

No. _____

19-6406

IN THE
SUPREME COURT OF THE UNITED STATES

CLIFFORD RUSH — PETITIONER
(Your Name)

vs.

STATE OF NEBRASKA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FILED

OCT 15 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Nebraska Supreme Court
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Clifford Rush
(Your Name)

P.O. Box 22500, 4201 S. 14th Street
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(City, State, Zip Code)

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

I.

WHETHER OR NOT THE NEBRASKA SUPREME COURT OPINION IN AFFIRMING THE NEBRASKA LOWER COURT'S JUDGMENT DENYING PETITIONER THE SIXTH AMENDMENT RIGHT TO PROCEED PRO SE, ONNHIESSOWN, AS COUNSEL OF CHOICE,, WAS CONSTITUTIONALLY INFIRMED AND PREJUDICIAL.

II.

WHETHER OR NOT THE NEBRASKA SUPREME COURT OPINION IN AFFIRMING THE NEBRASKA LOWER COURT'S JUDGMENT DENYING PETITIONER'S DEFENSE COUNSEL MOTION TO WITHDRAW BASED UPON DISAGREEMENTS AND CONFLICTS OF INTERESTS ENGENDERED BY DEFENSE COUNSEL AND PETITIONER, CONSTITUTED AN CONSTITUTIONAL INFRINGEMENT IN VIOLATION OF THE PETITIONER'S FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

III.

WHETHER THE DUE PROCESS CLAUSE AND PETITIONER'S RIGHT TO COUNSEL OF CHOICE WAS VIOLATED WHEN THE LOWER DISTRICT COURT VIA ITS ORDER DENIED CRIMINAL DEFENDANT HIS RIGHT TO SELF-REPRESENTATION (PRO SE), IN CONJUNCTION WITH A SIMULTANEOUSLY ADJUDICATION WITH DENYING CRIMINAL DEFENDANT'S DEFENSE COUNSEL MOTION TO WITHDRAW FROM REPRESENTATION THEREOF.

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:

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Dallio v. Spitzer, 343 F3d 553 (2003)	8
Faretta v. California, 95 Sct. 2525 (2019)	7,8,9
McKasie v. Wiggins, 104 Sct. 944 (1984)	8
Strickland v. Washington, 104 Sct. 2052 (1984)	6
U.S. v. Cronic, 104 Sct. 2039 (1984)	6
State v. Rush, S-18-0502 (Nebraska Supreme Court)	1,5

STATUTES AND RULES

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APPENDIX C :	Petitioner's Brief of Appellant, <u>State v. Rush</u>, S-18-0502
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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

☐ For cases from federal courts:

The opinion of the United States court of appeals 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 United States district 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.

☒ For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

☒ reported at State v. Rush, S-18-0502; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the Lancaster County District Court court appears at Appendix B to the petition and is

☒ reported at State v. Rush, CR17-1307; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☐ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals 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. § 1254(1).

☒ For cases from state courts:

The date on which the highest state court decided my case was Aug. 22, 2019.
A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date: September 26, 2019, and a copy of the order denying rehearing appears at Appendix E.

☐ 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 PROVISIONS INVOLVED

The **Sixth Amendment** to the United States Constitution states in pertinent part, that "In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence."

* * *

The **Fifth and Fourteenth Amendments** to the United States Constitution states in pertinent part, that "No person shall . . . be deprived of life, liberty, or property without due process of law . . ."

STATEMENT OF THE CASE

Petitioner Clifford Rush was convicted and sentenced in the District Court of Lancaster County, Nebraska, for Second Degree Assault, whereupon he received an 18 to 20 years sentence imposition to prison.

The aforementioned action arose from much complaining, ~~a conflict~~ and disagreements between defense counsel and petitioner herein; in particular, communication contact, court hearings, and petitioner's pro se motions to the district court devoid of defense counsel's actions or representations of such. (SEE Appendix F-Bill of Exceptions, Case No. CR17-1307, Lancaster County District Court, Nebraska).

It then follows that petitioner, under duress and ailing subjugations, was compelled to enter a plea of nolo contendere ("no contest") to a second degree assault, notwithstanding his continuing proclamation of innocence to said charge. The record in this criminal matter illuminates voluminous proceedings, prior to petitioner's plea entry, between the district lower court judge, defense counsel, and petitioner, engaging in irrefutable and harsh debate regarding petitioner's quest and right to proceed pro se, on his own, and wanting, in adamant fashion, defense counsel to not represent him, attesting counsel's withdrawal. On the other hand, the district court judge deemed otherwise, and through a lengthy colloquy with petitioner, denied both petitioner's constitutional right to self-representation pro se, and defense counsel's motion to withdraw. The same court, via petitioner's unwilling nolo contendere plea, sentenced petitioner to the aforementioned term of imprisonment. (SEE Appendices B, C, D, and E herewith).

For Direct Appeal, petitioner was appointed new and different counsel. Initially, the appeal was assigned to the Nebraska Court of Appeals, Case Number **A-18-0502**. However, pursuant to **Nebraska Revised Statute § 24-1106**, the Nebraska Supreme Court ordered this case moved to its Supreme Court docket/caseload on June 28, 2019, whereupon it decided and opined the decision reached in this matter, via **Memorandum Opinion and Judgment on Appeal, S-18-0502**, devoid of publishment and digital recording. (**SEE Appendix A** herewith).

