

(ORDER LIST: 567 U.S.)

MONDAY, JUNE 18, 2012

ORDERS IN PENDING CASES

11-702 MONCRIEFFE, ADRIAN V. HOLDER, ATT'Y GEN.

The motion of petitioner to dispense with printing the joint appendix is granted.

11-1155 BLUE CROSS AND BLUE SHIELD V. FOSSEN, DALE, ET AL.

11-1221 HILLMAN, JACQUELINE V. MARETTA, JUDY A.

The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

11-9810 SIMMONS, ELLA L. V. BRAVERMAN, LESLIE C.

The motion of petitioner for leave to proceed *in forma pauperis* is denied. Petitioner is allowed until July 9, 2012, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

CERTIORARI GRANTED

11-8976 SMITH, CALVIN, ET AL. V. UNITED STATES

The motion of petitioners for leave to proceed *in forma pauperis* is granted. The petition for a writ of certiorari is granted limited to Question II presented by the petition.

CERTIORARI DENIED

11-882 McCALL, CHARLES W. V. UNITED STATES

11-1101 TIMBERRIDGE PRESBYTERIAN CHURCH V. PRESBYTERY OF GREATER ATLANTA

11-1119 YANG, RUI V. HOLDER, ATT'Y GEN.

11-1135 STUDENT DOE 1, ET AL. V. LOWER MERION SCHOOL DISTRICT

11-1173 BROWN, CHRISTOPHER V. CALAMOS, JOHN P., ET AL.
11-1219 GJERDE, SEAN V. STATE BAR OF CA
11-1227 SNELLING, LONNIE D. V. HAYNES, J. D., ET AL.
11-1228 BURNETT, BOYD V. CAMPBELL, INGRID A.
11-1230 DELANDER, STEVEN W. V. HUBBARD, WARDEN
11-1233 TORAIN, BILLY V. DEUTSCHE BANK NATIONAL TRUST CO.
11-1239 TELASCO, ANNE G. V. 7320 BISCAYNE, LLC
11-1242 ZORN, DANIEL, ET UX. V. DEMETRI, GEORGE, ET AL.
11-1264 HEARTS BLUFF GAME RANCH, INC. V. UNITED STATES
11-1267 LAHRICHI, ADIL V. LUMERA CORP., ET AL.
11-1280 FOSSEN, DALE, ET AL. V. BLUE CROSS AND BLUE SHIELD
11-1299 CALABRESE, DOROTHY V. SEBELIUS, SEC. OF H&HS
11-1303 GROVES, NATHAN A., ET AL. V. DARLINGTON, SC
11-1330 IRVIN, PAMELA V. RAY, LEON
11-1349 WEITZ COMPANY, LLC V. MACKENZIE HOUSE, LLC, ET AL.
11-1353 GOLDINGS, MORRIS M. V. UNITED STATES
11-1354 DEE, MICHAEL J. V. MAINE
11-1360 CLARK, ROBERT M. V. UTAH
11-1372 HOOK, MARY J. V. CIR
11-7711 PENDLETON, THOMAS V. UNITED STATES
11-8334 MYERS, ROBIN D. V. THOMAS, COMM'R, AL DOC, ET AL.
11-8335 PIERRE, PHILOME, ET AL. V. HOLDER, ATT'Y GEN.
11-8474 BOYD, LATHIERIAL V. JACKSON, WARDEN
11-8648 FERGUSON, SUSAN V. AVELO MORTGAGE, LLC
11-8978 MOORE, RODNEY, ET AL. V. UNITED STATES
11-9056 FERGUSON, SUSAN L. V. AVELO MORTGAGE, LLC
11-9259 ROSE, RONALD C. V. MICHIGAN
11-9263 SWEET, JOSEPH V. UNITED STATES

11-9330 MILLER, AUBREY R. V. UNITED STATES

11-9357 SMITH, ANTOINE V. MISSOURI

11-9433 NUNNERY, EUGENE H. V. NEVADA

11-9761 STRONG, JEROME V. MERRILL LYNCH

11-9776 AZIZ, WASIM V. BENNETT, DAVID, ET AL.

