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IN THE SUPREME COURT OF THE UNITED STATES

SAMUEL HOGANS - PETITIONER

v.

UNITED STATES OF AMERICA - RESPONDENT

**ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Under the Sixth Amendment, is it constitutional for a competent criminal defendant to be denied the fundamental right to self-representation when the defendant invokes his right three days before the commencement of trial and the granting of his request will not result in a delay of the trial proceedings?

LIST OF PARTIES

All parties to this proceeding appear in the caption of the case.

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OPINIONS BELOW

The Petitioner, Samuel Hogans (“Mr. Hogans”), seeks review of the Fourth Circuit Court of Appeals’ unpublished decision in United States v. Samuel Hogans, 4CCA, No. 19-4431, which is attached hereto at App. A.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1254(1). The judgment of the Court of Appeals was entered on July 14, 2020. In accordance with this Court’s order of March 19, 2020, Mr. Hogans’ petition for writ of certiorari is being filed within 150 days of the entry of the Court of Appeals’ judgment.

CONSTITUTIONAL PROVISION INVOLVED

The Sixth Amendment to the United States Constitution provides: “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.”

INTRODUCTION

This case presents important questions about criminal defendants’ Sixth Amendment right to represent themselves at trial, a right this Court has repeatedly labeled “fundamental.” *Faretta v. California*, 422 U.S. 806, 817 (1975). Mr. Hogans invoked that right three days before his trial was scheduled

to begin. He did so as soon as he realized that his court-appointed counsel did not intend to introduce any exhibits on his behalf at trial—and having previously alerted the trial court over the preceding weeks to his concerns with his lawyer’s representation. When he made his request to represent himself, he specifically stated that he was ready to go to trial and would not be seeking a continuance. The trial court still denied his request without conducting any inquiry of him, his counsel or the Government, and without balancing his right to represent himself against any competing governmental interest. Instead, the trial court simply concluded that he did not have enough time to prepare for trial, and therefore his request was merely an attempt to delay the proceedings. In a per curium opinion, the Fourth Circuit summarily affirmed the district’s court’s decision. This Court should review the decisions of the trial court and Fourth Circuit because they are contrary to the Court’s decision in *Faretta* and undermine the fundamental right of self-representation.

STATEMENT OF THE CASE

A. Basis for Jurisdiction in the Courts Below

The United States District Court for the Northern District of West Virginia had jurisdiction over this federal criminal case pursuant to 21 U.S.C. §§ 841(a)(1), 841(b)(1)(C) and (2); 18 U.S.C. §§ 1791(a)(2), 1791(b)(3), and 1791(d)(1)(B). The Court of Appeals had jurisdiction over the appeal from the final judgment and criminal conviction pursuant to 28 U.S.C. § 1291.

B. Proceedings in the District Court

On May 1, 2018, Mr. Hogans was indicted in the district court and charged with six counts of distribution of crack cocaine, four counts of distribution of heroin, one count of possession of a firearm by a felon, and one count of possession of a stolen firearm. Subsequently, on September 18, 2018, he was separately indicted in the district court and charged with one count of possession of contraband in prison, in violation of 18 U.S.C. § 1791(a)(2). Specifically, the indictment alleged that he possessed a “shank” while in the state jail, where he was being detained by the Government pending his trial on the drug indictment.

Thereafter, on November 1, 2018, Mr. Hogans’ court-appointed counsel, James Kratovil, Esq., filed a motion to withdraw from representation, which is attached hereto at App. B. As grounds for his motion, Mr. Kratovil alleged that there had been “a substantial breakdown in communications between client and counsel in that the Defendant has alleged improper collusion between counsel and the U. S. Attorney’s Office resulting in the Defendant walking out of the interview room at the Eastern Regional Jail and refusing communication with counsel.” (App. B at 1.)

On November 11, 2018, the district court held a hearing on Mr. Kratovil’s motion to withdraw from representation (transcript of hearing attached hereto as App. C). At the hearing, the district court addressed Mr. Hogans directly regarding the alleged breakdown in his attorney-client relationship with Mr.

Kratovil. Specifically, Mr. Hogans complained that Mr. Kratovil was not communicating with him to his satisfaction. In that regard, Mr. Hogans referred to a motion that he asked Mr. Kratovil to file for purposes of obtaining a copy of the district court's grand jury master list. Mr. Kratovil had filed the motion for Mr. Hogans, but it was denied by the district court. Mr. Hogans told the district court that:

The thing with Mr. Kratovil is I was just saying to him that -- I mean I don't think he's a bad person at all. It's just, you know, we not -- where we going at with my case is he's not doing anything that I was asking him to do as far as like the -- the only thing I was asking him about was my order denying the motion for my grand jury master list. I was asking him about that.

