CASE NO: 20-5676

IN THE SUPREME COURT OF THE UNITED STATES

ORIGINAL

Leon Venegas,Jr.

Petitioner,

vs

Shane Jackson

Respondent.

_____/

ON PETITION FOR WRIT CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF MY CASE)

PETITION FOR WRIT OF CERTIORARI

Leon Venegas,Jr.-Petitioner, In Pro Per
2500 South Sheridan Drive
Muskegon Heights, Michigan. 49444

QUESTIONS PRESENTED

I. DOES A STATE TRIAL COURT DEPRIVE A CRIMINAL DEFENDANT OF HIS/HER CONSTITUTIONAL RIGHT TO SELF REPRESENTION WHEN THEY DENY THE DEFENDANTS UNEQUIVOCAL REQUEST TO REPRESENT THEMSELVES WITHOUT FIRST CONDUCTING THE REQUIRED FARETTA INQUIRY TO DETERMINE THE FACTS OF THE DEFENDANTS REQUEST ON THE RECORD?

PETITIONER answers, "Yes".

RESPONDENT has not answered.

(a) IS A REQUEST FOR SELF-REPRESENTATION CONSIDERED TIMELY WHEN THAT REQUEST IS MADE DURING THE FINAL PRETRIAL PROCEEDING, PRIOR TO THE JURY BEING CALLED IN FOR JURY SELECTION?

PETITIONER answeres, "Yes".

RESPONDENT has not answered.

II. DOES A CRIMINAL DEFENDANTS TRIAL COUNSEL DEPRIVE THE DEFENDANT OF THEIR CONSTITUTIONAL RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL BY DELIBERATELY FAILING TO INVESTIGATE (OBTAIN) EXCULPATORY EVIDENCE?

PETITIONER answers, "YES"

RESPONDENT has not answered.

LIST OF PARTIES

Leon Venegas, Jr., Petitionser

Shane Jackson (Warden), Respondent

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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review in the judgment below.

OPINION BELOW

The opinion of the United States Sixth Circuit Court of Appeals appears at apendix B to the petition and is unpublished.

JURISDICTION

The date on which the United States Sixth Circuit Court of Appeals decided my case was December 26, 2018.

A timely petition for rehearing was denied by the United States Sixth Circuit Court of Appeals on th following date: March 6, 2019, and a copy of the order denying rehearing apears at appendix A.

The jurisdiction of this court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

I. A criminal defendants right to represent himself is implicitly guranteed by the Sixth Amendment to the United States Constitution, US Const, AM VI.

II. A criminal defendant right to an effective assistance of counsel, is implicitly guaranteed by the United States Constitution, US Const, AM VI.

STATEMENT OF THE CASE

Petitioner, Leon Venegas Jr. stood trial twice in the Ingham County Circuit Court; City of Lansing, Michigan, before Judge Rosemarie Aquilina. The first jury acquited petitioner of retaliating against a witness and deadlocked on the two remaining charges of domestic violence - 3rd offense and unlawful imprisonment.

At the second trial, the jury convicted petitioner of the remaining charges. The charges stemmed from a purported altercation between petitioner and his then girlfriend, Angela Baker. The Judge sentenced petitioner on December 8, 2014 within his guidelines as a habitual Fourth offender concurrent prison term of 12 to 30 for unlawful imprisonment and 5 years to 200 months for domestic violence - 3rd, with credit for 228 days.

Petitioner and his trial attorney Damien Anthes disagreed strongly concerning trial strategy. Their disagreement began in December of 2013 and persisted throughout both trials. The breakdown of their attorney-client relationship centered on Mr. Anthes failure to serve a subpoena signed by the Judge to obtain recordings of two exculpatory jail calls between petitioner and the com plainant Angela Baker, where she admitted to falsely accusing petitioner of the assult. See Appx. G. However, despite the Judge's order and petitioner's repeated request for trial counsel to obtain those recordings, he failed to do so.

Petitioner appealed as of right to the Michigan Court of Appeals claiming that relevant to this writ, that the trial court violated his Sixth Amendment right to represent himself as petitioner made and unequivocal request to represent himself before the commencement of his 2nd trial; prior to the jury being called

for jury selection. (2nd trial pg.17)

In fact, petitioner made several request to represent himself throughout the proceedings in the trial court, due to the attorney-client relationship breakdown. However, petitioner self representation request were all together denied by the trial court Judge because petitioner was not a lawyer (Arr.Sept.18, 2013, pg.11); did not have a legal license (Motion Hearing-June 25, 2014, pg.11, 13); or have a law degree (Trial 1 - Aug. 25, 2014, pg.15) Further abusing her discretion, the trial Judge concluded to FORCE unwanted counsel (Anthes) upon petitioner under the choice of either co-counsel or trial counsel as lead counsel, not self representation. As the trial Judge stated (more than once); that she did not let people represent themselves in her courtroom. (Arr. Sept. 18, 2013, pg.11-12; Trial 1 - Aug. 25, 2014, pg.15).

Petitioner also claimed in his appeal to the Michigan Court of Appeals that trial counsel was ineffective for failing to investigate (obtain) the Ottowa County Jail inmate phone recordings petitioner requested that were most relevant in a trial that hinged largely on the complaintants credibility, depriving him of an adequate defense and a fair trial.

Petitioner also raised - improper denial of substitute counsel and prosecutorial misconduct for failure to correct perjured testimony. However, petitioner abandoned these issues at the Federal level of his appeals.