11-9780 STOUT, DEBORAH K. V. BASKERVILLE, WARDEN

11-9783 SMITH, JERRY L. V. FLORIDA

11-9787 BANKS, TOMMY E. V. MISSISSIPPI

11-9796 MUHAMMAD, MALIK A. V. MARIN COUNTY, CA

11-9798 PROPES, JOHNNIE R. V. TEXAS

11-9801 DOWDY, MARK R. V. VIRGINIA

11-9802 CHAPMAN, WILLIAM V. McEWEN, ACTING WARDEN

11-9803 MOORE, LARRY L. V. MARICOPA CTY. SHERIFF'S OFFICE

11-9806 ROBERTS, TODRICK P. V. FLORIDA, ET AL.

11-9814 POLEDORE, DENNIS J. V. THALER, DIR., TX DCJ

11-9823 WILEY, DIANTE V. ILLINOIS

11-9829 FONNER, PAUL V. INDIANA

11-9838 ANDERSON, JEROME V. PRUITT, A. K., ET AL.

11-9844) JACKSON, PAULETTE V. LOS ANGELES UNIFIED SCHOOL

11-9845) JOHNSON, ALICE V. LOS ANGELES UNIFIED SCHOOL

11-9847 LIRA, CARLOS V. FLORIDA

11-9856 POOLE, EDWARD E. V. CARTERET CTY. SHERIFF'S DEPT.

11-9868 ANDREW D. V. ARIZONA

11-9870 BLACKMAN, NAJEE V. INDIANA

11-9879 BROOKS, ISAAC V. WHIRLPOOL CORP., ET AL.

11-9932 COLEMAN, EVELYN D. V. ASTRUE, COMM'R, SOCIAL SEC.

11-9989 PETWAY, MICHAEL V. NATIONAL LABOR RELATIONS BOARD

11-9991 BRAXTON, DALY N. V. TUCKER, SEC., FL DOC, ET AL.

11-10015 RUELAS, JOHN R. V. RYAN, DIR., AZ DOC, ET AL.
11-10029 QUINTON, ERIC E. V. CLAY, WARDEN, ET AL.
11-10054 BUCKMAN, JOSEPH W. V. MASSACHUSETTS
11-10085 MARQUEZ, VICTOR V. MASSACHUSETTS
11-10103 BAKER, ANTRAVEIUS T. V. FLORIDA
11-10108 LOPEZ, CARLOS V. PHELPS, WARDEN
11-10122 MUNOZ, RAMON E. V. CATE, SEC., CA DOC
11-10155 SANCHEZ, RAUL A. V. CALIFORNIA
11-10197 HERNANDEZ, ARTURO J. V. CALIFORNIA
11-10212 ZEYON, TAILEY S. V. BURNS, ACTING SUPT., LAUREL
11-10224 BUSH, FELDON V. PHILADELPHIA, PA, ET AL.
11-10232 BARBARIN, ANTHONY V. SCRIBNER, WARDEN, ET AL.
11-10274 ALEXANDER, KEITH V. FOLINO, SUPT., GREENE
11-10313 SMITH, TICO J. V. UNITED STATES
11-10317 SEARCY, EDGAR J. V. UNITED STATES
11-10319 SOTO, RODERICK V. UNITED STATES
11-10323 BUTTS, COURTNEY J. V. UNITED STATES
11-10331 SMITH, FELICIA V. UNITED STATES
11-10351 PIPKIN, EDWARD T. V. UNITED STATES
11-10353 AMARO, DARNELL J. V. UNITED STATES
11-10357 CHAVEZ-CUEVAS, MARTIN V. UNITED STATES
11-10361 MYERS, VINCENT A. V. UNITED STATES
11-10364 TORRES-LARANEGA, JORGE V. UNITED STATES
11-10365 JOHNSON, ANTHONY V. UNITED STATES
11-10374 LACSON, PAUL R. V. UNITED STATES
11-10375 MALDONADO-TORRES, MARTIN V. UNITED STATES
11-10378 BRYANT, DOUGLAS C. V. UNITED STATES
11-10380 CANADA, VINCENT R. V. UNITED STATES

