course of the

hearing, the trial court said to Wall, explaining a previous in camera hearing:

"You can second-guess me. The Supreme Court will have every chance to second-guess me. I don't have any issue with that."

At the following hearing, on December 20, 2013, Dr. Poorman testified that Wall was competent to represent himself. Her earlier determination in May 2013, that he was not competent to self-represent, was based on his behavioral issues, hunger strikes, and unwillingness to cooperate with the evaluation. However, on December 20, 2013, Dr. Poorman testified that Wall had the ability to represent himself with the caveat that he would need to control his vulgar language. Wall indicated that he wanted to dismiss counsel and get new attorneys. When the trial court asked if he wanted a *Faretta* hearing, he responded that he had no choice. The trial court noted that there was no sufficient basis to remove counsel, so Wall chose to proceed pro se. The trial court then conducted a *Faretta* hearing. However, Wall's attorneys were ordered to remain on the case as standby counsel over Wall's objection. Wall saw no difference in that structure, so he decided to keep representation by counsel and did not proceed pro se.

When Wall disagreed with the trial court appointing a mitigation specialist, he became irate:

I can't verify that she'll live. Straight up. That bitch is-no. I can't even verify that she'll breathe another day, including [trial counsel]. Establish that. I might as well just go ahead and go all in.

When the trial court ordered Wall removed from the courtroom, Wall screamed back into the courtroom. After that comment, the trial court remarked that hopefully this Court will review that outburst if the case came here. On February 7, 2014, at a *Faretta/Nelson* hearing, Wall indicated his displeasure with trial counsel and noted that he was in the psychiatric unit under suicide watch. Later, Wall decided to proceed pro se again.

On March 6, 2014, the trial court reaffirmed that Wall wished to proceed pro se. Then the trial court denied Wall's motion for continuance. The trial court reminded Wall that he had been warned a continuance would not be granted due to lack of preparation. At that point, the trial was scheduled for about one month later and the parties had been previously discussing pro se representation for six to eight months. The trial court explained that Wall repeatedly admitted to murdering Taft and stated multiple times that he wanted to receive the death penalty. Wall responded, "Let's make a deal." To which the trial court responded:

No, your dispute has been with the death of the child and whether you're legally responsible for that, and my understanding is that all of those experts that have been listed are going to be called. The State does not need to take their depositions.

So your defense, as far as the death of the minor child, is going to be based on the testimony of those experts, right?

So I fail to understand how you can't be ready, if the State is not deposing those experts and you've already acknowledged responsibility for the death of Ms. Taft; and, in fact, want to receive the ultimate penalty for the death of Ms. Taft.

[A]nd the defense that you want to present is that you're not responsible for the death of the minor child; am I accurate in that?

Then Wall stated, "No, not anymore. ... As far as I'm concerned, aliens beamed me up and then left me in the car with blood on me" Wall suggested that his strategy made him a "mad genius" and that perhaps he actually was using reverse psychology to avoid the death penalty. The trial court denied the continuance, and, to avoid a lengthy procedure, Wall again unsuccessfully sought to have the State dismiss the case regarding C.J. in exchange for the death penalty.

On April 4, 2014, Wall filed a pro se motion to

disqualify the trial court. As grounds, Wall asserted that the trial court was biased against him and that it had already predetermined his death sentence. Wall claimed that he only discovered the basis for the motion on March 26, 2014, when transcripts were delivered to him. However, the statements that Wall took issue with were the trial court's mention of this Court reviewing the case, which were made on April 12, 2013, and December 13, 2013, respectively. The trial court denied the motion to disqualify as legally insufficient. After orally denying the motion on April 4, 2014, the trial court informed the parties that trial would commence the following week. A later petition for a writ of prohibition to the Second District Court of Appeal regarding the denial of Wall's motion to disqualify was also denied.

On April 7, 2014, the morning of jury selection, Wall asked for reappointment of counsel, claiming that he was not prepared. Trial counsel requested a continuance, which was granted. Trial was set for October 2014. However, during an October 29, 2014, pretrial hearing, Wall again moved to discharge counsel and requested a *Nelson* hearing. The trial was pushed back to February 2015 and counsel was instructed to continue to prepare. At the *Nelson* hearing, the trial court did not discharge counsel, so Wall requested another *Faretta* hearing, which the trial court delayed to be held later if necessary.

