NO: 20-7274

IN THE

SUPREME COURT OF THE UNITED STATES

MICHAEL DIABOLIS GRIFFIS - Petitioner,

v.

LES PARISH - Respondent.

PETITION FOR WRIT OF CERTIORARI

MICHAEL DIABOLIS GRIFFIS
MDOC #235794 IN PRO PER
OAKS CORRECTIONAL FACILITY
1500 CABERFAE HIGHWAY
MANISTEE, MICHIGAN 49660

PETITIONER / PRO PER

QUESTIONS PRESENTED

I. WHETHER THE SIXTH CIRCUIT COURT OF APPEALS DECISION CONFLICTS WITH CLEARLY ESTABLISHED LAW IN FARETTA V. CALIFORNIA AND CONFLICTS WITH THE DECISIONS OF OTHER FEDERAL APPELLATE COURTS ON DEFINING AN UNEQUIVOCAL REQUEST TO PROCEED IN PROPRIA PERSONA, AND WHETHER THE DECISION VIOLATES PETITIONER'S RIGHT TO DISPENSE WITH THE ASSISTANCE OF COUNSEL AS GUARANTEED WITHIN THE SIXTH AMENDMENT OF THE UNITED STATES AND MICHIGAN CONSTITUTIONS...

LIST OF PARTIES

MICHAEL DIABOLIS GRIFFIS - Petitioner IN PROPRIA PERSONA

LES PARISH, WARDEN - Respondent

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IN THE

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PETITION FOR WRIT OF CERTIORARI

The Petitioner respectfully request that this Honorable Court issue a writ of certiorari to review the judgment below.

OPINIONS BELOW

FEDERAL COURT CASES:

The opinion of the Sixth Circuit Court of Appeals appears at Appendix A, to the petition and is reported at **Griffis v. Parish, 2020 U.S. App. LEXIS 28415 (6th Cir. Sept 8, 2020).**

The opinion of the United States District Court appears at Appendix B, to this petition and is reported at **Griffis v. Parish, 2019 U.S. Dist. LEXIS 230304 (W.D. Mich., July 15, 2019).**

The Report and Recommendation of the United States District Court appears at Appendix C, to this petition and is reported at **Griffis v. Parish, 2020 U.S. Dist. LEXIS 66908 (W.D. Mich., Apr 16, 2020).**

The opinion of the United States District Court denying Petitioner's objection to the Report and Recommendation appears at Appendix D, to this petition and is reported at **Griffis v. Parish, 2020 U.S. Dist. LEXIS 66908 (W.D. Mich., Apr 16, 2020).**

STATE COURT CASES:

The opinion of the Michigan Supreme Court appears at Appendix E, to the petition and is unpublished; **May 06, 2016.**

The opinion of the Michigan Court of Appeals appears at Appendix F, to the petition and is unpublished; **May 12, 2015.**

The opinion of the Ninth Judicial Circuit Trial Court appears at Appendix G, to the petition and is unpublished; **August 16, 2016.**

The opinion of the Michigan Supreme Court appears at Appendix H, to the petition and is/was defaulted; **June 26, 2017.**

The opinion of the Michigan Court of Appeals appears at Appendix I, to the petition and is unpublished; **April 4, 2017.**

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTION AMENDMENT VI:

"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 the compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

UNITED STATES CONSTITUTION AMENDMENT XIV:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction to the equal protections of the law."

MICHIGAN CONSTITUTION 1963 ARTICLE 1, § 13:

"Conduct of suits in person or by counsel. -- A suitor in any court of this state has the right to prosecute or defend his suit, either in his own proper person or by an attorney."

MICHIGAN COMPILED LAWS § 763.1. RIGHTS OF ACCUSED; HEARING BY COUNSEL, DEFENSE, PROOFS, CONFRONTING WITNESSES:

"On the trial of every indictment or other criminal accusations, the party shall be allowed to be heard by counsel and may defend himself, and he shall have a right to produce witnesses and proofs in his favor, and meet the witnesses who are produced against him face to face."