11-10381 CARMICHAEL, DEONZA L. V. UNITED STATES
11-10382 COULTER, SHELLA D. V. UNITED STATES
11-10383 DEVO, LEON A. V. UNITED STATES
11-10385 SOUTHERLAND, DENISE A. V. UNITED STATES
11-10387 KOUFOS, GEORGE J. V. UNITED STATES
11-10388 OLIVO, JOSE L. V. UNITED STATES
11-10390 ANDERSON, MERVIN G. V. UNITED STATES
11-10392 HERBST, MICHAEL V. UNITED STATES
11-10393 FREERKSEN, DEAN L. V. UNITED STATES
11-10394 GILLESPIE, DONALD S. V. UNITED STATES
11-10396 FORDE, NICHOLE M. V. UNITED STATES
11-10397 HAYMOND, ANDRE R. V. UNITED STATES
11-10398 GERMAN, ERIC V. UNITED STATES
11-10399 GREEN, JOE D. V. UNITED STATES
11-10402 HERNANDEZ-GONZALEZ, ADOLFO V. UNITED STATES
11-10414 GARZA, NOE N. V. UNITED STATES
11-10422 FORD, QUINDELL V. UNITED STATES
11-10426 UNDER SEAL V. UNITED STATES
11-10428 MOORE, KENNETH E. V. UNITED STATES
11-10430 GERHOLDT, TIMOTHY A. V. UNITED STATES
11-10435 WARREN, BRIAN K. V. UNITED STATES
11-10438 ROUNDSTONE, DALE A. V. UNITED STATES
11-10441 ALVERA-RAMIREZ, CARLOS V. UNITED STATES
11-10443 PORCELLI, PETER J. V. UNITED STATES
11-10444 WILLIAMS, FRANKLIN L. V. TAMEZ, WARDEN
11-10456 DHALIWAL, SUKHRAJ V. UNITED STATES

The petitions for writs of certiorari are denied.

11-1066 LUTZER, ERWIN V. DUNCAN, RICHARD A.

The motion of Alliance Defense Fund for leave to file a brief as *amicus curiae* is granted. The petition for a writ of certiorari is denied.

11-1139 GAUSS, RONALD S., ET AL. V. EPISCOPAL CHURCH OF CT, ET AL.

The motion of St. James Anglican Church, et al. for leave to file a brief as *amici curiae* is granted. The petition for a writ of certiorari is denied.

11-1234 REDEVELOPMENT AUTH., ET AL. V. R&J HOLDING, ET AL.

The motion of National League of Cities, et al. for leave to file a brief as *amici curiae* is granted. The petition for a writ of certiorari is denied.

11-1236 NELSON, DONNA L., ET AL. V. TIME WARNER CABLE INC., ET AL.

The petition for a writ of certiorari is denied. The Chief Justice took no part in the consideration or decision of this petition.

11-9344 EL FALESTENY, MAHER V. OBAMA, PRESIDENT OF U.S., ET AL.

The motion of respondents for leave to a file brief in opposition under seal is granted. The motion of petitioner for leave to file a reply brief under seal is granted. The petition for a writ of certiorari is denied.

11-9768 BLACKMON, CARL L. V. DOUGLAS, WARDEN

The motion of petitioner to defer consideration of the petition for a writ of certiorari is denied. The petition for a writ of certiorari is denied.

11-9797 MILLER, SIDNEY R. V. MARSHALL, MARILYN O.

11-9865 HOUSTON, CLAUDIA V. QUALITY HOME LOANS, ET AL.

The petitions for writs of certiorari before judgment are

denied.

11-10389 BASCIANO, VINCENT V. UNITED STATES

The petition for a writ of certiorari is denied. Justice Sotomayor took no part in the consideration or decision of this petition.

HABEAS CORPUS DENIED

11-10489 IN RE STEVEN T. HILL

The petition for a writ of habeas corpus is denied.