The Michigan Court of Appeals - Affirmed. See Appx. F.

Petitioner then filed a Leave to Appeal to the Michigan Supreme Court whom denied the Appeal. See Appx. E.

Petitioner then filed a Writ of Habeas Corpus in the United States District Court For the Western District of Michigan, Southern Division. The District Court denied the writ, along with his Motion for Bond and Certificate of Appealibility. Appx. D-C.

Petitioner appealed to the United States of Court for the Sixth Circuit only on issues 1, 2, and 3. The Sixth Circuit denied. Appx.B.

Petitioner then filed for a rehearing en banc in the Sixth Circuit only on issues 1 and 2. They denied it. Appx. A.

REASONS FOR GRANTING THE WRIT

I. THE TRIAL COURT DEPRIVED PETITIONER OF HIS CONSTITUTIONAL RIGHT TO SELF-REPRESENTATION WHEN IT DENIED HIS UNEQUIVOCAL REQUEST TO REPRESENT HIMSELF WITHOUT FIRST CONDUCTING THE REQUIRED FARETTA INQUIRY TO DETERMINE THE FACTS OF PETITIONERS REQUEST ON THE RECORD.

The Sixth Circuit Court of Appeals decision on petitioners self-representation issue was contrary to the United States Supreme Court precedent and an unreasonable application of clearly established Federal law set forth in Faretta v. California, 422 U.S. 806 (1974).

In affirming, and denying petitioner a certificate of appealability on his self-representation issue, the Sixth Circuit Court of Appeals (hereafter, 6th Cir.) stated on pg. 2 & 3 of their Unpublished Opinion (dated Dec. 26, 2018, No. 18-1648):

> The state court of appeals rejected this claim because Venegas decided to proceed with counsel at the beginning of his first trial and did not seriously invoke his right to self-representation at the outset of his second trial. Venegas, 2016 WL 3365170, at *3. The district court determined that the state court of appeals reasonably applied Faretta and its progeny because the record made it clear that Venegas's request was not serious. To the extent Venegas argued that the trial court had a rule against self-representation, the district court rebuffed that claim by citing the trial court's discussion concerning self-representation at the beginning of Venegas's first trial. Although, Venegas now claims that the trial court had to conduct some inquiry into his second request, the Supreme Court has not clearly required a trial court to do so when denying an untimely request. See Hill v. Curtin, 792 F.3d 670, 678 (6th Cir. 2015).

In addressing the first part of the above statement by the 6th Cir. that- "the state court of appeals rejected this claim because Venegas decided to proceed with counsel at the beginning of his first trial and did not seriously invoke his right to self-representation at the outset of his 2nd trial." (6th Cir. Unpublished Opinion, dated Dec. 26, 2018, No. 18-1648 pg. 2).

Petitioner points out - that the trial court Judge only allowed petitioner to proceed in his first trial under co-counsel (Hybrid rep.), NOT self-representation, but petitioner backed out because he was promised that the Ottowa County Jail inmate phone recordings would be admitted into evidence for use in his defense - Aug. 25, 2014 T1 pg. 18, Av: 2-17. Petitioners decision to proceed with counsel was logical and understandable.

However, when those recordings were still not made available by the beginning of petitioners second trial, the very issue which caused him to request the representation of himself, was still present. Therefore petitioner had no choice but to renew his request to proceed in pro se in the following exchange between petitioner and the trial court Judge:

> Mr. Venegas: I want to fire my attorney
>
> The Court: Denied. Have a seat.
>
> Mr. Venegas: Well, I'll represent myself then, how about that?
>
> The Court: Have a seat, how about that? Now, you can either behave, sir, in this courtroom and have a trial with your presence or you can have a trial without your presence. That's my ruling. Have a seat.

(Trial 2 - October 20, 2014, pg. 17).

The United States Supreme Court has held that a trial courts erroneous denial of a defendants right to self-representation is a structural error necessitating automatic reversal and not subject to harmeless error review. United States v. Gonzales-Lopez, 165 L.Ed.2d 409; 548 US 140; 126 S.Ct. 2557, 2564 (2006).

In addressing the second part of the 6th Cir.'s statement that - [petitioner] "did not seriously invoke his right to self-representation at the outset of his second trial". (6th Cir. Unpublished opinion dated Dec. 26, 2018, No. 18-1648 pg 2). Petitioner must go back to the Michigan Court of Appeal's statement concerning this issue: "Although the trial court stated NO

findings in support of its ruling" (...Michigan Court of Appeals, Unpublished Opinion, dated June 16, 2016, No. 325380 pg. 3). Here petitioner is showing this most Honorable court that this "opinion" became a decision based on ASSUMPTION and NOT FACT or in other words an unreasonable determination of the FACTS. In which the following reviewing courts should have never accepted.

Moving on to the next statement made by the 6th Cir. that - "the district court determined that the state court of appeals reasonably APPLIED Faretta and its progeny because the record made it clear that Venegas's request was not serious." (6th Cir., Unpublished Opinion, dated Dec. 26, 2018, No. 18-1640 pg 2).

It was NOT the Michigan Court of Appeals duty to APPLY the Faretta inquiry or its progeny into petitioners unequivocal request to represent himself.

It was the "TRIAL COURTS" - Mandatory duty to APPLY it.