MICHIGAN COURT RULE 6.005(D): APPOINTMENT OR WAIVER OF A LAWYER:

"If the court determines that the defendant is financially unable to retain a lawyer, it must promptly appoint a lawyer and promptly notify the lawyer of the appointment. The court may not permit the defendant to make an initial waiver of the right to be represented by a lawyer without first;

(1) advising the defendant of the charge, the maximum possible prison sentence for the offense, any mandatory minimum sentence required by law, and the risk involved in self representation, and

(2) offering the defendant the opportunity to consult with a retained lawyer or, if the defendant is indigent, the opportunity to consult with an appointed lawyer.

STATEMENT OF THE CASE

On **March 6, 2017** during a motion hearing requested by then appointed trial attorney John D. Gardiner to withdraw from the case due to a conflict of interest and irreconcilable differences; and after the District Court denied the motion reasoning that the defendant was not at liberty to "forum shop" for attorney's, Petitioner stated to the court, "**I'll represent myself.**" **M. Hrg. 3-6-13, at pp.7-8.** When the Court did not acknowledge Petitioner's assertion, defense counsel Gardiner then reiterated Petitioner's statement to the Court that Petitioner was "contemplating going pro per," to which the court also ignored. **M. Hrg. 3-6-13, at pp. 6-7.**

The Petitioner was bound over for trial and was convicted by a jury on **December 13, 2013** of two counts of Criminal Sexual Conduct, and was sentenced to two counts of 50 to 75 years on **January 13, 2014.**

REASON FOR GRANTING THE PETITION

The Petitioner alleges that the Sixth Circuit Court of Appeals decision denying habeas relief, and/or a certificate of appealability conflicts with the decision in **Faretta v. California, 422 U.S. 806 (1975);** as well as the decision of the 3rd Circuit Court of Appeals in **Buhl v. Cooksey, 233 F.3d 783, 792 (3rd Cir. 2000);** also see **U.S. v. Thomas, 357 F.3d 357, 363 (3rd Cir. 2004);** the 11th Circuit Court of Appeals in **Darman v. Wainwright, 798 F.2d 1358, 1367 (11th Cir. 1986),** on the same important matter and has decided an important federal question in a way that conflicts with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power.

The Sixth Amendment Constitutional provision of "**SELF-REPRESENTATION**" is a right that is [only] absolute [after] it has properly been asserted and it has been

unequivocally established. **Martinez v. Court of Appeals, 528 U.S. 152 (2000).**

In asserting the right to self-representation, both the 3rd and 11th Circuit Courts held that there was [NO] ritualistic "talismanic formula" required for the petitioner to recite to invoke the provisions of the Sixth Amendment right:

> "To invoke his Sixth Amendment right under **Faretta** a defendant does not need to recite some talismanic formula hoping to open eyes and ears to the Court of his request. Insofar as the desire to proceed pro se is concerned, petitioner must do no more than [state] his request, either verbally or in writing, unambiguously to the Court so that no reasonable person can say that the request was not made." **Dorman v. Wainwright, 798 F.2d 1358, 1366 (11th Cir. 1986).**

> "A defendant need not recite some talismanic formula hoping to open the eyes and ears of the Court to his request to invoke his/her Sixth Amendment right under **Faretta. Dorman supra 366.** Indeed, such a requirement would contradict the right it was designed to [protect], as a defendant's Sixth Amendment right of self-representation would then be conditioned upon his or her knowledge of the precise language needed to assert it. Rather than placing the burden on the defendant, the law simply requires an affirmative, unequivocal, request, and does not require that request to be written or in the form of a formal motion filed with the court." **Buhl v. Cooksey, 233 F.3d 783, 792 (3rd Cir. 2000).**

The Sixth Circuit Court of Appeals denied Petitioner's petition for a Certificate of Appealability because Petitioner's statement "I'll represent myself" was made in response to the Court's denial of defense counsel's motion to withdraw. Furthermore, the Sixth Circuit Court's finding that defense counsel's statement to the Court reiterating Petitioner's desire to proceed pro se; "I think the difficulty is now my client's indicated that he's perhaps contemplating going pro per or pro se." ; "that counsel did not suggest to the court that Petitioner was invoking his right to self-representation, and petitioner did not express disagreement with counsel's statement that Petitioner was only contemplating representing himself"; this finding conflicts with the holdings of both **Dorman** and **Buhl** because to uphold the Sixth Circuit's decision would in fact insinuate or imply that there is some talismanic formula that a petitioner or an attorney [must] recite before constitutional guarantees and protections are triggered.

