IN THE SUPREME COURT OF FLORIDA

CRAIG ALAN WALL, SR.,
Appellant,
v.

CASE NO: SC19-1727

STATE OF FLORIDA,
Appellee.
_____/

ON APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, IN AND FOR PINELLAS COUNTY, FLORIDA

PRO SE SUPPLEMENTAL BRIEF PURSUANT TO COURT ORDER DATED JUNE 18, 2020

Craig Alan Wall, Sr.
Appellant, pro se
Union Correctional Institution
P.O. Box 1000
Raiford, Florida 32083

TABLE OF CONTENTS

Page(s)

TABLE OF CITATIONS

ARGUMENT

This Court asks for reason to reconsider from Gordon v. State, 75 So.3d 200 (Fla. 2011).

If this Court is referring to whether or not Appellant filing pro se in THIS case violates Gordon, the answer is that Gordon does not apply in this filing. Appellant was made pro se by the lower tribunal, and collateral counsel was "DISCHARGED from representation", by signed court order, dated September 18, 2019. Unless or until this Court overturns that court order, Appellant remains pro se and currently is "without counsel." So Gordon does not apply here and now.

As to Gordon applying to Appellant's claims, Appellant hereby incorporates his "Pro Se Brief of Appellant", "Motion to Sever Appeals" (both pending under this case number); as well as the lower tribunal hearing transcript (ROA 82-174), as argument and evidence in support, and would further state:

1. Gordon specifically deals with pro se appeals before THIS COURT, relying on Davis v. State, 789 So.2d 978 (Fla. 2001), which only deals with DIRECT APPEAL, NOT pro se post-conviction in the lower tribunal.

This Court's ruling in Gordon is in conflict, and contrary to, Durocher v. Singletary, 623 So.2d 482 (Fla. 1993). Gordon violates stare decisis of Durocher. Durocher is controlling

because Gordon never rescinded from, or even addressed its conflict and inconsistency with Durocher.

In Florida, "Durocher" is synonymous with "pro se" and Durocher was a capital post-conviction case. This Court, and every court in this state, labels a "Pro Se Hearing" as a "Durocher/Faretta Hearing" (Faretta v. California, 422 U.S. 806 (1975)). Therefore, there is no question that "Durocher" MEANS "pro se" in Florida.

Durocher was capital postconviction, and this Court made it clear that capital defendants could proceed pro se in postconviction proceedings. "[i]f the right to representation can be waived at trial, we see no reason why the statutory right to collateral counsel cannot also be waived," id. 483. This Court also made clear that CCRC "has no duty or right to represent a death row inmate without that inmate's permission," id. 484-485.

Durocher is SPECIFICALLY USED in Florida for a defendant to proceed pro se via a "Durocher/Faretta Hearing," and Durocher was a capital postconviction defendant. Gordon violates Durocher. Martinez v. California, 528 U.S. 152 (2000), simply said it is up to the States to decide. This Court **already decided** in Durocher, and Martinez had no effect on Durocher and this Court has never claimed it did.

Further, this Court put NO STIPULATIONS in Durocher regarding waiving CCRC and proceeding pro se, and this Court definitely did NOT intend or envision FORCING forfeiture for ALL postconviction proceedings **in order to waive collateral counsel**, which 3.851(i) does.

2. Appellant also adopts the reasoned and sound dissent in Gordon by Chief Justice Canady (joined by Justice Polston):

> This is Mr. Gordon's case, and it is a case in which Mr. Gordon's life is at stake. I would not presume to impose postconviction appeal counsel on Mr. Gordon if he has made a knowing, informed, and voluntary choice to repudiate that counsel. It is true that appellants in direct criminal appeals do not have the right to be pro se. **but there is one very important difference between direct appeals and postconviction appeals**: a remedy is available for ineffective assistance of appellate counsel in direct appeals, **but no such remedy is available with respect to postconviction appellate counsel….** I conclude that it is an unwise and unfair policy to **saddle** such a litigant **with counsel against his wishes-particularly when the litigant is without meaningful remedy for ineffective assistance of counsel.**
> (emphasis added)

Chief Justice Canady's dissent is evident, in what occurrd at the lower tribunal, in this case.

3. Gordon violates the Equal Protection Clause of the Florida and U.S. Constitutions, and makes capital Appellants a Suspect Class, in two ways:

(a) Rich Vs. Poor Appellants: A rich person does not, and cannot, be assigned CCRC counsel under Fla. Stat. §27. The State cannot force a rich person to use his own money to hire counsel.