The crux and heart of this petition derives in reiteration from the relief sought therein petitioner's direct appeal brief of appellant. (**SEE Appendices C and D** herewith).

REASONS FOR GRANTING THE PETITION

The Nebraska Supreme Court Memorandum Opinion and Judgment defies constitutional precepts our forefathers instituted ~~gsaaaguaranteeetorevery~~ citizen of the United States of America. Particularly, the right of every criminal offender to have "effective assistance of counsel for his defence." This right is paramount and axiomatic, as envisioned by the spirit of the **Sixth Amendment** to the United States Constitution.

Petitioner Clifford Rush was not afforded this guaranteed right. He was charged by criminal information of a charge in which he emphatically denies and refutes. He was appointed a defense counsel, whose representation fell below a reasonable standard expected by an attorney with ordinary skill, training, and knowledge in the area of criminal law. In petitioner's eyes, his defense counsel's representation prior to the unwilling ~~nodo~~ ~~contendere~~ plea, was deficient and ineffective, ~~atoithenpoint~~ of no return. And prejudicial to the extent that defense counsel and petitioner engaged in extreme differences and disagreements about how the defense of the case should be litigated and tried. There was no relenting by petitioner in wanting said counsel removed and/or, to withdraw. Simply put, petitioner felt and believed that defense counsel was failing to subject the state's plaintiff's case to meaningful adversarial testing. U.S. v. Cronin, 104 S.Ct. 2039 (1984) (SEE Also Strickland v. Washington, 104 S.Ct. 2052 (1984)). Be that as it may, petitioner commenced filing and submitting his own pro se motions and pleadings in an attempt to muster and strategize his own defense of the original charges lodged against him. This was acknowledged by the court during one of several hearings. (SEE Appendix F herewith).

As such, the lower district court failed to realize or take judicial notice that petitioner was capable of preparing, drafting, and causing to be filed, his own pro se pleadings without the assistance of defense counsel. Yet, it took on an '**ad hoc de facto**' impromptu during the plea colloquy that involved itself, defense counsel and petitioner as to determine whether petitioner should be granted self-representation, as counsel of choice, and to the extent, whether defense counsel should remain on board representing petitioner. Unconstitutionally, the lower district court judge denied petitioner his **Sixth Amendment** right, and thereto simultaneously, denied defense counsel's motion to withdraw, further infringing upon petitioner's right to due process. (SEE Appendices C and F herewith).

Referring to the long-standing recognition of a right of self-representation in federal and state courts, this Superior Court affirmed such said position of pro se litigants. The case: **Faretta v. California**, 95 S.Ct. 2525 (2019); the leading case on the right to self-representation. Interestingly, this court vacated the state court conviction precisely because the defendant's request to proceed pro se was denied. In **Faretta**, the court explained:

"The 6th Amendment does not provide merely that a defense shall be made for the accused; it grants to the accused personally the right to make his defense . . . Although not stated in the Amendment in so many words, the right to self-representation to make one's own defense personally is thus necessarily implied by the structure of the Amendment." **Id.**

The Nebraska Supreme Court's decision in affirming the lower district court runs afoul of the **Sixth Amendment** in this regard, because it too, ignored the aforementioned precept this said Amendment guarantees. The language and Spirit of the **Sixth Amendment** contemplate that counsel, like

other defense tools guaranteed by it, shall be an aid to the willing defendant, and not an organ of the state interposed between an unwilling defendant and his right to defend himself personally. Id. Allocation, to defense counsel, of power to make binding decision of trial strategy can only be justified by defendant's consent at the outset, to accept counsel as his representative. Id. Petitioner herein, in the case at bar, clearly protest defense counsel's representation, as shown in the record of this criminal matter. The lower district court 'forced defense counsel upon petitioner, absent the sanctity of the **Sixth Amendment**. Moreover, the task of judging the competence of a particular accused to represent himself cannot be escaped by announcing delusively simple rules of trial procedure when judges must mechanically follow the question in each case as to whether the accused is competent to exercise an intelligent, informed judgment to proceed pro se. Dallio v. Spitzer, 343 F3d 553 (2003). The Dallio court held:

"[E]xplicit warnings about the dangers and disadvantages of self-representation were not required as minimum constitutional prerequisites for valid waiver of the 6th Amendment right to counsel.

Id.

(SEE Also McKasie v. Wiggins, 104 SCt. 944 (1984)). Although not expressly stated in the **Sixth Amendment**, a clearly established corollary to the right to counsel is the right to dispense with lawyer's help and to represent oneself. Id. This was petitioner's aim and goal. Where accused . . . unequivocally declared to judge that he wanted to represent himself and did not want counsel, and record affirmatively showed that accused was literate, competent, and understanding, and that he voluntarily exercising his informed free will, and where accused had been warned by the court . . . state court

in compelling accused to accept against his will a state-appointed public defender (like here), deprived him of his constitutional right to conduct his own defense whatever the extent of his technical legal knowledge.

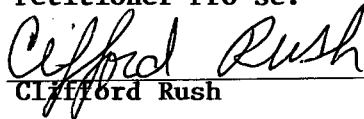
Faretta v. California, supra. The Spirit of the **Sixth Amendment** supports petitioner herein quest for relief to this Supreme Court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Petitioner Pro se:


Clifford Rush

Date: October 10, 2019