No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

ABEL PUENTE — PETITIONER
(Your Name)

vs.

JULIE L. JONES, ET. AL. —RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES CIRCUIT COURT OF APPEAL FOR THE ELEVENTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Abel Puente
(Your Name)

P. O. Box 719001
(Address)

Moore Have, Florida 33471
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

"WHETHER THE SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AND TO COUNSEL OF CHOICE, WHICH ALSO PROVIDED THE RIGHT TO DISCHARGE COUNSEL, WILL PROTECT A DEFENDANT WHO IN THE FIRST INSTANCE COULD AFFORD TO PAY FOR HIS OWN ATTORNEY AND AFTER SOME TIME SPENT INCARCERATED, BECOME INDIGENT AND UNABLE TO AFFORD TO PAY FOR A NEW RETAINED ATTORNEY; OR UNDER THESE CIRCUMSTANCES ABOVE MENTIONED, DOES DEFENDANT LOSE THE PROTECTION OF THE RIGHT TO COUNSEL OF CHOICE? IF IT IS SO, WHEN?

WHETHER THE SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AND TO COUNSEL OF CHOICE, WHICH ALSO PROVIDED THE RIGHT TO DISCHARGE COUNSEL, REQUIRES FOR TRIAL COURT TO CONDUCT A "SIXTH AMENDMENT INQUIRY" AS TO COUNSEL EFFECTIVENESS, WHEN DEFENDANT WHO IN THE FIRST INSTANCE COULD AFFORD TO PAY FOR HIS OWN ATTORNEY AND AFTER SOME TIME SPENT INCARCERATED, BECOME INDIGENT AND UNABLE TO AFFORD TO PAY FOR A NEW RETAINED ATTORNEY?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[√] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

1). Bondi, Pamela Jo ..... Florida Attorney General

2). Jones, Julie L ..... Florida Secretary of Department of Corrections

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLES OF AUTHORITIES CITED

Cases

Statutes

IN THE

SUPREME COURT OF THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINION BELOW

[√] For case from **federal courts**:

The opinion of the United States Court of Appeal appears at Appendix __A__ to the petition and is
[ ] reported at _____; or,
[√] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States District Court appears at Appendix __B____ to the petition and is
[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[√] is unpublished.

[ ] For case from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is
[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is
[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[√] For case from **federal courts**:

The date on which the United State Court of Appeal decided my case was May 21, 2018.

[ ] No petition for rehearing was timely filed in my case.

[√] A timely petition for rehearing was denied by the United States Court of Appeal on the following date: July 11, 2018, and a copy of the order denying rehearing appears at Appendix G .

[ ] an extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U.S.C § 1254(1).

[ ] For case from **state courts**:

The date on which the highest state court decided my case was _____ _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: ___ _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U.S.C § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

Article I, Section 16(a) of the Florida Constitution, also called as, "Rights of Accused and of Victims", entitles: "In all criminal prosecutions the accused shall ... have the right to ... be heard in person, by counsel or both..."

Sixth Amendment to the United States Constitution, entitles to all criminal defendants "procedural rights," states in pertinent part: "In all criminal prosecutions, the accused shall enjoy the right . . . to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence."

STATEMENT OF THE CASE

The petitioner was charged by felony information with two counts of sexual battery against his wife. In Count 1, it was alleged that the petitioner committed sexual battery by placing his penis in, or in union with, the victim's anus. In Count 2, it was alleged that the petitioner committed sexual battery by placing his penis in, or union with, the victims' mouth. (See, R. Vol. 1, pgs. 42-43).

After two days trial, the jury found the petitioner guilty as charged as to Count 1 and guilty of the lesser included offense of simple battery on Count 2. (See, R. Vol. 1, pgs. 98-99). The Criminal Punishment Code Scoresheet reflected a lowest permissible sentence of 100.65 months in prison. (See, R. Vol. 1, pgs. 106-107). The court sentenced the petitioner to time served on the misdemeanor conviction and to fifteen (15) years state prison on the sexual battery conviction. (See, R. Vol. 1, pgs. 103-104; 112-120). This sentence was ordered to run consecutively to a five (5) years sentence that the petitioner was already serving. (See, R. Vol. 1, pgs. 107).