At February 6 and 11, 2015, hearings, the parties discussed a possible plea of guilty as to Taft's murder and no contest as to C.J.'s. However, Wall demanded to condition his plea on receiving the death penalty, and if he did not receive it, he wanted the option to withdraw the plea. Eventually, the State refused to agree to a conditional plea, which would allow Wall to withdraw. The State was concerned that the entire strategy was a ploy to drag the case out even longer and that this Court would disapprove of the procedure.

During these hearings, the trial court discussed the logistics of a possible plea and the penalty phase. The trial court indicated that it would be best to have a psychologist evaluate Wall. It was decided that Dr. Poorman would evaluate Wall prior to a plea, along

with another psychologist, Dr. Gamache, depending on availability. Trial counsel stated that Dr. Poorman had already determined Wall was competent. Also, trial counsel indicated that it was not necessary to have Dr. Gamache evaluate Wall for the plea. The trial court stated that it would rather have Wall reevaluated prior to any plea. Dr. Gamache never evaluated Wall; however, Dr. Poorman was eventually able to conduct another evaluation.

On February 13, 2015, Wall signed a plea agreement—despite the State's rejection of his conditional plea offer. The plea stated:

The State and I agree to the death penalty in this case. Both parties agree that the aggravating circumstances outweigh the mitigating circumstances and that death is the appropriate sentence. However, both parties understand that the Court will determine the sentence pursuant to Florida Statutes.

On February 13, 2015, the trial court held a change of plea hearing and questioned Dr. Poorman to determine if Wall was competent to plead. Dr. Poorman testified that Wall was competent and was aware of the penalties. Dr. Poorman stated that Wall understood the rights that he was forfeiting by pleading instead of proceeding to trial. Moreover, Dr. Poorman opined that Wall was competent to proceed to trial and represent himself. All criteria for self-representation were satisfied, and Dr. Poorman had no concerns about Wall's literacy, verbal ability, or overall intelligence.

The trial court conducted a thorough plea colloquy and ensured that Wall understood the rights that he was forfeiting and that the trial court would ultimately determine the appropriate sentence. Wall admitted that he previously attempted suicide, but stated that he was not suicidal. Trial counsel stated that he was prepared to mount a defense for Wall and did not recommend that he accept the plea, but that he was respecting Wall's position. The trial court accepted the plea, adjudicated Wall guilty, and proceeded to a *Faretta* hearing because Wall intended to proceed pro se at the penalty phase.

On direct appeal, this Court agreed that Wall was competent to enter the plea and that the plea was voluntarily entered. Wall, 238 So. 3d at 142, 145. This Court affirmed the convictions and sentences.

On July 16, 2019, Wall delivered to prison officials for mailing his pro se motion entitled: "Motion to Monitor and Remove Counsel Pursuant to § 27.711(12) Findings and if denied 3.851 Motion to Dismiss All Counsel and Post-conviction Proceedings." (3-60)

At an August 2, 2019, Status Conference postconviction counsel raised concerns regarding Wall's competency and asked the court to order a competency evaluation prior to deciding Wall's pro se motion. (65). The State argued, and the court agreed, that Florida Rule of Criminal Procedure 3.851(i) should be scrupulously followed, and that Wall was not likely to cooperate with a competency evaluation prior to the hearing that the rule requires. (66-7). Per the rule, if at the hearing the court had reasonable grounds to conclude that Wall was not competent, the court could order an evaluation at that point. The ore tenus motion was denied without prejudice for counsel to request a competency evaluation at the 3.851(i) hearing.

A hearing on Wall's pro se motion was held on August 23, 2019. The court found that Wall was not entitled to relief under

§ 27.702. The court proceeded to conduct a hearing under Florida Rule of Criminal Procedure 3.851(i). (100) During the hearing, counsel again raised a concern about Wall's competency. (118). The court noted that Wall's behavior is consistent with his previous behavior in court when he was found competent -- a finding that was affirmed on direct appeal. (119). Specifically, the court noted that Wall was oriented, understood the process, and conducted relevant legal research. He understood the consequences of his decisions. The court did not observe anything giving rise to a concern about Wall's competency. (119, 122).

