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No. 19-8650

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

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

PETITIONERS REPLY BRIEF

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SUPREME COURT, U.S.

QUESTION PRESENTED

Do Maryland statutes and precedents compel all indigent, pro se defendants to proceed to trial without the basic necessary tools for an adequate defense, thereby deciding the federal issues of self-representation and the provision of the basic tools for an adequate defense to indigents in a manner that conflicts with U.S. Supreme Court rulings?

NOTE TO COURT

Petitioner begs the Court's indulgence as to the style of this Reply Brief and its handwritten content. Due to newly imposed COVID-19 restrictions, Building 3 of the North Branch Correctional Facility, where Petitioner is confined, is on full "Quarantine Protocol." Access to legal research and materials necessary for the production of briefs is indefinitely prohibited. Petitioner received Respondent's Brief in Opposition on November 20, 2020, seven (7) days after it was filed, upon which he immediately initiated the following reply, despite the formidable circumscription.

Petitioner notes Rules of the Supreme Court 15.6 governing reply briefs does not mandate that they conform to Rule 24, as they specifically do in other circumstances. Therefore, without further guidance, Petitioner submits this Reply Brief as closely conforming to the applicable Rules as is possible under the circumstances.

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STATEMENT OF THE CASE

On November 13, 2020 AAG Williams filed the State's opposition to Petitioner's Petition for Writ of Certiorari. Her Statement of the Case selectively failed to convey the totality of the circumstances. Petitioner is compelled to amend her version.

Petitioner was prosecuted in this case by Assistant State's Attorney ("ASA") Elizabeth Haynes, the same prosecutor who three (3) years earlier, was summarily defeated by Petitioner representing himself in a jury trial where the verdict of "not guilty on all counts" was rendered after less than an hour of deliberation (Montgomery City Cir. Ct case #124324C, 7/10/14, Dkt #11).

Petitioner elected to represent himself at the onset of these proceedings just as Mr. Williams asserted, however, her conclusion that Petitioner declined OPD representation "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," is tragically incomplete.

Petitioner's disenchantment with the OPD was based on the deceit they demonstrated in his previous trial against ASA Haynes where he was forced to dismiss the OPD on the day of trial and proceed without counsel. Petitioner asserted, "So I went to trial with no, no legal knowledge at the time... and because I was innocent I won the case." In explaining to the trial court

his reason for proceeding pro se he acknowledged, "I feel that innocence is the barometer here." (F-8/11/17, pg 34-35).

THE ART OF MISDIRECTION

AAG Carrie Williams' "Reasons for Denying the Petition" amount to a concededly skillful yet factually deficient diversion from the true issue before this Court. First Ms. Williams has completely misled the Court in her assertion that, "it remains unclear what kind of expert assistance Campbell sought," (AAG Brief @ 5) or that there is a "void in the record," precluding consideration of the constitutional issue. These statements are simply false.

1. Petitioner's Request for Expert Assistance

The very precedent the Court of Special Appeals utilized to deny Petitioner relief on this issue conclusively established the process by which expert assistance can be acquired in Maryland. The initial prerequisite, as Ms. Williams correctly defined, is that "defendant must proffer the type of expert needed, and the relevance of his or her expertise," (AAG Brief @ 12). The deficiency in her argument is that the Maryland Court of Appeals has declared,

"A defendant may be required to reveal to the court the defense theory in order to demonstrate entitlement to expert assistance. A defendant may request these disclosures be made ex parte."

- *Meese v. State*, 300 Md. 343, 370 (2005). In reviewing the different states with varying degrees of entitlement to ex parte hearings the Court of Appeals determined, "We believe that the better view is that an ex parte hearing, when timely requested, IS REQUIRED." Id. 371 (emphasis added).

In this case it has never been asserted that Petitioner's request for ex parte hearing was untimely, only that the request for the hearing itself was denied, on other grounds, despite controlling precedent directing otherwise. The skillfully veiled truth is that if there was any void in the record as to Petitioner's necessity or intentions for expert testimony, it is a direct result of the trial court's untenable denial of the hearing it was "required" to conduct in order to ascertain those very facts. In Petitioner's humble opinion, the State should not be allowed to benefit from errors it generated, and thereby deprive Petitioner of relief.