MANDAMUS DENIED

11-9785 IN RE DERRICK R. PARKHURST

11-10236 IN RE JOANENICE SHIELDS

The petitions for writs of mandamus are denied.

REHEARINGS DENIED

11-1072 COHEN, ALLYSON H. V. ALFRED & ADELE DAVIS ACADEMY

11-1095 GRAVES, MICHAEL B. V. IBT LOCAL 572, ET AL.

11-8257 WINSTON, MC V. TEGELS, WARDEN

11-8485 PANDEY, SACHCHIT K. V. RUSSELL, ROBERT H., ET AL.

11-8900 WILKINSON, JAMES V. CALIFORNIA

11-8953 VINSON, WAYNE V. U.S. MARSHALS SERVICE, ET AL.

11-8986 ROBINSON, SAVOY V. COLEMAN, SUPT., FAYETTE, ET AL.

11-8995 WALKER, CHAUNCEY L. V. CLARKE, DIR., VA DOC

11-9040 IN RE VICTOR J. BALZAROTTI

11-9084 MARQUARDT, BILL P. V. VAN RYBROEK, GREG

11-9214 McCARTHY, PATRICK V. SOSNICK, EDWARD, ET AL.

11-9839 BUSH, BARBARA V. UNITED STATES

The petitions for rehearing are denied.

11-1063 BLYE, TANESHA, ET AL. V. KOZINSKI, CHIEF JUDGE, USCA 9

The petition for rehearing is denied. Justice Breyer took

no part in the consideration or decision of this petition.

11-7106

CURTIS-JOSEPH, FUNMI M. V. RICHARDSON, JOHN W., ET AL.

The motion for leave to file a petition for rehearing is denied.

ATTORNEY DISCIPLINE

D-2658

IN THE MATTER OF DISBARMENT OF JOEL DAVID JOSEPH

Joel David Joseph, of Beverly Hills, California, having been suspended from the practice of law in this Court by order of April 16, 2012; and a rule having been issued and served upon him requiring him to show cause why he should not be disbarred; and a response having been filed;

It is ordered that Joel David Joseph is disbarred from the practice of law in this Court.

D-2674

IN THE MATTER OF ROBERT M. M. SETO

Robert M. M. Seto, of Virginia Beach, Virginia, having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys permitted to the practice of law before this Court. The Rule to Show Cause, issued on April 30, 2012, is discharged.

SOTOMAYOR, J., dissenting

SUPREME COURT OF THE UNITED STATES

WILLIAM SMOAK FAIREY, JR., AKA DOAK FAIREY *v.*
KENNETH S. TUCKER, SECRETARY, FLORIDA
DEPARTMENT OF CORRECTIONS, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 11–7185. Decided June 18, 2012

The petition for a writ of certiorari is denied.

JUSTICE SOTOMAYOR, dissenting from denial of certiorari.

Petitioner William Fairey was tried *in absentia* and without counsel on state felony charges. Although Fairey had not received actual notice of his trial date, the state court concluded that he had waived his right to be present when he failed to appear in court on the scheduled trial date. The State tried Fairey in his absence and, without having heard any defense, the jury found Fairey guilty. The court sentenced him to eight years' imprisonment and \$25,000 in restitution. Fairey sought relief on the ground that his trial *in absentia* violated the Sixth and Fourteenth Amendments. After exhausting state remedies, he filed a federal petition for writ of habeas corpus. The District Court denied relief. Both the District Court and the United States Court of Appeals for the Fourth Circuit denied a certificate of appealability (COA).

I believe a COA should have issued; at the very least, “the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U. S. 322, 327 (2003). An accused's right to be present at his own trial is among the most fundamental rights our Constitution secures. In view of the importance of the right involved and the obvious error here, I would grant the petition for a writ of certiorari and summarily reverse the judgment below.