Under Michigan case law, once a defendant requests to represent himself the TRIAL court MUST DETERMINE that the request is [serious] unequivocal, and that the defendants assertion of the right to self-representation is knowing, intelligent, and voluntary. People v. Russell, 471 Mich. 182, 190; 684 NW2d 745 (2004); People v. Williams, 470 Mich. 634, 642; 683 NW2d 597 (2004) [quoting Faretta v. Cali, 422 U.S. 806, 835]. The trial court must also substantially comply with MCR 6.005 by advising the defendant of the charge against him, the possible prison sentence, any mandatory minimum sentence, and the risks of self-representation, and by offering the defendant the opportunity to consult with an attorney. Russell, 471 Mich. at 190-191. (People v. Hill, 282 Mich. App. 538; 553; 766 N.W.2d 17, 2009 - Jansen, P.J. dissenting).

The bright "Illuminated Path" paved by the Michigan court rules in which the Mich. Court of Appeals and the 6th Dist. spoke of is totally absent from

the trial courts record of petitioners 2nd trial on Oct. 20, 2014; which resulted in an unreasonable application of Faretta Mandate that the trial court must investigate a litigant's request to proceed without counsel - Faretta, 422 at 807, 835.

Moving on to the next statement made b the 6th Cir. (pg.2) that - "To the extent Venegas argued that the trial court had a rule against self-representation, the district court rebuffed that claim by citing the trial courts discussion concerning self-representation at the beginning of Venegas's first trial.

The citing of the trial courts discussion that was made "by the U.S. Dist. court concerning the trial Judges rule against self-representation - on page 5 of their 5-14-18 decision is of petitioners, Sept. 18, 2013 "arraignment." Not petitioners request for self-representation in his 1st trial.

However, the Dist. Court claimed that the trial court [Judge Aquilina] did not have an "unconstitutional blanket - rule" in her courtroom because she would appoint (Hybrid) co-counsel for defendants who wished to represent themselves during trial. This was an unreasonable determination of the facts by the Dist. court which was erroneously supported by standby counsel case law. And even though standby counsel and co-counsel (Hybrid rep.) are not the same these arguments in trying to justify the trial Judges blanket rule still fail because -

A.) The trial Judge stated, "in MORE then one hearing", that "she did not allow self-representation in her courtroom". The First time was-

Arraignment (30th Cir. Co.) Sept. 18, 2013 pg. 11

The Court: Now, I understand that you have chosen to represent yourself?
The Defendant: Yes. (Av. 12-13.)

Additionally, petitioner timely asserted his right to self-representation and was unequivocal @ that point (pg. 11, Lines 12, 13 & 14) and by long established law, the trial court was to stop all proceedings and carry out the mandatory colloquy (under Faretta) to inquire into petitioner's competency to act as his own attorney. That did not happen and such cannot be refuted by the record. This was "structural error" requiring reversal of petitioner's sentences and convictions (McKaskie v. Wiggins, Supra, 177 n.8; Arizona v. Fulminante, 499 U.S. 279, 309-10 (1991). All proceedings that followed from that day forward must be declared null, and void, including the entire second trial.

(trial Judge Aquilina's blanket rule statements continued)...

Arraignment (30th Cir. Co.) Sept. 18, 2013

Pg. 11, Line 15 - The Court: Well that doesn't happen in my courtroom unless
Pg. 12, Line 16 - The Court: I don't let you represent yourself

The second time the trial Judge stated that "she did not allow self-representation in her courtroom", was -

Trial 1 (pretrial proceeding) Aug. 25, 2014

Pg. 15, - The Court: ..... I - don't let people represent themselves in my courtroom (Av. 24 & 25).

In the exchanges noted above between the trial Judge and petitioner, there is no misconstruing the trial Judge's statements which verifies the FACT that she DID have an unconstitutional blanket rule against self-representation in place in her courtroom.

A criminal defendant's right to represent himself is implicitly guaranteed by the Sixth Amendment to the United States constitution, U.S. Const., Am VI; Feretta v. California, 422 U.S. 806, 819-820; 95 S.Ct. 2525; 45 L.Ed.2d 562 (1975).

Furthermore, everytime petitioner requested to represent himself, the trial

Judge violated his constitutional right to represent himself by FORCING unwanted counsel upon him under the choice of either co-counsel (Hybrid Rep.) or trial counsel as lead counsel, NOT self-representation. However, at no time during this entire case did petitioner ever request co-counsel (Hybrid rep.).

B.) In order for a Court/Judge to "appoint co-counsel (Hybrid rep.)," it must first be requested by the defendant. Which is in the courts discretion to grant or deny the request. McKaskle v. Wiggins, 465 U.S. 168, 183, (1984).

Faretta, 422 U.S. 806, 820 - To thrust counsel upon the accused against his considered wish, thus violates the logic of the Amendment. In such a case, counsel is NOT an assistant, "but a Master;" and a right to make a defense is stripped of the personal character upon which the Amendment insists. pg. 821- An unwanted counsel 'represents the defendants only through tenuos and unacceptable Legal Fiction'. Unless the accused has acquiesced in such representation, the defense presented is not the defense guaranteed him by the const., for, in a very real sense, it is not his defense. See also - Cochrane v. Palmer, 2012 U.S. Dist. LEXIS 187399 pg. 45; "Hill v. Curtin", 792 F.3d 670, 689.

NOW petitioner will show "WHY", the trial Judge had a blanket rule in place in her courtroom.

Arraignment (Cir. Co) Sept. 18, 2013

Pg. 11, Line 15 - The Court: Well, that doesn't happen in my courtroom
Line 16 - "unless" - are you a LAWYER, sir?

