CASE NO. 21-6393

IN THE UNITED STATES SUPREME COURT

MICHAEL LAWRENCE WOODBURY,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

RESPONDENT'S BRIEF IN OPPOSITION

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CAPITAL CASE

QUESTION PRESENTED

Whether the Florida Supreme Court is required to apply a heightened standard of competency before granting the request for self-representation by a criminal defendant who is competent to stand trial.

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STATEMENT

The Offense. In March 2018, Woodbury was indicted on one count of first-degree murder for killing his cellmate, Antoneeze Haynes. When the offense occurred, Woodbury was serving life sentences for killing three people in New Hampshire during a 2007 robbery. Pet. App. 9. "The evidence presented at trial showed that on September 22, 2017, Woodbury barricaded the door to the cell he shared with Haynes and then proceeded to brutally assault Haynes for hours, using his fists, boots, and makeshift weapons Woodbury had gathered in preparation for the attack." *Id.* The assault lasted about four hours, involving what Woodbury admits was a hostage situation, with Woodbury threatening to further harm Haynes if officers on the scene failed to meet Woodbury's demands. Eventually Woodbury instructed the correctional officers to take away medical equipment intended for the victim, saying: "You're probably going to need a body bag, but not medical equipment. You can take that stuff with you." *Id.* Woodbury only stopped assaulting Haynes when a forcible extraction appeared imminent. *Id.*

Court Proceedings. At his initial court appearance, Petitioner invoked his right to represent himself at trial, which prompted the court to conduct a *Faretta*[1] inquiry. *Id.* Petitioner stated he understood each question asked and informed the court that he was medicated for bipolar disorder. At the next court appearance, Petitioner remained adamant about representing himself at trial, and after the court's explanation regarding the advantages of counsel and the disadvantages of

[1] *Faretta v. California*, 422 U.S. 806 (1975).

self-representation, Petitioner said he understood, but was frustrated with the prospect of renewed offers of counsel and *Faretta* inquiries throughout the proceedings. *Id.*

Petitioner explained his history of bipolar disorder, noting he had experienced "[m]ood swings, just stuff like that." *Id.* Petitioner said there were no other issues that would impact his ability to represent himself. *Id.* The court granted Petitioner's request to proceed pro se, "finding that [Petitioner's] waiver of counsel was made freely and voluntarily with a full understanding of his rights, and that [Petitioner] was competent to make that decision." Pet. App. 10. Standby counsel was appointed, and Petitioner was told that "counsel would be appointed to represent him if, at any point in the proceedings, he ever decided that he wanted an attorney." *Id.*

At a subsequent pretrial hearing, the court conducted another *Faretta* inquiry and again found Petitioner competent to waive counsel noting he had done so knowingly and intelligently. *Id.* The State requested a *Faretta* inquiry be conducted each day of the trial to perfect the record. Petitioner objected to this, saying "he had read more than 105 cases and failure to conduct repeated *Faretta* inquiries was not a basis for appeal." *Id.*

When Petitioner's trial began, the court again offered to appoint counsel and conducted a *Faretta* inquiry. Petitioner was steadfast in his decision to proceed pro se, explaining that he "would want an attorney to handle his appeal if he were to be convicted but that he did not want counsel for the trial." *Id.* After questions about Petitioner's bipolar disorder or anything else that might affect his ability to proceed

pro se, "[t]he court again found that [Petitioner] understood the charges against him and the consequences of waiving counsel, and found that he had voluntarily, knowingly, and intelligently waived his right to counsel." *Id.*

During jury selection Petitioner conducted voir dire and consulted with his standby counsel on occasion. The State requested the court make a finding on Petitioner's competence and demeanor, and the court said:

> I think you've done actually very well for somebody in your circumstance. . . . I actually will compliment you on your behavior. . . . But overall I think you've complied with the general courtroom demeanor that's necessary and I appreciate that for what it's worth. . . . You'd be surprised, some people come here unrepresented and you can't figure what their focus is. Yours I think is pretty clear . . . and I think it's actually . . . quite impressive.