The Petitioner, Abel Puente, appealed his conviction and sentence for one count of sexual battery in violation of Section 794.011(5), Florida Statute (2007), and the sentence imposed after a jury trial before Twentieth Judicial Circuit Judge Frederick R. Hardt, in Collier County, Florida on February 15-16, 2010. See, *Puente v. State*, 70 So.3d 594 (Fla. 2nd DCA 2011).

Trial Testimony

The victim, Juana Puente, and the Petitioner, Abel Puente were married in 2006. (See, R. Vol. 2, pg. 131). According to Juana Puente, petitioner moved out of their trailer approximately one week prior to the date of the alleged offense and moved in with his parents. (See, R. Vol. 2, pgs. 133; 135). Juana Puente testified that petitioner came over on the night of the offense to visit their children and as he was leaving, one child began crying because he wanted to go with his dad. (See, R. Vol. 2, pgs. 136-138). Petitioner came back inside and spoke to the child, and when he left again, the child began to cry. (See, R. Vol. 2, pg. 138). Juana Puente testified that she then locked the door and would not let petitioner back inside but he broke in through the front door. (See, R. Vol. 2, pg. 138).

Juana Puente said that petitioner was upset and screaming at her, he smelled of alcohol, and in front of their two small children, he pushed her and grabbed her hair. (See, R. Vol. 2, pgs. 131; 138; 140-141). According to Juana Puente, petitioner told her that he wanted to have sex with her, threw her down face first onto the bed, pulled her shorts down and inserted his penis into her anus against her will. (See, R. Vol. 2, pgs. 141-142). Juana Puente testified that while this was happening, their youngest child was hitting petitioner with the TV remote control and the oldest child was yelling at him to stop hitting their mother. (See, R. Vol. 2, pg. 142).

Juana Puente testified that in order to get away from the children, she told petitioner that she wanted to go into the bathroom and have sex there. (See, R. Vol. 2, pgs. 142-143). According to Juana Puente, she closed the bathroom door and petitioner told her he wanted her to perform oral sex on him, he grabbed her by the hair and made her put his penis inside her mouth against her will. (See, R. Vol. 2, pg. 144). Juana Puente testified that petitioner penetrated her anus with his penis once again while inside the bathroom. (See, R. Vol. 2, pg. 145).

When she heard the bathroom door rattle, Juana Puente told petitioner that one of their children was leaving which made petitioner leave the bathroom. (See, R. Vol. 2, pgs. 145-146). Juana Puente testified that she then attempted to crawl out of the bathroom window, while her pants were still off, and she yelled for help. (See, R. Vol. 2, pgs. 146; 163). According to Juana Puente, petitioner saw her trying to get out of the window and he pulled her back inside by her feet and hair. (See, R. Vol. 2, pg. 147). Juana Puente's father who lived in the trailer with Juana Puente came to investigate and said he was going to call the police. (See, R. Vol. 2, pgs. 147). After the petitioner left the trailer. (See, R. Vol. 2, pg. 147).

The police and paramedics arrived and Juana Puente was taken for an examination (See, R. Vol. 2, pgs. 148-149). Juana Puente testified that she did not know whether the petitioner ejaculated and said he was not wearing a condom during the alleged offense. (See, R. Vol. 2, pg. 150). Juana Puente

acknowledged that even though she was having marital problems, she and petitioner continued to have a sexual relationship up until the days of the offense. (See, R. Vol. 2, pg. 170).

After the victim, Juana Puente, testified, the state brought to the stand, the victim's father, Poncho Francisco. (See, R. Vol. 2, pg. 179 — R. Vol. 3, pg 196).

