No. 19-8650

IN THE

SUPREME COURT OF THE UNITED STATES

SEBASTIAN ALBERT CAMPBELL,

Petitioner,

v.

STATE OF MARYLAND,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS OF MARYLAND

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Maryland statutory and case law considers funds for expert witnesses to be part of a "package" of services that is available only if the indigent defendant is represented by the Office of the Public Defender. In a criminal case where an indigent defendant exercises his Sixth Amendment right to represent himself at trial, does the State's refusal to fund an expert to assist him to prepare his defense violate his constitutional right to self-representation?

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The decision of the Court of Appeals of Maryland denying Campbell's petition for a writ of certiorari is reported at 467 Md. 695 (2020). The opinion of Court of Special Appeals of Maryland is reported at 243 Md. App. 507 (2020).

JURISDICTION

Jurisdiction is invoked under 28 U.S.C. § 1257(a).

STATEMENT OF THE CASE

1. Campbell's request for public funds

On May 18, 2017, Campbell was charged with sexually abusing and raping his minor daughter ("victim"), who in August 2013, at the age of 13, gave birth to Campbell's child. *Campbell*, 243 Md. App. at 514; Md. Judiciary Case Search, Montgomery County Cir. Ct. Case No. 131730C. Campbell qualified for the assistance of the public defender and was assigned one to represent him against those charges. Tr. 5/26/17 at 5–6. At his initial appearance in court and in subsequent proceedings, Campbell declined to be represented by counsel from the Office of

the Public Defender ("OPD") and elected to represent himself. *Id.* at 7, 12–15; Tr. 8/7/17 29–41. Three days after Campbell's initial appearance, the State served Campbell with notice of its intent to present DNA evidence confirming his paternity of the victim's child. Md. Judiciary Case Search, Montgomery County Cir. Ct. Case No. 131730C, Docket No. 28.

Before trial, Campbell filed a "motion for an ex parte hearing to establish the necessity for appointment of expert witness." Tr. 8/7/17 at 4–6, 11–12; Md. Judiciary Case Search, Montgomery County Cir. Ct. Case No. 131730C, Docket No. 68. The Circuit Court for Montgomery County, Maryland, held a hearing on Campbell's motion, albeit not ex parte.

The court heard from Allen Wolf, the District Public Defender for Montgomery County. Wolf testified that the OPD provides funds only for clients it is representing; if an indigent defendant is not represented by the OPD, the defendant is financially responsible for the ancillary services that the OPD would have otherwise provided, such as transcripts and experts. Tr. 8/7/17 at 14–16, 21. Wolf explained that, although Maryland state courts have the authority to appoint counsel for a criminal

defendant where the OPD has declined to represent him or her, the OPD never declined to represent Campbell. *Id.* at 17–20. Aside from public defender services, Wolf was unaware of any financial resources available to criminal defendants to pay for the assistance of an expert. *Id.* at 22–23.

Campbell acknowledged that if he had pro bono or retained counsel, under Maryland case law,[1] he would not be legally entitled to a state-funded expert because services provided by the OPD are non-severable. *Id.* at 27–28. Still, he argued that the trial court's reliance on the Public Defender Act of Maryland[2] to deny him the service of an expert was unconstitutional because it violated his right to represent himself, as guaranteed by the Sixth Amendment of the Constitution. *Id.* at 27–29. Campbell insisted that he had "an absolute right to an expert witness to rebut any testimony by the prosecution," and complained that he would have to give up his "absolute right to self-representation to gain [his] absolute right of

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[1] *See Moore v. State*, 390 Md. 343 (2005), *cert. denied*, 549 U.S. 813 (2006); *State v. Miller*, 337 Md. 71 (1994).

[2] Md. Code Ann., Crim. Proc. §§ 16-101–16-403 (2008).

the tools to create an effective defense," and that was not a choice he "should have to make." *Id.* at 27–29. Campbell was offered the opportunity to reengage the OPD as his counsel, but declined because, "[a]s much as [he] needed" an expert, he did not want to give up the ability to personally cross-examine the State's witnesses. *Id.* at 29–41.

The court agreed with the OPD that, other than public defender services, there is no alternative "avenue" for a defendant to fund a defense at the State's expense. *Id.* at 25–26. Due to the absence of funds to grant Campbell's request, the trial court denied Campbell an ex parte hearing. *Id.* at 27; *see also id.* at 55–58. At no point did Campbell proffer the type of expert he wished to enlist, the information he expected to obtain from that expert, or the manner in which an expert could assist him in preparing his defense. Campbell simply stated, "I need an expert witness, obviously." *Id.* at 35–37.