Wall took advantage of the ample opportunity that the court gave him to explain why he wanted to dismiss counsel and waive his postconviction proceedings. The court confirmed that Wall wanted to dismiss his counsel and waive his postconviction proceedings including potential warrant-litigation related claims. (130, 148, 149, 154, 155).

SUMMARY OF THE ARGUMENT

ISSUE I: The postconviction court did not abuse its discretion in rejecting counsel's request for an expert competency evaluation. The postconviction court is very familiar with Wall and his behavior and had no reasonable grounds to believe that Wall was incompetent. Mental illness does not equate to incompetency.

ISSUE II: The postconviction court properly found that Wall made a knowing, intelligent, and voluntary waiver of his right to postconviction counsel and to pursue his postconviction claims. At the hearing, Wall explained the reasoning behind his decision to waive his postconviction proceedings and dismiss his collateral counsel. As this Court has held on numerous occasions, a competent death-row inmate may waive his collateral counsel and motions provided the waiver is knowing, intelligent, and voluntary. The record in this case clearly supports the trial court's finding that Wall understood the consequences of his actions and made a knowing, intelligent, and voluntary waiver of his collateral counsel and postconviction proceedings.

ISSUE III: This issue is not properly before this Court. Even so, the postconviction court did not abuse its discretion in

striking Capital Collateral Regional Counsel's unauthorized motion for postconviction relief filed on behalf of Wall. CCRC does not represent Wall for purposes of a postconviction pleading in circuit court.

ARGUMENT

ISSUE I

THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION IN DENYING COUNSEL'S REQUEST FOR A COMPETENCY EVALUATION OF WALL PRIOR TO RENDERING A DECISION ON APPELLANT'S PRO SE MOTION TO DISMISS COUNSEL AND POSTCONVICTION PROCEEDINGS.

The procedure for determining whether a defendant is competent to dismiss counsel and waive all postconviction claims is contained in Florida Rule of Criminal Procedure 3.851(i).

Rule 3.851(i)(4) states:

The judge shall examine the defendant at the hearing and shall hear argument of the defendant, collateral counsel, and the state. No fewer than 2 or more than 3 qualified experts shall be appointed to examine the defendant ***if the judge concludes that there are reasonable grounds to believe the defendant is not mentally competent*** for purposes of this rule. The experts shall file reports with the court setting forth their findings. Thereafter, the court shall conduct an evidentiary hearing and enter an order setting forth findings of competency or incompetency.

(emphasis added).

Although counsel raised competency concerns based on Wall's alleged mental illness prior to and during the hearing, the court correctly observed that the rule provides that the court is to appoint experts to evaluate Wall *if* the court has "reasonable grounds" to believe Wall is incompetent. (73). The court stated that "nothing has changed over eight - I would say eight years that Mr. Wall has been here. The same affect, the

same interaction, the same ability to respond, to talk, to communicate. While he can be vociferous in the way he speaks and a little profane . . . there is nothing that he is acting like today that isn't something that I've seen over the years. . . . "

After an interaction with Wall, the court continued:

. . . he understands what's going on. He's oriented. He knows what the process is. He's done the research. He's thought about it. He's come here with a plan. He's got an idea. I mean, all of those things are the same that I've seen throughout. He was able to waive - not only able to plead guilty, but was able to waive having counsel to represent him and represent him in the penalty phase, which is even higher standard than competence to go to trial if you have to represent yourself, and he was found to be competent. The Florida Supreme Court upheld all those findings. So unless something is different - and, frankly, I haven't seen anything that is different. This is more of the same interaction that we've had over the last eight years throughout this entire process. There is nothing here to suggest to me that I need to have him evaluated by experts.

(38-39).