After the Poncho Francisco testified, the state brought to the stand, Deputy Sheriff Steven Blackwell. (See, R. Vol. 3, pgs. 196-216).

After the Deputy Sheriff Steven Blackwell testified, the state brought to the stand, Mrs. Yanez Camps, the paramedic who responded to the scene. (See, R. Vol. 2, pgs. 216-246).

After Mrs. Yanez Camps testified, the state brought to the stand, Diana Hansell, a nurse practitioner. (See, R. Vol. 3, pgs. 246-324).

After Mrs. Diana Hansell testified, the state brought to the stand, Linda Maran, a Domestic Violence Detective from Collier County Sheriff Office. (See, R. Vol. 3, pgs. 324- 372).

After Mrs. Linda Maran testified, the state brought to the stand, Tonya Garrett, Florida Department of Law Enforcement Forensic Technologist. (See, R. Vol. 3, pgs. 372 — R. Vol. 4, pgs -413).

After Mrs. Tonya Garrett testified, the state brought to the stand, Ida Puente, petitioner's mother. (See, R. Vol. 4, pgs. 413-441).

Thereafter the state rests its case in chief. (See, R. Vol. 4, pgs. 428-441).

During petitioner's case in chief, Juana Puente was recalled as a witness and testified that she was in the process of trying to become a U.S. citizen and had paid several thousand dollars to do so. (See, R. Vol. 4, pgs. 441-442). Defense counsel asked Juana Puente if she was aware of the Violence Against Women Act (V.A.M.A) and the prosecution objected. (See, R. Vol. 4, pg. 442). At a sidebar, the prosecutor expressed concern that the petitioner was opening the door to the fact that Juana Puente knew the law because the petitioner had battered her in the past. (See, R. Vol. 4, pgs. 442-443). Defense counsel indicated that he was doing what petitioner had instructed him to do and this line of questioning went against his advice to his client. (See, R. Vol. 4, pgs. 443-444). Juana Puente then testified that she was aware of a law that protected her victim of a crime "from her immigration status" and she used that law to help her citizenship. (See, R. Vol. 4, pgs. 448; 450). On cross-examination, Juana Puente testified that she did not report these other instances because she was afraid. (See, R. Vol. 4, pg. 453).

Juana Puente denied having any contact at all with the petitioner after he was arrested, but after she was done testifying, she apparently remembered that she had actually done so. (See, R. Vol. 4, pgs. 451; 468-469). Juana Puente recalled again and she finally admitted that she visited petitioner in jail on one occasion, but she said that on that visit, petitioner tried to convince her to withdraw the charges. (See, R. Vol. 4, pgs. 480-481).

The second witness for the defense was the petitioner, himself. The petitioner testified that he never moves out of his trailer where he lived with Juana Puente, though he would sometimes stay at his parent's house if he was working with his dad the next day. (See, R. Vol. 4, pgs. 500-501). On the night of the alleged incident, his mother dropped him off at his trailer and Juana Puente told him he had to watch the kids because she was going to go out. (See, R. Vol. 4, pg. 507). Petitioner told Juana Puente that he did not want to watch the children because he already bought a six-pack of beers and was planning to drink with a neighbor. (See, R. Vol. 4, pg. 507). Juana Puente was upset and left for an hour. (See, R. Vol. 4, pg. 508). When she returned, petitioner was outside drinking with his neighbor and Juana Puente told him to come inside. (See, R. Vol. 4, pgs. 508; 510). Petitioner eventually went inside because he needed to use the bathroom and asked Juana Puente where she had been because he thought she might be having an affair. (See, R. Vol. 4, pgs. 511-512).

While the two of them were in the bathroom, Juana Puente got furious with petitioner because he told her he was going to go out. (See, R. Vol. 4, pg. 514). Petitioner testified that Juana Puente was also mad at him because he told her that he was going to divorce her and he had ripped up her immigration papers. (See, R. Vol. 4, pg. 515).