I

In early 1998, South Carolina served Fairey with an arrest warrant for obtaining goods and moneys under false pretenses, a state felony. Fairey was released on his personal recognizance and the State dismissed the warrant. Some time later, Fairey moved from South Carolina to Sarasota, Florida. In 2001, South Carolina indicted Fairey for the charge underlying the warrant. Fairey proceeded *pro se* and defended himself actively. He filed motions, sought the discovery of documents, and corresponded with the court. Twice he traveled from Florida to South Carolina for proceedings.

In the fall of 2002, Fairey informed the state solicitor (hereinafter Solicitor) and the trial court of his new address in Castiac, California. Several months later, Fairey moved to quash his indictment. In that submission, he listed both the California and Florida addresses, the latter now denoted as a “temporary address.” Record in No. 4:09–cv–01610–RMG (D SC), Doc. 19, p. 160 (Exh. 10). Fairey explained: “Beginning February 23, I have been living temporarily in Sarasota, Florida, awaiting my next [work] assignment and my return to California.” *Id.*, at 171. He attended the hearing on his motion in March, and there submitted a motion to dismiss and an accompanying affidavit. Both listed only his Florida address. The trial court denied Fairey’s motion to quash and sent notice of its ruling to the Florida address alone. The Solicitor subsequently sent at least one letter to that address. Some 15 months later, the trial court denied Fairey’s motion to dismiss. Notice again was sent only to Florida.

In June 2004, the Solicitor subpoenaed Fairey to appear for trial in South Carolina the following month. Although Fairey’s most recent filing had listed only his Florida address, and both the trial court and Solicitor most recently had sent correspondence to that address alone, the Solicitor mailed the subpoena to two different addresses:

SOTOMAYOR, J., dissenting

the California address, and a South Carolina address listed on Fairey’s 1998 personal recognizance bond form. It is undisputed that Fairey did not receive the subpoena. Unaware of his trial date, he did not appear at trial. The State tried him in his absence, and the jury found him guilty after less than 30 minutes of deliberation.

When it came time to arrest Fairey, the State had no trouble locating him in Florida. After he was incarcerated, Fairey moved for a new trial. The trial court denied the motion and the South Carolina Court of Appeals affirmed. The court acknowledged that the Sixth Amendment guarantees the right of an accused to be present at every stage of his trial. 374 S. C. 92, 98–99, 646 S. E. 2d 445, 448 (2007). But the court concluded that Fairey had waived this right because (1) notice of his trial date was sent to his California address, which was the “permanent address for service of notice” in the record; and (2) Fairey had been warned on his 1998 personal recognizance bond form that trial would proceed in his absence if he did not attend. *Id.*, at 99–103, 646 S. E. 2d, at 448–450. After exhausting his state remedies, Fairey petitioned the United States District Court for the District of South Carolina for a writ of habeas corpus. The District Court denied relief, largely adopting the reasoning of the State Court of Appeals. The District Court and United States Court of Appeals for the Fourth Circuit denied a COA. See 441 Fed. Appx. 160 (2011). Fairey, proceeding *pro se*, petitioned for a writ of certiorari.

II

It is a basic premise of our justice system that “in a prosecution for a felony the defendant has the privilege under the Fourteenth Amendment to be present in his own person whenever his presence has a relation, reasonably substantial, to the fullness of his opportunity to defend against the charge.” *Snyder v. Massachusetts*, 291

SOTOMAYOR, J., dissenting

U. S. 97, 105–106 (1934). This longstanding right reflects the “notion that a fair trial [can] take place only if the jurors me[e]t the defendant face-to-face and only if those testifying against the defendant [do] so in his presence.” *Crosby v. United States*, 506 U. S. 255, 259 (1993); see also *ibid.* (“It is well settled that . . . at common law the personal presence of the defendant is essential to a valid trial and conviction on a charge of felony.” (quoting W. Mikell, *Clark’s Criminal Procedure* 492 (2d ed. 1918) (hereinafter Mikell))); *Diaz v. United States*, 223 U. S. 442, 455 (1912) (right to be present is “scarcely less important to the accused than the right of trial itself”). Thus in general, “if [the defendant] is absent [from trial], . . . a conviction will be set aside.” *Crosby*, 506 U. S., at 259 (quoting Mikell 492).

