19-6437

No. _____ ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

LEE EDWARD PEYTON — PETITIONER
(Your Name)

vs.

STATE OF CALIFORNIA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF THE STATE OF CALIFORNIA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

LEE EDWARD PEYTON (#BD4173)
(Your Name)

POST BOX 4610
(Address)

LANCASTER, CA 93539
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

This Petition presents an issue of fundamental importance to all defendants facing criminal prosecution in California: Whether the Sixth and Fourteenth Amendments to the United States Constitution, as interpreted by this Court in Faretta V. California, 422 U.S. 806 (1975), permits trial courts to deny a request to proceed pro se, in the first instance, and on the grounds of the presiding judges accusations that the "defendant has demonstrated an inability to conform his behavior to the rules of procedure and courtroom protocol", and accusation of "anticipated disruption", and then pass on his own credibility in making the factual determination.

1. CONSISTENT WITH FARETTA'S - INQUIRY BASED RULE, MAY A TRIAL COURT UNDER THE SIXTH AMENDMENT "COUNSEL" AND "CONFRONTATION" CLAUSES, AND FOURTEENTH AMENDMENT "DUE PROCESS" CLAUSE, DENY A DEFENDANTS REQUEST TO PROCEED PRO SE, IN THE FIRST INSTANCE, ON THE GROUND OF THE PRESIDING JUDGE'S ACCUSATION THAT THE "DEFENDANT DEMONSTRATED AN INABILITY TO CONFORM HIS BEHAVIOR TO THE RULES OF PROCEDURE AND COURTROOM PROTOCOL", OR, ACCUSATION OF "ANTICIPATED DISRUPTION", WHILE PASSING ON HIS OWN CREDIBILITY IN MAKING THE FACTUAL DETERMINATION IN THE CONTEXT OF A FARETTA HEARING?

2. WHEN A STATES REVIEWING COURTS TAKE THIS COURTS CLEARLY ESTABLISHED RULES OF LAW AND MODIFY OR TRANSFORM THIS COURTS RULES INTO A SPECIFIC LEGAL RULE, NOT ANNOUNCED BY THIS COURT, AND SUCH TRANSFORMATION RESULTS IN DEPRIVING THE DEFENDANT OF SUBSTANTIAL AND PROCEDURAL RIGHTS, AND FUNDAMENTAL FAIRNESS, TO WHICH THE LAW ENTITLES HIM, MAY THE "SUPERVISORY POWERS" BE USED AND THE CASE DISMISSED, AS A REMEDY TO DISCIPLINE STATE COURTS FOR BLATANT DISREGARD OF THE BINDS OF ARTICLE III OF THE CONSTITUTION?

TABLE OF AUTHORITIES CITED

CASES CONT

LIST OF PARTIES

[X] 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:

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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.

[X] 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 _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the State Appellate court appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] 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).

[X] For cases from **state courts**:

The date on which the highest state court decided my case was OCTOBER 9, 2019. A copy of that decision appears at Appendix A.

[ ] A timely petition for rehearing was thereafter denied on the following date: N/A, 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 N/A (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

AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

AMENDMENT XIV

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizen's of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizen's of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within it's jurisdiction the equal protection of the laws.

TITLE 28 U.S.C. § 2254, subdivision (d)

An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in the State court proceedings unless the adjudication of the claim--

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding.

STATEMENT OF THE CASE

Petitioner, Lee Edward Peyton, was charged with rape and other related crimes. Prior to his preliminary hearing examination Peyton requested five times to proceed pro se. The trial court during Faretta hearing proceedings held on June 22, 2016, and, respectively on July 6, 2016, and without directly or promptly launching the necessary Faretta-based inquiry, denied Peyton's request to proceed pro se, on the grounds of the presiding judge's accusations that Peyton had demonstrated an inability to conform his behavior to the rules of procedure and courtroom protocol", and "anticipated disruption." (Appendix. D at 5, 23-24; APPENDIX E).

On January 5, 2017, Peyton again requested to proceed pro se before a different judge. The trial court again denied his request. (Appendix. D at 25-31). He was forced to proceed to trial with a conflicted counsel against his will, and was ultimately convicted of rape, but a hung jury on several other counts.

The California Court of Appeal affirmed Peyton's conviction. The court after reviewing California authority on the matter failed to address Peyton's contention that the trial court erred when it denied his Faretta motion based on an improper standard; the Appellate Court concluded that Peyton's Faretta motions were equivocal because his motions were interspersed among his requests for substitution of counsel and denial of such requests. (Appendix. B at 8-10).