The trial court's error notwithstanding, Petitioner is still not without recourse. The record does, in fact, still provide this Court with clear evidence of Petitioner's intended uses for expert assistance. As Mr. Williams indicated, the alleged victim, "Tania" Bentley, Petitioner's biological daughter, testified at trial that, "From March 2012 to December 2013

• Campbell vaginally penetrated the victim '[a]t least twice a week' without wearing a condom," (AAG Brf @ 5). Having already made his medical records available to the State, Petitioner adduced on direct that he'd contracted Hepatitis C as a result of a singular, unprotected sexual encounter. Petitioner offered as to relevance,

"THE COURT: How is this relevant to anything that is the center of this litigation?"

THE DEFENDANT: I've had Hepatitis C since 2010. There's no way Tavia could have known that when she made up these stories about me, saying we had unprotected sex twice a week for over a year. If Tavia doesn't have Hepatitis C, the likelihood that we had unprotected sex for over a year is extremely [low].

THE COURT: You're not testifying to any of that unless you have a medical degree and a medical license."

(F-8/17/17, pp 40-41). The trial court's own ruling established the prejudice from denying Petitioner's request, as well as places firmly in the record the necessity and intended use for expert testimony. Petitioner was clearly within his right, pursuant to precedent, to request an ex parte hearing to maintain the integrity of his defense.

It goes without question Petitioner faced a monumentally arduous task in persuading the jury that a 12-year-old girl had unwittingly impregnated herself while masturbating with a dildo and a used condom (AAG Brf @ 5-6). Despite the fact that Tavia admitted to purchasing the dildo online, and even photographing

it with a condom on it, the trial court sustained an objection to the inquiry of if she'd actually masturbated with it. The trial court later declared she felt Petitioner's theory on defense was "preposterous and offensive." (T-3/22/18, p. 31).

Again, contrary to Ms. Williams' interpretation of a void, the record clearly reflects that Petitioner filed a Motion for New Trial seven (7) days after the verdict was rendered pursuant to Md Rule 4-331(a), which allows the trial court to grant a new trial in the interests of justice. (Mont. City Cir Ct. #131730c, 8/24/17, D#160). At the hearing Petitioner again raised the issues discussed herein, unequivocally advancing, "So, in requesting an expert witness I would have at that time, in the ex parte hearing, requested a witness on artificial insemination and infectious disease," (T-12/14/17, p. 51). It certainly does not, in Petitioner's opinion, require an expert of any kind to ascertain the critical nature of Petitioner's desired experts to the core of his defense. The viability of artificial insemination is utterly impracticable as a defense without the assertion through expert medical testimony. Even to the most open-minded jury, the statistical truth of Petitioner's defense simply could not be exposed. (It should be noted, since Ms. Williams advised the Court that Petitioner was appealing "the denial of his motion for new trial," (AAC Bry 87, footnote 3),

that on April 26, 2018, four weeks after final judgment and the exact date of Tavia's legal emancipation she contacted ASA Haynes and indicated, "Everything I said on the stand was a lie... My father never raped me... I said what I said because I was afraid of CPS taking my daughter and placing me in a mental institution... I have always been very promiscuous and I wanted to see what [sperm] felt like inside me." (Mont. City Cir. Ct. 8/22/18, Motion New Trial- Birthday letter, Dkt# 240). On May 8, 2018 Tavia contacted the District Public Defender, Allen Wolf who submitted an affidavit stating, "[Tavia] had just turned 18 a few weeks ago and she was now able to tell the truth about what really happened in the case... Ms. Bentley retrieved the used condom, poked a hole in it and placed it on one of the dildos. She then used the dildo on herself." (Mont. City Cir. Ct. #131730c, 5/8/19, Def. Ex. #2, Dkt# 309). On August 14, 2018 Tavia presented a sworn, notarized affidavit in support of Petitioner's motion for new trial affirming, under penalty of perjury, "I wanted to know what it felt like to have 'cum' inside of me. So I waited until they were finished and I took a used condom out of the trash can. I put it on my vibrator, poked a hole in the tip and began masturbating." (Mont. City Cir. Ct. #131730c, 1/3/19, Mo. New Trial, Attachment-Affidavit, Dkt# 272). On May 8, 2019 Tavia testified