2. The evidence presented at trial

A week later, on August 14, 2017, Campbell proceeded pro se to a jury trial on the sexual abuse and rape charges.

The victim testified that she was 11 years old when her father, Campbell, first raped her. Tr. 8/15/17 at 87–88. From March 2012 to December 2013, Campbell vaginally penetrated the victim "[a]t least twice a week" without wearing a condom. *Id.* at 31, 89. The victim was impregnated and in August 2013 delivered a baby prematurely via cesarean section at the hospital. *Id.* at 35–36.

The State presented DNA evidence through two experts. Tr. 8/15/17 at 152; Tr. 8/16/17 at 126. One testified that Campbell was included as the possible biological father of the victim's baby. Tr. 8/16/17 at 131. The other, using the "likelihood ratio," calculated "the probability of paternity" at "99.99999999 percent" and opined that Campbell was the father of the victim's baby. Tr. 8/15/17 at 158–59. Campbell did not cross-examine either expert. Tr. 8/15/17 at 161; Tr. 8/16/17 at 134.

Campbell testified in his own defense and admitted that he was the father of the victim's child—a fact he acknowledged was "difficult to dispute given the DNA evidence in this case." Tr. 8/16/18 at 222; Tr. 8/17/17 at 59. But he denied that the child was conceived through sexual intercourse. He posited, instead,

that the victim impregnated herself with his sperm, which she retrieved from a used condom he had thrown in a trash can. Tr. 8/17/17 at 28.

At the conclusion of his trial, the jury found Campbell guilty of two counts of sexual abuse of a minor and four counts of second-degree rape. Tr. 8/17/17 at 213–14. The trial court sentenced Campbell to consecutive sentences totaling 130 years. *Campbell*, 243 Md. App. at 513.

3. The Maryland Court of Special Appeals' opinion affirming Campbell's convictions

On appeal, Campbell claimed that the Maryland Public Defender Act was unconstitutional with respect to indigent, pro se defendants and that its application to his case amounted to a violation of his constitutional rights. *Campbell*, 243 Md. App. at 524. According to Campbell, the trial court's ruling impermissibly forced him to surrender one "constitutional right, namely, his right to present a defense, in favor of another constitutional right, namely, his right to self-representation." *Id.* at 525.

Relying on *Moore*, in which the Maryland Court of Appeals held that "'there is no constitutional violation when the State

requires that an indigent defendant avail himself of the services of the [OPD] in order to obtain [ancillary services],'" the intermediate appellate court rejected Campbell's claim. *Campbell*, 243 Md. App. at 525 (quoting *Moore*, 390 Md. at 377, in turn quoting *Miller*, 337 Md. at 87–88). The court concluded that Campbell was faced with the same choice as the defendant in *Moore*: either accept public defender representation to access the "package" of services provided by the State through that office or forgo them entirely. *Id.* at 525–27. As in *Moore*, the Court of Special Appeals determined that requiring that choice here was permissible under the Constitution. *Id.* at 527. If, "assuming *arguendo*, that assistance of an expert was necessary to the defense in this case, the State did not deny [Campbell] that assistance" because he could have obtained it by accepting OPD representation. *Id.* Thus, the court concluded, no constitutional violation occurred. *Id.*[3]

[3] Campbell currently has another appeal pending before the Maryland Court of Special Appeals in the underlying case. There, he is challenging the denial of his motion for new trial. *Sebastian Albert Campbell v. State of Maryland,* No. 1397, Sept. Term, 2019 (Md. Ct. Spec. App. Oct. 21, 2020).

REASONS FOR DENYING THE PETITION

This case involves an indigent, pro se criminal defendant who requested government funding for an expert witness in a state that limits such funding to defendants who are represented by the state's Office of the Public Defender. Campbell's challenge to that limitation relies primarily on the *Faretta*[4] right of self-representation and the *Ake*[5] holding regarding the requirements of due process in a case where the defendant claims a mental impairment. A grant of certiorari is unwarranted for three reasons.

First, this case is a poor vehicle for assessing what impact, if any, the denial of expert-witness assistance had on Campbell's right to self-representation. *Ake* and subsequent cases have made clear that a defendant is required to make a threshold showing that the expert testimony would be relevant and helpful. Even now, following trial and appeal, it remains unclear what kind of

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[4] *Faretta v. California*, 422 U.S. 806, 832 (1975).

