No._____

IN THE

SUPREME COURT OF THE UNITED STATES

CHRISTOPHER HALL Sr.

PETITIONER

vs.

UNITED STATES OF AMERICA

RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Christopher Hall, Sr.
Prisoner No: 24227-016
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Fed. Prison Camp - Gilmer
Glenville, WV 26351

QUESTION PRESENTED:

"Does a higher standard exist for measuring *competency to represent oneself* at trial, than for *competency to stand trial,* in a case wherein a criminal defendant, who was shot in the head, and died in the emergency room of the hospital only to later self resuscitate in the morgue, to the shock of the attending physicians, was coerced into represent himself at trial? The due process issue is how can the petitioner, having been found legally *competent to represent himself at trial,* be declared a *mentally competent pro-se advocate* under Indiana v. Edwards, (infra) when the defendant was, and to this day continues to be medicated, due to his mentally decompensatory tendency, wherein during the course of a simple conversation, forgets the subject he is speaking about," (emphasis added).

LIST OF PARTIES

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES CITED

CASES PAGE NUMBER

IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW:

[X] For cases from federal courts:

The opinion of the United States court of appeals is attached in appendix A.

The opinion of the United States district court is attached in appendix B.

JURISDICTION

[X] For cases from federal courts:

The date on which the United States Court of Appeals for the Fourth Circuit decided my case was July 18, 2018

The Appeal Case Number was, 18-6318

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

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

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution as to Due Process.

The SIxth Amendment to the United States Constitution as applied to right to counsel.

STATEMENT OF THE CASE

The case before the court arose in the United States Court of Appeals for the Fourth CIrcuit, wherein 2241 relief was denied regarding the gunshot/competency issue raised herein. The case below was Criminal Number 8:04-cr-00559-PJM, United States District Court, Eastern District of Maryland, Greenbelt Division, the Hon: Peter J. Messitte, Senior District Judge presiding.

The petitioner was alleged to have participated in an interstate drug conspiracy, with numerous other co-defendants. There were four trials in the case and numerous changes of venue in what appears to be favorable forum shopping. The first three trials ended in hung juries. In those first three trials the petitioner was represented by highly competent, retained counsel.

After the first three trials the petitioners psychological behavior began to deteriorate. One day the petitioner wanted one thing, the next day the petitioner changed his mind, and desired something else. It appears the District Court took notice of the odd behavior, however trial schedule expediency outweighed the need to inquire into the petitioners odd behavior.

The court took notice of the odd behavior and even commented on such during the sentencing. The courts comments were couched in a manner wherein the court appeared to think the odd behavior was humorous. (See: Trial and sentence transcript excerpts attached in appendix "C")

The court failed in it's due process duties by failing to take note of the petitioners gunshot injury, subsequent death and resurrection. This due process violation appears to violate the requirement for testing for competency, to self represent as discussed in Indiana v. Edwards, (supra).

The error in the fourth circuit is centered on two factors. [1] The Appeals court failed to allow the matter to move forward based upon the conclusion that the petitioner had never appealed or engaged in collateral application on this point, thus the petitioners 2241 was untimely. ***The petitioners mental problems, put quite simply, are like asking Forest Gump to engineer a nuclear reactor. A man with the Traumatic Brain Injury (TBI) suffered by this petitioner***

cannot be expected to understand or even know he had an "Edwards" issue, (emphasis added). How could he have known what or when to appeal or file collateral applications.

REASONS FOR GRANTING THE PETITION

This case focuses upon a criminal defendant whom the United States District Court in Greenbelt Maryland, found mentally competent to stand trial and mentally competent to conduct that trial himself.

The petitioner was alleged to have been engaged in a drug case. Shortly before his arrest the petitioner was shot in the head with a large caliber handgun. The petitioner was taken to District of Columbia hospital whereupon he died in the emergency room.

Thereafter the petitioner's body was removed from the emergency room and sent to the morgue. For reasons never explained the petitioner auto-resuscitated and came back to life to the chagrin of the morgue staff and attending physicians.

An examination of this Court's precedents shows that those precedents frame the question presented, but they do not answer it. The two cases that set forth the Constitution's "mental competence" standard, Dusky v. United States, 362 U. S. 402 (1960) (per curiam), and Drope v. Missouri, 420 U. S. 162 (1975) , specify that the Constitution does not permit trial of an individual who lacks "mental competency." Dusky defines the competency standard as including both (1) "whether" the defendant has "a rational as well as factual understanding of the proceedings against him" and (2) whether the defendant "has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding." 362 U. S., at 402 (emphasis added; internal quotation marks omitted).