...

I was just asking this man -- I been trying to get him to explain to me some of these cases. I don't come to court. I'm not getting no help at the jail because I'm being denied access to the courts in the jail. And I been explaining this to him. I've got phone calls that I've been calling him, explaining to him that they've been denying me access to the courts by not bringing me to the law library, by not having nobody in there to help me navigate with this -- this -- LexisNexis. I've been asking him if he can get somebody to the jail to help us. They don't have nobody there to help us. There is nothing in the law library. Nothing. No books. No anything. I don't understand half the stuff I been reading. So I been asking this man, and he hasn't been explaining it to me. So when he -- he hasn't been explaining to me. I got to go elsewhere. I've been, you know, asking for outside support. My mother, my father, my brothers, and sisters and friends and everybody been telling me little tidbits. So I've been giving it to him. And then he's not really doing nothing with it. Then I get an order denying me when this guy -- he got relief in the Fourth Circuit. So I'm not saying that. And then --

(App. C at 4-5.)

After hearing Mr. Hogans' concerns about Mr. Kratovil's representation, the district court asked Mr. Kratovil: "[O]ther than the fact that Mr. Hogans walked out of your meeting when things kind of fell apart because you wouldn't do what he asked you to do because you didn't think you had a good-faith basis to do it, are you prepared to go to trial other than what you need to work with him on?" (*Id.* at 17.) In response, Mr. Kratovil said that he was "ready to go to trial." (*Ibid.*) At the same time, Mr. Kratovil stated that if the district court would extend the timeframe for filing pretrial motions in the drug case, "he could take another look at those." (*Id.* at 18.)

The Government opposed Mr. Kratovil's motion to withdraw from representation, noting that he was Mr. Hogans' third court-appointed counsel and that his trial had already been continued twice before. (*Id.* at 18-19.) According to the Government, the alleged conflict between Mr. Hogans and Mr. Kratovil was just another attempt by him to "delay and/or avoid trial." (*Ibid.*) The Government argued that, "to continue to grant the defendant's request for new counsel would be to deny both the defendant's and the public's interest in a speedy resolution of this matter." (*Id.* at 19.)

After hearing from all interested parties, the district court ultimately denied Mr. Kratovil's motion to withdraw from representation. First, the district court pointed out that Mr. Kratovil was Mr. Hogans' third court-appointed counsel, and that his first two court-appointed attorneys had withdrawn because of similar alleged breakdowns in communication with him. In both of those

instances, the district court had continued Mr. Hogans' previously scheduled trials. Regarding Mr. Kratovil's position on the alleged breakdown, the district court found that there was no genuine conflict with Mr. Hogans. Rather, the court concluded that their relationship had "fallen off the rails because Mr. Kratovil in good faith can't file motions that don't pertain to this case or hold water." (*Id.* at 21.) Lastly, the district court stated that Mr. Hogans' conduct was "bordering on the defendant's obstructing and sabotaging of his relationship with all of these attorneys because it's happened again and again and again." (*Id.* at 22.)

After the district court announced its ruling, Mr. Hogans stated:

All right. I would like to say that I've done nothing to impede the trial. I'm ready for trial. I was ready for trial March 20th. Now, she's saying that I been doing stuff to uphold the -- to hold up the trial. I'll represent myself if she want to go to trial December 11th. I don't got a problem going to trial. I been wanting to go to trial.

I been asking my lawyers how is it that when you all -- you all -- you all been granted -- you all been granted time to -- you know, for a continuance. I'm thinking one month. You know, a couple weeks. Next thing you know I'm going four months down to the next court date. Another three months to the next court date. I was only given continuances for like one month, two weeks. Then they come back telling me, oh, your trial date has been from May 22nd to September 18th. I get a new lawyer. You know, I give him permission to, you know, go for another continuance. And it goes from September 18th to December 11th. I never been -- I never was asking for no continuances for that long. I was asking for a continuance maybe two weeks, maybe a month's time.

I'm ready for trial. I've been ready for trial March 20th. I haven't done anything to hold a trial up. I think that's a slight to my character to say I've been doing stuff like that.

I've been trying to work with these lawyers as best as I can, and it's not all on me. Don't -- they can't make it out to be like it's all on me.

(*Id.* at 25-26.)

Mr. Hogans then asked the district court what he could do if there was another "misunderstanding" between him and Mr. Kratovil. (*Id.* at 33.)

