

IN THE SUPREME COURT OF THE UNITED STATES

NO. 15-9000

EARL FORREST,
Petitioner,
v.
CINDY GRIFFITH, Warden,
Potosi Correctional Center,
Respondent.

**On Petition For A Writ of Certiorari To The
Supreme Court of Missouri**

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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STATEMENT OF THE CASE

A jury convicted Earl Forrest of three counts of first-degree murder in the Platte County (Missouri) Circuit Court. *State v. Forrest*, 183 S.W.3d 218, 222 (Mo. banc 2006). After the penalty-phase trial, the jury found multiple statutory aggravating circumstances. With regard to the murder of Harriett Smith, the jury found that: (1) her murder was committed while Forrest was engaged in the commission of the unlawful homicide of Michael Wells, and (2) Forrest murdered Smith for the purpose of receiving something of monetary value. As to the Michael Well's murder, the jury found that Wells was murdered for pecuniary gain. Lastly, the jury found the murder of Joan Barnes was committed against a peace officer, who was engaged in the performance of her official duty. *Id.* at 223, 232. The jury recommended death sentences, sentences the trial court imposed.

The circumstances surrounding Forrest's murders of the three victims are as follows: Around 10:00 a.m., on December 9, 2002, Forrest, who had been drinking whiskey that morning, along with his then girlfriend Angela Gamblin, drove to Harriett Smith's¹ house. Forrest went into the house while

¹Although they had been friends for years, Forrest and Smith had argued about whether Smith would purchase a lawnmower and trailer for Forrest, items that Forrest believed she owed him for introducing her to a source for

Gamblin remained in the car. Inside the house, Smith and Michael Wells, a friend of Smith's, were in the living room. Eddie Starks, Smith's boyfriend, was in one of the back bedrooms using the computer. As Forrest entered the house, he said to Smith, "All I asked you for was a fucking lawnmower." Smith responded, "Earl, I'll get you a lawnmower. Calm down." Forrest then asked if anyone else was in the house; Smith responded, "Eddie." Forrest fired two shots with a gun he had brought to the Smith home. One shot hit and killed Wells. The other shot hit Smith.

Smith screamed and ran out of the house. She got into the driver's seat of Gamblin's car. Smith put the car in reverse and attempted to back up. Gamblin started yelling at her and asked her what was wrong. Smith did not answer. Smith continued to back up but hit a tree; the car was stuck. Gamblin got out of the car.

In the meantime, Forrest came outside and fired the gun into the air. Forrest walked up to Gamblin's car and got in on the passenger side. Gamblin walked up to the car and screamed, asking Forrest and Smith what was going on. Smith told her not to worry about it and said, "I'm sorry. I'll make it right. I'm sorry." Forrest said not to worry and that "everything would be okay."

her methamphetamine. Forrest and Smith also argued about Forrest's failing to help Smith around her house as he had previously promised.

Smith got the car unstuck and drove back towards the house. Smith and Forrest left the car and walked inside. Meanwhile, an uninjured Starks left Smith's house, and ran to a neighbor's house to get help.

Back at Smith's house, Gamblin remained outside and looked at the damage to her car; as she started to get inside the car, she noticed blood all over the driver's seat where Smith had been sitting. Forrest came outside a few minutes later carrying the gun and a metal lockbox. Forrest got into Gamblin's car and told Gamblin to drive home.

Forrest and Gamblin returned to his house. Forrest shot the lockbox to open it. He injected himself with some of the methamphetamine that was inside the box. When Gamblin remarked that there was a lot of methamphetamine inside the box, Forrest stated it was worth approximately \$25,000.

Meanwhile, Starks returned to the Smith home with his friend Karen Ruth Workman and her daughter Karen Kozak. Workman ran inside and saw Wells on the couch; he did not have a pulse. Workman started screaming for Smith and looking through the house. Starks and Workman found Smith in her bedroom, "slumped" against the bed; she did not breathe or have a pulse. Workman returned to the living room and called 911. After searching for Smith's metal lockbox of methamphetamine, they left the house and waited outside for officers.