First, Petitioner unequivocally asserted to the court's that he desired to

represent himself, and the court's completely disregarded Petitioner's assertion. Second, defense counsel attempted to [alert] the Court to the fact that Petitioner was attempting to assert this right, but the Court's continued to disregard the Petitioner's assertion, and the Sixth Circuit Court clearly denied the Petitioner's C.O.A because Petitioner nor defense counsel used "identified script" or some recognized talismanic formula to alert the court's to the fact that Petitioner was in fact asserting the right to self-representation.

The Appellate Court's also denied the petition on the grounds that Petitioner's assertion did not reach the bar of being "unequivocal" and that the court's duty to conduct a colloquy "**Faretta**" hearing [did not] activate until the Petitioner unequivocally invoked the right to self-representation. This conflicts with the decision of the United States Supreme Court in **Martinez v. Court of Appeals of Cal, Fourth App. Dist., 528 U.S. 152, 162; 120 S. Ct. 684; 145 L. Ed 2d 597 (2000)** in which the court held:

> "To invoke the right to self-representation, a defendant [first] must assert his self-representation right 'in a timely manner.' [Second], the defendant must 'knowingly and intelligently' waive the right to counsel after being advised of "the dangers and disadvantages of self-representation." **Faretta, 422 U.S. at 835.** Finally, a defendant's request for self-representation must be made clearly and unequivocally. **Id. at 422 U.S. at 835.**"

Again, as Petitioner outlined above the Petitioner timely asserted that in lieu of the waiver of counsel, "petitioner would represent himself." As all courts have recognized, there [must] be an unequivocal request made, this would be consistent with the opinions of this Court. Petitioner then argues that even if the Court's opted to consider Petitioner's request as unequivocal, and opted to casually disregard it, then it stands to reason that defense counsel's statement deserved and required more attention than the very blatant "slap in the face" disregard it received by an officer of the court to a mutual officer of the court. It is clear from the record that a determination was in fact never concluded as to whether or not Petitioner's statement was an unequivocal assertion or not. Is a superior court entitled to "assume" against the Petitioner when such a crisis of the

Constitution of the United States is involved? Furthermore, the court failed to hold the "**Faretta**" hearing to ascertain whether Petitioner's assertion was unequivocally made. **Johnson v. Zerbst, 304 U.S. 458, 464 (1938); U.S. v. Long, 597 F.3d 720, 724 (5th Cir. 2010).**

Last, is the Sixth Circuit's determination that because the Petitioner was dissatisfied with his attorney, Petitioner was not protected under the Sixth Amendment right to "dispense with the assistance of counsel." **(6th Cir. Ct. of App. Order Sept. 8, 2020).** See **Adams v. United States ex rel. McCann, 63 S. Ct. 236, 242, 279-280 (1975)** holding:

> "What were contrived as protections for the accused should not be turned into fetters. To deny an accused a choice of procedure in circumstance in which, though a layman, is capable as any lawyer of making intelligent choices, is to impair the worth of great constitutional safeguards by treating them as empty verbalisms." **Adams, 63 S. Ct. at 242.**

> "When the administration of the criminal law ... is hedged about as it is by the constitutional safeguards for protection of an accused, to deny him in the exercise of his free choice the right to dispense with some of these safeguards..... is to imprison a man in his privileges and call it the constitution."**Id. at 279-280.**

Protections are not actual protections; guarantees are not actual guarantees; rights are not actual rights; and the United States Constitution is not [absolute] when the provisions of the constitution are altered to umbrella judicial circumstance. There are circumstances in which a criminal defendant is not, and does not make "good faith assertions" and their only intent is to disrupt the normal process of the trial court's. But that is not the case for every criminal defendant who has disagreed with an appointed defense attorney's trial strategy, and because the attorney and his client have a legitimate difference of opinion which result in irreconcilable differences; and the District Court has failed to remedy the problem by replacing counsel; is not the criminal defendant at liberty to forego representation?

