

NO. 20-7834

IN THE SUPREME COURT OF THE UNITED STATES

STEVEN COOPER,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE FIRST DISTRICT COURT OF APPEAL OF FLORIDA

BRIEF IN OPPOSITION
TO PETITION FOR A WRIT OF CERTIORARI

ASHLEY MOODY
ATTORNEY GENERAL OF FLORIDA

CAROLYN M. SNURKOWSKI
Associate Deputy Attorney General
Counsel of Record

TRISHA MEGGS PATE
Tallahassee Bureau Chief
Criminal Appeals
Office of the Attorney General
PL-01, The Capitol
Tallahassee, FL 32399-1050
Carolyn.Snurkowski@myfloridalegal.com
crimapptlh@myfloridalegal.com
(850) 414-3300

COUNSEL FOR RESPONDENT

QUESTION PRESENTED

Whether the state appellate court denied Petitioner his right to represent himself when the state court denied the pro se petition for writ of certiorari seeking review of his pre-trial motion to dismiss.

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OPINION BELOW

Petitioner challenges the order by the First District Court of Appeal of Florida denying his petition for writ of certiorari. The unreported opinion of the First District Court of Appeal is provided in Petitioner's appendix as Appendix page 1. The arrest report is provided in the Respondent's appendix as Respondent's Appendix A. The circuit court docket is provided in the Respondent's appendix as Respondent's Appendix B. Documents in the appendices are referred to as Petitioner's or Respondent's Appendix A, B, and so forth, followed by a page number.

JURISDICTION

This Court's jurisdiction to review the final judgment of the First District Court of Appeal of Florida is permissible under 28 U.S.C. § 1257. However, this Court should decline to exercise jurisdiction in this case because the First District Court of Appeal's order does not implicate an important or unsettled question of federal law, does not conflict with another state court of last resort or a court of appeal of the United States, and does not conflict with relevant decisions of this Court. Sup. Ct. R. 10. In short, no compelling reasons exist to grant a writ of certiorari in this case. Sup. Ct. R. 10.

STATEMENT OF THE CASE AND FACTS

The State of Florida charged Petitioner with grand theft over \$20,000 and criminal mischief over \$1,000 in damages. According to the arrest report, the victim had failed to pay her property taxes and two years of the tax certificates were placed up for sale at auction. When the certificates were not sold at the auction, they were placed up for sale by the property appraiser's office. Petitioner apparently desired to procure tax certificates in order to obtain the property by adverse possession. The clerk's office employees repeatedly attempted to explain to Petitioner how to purchase the tax certificates, but Petitioner insisted upon redeeming the certificates instead, which resulted in him paying the victim's tax debts. Petitioner then intentionally demolished the victim's home on the property. Petitioner claimed he had acquired

the property by adverse position. However, Florida law requires possession of the property or purchase of the tax certificates for seven years, and Petitioner did not even have two years of tax certificates as he had paid the victim's taxes rather than purchasing the certificates. (Respondent's Appendix A)

The state court appointed an attorney to represent Petitioner in the circuit court regarding the criminal charges. According to the trial court docket, Petitioner filed several motions to "discharge incompetent and ineffective counsel." In January 2020, Petitioner's public defender moved to withdraw, and regional conflict counsel was appointed. On July 14, 2020, Petitioner filed a pro se motion to dismiss the information and a notice that he was appearing pro se. The trial court denied the motion to dismiss the information, as Petitioner was represented by counsel. Petitioner also filed a second notice of pro se appearance and waiver of the right to counsel on July 20, 2020. The trial court has not entered a written ruling on those motions. (Respondent's Appendix B)

On August 31, 2020, Petitioner filed the petition for writ of certiorari, which is at issue in this case. In Florida a petition for writ of certiorari may be used to review an interlocutory order only when "it clearly appears that there is no full, adequate and complete remedy available to the petitioner by appeal after final judgment." *Earnest v. State*, 253 So. 2d 458, 459 (Fla. 1st DCA 1971) (citation omitted). In his petition, Petitioner claimed that the trial court had departed from the essential requirements of law by dismissing his motion for hearing and motion to dismiss the information. Petitioner also asserted that there was a conspiracy against him and

his claim of adverse possession of the property. The First District initially did order Petitioner to show cause why the petition should not be dismissed as unauthorized. The First District cited to *Logan v. State*, 846 So. 2d 472 (Fla. 2003), which held that a criminal defendant cannot proceed pro se in a petition for an extraordinary writ in the appellate court while represented by counsel in the trial court. Petitioner filed a response to the First District's order in which he argued that he had waived his right to counsel in the trial court. On December 16, 2020, the First District issued an order discharging the order to show cause and denying the petition for writ of certiorari on the merits.

REASON FOR DENYING THE WRIT

WHETHER THE STATE APPELLATE COURT DENIED PETITIONER HIS RIGHT TO REPRESENT HIMSELF WHEN THE STATE COURT DENIED THE PRO SE PETITION FOR WRIT OF CERTIORARI SEEKING REVIEW OF HIS PRE-TRIAL MOTION TO DISMISS.

I. Summary

Petitioner asserts that this Court should grant certiorari review because the state court has violated his Sixth Amendment right to represent himself by denying his petition for writ of certiorari.¹ Petitioner is incorrect, and this Court should deny review. Petitioner has failed to present a conflict of law or even that the state has pushed the limits of this Court's precedent. In this case, the state did not dismiss his petition because he was represented by counsel; instead, the state denied the petition on the merits.