The California Supreme Court denied review. (Appendix. C)

On March 18, 2019, Peyton filed an original state habeas corpus for relief, and for purpose of properly and fairly presenting the full and complete substance of his Federal Faretta claim not raised or presented by his appellate counsel, amongst other claims, and for purpose of properly exhausting his state remedies. In his habeas petition Peyton contended the trial courts rulings and reliance upon People V. Watts, 173 Cal. App. 4th 621 (2009); People V. Welch, 20 Cal. 4th 701 (1999) and People V. Peyton, 229 Cal. App. 4th 1063 (2014), as a basis to deny his right to self-representation was contrary to Faretta itself and the trial judges

testimonial allegations against Peyton during the Faretta proceedings and passing on the credibility of his own allegations in making the factual findings deprived Peyton of his Sixth Amendment right to "confrontation" and "cross-examination", and Fourteenth Amendment right to a fair and impartial tribunal and due process of law. Peyton further contended that the states courts use of "case law" as a substitute for evidence to prove a material issue of disputed facts, raised serious Sixth Amendment concerns and a deprivation of the right to confrontation and cross-examination. Peyton also challenged that the states holdings in People V. Watts, 173 Cal. App. 4th 621, and People V. Welch, 20 Cal. 4th 701, reached conclusions and holdings that were both "contrary to", and "unreasonable applications of", clearly established Federal law, as interpreted by this Court in Faretta V. California, 422 U.S. 806 (1975) and McKaskle V. Wiggins, 465 U.S. 168 (1984), and hence contravene 28 U.S.C. § 2254 (d) (1), which deprived Peyton of both substantial and procedural rights to which the law entitle him. Peyton argued to the states Supreme Court that the states decisions in Watts and Welch could not stand, nor could the states denial of his right to proceed pro se, and that his conviction must be vacated, and remanded for a new trial. Finally, Peyton contended the state appellate court's unpublished opinion is replete with misapprehensions and misstatements of the record, and ignored highly probative and critical evidence central to Peyton's claims, in making its factual findings, rendering the resulting factual findings unreasonable, and a deprivation of due process of law.

The California Supreme Court denied the habeas petition, without adjudicating Peyton's straightfoward claim that the decisions in Watts and Welch contravene 28 U.S.C. § 2254 (d) (1). (Appendix. A)

REASONS FOR GRANTING THE PETITION

In announcing in Faretta the Sixth Amendment right to act as one's own counsel, this Court set down specific comprehensive prerequisites that an accused requesting to proceed pro se must satisfy in order to be granted self-representation. His request must be timely, clear and unequivocal, competent, knowing and intelligent, and he must be aware of the dangers and disadvantages of self-representation. FARETTA V. California, 422 U.S. 806, 835 (1975). The concept of a threshold, or gateway, test was not innovation of California. This Court established this threshold prerequisite to self-representation, in large part because it was concerned with California's ruling that self-representation was not a Federal Constitutional right. Thus, if an accused satisfies Faretta's prerequisites, the trial court lacks discretion to deny the request so long as it is knowing and voluntary. In this case, despite this Court's repeated admonitions to the state courts, that AEDPA means what it says, California failed to abide by that limitation.

Petitioner asked the trial court to proceed pro se on five seperate occasions. During the June 22, 2016 Faretta proceedings instead of responding directly or promptly launching the Faretta-based inquiry the presiding judge Ryan Wright responded by accusing Peyton, in a prior case, of having demonstrated an inability to conform his behavior to the rules of procedure and courtroom protocol, citing People V. Watts, 173 Cal. App. 4th 621; People V. Welch, 20 Cal. 4th 701; People V. Peyton, 229 Cal. App. 4th. 1063, and denied Peyton's request to proceed pro se. (Appendix. D at 5)

During the July 6, 2016 Faretta proceedings instead of responding directly or promptly launching the Faretta-based inquiry Judge Wright again responded by testifying that "there is evidence before this court based on the defendant's prior misconduct and his prior case, which is very well documented in the court of appeal case"; and denied Peyton's request to proceed pro se. (Appendix. D at 23-24)

Again during the January 5, 2017 Faretta proceedings instead of responding directly or promptly launching the Faretta-based inquiry the trial court responded

stating the issue had already been litigated and decided upon, and denied Peyton's request to proceed pro se. (Appendix.D at 26-29)

In this case, in California's view the states trial courts have authority to discard Faretta's clearly established "inquiry rule" and deny an accused clear and unequivocal request for self-representation, in the first instance, on the 'mere' basis of the judges accusation that the "Faretta-applicant has demonstrated an inability to conform his behavior to the rules of procedure and courtroom protocol", or, an accusation of "anticipated disruption", under the states decisions in People V. Watts, 173 Cal.App.4th at 629; People V. Welch, 20 Cal.4th at 734.

