

No. 21-5085

ORIGINAL

SC21-428

IN THE

FILED

JUN 25 2021

SUPREME COURT OF THE UNITED STATES OFFICE OF THE CLERK
SUPREME COURT, U.S.

In re: David James Lola

David James Lola — PETITIONER
(Your Name)

vs.

State of Florida — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court of Florida
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

David James Lola
(Your Name)

Inmate #18001264
Monroe County Detention Center
(Address)

Key West, FL 33040
(City, State, Zip Code)

(305) 851-6209
(Phone Number)

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

1) Does due process under the Sixth and Fourteenth Amendments dictate that there is a presumption of competence for a criminal defendant to proceed pro se (represent one's self) such that a trial court may not determine competence to proceed pro se in advance of indicia of a lack of competence to proceed pro se.

2) Does due process under the Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution authorize a state to establish and operate a judicial system that does not render written appellate opinions so that the state's highest court may deny jurisdiction to review a lower court's decision that clearly does not apply to reflect the factual reality of the representation status of the appellant.

QUESTION(S) PRESENTED

3) Does due process under the United States Constitution provide that a State may ignore a criminal defendant's demand to proceed pro se at the first appearance before the tribunal; refuse to accept, docket, and consider the criminal defendant's motion to be assigned to a different judge based on prior prejudicial statements of the assigned judge on the basis that the defendant had an attorney assigned; require the defendant to be subjected to a competency hearing to proceed pro se; repetitively delay said competency hearing as a pretext to have the defendant waive due process rights as a punitive measure for proceeding pro se; and rule against the defendant on assigning the matter to a new judge, while acting contrary to state statute and relevant legal authority contrary to stare decisis.

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

Supreme Court of Florida, SC21-428 (2021);

District Court of Appeal for Florida,
Third District, Cases 3D21-248 (2021),
3D20-1812, and 3D21-517;

Sixteenth Judicial Circuit of Florida
Key West, Cases 4:20-CF-633,
4:18-MM-642

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APPENDIX B	District Court of Appeal of Florida, Third District Order, 3D21-248, Feb. 19 th , 2021
APPENDIX C	District Court of Appeal of Florida, Third District Order, 3D21-248, Jan. 21, 2021;
APPENDIX D	Sixteenth Judicial Circuit of Florida Order, 2020-CF-633, Jan. 28 th , 2021;
APPENDIX E	First Appearance Transcript, Pro Se November 3, 2020; Judge Becker; and
APPENDIX F	Arraignment Transcript, Pro Se December 1, 2020, Judge Wilson.

TABLE OF AUTHORITIES CITED

CASES

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1. *Faretta v. California*, U.S. S.Ct., 3, 6
2. *Delgado v. Morejon*, 295 So.3d 1214 (Fla. 5th DCA 2020); 8
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OTHER

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 _____ 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 _____ 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 A to the petition and is

- ☒ reported at [No library access]; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Third District Court of Appeal court appears at Appendix B to the petition and is

- ☒ reported at [No access to internet]; 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 _____.

☐ 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: _____, 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. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 3/22/21.
A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date: 3/22/21, 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

The Fifth and Sixth Amendments pertain to due process and are extended to the citizens of the United States through the Fourteenth Amendment. The First Amendment right to access the courts and lack of law library are at issue.

The state of Florida has a judiciary system without a reasonable means to review trial court level decisions affecting criminal defendants' due process rights. The lack of a meaningful review process necessarily requires the pressure to be shifted to other overly-encumbered tribunals.

The underlying issue stems from the violation of the Sixth Amendment right to represent one's self as presented in the holding of *Faretta v. California*. The trial court refused to allow defendant to represent himself then refused to accept motion filings from the Defendant to his material prejudice.

STATEMENT OF THE CASE

This Petition arises from the constructive dismissal of a motion for recusal of a judge on the basis of prejudice pertaining to the character and believability of a pro se defendant in a state criminal action. The Petitioner upon assignment to Judge Mark Wilson immediately requested to be assigned to a different judge in the Sixteenth Judicial Circuit of Florida. Petitioner's motion was constructively denied when the trial court refused to accept the motion for filing on the basis that ^{the} Petitioner was represented by counsel. ~~The Third~~ In fact, Petitioner was not represented by counsel. The Third DCA (District Court of Appeal for Florida) refused to rule on this issue.

The contentions regarding the status of Petitioner's status of representation form the central basis for this Petition. Secondary are the following:

- a) the trial court erred in not immediately recognizing Petitioner's pro se status;

STATEMENT OF THE CASE

- b) the trial court erred in requiring Petitioner to establish his competency prior to recognizing Petitioner's representation of himself;
- c) the trial court erred in ordering counsel to represent Petitioner; and
- d) the trial court erred in deviating from established authority (stare decisis) and caselaw, which supports assignment of the case to a different judge.

REASONS FOR GRANTING THE PETITION

The Court should grant the Petition to allow citizens the opportunity to represent themselves in criminal proceedings without being subjected to undue prejudice and capricious trial decisions. Pro se defendants should be afforded the same due process protections as represented defendants against prejudicial predeterminations of character and believability.

In the case at bar the Honorable Mark Wilson of the Sixteenth Judicial Circuit of Florida substantially deviated from the relevant caselaw and statute of Florida and in so doing violated Petitioner's First, Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution and the holding in Faretta v. California.

Petitioner went to First Appearance on November 3rd, 2020. Five days later on November 8th, 2020, Petitioner moved the trial court to be assigned to a different judge based on the prejudice of Judge Wilson, evidenced by his claim

REASONS FOR GRANTING THE PETITION

that Petitioner was a "low-life raging against the machine." Judge Wilson did this after Petitioner requested a case be dismissed on the basis that former state attorney (prosecutor) Christopher Bridger was intoxicated on cocaine when he executed the jurat on an information charging Petitioner with several specious felonies. Judge Wilson claimed that Bridger was an upstanding citizen and that Petitioner was a low-life not to be trusted. Bridger resigned two weeks later for reasons believed to be consistent with Petitioner's averments.

Petitioner in the Motion to Recuse claimed that he was entitled to a presiding trial judge that has not evaluated his character and credibility in a negative fashion. (Holmes v. Goldstein, 650 So. 2d 87, 88 (Fla. 4th DCA 1995), JTN FLB v. CFLB Partnership, LLC, 283 So. 3d 922-6 (Fla. 3d DCA 2019).

The order denying the Motion to Recuse is dated January 28th, 2021 (see ~~at~~ Appendix D).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

David J. Loh

David J. Loh

Date: June 20, 2021