After receiving a dispatch relating to Forrest's involvement in the shooting at Smith's residence, Sheriff Bob Wofford and Deputy Sharon Joann Barnes arrived at Forrest's house. Inside the house, Gamblin noticed the officers coming up the driveway and told Forrest that they were there; Forrest told her to answer the door. When Gamblin opened the door, Sheriff Wofford asked for Forrest; Gamblin stepped away from the door. Sheriff Wofford noticed that as Forrest walked toward the door, he took a gun from behind his thigh; Sheriff Wofford warned Deputy Barnes that Forrest had a gun. Forrest squatted beside the door, raised his gun, pointed it out the door, and began shooting officers. Sheriff Wofford returned fire. Forrest and the officers continued to exchange gunfire. Suddenly, the gunfire stopped, and Sheriff Wofford noticed that Deputy Barnes was lying on the ground, not breathing, with blood coming out of her ears. Sheriff Wofford noticed that he had also been shot. He returned to his patrol car and called for help. Sheriff Wofford could see inside the house, and he noticed Forrest sitting on the sofa, looking at the officer, and fiddling with something. Sheriff Wofford took another shot at Forrest from the patrol car, and then could no longer see Forrest inside the house.

Sheriff Wofford again called for help. When officers arrived, including Officers Sigman and Piatt of the Salem Police Department, gunfire from inside and outside the house began again. Officer Sigman noticed Sheriff

Wofford's gunshot wound to his abdomen. Officer Sigman fired five rounds over the house so Officer Piatt could take Sheriff Wofford behind another patrol vehicle for safety. Forrest did not return fire. Sheriff Wofford was removed from the scene by ambulance and treated at the hospital.

Meanwhile, inside Forrest's house, at some point during the exchange of gunfire, Gamblin was shot in the shoulder and back. Gamblin fell against the wall behind the couch. Forrest ran into the bedroom and looked out the window. The shooting stopped, and Forrest returned to the living room and crouched down near Gamblin. Forrest had been shot in the face. Forrest said he was going to surrender; he had put some of the methamphetamine in his mouth. Forrest crawled to the door and started yelling, "I surrender. We need help. People down."

At this point, Corporal Folsom and Sergeant Roark, with the Missouri Highway Patrol, arrived at Forrest's residence and approached the residence from the rear. As they approached the house, they noticed Deputy Barnes lying on the ground but did not locate Forrest at first. Folsom then noticed Forrest's hands at the doorway of the house and told Forrest to crawl out so Folsom could determine whether Forrest had any weapons. Forrest crawled out of the house, and Folsom apprehended him. After arresting Forrest and placing him in handcuffs, Folsom noticed that Forrest had a large hunting knife in a sheath on his side. As Folsom took the knife, he noticed that

Forrest had a wound to his face.

Roark then entered the house to see if any other individuals were inside. Roark located Angela Gamblin, who was face down on the floor, crying and in pain. Roark noticed a great deal of blood but could not tell the extent of her injuries. Gamblin told Roark that Forrest started shooting and that Sheriff Wofford returned fire and shot her. Gamblin also stated that she and Forrest had previously gone to the Smith house. Gamblin was later taken to the hospital.

Meanwhile, Folsom checked on Deputy Barnes. Deputy Barnes was lying on her side with her face down. Her service pistol was still holstered. Folsom rolled her over onto her back and tilted her head back. She had a bullet wound in her chest. She was still breathing but had blood coming out of her ears. Folsom rolled her onto her side to attempt to allow one lung to function. Folsom then noticed that she also had a gunshot wound to the back of her head. Deputy Barnes was transported to St. Louis Hospital where she died.

Folsom and Roark processed the scene at Forrest's residence. Inside the home, they recovered: several .22 caliber shell casings; a .22 caliber bullet fragment; a .40 caliber bullet fragment from a hole in a wall; a .22 caliber Ruger semiautomatic pistol (with blood on it) lying on the floor near the doorway of the master bedroom; an empty magazine next to the pistol; a full

box of 100 rounds of .22 caliber ammunition; a partially used box of 100 rounds of .22 caliber ammunition; Harriett Smith's brown metal lockbox with gunshot holes in the side, containing large bags of methamphetamine; a black web belt with a holster lying on the sofa; drug paraphernalia including stash boxes and pipes, small plastic baggies, glass tubes normally used for ingesting various types of drugs; another .22 caliber semiautomatic rifle lying on the floor near the refrigerator; five .22 caliber shell casings found in the dining room and kitchen; a Ruger magazine on the coffee table; and a large hunting knife propped up against one of the living room walls. A 1996 Chrysler vehicle, registered to Angella Gamblin, was parked in front of the house. Inside the vehicle, officers located various blood stains on the seat of the driver's area and on a white cotton towel on the back of the seat. The blood stain extracted from the seat was later DNA tested and was found to be consistent with Smith.

