No. 19-818

IN THE
SUPREME COURT OF THE UNITED STATES

JOSHUA M. WREN,

Petitioner,

vs.

STATE OF WISCONSIN,

Respondent.

On petition for a writ of certiorari from the
Supreme Court of Wisconsin

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

When trial counsel acts ineffectiveness in failing to initiate a requested appeal leaves a defendant without appellate counsel, can delays and missteps in seeking postconviction relief be attributed to the unrepresented defendant so as to deny reinstatement of his appeal?

The court below, applying laches, answered in the affirmative.

PARTIES TO THE PROCEEDING

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

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PETITION FOR WRIT OF CERTIORARI

Petitioner Joshua M. Wren respectfully submits this petition for writ of certiorari.

OPINIONS BELOW

The opinion of the Supreme Court of Wisconsin below (Appendix A) is published as *State of Wisconsin ex rel. Joshua M. Wren v. Reed Richardson Warden*, 2019 WI 110, 389 Wis.2d 516, 936 N.W.2d 587.

The opinion of the Court of Appeals of Wisconsin (Appendix B) is not published.

The finding of fact of the circuit court for Milwaukee County (Appendix C) is not published.

JURISDICTION

The Wisconsin Supreme Court issued its decision in this case on December 26, 2019. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

This case implicates the Sixth Amendment to the United States Constitution, which provides, in relevant part: "In all criminal prosecutions, the accused shall . . . have the Assistance of Counsel for his defence."

This case also implicates Section 1 of the Fourteenth Amendment which provides, in relevant part: "No State shall . . . deprive any person of life, liberty, or property, without due process of law."

STATEMENT OF THE CASE

The underlying case

A criminal complaint dated May 16, 2006 charged 15-year-old Joshua M. Wren with one count of first-degree reckless homicide in violation of Wis. Stat. §940.02(1). Apx. A: ¶4, ¶49; R. 1: 1-5. (Citations denoted by "R" are to the state appeal record.)

On November 13, 2006 Mr. Wren entered a guilty plea to first degree reckless homicide in return for a promise by the State make no specific sentencing recommendation and to leave the sentence up to the Court. Apx. A: ¶4, ¶49; R. 14: 1; R. 53: 3, 8.

On March 13, 2007, Mr. Wren, represented by Attorney Nikola Kostich, appeared before the trial court for sentencing. Apx. A: ¶5; R. 53: 1. The court imposed a sentence of 30 years imprisonment consisting of 21 years initial confinement and 9 years extended supervision, considerably more that Mr. Wren's counsel suggested and longer than was recommended in the presentence report. Apx. A: ¶4, ¶49.

No notice of intent to pursue postconviction relief was filed. Apx. A: ¶5; Apx. C: p. 3.

Proceedings in the Wisconsin Court of Appeals

On May 15, 2017 Mr. Wren, *pro se*, filed a petition for habeas corpus in the Wisconsin Court of Appeals asserting that his trial counsel was ineffective for having failed to file a notice of intent to seek postconviction relief after Mr. Wren had requested to appeal; as a remedy, Mr. Wren sought reinstatement of his direct appeal rights. Apx. A: ¶1, ¶7; R. 45: 1-14. The Wisconsin Court of Appeals ordered the State to file a response. Apx. B: p. 3; R. 27: 1; R. 28: 1. In its response, the State indicated an intent to interpose a laches defense to Mr. Wren's petition, but indicated that remand for a fact-finding hearing was necessary to establish the merits of both Mr. Wren's petition and laches. Apx. B: p. 3; R. 30: 1-4.

The Court of Appeals remanded the case for a fact-finding hearing on Mr. Wren's petition and on the laches defense, specifying nine points to be addressed in the findings. Apx. B: p. 3; R. 49: 3-5; R.

32: 2. On March 1, 2018 the Honorable Carolina Stark held an evidentiary fact-finding hearing at which Mr. Wren and three of his family members testified. R. 54: 1-68. On April 11, 2018 Judge Stark issued written findings of fact. Apx. C: pp. 1-4; R. 48: 1-4.