Drope repeats that standard, stating that it "has long been accepted that a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial." 420 U.

S.; at 171 (emphasis added). Neither case considered the mental competency issue presented here, namely, the relation of the mental competence standard to the right of self-representation.

The Court's foundational "self-representation" case, Faretta v. California, held that the Sixth and Fourteenth Amendment s include a "constitutional right to proceed without counsel when" a criminal defendant "voluntarily and intelligently elects to do so." 422 U. S., at 807 (emphasis in original). The Court implied that right from: (1) a "nearly universal conviction," made manifest in state law, that "forcing a lawyer upon an unwilling defendant is contrary to his basic right to defend himself if he truly wants to do so," id., at 817–818; (2) Sixth Amendment language granting rights to the "accused;" (3) Sixth Amendment structure indicating that the rights it sets forth, related to the "fair administration of American justice," are "personal]" to the accused, id., at 818–821; (4) the absence of historical examples of forced representation, id., at 821–832; and (5) " 'respect for the individual,' " id., at 834 (quoting Illinois v. Allen, 397 U. S. 337, 350–351 (1970) (Brennan, J., concurring) (a knowing and intelligent waiver of counsel "must be honored out of 'that respect for the individual which is the lifeblood of the law' ").

Faretta does not answer the question in this case because it did not consider the problem of mental competency (cf. 422 U. S., at 835 (Faretta was "literate, competent, and understanding"), and because Faretta itself and later cases have made clear that the right of self-representation is not absolute. See Martinez v. Court of Appeal of Cal., Fourth Appellate Dist., 528 U. S. 152, 163 (2000) (no right of self-representation on direct appeal in a criminal case); McKaskle v. Wiggins, 465 U. S. 168, 178–179 (1984) (appointment of standby counsel over self-represented defendant's objection is permissible); Faretta, 422 U. S., at 835, n. 46 (no right "to abuse the dignity of the courtroom"); ibid. (no right to avoid compliance with "relevant rules of procedural and substantive law"); id., at834, n. 46 (no right to

"engaged in serious and obstructionist misconduct," referring to Illinois v. Allen, supra). The question here concerns a mental-illness-related limitation on the scope of the self-representation right.

The sole case in which this Court considered mental competence and self-representation together, Godinez, supra, presents a question closer to that at issue here. The case focused upon a borderline-competent criminal defendant who had asked a state trial court to permit him to represent himself and to change his pleas from not guilty to guilty. The state trial court had found that the defendant met Dusky's mental competence standard, that he "knowingly and intelligently" waived his right to assistance of counsel, and that he "freely and voluntarily" chose to plead guilty. 509 U. S., at 393 (internal quotation marks omitted). And the state trial court had consequently granted the defendant's self-representation and change-of-plea requests. See id., at 392–393. A federal appeals court, however, had vacated the defendant's guilty pleas on the ground that the Constitution required the trial court to ask a further question, namely, whether the defendant was competent to waive his constitutional right to counsel. See id., at 393–394. Competence to make that latter decision, the appeals court said, required the defendant to satisfy a higher mental competency standard than the standard set forth in Dusky. See 509 U. S., at 393–394. Dusky's more general standard sought only to determine whether a defendant represented by counsel was competent to stand trial, not whether he was competent to waive his right to counsel. 509 U. S.,at 394–395.

This Court, reversing the Court of Appeals, "rejected the notion that competence to plead guilty or to waive the right to counsel must be measured by a standard that is higher than (or even different from) the Dusky standard." Id., at 398. The decision to plead guilty, we said, "is no more complicated than the sum total of decisions that a [represented] defendant may be called upon to make during the course of a trial." Ibid. Hence "there is no reason to believe that the decision to waive counsel requires an appreciably higher level of mental functioning than the decision to waive other constitutional rights." Id.,

at 399. And even assuming that self-representation might pose special trial-related difficulties, "the competence that is required of a defendant seeking to waive his right to counsel is the competence to waive the right, not the competence to represent himself." Ibid. (emphasis in original). For this reason, this court concluded, "the defendant's 'technical legal knowledge' is 'not relevant' to the determination." Id., at 400 (quoting Faretta, supra, at 836).

Godinez bears certain similarities with the present case. Both involve mental competence and self-representation. Both involve a defendant who wants to, or possibly due to mental defect may have deluded himself into thinking he wanted to, represent himself. Both involve a mental condition that falls in a gray area between Dusky's minimal constitutional requirement that measures a defendant's ability to stand trial and a somewhat higher standard that measures mental fitness for another legal purpose.

