

20-8378
No. _____

Supreme Court, U.S.

FILED

OCT 27 2020

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Michael Gore, Jr.

— PETITIONER

(Your Name)

vs.

State of New Jersey

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Court of Appeals for the Third Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Michael Gore, Jr.

306860;983882B

(Your Name)

East Jersey State Prison

1100 Woodbridge Road, Lock Bag R

(Address)

Rahway, N.J. 07065

(City, State, Zip Code)

N/A

(Phone Number)

ORIGINAL

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QUESTIONS PRESENTED

- I. IS THE RIGHT TO SELF-REPRESENTATION VIOLATED WHEN A DEFENDANT IS NOT AFFORDED VOIR DIRE UNDER THE U.S. SUPREME COURT'S DECISION IN KARETTA-V.-CALIFORNIA TO DETERMINE IF, THE PETITIONER'S WAIVER IS KNOWING, INTELLIGENT AND VOLUNTARY; WHERE DEFENDANT MADE THE UNEQUIVOCAL REQUEST, BUT THE TRIAL COURT RULED IT WAS UNTIMELY?
- II. DID THE THIRD CIRCUIT COURT OF APPEALS ERR IN ITS FAILURE TO APPLY THIS COURT'S HOLDING IN KARETTA-V.-CALIFORNIA WHEN IT DENIED PETITIONER'S APPLICATION FOR A CERTIFICATE OF APPEALABILITY ON THE MERITS OF PETITIONER'S SIXTH AMENDMENT CLAIM THAT HE WAS DENIED TO CONDUCT HIS OWN DEFENSE, AND REPRESENT HIMSELF DURING CRIMINAL PROCEEDINGS AND TRIAL?

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix D to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was July 27 2020.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: August 28 2020, and a copy of the order denying rehearing appears at Appendix A.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment VI of the United States Constitution;

In all criminal prosecutions, the accused shall enjoy the right to a speedy trial and public trial, by an impartial jury of the State and district wherein the crime shall have been committed by law, and to be informed of the nature and cause of the accusation; to be confronted with witnesses against him; to have compulsory process for obtaining witnesses and to have the assistance of counsel for his defense.

Amendment XIV, Section 1 of the United States Constitution;

.....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 any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioner commenced this action by filing a timely 2254 petition in the U.S. District Court for the District of New Jersey (the "Petition") (ECF Dkt. No. 1). Michael R. Gore, Jr., v. Steven Johnson, et. al., 3:17-cv-00223 (BRM). The Respondent/State ("Respondents") filed an Answer to the Petition (the "Answer") (ECF Dkt. No. 12). Petitioner's claims in the underlying action arise from his state-court conviction on October 3, 2005, for first degree murder, felony murder and related offenses. Petitioner brought this 2254 action alleging that his right to waive his assigned attorney was violated under Sixth Amendment to the United States Constitution.

This application for certiorari that the state-court conviction must be vacated because Petitioner was denied his federal constitutional right to waive counsel and to present his own defense.

By opinion and order dated January 16, 2020, Hon. Brian R. Martinotti, U.S.D.J., denied the petition without conducting an evidentiary hearing. The court's focus was whether Petitioner's application to waive counsel and to present his own defense was [timely]. Rather, than whether Petitioner's request was knowing, and voluntarily waived. Petitioner filed a timely notice of appeal (ECF Dkt. No. 17).

On July 27, 2020, the Third Circuit Court of Appeals denied Petitioner's application for a certificate of appealability, and on August 28, 2020, the Court denied

Petitioner's application for rehearing.

It is respectfully submitted that the Court of Appeals failed to recognize Petitioner's right to waive counsel and to present his own defense pursuant to the Sixth Amendment of the United States Constitution and this Court's holding in Faretta v. California 95 S.Ct. 2525 (1975), that voir dire be conducted to that determination before the court can determine conclusively, whether a defendant has made an informed decision that was knowing and intelligent. Moreover, that court must follow all of the due process requirements set forth by this Court in Faretta to that end. Therefore, this application for certiorari follows.

In this regard, Petitioner relies upon the lower court record, the arguments and issues raised by Petitioner, and respectfully requests that this application for certiorari be granted in all respects.

REASONS FOR GRANTING THE WRIT

A. Conflicts with the Decision of this Court:

The holding of the courts below that petitioner's request was not timely and/or not unequivocal is directly contrary to the holding of Faretta v. California, 95 S.Ct. 2525 (1975).

B. Importance of the Question Presented:

This case presents a fundamental question of the interpretation of this Court's decision in Faretta v. California, 95 S.Ct. 2525 (1975). The question is of great importance because it affects the Petitioner's Sixth Amendment right to waive counsel and to present his own defense.

The issue's importance is enhanced by the fact that the lower courts in this case have seriously misinterpreted Faretta. This Court held in Faretta that the court must conduct a voir dire to determine whether a criminal defendant's request to dispense with counsel and to represent himself, the court can only make that determination by a thorough voir dire, and that education or lack thereof plays no part.

The lower court's reasoning that petitioner's request was not timely made is unconvincing, in view of the fact that the lower court conducted no voir dire as required.

Thus, the court below seriously misinterpreted Faretta by failing to distinguish between the 'timeliness' of the request and whether the petitioner's request was a knowing, intelligent, voluntary waiver. The Court should correct that misinterpretation and make clear that a criminal defendant is thoroughly vetted through voir dire before it denies him the fundamental right guaranteed by the Sixth Amendment to the United States Constitution and, Faretta.

CONCLUSION

For the foregoing reasons, certiorari should be granted in this case.

Respectfully submitted,

x Michael R. Gore

Michael R. Gore, Jr.
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