¹ Petitioner's petition to this Court is difficult to follow, but it appears that his primary concern is that he was denied the right to represent himself.

A major consideration in this Court's decision to grant review is whether there is conflict on a significant legal issue among federal circuit courts and state supreme courts. The rule of this Court explaining the considerations governing review on writ of certiorari, Rule 10, provides:

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by 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;

(b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court. A petition for a writ of certiorari to invoke "this Court's appellate jurisdiction of state criminal judgments, 'is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor.'" *Fay v. Noia*, 372 U.S. 391, 436 (1963) (citation omitted), overruled in part by *Wainwright v. Sykes*, 433 U.S. 72 (1977), and abrogated by *Coleman v. Thompson*, 501 U.S. 722 (1991). Petitioner is asking this Court to review an unpublished order of the First District Court of Appeal, which has no precedential value. *Dep't of Legal Affairs v. Dist. Court of Appeal, 5th Dist.*, 434 So. 2d 310, 311 (Fla. 1983) (holding that a per curiam appellate court decision with no written opinion does not have any precedential value). Because the state court decision merely states "denied," it cannot

conflict with a decision of another state court of last resort or of a United States court of appeals. Nor does the state court order decide an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court. No such conflict is presented in this petition. Nor does this case test the limits of this Court's precedent.

The Sixth Amendment provides an accused the right to represent him- or herself. *Faretta v. California*, 422 U.S. 806, 821 (1975). However, by representing oneself the accused “relinquishes, as a purely factual matter, many of the traditional benefits associated with the right to counsel. For this reason, in order to represent himself, the accused must ‘knowingly and intelligently’ forgo those relinquished benefits.” *Id.* at 835 (citation omitted). Moreover, “*Faretta* does not require a trial judge to permit ‘hybrid’ representation.” *McKaskle v. Wiggins*, 465 U.S. 168, 183 (1984). Lastly, “[a]n indigent defendant has no right to have a particular attorney represent him and therefore must demonstrate ‘good cause’ to warrant substitution of counsel.” *United States v. Iles*, 906 F.2d 1122, 1130 (6th Cir. 1990) (footnote omitted).

In this case, the First District did not prohibit Petitioner from representing himself. The First District did initially issue an order for Petitioner to show cause why the petition should not be dismissed as it appeared Petitioner was represented by counsel in the trial court. However, after receiving Petitioner's response to the

show cause order, the First District discharged the order to show cause and denied the pro se petition.

Secondly, the procedural posture of this case prevents this Court from determining whether his right to self-representation was denied in the trial court. While Petitioner was represented by counsel in the trial court, the Petitioner filed numerous pro se motions. The trial court denied the pro se motion to dismiss the information on the grounds that Petitioner was represented by counsel. Petitioner then filed a petition for writ of certiorari relief in the state appellate court to seek review of that ruling. Under Florida law, certiorari review is not available to review pre-trial rulings unless the ruling is a departure from the essential requirements of law for which there is no adequate remedy on appeal. *State ex rel. Boyles v. Fla. Parole & Probation Comm'n*, 436 So. 2d 207, 209 (Fla. 1st DCA 1983) (providing that “[c]ertiorari is a common law writ which issues in the discretion of the court to an inferior tribunal to review its action and determine whether the inferior tribunal has exceeded its jurisdiction or has not proceeded in accordance with the essential requirements of law in cases where no remedy will lie by appeal”).

In this case, the trial court has not ruled on all of Petitioner’s pre-trial rulings and certainly not his Waiver of Counsel motion, therefore it is not certain how the trial court will rule. Furthermore, even if the trial court did deny the request to proceed pro se, the Petitioner still has the ability to raise that issue on direct appeal after his trial. Additionally, the First District’s order denying the Petitioner’s state court petition for writ of certiorari is not an endorsement or approval to deny

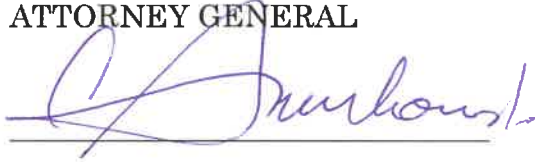
Petitioner his right to represent himself, but instead, the order is a reflection of Petitioner's failure to meet the requirements to be granted certiorari relief in Florida. Because there is no definitive ruling on Petitioner's request to represent himself from the state trial court there is no conflict or important question of federal law. Accordingly, this case is not new or novel, nor did the state fail to follow or expand any principle of law. Instead, the state followed the clearly established law regarding extraordinary writs to the unique facts of this case. The state court's decision was a fact-specific decision. Thus, there simply is no basis for granting certiorari review of this case. The petition should be denied.

The decision below presents no unsettled question of constitutional law or meaningful conflict with that of any federal or state appellate court. Accordingly, certiorari should be denied.

CONCLUSION

This case presents no constitutional question or controversy worthy of this Court's review. Therefore, Respondent respectfully submits that this Court should deny the petition.

Respectfully submitted,
ASHLEY MOODY
ATTORNEY GENERAL



CAROLYN M. SNURKOWSKI
Associate Deputy Attorney General
Florida Bar No. 158541
Counsel of Record

Trisha Meggs Pate
Tallahassee Bureau Chief
Criminal Appeals

Office of the Attorney General
PL-01, The Capitol
Tallahassee, FL 32399-1050
Carolyn.Snurkowski@myfloridalegal.com
crimapptlh@myfloridalegal.com
(850) 414-3300

COUNSEL FOR RESPONDENT