Nonetheless Godinez does not answer the question in Hall Sr's case. In part that is because the Court of Appeals higher standard at issue in Godinez differs in a critical way from the higher standard at issue here. In Godinez, the higher standard sought to measure the defendant's ability to proceed on his own to enter a guilty plea; in Hall Sr's case the higher standard seeks to measure the defendant's ability to conduct trial proceedings. To put the matter more specifically, the Godinez defendant sought only to change his pleas to guilty, he did not seek to conduct trial proceedings, and his ability to conduct a defense at trial was expressly not at issue. In Godinez the court needed to consider only the defendant's "competency to waive the right." 509 U. S., at 399 (emphasis in original). Further this court emphasized that it need not consider the defendant's "technical legal knowledge" about how to proceed at trial. Id., at 400 (internal quotation marks omitted). The court found with the Court's earlier statement in Massey v. Moore, 348 U. S. 105, 108 (1954) , that ***"one might not be insane in the sense of being incapable of standing trial and yet lack the capacity to stand trial without benefit of counsel,"*** (emphasis added). See Godinez, supra, at 399–400, n. 10 (quoting Massey and noting that it dealt with "a question that is quite

different from the question presented" in Godinez). In Petitioner Hall Sr's case, the very matters that this court did not consider in Godinez or Edwards is ripe for consideration.

Godinez involved a State that sought to permit a gray-area defendant to represent himself. Godinez's constitutional holding is that a State may do so. But that holding simply does not tell a State whether it must test the competency of a defendant to represent himself the matter at issue here.

Yet one could more forcefully argue that Godinez simply did not consider whether the Constitution requires testing as to the competency gray-area defendants regarding self representation. The upshot is that the question is an open one.

Court's assume that a criminal defendant has sufficient mental competence to stand trial (i.e., the defendant meets Dusky's standard) and that if the defendant insists on representing himself during that trial, under Faretta that's fine. Petitioner Hall Sr, asks whether the Constitution permits the willy nilly playing of self counsel when the defendant obviously lacks the mental capacity to conduct his trial defense unless represented, and most egregiously the court takes note of the inability and comments upon it on the record..

Several considerations taken together leads one to conclude that the answer to this question is no. This Court's "mental competency" cases set forth a standard that focuses directly upon a defendant's "present ability to consult with his lawyer," Dusky, 362 U. S., at 402 (internal quotation marks omitted); a "capacity ... to consult with counsel," and an ability "to assist [counsel] in preparing his defense," Drope, 420 U. S., at 171. See ibid. ("It has long been accepted that a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial" (emphasis added)). These standards assume representation by counsel and emphasize the importance of counsel. They thus suggest

(though do not hold) that an instance in which a defendant who would choose to forgo counsel at trial presents a very different set of circumstances, which in our view, calls for a different standard.

The American Psychiatric Association (APA) in its amicus brief filed in Indiana v. Edwards states that "disorganized thinking, deficits in sustaining attention and concentration, impaired expressive abilities, anxiety, and other common symptoms of severe mental illnesses can impair the defendant's ability to play the significantly expanded role required for self-representation even if he can play the lesser role of represented defendant." Brief for APA et al. as Amici Curiae.

The right of self-representation at trial will not "affirm the dignity" of a defendant who lacks the mental capacity to conduct his defense without the assistance of counsel. McKaskle, supra, at 176–177 ("Dignity" and "autonomy" of individual underlie self-representation right). To the contrary, given that defendant's uncertain mental state, the spectacle that could well result from his self-representation at trial is at least as likely to prove humiliating as ennobling. Moreover, insofar as a defendant's lack of capacity threatens an improper conviction or sentence, self-representation in that exceptional context undercuts the most basic of the Constitution's criminal law objectives, providing a fair trial. As Justice Brennan put it, "[t]he Constitution would protect none of us if it prevented the courts from acting to preserve the very processes that the Constitution itself prescribes." Allen, 397 U. S., at 350 (concurring opinion). **See Martinez, 528 U. S., at 162 ("Even at the trial level ... the government's interest in ensuring the integrity and efficiency of the trial at times outweighs the defendant's interest in acting as his own lawyer"),** (emphasis added). See also Sell v. United States, 539 U. S. 166, 180 (2003) ("[T]he Government has a concomitant, constitutionally essential interest in assuring that the defendant's trial is a fair one").