Motion Hearing (Cir. Co) June 25, 2014

Pg. 11, Line 23 - The Court: Sir, here's the thing. You want to
Line 24 - drive the bus without a "Legal License."
Pg. 13, Line 14 - The Court: you wanting to drive the bus without a
Line 15 - license.

Trial 1 (pretrial proceeding) Aug. 25, 2014

Pg. 15, Line 24 - and you do not have a "LAW DEGREE" and I
Line 25 - (don't let people represent themselves in my courtroom, [etc.]...[.]

The above exchanges between the trial Judge and petitioner show & prove, exactly "WHY" the trial Judge had a blanket rule in place in her courtroom, which is all the more an unconstitutional violation of petitioner's or anyone's right to self-representation.

The United States Supreme court has held that the defendant's "technical legal knowledge" may simply not be considered a basis for determining the propriety of an asserted right to self-representation - Faretta pg. 836. We made it clear that the defendants tech. Legal Knowledge is not relevant to the determination whether he is competent to waive his right to the determination whether he is competent to waive his right to counsel, and we emphasized that although the defendant may conduct his own defense ultimately to his own detriment, his choice must be honored - Godinez v. Moran, 509 U.S. 389, 400.

Yet, it is undeniably clear that the trial Judge in this case also abused her discretion (more than once), when she improperly invoked petitioner lack of tech. Legal knowledge as a ground for denying his constitutional right to represent himself.

"Nonetheless, as noted previously, the trial court made no inquiry into defendants assertion of the right to self-representation. Without making any inquiry, it was IMPOSSIBLE for the trial court to ascertain whether defendant was seeking to unequivocally, knowingly, intelligently, and voluntarily waive his right to an attorney. By summarily substituting its own decision for that of defendant -- whether for the sake of expediency or for some other reason -- the trial court effectively foreclosed any consideration of defendants assertion of the right to proceed pro se, never reaching the merits of his request. If our trial courts are to be allowed to simply deny criminal defendants -

requests there will be little meaning left in the Sixth Amendment right to self-representation under Faretta, or in Michigans constitutional guarantee that a litigant in the courts of this State may defend his suit...in his own proper person....Const., 1963, art 1 § 13. (People v. Hill, 282 Mich. App. 538; 766 N.W.2d 17, 2009 Jansen, P.J. dissenting).

REASONS FOR GRANTING THE WRIT

(a) A REQUEST FOR SELF REPRESENTATION IS (CONSIDERED) TIMELY-WHEN THE REQUEST IS MADE DURING THE FINAL PRETRIAL PROCEEDING; PRIOR TO THE JURY BEING CALLED IN FOR JURY SELECTION.

THERE EXIST A CONFLICT IN THE CIRCUIT COURTS PERTAINING TO THE APPLICATION OF FARETTA V. CALIFORNIA - AS TO-WHEN A SELF REPRESENTATION REQUEST IS CONSIDERED TIMELY. THIS COURT IS BEING CALLED UPON TO DEFINITIVELY DECIDE THIS MATTER.

In affirming the Michigan Court of Appeals and the U.S. District Court the 6th Cir. added their own personal non-record supporting "facts" as to why the C.O.A. was correct and should be affirmed.

This resulted in a decision that was an unreasonable determination of the "facts" in light of the record facts that clearly show the trial courts ruling to deny petitioner **his** unequivocal request to represent himself in his second trial was not in compliance with Faretta & Michigan Law.

The 6th Cir. relied on Hill v. Curtin, 792 F.3d 670, 678 (6th Cir. 2015), where Hill's trial Judge denied his request - stating on the record: "Not at this time". Implicating that this last minute decision to represent himself would have caused a delay in the trial proceeding; and was therefore untimely.

However, in distinguishing the "FACTS" from petitioners case and that of Hills. Petitioners "trial court stated NO Findings in support of its ruling". (Michigan Court of Appeals, Unpublished Opinion, dated June 16, 2016, No. 325380 pg. 3).

There was NO record FACTS to support the trial court/Judge ever took the position that petitioners request was "untimely". This constitutes an unreasonable application of non-existing facts and therefore the 6th cir. decision to deny petitioner for such reason as untimely should be reversed.

In Hill v. Curtin, 2013 U.S. APP. LEXIS 26115 (6th cir. 2013) where the

Sixth Circuit granted Hill a writ of Habeas Corpus they stated: "although the Supreme Court has yet to elaborate on the exact point at which a request for self-representation is no longer timely", "this court and our sister courts have held that a request for self-representation IS timely if it is made prior to the time the jury is selected and sworn in - and jeopardy attaches - unless the prosecution can demonstrate that the request is merely a delay tactic. (Hill at pg 7) See Roberds v. Rees, 789 F.2d 379, 383 (6th Cir. 1986); see also United States v. Bankoff, 613 F.3d 358, 373 (3rd Cir. 2010); (pg.8) United States v. Young, 287 F.3d 1352, 1354 (11th Cir. 2002); United States v. Smith, 780 F.2d 810, 811 (9th Cir. 1986); Chapman v. United States, 553 F.2d 886, 887 (5th Cir. 1977); United States ex. rel. Maldonado v. Denno, 348 F.2d 12, 16 (2nd Cir. 1965).

Then the Sixth Circuit changed its course 2 years later in Hill v. Curtin, 792 F.3d 670, 678 (6th Cir. 2015), in accordance with People v. Hill, 485 Mich. 912 (2009) in which the ORDER of the Michigan Supreme Court held: that the Wayne Circuit county denying the request for self-representation "at this time" did not deny the defendant his constitutional right to self-representation where the defendants request was not timely and granting the request "at that moment" would have disrupted, unduly inconvenienced and burdened the administration of the courts business. People v. Russell, 471 Mich. 182, 190; 684 N.W.2d 745 (2004).