Here, on the record facts, the state court's collectively not only failed to apply Faretta correctly, but failed to apply it at all, and instead proceeded to apply erroneous legal standards specifically rejected by this Court in Faretta. Mr Peyton submits the state court's decisions were "contrary to" clearly established Supreme Court case law within the meaning of section 2254. He submits there are several reasons why the states categorical-rule contravenes AEDPA, notwithstanding presenting several "confrontation" and "due process" concerns.

First, Petitioner clearly presented a federal constitutional Murchison claim to the State Supreme Court as he had to the Appellate Court and both failed to discern the significance of the issue raised. The state court's did not discuss the judges 'accuser-adjudicator' role in this case. The highlight of the record facts in this case is the state court's collectively ignored, as inconsequential, the confrontation and due process violations created by Judge Wright's testimony. The judges testimony accusing Peyton of demonstrating an inability to conform his behavior to the rules of procedure and courtroom protocol, in his prior case and "anticipated disruption" came from the bench. The judge testified there was evidence before the court based on Peyton's alleged prior misconduct, in his prior case, which the judge stated was very

well documented in the court of appeal case.[1] But this evidence came from the lips of the judge in making his allegations and serves as testimony. The accusatory-specific statements related by the judge concerning Peyton's prior case, unquestionably constituted testimony without the right of cross-examination by Peyton. Certainly, the Sixth Amendment's confrontation clause does not permit presentation by parties, nor admission of "case law" as a substitute for evidence to prove a material issue of disputed facts. The obviousness of this is confirmed by the fact that allegations formulated from the text of "case law", could never in any sense be the subject of cross-examination. This should've been obvious to the state court's.

Allowing the judge to act as both accuser-adjudicator in this case, and in the context of a Faretta hearing--and then pass on the credibility of his own allegations in making the factual findings was a denial of the guarantee of due process, In Re Murchison, 349 U.S. 133, 136-137 (1955), that affected the whole adjudicatory framework, constituting structural error. When assessed in light of these facts the trial court's ruling strikes out swinging, and due process entitles Peyton to a "proceeding in which he may present his case with assurance" that no member of the court is "predisposed to find against him." Marshall V. Jerrico, Inc., 446 U.S. 238, 242 (1980).

To return to the treatment at the trial court level of Peyton's request to represent himself, the trial court flat-out failed to exercise it's discretion and ultimately did not rule on those requests, but let the issue go, on the basis of the judges accusations against Peyton instead. Such a failure to make a ruling on Peyton's unequivocal request to proceed pro se was objectively unreasonable in light of Faretta.

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1. Nothing in the record shows Peyton adopted the state Court of Appeals accusations as supplying the factual basis for the trial courts improper denial of his right to self-representation. Mr Peyton denys the appellate courts accusations in the dictum of it's opinion. Indeed, in this case the appellate court once again invented it's own unsupported accusations as it's basis to deny relief (Appendix. B. at 8-10), which demonstrates a pattern of misstating the record in making it's factual findings, which constitutes a denial of due process, and hence must curtailed. (Emphasis Added)

AEDPA requires a state prisoner to show that the state court's ruling on the claim being presented in Federal court was so lacking in in justification that there was an error beyond any possibility for fairminded disagreement. In other words, mistakes in reasoning or in predicate decisions of the type in question here -- use of the wrong legal rule or framework -- do constitute error under the "contrary to" prong of section 2254 (d)(1) standard for the grant of certiorari relief.

In this case the trial court's justification for denying Peyton's motions requesting self-representation in the first instance, were grounded entirely in the courts reliance upon the states decisions in People V. Watts, 173 Cal.App.4th 621, and People V. Welch, 20 Cal.4th 701; decisions in which California Supreme and Appellate Courts erred in holding that McKaskle V. Wiggins, 465 U.S. 168 (1984), modified or in some way supplanted the inquiry and termination rules set down in Faretta. Petitioner submits as set forth below that cases such as People V. Watts and People V. Welch, do not constitute clearly established Federal law, as determined by this Court, and did not justify a departure from a straightfoward application of Faretta when the misapplication did deprive the defendant of a substantive and procedural right to which the law entitles him. In the instant case, it is undisputed Peyton had a right - indeed, a constitutionally protected right - to represent himself and present his defense to the jury.