When Juana Puente blocked petitioner from leaving the bathroom, he grabbed her arms and pushed her out of the way. (See, R. Vol. 4, pg. 517). According to petitioner, Juana Puente then became furious and attacked him.

(See, R. Vol. 4, pg. 517). Petitioner then grabbed Juana Puente, tried to push her out of the way again while she continued to hit him. (See, R. Vol. 4, pg. 518). Petitioner was able to exit the bathroom and he held the door shut from the outside while she tried to open it from the inside. (See, R. Vol. 4, pg. 518).

Petitioner then heard the bathroom window open and he heard the victim yelling for help and causing a commotion. (See, R. Vol. 4, pgs. 518-520). The petitioner went back into the bathroom and saw the victim stuck halfway out of the window. (See, R. Vol. 4, pg. 520). According to petitioner, Juana Puente clothes were still on during this time. (See, R. Vol. 4, pg. 522). Petitioner grabbed her, pulled her back inside the bathroom, and acknowledged that he may have grabbed her hair while doing so. (See, R. Vol. 4, pgs. 522, 568).

During this altercation, Juana Puente father walked into the bathroom and petitioner explained to him that he was trying to leave but Juana Puente prevented him from doing so. (See, R. Vol. 4, pgs. 523-524). After this conversation with Juana Puente father, petitioner left the trailer and went to his parents' house and the police found him there later that evening. (See, R. Vol. 4, pgs. 525-526).

Petitioner testified that Juana Puente visited him on four or five occasion while he was in custody, and during those visits, she told petitioner that she hated him and wanted to get vengeance on him because he threatened to divorce her and had ripped her immigration papers up. (See, R. Vol. 4, pgs. 527-529).

Petitioner testified that he did not have sexual relationship with Juana Puente on the day of the alleged offense, but the two had a continuing sexual relationship and had been intimate prior to this date. (See, R. Vol. 4, pg. 525). Petitioner denied committing any kind of sexual battery against Juana Puente and he denied pulling her pants down, dragging her into the bathroom or punching her in the face. (See, R. Vol. 4, pg. 530). Petitioner further testified that Juana Puente getting stuck in the window caused her injuries. (See, R. Vol. 4, pg. 570).

Motion to Discharge Counsel

In the middle of trial, defense counsel informed the trial court that the petitioner wished to exercise his constitutional right of self-representation. (See, R. Vol. 3, pg. 226). The trial court stated, "Well, that's very nice, but guess what? He is out of luck." (See, R. Vol. 3, pg. 226). Defense counsel stated that he did not want to proceed with any additional witnesses because petitioner had told him that he was "fired" and counsel concluded that he could not function with the petitioner. (See, R. Vol. 3, pgs. 226-227). The prosecutor asked for a hearing to be conducted and the trial court stated it was not required to grant the request after the trial has commenced. (See, R. Vol. 3, pg. 227). After the prosecutor and defense counsel opined that the petitioner had the right to represent himself at any stage of the proceedings, the trial court finally agreed to conduct a hearing. (See, R. Vol. 3, pg. 228).

At the hearing, the petitioner indicated that he was dissatisfied with the

manner in which his attorney had been conducting the trial and stated that he wanted to ask the questions and have his attorney just be the standby. (See, R. Vol. 3, pgs. 229-230). Defense counsel on several occasions attempted to clarify the petitioner's statements for the court and indicated that there had been a breakdown of the attorney/client relationship where petitioner wants to assume the role as the lawyer. (See, R. Vol. 3, pg. 230). The petitioner informed that trial court that there was favorable evidence available that had not been introduced and he was being denied a fair trial because of his attorney would not introduce evidence on his behalf; he will represent himself and do it on his own. (See, R. Vol. 3, pg. 232).

The trial court again inquired whether the petitioner had a right to do this in the middle of a trial and defense counsel indicated that he believed he could. (See, R. Vol. 3, pg. 233). The trial court noted that if the motion was done for the purpose of interfering with the proper process of the trial then it would not allow the petitioner to do so. (See, R. Vol. 3, pg. 234). Defense counsel stated that he did not believe the motion was made for that purpose, but instead told the trial court that the petitioner wants certain things done in a certain way. (See, R. Vol. 3, pg. 234).

