ORIGINAL

No. 21-5682

IN THE

SUPREME COURT OF THE UNITED STATES

SHEILA DAVALLOO – PETITIONER

vs.

EILEEN RUSSELL, SUPERINTENDENT, ET. AL - RESPONDENT(S)

ON A PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Most federal courts of appeal require that defendants are aware of the "dangers and disadvantages" of self-representation prior to waiver of their Sixth Amendment right to counsel; this includes a knowledge of the range of punishment and procedural and evidentiary rules.

In contrast, this Petitioner's *Faretta* hearing amounted to hollow formalities, whereby she was erroneously told that the maximum punishment was twenty years and that the trial court would provide some leeway. In addition, contrary to this court's holding in McKaskle v. Wiggins, 465 U.S. 168, emphasizing that "no absolute bar on standby counsel's participation is appropriate," the trial court in this case, restricted standby counsel's solicited participation.

Did the *Faretta* hearing in this case result in a decision that was contrary to, or an unreasonable application of, clearly established federal law, as determined by this honorable court?

LIST OF PARTIES

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

George Jepson, Attorney General of the State of Connecticut
Respondent – Appellee

Michelle E. Maerov –New York State of the Attorney General
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CASES:

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PETITION FOR WRIT OF CERTIORARI

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

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The opinion of the United States court of appeals appears at Appendix A to the petition and is unpublished.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 WL 4569858.

JURISDICTION

The date on which the United States Court of Appeals decided my case was February 3, 2021.

No petition for rehearing was timely filed in my case.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. 6 provides:

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

STATEMENT OF THE CASE

The petitioner is currently a New York State prisoner, who was extradited to Connecticut in accordance with the Interstate Agreement on Detainees. She was subsequently charged and convicted upon a jury trial with Murder in the Second Degree. During trial, the Petitioner represented herself.

REASONS FOR GRANTING THE PETITION

Currently, the Federal Courts of Appeals have split on whether a Defendant is entitled to an explicit warning of the "dangers and disadvantages" of self-representation (Harvard Law Review, March 2004). Furthermore, the courts have disparate opinions about the content of the colloquy prior to foregoing the Sixth Amendment right to counsel during trial. In fact, in Dallio v. Spitzer, 343 F.3d 553 (2d Cir. 2003), the court ruled that an explicit warning is not required. *Id* at 563-65.

Unlike Dallio, *supra*, other Circuit Courts have set the bar much higher and do not view warning of dangers and disadvantages of self-representation as dictum. See, e.g. United States v. Davis, 269 F.3d 514, 518-19 (5th Cir. 2001) ("This Court has consistently required trial courts to provide *Faretta* warnings."); United States v. Welty, 674 F.2d 185, 188 (3d Cir. 1982) (requiring warning); Ferguson v. Bruton, 217 F.3d 983, 985 (8th Cir. 2000) (finding the *Faretta* warning "not an absolute necessity", but nevertheless treating it as part of *Faretta's* holding). Also compare, e.g., United States v. Peppers, 302 F.3d 120, 133 (3rd Cir. 2002) ("A defendant's request to proceed *pro se*...calls for specific forewarning of the risks that foregoing counsel's trained representation entails."), with Ferguson v. Bruton, 217 F.3d 983, 985 (8th Cir. 2000) (holding that *Faretta* warning is "not an absolute necessity").

In fact, the questions from the Benchbook for U.S. District Court Judges § 1.02 (4th Ed. 2000), are the most comprehensive, including specific questions to ascertain the defendant's knowledge of rules of criminal procedure and range of punishment and whether the sentences are served consecutively (the Sixth Circuit mandates a formal inquiry including "a series of questions drawn from or substantially similar to the model inquiry set forth in the Benchbook.") United States v. McBride, 362 F.3d 360, 366 (6th Cir. 2004).

In United States v. Farias, 618 F.3d 1049 (2010), the Ninth Circuit opined that a *pro se* Defendant has the right to represent himself meaningfully. *Id.* at 1054. A meaningful representation requires time to prepare. Milton v. Morris, 767 F.2d 1443, 1446 (9th Cir. 1985) ("Time to prepare...is fundamental to a meaningful right to representation."); See also Powell v. Alabama, 287 U.S. 45, 59, 53 S.Ct. 55, 77 L.Ed. 158 (1932) ("It is vain to give the accused a day in court with no opportunity to prepare for it..."); Barham v. Powell, 895 F.2d 19, 22 (1st Cir. 1990) ("If the Defendant needed that extra time to exercise his right to self-representation in a meaningful way, then denying him the time effectively deprived him of the right and may have been Constitutional error.") In this case however, the Defendant's requests for time to prepare were summarily denied.

In recent years, *Faretta* has been limited in material respects. Martinez v. Court of Appeals of California, 528 U.S. 152 (2000) (*Faretta* does not extend to criminal defendants on direct appeal); McKaskle v. Wiggins, 465 U.S. 168 ("No absolute bar on standby counsel's unsolicited participation..."); Indiana v. Edwards, 128 S.Ct. 2379 (2008) (State's right to insist upon representation by counsel for those who are competent to stand trial but still suffer from mental illness). Therefore, this case presents an opportunity to provide guidance to the lower

courts in hopes that they are more aligned with the "fairness seeking ideals of the Supreme Court's Sixth Amendment jurisprudence" (citation omitted).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: 6/25/21