Nevertheless, both the state Supreme and Appellate Courts read this Court's decision in McKaskle, not only to require a seperate inquiry into a defendant's request to proceed pro se, but also a per se rule. Under California's reading of this Court's statement in McKaskle and in pertinent part: ." An accused has a Sixth Amendment right to conduct his own defense,

provided only that. . . , he is able and willing to abide by rules of procedure and courtroom protocol." If a Faretta applicant does not prove a compelling case for self-representation in the first instance under the states categorical-rule, the trial court has discretion to deny a request for self-representation in the first instance- never mind the Faretta-based inquiry rule, so says the state of California under People V. Watts, 173 Cal. App. 4th at 629, and People V. Welch, 20 Cal. 4th at 734.

This is an implausible reading of McKaskle, and the States view disregards perfectly reasonable interpretations of McKaskle's holdings, as well as this Court's repeated admonitions to the state courts that state precedents may not be used to refine or sharpen a general principle of the Supreme Court into a specific legal rule, this Court has not announced. See Kernan V. Cuero, 138 S.Ct. 4, 9 (2017).

First, the state courts contrary holdings in Watts and Welch rest on a case that did not involve a defendant's inability or unwillingness to abide by the rules of procedure and courtroom protocol. To reach it's result in Watts and Welch, the state court's felt free to transpose the McKaskle case into novel context, as well as improperly invert Faretta's "inquiry" and "termination" rules-order of operation". These transpositions are improper on their terms.

In Faretta V. California, 422 U.S. 806, this Court left open what role might be taken by standby counsel. Id at 834 n.46. In McKaskle V. Wiggins, 465 U.S. 168, this Court reiterated Faretta's holding concerning standby counsel and developed the contours of the standby counsel's role in relation to the defendant's Faretta right to proceed pro se in instances where the standby counsel's help was not requested by the self-represented defendant (Id at 176), clarifying the distinction between permissible and impermissible interference by standby counsel, and imposing some limits on the extent of standby counsel's unsolicited participation, so as to

protect the Faretta right. Id at 177.

However, in Welch and Watts the state courts concluded and held McKaskle stands for the proposition that a trial court has discretion to deny a request for self-representation, in the first instance, merely upon a presiding judge allegation that the defendant-applicant has demonstrated an inability to conform his behavior to the rules of procedure and courtroom protocol, notwithstanding that the defendant-applicant never became pro se. Based on this reading the state Supreme and Appellate courts held it's categorical-rule constitutes a per se rule under McKaskle.

Peyton argues that McKaskle's precedential scope -it's holding, may not be so incorporated into the "Faretta-based inquiry," as the one set down in Faretta is a clearly established rule - and McKaskle did not establish a seperate inquiry, nor modify or supplant Faretta's inquiry rule. In this case it is clear that this Court's precedents do not clearly establish the State courts categorical-rule, in question.

Indeed, Petitioner concedes that this Court expressly denied in the footnote in Faretta that the right of self-representation is "a license not to comply with relevant rules of procedural and substantive law. 422 U.S. at 834. n.46. This footnote speaks of disruption in the courtroom, namely, that a defendants right to self-representation does not allow him to engage in uncontrollable and disruptive behavior in the courtroom. But, here, the state courts unreasonably construed the footnote to mean that a defendants Sixth Amendment right to self-representation -- so vigorously upheld by this Court in Faretta -- may be extinguished, as it was in this case, due to a judges declarative-allegations that Peyton demonstrated an inability to conform his behavior to the rules of procedure and courtroom protocol and in

a prior case - years before, and in absence of Peyton ever becoming a pro se defendant. This Court never suggested that a defendants right to self-representation could be denied in the first instance for a judge's allegation that the defendant-applicant demonstrated an inability to abide by rules of procedure and courtroom protocol as the state put it. There is no indication in Faretta that an allegation of an inability to comply with such rules without ever becoming a pro se defendant, can result in a denial of pro se status in the first instance.

