IN THE SUPREME COURT OF FLORIDA

CRAIG ALAN WALL, SR.,

Appellant,

v.

STATE OF FLORIDA,

Appellee.
_____/

CASE No. SC19-1727
L.T. No. 10-CF-003759

DEATH PENALTY CASE

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

SUPPLEMENTAL 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. 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 the 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 required by the rule. (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 § 27.711. 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).

On October 10, 2019, postconviction counsel filed an Initial Brief addressing Wall's competency to waive counsel and postconviction proceedings. The State of Florida filed its Answer Brief on November 15, 2019, and Wall filed his pro se Answer Brief on January 24, 2020. On June 18, 2020, this Court issued an order for the parties to address Wall's pro se "Motion to Declare Fla. R. Crim. P. 3.851(b)(6)&(i) Unconstitutional." This Court further ordered the parties to address whether Wall has a constitutional right to represent himself in postconviction.

SUMMARY OF THE ARGUMENT

There is no state or federal constitutional right to self-representation in postconviction. Consequently, Florida Statute 27.7001 and Florida Rules of Criminal Procedure 3.851(b)(6) and 3.851(i) are not unconstitutional. Neither the statute nor the rules violate the Sixth Amendment or the Due Process Clause. Nonetheless, this Court could reconsider whether capital defendants should be permitted to knowingly and voluntarily waive postconviction counsel and proceed pro se in a postconviction appeal. Because of concerns regarding finality and undue delay, however, capital defendants should not be permitted to represent themselves in postconviction circuit court proceedings. Instead, a competent capital defendant can waive counsel only if he or she is willing to waive any postconviction claims.

ARGUMENT

ISSUE

WHETHER THIS COURT SHOULD RECONSIDER GORDON V. STATE, 75 SO. 3D 200 (Fla. 2011) TO ALLOW CAPITAL DEFENDANTS TO WAIVE STATUTORILY IMPOSED COUNSEL IN POSTCONVICTION APPEALS.

Unquestionably, a competent capital defendant has a constitutional right to represent himself at trial. Faretta v. California, 422 U.S. 806 (1975). However, under both state and federal law, a capital defendant does not have the constitutional right to self-representation on direct appeal. See Davis v. State, 789 So. 2d 978, 980-81 (Fla. 2001); See also Martinez v. Court of

Appeal of Cal., 528 U.S. 152 (2000). Likewise, capital defendants do not have a constitutional right to postconviction counsel. Indeed, states are not constitutionally required to provide for postconviction relief, much less counsel for this avenue of challenge to their convictions. Pennsylvania v. Finley, 481 U.S. 551, 555 (1987). Appointment of counsel pursuant to § 27.7001[1], Fla. Stat. "was established to alleviate problems in obtaining counsel to represent Florida's death-sentenced prisoners in collateral relief proceedings," but "did not add anything to the substantive state-law or constitutional rights of such persons." Durocher v. Singletary, 623 So. 2d 482, 483 (Fla. 1993).

It has long been recognized that constitutional rights may be waived. See United States v. Mezzanatto, 513 U.S. 196, 201 (1995) (noting a "criminal defendant may knowingly and voluntarily waive many of the most fundamental protections afforded by the Constitution" citing cases and noting a criminal defendant may also waive rule-based rights); Peretz v. United States, 501 U.S.

[1] "It is the intent of the Legislature to create part IV of this chapter, consisting of ss. 27.7001-27.711, inclusive, to provide for the collateral representation of any person convicted and sentenced to death in this state, so that collateral legal proceedings to challenge any Florida capital conviction and sentence may be commenced in a timely manner and so as to assure the people of this state that the judgments of its courts may be regarded with the finality to which they are entitled in the interests of justice. It is the further intent of the Legislature that collateral representation shall not include representation during retrials, resentencing, proceedings commenced under chapter 940, or civil litigation." § 27.7001, Fla. Stat.

923, 936 (1991) ("The most basic rights of criminal defendants are similarly subject to waiver") (citations omitted). This Court has previously recognized that "a trend has developed toward permitting the waiver of constitutional rights, especially rights given to criminal defendants." Chames v. DeMayo, 972 So. 2d 850, 860 (Fla. 2007); Cf. McCoy v. Louisiana, 138 S. Ct. 1500, 1511 (2018) (finding trial counsel violated Defendant's Sixth Amendment right to autonomy at the time of trial).

If constitutional rights can be waived, there seems to be less rationale to preclude or limit a waiver of statutory "rights." See Finley, 481 U.S. at 556 (stating that the "right to counsel" in postconviction proceedings results from a state's decision to provide counsel and is not a command of the United States Constitution.); See also Gordon, 75 So. 3d at 203 (Canady, J. dissenting) (". . . it is an unwise and unfair policy to saddle such a litigant with counsel against his wishes . . .").