Facts relevant to the petition and laches

Testimony at the fact-finding hearing before Judge Stark and the resulting findings of fact reveal the following:

Mr. Wren was born on May 10, 1990. R. 54: 19. His case started in Children's Court but then moved to adult court. R. 54: 30. Attorney Nikola Kostich represented Mr. Wren in all adult court proceedings through sentencing. R. 54: 30. Mr. Kostich was appointed by the State Public Defender. R. 54: 29-30; R. 2: 1. Mr. Kostich died in 2014. Apx. C: p. 4; R. 48: 4.

Joshua Wren, his mother Beverly Cotton, his father Danny Wren and his sister Danielle Wren all testified at the fact-finding hearing as to events at Joshua Wren's sentencing. All three family members were present at the sentencing hearing. R. 53: 19; R. 54: 6, 14, 20. Ms.

Cotton, Danny Wren and Joshua Wren testified that based on conversations with Mr. Kostich, the expected sentence or requested sentence would include 13 years of incarceration. R. 54: 6-7, 14, 30. The presentence report included a recommendation of 13 years initial confinement and 5 to 6 years of extended supervision. Apx. A, ¶4 and footnote 3; R. 13: 12; R. 53: 28; R. 54: 31.

The sentence imposed included 21 years of confinement. Apx. A, ¶4; R. 14: 1; R. 53: 40. Joshua Wren was dissatisfied with this and immediately asked Mr. Kostich to appeal; Judge Stark found:

> [U]pon conclusion of the sentencing hearing, while Wren was still in the courtroom and at the defense table, he told Attorney Kostich that he disagreed with the sentence. In response, Attorney Kostich told Wren not to worry because they would appeal, and as a result, Wren believed that Attorney Kostich would complete the requirements necessary to seek postconviction relief.

Apx. C: p. 2; R. 48: 2. Joshua Wren, being in custody, could not follow Mr. Kostich out of the courtroom. However, Ms. Cotton, Danny Wren and Ms. Wren all testified that they met with Mr. Kostich in the hallway after sentencing, and that Mr. Kostich told them not to worry as he

would appeal. Apx. C: p. 2; R. 54: 7-8, 16, 21.

Judge Stark addressed the Notice of Right to Seek Postconviction Relief form, finding that it was filed on March 13, 2007, the date of sentencing, although it was dated March 7, 2007. Apx. C, p. 1; R. 48: 1. The court found that the "undecided" box was checked, but that Mr. Wren did not check it and the court could not determine who checked this box. Apx. C, pp. 1-2 and footnote 2; R. 48: 1-2 and footnote 2. The court found that when Mr. Wren signed the form, he did not know which box would be checked, as Mr. Wren's counsel did not discuss this with Mr. Wren. Apx. C: p. 2; R. 48: 2. Mr. Wren testified he never received a copy of this form. R. 54: 43-44. Judge Stark noted that both the original and the colored carbon copies of this form (exhibit 9) were in the court file, although not file-stamped. R. 54: 40-41; R. 47: 1-3.

After the sentencing hearing, Mr. Wren's family members made numerous attempts to contact Mr. Kostich regarding the appeal. Judge Stark found that Danielle Wren made multiple phone calls to Mr. Kostich, both within the 20 days after sentencing and for about 3 years

afterward, but Mr. Kostich never responded. Apx. C: p. 3; R. 48: 3. Beverly Cotton and Danny Wren also tried calling Mr. Kostich, but without success. Apx. C, p. 3; R. 48: 3. Judge Stark found:

> Attorney Kostich was not available to Wren or third parties acting on his behalf during the twenty days after March 13, 2007. Attorney Kostich had no communication with Wren or third parties acting on his behalf after March 13, 2007, despite their multiple attempts to contact him. Attorney Kostich intentionally led Wren and third parties acting on his behalf to believe that he would timely complete the requirements necessary for the defendant to seek postconviction relief, and then he failed to do so without notifying Wren or third parties acting on his behalf.

Apx. C: p. 3; R. 48: 3.