Specifically, he said:

I'm asking -- I'm saying from this point, I want to be on the record that if there's something else that this man is not trying to file and that's integral to my defense, is there any other way that we cannot go through with that and still go forward with the case without me having to represent myself? *Because I don't have a problem representing myself.* [emphasis added]

(*Ibid.*)

In response, the district court informed Mr. Hogans that:

[I]n the future, if you think that things have broken down with Mr. Kratovil, and you want to represent yourself, you're free to file that motion. But I'm going to tell you this right now. We're so close to trial. It's not going to be terribly timely. And in listening to what you've told me, Mr. Hogans, you're reading a lot of law, and you're trying your best -- looking at it in the light most favorable to you, what you're telling me, you're trying your best to try to assist Mr. Kratovil and help him and help yourself. But it sounds as though you're finding a lot of stuff in Mr. Kratovil's estimation that's not really germane to preparation of your defense.

So I'm finding at this point, based on just what you've told me here today, that considering your background, your appreciation of what's pertinent to the charges against you and your understanding or misunderstanding of the advantages and disadvantages of self-representation, I come to the conclusion at this point that your waiving

counsel in this case is not knowing and voluntary -- well, let's put it this way. It's not knowing and intelligent.

So at this point, I haven't heard anything from you that would leave me to make any sort of clear determination that it would be fitting and appropriate for you to represent yourself. So that's the final word on that at this point.

(*Id.* at 35-36.)

Approximately one month later, on December 6, 2018, Mr. Hogans appeared before the district court with Mr. Kratovil for a pretrial conference in both underlying matters (transcript of hearing attached hereto as App. D). At that time, both cases were scheduled for trial on December 10, 2018. At the pretrial hearing, the district court informed the parties that only the drug case would be tried on December 10, 2018. As such, the trial pertaining to the prison contraband case was rescheduled for January 9, 2019. The district court then proceeded to review the parties' proposed voir dire, jury instructions, and the status of their plea negotiations. After recessing briefly for Mr. Kratovil and Mr. Hogans to discuss the Government's pending plea offer in the prison contraband case, Mr. Kratovil moved to continue the pretrial. He stated that:

Mr. Hogans has indicated to me that he'd like to continue this pretrial so that he can discuss some more issues with me. There is [*sic*] some motions that he wants to file and wants me to file that I have so far refused to file. And he wants some more time to convince me that I should file those motions.

(App. D at 17.)

The district court denied the motion to continue, stating that "I see this as nothing more than an attempt to delay these proceedings. We're set on track for

trial, and we will proceed.” (*Id.* at 18.) At that point, the district court proceeded on with the pretrial hearing. After Mr. Kratovil informed the district court that Mr. Hogans did not intend to present any exhibits at trial, Mr. Hogans stated:

Your Honor, we have an exhibit list. This is what I’m talking about. I’ve been saying something to him about my exhibits. I was here today. I brought my exhibits with me. This is what -- and I told him I have more motions, and he didn’t say anything. And I was telling him (indiscernible) file any of my motions I wanted to file, *I wanted to represent myself because this man is not addressing my issues that I want to address. And I don’t have no problem address -- I don’t have no problem with representing myself. I knowingly and intelligently will waive my rights to an effective assistance of competent counsel. I would definitely do that,* and I would definitely not try to -- I want my motions -- I want my motions addressed separately and specially. And I told this man. He didn’t even address what I just asked him to just now. And I brought my own exhibit list just to show him. I brought it today. [emphasis added]

(*Id.* at 41.)

The district court again denied Mr. Hogans’ motion to represent himself, stating that: “I see all of this, what I’ve heard, including the motion by Mr. Hogans to represent himself, which he never could gear up to do before this coming Monday at 9 o’clock, is just a means to delay and obstruct this process.”

(*Id.* at 45-46.) The pretrial hearing concluded after the following colloquy between the district court and Mr. Hogans:

THE DEFENDANT: If you give me the opportunity to –

THE COURT: Well, I’m not giving you that opportunity because I don’t think you can do it.

THE DEFENDANT: If Mr. Kratovil gives me all the information, I will be ready. I will be ready. I’ve been ready

since March 20th. I'm ready. If you give me all the information Mr. Kratovil has, I will be ready. And I won't be coming back on the (indiscernible) trying to say I wasn't ready. I will be ready.

(Simultaneous speech.)

THE COURT: The motion is denied. We're going to proceed with Mr. Kratovil as your counsel.

THE DEFENDANT: I don't want Mr. Kratovil to represent me because he's not getting my issues that I want addressed on the record because I've asked Mr. Kratovil all kinds of things to get on the record, and he hasn't been addressing them. I been trying to be patient with Mr. Kratovil per your instructions. I've been listening to Mr. Kratovil, and we've been butting heads. But as man to man, I mean I been listening to him. But he hasn't been addressing my issues I got, and I got -- I got case law to support everything I'm telling this man.