After the recess, the trial court conducted a *Faretta*[1] inquiry and gave the petitioner the option of either proceeding with his attorney or representing himself. (See, R. Vol. 3, pgs. 236-240; 242). When repeatedly asked if he wished to keep his attorney, the petitioner answered that he would, but only if his

[1] *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525 (1975).

attorney was going to do what he was asking him to do. (See, R. Vol. 3, pgs. 242-243). Without ever getting an unequivocal answer from the petitioner as to whether he wanted to keep his attorney or proceed to represent himself, the trial court called the jury back in and the trial resumed. (See, R. Vol. 3, pg. 244).

At the beginning of the second days of trial, defense counsel asked the trial court to conduct another *Faretta* inquiry because the petitioner adamantly said that he does not want me to represent him as of this morning and we are no longer speaking. (See, R. Vol. 3, pg. 275). When the trial court asked if this were true, the petitioner stated that was not true, but he again expressed displeasure in how he was being represented and listed several specific examples to support his claim. (See, R. Vol. 3, pgs. 275-287).

The court made a finding that the petitioner has failed to demonstrate any specific omission or overt on the part of defense counsel that is a substantial or serious deficiency measurably below that of a competent counsel. Therefore, the court will not discharge defense counsel under *Nelson v. State*, 274 So.2d 256 (Fla. 4th DCA 1973) and appoint other counsel. (See, R. Vol. 3, pg. 287). The petitioner again tried to explain what he thought should be done in his defense and the trial court told him it was going to proceed with the trial at that time. (See, R. Vol. 3, pgs. 288-289).

When the jury returned, the petitioner began to address the jury directly on the issue that the trial court does not want them to hear the fact ...before the trial court excused them from the courtroom. (See, R. Vol. 3, pg. 291). The trial

court cautioned petitioner that he would not be allowed to remain in the courtroom if he disrupted the proceedings. (See, R. Vol. 3, pgs. 292-293).

The petitioner then informed the trial court that he was dismissing his attorney, but indicated that he did not wish to go forward without an attorney. (See, R. Vol. 3, pg. 293). The petitioner then asked the trial court to appoint him a lawyer. (See, R. Vol. 3, pg. 294). The trial court mistakenly believed that trial counsel was a court-appointed counsel instead of a privately retained counsel, and when this was noted, the trial court ruled that petitioner was not entitled to a court appointed attorney because he was not indigent. (See, R. Vol. 3, pgs. 294-295). However, an unidentified speaker pointed out that the petitioner had been declared indigent for expenses, as he was unable to pay for the services of an investigator. (See, R. Vol. 3, pg. 295). The petitioner again asked for the trial court to appoint him an attorney, and the trial court denied that request without comment. (See, R. Vol. 3, pg. 295).

REASON FOR GRANTING THE PETITION

This Court has, never addressed the issues presented in this case, in the past.

Petitioner first raised this issue in his direct appeal, which the Florida Courts of Appeals, per curiam, affirmed without a written opinion. (See, Appendix C). Then, petitioner raised this issue before the United States District Court for the Middle District of Florida under a petition for writ of habeas corpus under Title 18 U.S.C. § 2254. The United States District Court for the Middle District of Florida denied habeas relief. (See, Appendix B). After the United States District Court for the Middle District of Florida denial, petitioner filed for a Certificate of Appealability to the Eleventh Circuit Court of Appeal, which the Circuit Court denies said certificate. (See, Appendix A).

In the instant case, this Honorable Court has the opportunity to address "whether the Sixth Amendment right to effective assistance of counsel and to counsel of choice, which also provided the right to discharge counsel, will protect a defendant who in the first instance could afford to pay for his own attorney and after some time spent incarcerated, become indigent and unable to afford to pay for a new retained attorney; or under these circumstances above mentioned, does defendant lose the protection of the right to counsel of choice? If it is so, when?