The reference of "at this time" came from when the trial Judge denied Hill's request on the first day of his trial and Hill informed the trial court that he wanted to represent himself "as potential jurors were on their way up to the courtroom." Although minutes prior to Hills request the trial court asked if there were any issues or motions to address in which Hill's court appointed counsel replied - "Not at this time", essentially waiving Hill's Final pretrial

without Hill's consent.

However, Hill argued in his appeals that the jury had not been selected when he made the request to represent himself. An in contradicting as the decisions that the Sixth Circuits are, the Michigan Supreme Court also contradicts their prior decision of their then governing procedural rule set forth on the timeliness of a self-representation request in People v. Anderson, 55 Mich. App. 317 (1974) - Overview: In reaching its decision, the court considered defendants claim that it was reversible error for the trial court to refuse to permit defendant to discharge his attorney prior to the selection of the jury and to proceed with the trial representing himself. The court held that because defendants request to discharge his attorney was accompanied by an unequivocal statement that defendant desired to represent himself, the trial court violated defendants constitutional and statutory rights under Michigan Const., art 1 § 13 (1963) Mich. Comp. Laws § 763.1 by its failure to honor defendants request. Outcome, reversed conviction remanded for a new trial. (NOTE: MCR 6.005(D) or (E) waiver of counsel - has NO time parameters.).

So there is undeniably too much confusion; alot of contradictions in this State alone. And, there is a definite split between the Federal Courts on the issue of when does a request for self-representation become untimely?

Justice Bernice S.D., in her dissent in - Hill v. Curtin, 792 F.3d 670, 679 (2015), identifies that numerous courts are misinterpreting and misapplying Faretta's holding, that a procedural rule on the timeliness of a self-representation request has never been set in Michigan.

"Beyond this loose limit, the Faretta court did not address timeliness. Indeed, timing was one of the unanswered concerns that vexed the dissenting Justice Blackmun. Justice Blackmun raised a series of questions on how the right to self-representation would operate in practice, including: "How soon

in the criminal proceeding's must a defendant decide between proceeding by counsel or pro se? Must he be allowed to switch in mid-trial? (Faretta, 422 U.S. at 852 Blackmun, J., dissenting)." (Hill v. Curtin, 792 F.3d 670, 679, 2015. Bernice, B.D.J.; dissenting).

"To the extent the Michigan Supreme Court relied on the timing of Hill's request to support its conclusion that Hill's constitutional right to represent himself was not violated by the trial courts failure to address whether Hill's request was intelligently and voluntarily made, that conclusion is an unreasonable application of Faretta and its progeny". (Hill v. Curtin, 792 F.3d 670, 682, 2015, Bernice, B.D.J., dissenting).

"The reason being is because TIMING is not essential to Faretta's principal holding, which is that a trial court may not constitutionally FORCE a lawyer on a defendant who intelligently and voluntarily choose's to waive his right to counsel and represent himself." (Hill v. Curtin, 792 F.3d 670, 682, 2015, Bernice, B.D.J., dissenting).

"The case law relied upon by the majority also tends to support this conclusion. For instance, the majority derive's its assertion that Faretta's holding necessarily incorporates a loose timing element by selectively quoting from the Ninth Circuits decision in Marshall v. Taylor, 395 F.3d 1058 (9th Cir. 2005). Marshall observed: Supreme Court precedent regarding the permissable timing of a Faretta request is scarce. NO Supreme Court case HAS directly addressed the TIMING of a request for self-representation. However, the holding in Faretta indirectly incorporated a timely element"....

"Thus, the Supreme Court incorporated the facts of Faretta into its holding. Accordingly, the holding may be read to require a court to grant a Faretta request when the request occur's "weeks before trial." However, the holding does NOT define when such a request would become untimely."

"NOWHERE in the Faretta decision did the Supreme Court explicity state that a defendants self-representation request must be granted if and only if it comes "well or weeks" before trial. As FACTUAL and LEGAL MATTER this cannot be the case". (Hill v. Curtin, 792 F.3d 670, 687, 2015, Bernice, B.D.J., dissenting).

As previously stated in petitioners case the trial court made no inquiry into his unequivocal request to represent himself. In People v. Hill, 282 Mich. App. 538, 557, 2009. In the dissenting opinion - Jansen, P.J., stated:

...the trial courts failure to consider defendant's request to represent himself was tantamount to a wrongful denial of his right to represent himself. Both, the failure to consider a request to proceed pro se and the wrongful denial of a request to proceed pro se achieve the same result; both actions improperly foreclose a defendants constitutional right to self-representation. See Faretta, 422 U.S. at 817, 819-820. I see NO meaningful difference between the two. Because the trial courts wholesale failure to consider defendants request to proceed without counsel in this case was tantamount to a wrongful denial of the right, I conclude that structural error occured and automatic reversal is required. Gonzales - Lopez, 548 U.S. at 150; McKaskle v. Wiggins, 465 U.S. 168, 177 n 8; 104 S.Ct. 944; 79 L.Ed.2d 122 (1984)(observing that the denial of the right to self-representation "is not amenable to 'harmless error' analysis" and that "[t]he right is either respected or denied, its deprivation cannot be harmless")."(People v. Hill, 282 Mich. App. 538, 557; 766 N.W.2d 17, 2009. Jansen, P.J., dissenting).