THE COURT: All right. All right. And he's the lawyer, and he's making the decisions on how to present your defense. I'm instructing you --

THE DEFENDANT: (Indiscernible.)

THE COURT: -- Mr. Hogans, to work with Mr. Kratovil in defense of your case --

(Simultaneous speech.)

THE COURT: -- because he's your lawyer, and he's going to be your lawyer for trial.

(Simultaneous speech.)

THE COURT: We are finished here. We are in recess.

(*Id.* at 46-47.)

On the following day, Mr. Hogans appeared before the magistrate judge with Mr. Kratovil as his counsel and entered a guilty plea in the drug case

pursuant to a plea agreement. During the following week, Mr. Hogans went to trial in the prison contraband case with Mr. Kratovil as his counsel. After a two-day jury trial, he was convicted. Subsequently, he was sentenced to concurrent terms of imprisonment of 151 months for his drug conviction and 60 months for his prison contraband conviction.

C. Proceedings in the Circuit Court of Appeals

Mr. Hogans filed a timely appeal to the United States Court of Appeals for the Fourth Circuit. On appeal, he challenged the district court's decision to deny his request for self-representation. He argued that he was constitutionally entitled to proceed to trial without counsel because his request to represent himself was: (1) clear and unequivocal; (2) knowing, intelligent, and voluntary; (3) timely; and (4) not made in bad faith—all factors required by Fourth Circuit precedent. *See generally United States v. Bush*, 404 F.3d 263, 271 (4th Cir. 2005).

The Fourth Circuit affirmed. (App. A at 5.) In its decision, the Fourth Circuit concluded that the district court did not err in denying Mr. Hogans' request for self-representation. Specifically, the Fourth Circuit stated that:

[O]n appeal, Hogans contends that his assertion of his right to self-representation satisfied all the requirements of *Bernard*. However, we find that Hogans' request to represent himself was neither clear and unequivocal nor timely under the circumstances. *See Bush*, 404 F.3d at 271. Furthermore, we conclude that the district court did not clearly err in finding that Hogans' request for self-representation was intended to delay and obstruct the administration of justice. Accordingly, we affirm the district court's judgment.

(*Id.* at 5)

REASONS FOR GRANTING PETITION

The Fourth Circuit's decision is subject to this Court's review not only because it is contrary to this Court's decision in *Faretta*, but also because it is fundamentally inconsistent with the Sixth Amendment of the United States Constitution, which guarantees the right to self-representation in all criminal prosecutions. In that regard, the Petitioner's case presents a salient legal question regarding the misapplication of *Faretta* and, as a result, the misinterpretation of the federal Constitution. Therefore, this Court should grant certiorari to correct the Fourth Circuit's clear misapplication of *Faretta*, as well as its contravention of the United States Constitution.

A. *Faretta v. California*

In *Faretta*, this Court emphasized the basic, fundamental nature of one's constitutional right to self-representation in a criminal matter. Specifically, this Court noted "[t]he right to defend is given directly to the accused; for it is he who suffers the consequences if the defense fails." *Faretta*, 422 U.S. at 819-20. In the same vein, this Court stressed the importance of personal autonomy with regard to waiving one's right to the assistance of counsel stating:

We confront here a nearly universal conviction, on the part of our people as well as our courts, that forcing a lawyer upon an unwilling defendant is contrary to his basic right to defend himself if he truly wants to do so.

Id. at 817.

Based on the aforementioned principles, this Court has stated that compulsory legal representation by waived court-appointed counsel creates a “tenuous and unacceptable legal fiction,” wherein “counsel is not an assistant, but a master.” *Id.* at 820-21. Over the years, the sentiments enunciated in *Faretta* have been adopted and reiterated by federal courts and state courts alike. “[A] defendant’s right to self-representation is a protection afforded by the Sixth Amendment.” *United States v. Hilton*, 701 F.3d 959, 965 (4th Cir. 2012), citing *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975). Similarly, in a 1942 Supreme Court decision, this Court forewarned of the oppressive nature of forced legal assistance by equating it to “imprison[ing] a man in his privileges.” *Adams v. United States*, 317 U.S. 269, 280, 63 S.Ct. 236, 87 L.Ed.2d 268 (1942).