Id. Over the course of the trial proceedings, Petitioner consistently demanded he be allowed to represent himself. Each time the trial court found that Petitioner was competent to waive his right to counsel and that it was done knowingly and voluntarily. *Id.*

Petitioner made an opening statement and actively participated in questioning witnesses. At the conclusion of the State's case, the court attempted another *Faretta* inquiry; Petitioner vehemently objected, declaring: "I have a constitutional right to represent myself, and this has rose to the level of harassment." *Id.* The court demurred, indicated the inquiry would be done "quickly," but made sure Petitioner knew he could ask any questions he may have. *Id.* Petitioner maintained his opposition stating that his "right to represent himself superseded the need for constant *Faretta* inquiries," and threatened to stall the proceedings. *Id.* Petitioner

acknowledged that the penalty phase would require another *Faretta* inquiry, and he told the court that he would cooperate fully with that process when the time came. *Id.*

When the defense case began, initially Petitioner indicated he would not testify and was not intending to call any witnesses, instead relying on incident reports prepared by two corrections officers. Ultimately, after conferring with standby counsel, Petitioner called two witnesses and having changed his mind about testifying, took the stand on his own behalf. (T. 1352-1364).[2] He testified that "he woke up on the morning in question to find the victim attempting to sexually assault him." Pet. App. 11. Petitioner admitted he had armed himself in advance but asserted there was no premeditation. Petitioner stated: "[I]f I was planning on killing my roommate before I went to bed, I would have at least put a point on my knife." *Id.* Petitioner admitted he had held the victim hostage but argued that he did that only as a way to stall for time until a tactical team arrived with cameras. *Id.*

After testifying to his version of the incident, Petitioner, in open court, announced he wished to plead guilty as charged. *Id.* Prior to accepting the change of plea, the court again offered Petitioner an attorney and conducted another *Faretta* inquiry. *Id.* During the *Faretta* inquiry, the State noted their intention to cross-examine Petitioner. Petitioner vehemently objected to cross-examination and stated several times that the "case was over." (T. 1373; 1383; 1384). The trial court again

[2] Citations to "T." reference the relevant portions of the trial transcript which were not included in the Petitioner's appendix.

found Petitioner competent to waive his right to counsel. He was not cross-examined by the State.

Here, the trial judge noted that Petitioner appeared to understand the proceedings and was "obviously intelligent" and was able to "handle yourself in court, whether it's just questioning or just behavior or being—being able to ask your standby counsel." Pet. App. 11. The court went on to say, "[e]ven asking to do so, you've been polite, you've been courteous, and I think your behavior has been, compared to all the other pro se people in the past, actually better than all of them combined." *Id.* Petitioner told the court that his standby counsel had provided "excellent" assistance with all legal questions.

The trial court then accepted Petitioner's guilty plea. Petitioner then told the court he wished to represent himself in the penalty phase and stated that he had already discussed this with standby counsel. Pet. App. 11-12. The court ordered a presentencing investigation, and at the request of the State, appointed Dr. Sesta, a mental health expert, to evaluate Petitioner's mental health for potential mitigation purposes. Pet. App. 12. Dr. Sesta's duties did not include making a competency determination. *Id.*

The penalty phase trial began in July with another offer of counsel, a *Faretta* inquiry, and with the court taking judicial notice of Petitioner's previous statements about his bipolar disorder. Petitioner again indicated that he "understood the rights he was waiving and the disadvantages of self-representation, and the court granted

his request to proceed pro se after finding him competent to waive his right to counsel." *Id.* Ultimately the jury unanimously recommended the death penalty. *Id.*

Court resumed for the *Spencer*[3] hearing on September 21, 2018, and another full *Faretta* inquiry, the twelfth of the trial, was conducted. Petitioner was asked if the court should appoint a lawyer to represent him, Woodbury responded, "Absolutely not, sir." (T. 1818). When the court emphasized the importance of an attorney and confirmed Petitioner understood, his response was, "[y]es, yes sir. I just believe that my constitutional right to represent myself supersedes the—supersedes that right there." (T. 1830). Later in the colloquy, when asked about mental illness, Petitioner reiterated he had been diagnosed bipolar at approximately age 18. (T. 1830). The court again asked if Woodbury wished to have an attorney appointed, continuing to emphasize the importance of counsel in a criminal proceeding. Petitioner said he was absolutely certain he did not want an attorney. (T. 1831). While clarifying Petitioner's treatment and any possible side effects, the court noted, "[Petitioner] said he began taking Tegretol shortly after the murder, that he took it consistently during the trial, and that it did not affect his ability to understand the proceedings." Pet. App. 12.

