

No. 20-5327

Supreme Court, U.S.
FILED

JUL 17 2020

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

THYCHUS A. HUGGINS — PETITIONER
(Your Name)

VS.

THE PEOPLE OF THE STATE OF
CALIFORNIA, ET AL — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

COURT OF APPEAL OF THE STATE OF CALIFORNIA THIRD APPELLATE DISTRICT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Thyochus Amen Huggins
(Your Name)

% P.O. Box 4000
(Address)

vacaville, California [95696]
(City, State, Zip Code)

(916) 461-3424
(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

1. Did the trial court violate Petitioners rights under the Sixth Amendment and *Faretta v. California*, 422 U.S. 806 (1975) when, following a single period of self-representation by Petitioner and prior to trial, the court unequivocally informed him that he would not be allowed to represent himself again if he decided to proceed with counsel, and conditioned the reappointment of counsel on Petitioners forfeiture of his *Faretta* rights?

LIST OF PARTIES

[] 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:

Anne Marie Schubert, District Attorney's office

Xavier Bercerra, Attorney General's office

Gerrit WOOD, Superior Court of California County of Sacramento.

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PETITION FOR REVIEW

10
11
12 TO THE HONORABLE, CHIEF JUSTICE, AND TO THE HONORABLE
13 ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE
14 UNITED STATES:

15
16
17
18 Petitioner Thyochus Amen Huggins petitions this court for
19 review of the decision of the court of Appeal, Third
20 Appellate District, filed on January 24, 2020 ("Opinion"),
21 and modified on February 5, 2020 ("Modification of
22 Judgment"). A copy of the January 24, 2020 unpublished
23 opinion and the February 5, 2020 order modifying the
24 opinion are attached hereto. Along with the Supreme
25 court of California "Docket" opinion denying review.

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.

☒ 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 California, Supreme court appears at Appendix C to the petition and is

☒ reported at Case # 5261216; 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 _____.

☐ 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 01/24/2020. A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date: 04/23/2020, and a copy of the order denying rehearing appears at Appendix C.

☐ 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 Const., 6th Amend. . . . pg. 5, 6, 15, 17

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 defense. (i.e. self-representation).

STATEMENT OF THE CASE

A jury found Petitioner guilty of residential burglary (According to Penal Code § 459), receiving stolen property (According to Penal Code § 496, subdivision (a)) and two counts of shoplifting According to (Penal Code § 459.5). The trial court imposed a sentence of 22 years, consisting of the Upper term of six years for the burglary doubled to 12 years based on a prior strike offense (According to Penal Code § 667, subdivision (e)(1), and § 1170.12 subdivision (c)(1)), plus two consecutive five-year enhancements for prior serious felony convictions (According to Penal Code § 667 subdivision (a)). The court also imposed and stayed two one-year prior prison term enhancements under section 667.5 subdivision (b) of the Penal Code. (opinion at p.5)

The court of appeal remanded the case with directions for the trial court to correct errors in the judgment and to exercise discretion whether or not to strike the enhancements under Penal Code section 667, subdivision (a), and to resentence petitioner if appropriate. Subsequently, the court of appeal modified the judgment to additionally direct the trial court to strike the two prior prison term enhancements imposed under Penal Code section 667.5, subdivision (b). (Modification of Judgment at p.3.)

REASONS FOR GRANTING THE PETITION

A grant of review and resolution of the issue is necessary to settle an important question of law regarding the application of *Faretta v. California*, 422 U.S. 806 (1975) ("Faretta"), *People v. Dent* (2003) 30 Cal. 4th 213 ("Dent"), *People v. Lancaster* (2007) 42 Cal. 4th 40 ("Lancaster") and *People v. Gomez* (2018) 6 Cal. 5th 243 ("Gomez"). This case presents an important question of law regarding the denial of a defendant's right to self-representation, which is an issue of statewide importance, and the court of appeal's opinion conflicts with both *Faretta* and *Dent*.

A defendant in a state court criminal proceeding who knowingly and intelligently waives the right of counsel has a right under the Sixth Amendment of the United States Constitution to self-representation. (*Faretta*, supra, 422 U.S. at p. 807) In order to invoke that right, a defendant must be mentally competent, must make the request knowingly and intelligently, and must make the request unequivocally within a reasonable time prior to the commencement of trial. (*People v. Jackson* (2009) 45 Cal. 4th 662, 689-90.)

where a defendant makes a timely, intelligent and unequivocal request for self-representation, *Faretta* requires the court to grant the motion. (*People v. Bloom* (1989) 48 Cal. 3d 1194, 1220.) Once trial has commenced, the right is not lost but is addressed to the sound discretion of the court (*Id.*; *People v. Jackson*, supra, 45 Cal. 4th at pp. 689-90)

1 In this case, Petitioner had been representing him-
2 self for several weeks when he requested appointment
3 of counsel five days prior to the scheduled trial
4 date. In granting the request, the trial court advised
5 Petitioner that he would not under any circumstances
6 be allowed to represent himself again from that point
7 forward if he decided to proceed with counsel. The
8 following exchange occurred:

9 The Court: Okay. So, Mr. Huggins, then if I allow another
10 attorney to come in to represent you, that's it. You're
11 going to be represented by an attorney from this point
12 on. [9] You cannot pick and choose when you're going to
13 represent yourself.