In *Faretta*, the defendant, who had only a high-school education and no legal expertise, was denied his fundamental right to self-representation by the Superior Court of Los Angeles County, California, after the trial judge determined that he lacked the legal knowledge to make “an intelligent and knowing waiver of his right to the assistance of counsel.” *Faretta*, 422 U.S. at 819-20. In the same breath, the trial judge egregiously stated that the defendant “had no constitutional right to conduct his own defense” *Ibid.* After erroneously determining that the defendant did not effectively invoke his right to self-representation, the court re-appointed the defendant’s public defender to assist Mr. Faretta in his criminal matter. Following an appeal, this Court vacated the

judgment below and remanded the matter for further proceedings consistent with its decision. Specifically, this Court determined that the lower court had infringed upon Mr. Faretta's Sixth Amendment right to self-representation stating:

Here, weeks before trial, Faretta *clearly and unequivocally declared to the trial judge that he wanted to represent himself and did not want counsel*. The record affirmatively shows that Faretta was *literate, competent, and understanding, and that he was voluntarily exercising his informed free will*. [emphasis added]

Id. at 835-36.

Notwithstanding the foundational nature of the right to self-representation, this Court has held that the right is not absolute. For example, *Faretta* approved the denial of the self-representation right to “a defendant who deliberately engages in serious and obstructionist misconduct.” 422 U.S. at 834 n.46. This Court has also stated that “[t]he right of self-representation is not a license to abuse the dignity of the courtroom,” *Faretta*, 422 U.S. at 834 n.46, and that “the government’s interest in ensuring the integrity and efficiency of the trial at times outweighs the defendant’s interest in acting as his own lawyer,” *Martinez v. Court of Appeal of Cal., Martinez*, 528 U.S. 152, 162 (2000). Thus, the right to self-representation can be denied in some cases, but only when there is a countervailing governmental interest that outweighs the defendant’s interest in conducting his own defense.

B. Fourth Circuit's Decision is Contrary to *Faretta*

Here, like *Faretta*, Mr. Hogans' request to represent himself could not have been any more clear or unequivocal. Again, at the pretrial conference on December 6, 2018, he explicitly stated "I wanted to represent myself because this man is not addressing my issues that I want to address. And I don't have no problem address -- I don't have no problem with representing myself. I knowingly and intelligently will waive my rights to an effective assistance of competent counsel." Moreover, the Petitioner, like Mr. Faretta, was literate, legally competent, and exercising his free will when he opted to waive his right to his court-appointed counsel and proceed as a pro se defendant.

In addition to Mr. Hogan's request being clear and unequivocal, like the defendant in *Faretta*, the facts of both cases also mirror one another insofar as the defendants' requests in both matters were made timely and prior to trial. In *Faretta*, this Court determined that the defendants' request was timely when made several weeks before his trial. Generally, in analyzing whether a request for self-representation has been made timely, courts consider the timing of the request in relation to the commencement of material trial proceedings. For example, the Fourth Circuit has held that a defendant's request for self-representation, to be timely, must be made 'before meaningful trial proceedings have commenced, and that thereafter its exercise rests with the sound discretion of the trial court.' *United States v. Lawrence*, 605 F.2d 1321, 1325 (4th Cir. 1979). Thus, "[t]he right of a defendant in a criminal case to act as his own

lawyer is unqualified if invoked prior to the start of the trial.” Id. at 1324; *see also United States v. Tucker*, 451 F.3d 1176, 1181 (10th Cir. 2006) (concluding that a request to proceed as a pro se defendant is timely if made before a jury is impaneled).

Here, Mr. Hogans’ request to represent himself was clearly made before meaningful trial proceedings had begun in his cases. Indeed, he made his request before any trial proceedings had begun whatsoever. Specifically, his second request was made at the pretrial conference on December 6, 2018, which was three days before his scheduled trial in the drug case. At that time, he told the district court that he wanted to represent himself because he was still not satisfied with Mr. Kratovil’s representation. As such, because Mr. Hogans’ request was made before the start of his trial, and was timely within the framework established by this Court, he had an unqualified right to represent himself going forward. Furthermore, his request was not “out of the blue” or unanticipated by any means; in fact, as stated above, Mr. Hogans had made his initial request weeks earlier at a hearing on Mr. Kratovil’s motion to withdraw from representation.

Thus, the Fourth Circuit misapplied *Faretta* and its progeny when it determined that Mr. Hogans’ request to proceed as a pro se defendant was neither clear and unequivocal nor timely. Additionally, neither the trial court nor the Fourth engaged in any analysis of whether there was a countervailing government interest that sufficiently outweighed his constitutional right to

represent himself. Therefore, intervention by this Court is not only necessary for purposes of clarifying an important, constitutional legal question, but is also vital for rectifying the Fourth Circuit's misapplication of this Court's longstanding precedent established in *Faretta*.

CONCLUSION

For the foregoing reasons, this Court should grant certiorari.

Respectfully submitted,

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