

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

NAZARI VASILICH CAM,
Petitioner,

v.

STATE OF OREGON,
Respondent

On Petition for a Writ of Certiorari to the Court of Appeals of the State of Oregon

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a state appellate court must appoint counsel *sua sponte* for an indigent criminal defendant who represents himself at trial, files a notice of appeal *pro se*, and does not expressly assert or waive the right to counsel on appeal.

RELATED CASES

Oregon Supreme Court, S067889, *State of Oregon v. Cam*, October 1, 2020; Oregon Court of Appeals, A173276, *State of Oregon v. Cam*, April 6, 2020, *recons den*, July 7, 2020; Yamhill County Circuit Court, 18CR42157, *State of Oregon v. Cam*, December 19, 2019.

OPINIONS BELOW

The Oregon Supreme Court's order denying review is unpublished but reprinted at App. 3. The Oregon Court of Appeals' orders dismissing the appeal and denying reconsideration are unpublished but reprinted at App. 1 and 2. The trial court's judgment is unpublished but reprinted at App. 24-32.

JURISDICTIONAL STATEMENT

The Oregon Supreme Court denied discretionary review on October 1, 2020. Under this Court's March 19, 2020, order extending the time to file a petition for a writ of certiorari to 150 days from the date of an order denying review, the petition is due March 1, 2021. This Court has jurisdiction under 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides, in pertinent part, “[N]or shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

STATEMENT OF THE CASE

The State of Oregon charged Mr. Cam with felony driving under the influence of intoxicants and several misdemeanors. The trial court initially found that Mr. Cam was indigent and appointed a lawyer to represent him, but the court later removed the lawyer. Although Mr. Cam had initially applied for court-appointed counsel, and he protested his lack of counsel throughout the trial, the court found that what he really wanted was to be represented by a lawyer who was not a member of the Oregon State Bar. The court concluded that it could not grant that request and that Mr. Cam had validly waived his right to counsel. A jury convicted him, and the court sentenced him to 20 months in prison.

Mr. Cam, still representing himself, timely filed a notice of appeal to the Oregon Court of Appeals. But he did not serve the District Attorney with the notice as required by Oregon law. The notice is attached at App. 33-37.

In the meantime, the trial court sent Mr. Cam a letter stating that he qualified for appointed counsel on appeal and encouraging him to contact the Oregon Office of Public Defense Services to obtain representation. The trial court also sent a copy of the letter to the Oregon Court of Appeals.

The Court of Appeals ordered Mr. Cam to show cause why his appeal should not be dismissed for deficient service. Mr. Cam did not respond to the order. He neither requested nor waived counsel on appeal, and the Court of Appeals did not appoint counsel for him or ask whether he wanted counsel. When Mr. Cam failed to correct the deficient service by the statutory deadline, the court dismissed his appeal.

A few days later, a lawyer from the Office of Public Defense Services moved the Court of Appeals for appointment of counsel on Mr. Cam's behalf, and the court granted the motion. Counsel filed a petition for reconsideration of the order of dismissal, arguing that the court had violated the Fourteenth Amendment by not appointing counsel for Mr. Cam *sua sponte* before it dismissed his appeal. The petition for reconsideration is attached at App. 5-15.

In response, the State of Oregon argued that the court was not obliged to appoint counsel *sua sponte* because Mr. Cam had represented himself at trial and did not request counsel on appeal. The State's response is attached at App. 16-23. The Court of Appeals issued an order denying reconsideration that adopted the State's position. The Oregon Supreme Court denied review by summary order.

REASONS FOR ALLOWING THE WRIT

This Court should allow the writ because the decision of the Oregon Court of Appeals conflicts with this court's decisions in *Swenson v. Bosler*, 386 U. S. 258 (1967), and *Halbert v. Michigan*, 545 U. S. 605 (2005). In *Swenson*, 386 U. S., at 260, this Court held that a state court must appoint appellate counsel for "a defendant whose indigency and desire to appeal are manifest" without waiting for the defendant to request counsel. This Court noted that a state court could decline to appoint counsel on appeal only if the record reflected that the defendant knowingly and intelligently waived the right to appellate counsel. *Id.* Similarly, in *Halbert*, 545 U. S., at 623-24, this Court held that the record did not reflect a valid waiver of appellate counsel when "the trial court did not tell Halbert, simply and directly, that in his case, there would

be no access to appointed counsel.” Rather, this Court explained that “the State must affirmatively ensure that poor defendants receive the legal assistance necessary to provide meaningful access to the judicial system.” *Id.*, at 624, n. 8.

In this case, the record before the Oregon Court of Appeals reflected a defendant whose “indigency and desire to appeal” were “manifest.” Mr. Cam had been found indigent by the trial court, and he timely filed a notice of appeal. Nothing in the record showed that he knowingly and intelligently decided to waive counsel *on appeal*. *Swenson* and *Halbert* therefore establish that the Court of Appeals had a duty to appoint counsel *sua sponte*. The Court of Appeals failed to fulfill that duty, and on reconsideration it held that it had no such duty.

The state court decided an important federal question in a way that suggests it will fail to abide by this Court’s decisions going forward. And a decision from this Court in this case would be especially helpful because state appellate courts frequently deal with indigent defendants who wish to appeal and who have a right to counsel on appeal under the Fourteenth Amendment. No other court can provide the much-needed guidance about when the Fourteenth Amendment requires a state appellate court to appoint counsel.

Respectfully submitted,

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