After processing the scene at Forrest's residence, Folsom and Roark went to the Smith residence to process the scene. They seized two .22 shell casings; one from the living room sectional couch and another lying on the floor near the couch.

In the bedroom, where Harriett Smith was located, there was a large amount of blood on the bed and some blood spatter on the wall. Officers noticed several gunshot wounds to Smith and a large amount of blood

covering her body. At the front door of the residence, officers located a bullet hole, approximately two feet from the ground. In the living room, officers noticed that Michael Wells had a gunshot wound to the facial area.

Smith had a bullet wound to the right leg. She had a bullet removed from her left breast. She had two bullet wounds to her back, including one in her lower back. Her left hand had two bullet wounds, one in her wrist and one in the palm of her hand; these were close contact wounds. She had two bullet wounds to her face, including a gunshot wound above her left eyebrow, which was also a close contact wound.

The fatal gunshot wounds to her head caused extensive brain damage and caused her to stop breathing. The gunshot wounds to her back entered her spleen, her lungs, and her liver. Various bullets and bullet fragments were removed from Smith's body.

Wells had a close contact gunshot wound to his head, near his eye. The wound damaged his eye and penetrated his skull and traveled into the sinuses in front of the brain. The gunshot wound caused him to hemorrhage around his brainstem and cerebellum and would have stopped his breathing.

Barnes had two gunshot wounds; one gunshot wound was to the back of her head, near her left ear, and one gunshot wound was to her abdomen in the gastric area. The wound to the abdomen damaged her colon and caused internal bleeding. The wound to her head went through the scalp and the

cranium bone and traveled from the left side of the brain to the right side of the brain. Barnes's cranium was torn and fractured. The gunshot wound to her head was fatal. Bullet fragments and a bullet were retrieved from Deputy Barnes's body.

Forrest did not testify on his own behalf during the guilt phase, but presented one witness, Dr. Robert Smith, a psychologist, who testified that he diagnosed Forrest with dysthymic disorder, cognitive disorder, and substance dependence.

The jury found Forrest guilty of all three charges of first-degree murder.

During the penalty phase, the State presented evidence regarding: Forrest's possession, as a felon, of a concealed .22 caliber handgun; illegal possession of a four-inch-long-gravity-type knife; possession of methamphetamine; possession of a .44 Ruger handgun while he was living in California; the prior conviction of possession of a weapon by a felon; evidence regarding possession several bags of methamphetamine, drug paraphernalia, stolen checks, and cash; and evidence regarding the impact of the victims' deaths on their families.

At the close of the evidence, instructions and argument, the jury recommended capital punishment for Forrest for each murder. The trial court sentenced Forrest to death for each count of murder.

Forrest appealed his conviction and sentence. The Missouri Supreme Court affirmed. *State v. Forrest*, 183 S.W.3d 218 (Mo. banc 2006). Forrest then sought post-conviction relief. The motion court denied relief, and the Missouri Supreme Court affirmed. *Forrest v. State*, 290 S.W.3d 704 (Mo. banc 2009). The court of appeals affirmed the district court's denial of federal habeas relief. *Forrest v. Steele*, 764 F.3d 848 (8th Cir. 2014), *cert. denied*, 136 S.Ct. 35 (2015). The Missouri Supreme Court set Forrest's execution for May 11, 2016 (App. A-2 to A-5).

Here, Forest seeks review of the Missouri Supreme Court's January 21, 2016 order denying his petition for writ of habeas corpus in case no. SC95479 (App. A-1). In that case, Forrest sought state habeas relief because he claimed the death penalty constitutes cruel and unusual punishment in violation of the Eighth Amendment and Art. I, § 21 of the Missouri constitution. (App. A-8 to A-43). On January 21, 2016, the Missouri Supreme Court issued a summary order denying Forrest's petition (App. A-1).

REASONS TO DENY CERTIORARI

A. This Court lacks jurisdiction to review the Missouri Supreme Court’s decision because the state high court had “separate, adequate, and independent” state law grounds for denying Forrest’s petition for writ of habeas corpus.