Mr. Wren wrote to Mr. Kostich in June and December of 2007 inquiring about the status of his appeal, but received no response. Apx. C: p. 2; R. 48: 2; R. 45: 13. In 2010 or 2011, Mr. Wren concluded that Mr. Kostich had not filed an appeal on his behalf. Apx. C: p. 3; R. 48: 3. In the period from 2010 to 2016, with the help of non-attorneys, Mr. Wren filed several postconviction pleadings. Apx. C: p. 4; R. 48: 4; R. 54: 45-48. None of these pleadings sought reinstatement of Mr. Wren's direct appeal because Mr. Wren was not aware of that option; he would

have sought such relief earlier had he known he could do so. R. 54: 49-50. Mr. Wren learned of his option to seek reinstatement of his appeal by corresponding with an uncle confined in another institution. R. 54: 50-51. Within 3 or 4 months after communicating with his uncle, Mr. Wren filed the habeas petition giving rise to this action. R. 54: 56-57. Judge Stark thus found:

> Sometime in 2010 or 2011, Wren concluded that Attorney Kostich had not filed an appeal on his behalf. After reaching this conclusion, Wren still wanted to seek postconviction relief regarding ineffective assistance of trial counsel and the sentence, but he did not know how to do so.

Apx. C: pp. 3-4; R. 48: 3-4.

Wisconsin Court of Appeals decision

On November 12, 2018 the Court of Appeals issued an opinion and order that Mr. Wren's habeas corpus petition be denied. Apx. B: pp. 1-10. The Court acknowledged that Mr. Wren asserted his trial counsel was ineffective in failing to file the document which initiates postconviction proceedings after Mr. Wren asked him to do so, and that Mr. Wren sought reinstatement of his direct appeal. Apx. B: pp. 1, 3-4.

The Court did not directly decide this claim, noting the State was asserting a defense of laches. Apx. B: p. 4. The Court's decision instead addressed the elements of laches and the equities in applying laches.

The Court found Mr. Wren unreasonably delayed seeking relief. The court quoted Mr. Wren's citation to the factual findings that after realizing in 2010 or 2011 that no appeal had been filed, Mr. Wren still wanted to seek postconviction relief but "'he did not know how to do so.'" Apx. B: p. 6, quoting apx. C: pp. 3-4. The court nonetheless found that Mr. Wren unreasonably delayed bringing his claim:

> It is undisputed that Wren knew by 2011 that no appeal had been filed on his behalf. Pursuing a series of *pro se* motions without alerting any court to the fact that he believed his trial counsel failed to preserve his right to seek postconviction relief is unreasonable.

Apx. B: p. 7.

The Court also considered the equities of applying laches. Apx. B: p. 9. The Court acknowledged, and did not refute, Mr. Wren's assertion "that trial counsel's failure to file a notice of intent to pursue postconviction relief deprived him of both a direct appeal and counsel

to represent him on direct appeal, which led Wren to make 'the kind of procedural errors unrepresented defendants tend to commit.'" Apx. B: p. 9. The court nonetheless concluded:

> [I]t is equitable and appropriate to apply laches in this case. Wren waited over ten years to raise concerns about the lack of the appointment of postconviction counsel and a direct appeal, despite the fact that he sought relief numerous times from the trial court.

Apx. B: p. 9.

Wisconsin Supreme Court decision

The Wisconsin Supreme Court set forth Mr. Wren's claim contained in his habeas petition: that after his appointed trial counsel promised to appeal and did not, Mr. Wren was "left entirely without counsel in violation of his Sixth Amendment rights." Apx. A: ¶7. However, like the court of appeals, the supreme court did not address this claim, instead considering only the application of the laches defense. Apx. A: ¶12 and footnote 7.

The Court acknowledged the finding of fact that after Mr. Wren knew in 2010 or 2011 that no appeal had been filed, he still wanted to

seek postconviction relief but did not know how to do so. Apx. A: ¶10. In assessing the reasonableness of the delay in bringing the claim, the Court determined that what Mr. Wren *actually* knew was not determinative, but rather what Mr. Wren *should have* known: "Thus, the question is when Wren either knew or should have known he had a potential claim." Apx. A: ¶21. Despite whatever educational or knowledge deficits Mr. Wren may actually have, the Court would not exempt him from the "constructive knowledge requirement we apply to all other litigants." Apx. A: ¶23. The Court reasoned:

> Nothing prevented Wren from researching available options to ensure he took advantage of every possible legal argument he could make. It surely cannot be that 20-year-olds (Wren's approximate age when he found out no appeal was forthcoming) are deemed incompetent. And while the PSI noted Wren had a second grade reading level at the time of sentencing, that detail alone does not mean he cannot research, consult others, and find out what needs to be done.