In sum, the footnote in Faretta, as interpreted by this Court meaning to be, that a defendant cannot claim "ineffective assistance of counsel "flowing from his failure to follow the rules of procedure or from his misinterpretation of the substantive law. If he chooses to defend himself, he must be content with the quality of that defense. Thus, a defendant proceeding pro se, or requesting to to proceed pro se, is subject to the same good faith limitations imposed on lawyers, as officer's of the court. Although a pro se defendant must be "able and willing to abide by rules of procedure and courtroom protocol", the term "abide" connotes a willingness "to accept without rejection," "to conform", or "to acquiesce in." (Webster's Ninth New Collegiate Dict. (1984) p.44.) Indeed, were courts permitted to construe Faretta and it's progeny as requiring the the denial of pro se status merely on the basis of a judges allegation that the accused demonstated an inability to abide by the relevant rules of procedure, substantive law, and courtroom protocol, few requests for self-representation would ever be granted. This, however, is not grounds for denying pro se status in the first instance. This Court in Faretta emphasized that the Sixth Amendment does not

permit denying a defendant the right to self-representation on the basis that it is alleged or anticipated the defendant has an inability to abide by rules of procedure and courtroom protocol. 422 U.S. at 835 n.46.

Furthermore, acknowledging that pro se status does excuse a criminal defendant from complying with procedural or substantive rules of the court (Ibid), a defendant who knowingly and intelligently assumes the risks of conducting his own defense is entitled to no greater rights than a litigant represented by counsel. That obligation is fully satisfied by the appointment of standby counsel, whose presence is intented "to steer a defendant through the basic procedures of trial" and "to relieve the judge of the need to explain and enforee basic rules of courtroom protocol," as interpreted by this Court in McKaskle V. Wiggins, 465 U.S. at 184. That a pro se litigant may refuse to follow advice by appointed counsel, that choice, as with all the other stragetic decisions, made by a pro se litigant, is his own. Having refused this assistance, however, he may not be heard to later complain that the court failed to protect him from his own ineptitude.

The second error in the state's analysis of Faretta, in it's decision in People V. Welch, is that the State Supreme Court placed great weight on Farettas' termination rule. There the Welch court purported to find support for it's "anticipated disruption rule" by relying on this Courts statement in Faretta that: "a trial court may terminate self-representation by a defendant who deliberately engages in serious and obstructionist misconduct. People V. Welch, 20 Cal. 4th at 734. Here, the Petitioner never became a prose

defendant. Peyton does not complain that his pro se status was terminated -- rather he complains he was denied his right to self-representation in contravention of Faretta's clearly established rules. The Welch Court further proceeded to find support for its "anticipated disruption" rule based on it's reading of footnote 8 in the McKaskle opinion. Based on these readings of footnotes in Faretta and McKaskle, the State Supreme Court held that Faretta's termination rule applies to the denial of a motion for self-representation in the first instance when a defendant's conduct prior to the Faretta motion gives the trial court a reasonable basis for believing that his self-representation will create disruption. People V. Welch, 20 Cal. 4th at 734.

Peyton contends the state Supreme Court's own analysis of Faretta's clearly established "inquiry and termination rules" and reaching contrary conclusions was unreasonable in at least three respects.

First, the California Supreme Court effectively inverted the rules established in Faretta. Instead of considering whether the defendant requesting self-representation has satisfactorily shown he is competent, literate, the request is timely, clear and unequivocal, knowing and voluntary, and that he is aware of the dangers and disadvantages of self-representation which satisfy Faretta's rule for granting self-representation, the California Supreme Court's holding considers a judges declarative-belief of anticipated disruption under the termination rule analysis, rather than the Faretta-based inquiry rule, which is in fact never applied to the request to proceed pro se at all. This per se rule is constitutionally permissible, i.e., inverting the order of operations of Faretta's rules, because according to the State Supreme Court's reading of footnote 8 in the McKaskle opinion, California judges are entitled to the usual

deference when making "judgment calls" -- when it comes to deciding whether a defendant's motion for self-representation should be granted in the first instance.

Petitioner submits the State Supreme Court's holding was not just wrong. It also committed fundamental errors that this Court has repeatedly admonished courts to avoid. Here, the decision of the state Supreme Court involves erroneous combination of, defining clearly established Federal law at a high level of generality; holding that state precedent may be used to refine or sharpen a general principle of this Court into a specific legal rule that this Court has not announced; and extending a legal principle to a new context where is does not apply. California failed to abide by that limitation here. It's resulting holding was erroneous and should be overruled.

In particular, context of a legal rule is critical. If this Court applied a rule in one context, state law cannot "bridge the gap" to extend the rule to a new context. Premo V. Moore, 562 U.S. 115, 127 (2011). This Court has never adopted a rule authorizing lower federal or state courts to extend this Courts clearly established rules in Faretta or McKaskle to a new context, on which the state relies. It has not been so much as endorsed in a majority opinion. Section 2254(d)(1), here provides a remedy for instances in which a state court unreasonably applies or extends this Court's precedent.