The court did not abuse its discretion in rejecting counsel's request for an expert competency evaluation. The postconviction court is very familiar with Wall and his behavior. Indeed, there is a previous judicial determination of Wall's competence. A presumption of competence attaches from a previous judicial determination of competency. See Wall v. State, 238 So. 3d 127, 140 (Fla. 2018); Sanchez-Velasco v. State, 702 So. 2d 224 (Fla. 1997); Durocher v. Singletary, 623 So. 2d 482, 484 (Fla. 1993).

Despite Wall's alleged mental illness, whatever that may or may not be, he was capable of knowingly, intelligently, and voluntarily waiving his postconviction counsel and proceedings. Mental illness does not equate to incompetence. See Silvia v. State, 228 So. 3d 1144 (Fla. 2013). This Court should affirm.

ISSUE II

THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION IN DETERMINING APPELLANT MADE A KNOWING, INTELLIGENT, AND VOLUNTARY WAIVER OF HIS POSTCONVICTION COUNSEL AND PROCEEDINGS.

At the hearing, the trial judge conducted a detailed inquiry of Wall to determine whether he was making a knowing, intelligent, and voluntary waiver of his postconviction proceedings and of collateral counsel. The circuit court's determination that Wall is competent, and that his waiver is voluntary, knowing, and intelligent is reviewed for an abuse of discretion. Franklin v. State, 137 So. 3d 969 (Fla. 2014) (stating a trial court's decision regarding competency will stand absent a showing of abuse of discretion and shall not be reversed unless no reasonable person would take the view adopted by the trial court).

In Hamblen v. State, 527 So. 2d 800 (Fla. 1988), this Court addressed the situation where a defendant represented himself at trial, pleaded guilty to first degree murder, and waived the

right to have a jury consider whether he should be executed. This Court addressed "the friction between an individual's right to control his destiny and society's duty to see that executions do not become a vehicle by which a person could commit suicide," and ultimately held that Hamblen had a constitutional right to represent himself at trial and was competent to do so. Id. at 802, 804. This Court additionally stated:

In the field of criminal law, there is no doubt that 'death is different,' but, in the final analysis, all competent defendants have a right to control their own destinies. This does not mean that the courts of this state can administer the death penalty by default. The rights, responsibilities and procedures set forth in our constitution and statutes have not been suspended simply because the accused invites the possibility of a death sentence. A defendant cannot be executed unless his guilt and the propriety of his sentence have been established according to law.

Id. at 804 (emphasis added).

A few years after Hamblen, this Court addressed the issue of a capital defendant seeking to waive representation by collateral counsel during his postconviction proceedings. See Durocher, 623 So. 2d 482. In Durocher, this Court held that a competent defendant could waive collateral counsel, but the State has an obligation to assure that the defendant's waiver is knowing, intelligent, and voluntary. Id. at 485. This Court instructed trial courts to conduct a Faretta-type¹ inquiry in

¹ Faretta v. California, 422 U.S. 806 (1975).

these situations, and after conducting such a hearing, the court could order a mental health evaluation if there were any questions in the judge's mind regarding the defendant's competency.

In 2015 the rules of criminal procedure were amended. The committee notes state "Because the Sixth Amendment does not apply to postconviction proceedings . . . a defendant has no constitutional right to self-representation in postconviction matters." The committee also concluded that the capital postconviction process would function more effectively if defendants were represented by counsel. Presently, a capital defendant can dismiss counsel but only where the defendant also dismisses the postconviction proceedings. The procedure for determining whether it is appropriate to permit a defendant to dismiss counsel and waive postconviction claims is contained in Florida Rule of Criminal Procedure 3.851(i).

Here, the circuit court conducted a thorough inquiry of Wall to determine if he was competent to dismiss both collateral counsel and his postconviction proceedings. The court asked Wall if he understood the consequences of dismissing counsel and waiving postconviction proceedings, including that it would be "warrant ready." (111). Wall responded that, in fact, collateral counsel would file an appeal of any order dismissing counsel and waiving the claims. (111). When the court again sought a

response from Wall he stated, "Do you think I understand it?" (113). Wall, as is typical of his behavior, engaged the court in a conversation about his actions, his willingness to accept death as a punishment, and his experience in the Department of Corrections. (124).