Apx. A: ¶23.

The Court acknowledged that if Mr. Wren told his counsel to file an appeal and counsel failed to do so, that failure would be constitutionally deficient performance, and prejudice is then presumed.

Apx. A: ¶28, citing *Garza v. Idaho*, 139 S.Ct. 738, 744 (2019). The Court also noted that Mr. Wren is not responsible for the faults of his constitutionally deficient counsel. Apx. A: ¶28, citing *Coleman v. Thompson*, 501 U.S. 722, 754 (1991). However, the Court deemed the question to be: "knowing counsel did not file an appeal, did Wren himself unreasonable delay in seeking relief[?]" Apx. A: ¶31. The Court concluded that Mr. Wren's habeas petition was unreasonably delayed:

> After knowing no appeal had been filed, and after knowing his counsel had not responded to him, Wren had an obligation to exercise reasonable diligence and raise the issues in a timely manner. Wren's delay of six to seven years from the time he knew this is not attributable to the State; it is on Wren. Put simply, Wren had some time to figure this out, but not unlimited time. Here, his delay was unreasonable.

Apx. A: ¶31.

In considering the equities of applying laches to preclude Mr. Wren's claim, the Court found reasonable the Wisconsin Court of Appeals conclusion that "even if the State failed to provide him with constitutionally adequate counsel, any subsequent delays by Wren

should not be attributed to the State." Apx. A: ¶42.

Three justices vigorously dissented. Apx. A: ¶¶44-77.

While agreeing that laches is a defense available to the State in response to a habeas petition, the dissent disagreed with its application in Mr. Wren's circumstances. Apx. A: ¶¶46-47. While the majority faults Mr. Wren for unreasonably delaying, the dissent would hold the State responsible for the delay pursuant to this Court's precedent. Apx. A: ¶¶56-58, citing *Coleman v. Thompson*, 501 U.S. 722 (1991). Likewise, the dissent criticized the majority's faulting of Wren for filing other motions while unrepresented. Apx. A: ¶¶63-64, 67. By filing his habeas petition within four months after learning such a petition was an option he did not unreasonably delay. Apx. A: ¶¶68-69.

The dissent also found equity weighed against applying laches. While the State was prejudiced by Attorney Kostich's unavailability, so was Mr. Wren. Apx. A: ¶¶73-74. Further, since it was the State that denied Mr. Wren counsel on appeal, it would be inequitable to hold Mr. Wren accountable for the State's failing. Apx. A: ¶75.

REASONS FOR GRANTING THE PETITION

I. The decision below contravenes this Court's holdings that when counsel's deficient performance deprives a defendant of an appeal he otherwise would have taken, responsibility for resulting missteps and delays by the defendant must be imputed to the State.

The Sixth Amendment guarantees the right of the accused "to have the Assistance of Counsel for his defence." This court extended this right, through the Due Process Clause of the Fourth Amendment, to the accused in State prosecutions, stating:

> The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence.

Powell v. Alabama, 287 U.S. 45, 67-68 (1932).

The right to counsel came to encompass the right to effective assistance of counsel. This Court set forth the two-part test for determining ineffective assistance of counsel: a defendant alleging ineffective assistance must typically show both deficient performance by counsel and prejudice to the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). However, the requirement to show prejudice is not imposed where counsel has been denied to a defendant:

> In certain Sixth Amendment contexts, prejudice is presumed. Actual or constructive denial of the assistance of counsel altogether is legally presumed to result in prejudice. So are various kinds of state interference with counsel's assistance. Prejudice in these circumstances is so likely that case-by-case inquiry into prejudice is not worth the cost.

Strickland at 692 (internal citations omitted). Thus, where the accused is deprived of counsel for any "critical stage of his trial," prejudice is presumed. *United States v. Cronic*, 466 U.S. 648, 659 (1984). The same is true on appeal. *Roe v. Flores-Ortega*, 528 U.S. 470, 483 (2000). Thus, this court held that "when counsel's constitutionally deficient performance deprives a defendant of an appeal that he otherwise would have taken, the defendant has made out a successful ineffective

assistance of counsel claim entitling him to an appeal." *Flores-Ortega* at 484. This holding was affirmed even when a defendant had signed an appeal waiver limiting the potential issues in his appeal. *Garza v. Idaho*, 139 U.S. 738 (2019).