In the instant case, it appears the states Supreme Court has a knack for transposing statements in footnotes from this Courts opinions into novel context, and it's judicial disregard for this Court's clearly established jurisprudence is inherent in the opinion of the California Supreme Court here under review.

In Warden V. Marrero, 417 U.S. 653 (1974), this Court held that "the United States Supreme Court cannot reasonably be thought to have decided in a footnote a question on which the Court, as specifically stated in the text of the opinion, expressed no opinion." Id at 658-659. California Supreme Court did not accept this ruling.

According to the State Supreme Court, this Court's statement: "the trial judge may terminate self-representation by a defendant who deliberately engages in serious and obstructionist misconduct" (FARETTA V. CALIFORNIA, 422 U.S. at 834 n.46), in conjunction with this Court's statement: "the trial judge may be required to make numerous rulings. . . ; nothing in the nature of the Faretta right suggests that the usual deference to "judgment calls" on these issues by the trial judge should not obtain here as elsewhere" (McKaskle V. Wiggins, 465 U.S. at 177-178 n.8), constitutes in combination, a legal rule clearly established by this Court's cases, permitting trial courts to deny a request for self-representation in the first instance, on the mere basis of the judges statement that he believes granting self-representation will disrupt court proceedings. Petitioner argues the State Supreme Court read both Faretta and McKaskle's footnotes far too broadly and found clearly established law lurking in the broad.

In Faretta five Justices of this Court made the controversial observation that the governments speculative contention that defendants would use self-representation for deliberate disruption of their trials, lacked any merit on the basis of history. Faretta V. California, 422 U.S. at 834-835 n.46. In it's footnote

Faretta cited three pages of United States V. Dougherty, 473 F.2d 1113 (D.C.CIR.1972), in which we find, in pertinent part these conclusions and holdings:

> [The right of self-representation, though asserted before trial, can be lost by disruptive behavior during trial, constituting effective waiver. But that is a far different situation from that presented by the instant case, where appellants unequivocally claimed the right to represent themselves, well in advance of trial and selection of the jury.... The government seeks to sustain the denial of appellant's pro se motions on a theory of "possible disruption". A list of five factors is offered which, it is said "taken together" support the judges finding of risk of disruption.... A potentially unruly defendant may and should be clearly forewarned that deliberate dilatory or obstructive behavior may operate in effect of a waiver of his pro se rights .... The trial judge must proceed by skill and suasion, by obtaining defendants cooperation, not by denying their pro se rights.... In the instant case before us, defendants and counsel assured the court, on several occasions, of their lack of disruptive intent.... In effect the unqualified right of self-representation rests on an implied presumption that the court will be able to achieve reasonable cooperation. The possibility that reasonable cooperation, may be withheld, and the right later waived, is not a reason for denying the right of self-representation at the start.] (Id at 1124-1126)

Petitioner submits the aforementioned conclusions and holdings of the Dougherty Court may be reasonably inferred to have provided the impetus leading the Faretta Court to reject the government's contention that defendants would use self-representation to disrupt their trials. Faretta V. California, 422 U.S. at 834-835 n.46 (quoting United States V. Dougherty, 473. F. 2d at 1124-1126 (D.C. CIR. 1972))

Indeed, the state court's whole analysis of Faretta and McKaskles footnotes in reaching their contrary holdings excluded any analysis of Dougherty. It's analysis simply overlooked that the textual language in footnote 46 of the Faretta opinion mirrors the textual language of the conclusions and holdings in Dougherty's opinion. (Emphasis Added.)

California Supreme Court's conclusion that this Court's statements in the footnotes of Faretta and McKasktes opinions-in combination-constitutes a clearly established "anticipated disruption-rule" was improper. It is clear that the state Supreme Court's conclusions and holdings was contrary to the actual holding of Faretta. 28 U.S.C. § 2254 (d)(1). In Faretta this Court framed its holding narrowly, in terms implying that it was limited to circumstances where an accused makes a clear and unequivocal, timely request to represent himself. And Faretta included an express caution. Faretta V. California, 422 U.S. at 835, n.46. This alone suffices to establish that California's conclusion was contrary to clearly established Federal law. California's view that this Court's statements in the footnotes of Faretta and McKaskle's opinions created an exception to, or modified or somehow supplanted the established "inquiry-based" and "termination" rules of Faretta, disregards perfectly reasonable interpretations of Faretta and McKaskle,

and hence contravenes Article III of the Constitution. 28 U.S.C. § 2254(d)(1). Faretta did not involve a circumstance of either anticipated disruption, or actual disruption of court proceedings based on the defendant's misconduct; or a refusal, or inability to abide by rules of procedure and courtroom protocol. Thus, whatever Faretta said about terminating self-representation by a defendant who deliberately engages in serious and obstructionist misconduct, it's holding - the only aspect of the decision relevant here - does not require or prescribe the categorical-rule the state of California ascribes to.