[5] *Ake v. Oklahoma*, 470 U.S. 68, 83 (1985).

expert assistance Campbell sought, or how it would have been relevant. This void in the record limits this Court's ability to consider the constitutional question presented here.

Second, certiorari review by this Court would be premature. Nationwide, only a handful of reported opinions have addressed entitlement to expert-witness funding for an indigent criminal defendant who elects to proceed pro se.[6] A greater period of percolation will allow this issue to further develop among the states, thereby leading to a greater array of opinions on which this Court can rely to inform its ruling.

Third, the Court of Special Appeals' decision does not conflict with any relevant decision of this Court. In *Ake*, this Court left it to the states to determine the best way to provide the expert-witness funding required by due process. Maryland has properly

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[6] The issue does not arise in federal court because the Criminal Justice Act has been construed to cover such an expense for an indigent, pro se defendant. *See* Criminal Justice Act Guidelines § 310.10.30(a) ("Persons who are eligible for representation under the CJA, but who have elected to proceed pro se, may, upon request, be authorized to obtain investigative, expert, and other services in accordance with 18 U.S.C. § 3006A(e).").

chosen to implement the right through its OPD and to treat access to an attorney and to expert witnesses as a "package." That system does not improperly infringe on a defendant's right to self-representation, which is not absolute.

1. The uncertain record provides a poor vehicle for decision.

Even if this Court were inclined to address the question presented here, this case is a poor vehicle for doing so. The record suffers from a void left by Campbell's failure to proffer the type of expert he desired, the information he hoped to obtain from the expert, or the manner in which the expert could have assisted his defense.

In *Ake*, this Court identified three factors that are relevant to the determination of whether, and under what conditions, the state is required to fund the participation of the requested expert. 470 U.S. at 77. Those factors include: (1) the private interest that will be affected by the action of the state; (2) the governmental interest that will be affected if the safeguard is provided; and (3) the probable value of the additional or substitute procedural safeguards that are sought, and the risk of an erroneous

deprivation of the affected interest if those safeguards are not provided. *Id.*; *see Ross v. Moffitt*, 417 U.S. 600, 616 (1974) (stating that "the fact that a particular service might be of benefit to an indigent defendant does not mean that the service is constitutionally required").[7]

"The reasonableness of a judge's denial of that assistance 'necessarily turns on the sufficiency of the petitioner's explanation as to why he needed an expert.'" *Conklin v. Schofield*, 366 F.3d 1191, 1208 (11th Cir. 2004), *cert. denied*, 544 U.S. 952 (2005) (quoting *Moore v. Kemp*, 809 F.2d 702, 710 (1987) (11th Cir.) (en banc), *cert. denied*, 481 U.S. 1054 (1987)); *see Caldwell v. Mississippi*, 472 U.S. 320, 323 n.1 (1985) (requiring more than "undeveloped assertions" "to determine as a matter of federal constitutional law what if any showing would have entitled a

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[7] To the extent that Campbell characterizes access to an expert as a "basic tool" to his defense (Petition at 5, 8, 10), that assertion is unsupported by case law. This Court has recognized certain "raw materials" that are necessary to the adversarial process, such as providing an indigent defendant with a transcript, the effective assistance of counsel at trial and on direct appeal, and paternity tests in "quasi-criminal" paternity actions. *Ake*, 470 U.S. at 76 (collecting cases). Access to a non-psychiatric expert is not among them.

defendant to assistance of the type here sought"). Thus, critically important to proper appellate review is the proffer made by a defendant to support his or her request for the appointment of an expert *before* the trial court's ruling.

Ake and its progeny are clear that the defendant must proffer the type of expert needed and the relevance of his or her expertise. *See*, *e.g.*, *Caldwell*, 472 U.S. at 323 n.1 (finding no deprivation of due process in the trial judge's refusal to appoint fingerprint and ballistics experts where "petitioner offered little more than undeveloped assertions that the requested assistance would be beneficial"); *Moore*, 809 F.2d at 718 (upholding denial of expert appointment where petitioner merely requested a "criminologist or other expert witness" without specifying the kind of expert he desired, the role the expert would play, or what the expert would have contributed to the defense).

That critical information is lacking here. At the hearing on his motion, Campbell baldly asserted that he "obviously" "needed an expert witness," but did not identify the type of expert he needed or articulate how that expert would have assisted him in preparing his defense. Without that necessary proffer by

Campbell, this Court cannot evaluate "the probable value" of the expert's input and weigh the detriment, if any, to Campbell's exercise of his *Faretta* right. This void in the record counsels against certiorari review.

