No. 21-5538 ORIGINAL

IN THE

Supreme Court Of The United States

MICHAEL EDMONDSON,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS

PETITION FOR A WRIT OF CERTIORARI

Michael Edmondson
pro se – D.C. # D27445
Wakulla C. I.
110 Melaleuca Drive
Crawfordville, FL 32327

QUESTIONS PRESENTED

In this case, the United States Court of Appeals *per curiam* affirmed denial of Petitioner's appeal for habeas corpus relief. Petitioner contends that his request was "clear and unequivocal" invoking this constitutional right to proceed without counsel and self-representation under the Sixth and Fourteenth Amendments to the United States Constitution.

I. Whether the trial Judge fulfilled his duty of determining whether there was an intelligent and competent waiver of accused's right to assistance of counsel, under the 6th and 14th Amendments of the United States Constitution.

II. Whether Petitioner invoked the constitutional right of self-representation under the 6th and 14th Amendments of the United States Constitution.

III. Whether the United States Court of Appeals has decided on important Federal question in a way that conflicts with relevant decisions of this court's ruling pursuant to *Faretta v. California*, 422 U.S. 806 (1975)

LIST OF PARTIES

All parties do appear in the caption of the case on the cover page.

RELATED CASES

- *Edmondson v. State*, No. 2D14-107, District Court of Appeals for the State of Florida. Judgment entered January 26th, 2016. **Mandate** February 29th, 2016.
- *Edmondson v. State*, No. 8:18-cv-287-T-02 TGW, U.S. District Court for the State of Florida. Judgment entered July 6th, 2020.
- *Edmondson v. Attorney General, et. al.,* No. 20-12983 DD, U.S. Court of Appeals, Eleventh Circuit, judgment entered on June 17th, 2021.

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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.

The United States Court of Appeal for the Eleventh Circuit entered this matter on April 23rd, 2021, affirming the final order denying petitioner's habeas corpus petition entered by the United States District Court of Florida in and for Hillsborough County, Florida, on July 6th, 2020.

OPINIONS BELOW

The opinion of the United States Court of Appeals appears at Appendix A to the petition and is unpublished.

The opinion of the United States District Court appears at Appendix B to the petition and is reported at 2020 U.S. District LEXIS 117537.

JURISDICTION

The date on which the United States Court of Appeal decided my case was April 23rd, 2021.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: June 17th, 2021, and a copy of the order denying rehearing appears at Appendix C.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS

This case involves the Fourteenth Amendment to the United States Constitution, reading in relevant part:

> "No State shall ... deprive any person of life, liberty, or property, without due process of law ..."

And the Sixth Amendment to the United States Constitution, reading in relevant part:

> "... The right to proceed without counsel, and the right to Self-representation."

STATEMENT OF THE CASE

A. Statement of Jurisdiction in the lower courts, in accordance with this Court's Rule 14(1)(g)(ii), and suggestion of Justification for consideration, as suggested under Rule 10.

Petitioner Michael Edmondson, is a Florida State prisoner serving a 30-year sentence for Burglary of an occupied structure (count 1). Petitioner filed a timely appeal to the Fla. 2nd DCA regarding his *Faretta*[1] claim. However, the 2nd DCA denied the claim without an opinion. Petitioner filed a timely petition for habeas corpus relief. The petition was denied. Petitioner filed a timely appeal to the Eleventh Circuit Court of Appeals for the United States. The petition was denied.

This case involves an important federal question that this Court has consistently established a defendant is entitled to. Specifically, this case concerns a question whether the basis for the lower court's decision reflect on important Federal question in a way that contrary to, or involved on unreasonable application of clearly established Federal law determined by the Supreme Court when it rejected Petitioner's appeal for habeas corpus relief under the precedent in *Faretta.* The questions to be determined is whether the Petitioner invoked the constitutional right of self-representation pursuant to *Faretta* and whether the trial Judge fulfilled his duty of determining whether there was an intelligent and competent waiver of accused's right to assistance of counsel.

