

19-7898

IN THE
SUPREME COURT OF THE UNITED STATES

Richard C. Murphy — PETITIONER
(Your Name)

vs.

United States — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Third Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Richard C. Murphy
(Your Name)

Federal Correctional Institution
(Address)

P.O. Box 420, Fairfax, NJ 08320
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION

Did the Third Circuit Court of Appeals abuse their discretion by allowing counsel to continue representation after counsel documented his unwillingness to represent Petitioner?

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APPENDIX A

Third Circuit Court of Appeals opinion for Nos.
18-3598 and 19-2178

TABLE OF AUTHORITIES

SUPREME COURT

Faretta v. California
422 U.S. 806, 45 L.Ed.2d 562 (1975)

APPEALS COURT

American Standard Inc. v. Pfizer Inc.
828 F.2d 734 (Fed. Cir. 1987)

Lynn v. United States
365 F.3d 1225 (11th Cir. 2004)

Murphy v. United States
2019 U.S. App. LEXIS 36000 (3rd Cir. 2019)

OTHER

United States Constitution
Bill of Rights, 6th Amendment

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 A to the petition and is

☒ reported at 2019 U.S. App. Lexis 36000; 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☐ is unpublished.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☐ is unpublished.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 _____ 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☐ is unpublished.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☐ is unpublished.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 cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was October 24, 2019 filed December 4, 2019

☐ 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 _____.
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 PROVISIONS INVOLVED

United States Constitution

Bill of Rights, Amendment 6: Rights of the accused

In all criminal prosecutions, the accused shall enjoy the right, ... to have the assistance of counsel for his defence.

STATEMENT OF THE CASE

On June 26, 2019, Petitioner's counsel filed an affirmation that documented counsel's unwillingness to continue representation to the Third Circuit Court of Appeals.

RELEVANT FACTS

This correspondence must be expressed to show the magnitude of the Appeals Court's abuse of discretion in regards to Petitioner's right to proceed pro se.

On April 2, 2019, Petitioner received a letter from counsel stating "if you feel that you are not being properly represented, or if you want different representation in the future as it relates to restitution, I suggest you make application to the court for same."

On April 3, 2019, Petitioner received a letter from counsel stating "As I previously advised you, if you wish to go forward with an appeal, you must file a notion of appeal upon receipt of this opinion and order. In addition, if you choose to go forward, you must make an application to have an attorney appointed to you for this appeal other than this firm."

On June 26, 2019, Petitioner's counsel filed an affirmation to the Appeals Court stating the "court has an obligation to make sure Mr. Murphy is properly represented on appeal, and the appeal

is prepared in the best interest of Mr. Murphy... It would seem improper for undersigned to prosecute Mr. Murphy's claim."

- I. Petitioner contends that the Court of Appeals abused their discretion and as such violated Petitioner's constitutional right to adequate representation.

STANDARD

"An abuse of discretion occurs when one or more of these circumstances obtains: (1) the record contains no evidence on which the court could rationally have based its decision; (2) the decision is based on an erroneous conclusion of law; (3) the decision is based on clearly erroneous factual findings; (4) the decision clearly appears arbitrary." American Standard Inc. v. Pfizer Inc., 828 F.2d 734 (Fed. Cir. 1987).

ARGUMENT

As Petitioner has shown based upon counsel's letters dated April 2nd and 3rd, he would need to proceed on his own or seek other counsel to advance his appeal. As these letters were not provided to the Court of Appeals by counsel, Petitioner was under the impression he would not be represented by counsel during his appeal.

From this information Petitioner sought permission from the Court of Appeals to proceed pro se, but was denied because his trial counsel was appointed to represent him in his appeal unbeknownst

to Petitioner. When Petitioner found out, he filed a motion to the Court of Appeals to relieve his counsel of representation and was told he could not have counsel of choice but "it is the defendant who must be free personally to decide whether in his particular case counsel is to his advantage." Faretta v. California, 422 U.S. 806, 45 L.Ed.2d 562 (1975).

Petitioner was at odds with his counsel throughout his whole appeal process. The Appeals Court had ample opportunity to rectify the situation because the Appeals Court "has the obligation to make sure Mr. Murphy is properly represented on appeal and the appeal is prepared in the best interest of Mr. Murphy." (Affirmation, 6/26/19), but choose to ignore evidence of counsel's ineptitude.

On June 26, 2019, Petitioner's counsel filed an affirmation documenting his disinterest in prosecuting Petitioner's claim on appeal stating "it would seem improper for the undersigned to prosecute Mr. Murphy's claim." This should have been regarded by the Appeals Court as an admittance by counsel that he would not be acting in the best interest of Petitioner during the appeal. Yet again the Court of Appeals choose to ignore all things ethical and allowed Petitioner's counsel to proceed.

The affirmation presented to the Appeals Court gave evidence of Petitioner's counsel's lack of interest in representing Petitioner because it gained responses such as "there is no basis whatsoever in case law or statutes for Murphy's argument," and

"Murphy's arguments are unavailing." Murphy v. United States, 2019 U.S. App. LEXIS 36000 (3rd Cir. 2019). This further backs up the affirmation and counsel's disinterest, and all but proves the abuse of discretion of the Appeals Court.

Petitioner has continuously expressed through motions to the Appeals Court his ability to proceed pro se and the need to do so prior to the foreclosing of claims Petitioner's counsel failed to advance. Precedent dictates that "a defendant generally must advance an available challenge to a criminal conviction or sentence on direct appeal or else the defendant is barred from presenting that claim in a 28 U.S.C. § 2255 proceeding. This rule generally applies to all claims, including constitutional claims." Lynn v. United States, 365 F.3d 1225 (11th Cir. 2004). Even though the Appeals Court should not advocate on behalf of Petitioner, it was well within the Appeals Court's discretion to have decided to allow Petitioner a complete pro se appeal or pro se amendments to his appeal after the affirmation was presented to the Appeals Court.

The Appeals Court's failure to act upon the affirmation hindered Petitioner's right to adequate counsel guaranteed by the Sixth Amendment of the Constitution. The Appeals Court's disregard for the documents presented by Petitioner and his counsel shows complete neglect for Petitioner's constitutional rights.

The Court of Appeals abused their discretion when the affirmation documenting counsel's unwillingness to continue representation

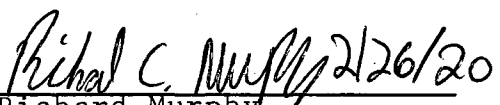
was arbitrarily disregarded and that decision was not rationally based on the evidence presented, i.e. counsel's affirmation. For the Court of Appeals to allow counsel to proceed after the aforementioned affirmation, has done a grave injustice to the judicial proceeding. There can be no other logical explanation for the blatant constitutional violations other than complete abuse of discretion.

CONCLUSION

When the Appeals Court allowed counsel after the affirmation to continue representation, the Appeals Court disregarded their obligation of allowing Petitioner to be adequately represented, thus violating Petitioner's constitutional right to adequate counsel. Petitioner put forth numerous pro se motions concerning his counsel's unwillingness to continue representation and counsel's failure to communicate with Petitioner throughout the appeals process. Throughout Petitioner's appeal he has been expressing to the Appeals Court his need to proceed pro se due to inadequate representation on behalf of his counsel, which the Appeals Court choose to arbitrarily disregard.

Petitioner seeks relief in the form of a pro se appeal brief, or least of all be allowed to advance a pro se supplement to the appeal.

Respectfully submitted,


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CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Richard C. Murphy

Date: February 26, 2020