"A criminal defendants right to represent himself is implicitly guaranteed by the Sixth Amendment to the United States Constitution, US Const, AM VI: Faretta v. California, 422 U.S. 806, 819-820; 95 S.Ct. 2525; 45 L.Ed.2d 562 (1975), and explicitly guaranteed by the Michigan Constitution and Michigan Statutory Law, Const 1963, art 1 § 13; MCL 763.1. The right to

defend is personal", and its therefore "the defendant... who must be free personally to decide whether in his particular case counsel is to his advantage... [A]lthough he may conduct his own defense ultimately to his own detriment, his choice must be honored out of 'that respect for the individual which is the lifeblood of the law.'" Faretta, 422 U.S. at 834 (citation omitted)." (People v. Hill, 282 Mich. App. 538, 552-553; 766 N.W.2d 17, 2009. Jansen, P.J., dissenting).

In Faretta v. California, 422 U.S. 806, the Faretta court quoted - Thomas Paine: "Either party...has a NATURAL right to plead his own cause; this right is consistent with safety, therefore it is retained; but the parties may not be able, ... therefore the civil right of pleading by proxy, that is, by a counsel, is an appendage to the natural right [of self-representation]...." Thomas Paine on a Bill of Rights, 1777, reprinted in 1 Swartz 316. (Farette v. California, 422 U.S. 806; 95 S.Ct. 2525, 45 L.Ed.2d 562 1975).

Petitioner asserts that it is not a privilege, for a person who is mentally competent to plead their own case, but a Natural Right, and that they should never be denied their Natural Right only to have it stripped from them and justified under the "assumption" that their request was not "serious", or to "assume" that person would disrupt, unduly inconvenience, and burden the court and the administration of the courts business", or for their request being "untimely", or for any reason without first inquiring into the FACTS of that persons request to represent themself, at that very moment - on the record, so that the record will support the determinations and decisions made - in concern to that persons request.

To deny a person their Constitutional and Natural Right for such assumptions, or without any inquiry, would be detrimental and a miscarriage of justice.

Which is all the more reasons for having our Constitution and a people or government who are sworn to do everything in their power to uphold our rights and reflect justice.

Petitioner was erroneously deprived of his constitutional and natural right to represent himself and therefore he asks and prays for this most Honorable Court to grant him a writ of certiorari, and to reverse his convictions and sentences, and remand his case back to the trial court for a new trial.

REASONS FOR GRANTING THE WRIT

II. TRIAL COUNSEL DEPRIVED PETITIONER OF HIS CONSTITUTIONAL RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL BY DELIBERATELY FAILING TO INVESTIGATE (OBTAIN) EXCULPATORY EVIDENCE.

The Sixth Circuit Court of Appeals decision on petitioners ineffective assistance of counsel issue was erroneous and involved an unreasonable application of clearly established Federal law set forth by this court in Strickland v. Washington (citation omitted).

In affirming, and denying petitioner a certificate of appealability on his self-representation issue, the Sixth Circuit Court of Appeals (hereafter, 6th Cir.) stated on pg. 3 of their Unpublished Opinion (dated Dec. 26, 2018, No. 18-1648):

> And the state court of appeals rejected the ineffective assistance claim because "[c]ounsel's decision to not use the Ottowa County phone calls to prevent the jury from learning that [Venegas] was incarcerated on other charges constituted trial strategy." Id. Even assuming that counsel performed deficiently by failing to obtain those recording's, Venegas cannot show he suffered prejudice. For one, although the victim said that she reported Venegas as payback, that statement does not necessarily mean that she fabricated her allegations. And while she said that Venegas did not hit her, she did say that he put his hands on her, so her statements would not undermine his convictions - especially when considered in light of the victim's other statements regarding the incident at issue and the injuries she suffered. Because Venegas cannot show prejudice, reasonable jurists would not debate the district court's denial of this claim.

In Strickland v. Washington, 466 U.S. 668, 687

> A convicted defendant's claim that counsels assistance was so defective as to require reversal of a conviction...has two components. First, the defendant must show that counsels performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the counsel guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsels errors were so serious as to deprive the defendant of

> a fair trial, a trial whose result is reliable. Unless a defendant makes both showing's, it cannot be said that the conviction...resulted from a breakdown in the adversary process that renders the result unreliable.

In addressing the first part of Stricklands requirement, petitioner points to trial counsels deficient performance where: counsel failed to investigate (obtain) the OTTOWA county jail (hereafter, O.C.J.) recording's despite petitioners repeated requests on - Apr. 14, 2014 pg. 8, June 25, 2014 pg. 9, 10 & 12, Trial 1 - Aug. 25, 2014 pg. 10 Av. 24 & 25 pg. 11 Av. 1-9 pg. 13, 17 18 *; trial counsels own words in acknowleding his awareness of the O.C.J. recording's being exculpatory in the pretrial proceedings of petitioners first Trial on - Aug. 25, 2014 pg. 13 - Av. 13, 14 & 21 *; and the Trial Judge's direct orders for trial counsel to obtain the O.C.J. recording's - via subpoena: see Appx. G, Apr. 14, 2014 pg. 8, June 25, 2014 pg. 9 Av. 21-24, Trial 1 - Aug. 25, 2014 pg. 14 Av. 2-9 & pg. 18 Av. 2-10.

The above evidence identifies (shows and proves) that trial counsels performance was deficient.