Proceedings must not only be fair, they must **"appear fair to all who observe them."** Wheat v. United States, 486 U. S. 153, 160 (1988) . An amicus brief reports one psychiatrist's reaction to having

observed a patient (a patient who had satisfied Dusky) try to conduct his own defense: **"[H]ow in the world can our legal system allow an insane man to defend himself?"** Brief for Ohio et al. as Amici Curiae 24 (internal quotation marks omitted). See Massey, 348 U. S., at 108 **("No trial can be fair that leaves the defense to a man who is insane, unaided by counsel, and who by reason of his mental condition stands helpless and alone before the court").** The application of Dusky's basic mental competence standard can help in part to avoid this result. But given the different capacities needed to proceed to trial without counsel, there is little reason to believe that Dusky alone is sufficient. **Neurocognitive disorders are those involving thinking difficulties caused by abnormalities of the brain, caused by trauma commonly referred to as Traumatic Brain Injury, (TBI).** These disorders are usually permanent and often progressive.

There are many things that can damage the brain, most commonly infections, traumatic brain injuries, **- such as gunshot wounds to the head -** strokes, dementias like Alzheimer's disease, vascular disease, toxins, genetic and congenital brain malformations, immune disorders, alcohol or other substance abuse, and fetal alcohol exposure.

When determining whether someone is suffering from a TBI disability, one need not be so much concerned with the specific type of neurocognitive disorder as it is with the loss in a person's ability to function in a work-related way. Neurocognitive disorders can be mild or advanced.

Neurocognitive disorders are usually diagnosed by mental status examinations done by mental health professionals. This was not done in petitioner Hall Sr's case. During a mental status examination, a doctor tries to identity the underlying cause of the disorder and treatment to the extent possible. When there is not enough medical information in an applicant's medical

records to determine the severity of the neurocognitive disorder, an evaluation by a psychiatrist or psychologist is required.

People with the diagnosis of a neurocognitive disorder usually have brain imaging studies (MRI or CT scans) in their medical records. In rare instances in which severity cannot otherwise be determined, the person must undergo some type of neuropsychological test.

The signs of neurocognitive disorders, have one or more of the following problems that has become significantly worse than before:

- problems paying attention to tasks or listening to others, especially if complex (tasks are slowed or not completed; easy distraction interferes with attention)
- learning and memory deficits, especially recent memory (loss of immediate and recent memory makes learning difficult)
- executive function deficits (decreased planning ability and judgment)
- deficits in the use of language (errors in grammar, inability to recall words, misuse of words, or even inability to speak
- decrease in coordination (especially eye-hand coordination, but could be problems walking), and/or
- poor social judgment (decreased ability to know proper social behavior in differing circumstances).

There must be an extreme limitation in at least one of the following areas, or a "marked" limitation in at least two of the following areas:

- understanding, remembering, or using information (planning, ability to understand instructions, learning new things, applying new knowledge to tasks)
- interacting with others (using socially appropriate behaviors)
- concentrating, persisting, or maintaining pace in performing tasks (ability to complete tasks), and/or
- adapting to change and managing oneself (knowing what is acceptable work performance, maintaining personal hygiene and attire appropriate to a work setting, being aware of normal hazards and taking appropriate precautions)..

None of these tests were conducted on petitioner Hall Sr, and the best evidence available comes from the statements made in open court by the judge in this case, **(emphasis added). [See attached trial and sentence brief excerpts].**

The petitioner in this case was suffering from severe mental incapacitation due to the Traumatic Brain Injury, (TBI) suffered due to the large caliber gunshot wound. The petitioner should have never been allowed to act on his own behalf. The District Court in allowing same, and the Fourth Circuit in upholding same, have violated the Due Process Rights of the petitioner as afforded by the Fifth Amendment and the Right to Competent Counsel as afforded by the Sixth Amendment.

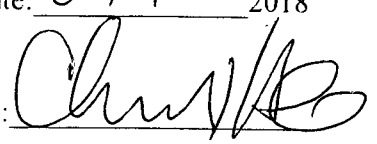
CONCLUSION

It appears that Petitioner Hall meets the Indiana v. Edwards exception criteria, and was constitutionally injured by the District Courts forcing him to proceed pro-se, without having made a determination as to the petitioner competency to defend himself.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: OCT 9 2018

By: 

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RESPONDENT

PROOF OF SERVICE

I, , do swear or declare that on this date, OCT 9, 2018 , as required by Supreme Court Rule 29, I have served the enclosed MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and PETITION FOR A WRIT OF CERTIORARI on the Clerk of the Supreme Court, and the Solicitor General of the United States by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:

Clerk, U.S. Supreme Court
1 First St NE,
Washington, DC 20543

Solicitor General of the United States
950 Pennsylvania Ave NW,
Washington, DC 20530

I declare under penalty of perjury that the foregoing is true and correct.

Executed on OCT 9, 2018

By: _____
Christopher Hall, Sr.