When a Counsel's deficient representation deprives a defendant of his appeal, his appeal should be restored without requiring that the defendant overcome obstacles he would not face had his appeal properly been initiated. This court considered such an obstacle, imposed by a circuit precedent, which required a defendant to disclose what errors would be raised on an appeal and to demonstrate that the denial of an appeal was prejudicial. This Court rejected this requirement, stating:

> Those whose right to appeal has been frustrated should be treated exactly like any other appellants; they should not be given an additional hurdle to clear just because their rights were violated at some earlier stage in the proceedings. Accordingly, we hold that the courts below erred in rejecting petitioner's application for relief because of his failure to specify the points he would raise were his right to appeal reinstated.

Rodriquez v. United States, 395 U.S. 327, 330 (1969).

Mr. Wren had a right to counsel in a direct appeal. *Douglas v. California,* 372 U.S. 353 (1963). Mr. Wren's trial counsel failed to file the notice necessary to initiate his direct appeal and trigger appointment of appellate counsel. See Wis. Stat. §809.30(2)(c)1 and (e). In such circumstances, subsequent delays are attributable not to the unrepresented defendant, but to the State. Thus, this Court has stated:

> Where a petitioner defaults a claim as a result of the denial of the right to effective assistance of counsel, the State, which is responsible for the denial as a constitutional matter, must bear the cost of any resulting default and the harm to state interests that [collateral] review entails.

Coleman v. Thompson, 501 U.S. 722, 754 (1991).

Joshua Wren was denied an appeal when his trial attorney assured him (and his family members who were present at sentencing) that he would file an appeal, and then failed to file the notice of intent to seek postconviction relief which, in Wisconsin, starts the appeal process and triggers the appointment of postconviction counsel. See Wis. Stat. §809.30(2)(a)-(e) (setting forth procedure to initial a criminal appeal).

After he was sentenced in March of 2007, Mr. Wren did not immediately know that no appeal had been started. In June and December of 2007, he wrote to Attorney Kostich to inquire about the status of his appeal, but received no reply. Apx. C: p. 2. Likewise, family members attempted to contact Mr. Kostich, both within the 20-day period for filing a notice of intent and for several years after, without success. Apx. C: pp. 2-3. Finally, in 2010 or 2011 Mr. Wren was forced to conclude that Mr. Kostich had filed no appeal. Apx. A: ¶10; apx. C: p. 3. Judge Stark found that while Mr. Wren wanted to seek postconviction relief, he "did not know how to do so." Apx. C: pp. 3-4. In other words, Mr. Wren "was unaware that he could petition to reinstate his direct appeal rights." Apx. A: ¶10. Thus, between 2010 and 2016, "with the assistance of people other than legal counsel," he filed a series of motions before filing the habeas petition which is the subject of this appeal. Apx. C: p. 4.

Finally, in 2017, after corresponding with an incarcerated uncle, Mr. Wren learned what to do and within three or four months he filed

the habeas petition giving rise to the instant appeal. Apx. A: ¶10. While Mr. Wren sought to reinstate his appeal rights, the Court below avoided addressing the merits of his petition, instead limiting its review to the applicability of laches. Apx. A: ¶12 and footnote 7.

The court addressed the elements of laches, starting with whether Mr. Wren unreasonably delayed in filing his habeas petition. Apx. A: ¶¶18-31. While the Court purported to determine this based on "the totality of circumstances" (Apx. A: ¶18), the court put aside findings concerning Mr. Wren's limitations and when he obtained actual knowledge of the possibility of filing a habeas petition seeking restoration of his appeal, instead relying on a "constructive knowledge requirement." Apx. A: ¶20. The court acknowledged Mr. Wren's assertions, consistent with the findings of fact, that he did not know he could make a claim to reinstate his appeal, and when he did learn of it, he filed his petition within three or four months. Apx. A: ¶22. The Court below rejected these assertions as "an effort to except Wren from the constructive knowledge requirement we apply to all other litigants."