Wall's loquaciousness is typical of him. It is not an indication that Wall is not competent. Instead, as he did throughout the trial proceedings, Wall engaged the court in a "back and forth" about the law, Wall's experience, and Wall's knowledge of legal procedure and precedent. Ultimately, though, Wall stated that he understood what he was doing and wanted to discharge postconviction counsel and waive his postconviction proceedings. The postconviction court noted that Wall was oriented, understood the process, and conducted relevant legal research. He understood the consequences of his decisions. The court did not observe anything giving rise to a concern about Wall's competency. (120, 122). The postconviction court did not abuse its discretion in finding Wall competent to waive his postconviction counsel and proceedings; therefore, this Court should affirm.

ISSUE III

**THE POSTCONVICTION COURT PROPERLY STRUCK CAPITAL
COLLATERAL REGIONAL COUNSEL'S MOTION FOR
POSTCONVICTION RELIEF IN WALL'S CASE BECAUSE CCRC DOES
NOT REPRESENT WALL AND HAS NOT BEEN AUTHORIZED TO FILE
ANY PLEADINGS ON HIS BEHALF.**

Preliminarily, this issue is not properly before this Court in this appeal. The postconviction court granted Wall's motion to discharge counsel and waive postconviction proceedings. The only issue properly before this Court is whether Wall was competent to do so. Review in this Court is automatic per Rule 3.851(i)(8)(B). The fact that the rule provides that discharged counsel file a brief on the issue of competency does not mean that counsel represents Wall in any other capacity.

Not only was CCRC without authority to file the postconviction motion, it is without authority to seek review of the order striking that motion. CCRC has filed a notice of appeal of the order striking the motion and a motion to consolidate. This Court has assigned case number SC19-1838 to that appeal. CCRC also filed a motion to consolidate the instant case with case number SC19-1838. The State of Florida filed a response to the motion to consolidate and a motion to strike the appeal in case number SC19-1838.

Should this Court reach this issue, Appellant has failed to establish that the postconviction court abused its discretion in

striking the unauthorized pleading. It is irrefutable that counsel was discharged prior to the filing of the motion. In fact, Wall filed his pro se motion to discharge counsel or dismiss postconviction proceedings on July 16, 2019. A status hearing was held on August 2, 2019, where the motion was mentioned. The Court set a hearing for August 23, 2019, so that Wall could appear in person. The order granting the motion and discharging counsel was not entered until September 26, 2019. The State does not dispute that October 9, 2019, was the date after which Wall's postconviction motion would have been untimely. That does not change the fact that after August 23, 2019, when the postconviction court orally granted the motion, CCRC did not represent Wall. Even given the benefit of the doubt and using the date the written order was rendered, the motion was filed almost a week after counsel was discharged. Therefore, the postconviction court was correct in striking the postconviction motion filed by CCRC *after* CCRC was discharged from representing Wall. See Durocher, 623 So. 2d at 485 (stating that CCR has no standing to file pleadings on behalf of a defendant once discharged).

CONCLUSION

The State respectfully requests Appellant's convictions and sentences be affirmed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of November, 2019, a true and correct copy of the foregoing has been furnished electronically via the Florida Courts e-Filing Portal to Sara Macks, Assistant State Attorney, State Attorney's Office, Sixth Judicial Circuit, Post Office Box 5028, Clearwater, Florida 33758 (**SA6eService@pinellascounty.org** and **smacks@co.pinellas.fl.us**); Adrienne Joy Shepherd, Lisa Marie Bort and Ali A. Shakoor, Assistant CCRC, Capital Collateral Regional Counsel - Middle Region, 12973 North Telecom Parkway, Temple Terrace, Florida 33637-0907 (**shakoor@ccmr.state.fl.us**, **shepherd@ccmr.state.fl.us**, **bort@ccmr.state.fl.us** and **support@ccmr.state.fl.us**); and by U.S. mail to Craig Alan Wall, Sr., DC #140726, Union Correctional Institution, Post Office Box 1000, Raiford, Florida 32083.

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

Respectfully submitted,

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