14 Petitioner: Your-Your-Your Honor, this is — it is my
15 constitutional right. I'm very well informed about my
16 rights, and it's a very well-established right that I have
17 representative counsel if I so desire, and I also have
18 a right to waive that away if the counsel does not
19 want to comply with my demands, and I —

20
21 The Court: No.

22
23 Petitioner: — have very —

24
25 The Court: Well, that's what I'm

26
27 Petitioner: — serious demands —

1 The Court: — saying. [91] I'm not going to play those
2 with you. [91] You are either going to represent yourself
3 as you asked —

4
5 Petitioner: Well, hold on. You —

6
7 The Court: Hold on, please. Don't interrupt me.

8
9 Petitioner: — have the responsibility, and I do, too.

10
11 The Court: Don't interrupt me, please. [91] You asked to
12 represent yourself. Now at the last minute you're saying
13 I can't do it, I want an attorney. [91] I'm just informing
14 you, if I appoint you an attorney, you have an attorney
15 from this point on. [91] I'm not going to appoint an attorney,
16 a month or two down the road you decide you want to re-
17 present yourself. [91] That's not going to happen.

18
19 Petitioner: I intend to have an attorney.

20
21 The Court: Okay. I just want to make sure —

22
23 Petitioner: However —

24
25 The Court: — we're clear on that.

26
27 Petitioner: — if my attorney fails to do his job, I'm
28 going to — I'm going to ask him to file a waiver to say

1 he doesn't want to represent me, and you're - you're
2 going to be right back where - whoever it is, the Judge
3 - whatever Judge is going to have to answer that, and
4 I hope you would do that with -

5
6 The Court: Well, hold on one second.

7
8 Petitioner: - with responsibility.

9
10 The Court: If I appoint you an attorney -

11 Petitioner: yeah.

12
13 The Court: - if there are conflicts you have with the
14 attorney, there is a remedy available.

15
16 Petitioner: I understand that.

17
18 The Court: But you are not going to be able to represent
19 yourself again is what I'm telling you!!

20
21 Petitioner: So you're saying that you - you can deny me
22 that -

23
24 The Court: Yes.

25
26 Petitioner: - right?

1 The court: yes.

2
3 Petitioner: It's a right, right?

4
5 The court: well, you will have abused that right by
6 having me relieve an attorney, represent yourself, and
7 now on the eve of trial say you want an attorney and
8 I comply and then down the road you say you want to
9 represent yourself —

10
11 Petitioner: well —

12 The court: — yes. That will not occur.

13
14 Petitioner: Judge —

15 The court: I'm just letting you know.

16
17 Petitioner: — we're talking the same language; however,
18 I—I understand it very differently than how you're
19 explaining it. [11] I understand that I have a constitutional
20 right to have representation. I also know that I have a
21 right to represent myself as well.

22
23 The court: And you've been given that right.

24 Petitioner: It's not like something — a right — like a right
25 is not something you can give and take from somebody
26 like at the drop of a hat.

27
28 The court: A right can be abused, and it's no longer a right.

1 Petitioner: So a right can be abused, and it's no longer
2 a right. Can I get this —

3
4 The Court: Mr. Huggins, I'm not going to be playing this
5 game with you.

6
7 Petitioner: — Taped?

8 The Court: I'm just telling you, if you are asking me
9 to appoint you a lawyer and I do so, you have a
10 lawyer present from then on.

11
12 Petitioner: You will then deny me my right in plain language.

13 The Court: Are you listening to me?

14
15 Petitioner: — to an attorney.

16 The Court: Are you listening to me?

17
18 Petitioner: I —

19 The Court: Did you hear what I just said?

20
21 Petitioner: I did hear what you said.

22 The Court: What did I just say?

23
24 Petitioner: You said that if I want representation and I —
25 and you give me that, then you're saying that on the flip side,
26 I can no longer represent myself —

27
28 The Court: That's exactly what I'm saying.