2. It is premature for this Court to address the issue of whether a state is required to provide an indigent defendant who elects to represent himself state-funded experts to prepare a defense for trial.

In *Faretta*, 422 U.S. at 832, this Court held that the Sixth Amendment guarantees a criminal defendant's right to self-representation at trial. Ten years later, in *Ake*, 470 U.S. at 83, this Court held "that when a defendant demonstrates to the trial judge that his sanity at the time of the offense is to be a significant factor at trial, the State must, at a minimum, assure the defendant access to a competent psychiatrist." Significantly, however, *Ake* left "the decision on how to implement this right" to the state. *Id.*

Despite the considerable time that has elapsed since *Ake*, it would nonetheless be premature for this Court to attempt resolution of pertinent questions left open in *Faretta* and *Ake* because the case law on the matter is still relatively undeveloped.

It is noteworthy that Campbell does not allege that there is a conflict among the federal appellate courts and state supreme courts as to when expert-witness funding is required for an indigent defendant who exercises his or her *Faretta* right of self-representation, or how that funding is to be provided.

Only a handful of reported opinions address the *Faretta* right to self-representation and expert-witness funding for an indigent criminal defendant who chooses to proceed pro se. *See* Annotation, *Right of indigent defendant in criminal case to aid of state by appointment of investigator or expert*, 34 A.L.R.3d 1256 (1970 & 2020 Supp.) (discussing more than 300 cases, two of which involved pro se defendants). The current state of the case law can be summarized briefly: of the small number of courts that have addressed the issue, most resolved it on non-constitutional grounds, and the lone case that found that the defendant was constitutionally entitled to such funding involved facts very similar to *Ake*.

Few reported state-court opinions have addressed whether *Faretta* and *Ake* require expert-witness funding for an indigent, pro se criminal defendant outside the circumstances in *Ake*. As one

state supreme court has observed, "few courts even have considered applying *Ake* principles in the self-represented litigant context." *State v. Davis,* 318 S.W.3d 618, 636 (Mo. 2010) (en banc) (addressing claim by defendant who proceeded to trial with counsel). Another state supreme court similarly recognized that the "right of an indigent, self-represented defendant to the same resources has been addressed less commonly" than the counsel-of-choice issue for defendants who had "pro bono or retained counsel." *State v. Bell*, 53 So.3d 437, 453 n.18 (La. 2010).

Of the few opinions that considered the issue, most resolved the appeal on non-constitutional grounds. Some of those opinions resolved the appeal based on the defendant's failure to make a threshold showing that the expert's testimony would be of probable value with respect to a significant factor in the defense. *See Crawford v. State*, 404 P.3d 204, 222 (Alaska Ct. App. 2017) (after requiring supplemental briefing on the issue of "whether the government is required to provide this same funding for investigative services and expert witnesses when an indigent defendant . . . chooses to proceed *in propria persona*," declining to reach the issue "because Crawford never made the threshold

showing required by *Ake*"); *Bell*, 53 So.3d at 452 n.18 (concluding that it is "unnecessary to delve into [the] entitlement" of "an indigent, self-represented defendant" to expert-witness resources at public expense because of the defendant's "poor showing of necessity" for those resources); *State v. Martin*, 195 P.3d 716, 723 (Idaho Ct. App. 2008) (pro se defendant failed to make "the required threshold showing" as to his request for controlled substance and DNA testing); *Fly v. State*, 494 S.E.2d 95, 99 (Ga. Ct. App. 1997) (pro se defendant failed to make threshold showing of "the necessity of an investigator or psychological expert").[8]

Other state court opinions have avoided the constitutional-entitlement issue for other reasons. *See State v. Wool*, 648 A.2d 655, 660 (Vt. 1994) (resolving issue of entitlement to funding for investigative services and expert testimony based on construction of state public defender statute, and finding that they were covered); *State v. Armentrout*, 8 S.W.3d 99, 105 (Mo. 1999)

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[8] As the State noted in Section 1, the record here suffers the same defect as the record in these cases. Campbell failed to proffer what type of expert witness he wanted to retain and how that witness would help his defense.

(declining to address whether pro se defendant was entitled to funding for depositions and experts because the colloquy showed that his self-representation-related requests "were not tied to the funding issue").