In Gordon this Court held that due to the complexity of the proceedings and the limited resources available to death row inmates, death-sentenced defendants are not permitted to proceed pro se in a postconviction appeal. Gordon, 75 So. 3d at 202. In so deciding, the Court adopted the reasoning in Davis.[2] Gordon, 75

[2] In Davis, this Court relied on the reasoning in Martinez to hold that there was no state right to self-representation in direct appeals, and, in this Court's discretion, pro se appeals were not permitted. Id. at 980-81. In Martinez, the United States Supreme

So. 3d at 202. In addition to the observation that there is no constitutional right to self-representation on direct appeal, the analysis in Davis considered the ability of capital defendants to raise claims of ineffective assistance of appellate counsel through a habeas petition. There is no such cognizable action in postconviction proceedings relating to the performance of collateral counsel in a postconviction appeal. Id. at 981.

In 2014, in conjunction with the passage of the Timely Justice Act, See Ch. 2013-216 Laws of Florida, this Court made a number of changes to the rules of procedure governing capital postconviction proceedings. Among those changes was an extension of Gordon's prohibition against capital pro se representation to include postconviction proceedings in the circuit courts. See In re Amends. to Fla. Rules of Jud. Admin.; Fla. Rules of Crim. P.; and Fla. Rules of App. P. Capital Postconviction Rules, 148 So. 3d 1171, 1173-74 (Fla. 2014). The rule was amended to include Fla. R. Crim. P. 3.851(b)(6), which reads: "A defendant who has been sentenced to death *may not* represent himself or herself in capital

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Court held that a defendant did not have a constitutional right to represent himself on direct appeal. The Court distinguished the right to represent oneself at trial, based on Faretta, from a right to represent oneself on appeal because (1) unlike self-representation at trial, there is no historical right to represent oneself on appeal, (2) the Sixth Amendment does not provide a basis for relief because it pertains only to trial proceedings, and (3) the Due Process Clause does not require a right to self-represent on appeal based on individual autonomy after conviction since there is no longer a presumption of innocence. Id. at 156-162.

postconviction proceedings in state court. The only basis for a defendant to seek to dismiss postconviction counsel in state court shall be pursuant to statute due to actual conflict or subdivision (i) of this rule." (emphasis added). Consequently, a capital defendant can dismiss postconviction counsel but only if the defendant also waives his or her postconviction claims.

Years before the Timely Justice Act and the amendments to the rules of procedure that followed, this Court held that "[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." Durocher, 623 So. 2d at 483 (internal citations omitted). This Court further stated that the right to postconviction counsel may be waived after the postconviction court conducts an inquiry of the defendant "to determine if he understands the consequences of waiving collateral counsel *and* proceedings." Id. (emphasis added). Like Fla. R. Crim. P. 3.851(b)(6), this strikes the proper balance between the inmate's autonomy and the goal that "judgments are regarded with the finality to which they are entitled in the interests of justice." § 27.7001, Fla. Stat.

While this Court has the inherent ability to permit pro se representation on appeal of a postconviction order, Rule 3.851(b)(6) would need to be amended to permit pro se representation in circuit court postconviction proceedings. There are a host of procedural and practical problems that would arise

if capital defendants were to represent themselves during the circuit court postconviction proceedings. For example, in certain cases additional safety measures would need to be enacted, evidentiary hearings would likely be delayed or prolonged, hybrid representation would likely become the norm. United States v. Daniels, 572 F.2d 535, 540 (5th Cir. 1978) ("The criminal defendant does not have the right, however, to a 'hybrid representation,' partly by counsel and partly by himself."); Logan v. State, 846 So. 2d 472, 474 (Fla. 2003)(stating the Constitution does not "guarantee that the accused can make his own defense personally and have the assistance of counsel.") The pretrial proceedings in this case are an example of the delay and manipulation that would occur if capital defendants were permitted to represent themselves in the circuit court.

Even if waiver of postconviction appellate counsel is permitted, this Court retains the discretion to prohibit pro se representation in appropriate circumstances such as preventing frivolous pleadings and avoiding undue delay. See Davis, 789 So. 2d at 980–81; See also State v. Spencer, 751 So. 2d 47, 48 (Fla. 1999)(stating, "any citizen, including a citizen attacking his or her conviction, abuses the right to pro se access by filing repetitious and frivolous pleadings . . ."). Such limitations would not intrude on any constitutionally protected right.

CONCLUSION

To the extent this Court reconsiders its holding in Gordon, it should also consider the practical and procedural issues that would arise with permitting pro se representation in a postconviction appeal. Capital defendants have no constitutional right to represent themselves in any postconviction proceedings. Consequently, rules and or statutes prohibiting pro se representation are not unconstitutional.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of July, 2020, I electronically filed the foregoing with the Clerk of the Court by using the Florida Courts E-Portal Filing System which will send a notice of electronic filing to the following: Lisa Marie Bort, Ali A. Shakoor, and Adrienne Joy Shepherd, Assistants CCRC, Office of the Capital Collateral Regional Counsel-Middle, 12973 North Telecom Parkway, Temple Terrace, Florida 33637, **bort@ccmr.state.fl.us**, **shakoor@ccmr.state.fl.us**, **shepherd@ccmr.state.fl.us**, and **support@ccmr.state.fl.us**; Sara Macks, Assistant State Attorney, Office of the State Attorney, Post Office Box 5028, Clearwater, Florida 33758, **smacks@co.pinellas.fl.us**.

The undersigned further certifies that a copy of the foregoing has been furnished by U.S. mail this date 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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