B. STATEMENT OF THE FACTS

(i) TRIAL: Previous to trial at a hearing on October 24th, 2013, before Honorable Judge Ficarrotta. The Court heard petitioner's complaints regarding

court-appointed counsel. After hearing from both, the Petitioner and counsel, the Court found no reason to discharge counsel.

Jury trial was held before Honorable Judge Fuente. On October 28th, 2013, before Jury selection, petitioner informed the trial court that he wished to "fire" court-appointed counsel:

> [DEFENSE COUNSEL]: Before we bring the Jury out, Your Honor, I think the defendant wants to address you.
>
> [THE COURT]: What's, to do what?
>
> [DEFENSE COUNSEL]: He wants to fire me, in his words.

The trial judge asked if Judge Ficarrotta do a *Nelson*[2] hearing and stated that:

> [THE COURT]: So he denied your request to discharge your lawyer. And I will simply abide by that ruling. I'm not going to rehash it.

Petitioner stated that:

> [DEFENDANT]: I will do it on my own if I have to.
>
> [THE COURT]: Do what on your own?
>
> [DEFENDANT]: Go to trial.

The trial Judge maintained that:

> [THE COURT]:I'm not going to change the ruling, I'm going to abide by that ruling.
>
> [DEFENDANT]: So does that mean I'm stuck with him?
>
> [THE COURT]: You are not stuck with him. He's going to represent you.

(ii) <u>DIRECT APPEAL</u>: Petitioner filed a timely Notice of Appeal to the 2nd DCA of Florida. Petitioner's counsel argued the following:

> "Under the United States Supreme Court's ruling in *Faretta*, an accused has the right to self-representation at trial. A defendant's choice to invoke this right must be honored out of that respect for the individual which is the lifeblood of the law." *Tennis v. State*, 997 So. 2d 375, 377-78 (Fla. 2008). "[T]he Sixth and Fourteenth Amendments include a constitutional right to proceed without counsel when a criminal defendant voluntarily and intelligently elects to do so." *Id.* At 378.

The court stated that "[U]nder *Faretta* and our precedent, once an unequivocal request for self-representation is made, the trial court is obligated to hold a hearing to determine whether the defendant is knowingly and intelligently waiving his right to court-appointed counsel." *Id.* Also, the court found that "the trial court's failure to hold a *Faretta* hearing is per se reversible error." *Id*, at 379.

In this case, like *Tennis*[3], Mr. Edmondson requested to represent himself. After the trial court failed to conduct an adequate *Nelson* inquiry, Mr. Edmondson stated that he wished to represent himself: "I will do it on my own if I have to." (This statement remains quite similar to the defendant's statement in *Tennis*: "I'll do it myself.") Any ambiguity in Mr. Edmondson's statement was resolved when the trial court asked Mr. Edmondson to clarify his request: "Do what on your own?" Mr. Edmondson responded and clearly stated that he wished to proceed to trial while representing himself: "Go to trial." Like *Tennis*, however, the trial court in this case failed to address Mr. Edmondson's request to represent himself; the trial court stated that he would abide by Judge Ficarrotta's ruling. (Mr. Edmondson never expressed his desire to proceed pro se before Judge Ficarrotta; therefore, Judge Ficarrotta, unlike Judge Fuente, was not required to hold a *Faretta* hearing.) After this exchange, Mr. Edmondson also asked the trial court the following question: "So

does that mean I'm stuck with him?" The trial court replied: "You are not stuck with him. He's going to represent you." The trial court, therefore, again failed to inquire as to whether Mr. Edmondson wished to proceed pro se; the trial court simply stated that counsel would "represent you" without conducting a *Faretta* hearing and without clarifying that Mr. Edmondson was not simply "stuck" with Counsel.

Like *Tennis*, the trial court in this case was obligated to hold a hearing to determine whether Mr. Edmondson wished to knowingly and intelligently waive his right to court-appointed counsel.

The 2nd DCA denied petitioner's *Faretta* claim, **per curiam** Affirmed and issued **Mandate**. (See Appendix D – Decision of the District Court of Appeals for Florida)

(iii) HABEAS CORPUS: Petitioner filed a timely petition to the United States District Court pursuant to 28 § 2254 habeas corpus relief on his *Faretta* claim.