To date, only one state supreme court decision has found entitlement to expert-witness funding. In *State v. Wang*, 92 A.3d 220, 223 (Conn. 2014), the Connecticut Supreme Court addressed a reserved question, "whether an indigent defendant who has waived the right to counsel and represents himself in a criminal prosecution is constitutionally entitled to expert or investigative services at public expense that are reasonably necessary to formulate and present a defense."[9]

Wang, however, is an outlier for multiple reasons. First, the State did not take a position on the reserved question. 92 A.3d at

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[9] The defendant in *Beshears v. State*, 254 So.3d 1133, 1134 (Fla. Dist. Ct. App. 2018), raised the same issue when he contended that he was entitled to a state-funded expert to support his claim that "his prescription medications caused him to be legally insane on the night of the incident," but in that case the State conceded error in not providing funding for the expert, and the only issue before the appellate court was whether that nonfunding constituted harmless error.

227. Second, because the defendant extensively documented his history of mental illness and his possible intention to raise a defense of mental disease or defect, the material facts were strikingly similar to *Ake*. *Id.* at 234 ("Because the defendant in this case has raised the possibility of a mental disease or defect affirmative defense, the parallels to *Ake* are striking."). Third, and importantly for this case, the holding was not primarily based on *Faretta*, as is Campbell's claim. Finally, no other appellate court has cited *Wang* in support of requiring state-funded experts for an indigent, pro se defendant.

When "frontier legal problems are presented, periods of 'percolation' in, and diverse opinions from, state and federal appellate courts may yield a better informed and more enduring final pronouncement by this Court." *Arizona v. Evans*, 514 U.S. 1, 23 n. l (1995) (Ginsburg, J., dissenting). Although *Faretta* and *Ake* are not recent cases, state supreme court case law regarding entitlement to funding for an indigent, pro se criminal defendant remains in its infancy. This Court should give state high courts an opportunity to apply *Faretta* and *Ake* to varying factual scenarios

before it considers whether to resolve a question left open by those cases.

3. The Maryland Court of Special Appeals' decision upholding the constitutionality of the Public Defender Act does not conflict with any relevant decision of this Court.

The Due Process Clause of the Fourteenth Amendment to the United States Constitution requires a state, upon request, to provide an indigent criminal defendant with the "basic tools of an adequate defense . . . when those tools are available for a price to other prisoners." *Britt v. North Carolina*, 404 U.S. 226, 227 (1971). Fundamental fairness requires only that the state not deny an indigent defendant "an adequate opportunity to present their claims fairly within the adversary system." *Ross*, 417 U.S. at 612.

Maryland honors those obligations through the OPD, which was created "to provide for the realization of the constitutional guarantees of counsel in the representation of indigents, including related necessary services and facilities[.]" *Miller*, 337 Md. at 77 (citing Art. 27A, § 1, Md. Code (1957, 1993 Repl. Vol.)); Md. Code Ann., Crim. Proc. § 16-201(1) (2008). The OPD "provide[s] the resources necessary for an indigent" defendant, while acting "as a

'gatekeeper'" to ensure "that those resources are not wasted or abused." *Miller*, 337 Md. at 81, 83.

For nearly 40 years, the OPD's statutory scheme has withstood constitutional challenges like the one Campbell presents. In *Miller v. Smith*, 115 F.3d 1136, 1141 (4th Cir.) (en banc), *cert. denied*, 522 U.S. 884 (1997), for example, the Fourth Circuit held that requiring an indigent criminal defendant to apply for legal representation with OPD "as a prerequisite to obtaining a free transcript in connection with an appeal" did not violate the Fourteenth Amendment because it "gives indigent criminal defendants an adequate opportunity to present claims on appeal." The court noted that Miller was not entirely cut off from the appellate process because he could have obtained what he needed by applying for public defender representation. *Id.* at 1142–43. While Maryland "may not have duplicated the legal arsenal of a wealthy defendant," it "has created a system in which indigent defendants can fairly present their claims to the appellate court," which is "all the Fourteenth Amendment requires." *Id.* at 1143.

In *Moore*, the Court of Appeals of Maryland concluded that representation by the OPD is not severable from ancillary services

provided by it. Addressing Moore's due process, equal protection, and Sixth Amendment right to counsel claims, the court held that the State had satisfied its constitutional obligations by establishing the OPD, "making expert services available to clients of that Office, and requiring that, in order for an indigent to receive State-funded expert services, the defendant *must* seek representation by [OPD]." *Moore*, 390 Md. at 374.