For the state court's to read Faretta and McKaskle to find a waiver of Peyton's right to self-representation was an objectively unreasonable application of those decisions. Given the state court's objectively unreasonable misapplication of law as clearly established in Faretta and McKaskle, and because California apparently acquired a taste for disregarding AEDPA, and Article III of the Constitution, Peyton respectfully request this Court to grant certiorari, to discourage this appetite.

Finally, the third reason the state court's decision in this case, was "contrary to" and an unreasonable application of that clearly established Federal law, is to the extent it held that Peyton's several requests to proceed pro se was equivocal because his requests were interspersed among his requests for substitution of counsel. (Appendix. B at 8-10).

Petitioner contends that his several requests to proceed pro se was no less voluntary because it was contigent on the denial of other options he might also find palatable. See Faretta V. California,

422 U.S. at 810 n.5, 835-836. See also Jones V. Jamrog, 414 F.3d 585, 592-593 (6th CIR. 2005); United States V. Denno, 348 F.2d 12, 14 n.1, 16 (2d CIR. 1965). Peyton submits that contrary to state courts objectively unreasonable conclusions, his requests to proceed pro se was not equivocal merely because it is an alternative position advanced as a fall-back to a primary request for different counsel. Faretta V. California, 422 U.S. at 810 n.5, 835-836.

The record is clear that on more than one occasion Peyton clearly and unequivocally asserted his desire to represent himself at trial. He elected to forgo counsel before his preliminary hearing. On each of those occasions Peyton's statements show a purposeful choice reflecting an unequivocal intent to forgo counsel. The record indicates Peyton preferred to have new unconflicted counsel; it also indicates that Peyton steadfastly sought to represent himself despite numerous denials. Peyton's persistent requests to represent himself, satisfied Faretta's requirement of a knowing, voluntary and unequivocal waiver of the right to appointed counsel. The record does not support the state appellate courts conclusion that Peyton's requests to proceed pro se on June 21, 2016, June 22, 2016, June 28, 2016, July 6, 2016 and January 5, 2017 was equivocal or that Peyton waived his right to proceed pro se through abandonment thereafter. (Appendix D at 1-2, 5-6, 7-13, 14-17, 23-24, 26-31; Appendix. E.) Peyton simply wanted to proceed pro se because he did not trust his unwanted appointed counsel and more important, believed he could do a better job representing himself and his interests, than any attorney.

In the instant case, the record also reflects Peyton demonstrated his capability to undertake the basic tasks necessary to represent himself, and that the trial court had no reason to doubt Peyton's skill and ability to do so. Peyton was cooperative, respectful and articulate during courtroom proceedings. He filed motions citing relevant legal authority that he applied to the specific facts at hand, made organized and internally consistent arguments and was able to effectively communicate his arguments to the trial court in written and oral form. Peyton demonstrated the ability to understand courtroom proceedings and apply rules of procedure. There is ample evidence throughout the record that Peyton was capable of undertaking the types of basic trial tasks that this Court identified as relevant to self-representation. See McKaskle V. Wiggins, 465 U.S. at 174. Peytons conduct both prior to and thereafter his many requests to proceed pro se did not amount to equivocation or vacillation. When Peyton announced his resolve to proceed pro se prior to his preliminary hearing, the trial court instead completely disregarded it's duty to engage the clearly established Faretta-based inquiry. In the ensuing months Peyton was unwilling to appear through counsel asserting a standing Faretta objection throughout the proceedings. But that alone cannot render his subsequent applications for pro se status capricious, much-less equivocal. The fact that Peyton tried having a lawyer merely confirms that his later willingness to forgo counsel was an informed decision. The fact that Peyton tried a lawyer reflects sound advice on the part of Peyton; it does not signify a waiver or suggest tactical abuse of the system. Judge Ryan

Wright who was closer to the unfolding situation than any other judge who considered the matter, made no finding of equivocation, or that Peyton was manipulating events; to the contrary Judge Wright's rulings were based solely on his allegations of an inability to conform behavior to rules of procedure and courtroom protocol, and anticipated disruption outlined above. Peyton's conduct before and even after the Faretta hearings furnishes no support for a finding of equivocation. But it is clear Peyton accepted an option to seek to proceed pro se. No equivocation, waiver, or manipulative intent can be imputed to Peyton under these circumstances. Wilson V. Sellers, 200 L.Ed.2d 530, 534 (2018).