The petition was **DENIED** and the court decided:

> "The obligation to conduct a *Faretta* hearing is triggered by the defendant's "clear and unequivocal assertion of a desire to represent himself." *See Cross v. United States*, 893 F. 2d 1287, 1290 (11th Cir. 1990):
>
> "The State argued on appeal and the appellate court implicitly agreed by its per curiam affirmance, that petitioner did not make a sufficient, unequivocal request in the trial record to represent himself. Thus, *Faretta* was not triggered. This is correct, and there is no other invocation of self-representation or request to proceed pro se in this record.
>
> (See Appendix B – Decision of the United States District Court)

(iv) APPEAL - HABEAS CORPUS: Petitioner filed a C.O.A. and it was GRANTED. Petitioner filed a timely appeal to the United States Court of Appeals (11th Cir.) The petition was **per curiam**:

> In sum, a finding that Edmondson did not clearly and unequivocally assert a desire to represent himself "could have supported [ ] the State's court decision – *See Harrington*, 562 U.S. at 102.[4] The district court therefore did not err in concluding that the State appellate court's rejection of Edmondson's *Faretta* claim was not an unreasonable application of clearly established Federal law. *See Gill*, 633 F. 3d at 1296.[5] Simply put, Edmondson did not meet his burden of "showing there was no reasonable basis for the State Court to deny relief." *See Harrington,* U.S. at 98.

AFFIRMED (See Appendix A – Decision of the United States Court of Appeals.)

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[1] *Faretta v. California*, 422 U.S. 806 (1975)
[2] *Nelson v. State*, 274 So. 2d 256 (Fla. DCA 1973)
[3] *Tennis v. State*, 997 So. 2d 375, 377-78
[4] *Harrington v. Richter*, 562 U.S. 86, 101 (2011)
[5] *Gill v. McCusker*, 633 F. 3d 1296 (11th Cir. 2011)

REASONS FOR GRANTING WRIT

THE QUESTION IS:

I. **WHETHER THE TRIAL JUDGE FULFILLED HIS DUTY DETERMINING WHETHER THERE WAS AN INTELLIGENT AND COMPETENT WAIVER OF ACCUSED'S RIGHT TO ASSISTANCE OF COUNSEL UNDER THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.**

(Under *Faretta v. California*, 422 U.S. 806 (1975) the Supreme Court decided that the Sixth and Fourteenth Amendments to the United States Constitution guarantees that a defendant in a state criminal trial has a constitutional right to proceed without counsel when he voluntarily and intelligently elects to do so.)

1. In this case, petitioner Michael Edmondson expressed his desire to the trial court seeking to discharge court-appointed counsel right before Jury selection was to begin. Therefore, the trial Judge was obligated to inquire whether he wished to persist in discharging his attorney, thereby waiving his right to court-appointed counsel and exercising his right to self-representation. However, the trial Judge denied Petitioner's request to "fire" court-appointed counsel without making any inquiry at all. The trial Judge stated that he was "abiding by the previous Judge's decision", and that he would not "rehash" the decision. The trial Judge remained obligated to conduct an inquiry into Petitioner's reason for seeking to discharge counsel. Thus, this was a structural defect requiring reversal as per se error.

> "Although a defendant need not himself have the skill and experience of a lawyer in order to competently and intelligently choose self-representation, he should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that he knows what he is doing and his choice is made with eyes open."
>
> *Adams v. State,* ex. rel. *McCann*, 317 U.S. at 279, 87.

THE QUESTION IS:

II. WHETHER PETITIONER INVOKED HIS CONSTITUTIONAL RIGHT OF SELF-REPRESENTATION UNDER THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

1. After the trial Judge rejected petitioner's request to "fire" court-appointed counsel, petitioner asserted, "I will do it on my own if I have to." The trial Judge asked, "Do what on your own?" Petitioner clearly responded, "Go to trial"." Thus, petitioner's request was unequivocal.

The trial Judge stated, "I'm not going to change the ruling, I'm going to abide by that ruling." Petitioner asked, "so does that mean that I'm stuck with him?" The trial Judge stated, "You are not stuck with him. He is going to represent you."