The Court is not at liberty to force unwanted appointed counsel unto the Petitioner. First, the right to assistance of counsel and the [correlative] right

to dispense with a lawyer's help are not legal formalisms. They rest on considerations that go to the substance of accused's position before the law. The public conscience must be satisfied that fairness dominates the administration of justice. An accused must have the means of presenting his best defense. He must have the facilities for investigations and the production of evidence. But evidence and truth are of no avail unless they can adequately be presented. Essential fairness is lacking if the accused cannot effectively put his case into the Court. But the constitution [does not force a lawyer upon a defendant]. He may waive his constitutional right to assistance of counsel if he knows what he is doing and his choice is made with eyes open." **Johnson v. Zerbst, 304 U.S. 458, 468-469 (1938).** Also see **Faretta v. California, 422 U.S. 806, 820-821 (1975)**, holding, "To thrust counsel upon 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 the right to make a defense is stripped away of the personal character upon which the amendment insists. An unwanted counsel represents the defendant through a tenuous and unacceptable legal fiction. Unless the accused has acquiesced in such representation, the defense presented is not the defense guaranteed him by the constitution, for in a very real sense, it is not his defense." Thus, "a defendants refusal to cooperate with an attorney" would act as a waiver of the right to counsel. **U.S. v. Thomas, 357 F.3d 357, 363 (3rd Cir. 2004).**

The questions before this Court for consideration are:

(1). Whether or not it is constitutional for a court to ignore / not address issue surrounding the federally protected constitutional right to self-representation under the Sixth Amendment of the United States Constitution?

(2). Whether there is some talismanic formula a petitioner is required to recite to invoke the federally protected right of self-representation?

(3). Whether or not a petitioner's dissatisfaction with appointed counsel and refusal to cooperate and work with appointed counsel; acting as a waiver of the right to the assistance of counsel, is sufficient in denying a petitioner the right to self-representation under the Sixth Amendment of the United States Constitution?

(4). Should the courts be required to make a record addressing any assertion or attempt to assert a constitutional right?

The Court must exercise it's judicial discretion on these questions because there are very important questions concerning the provisions of the Sixth Amendment which must be protected. There has been several reviews by this Court on the issue of self-representation, but the Court's have never addressed the issue of whether or not it is constitutional for a lower court to simply ignore [any] attempt to assert a constitutional right such as the right to proceed pro se in a criminal trial.

Michigan Court Rule 6.5008(D) and the **Judiciary Act of 1789, 1 stat. 92 § 35** both embody the right to the assistance of counsel, or to waive counsel and plead and manage his own cause. In order to invoke the Sixth Amendment right, a criminal defendant must unequivocally assert the right to the court. The issue that the court did not accept, deny, acknowledge or in any way adjudicate on the issue is relevant to the constitution. How many times must the petitioner invoke the constitutional right before it is properly asserted? This is the consideration before the Court.

CONCLUSION

In conclusion, Petitioner argues that in considering the questions presented to this Court, of the many considerations adjudicated by this Court, there has never truely been a complete discussion by this Court addressing what the responsibility of the Court is in a criminal proceeding when there has been [any] verbal or written statements to the court invoking or attempting to invoke a constitutionally protected right. Furthermore, this Court has never addressed whether it violates the Sixth Amendment right to proceed pro se, and the Fourteenth

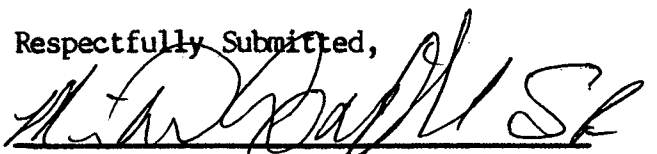
Amendment right to a fair trial and Due Process of law when a court [fails] to make a record and/or address an assertion of a right made by a criminal defendant.

The right to self-representation within the constitution and its legislative intent was to guarantee that it was the defendant that had a right to be heard, and that it was not just any defense, but the defendant's own defense being put forward in a trial contesting a complaint on indictment against him, because it is his life and liberty in jeopardy of being lost. The [only] reason that the right to self-representation is not [absolute] is because the primary objective and goal of the constitutional provision was to ensure that a defendant was afforded a fair trial by providing counsel to assist a defendant on points of the law a lay defendant would not be privy to.

In order to trigger the right, first an unequivocal assertion must be made. The consideration then becomes what makes the determination that an assertion is unequivocal? And because a constitutional right is involved, does it violate due process to not make a record of the determination being considered?

The Courts again must consider that further consideration is needed to protect petitioner and other defendant's from having the constitution used against him adversley to convict him unfairly. Petitioner prays that this Court will grant Certiorari and grant any other relief this Honorable Court deems appropriate.

Respectfully Submitted,



11-24-20
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