Nevertheless, the state appellate court made an attempt to invent a constitutional sequence of events to justify that which simply did not happen. (Appendix B. at 8-10) Simply put, giving deference to some hypothetical alternative rationale when the state court's actual reasoning evidences a section 2254 (d)(1) error, would distort the purpose of AEDPA. Indeed, in the related context of "unreasonable application" errors, this Court has focused it's analysis on state court's actual reasoning rather than hypothetical alternative lines of analysis. See Holland V. Jackson, 542 U.S. 649, 652 (2004); Wiggins V. Smith, 539 U.S. 510, 528-529 (2003). Even on section 2241 de novo review federal courts have rejected an alternative and unrelated legal argument or hypothetical justification of the type advanced by the state appellate court in this case. See Van Lynn V. Farmon, 347 F.3d 735, 741 (9th Cir. 2003). As with any de novo review, it is understood a courts review is confined to the alleged wrong and and the actual course of events at trial and on appeal.

In short, on the record facts Judge Wright's rulings cannot be supported by a finding of equivocation or vacillation on Peyton's part, because any such finding must rely solely on Peyton's acceptance (with misgivings) of a lawyer he unambiguously moved to discharge prior to his preliminary hearing. Furthermore, Peyton's applications were substantially in advance of trial, and did not present any incremental delay, expense to anyone, or evidence of abuse. His timely and unequivocal requests were denied on June 22, 2016, and July 6, 2016, and the door was closed. The trial courts ruling was categorized and expressly relied on in the advanced stage of proceedings - and were obstacles that were not going to be removed before trial. Johnson V. Zerbst, 304 U.S. 458, 464 (1938) [stating that we do not presume acquiescence in the loss of fundamental rights] The trial court unconditionally ruled that Peyton be represented; Peyton's desire to exchange one conflicted mandatory counsel for another counsel does not signify disruptive conduct, much-less equivocation or abandonment of his Sixth Amendment right to have none. In short, the facts do not reveal a deliberate plot to disrupt court proceedings or equivocation on Peyton's part.

Peyton submits his request to proceed pro se could not reasonably be deemed equivocal simply because he chose an alternative option advanced as a fall-back to the court's unwillingness to grant his request for new unconflicted counsel. See, e.g., Johnstone V. Kelly, 808 F.2d 214, 216 (2d CIR. 1986); United States V. Hernandez, 203 F.3d 614, 620-621 (9th CIR. 1999); Faretta V. California, 422 U.S. at 810 n.5, 835-836.

Recently this Court reaffirmed criminal defendants autonomy rights in a related context. McCoy V. Louisiana, 138 S.Ct. 1500, 1509 (2018). The right to appear pro se exists to affirm the dignity and autonomy of the accused. This right was not respected here.

A decision on which turns whether a man will spend the rest of his days behind bars merits closer judicial attention from the state courts and certainly respect for the laws of the land and the rights of the accused.

This Court held that the purposes underlying use of "Supervisory Powers" are three fold: (1) to implement a remedy for violation of recognized rights; (2) to preserve judicial integrity by ensuring a conviction rests on appropriate considerations validly before the jury; and (3) as a remedy to deter illegal conduct. United States V. Hastings, 461 U.S. 499, 505.

Petitioner asks, when a state court blatantly disregards the binds of Article III of the Constitution, and 28 U.S.C. § 2254 (d)(1), and defines clearly established Federal law at a high level of generality and/or acts upon itself to take Supreme Court precedents and thereby modify a general principle of this Court into a specific legal rule that this Court has not announced, in such case may the "Supervisory Powers" be implemented and the case dismissed upon a record showing the state courts conduct was not just simply improper, but demonstrates judicial disregard of the jurisdiction and the judicial power of Article III of the Constitution?

Petitioner submits, that it is impossible to determine, the extent to which the State of California courts errors with respect to its reading of Faretta and McKaskle affected it's ultimate arbitrary and capricious deprivations of Peyton's most fundamental Constitutional rights and his hunger for opportunity to prove his innocence, through a fundamentally fair trial.

As a direct and proximate result of California's Courts cumulative objectively unreasonable misapplications of clearly established Supreme Court law, and disregard for AEDPA, Petitioner, Lee Peyton prays this grant certiorari.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Lee Peyton

Date: 10/15/19