

*** CAPITAL CASE ***

No. 20-5760

IN THE SUPREME COURT OF THE UNITED STATES

DANIEL FREDERICKSON,
Petitioner,

v.

STATE OF CALIFORNIA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

REPLY TO BRIEF IN OPPOSITION

DOUGLAS G. WARD
Counsel of Record

Cal. State Bar No. 133360
wardhere@icloud.com

350 Bay Street, P.M.B. #199
San Francisco, California 94133
(415) 494-9252

Counsel for Petitioner

TABLE OF CONTENTS

Page

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

REPLY TO BRIEF IN OPPOSITION..... 1

 I. The Merits..... 1

 II. The Inadequate Procedural Bar 4

CONCLUSION 6

TABLE OF AUTHORITIES**Federal Cases**

<i>Faretta v. California</i> , 422 U.S. 806 (1975)	1
<i>Jones v. Barnes</i> , 463 U.S. 745 (1983).....	2
<i>Martinez v. Ct. of Appeal of Cal., Fourth Appellate Dist.</i> , 528 U.S. 152 (2000)	2
<i>McCoy v. Louisiana</i> , 584 U.S. ___, 138 S.Ct. 1500 (2018)	1, 2
<i>North Carolina v. Alford</i> , 400 U.S. 25, 39 (1970).....	3

State Cases

<i>People v. Chadd</i> , 28 Cal.3d 739 (1981)	1
---	---

Statutes

California Penal Code section 1018	passim
--	--------

REPLY TO BRIEF IN OPPOSITION

I. The Merits

This case presents an important question concerning the Sixth Amendment right of a self-represented defendant to plead guilty in a capital case and proceed to the penalty phase. California Penal Code section 1018 provides, in relevant part: “No plea of guilty of a felony for which the maximum punishment is death . . . shall be received from a defendant who does not appear with counsel, nor shall that plea be received without the consent of the defendant’s counsel.” Pursuant to that statute, a pro per defendant cannot plead guilty, but a represented defendant can. Petn. 3. In 1981, the California Supreme Court upheld the constitutionality of section 1018 in *People v. Chadd*, 28 Cal.3d 739 (1981), and has not deviated from that holding for forty years.

Petitioner claims that by requiring the consent of defense counsel before a defendant can plead guilty in a capital case, section 1018 violates the Sixth Amendment and the holdings of this Court in *Faretta v. California*, 422 U.S. 806 (1975) (*Faretta*), and *McCoy v. Louisiana*, 584 U.S. ___, 138 S.Ct. 1500 (2018) (*McCoy*). Both cases firmly establish that a defendant has the sole, unconditional right to set the objectives of his case. A defendant sets the objectives at a criminal trial in large part by the choice of which plea to enter: guilty or not guilty. The plea decision is arguably the single most important decision that a defendant will make in a criminal case because it is a choice “about what the [defendant’s] objectives in fact *are*.” *McCoy*, 138

S.Ct. at 1508, emphasis in original.

Respondent characterizes section 1018 as a permissible attempt by the state to ensure that death sentences are reliable, and then asserts: “Nothing in *McCoy*—which involved a defendant’s right to insist on his factual *innocence* in a capital case, not to acquiesce in a death sentence—undermines that conclusion.” Resp. 10, citation omitted.

This “Nothing in *McCoy*” assertion is facile in light of the fact that the Court referred to the decision “whether to plead guilty” as an example of trial decisions so fundamental that they “are reserved for the client.” *McCoy* at 1508, citing *Jones v. Barnes*, 463 U.S. 745, 751 (1983). Further, in the portion of the opinion setting forth that holding, the Court stated:

With individual liberty—and, in capital cases, life—at stake, it is the defendant’s prerogative, not counsel’s, to decide on the objective of his defense: to admit guilt in the hope of gaining mercy at the sentencing stage, or to maintain his innocence, leaving it to the State to prove his guilt beyond a reasonable doubt.

McCoy, 138 S.Ct. at 1505. Thus, *McCoy* contains clear references to the right to plead guilty. *McCoy* did not limit a defendant’s right to set the objectives of his/her defense to only the right to assert one’s innocence.

Both parties agree that the right to self-representation is not absolute, see, e.g., *Martinez v. Ct. of Appeal of Cal., Fourth Appellate Dist.*, 528 U.S. 152, 161 (2000), which held that a defendant does not have a Sixth Amendment right to self-representation on direct appeal from a criminal conviction. But respondent adds an additional spin to the holding in that

case when it contends that the right to self-representation is qualifiable “particularly in capital cases where there are competing constitutional concerns.” Resp. 9. *Martinez* was an embezzlement case and said nothing about the reliability of capital cases. The limitations that may be imposed on self-representation at trial relate to “the government’s interest in ensuring the integrity and efficiency of the trial.” *Id.* at 162. *Martinez* provides no support for stripping the accused of the right to control the objectives of his case by choosing which plea to enter.