The Court has acknowledged only two exceptions to this general rule. First, at least in noncapital trials, a defendant may waive his right to be present “if, *after the trial has begun in his presence*, he voluntarily absents himself.” *Crosby*, 506 U. S., at 260 (quoting *Diaz*, 223 U. S., at 455). Second, “a defendant can lose his right to be present at trial if, after being warned that he will be removed if he continues his disruptive behavior, he nevertheless insists on conducting himself in a manner so disorderly, disruptive, and disrespectful of the court that his trial cannot be carried on with him in the courtroom.” *Illinois v. Allen*, 397 U. S. 337, 343 (1970). This case, of course, does not fall within either exception. Rather, the state court conceived an additional exception, one never recognized by this Court: waiver on the basis of a defendant’s actions *prior* to the start of trial. And the state court went on to conclude that Fairey’s actions established such waiver on the basis of two facts: the Solicitor mailed a subpoena to Fairey’s California address and Fairey acknowledged in his 1998 personal recognizance bond form that trial could proceed in his absence if he failed to

SOTOMAYOR, J., dissenting

attend.

Whether the Constitution permits the trial *in absentia* of a defendant who is not present at the start of trial is a serious question. It is one we expressly left open in *Crosby*, though not without noting that there are good reasons for distinguishing in this context between a defendant who was present at the start of trial and one who was not present at all. We observed that “the defendant’s initial presence serves to assure that any waiver [of the right to be present] is indeed knowing.” 506 U. S., at 261–262. And we noted that “the costs of suspending a proceeding already under way will be greater than the cost of postponing a trial not yet begun,” and so “[i]f a clear line is to be drawn marking the point at which the costs of delay are likely to outweigh the interests of the defendant and society in having the defendant present, the commencement of trial is at least a plausible place at which to draw that line.” *Id.*, at 261.

Even assuming that a waiver of the right to be present at trial could ever be found when the defendant was not initially present, the facts here do not remotely demonstrate such a waiver. Our cases clearly establish that “waiver is the intentional relinquishment or abandonment of a known right.” *United States v. Olano*, 507 U. S. 725, 733 (1993) (internal quotation marks omitted). A defendant’s waiver of a fundamental constitutional right is not to be lightly presumed; rather, a court must “indulge every reasonable presumption against waiver of fundamental constitutional rights.” *Carnley v. Cochran*, 369 U. S. 506, 514 (1962) (internal quotation marks omitted). It was not reasonable for the state court to conclude that Fairey intentionally abandoned his right to be present.

As a *pro se* litigant, Fairey represented himself actively in pretrial proceedings; he made two interstate trips to do so and demonstrated every intention of mounting a vigorous defense at trial. To be sure, he did not appear in court

SOTOMAYOR, J., dissenting

on his scheduled trial date. And he was informed on his bail recognizance form that trial could proceed in his absence if he was not present. But the form did not specify his trial date, and Fairey had no knowledge of that date as he did not receive the Solicitor's notice, which was sent to California and not to Fairey's most recent address in Florida. There is no suggestion, moreover, that Fairey was derelict in his duty to monitor the docket or to keep the State informed of his whereabouts. His most recent motion to the court provided only his Florida address. An affidavit submitted two weeks earlier stated that he was presently living in Florida. And Fairey had been contacted at his Florida address by both the Solicitor and court after that date. Until he informed the court that he had returned to California or moved elsewhere, he was justified in believing the State would continue to contact him at his Florida address. In short, while Fairey failed to appear in court on the date of his scheduled trial, his failure to do so was wholly inadvertent. Consequently, his absence does not demonstrate the intent necessary to establish waiver under our established case law.

I believe a COA should have issued and that our intervention is warranted. A trial conducted without actual notice to a defendant and in his absence makes a mockery of fair process and the constitutional right to be present at trial. That is particularly true where, as here, the defendant participated actively in his defense and kept the State informed of his whereabouts. I would grant the petition and summarily reverse the judgment below.