Therefore, the trial Judge failed to conduct a *Faretta* hearing denying petitioner of his constitutional right to proceed without counsel and conduct his own defense. *See Westbrook v. Arizona*, 384 U.S. 150 ("The trial court violated due process by failing to conduct a hearing or inquiry into the issue of petitioner's competency to waive his constitutional right to the assistance of counsel.") The Supreme Court vacated a lower court's ruling because there has been no hearing or inquiry to waive his constitutional right to assistance of counsel.

THE QUESTION IS:

III. WHETHER THE UNITED STATES COURT OF APPEALS DECIDED AN IMPORTANT FEDERAL QUESTION THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT'S RULING IN *FARETTA* UNDER THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

1. The United States Court of Appeals decided that, "Edmondson did not clearly and unequivocally assert a desire to represent himself." The lower court illustrated that, "Like *Gill*, Edmondson's "isolated comment" about going to trial on his own "if" he had to was far from a clear statement of his desire or intent to proceed without counsel."

This Statement was not "isolated". This statement about "going to trial, on his own if he had to" was coupled with petitioner's unequivocal request to "fire" court-appointed counsel, thus petitioner's 'intent' was clear. The trial Judge dishonored this request so petitioner asserted "I will do it on my own if I have to." The Trial Judge asked, "Do what on your own?" Petitioner asserted clearly, "Go to trial." See *Dorman v. Wainwright*, 798 F. 2d 1358, 1366 (11th Cir. 1986)("A petitioner must do no more than state his request either orally or in writing unambiguously to the court so that no reasonable person can say that the request was not made.")

2. The lower Court also illustrated that, "In *Cross*, Mr. Edmondson's "if he had to" statement was not the only evidence on the record." It was sandwiched between Edmondson's complaints about his lawyer. His efforts to secure a substitute counsel and a prior concession that, "there is no way that I am going to be able to represent

myself," were "compelling evidence" that Edmondson had not made a sufficient clear and unambiguous invocation of his right to self-representation.

However, the statements that were construed by the lower Court were not "sandwiched" on the record the day of trial, at the time Petitioner requested to "fire" his court-appointed counsel and "go to trial", "on his own". These statements were in fact relating to the previous hearing that Judge Ficarrotta held on October 24th, 2013. The lower courts made a "sandwich" to make Petitioner's request appear equivocal and ambiguous, adding them in, to the trial record.

3. The lower Court also illustrated that, "Edmondson kept trying to fire his attorney after he made this solitary remark, rather than unambiguously letting the State trial court know that he wished to go pro se, thus like *Raulerson*[1] he did not pursue the matter of self-representation.

However, after the trial Judge denied Petitioner's constitutional right to proceed without counsel and represent himself, petitioner staed "So does that mean that I am stuck with him?" The trial Judge stated: "You are not stuck with him. He is going to represent you." The trial Judge, therefore, again failed to inquire as to whether Petitioner wished to proceed pro se; the trial Judge simply stated that counsel would "represent you" without conducting a *Faretta* hearing forcing court-appointed counsel upon Petitioner. Thus, Petitioner clearly pursued his

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[1] *Raulerson v. Wainwright*, 732 F. 2d 803, 803 (11th Cir. 1984)

constitutional right to self-representation diligently. ("... To force a lawyer on a defendant can only lead him to believe that the law contrives against him. Moreover, it is not inconceivable that in some rare instances, the defendant might in fact present his case more effectively by conducting his own defense. Personal liberties are not rooted in the law of averages. The right to defend is personal. The defendant, and not his lawyer or the State, will bear personal consequences of a conviction. It is the defendant, therefore, who must be free personally to decide whether in his particular case counsel is to his advantage. And although he may conduct his own defense ultimately to his own detriment, his choice must be honored out of that respect for the individual which is the lifeblood of the law.) *See Illinois v. Allen*, 397 U.S. 337, 350-351.

In this case, the Courts erred in forcing Petitioner against his will to accept a State-appointed public defender and in denying his request to conduct his own defense. Therefore, there was no reasonable basis for the lower court to deny relief.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

8/10/21
Date

Michael Edmondson