In part two of the Strickland requirement - petitioner is required to show that counsels performance prejudiced the defense.

To begin with, petitioner needs to point to the following exchanges between trial counsel and the trial court Judge (Trial 1 pretrial proceeding). MR. ANTHES [trial counsel]:..."a subpoena for. I indicated to him that there are Rules of Evidence that keep jurors from hearing that an individual is in custody on something else and has been charged with something else"...[.] (Trial 1 pretrial proceeding - Aug. 25, 2014 pg. 7).

The following exchange is in concern to the INGHAM county jail phone call recordings the prosecutor used, whom trial counsel helped REDACT.

MR. ANTHES: "We have went -- and Ms. Pulda went to EXTREME MEASURES to remove

ANY reference to INCARCERATION, any possibility of penalty, et cetera, from any phone call recording that she wants to use...[.] (Trial 1 pretrial proceeding - Aug. 25, 2014 pg. 7).

The prosecutor - Ms. Pulda, made the following statements in her exchange with the trial court Judge. MS. PULDA: ..."and showed him, as he mentioned, PARTS that ARE overly prejudicial to the defendant, that being OTHER places where he WAS INCARCERATED, penalties may exist in THAT CASE, NON-RELEVANT issues from those as to provide defendant a fair trial in this matter, and Mr. Anthes...phone calls, the REDACTED phone calls. HE WAS THERE to review the evidence and put ALOT of work into this case. I confirm that." (Trial 1 pretrial proceeding - Aug. 25, 2014 pg. 8).

Reasonably, Trial counsel could and should have REDACTED any mention of INCARCERATION; other charges; etc., from the (Ottowa) O.C.J. recordings just as he went through EXTREME MEASURES in helping the prosecutor do with the recordings she used against the defense.

And despite trial counsels new/second excuse, the trial Judge ordered trial counsel to obtain the O.C.J. recordings again for a third time - THE COURT: "The only thing we can do is make sure they're available and see if we can get them. That's all. See if you can get that. MR. ANTHES: Certainly will, Your Honor. THE COURT: Okay. Do you still have the subpoena? MR. ANTHES: I do, Your Honor. THE COURT: Okay. Just see if we can get it. If not, I can sign a new one. We'll see if they're available or ever were available, I don't know, Sir, but certainly you can ask. If that's the route you choose to go, we have -- the witness and that's the best evidence under the best evidence rule. Now, if she lies, we don't have the tape, but we're going to try to get it for you, okay? THE DEFENDANT: Yes, ma'am." (Trial 1 pretrial proceeding - Aug. 25, 2014 pg. 18 Av. 2-16).

However, trial counsel failed to fulfill his duty and comply with the trial Judges order to obtain the O.C.J. recordings. And in petitioners AFFIDAVIT, petitioner swears under the penalty of perjury - that: "Immediately upon entering the courtroom before the commencement (pretrial proceeding) of my second trial on October 20, 2014. I asked my trial counsel - Damian Anthes (P67138) if he had got the (O.C.J.) recordings? In response, he bent close to me and whispered that he had confirmed what the prosecutor (Pulda) said ... and that "the (O.C.J.) recordings have been destroyed"...[.] See Appx. H.

The fact that petitioner felt that he could not trust trial counsel (Anthes), haunted petitioner, and eventually led him to personally write a letter to the O.C.J. while fresh out of quarantine from the Saginaw Corr. Facility (under the F.O.I.A. - eventhough petitioner was not part of the public). O.C.J. Personnel - Scott Brovent wrote petitioner back informing him that the recordings were put on a C.D., the fee was $10, and that it was ready for pick up. See Appx. I.

Additionally, petitioner gave the information to his mother. His mother then picked up a certified copy of the recordings on C.D. from the O.C.J. and sent it to petitioners then appellate attorney - Jaqueline McCann @ SADO.

Instead of the C.O.A. granting petitioners Motion for an Evidentiary Hearing, they made the recordings part of the record for purposes of his appeal. See Appx. J.

Counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unneccessary - Strickland at 691.

Ms. Baker's testimony alone was the basis for probable cause. If trial counsel had used the O.C.J. recordings to discredit her testimony then there is NO crime of domestic violence.

Likewise, Under - Unlawful Imprisonment MCLS 750.349b a person commits the crime of unlawful imprisonment if he or she knowingly restrains another person under any of the following circumstances: (C) the person was restrained to fascilitate the commission as another Felony.

Ms. Baker admitted in her testimony at petitioners preliminary examination SEVEN times - pg. 12 Av. 25: "I had the key." Page 13 Av. 2-4: The key chain-- "he didn't know I had the key." SO, I COULD HAVE LEFT WHENEVER I WANTED." Cause he did get out the car to smoke a cigerette with somebody... Av. 13: - "I had the key". Av. 16... - "HE DIDN'T EVEN KNOW I HAD THE KEY." Page 20 Av. 1: I -- "I had the key." "I could have left whenever I wented". (Preliminary Examination - Vol I of II, Aug. 25, 2013) And on pg. 46 Av. 10: "I had -- I had the key to the CAR THE WHOLE TIME"... Page 48 Av. 24: "NO. I had the key the WHOLE TIME". (Preliminary Examination - Vol II of II, Sept. 5, 2013).

The following exchange is of the O.C.J. recordings between the petitioner - [Mr. Venegas], and Ms. Baker about the allegations at issue in this case:

Petitioner: I didn't put my hands on you, that's my point.