Whether the Sixth Amendment right to effective assistance of counsel and to counsel of choice, which also provided the right to discharge counsel, requires for trial court to conduct a "Sixth Amendment Inquiry" as to counsel effectiveness, when defendant who in the first instance could afford to pay for his own attorney

and after some time spent incarcerated, become indigent and unable to afford to pay for a new retained attorney?

The closest case in this matter is *United States v. Gonzalez-Lopez*, 548 U.S. 140, 126 S.Ct. 2557 (2006), this case, however, is neither even on point, nor applies in the instant case. In *Gonzalez-Lopez*, this Court recognized that "under the Sixth Amendment, a defendant who does not require appointed counsel enjoys both the right to effective assistance of counsel and the right to choose who will represent him ... the erroneous deprivation of the right to counsel of choice, with consequences that are necessarily unquantifiable and indeterminate, unquestionably qualifies as a structural error." Id. at 149 (quoting *Sullivan v. Louisiana*, 508 U.S. 275, 282, 113 S.Ct. 2078 (1993)).

In the context of retained counsel, that "the Sixth Amendment provides that 'In all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defence'"; that "an element of this right is the right of a defendant who does not require appointed counsel to choose who will represent him"; that "the Sixth Amendment guarantees a defendant the right to be represented by an otherwise qualified attorney whom that defendant can afford to hire, or who is willing to represent the defendant even though he is without funds"; but that "the right to counsel of choice is circumscribed in several important respects." (See, Appendix F). In the other hand, Article I, Section 16(a) of the Florida Constitution guarantees to any defendant the right to self-representation, counsel or co-counsel, nowhere in the provision of the Florida Constitution reads

about a right to effective of counsel, nor the right to counsel of choice. (See, Appendix E).

It obvious that when this Court referred to "a defendant who does not require appointed counsel", it is referred to those defendants whose counsel was appointed to them in the first instance.[2] See, *Gonzalez-Lopez*, 548 U.S. at 151; See also, 18 U.S.C. § 3006A(c)("If at any stage of the proceedings, ... the court finds that the person is financially unable to pay counsel **whom he had retained, it may appoint counsel** as provided in subsection (b) and authorize payment as provided in subsection (d), as the interests of justice may dictate.)(Emphasis Added)(See, Appendix H).

In the instant case, petitioner hired a private retained counsel before his jury trial. At the end of the first day and the beginning of the second day of his jury trial, the petitioner asked trial court to dismiss his counsel based on the breakdown of communication in between them; and also, privately retained counsel asked the trial court to allow him to withdraw from representing petitioner based on the breakdown of communication in between them and due to petitioner being dissatisfied with his representation.

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[2] It is noteworthy that the United States District Court of Florida, Middle District "misinterpreted" the United States Supreme Court's statement as meaning that regardless of whether a counsel has been previously retained, if a defendant afterward requires an appointment of counsel, he never had a right of counsel of choice. (See, Appendix B). In addition, some of the United States District Court and some of the Circuit Court have interpreted this Supreme Court's statement in the same manner. See, *United States v. Ontiveros*, 550 Fed.Appx. 624, 633 (10th Cir. 2013); *Rollins v. Pierce*, 2014 U.S. Dist. LEXIS 35682 (District Of Delaware 2014)(Unpublished Opinion). In other hand, the Western District of Michigan interpreted this statement in a different manner. See, *Thomas v. Harry*, 2014 U.S. Dist. LEXIS 104156 (Western District of Michigan 2014)(Unpublished Opinion).