Indeed, there is no Florida Statute, case law or rule that this Court or any court has the authority to force a rich person to hire counsel in order to exercise statutory right to direct appeal or postconviction proceedings. Thus, a rich person would have no choice but to proceed pro se, or go pro se by design, by "choosing" not to hire counsel. Therefore, the rich in this State have a "right" to proceed pro se should they "choose" to be pro se and not hire counsel with their own money. The poor should be entitled to be pro se under equal protection. If the State is going to force CCRC on a poor person against his will, then the State must do so to **any** appellant-not just the poor. SEE: Griffin v. Illinois, 351 U.S. 12 (1956).

(b) 3.851(b)(6)&(i) and Gordon denies pro se rights to capital defendants in postconviction proceedings, while the rules of law for non-capital postconviction defendants grants them pro se rights. *Compare* Fla. R. Crim. P. 3.850, *with* Fla. R. Crim. P. 3.851, which creates a "suspect class" out of capital defendants.

4. Lastly, unlike the issues this Court found with Gaskin v. State, SC19-1097, or McDonald v. State, SC19-635, **Appellant is currently pro se**, as the lower tribunal made Appellant pro se and issued an order **dismissing all counsel. Appellant is currently without counsel**, and pro se, before this Court.

Further, Appellant wanted to proceed pro se with his postconviction appeals after he discharged counsel (and the lower tribunal made that abundantly clear, multiple times, on record), however the lower tribunal insisted Appellant could NOT discharge counsel and proceed pro se BECAUSE Gordon and 3.851(b)(6)&(i) outlaws this. So the lower tribunal told Appellant he could NOT "proceed" pro se, and that his ONLY choices were to proceed "saddled" with CRCC, or proceed with 3.851(i) and discharge CCRC-but only COUPLED WITH forfeiting ALL his postconviction appeals. Gordon and 3.851(b)(6), denied Appellant the right, or ability, to proceed pro se after he "affirmatively [sought] to discharge counsel", and proceed pro se in this case.

Appellant has made it clear that he is "affirmatively seeking to discharge counsel", AND ACTUALLY DID SO. However, Gordon and 3.851(b)(6)&(i) unconstitutionally **FORCED** him to forfeit **ALL** his postconviction proceedings by denying him the right under Durocher to proceed pro se after discharging counsel. Appellant, unlike Gaskin or McDonald, has suffered ACTUAL HARM under 3.851(b)(6)&(i) and Gordon (section (b)(6) being the result of Gordon), AND Appellant is also "affirmatively seeking to discharge counsel" and proceed pro se unlike Gaskin or McDonald.

CONCLUSION

Appellant asserts his rights under Durocher to not only waive counsel, but to proceed pro se. Durocher is controlling law in this State. Durocher grants **postconviction appellants** the right to not only "waive" CCRC, but ALSO to **proceed pro se.** Gordon violates Stare Decisis and is inconsistent with Durocher via "Durocher" being synonymous with "Pro Se" in Florida ("Durocher/Faretta Hearing"), and Durocher being postconviction.

The State has no legal authority to revoke Appellant's Due Process right to postconviction proceedings BECAUSE he exercised his right to waive CCRC. It is unconstitutional to FORCE Appellant to give up his rights to ALL postconviction appeals (violating his right to Due Process) as **PUNISHMENT** for exercising his right to waive collateral counsel. Fla.R.Crim.P. 3.851(b)(6)&(i) are unconstitutional.

The dissent in Gordon, by Chief Justice Canady, is evident in Appellant's case. CCRC-Middle violated State laws by illegally hiring a 1st year college graduate, then illegally assigning her as Appellant's First Chair + Lead Counsel; **THEN** Appellant was denied any "meaningful remedy for the ineffective assistance of counsel" (C.J. Canady dissent, Gordon at 203), via the lower tribunal refusing to hold a hearing under Fl. Stat. §27.711(12). Pro se status is the ONLY protection for an Appellant against these abuses by "agents of the State."

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, on this 27th day of July, 2020, that a true and correct copy of the foregoing brief has been sent via U.S. Mail to: Asst. Attorney General Marilyn Beccue, 3507 E. Frontage Rd., Suite 200, Tampa, Florida 33607; and Capital Collateral Regional Counsel, 12973 N. Telecom Pkwy., Temple Terrace, Florida 33637.

CERTIFICATE OF COMPLIANCE

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

Respectfully submitted,

Craig Wall, Sr. #140726
Union Correctional Institution
P.O. Box 1000
Raiford, Florida 32083