Ms. Baker: It's still the threat with you in my face like that, its scary.

Petitioner: So you are going to help...the Lansing Police send me to prison because you got your finger stitche up?

Ms. Baker: Yup.

Petitioner: You're fuckin wrong as hell yo.

Ms. Baker: Naw, just call it peyback for my diamonds and my car.

(This excerpted portion begins at appx. minute 10:01 on July 19, 2013 made from the O.C.J. to 517-862-6174).

And in the second call they again discussed the evening in question:

Petitioner: Okay but, did I put my hands on you though? Just answer the question, did I put my hands on you?

Ms. Baker: NO you didn't hit me.

Petitioner: That ain't what I'm talking about man.

Ms. Baker: Yeah you put your hands on me, but NO you didn't hit me. You didn't punch me, slap me, choke me, pull my hair, or push me. NO you didn't do NONE of those things - but you put your hands on me.

Petitioner: "The ONLY time I put my hands on you is when you started kicking me and I was blocking your kicks, and I might have grabbed your pants leg, or ankle, you kicked me about 20 or 30 times."

Ms. Baker: (laughs) Hah, naw "I only kicked you about 4 or 5 times".

Petitioner: Yeah but I didn't beat your ass or physically assault you.

Ms. Baker: Yeah **BUT** you cut my finger.

Petitioner: You cut your own finger, the keys were in my hands, and you snatched the keys out "my" hand, if you wouldn't have snatched the keys out my hands out my hands you wouldn't have cut your finger, you snatched the keys out my hands, thats how your finger got cut."

Ms. Baker: **YEAH** but I still had to get stitches.

Petitioner: Yeah. O.K whatever.

(This excerpted portion begins at appx. minute 6:14 on July 19, 2013 made from the O.C.J. to 517-862-6174).

The exchanges in the O.C.J. recordings between petitioner and Ms. Baker was

exculpatory evidence that NO COMMISSION of another felony - "domestic violence" took place. Or in other words there can be NO crime of Unlawful Imprisonment without the crime of domestic violence.

Because trial counsel failed investigate the O.C.J. recording's that would have discredited the case of domestic violence, the prosecutor was allowed to proceed with the charge of Unlawful Imprisonment.

The above facts show and prove that petitioners trial counsels FAILURE TO INVESTIGATE (obtain) the O.C.J. recordings prejudiced the defense and deprived petitioner of a fair trial, a trial in which petitioners conviction resulted from the breakdown in the adversary process that renders the result unreliable.

To further show and prove that trial counsels performance prejudiced the defense, "the [petitioner] must show that there is a reasonable probability that, but for counsels unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." - Strickland at 694.

In a trial that hinged on Ms. Bakers credibility, her own words in the O.C.J. records were exculpatory were she admitted that petitioner did NOT hit her, etc., contrary to the assaultive allegations she testified to at both trials.

Had those recordings been INVESTIGATED: obtained, listened to, redacted (the unneccessary facts), entered into evidence, and played for the jury to hear, the outcome of petitioners 1st trial (most certainly) would have been different.

Because petitioners first trial ended in a deadlocked jury - with 9 not guilty and 3 guilty verdicts (due to Ms. Bakers constant recanting and wavering testimony) without the O.C.J. recordings there is a reasonable probability that additionally, the O.C.J. recordings would have tipped the

the scales in petitioners favor by convincing the jury as a whole that petitioner was NOT guilty and led to a complete acquittal.

Therefore, the decision for trial counsel not to investigate (obtain) the O.C.J. recordings cannot be deemed "reasonable or anything close to trial strategy.

In like manner counsel should ever be allowed to shield themselves behind the trial strategy umbrella or the magic words of trial strategy only to deprive a person who could possibly be innocent, of their life and/or liberty.

The Sixth Amendment not only guarantees the effective assistance of counsel, but also under the confrontation clause, petitioner had every right to confront his accuser with any and all exculpatory evidence available.

Trial counsels failure to INVESTIGATE (obtain) the O.C.J. recordings "resulted in actual and substantial disadvantage to the course of [petitioners] defense - See Strickland, 466 U.S. 682.

However, petitionr has met all requiremants by this court in Strickland, whowing and proving that he was deprived of his constitutional right to have the effective assistance of counsel, and the right to a fair trial.

Therefore petitioner asks and prays for this most Honorable Court to grant him a writ of certiorari, and to reverse his convictions and sentences, and remand his case back to the trial court for a new trial.

CONCLUSION

I. Petitioner was erroneously deprived of his constitutional right to represent himself and the Sixth Circuit Court of Appeals has decided an important Federal question pertaining to this issue in petitioners case in a way that conflicts with this Courts decision in Faretta v. California, 422 U.S. 806 and therefore petitioner respectfully asks and prays for this most Honorable Court to grant him a writ of certiorari.

(a) When a self-representation request is considered timely - is certainly an important question of Federal law that has not, but should be settled by this Court. Which is likewise, a compelling enough reason for this most Honorable Court to grant petitioner a writ of certiorari. As petitioner asserts that his unequivocal request was timely.

II. Petitioner was deprived of his constitutional right to the effective assistance of counsel and a fair trial and the Sixth Circuit Court of Appeals has decided an important Federal question pertaining to this issue in petitioners case in a way that conflicts with this Courts decision in Strickland v. Washington, 466 U.S. 668 and therefore petitioner respectfully asks and prays for this most Honorable Court to grant him a writ of certiorari.

Respectfully submitted,

July 22, 2020/
August 26, 2020

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