Finally, respondent contends that “there is no federal constitutional right to enter a guilty plea in the first place.” Resp. 9, citing *North Carolina v. Alford*, 400 U.S. 25, 39 (1970). Respondent’s citation to *Alford* omits the footnote which contains the language upon which it relies (footnote 11), fails to characterize that language as dictum, and misquotes *Alford* by changing the word “accept” to “enter.” Most importantly, respondent fails to address *Alford*’s clear assertion that “the States may by statute or otherwise confer such a right” (to have a guilty plea accepted), and does not deny that California law confers such a right to plead guilty in capital cases. *Id.* at 38, n.11; Pet. 15, n. 2. Once that right is conferred, as in petitioner’s case, it is subject to federal constitutional requirements, one of which is a prohibition on disenfranchising self-represented defendants from setting the objectives of his/her case by choosing to plead guilty in a capital case.

II. The Inadequate Procedural Bar

The California Supreme Court concluded that petitioner forfeited his federal claim by failing to raise it in the superior court, which was at the time his case was tried the second level court after the municipal court and the court in which his case was tried. Petitioner argues that the California Supreme Court based its forfeiture conclusion upon a statute that was never mentioned or invoked at trial or by respondent on appeal, whereas the true reason why petitioner was not allowed to plead guilty was, as plainly shown by the record below, the consent-of-counsel requirement in section 1018, which disallows a self-represented defendant from pleading guilty in a capital case, and thereby violates the Sixth Amendment. Pet. 26-29.

Respondent contends that the state court's forfeiture conclusion is an independent and adequate state law ground which deprives this Court of the jurisdiction to address petitioner's claim. Resp. 5-6. And, it rejects petitioner's argument that the forfeiture rule invoked below is not firmly established, regularly followed, and consistently applied: "[Petitioner's] argument erroneously conflates the state law ground on which the judgment below rests—forfeiture of an issue not preserved in the trial court—with California law governing entry of guilty pleas in municipal court." Resp. 7-8. Respondent misapprehends the manner in which this Court reviews the adequacy of a state procedural bar to its review of a federal claim. To determine whether a state rule is firmly established, regularly followed, and

consistently applied, this Court must perforce analyze state law. Neither the California Supreme Court in its opinion nor respondent in its opposition is able to muster a single capital case which involved the entry of a guilty plea when the former statutes and cases cited by the state court were binding and in effect at the time of petitioner's trial and barred such a guilty plea.

Finally, respondent contends that petitioner's argument is based on the state court's misapplication of state law, citing the entirety of the section of his petition devoted to procedural default. Resp 7, citing Pet. 26-35. Once again, this contention misapprehends the role of federal review. Precluding a self-represented defendant from pleading guilty in a capital case necessarily involves an examination of state law procedures relating to the entry and acceptance of guilty pleas in a capital case; but the effect of those procedures is what violates the Sixth Amendment.

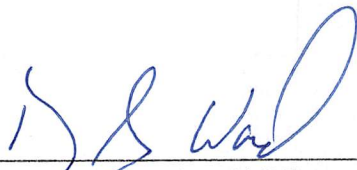
Respondent pays scant attention to the constitutionally significant facts in this case: petitioner made a motion to plead guilty; the prosecutor interrupted him and stated that "*by law he cannot plead guilty to a special circumstances allegation case. He understands that, but I told him no judge can accept your plea.*"; the court endorsed the prosecutor's comments, thereby denying the motion; and later portions of the record firmly establish that section 1018 was the basis for disallowing petitioner's guilty plea, not the recondite statute relied upon by the state court as the basis for forfeiture. Pet. 16-17, 29-32. Futility and equitable concerns are patent here.

CONCLUSION

Under section 1018, a self-represented defendant is flatly prohibited from setting the objectives of his case by pleading guilty in a capital case. The question presented here is an important one: does a self-represented defendant have a right in a capital case to choose which plea to enter. Section 1018 does not simply impair that choice, it destroys it by forbidding a self-represented defendant from pleading guilty in a capital case. The structural integrity of the Sixth Amendment is weakened by this unconstitutional statute. The state court's refusal to address this federal claim is based on a putative procedural bar that is both novel and unsupported by the record. Petitioner's claim is therefore not insulated from federal review by this Court.

Wherefore, petitioner respectfully requests that this Court grant the petition for a writ of certiorari and reverse the judgment of the Supreme Court of California.

Dated: October 26, 2020.



DOUGLAS G. WARD
Counsel of Record

350 Bay Street, P.M.B. #199
San Francisco, California
(415) 494-9252

ATTORNEY FOR PETITIONER