This Court lacks jurisdiction to review a decision from a state’s highest court when the state court decision was based on an independent and adequate state law ground. *Michigan v. Long*, 463 U.S. 1032, 1041-42 (1983). In *Long*, this Court explained that the principle that the Court “will not review judgments of state courts that rest on adequate and independent state grounds is based, in part, on ‘the limitations of our own jurisdiction.’” *Id.* (quoting *Herb v. Pitcairn*, 324 U.S. 117, 125 (1945)).

Here, the Missouri Supreme Court had an independent and adequate state law ground for denying Forrest’s petition for writ of habeas corpus because Forrest failed to raise his Eighth Amendment claim in earlier proceedings as required under Missouri law in order, to preserve the claim for review. See *State v. Newlon*, 627 S.W.2d 606, 611-12. (Mo. banc 1982)(Eighth Amendment challenge cognizable on direct appeal). In Missouri, “a claim must be presented ‘at each step of the judicial process’ in order to avoid default.” *Arnold v. Dormire*, 675 F.3d 1082, 1087 (8th Cir. 2012). Thus, where a state habeas petitioner could have, but did not, raise a

claim on direct appeal or during post-conviction proceedings, procedural default bars review of that claim in a state habeas proceeding. *See State ex rel. Strong v. Griffith*, 462 S.W.3d 732, 733, 738-9 (Mo. banc 2015); *see also State ex rel. Simmons v. White*, 866 S.W.2d 443, 446 (Mo. banc 1993); *Clay v. Dormire*, 37 S.W.3d 214, 217 (Mo. banc 2000).

In this case, Forrest failed to present his claim challenging the constitutionality of the death penalty as cruel and unusual punishment on direct appeal, *State v. Forrest*, 183 S.W.3d 218 (Mo. banc 2006), resulting in an independent and adequate state law basis for denying relief. Because Forrest failed to raise this claim during the ordinary course of review, Missouri law mandated denial of Forrest's constitutional challenge on procedural default grounds. *Simmons*, 866 S.W.2d at 446 (state habeas proceedings are not designed for "duplicative and unending challenges to the finality of a judgment.>").

Because procedural default was the "independent and adequate" state law ground for denying Forrest's petition, review of the Missouri Supreme Court's decision on certiorari exceeds "the limitations of [this Court's] jurisdiction." *Long*, 463 U.S. at 1041-42 (internal citation omitted); *see also Coleman v. Thompson*, 501 U.S. 722, 750 (1991) (explaining that the failure to raise a claim in the ordinary course of review creates an independent and

adequate state procedural bar which prevents federal review). This Court should thus deny Forrest's petition for a writ of certiorari.

B. Forrest's Eighth Amendment claim fails on the merits.

Even if the Missouri Supreme Court had not denied Forrest's state habeas petition on independent and adequate state law grounds, denial of the certiorari petition is warranted because Forrest's claim fails under the well-settled precedent of this Court. As his sole claim, Forrest challenges the constitutionality of capital punishment itself, claiming that "evolving standards of decency now dictate that the death penalty is cruel and unusual punishment." Petition 11.

As support for this claim, Forrest cites Justice Breyer's dissenting opinion in *Glossip v. Gross*, 576 U.S.____, 135 S. Ct. 2726 (2015) which suggests that modern society's "evolving standards of decency" have rendered the death penalty unconstitutional as cruel and unusual punishment. 135 S.Ct. at 2755 (Breyer, J., dissenting). However, Justice Breyer's dissent in *Glossip*, joined by only one other justice, does not represent the law.

The controlling precedent of this Court, as dictated by the majority opinion in *Glossip*, dictates dismissal of Forrest's claim. The majority in *Glossip* explicitly affirmed the constitutionality of the death penalty, noting "it is settled that capital punishment is constitutional..." *Glossip* 135 S.Ct. at 2732-3 (citing *Baze v. Rees*, 553 U.S. 35, 47 (2008)). In light of this Court's

“settled” precedent, Forrest’s categorical challenge to the death penalty as unconstitutional fails. This Court should deny his petition for certiorari on this basis.

CONCLUSION

This Court should deny the petition for the writ of certiorari.

Respectfully submitted,

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