under oath at Petitioner's hearing on motion for new trial again indicating, "[I] took a dildo, took a used condom from the trash and put it on there and masturbated with it." (T-51819, p. 46-91).

The State declined to cross-examine or challenge Tavia's testimony in any way. And most recently, Tavia executed another sworn, notarized affidavit on May 12, 2020 in support of Petitioner's Petition for Post Conviction Relief and reinforced, "I was terrified that if anyone found out I had gotten myself pregnant by masturbating with a used condom I would lose everything, including my daughter, and they would put me in a mental institution. Everybody was so eager to believe my father was a rapist, especially my mother and grandmother, it was way easier to just put the truth out of my mind and tell the story they wanted to accept." (Mont. City Ct. #131730c, 6/17/2020, Petition for Post-Conviction Relief, Attachment-Affidavit, Det. # 331)). All proceedings have been delayed until the issue in this Court is resolved. The fact that the alleged victim, the State's primary witness, has been coming forward for over two (2) years consistently corroborating the very defense Petitioner was unconstitutionally denied the opportunity to present at trial only exacerbates the sheer inequity of the State's error. It seems, upon closer examination, the record is much less "uncertain" than advertised.

2. U.S. Supreme Court Suffers from Premature Adjudication.

Ms Williams' second illusion is misdirecting this Court into ignoring the fact that *Faretta v. California* was decided 45 years ago; that nearly half-a-century of legislation has ensued since; and, that the issue before this Court is overwhelmingly the unconstitutional infringement on the right to self-representation, not the failure to provide expert assistance. The State of Maryland conditions the funding of expert witnesses, and literally every ancillary service required to construct an adequate defense, right down to providing a single copy of a single page document, on the acceptance of full representation by the OPD. In so doing Maryland imposes a restriction on the indigent defendant's right to self-representation that offends the Fourteenth Amendment's guarantee of equal protection. A financially solvent, pro se defendant would face no such restriction on self-representation. The highest state court in Maryland has definitively and consistently concluded, "The limitations which can be imposed on the election to proceed pro se can only be curtailed to prevent undue interference with the administration of justice and are only available after the trial has begun. Prior to the commencement of trial a defendant has an ABSOLUTE RIGHT to self-representation."

State v. Brown, 342 Md 404, 412 (1996); *Foulkes v. State*, 311 Md 586, 605 (1988); *Leonard v. State*, 362 Md 111, 121-22 (1985) (emphasis added). The condition that an indigent, pro se defendant must go to trial without the adequate or necessary tools for his defense is unquestionably a limitation imposed before trial. The U.S. Court of Appeals for this very Circuit (4th) has also weighed in concluding, "A defendant in a criminal proceeding is entitled to certain rights... he is entitled to all of them; he cannot be forced to barter one for another. When the exercise of one right is made contingent upon the forbearance of another, both rights are corrupted." *United States v. Midgett*, 342 F.3d 321, 327 (2003 4th Cir) (quoting *U.S. ex rel Wilcox v Johnson*, 555 F.2d 115, 120-21 (3rd Cir 1977). These principles are not "in its infancy" (AFF Brief @ 18) and yield sufficient guidance to adjudicate these issues, however, the Maryland Court of Special Appeals simply declines to absorb them. Ironically Ms Williams cites numerous cases from, numerous jurisdictions, all concerning the same issue, yet all being resolved on different grounds while still insisting that a ruling from this Court that would standardize the application of justice in this matter is premature.

The State would like this Court to examine this issue in terms of cases instead of the disenfranchised U.S. Citizens they represent.