1 Petitioner: - what so ever.

2 The court: That's right. You can work with your attorney,
3 but you will -

4
5 Petitioner: So whether or not I have a right to it, sir, or
6 not you're saying you would deny that to me.

7
8 The court: Are you listening to me?

9 Petitioner: I want to be clear here sir. I just want Clarity.

10
11 The court: I think you are being disrespectful.

12 Petitioner: whoa. I'm not that.

13
14 The court: Okay. Then listen to me.

15 Petitioner: yeah.

16
17 The court: You're correct. I'm not going to go back and forth
18 with you. [91] You want an attorney. Then the trial comes up,
19 and then once the trial goes away, you decide you want
20 to represent yourself. [91] If I give you an attorney, you will
21 have an attorney from this point on to represent you. [91] I
22 won't let you discharge the attorney. [91] If you are having
23 a conflict with that attorney and you bring it to the court's
24 attention and the court makes an independent finding
25 there is in fact a conflict and relieves you of that attorn-
26 ey, you will have another attorney appointed in their
27 place, but you will not be allowed to represent yourself
28 again because you are choosing an attorney to represent you

1 rather than represent yourself. (RT 52-57 (emphasis added))
2 while courts are not entirely foreclosed from preemptive-
3 ly discouraging Faretti request when there has been a pattern
4 of vacillation that will harm the progress of trial and the
5 defendant's ability to put on a defense, a court commits
6 Faretti error by unequivocally foreclosing any realistic possibili-
7 ty a defendant will perceive self-representation as continuing
8 available option. (Gomez, supra, 6 Cal. 5th at p.p. 271-72, citing
9 Dent, supra, 30 Cal. 4th at p. 219; also Lancaster, supra, 41 Cal. 4th
10 at pp. 69-70.) Here, the trial court did not give a warning
11 but instead categorically denied any further self-representation
12 by petitioner and foreclosed any realistic possibility that
13 he would view self-representation as an available option.
14 Thus, this case is like Dent, and, for the reasons discussed
15 infra, unlike Gomez and Lancaster, on which the court of
16 appeal relied.

17 In Dent, the attorney representing the defendant had
18 advised the trial court that the defendant was consid-
19 ering the alternatives of consenting to appointment of
20 new counsel or requesting to proceed in pro per. (Dent,
21 supra, 30 Cal. 4th at p. 219) The trial court stated it
22 would not let the defendant represent himself in a death
23 penalty murder trial, which was an improper reason.
24 Significantly, in holding that the trial court had committed
25 reversible Faretti error, this court did not find that the
26 defendant had made an unequivocal request:

27 we need not decide this issue[.]... [w]hether or not
28 defendant's request was equivocal, the trial court's response

1 was not only legally erroneous but also unequivocal, and fore-
2 closed any realistic possibility defendant would perceive
3 self-representation as an available option. Thus, even assum-
4 ing defendant's request was equivocal, the trial court's re-
5 sponse effectively prevented defendant from making his
6 invocation unequivocal.

7 (Dent, supra, 30 cal. 4th at p. 219 (emphasis added).)

8 In this case, Petitioner indicated he would seek
9 to represent himself in the event that "[his] attorney
10 fail[ed] to do his job[.]" (R 53.) The trial court made the
11 same type of improper "categorical denial" (Dent, supra,
12 30 cal. 4th at p. 219) of any further Faretta motion by
13 stating unequivocally that it would not be an available
14 option from that point forward. This was Faretta error.

15 A timely and properly asserted right to self-represen-
16 tation should generally be granted. (See People v.
17 Bloom, supra, 48 cal. 3d at p. 1220; People v. Windham
18 (1977) 19 cal. 3d 121, 128.) Even a Faretta request made
19 close to trial may be justified notwithstanding the
20 timing. (Id. at p. 128, n. 5; people v. Lynch (2010) 50 cal. 4th
21 693, 724.)

22 At a minimum, the trial court had a duty to exercise
23 its discretion on any future Faretta motion. (See People
24 v. Windham, supra, 19 cal. 3d at p. 128.) Moreover, the
25 possibility of a timely and properly made motion that
26 required granting was not foreclosed under the circumst-
27 ances of this case.

28 The trial court improperly determined that Petitioner

1 had "abused" the right by exercising it on a single occasion
2 and then requesting appointment of counsel. (see RT 54.) But
3 this was not a situation where Petitioner had engaged in
4 "serious and obstructionist misconduct". (see *Faretta*, supra,
5 422 U.S. at p. 834, n. 46; see also *Indiana v. Edwards* (2008)
6 554 U.S. 164, 171.) courts have consistently recognized
7 that a defendant must ordinarily be allowed to "change
8 his mind about whether he will represent himself [.]"
9 (*United States v. Kerr* (2nd Cir. 2014) 752 F.3d 206, 221;
10 *United States v. Taylor* (5th Cir. 1991) 933 F.2d 307, 311
11 (citing collected cases).) Even a "flip flop" in attempting
12 to resume self-representation after appointment of
13 counsel is not, standing alone, an untimely "manipulation
14 of the trial process". (*United States v. Smith* (8th Cir.
15 2016) 830 F.3d 803, 809.)