Concerning the matters before this Court, the Federal Circuit Courts had dealt with similar situations as this petitioner faced during his jury trial. For instance, the Fifth, Ninth and Eleventh Circuits Courts of Appeals have held that "the right to choose counsel is incomplete if it does not include the right to discharge counsel that one no longer chooses. A defendant exercises the right to counsel of choice when he moves to dismiss retained counsel, regardless of the type of counsel he wishes to engage afterward." Specially, the Eleventh Circuit Court faced a case where the court had to decide which standard applies when a defendant moves to replace retained counsel with appointed counsel. The Eleventh Circuit Court reversed and remanded the case with instructions, because, the right to choose counsel is incomplete if it does not include the right to discharge counsel that one no longer chooses[3]. See, *United States v. Jimenez-Antunez*, 820 F.3d 1267 (11th Cir. 2016)[4]; *United States v. Brown*, 785 F.3d 1337 (9th Cir. 2015); *United States v. Mason*, 668 F.3d 203, 212-15 (5th Cir. 2012).

However, none of the Circuit Courts of Appeals above-mentioned has addressed Gonzalez-*Lopez* in the context of the issues of "whether a trial court may conduct a Sixth Amendment Inquiry" as to counsel effectiveness before dismissing a private retained counsel and afterward appoint counsel", or "whether a defendant, without a showing of good cause, 'may discharge his retained counsel without

[3] The Eleventh Circuit Court's written opinion as presented in Appendix D covers both of petitioner's constitutional questions presented in this Certiorari. This opinion was issued in the context of which standard applies when a defendant moves to replace retained counsel with appointed counsel.

[4] See, Appendix D

regard to whether he will later request appointed counsel.'" Those are the constitutional questions presented before this Court today in this Certiorari.

In the other hand, the First, Second, Third, Fourth, Sixth, Eighth, and Tenth Circuit Courts of Appeals have held different from the Fifth, Seventh and Eleventh Circuit Courts of Appeals and their opinion are in direct conflict with each other courts. For instance, the First, Second, Third, Fourth, Sixth, Eighth, and Tenth Circuit Courts of Appeals have held that "a defendant's choice of counsel may be denied by a court's refusal to grant a continuance necessary to allow the chosen attorney to participate in the case. This issue has arisen when a defendant had not obtained an attorney by the time of trial, when a chosen attorney claimed that he or she had inadequate time to prepare for trial, or when a defendant sought to obtain a new attorney immediately before or during trial." Those Circuit Courts also require an "actual showing of good cause", in order to a court allowing a counsel to be dismissed and appoint a different counsel. See, *United States v. Maldonado*, 708 F.3d 38 (1st Cir. 2013); *United States v. Mota-Santana*, 391 F.3d 42 (1st Cir. 2004); *United States v. Griffiths*, 750 F.3d 237 (2nd Cir. 2014); *United States v. Tinsley*, 172 Fed.Appx. 431 (3rd Cir. 2006); *United States v. Horne*, 339 Fed.Appx. 343 (4th Cir. 2009)(Unpublished Opinion); *United States v. Trujillo*, 376 F.3d 593 (6th Cir. 2004); *United States v. Robinson*, 662 F.3d 1028 (8th Cir. 2011); *United States v. Holloway*, 826 F.3d 1237 (10th Cir. 2016); *United States v. Lowe*, 569 F.2d 1113 (10th Cir. 1978).

It seems like that there are a direct conflicting opinions amongst the Circuit Court of Appeals regarding those matter before this Court in this Certiorari,

therefore, petitioner respectfully asks this Honorable Court to grant this Certiorari, in order to resolve issues that are of great public importance.

CONCLUSION

The petition for a writ of certiorari should be granted in order to resolve an issue that it is of great public importance for the citizens of the United States.

Respectfully Submitted,

Abel Puente
DC # Y34288

CERTIFICATE OF SERVICE

I CERTIFY THAT the foregoing document has been furnished to the Office of the Attorney General, Criminal Appeals Division, PL-01, The Capitol, Tallahassee, Florida 32399-1050, via U.S. mail on this 2 days of ~~September~~ October 2018.

Respectfully Submitted,

/s/ Abel Puente
Abel Puente
DC # Y34288
Moore Haven Correctional Facility
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