Campbell's insistence on what he terms an "absolute" right to self-representation under *Faretta* does not, as he seems to believe, warrant any departure from the conclusions reached in *Moore* and *Miller*. *Faretta* itself did not suggest that the right to self-representation is absolute. Though Justice Blackmun's dissent in *Faretta* stated that "petitioner is seeking an absolute right to self-representation," 422 U.S. at 848, the majority opinion did not frame the right as an absolute, but instead noted scenarios illustrating its potentially conditional nature. For example, the *Faretta* majority recognized that "the trial judge may terminate self-representation by a defendant who deliberately engages in serious and obstructionist misconduct," for "[t]he right of self-representation is not a license to abuse the dignity of the

courtroom[;][n]either is it a license not to comply with relevant rules of procedural and substantive law."[10] 422 U.S. at 834 n.46; *see also Ross*, 417 U.S. at 612 ("Despite the tendency of all rights 'to declare themselves absolute to their logical extreme,' . . . . [t]he question is not one of absolutes, but one of degrees.") (citation omitted).[11]

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[10] *See also Indiana v. Edwards*, 554 U.S. 164, 171 (2008) (*Faretta* does not bar a state from "insisting that the defendant proceed to trial with counsel, the State thereby denying the defendant the right to represent himself"); *Martinez v. Court of Appeal of Cal., Fourth Appellate Dist.*, 528 U.S. 152, 163 (2000) (no right of self-representation on direct appeal in a criminal case); *McKaskle v. Wiggins*, 465 U.S. 168, 178–79 (1984) (appointment of standby counsel over self-represented defendant's objection is permissible).

[11] Campbell cites language from *Simmons v. United States*, 390 U.S. 377, 394 (1968), essentially to argue that any "sacrifice" of the "absolute" right of self-representation is "intolerable." (Petition at 8). Campbell omits the qualifying language that confines the statement to the circumstances of that case: "[I]n this case [the petitioner] was obliged either to give up what he believed, with advice of counsel, to be a valid Fourth Amendment claim or, in legal effect, to waive his Fifth Amendment privilege against self-incrimination. *In these circumstances*, we find it intolerable that one constitutional right should have to be surrendered in order to assert another." *Simmons*, 390 U.S. at 394 (emphasis added). The few opinions from this Court addressing *Simmons* usually do so with respect to a Fifth Amendment issue. *See*, *e.g.*, *Lefkowitz v. Cunningham*, 431 U.S. 801, 807–08 (1977) (citing *Simmons* (continued)

The Court of Special Appeals' holding is also consistent with *Ake*, 470 U.S. at 70, which held that "the Constitution requires that an indigent defendant have access to the psychiatric examination and assistance necessary to prepare an effective defense based on his mental condition, when his sanity at the time of the offense is seriously in question." *Id.* This Court limited *Ake*'s holding to cases in which the defendant's mental condition is "seriously in question," expert testimony regarding it "would be of probable value," and the defendant makes a "threshold showing to the trial court that his sanity is likely to be a significant factor in his defense." *Id.* at 82–83; *cf. Caldwell*, 472 U.S. at 323 n.1 (finding "no need to determine as a matter of federal constitutional law what if any showing would have entitled a defendant to assistance" of a non-psychiatric expert witness). This Court's concern was that "the indigent defendant have access to a competent psychiatrist for the purpose" of curbing the "extremely high" "risk of an inaccurate

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regarding Fifth Amendment claim). *Simmons* did not address *Faretta*, or the Sixth Amendment, or equal protection, or due process, or what government funding is required for criminal defendants in any context.

resolution of sanity issues"; *Ake* left "to the State[s] the decision on how to implement this right." 470 U.S. at 83.

This case does not involve a psychiatric expert. Nor does it involve a situation where Maryland flatly refused to provide funding for Campbell's expert witness. Maryland has implemented the right of access to expert testimony for indigent criminal defendants through its OPD, which provides indigent defendants with "'an adequate opportunity to present their claims fairly within the adversary system.'" *Ake*, 470 U.S. at 77 (quoting *Ross*, 417 U.S. at 612); *cf. Griffin v. Illinois*, 351 U.S. 12, 20 (1956) (recognizing that states "may find other means of affording" indigent defendants their constitutional rights and expressing confidence in states' ability to do so). That is all the Constitution demands. *Ake*, 470 U.S. at 77 (observing that this "Court has not held that the State must purchase for the indigent defendant all the assistance that his wealthier counterpart might buy"); *see Miller*, 115 F.3d at 1143 (upholding constitutionality of Maryland's requirement that a defendant apply for public defender representation to receive ancillary services).

CONCLUSION

The petition for a writ of certiorari should be denied.

Dated: November 13, 2020

Respectfully submitted,

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