16 This court has held that when a *Faretta* request is
17 made after the start of trial, a court "shall inquire
18 sua sponte into the specific factors underlying the
19 request[.]" (*People v. Windham*, supra, 19 Cal. 3d at p.
20 128.) "Having established a record based on [the] relevant
21 considerations, the court should then exercise its dis-
22 cretion and rule on the defendant's request. (Id. at pp. 128-29)

23 Unsurprisingly, in light of the trial court's clear and
24 unequivocal ruling that Petitioner could not represent
25 himself again after accepting appointment of counsel,
26 petitioner did not renew his motion to represent him-
27 self even when he became dissatisfied with counsel's

28 Performance². The trial court's previous, categorical
Instead, he filed a "marsden" motion (*People v. Marsden*) (1970) 2 Cal. 3d 118,
which was denied (opinion at 10)

1 denial of any future Faretti motion when it appointed
2 counsel & prevented petitioner from exercising his
3 Sixth Amendment right to make such a request before
4 trial, and prevented the court from being able to properly
5 exercise discretion on a later motion. Thus, the trial
6 court deprived petitioner of his Sixth Amendment right
7 to seek self-representation before trial. (see Faretti,
8 422 U.S. at p. 835.) It also abused its discretion by
9 refusing to properly exercise discretion on a motion
10 brought after the start of trial. (see People v. Sandoval
11 (2007) 41 Cal. 4th 825, 847-48.)

12 In rejecting petitioner's claim of error, the court
13 of appeal reasoned that Petitioner "understood that
14 he had a constitutional right to self-representation
15 should his appointed counsel fail to accede to his
16 demands." The trial court, however, had squarely con-
17 tradicted and corrected (by argument) Petitioner's
18 stated belief in this regard, and had advised him in
19 no uncertain terms that he would not be able to re-
20 present himself in the future, and had called Petitioner's
21 attempts to clarify the trial court's ruling "dis-
22 respectful." The lengthy colloquy and statements by
23 the trial court foreclosed any realistic possibility
24 that Petitioner would continue to perceive self-
25 representation as an available option. As this court
26 observed in Dent, even trained counsel is not required
27 to make a motion that has been categorically denied;
28 "how much more should we require of an untrained -

1 defendant seeking self-representation?" (Dent, supra,
2 30 Cal. 4th at p. 219.)

3 Since a waiver of the right to self-representation
4 necessarily results from the lack of a clear and un-
5 equivocal request, a trial court cannot, without un-
6 constitutionally depriving a defendant of the right,
7 prevent a proper request by foreclosing any realistic
8 possibility that the defendant will continue to perceive
9 self-representation as an available option. Dent is the
10 controlling case. (See Dent, supra, 30 Cal. 4th at p. 219.)
11 Both Gomez and Lancaster, on which the court of appeal
12 relied, are distinguishable because in both of those
13 cases only a "warning" was given which did not un-
14 equivocally foreclose any realistic possibility of self-
15 representation as an available option. (See Gomez, supra,
16 6 Cal. 5th at p. 269, 271-272 (considered in context, trial
17 court's statement did not unequivocally foreclose any realistic
18 possibility of future self-representation); Lancaster, supra,
19 41 Cal. 4th at pp. 69-70 (court's final words left open the
20 possibility of a renewed Faretta motion).

21 The trial court's frustration at the possibility that
22 Petitioner would seek to represent himself a second
23 time if he became dissatisfied with his appointed counsel
24 is understandable. Petitioner had not, however, engaged in
25 any obstructionist misconduct or caused substantial delay
26 by vacillating back and forth multiple times between
27 representation and self-representation. Where a defendant
28 makes a timely, intelligent and unequivocal request for self-

representation, Faretta requires the court to grant the motion. The good efforts of the trial court to prevent vacillation and what the court perceived as the potential for delay cannot override what has to be labeled as Faretta error, in that the trial court improperly prevented petitioner from making a clear, unequivocal request for self-representation in accordance with his sixth Amendment right. (see Faretta, 422 U.S. at p.835)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

~~WITHOUT PREJUDICE / ALL RIGHTS RESERVED~~

Myochus Amen Huggins

Date: July 12, 2020