Ms. Williams cited *Beckhaus v. State*, 254 So. 3d 1133, 1134 (Fla. Dist Ct App 2019) where the State (AAG Brief @ 17, footnote 9) conceded error in not providing funding, confirming its obligation to the principles of due process and equal protection. In the case at bar the indigent, pro se, Petitioner, weeks before trial, faultlessly adhered to the established procedure for obtaining expert assistance, but the State maintained it had the authority through statute and precedent to compel Petitioner to relinquish his right to self-representation prior to trial in order to receive what Ms Williams' cited case indicates an indigent pro se defendant rightfully deserves. In this case Petitioner desperately rebuked the trial court's persistent efforts to convince Petitioner to abandon his right to self-representation and accept representation through the OPD. Petitioner stood fast.

"THE COURT: Okay, so in light of what we've been discussing for the past hour, there won't be any funds for an expert witness... unless you are represented by the Public Defenders Office for which you have already been qualified. So do you want the Public Defenders Office?"

Mr. Cambeau: I think that for me to do that now, it would, I think that for the future of self-representation I'll take this one. I'll take this one on the chin.

THE COURT: What does that mean?

Mr. Cambeau: That means that I firmly believe that the statute is inappropriate and should be overturned and the only way that is going to happen is if somebody moves forward to the next level."

(T-8/1/17, pp 35-37). Petitioner sincerely believed the Maryland appellate courts recognize the error and institute, on its own, procedure or legislature to eradicate the possibility of future injustice. Obviously, Petitioner was mistaken. It is far more likely than not that the dearth of comparable cases Ms Williams alludes to stems from the acquiescence of defendants who are unwilling to stake a claim in the refinement of the judicial process at their own expense than it is due to any inherent need for U.S. citizens to continue to "percolate" in manifest injustice until a bevy of cases emerge.

3. The Maryland Court of Special Appeals was Correct.

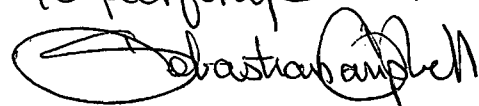
Finally, Ms. Williams' ultimate slight of hand begins with her reciting dialogue from the *Miller* and *Moore* cases as if the Maryland Court of Special Appeals' reliance on those cases is not the very injustice which presupposes that the right to self representation and the right to counsel of choice are of equal constitutional weight and therefore, without discussion, conclusively reduced Petitioner's right to self representation in a manner that decides an important federal question in a way that conflicts with relevant decisions of this Court. The performance ends with Ms Williams urging this Court to recognize that Maryland does, in fact, have a mechanism that provides experts and other necessary resources to indigent defendants, stating, "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,' (AAG Brief 19-24). Well of course it does. This Court mandated that very thing decades ago. However, what Mr. Williams has stealthily concealed is how Maryland implements that constitutional mandate while preserving an indigent defendant's absolute right to personally defend himself effectively in a proceeding in which his life or liberty is at stake. The silence to that issue is the only legitimate void in this case, and it is only through this Court that it can be adequately filled.

Ultimately, once the smoke and mirrors are removed it is clear that the true issue before this Court is the unconstitutional infringement on Petitioner's right to self-representation in a manner clearly contrary to constitutional, federal, and even state law, with the ultimate deprivation of Petitioner's right to be provided with the basic tools for an adequate defense emerging as the unconstitutional by-product. The State would have the highest Court in the greatest land simply look the other way and ignore the immutable fact fact that Petitioner will surely die in prison, along with

the untold misfortune of countless other citizens simply because the State of Maryland could not, as the State of Florida did in Ms. Williams' cited case, recognize and correct its own unconstitutional provision when presented with the opportunity to do so. For all the U.S. citizens struggling with summoning the courage to defy an unconstitutional ultimatum administered by the court in states as misguided as Maryland has proved to be, the granting of this Writ will be their salvation, along with Petitioner who stood his ground and held the door open.

Respectfully Submitted

 Sebastian Campbell 11/22/20