Apx. A: ¶23. The Court below denied this effort:

> [W]e regularly require legally untrained litigants to assert their rights in a timely manner. Nothing prevented Wren from contacting another attorney. Nothing prevented Wren from researching available options to ensure he took advantage of every possible legal argument he could make. It surely cannot be that 20-year-olds (Wren's approximate age when he found out no appeal was forthcoming) are deemed incompetent. And while the PSI noted Wren had a second grade reading level at the time of sentencing, that detail alone does not mean he cannot research, consult others, and find out what needs to be done.

Apx. A: ¶23.

The Court below acknowledged that Mr. "Wren is not liable for the faults of his constitutional deficient counsel. *See Coleman v. Thompson*, 501 U.S. 722, 754 (1991)." Apx. A: ¶28. Yet it would not apply this principle: "Wren's paramount objection seems to be that as a pro se litigant whose postconviction attorney abandoned him, any delay is the State's fault, not his. Incorrect." Apx. A: ¶24. The court expounds upon the strictures Wisconsin court place upon post-direct-appeal litigants, most of whom are pro se. Apx. A: ¶¶26-27.

Mr. Wren was entitled to trial counsel. *Gideon v. Wainwright*,

372 U.S. 335 (1963). He was entitled to effective assistance from his trial counsel. *Strickland v. Washington*, 466 U.S. 668 (1984). Mr. Wren was entitled to counsel to represent him in his first appeal as of right in state court. *Douglas v. California*, 372 U.S. 353 (1963). He was entitled to effective assistance of appellate counsel. *Evitts v. Lucey*, 469 U.S. 387 (1985). When a defendant is denied these rights, the State must bear the consequences:

> Where a petitioner defaults a claim as a result of the denial of the right to effective assistance of counsel, the State, which is responsible for the denial as a constitutional matter, must bear the cost of any resulting default and the harm to state interests that federal habeas review entails.

Coleman v. Thompson, 501 U.S. 722, 754 (1991).

Mr. Wren's trial counsel failed to file a notice of intent to seek postconviction relief, which deprived him of both a direct appeal and counsel on direct appeal. Yet though deprived of the counsel to which he was entitled, the decision below required Mr. Wren to promptly and correctly *act as his own attorney* to restore the rights lost through the deficiency of his trial counsel. This contravenes the holdings of this

Court.

II. The decision below conflicts with Seventh Circuit precedent.

In holding that Mr. Wren is responsible for unreasonably delaying seeking reinstatement of his appeal after being abandoned by counsel, the Wisconsin Supreme Court contravenes precedent from the Seventh Circuit. *Betts v. Litscher*, 241 F.3d 594 (7th Cir. 2001).

Mr. Betts was not deprived of appellate counsel from the outset, but his appellate counsel found no meritorious issues and notified the court that Mr. Betts declined a no-merit report and elected to proceed pro se. *Betts* at 595. However, Mr. Betts contradicted this by repeatedly requesting counsel. *Betts* at 595-596. These requests apparently spanned 12 years, from 1989 to 2001, and were all rejected by Wisconsin Courts and were deemed forfeited due to his failure to follow State procedures. *Betts*, 595-596. The Seventh Circuit granted habeas relief, stating:

> Betts was constitutionally entitled to the assistance of counsel on direct appeal, but the state of Wisconsin gave him

> the runaround. It allowed counsel to withdraw unilaterally, then used the ensuing procedural shortcomings to block all avenues of relief. Yet one principal reason why defendants are entitled to counsel on direct appeal is so that they will not make the kind of procedural errors that unrepresented defendants tend to commit. The Constitution does not permit a state to ensnare an unrepresented defendant in his own errors and thus foreclose access to counsel. This is one of those rare cases where a state procedural ground not only is inadequate — for it is circular and supposes that Betts *properly* lacked counsel when the missteps were made — but also contravenes rules articulated by the Supreme Court. . ..

Betts at 596. The court thus directed that Mr. Betts' direct appeal be reinstated with an opportunity to cure "whatever procedural gaffes Betts committed when he lacked legal assistance." *Betts* at 597.

The decision below in Mr. Wren's case, faulting him for delays and missteps while left without counsel, cannot be reconciled with *Betts*.

CONCLUSION

Petitioner Joshua M. Wren prays that the Court grant this petition for certiorari.

Respectfully Submitted:

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