During this hearing, standby counsel testified that Petitioner "knew there was a factual basis for mental health mitigation, including opinions contained in the report written by Dr. Sesta, but that Woodbury elected not to present any such mitigation." *Id.* When questioned by Petitioner on this topic, standby counsel agreed that the decision not to present mental health mitigation was Petitioner's and was

[3] *Spencer v. State*, 615 So. 2d 688 (Fla. 1993). This hearing provides the defense an opportunity to provide additional evidence to the judge before the sentence is entered.

strategic in nature noting that Petitioner "already had a penalty phase strategy" and "never intended to present mental health mitigation." *Id.* Petitioner concluded with "I laid out a strategy and, quite honestly, it failed, and it didn't include mental health mitigation." (T. 1877).

Petitioner was adjudicated guilty and sentenced to death.

Direct Appeal. The Florida Supreme Court affirmed. Pet. App. 22. In relevant part, the court noted that an accused has a Sixth Amendment right to represent himself at trial. Pet. App. 14. The court also quoted *Indiana v. Edwards*, 554 U.S. 164 (2008), in its ruling, noting that while technical skill is not a part of a *Faretta* requirement, "the government's interest in ensuring the integrity and efficiency of the trial at times outweighs the defendant's interest in acting as his own lawyer." Pet. App. 15. They also recognized that a trial court may prevent a defendant from proceeding pro se if he is "unable to carry out the basic tasks needed to present his own defense without help of counsel." *Id.*, quoting *Edwards*, 554 U.S. at 175-76. Incorporating the corresponding Florida Rule of Criminal Procedure into its ruling, the court noted that a trial court may deny a request to waive counsel and proceed pro se if (1) the waiver of right to counsel was not made knowingly and intelligently; or (2) the defendant suffers from severe mental illness to the point of being incompetent to conduct trial proceedings without assistance. Fla. R. Crim P. 3.111(d)(3). The court also recognized that in Florida, the competency standard to conduct trial proceedings is higher than the competency standard required to waive the right to counsel or stand trial. *Id.*

Applying this to Petitioner's mental health and his behavior exhibited in court, the court stated:

> Like the defendant in *Barnes*, [Petitioner] disclosed a history and diagnosis of bipolar disorder, but nothing about his behavior in court indicated a present inability to understand the proceedings against him or an inability to consult with his standby counsel (or with counsel, had an attorney been appointed). [Petitioner] filed motions on his own behalf, was consistently alert, demonstrated knowledge of legal issues, behaved appropriately, and stated multiple times that he understood the proceedings. At no time did the trial court, [Petitioner's] standby counsel, or the attorneys for the State express any concerns about [Petitioner's] competency. Rather, the trial court outright praised [Petitioner] more than once for his ability to conduct himself appropriately and properly engage with the court, jury, and standby counsel. The court went so far as to call [Petitioner's] behavior better than all other pro se defendants the court had seen, combined.

Pet. App. 14. Regarding Petitioner's right to represent himself at trial, their decision included the below analysis which incorporated the relevant facts from the trial court record:

> Here, starting from his first appearance, [Petitioner] never wavered in his insistence on representing himself at trial. As it was required to do upon receiving an unequivocal request for self-representation, the trial court explained the benefits of counsel and the pitfalls of self-representation and conducted a full *Faretta* inquiry. The court renewed the offer of counsel and conducted additional *Faretta* inquiries approximately a dozen times over the course of the proceedings. At the conclusion of each inquiry, the court found that [Petitioner's] rejection of the offer of counsel was knowing and intelligent and that [Petitioner] was competent to make his decision. We agree. [Petitioner] responded appropriately to the court's questions and indicated that he understood both the proceedings against him and the rights he was giving up by proceeding pro se.

> That leaves the question whether [Petitioner's] behavior in court, together with his bipolar disorder diagnosis, required the trial court to find that [Petitioner] suffered from severe mental illness to the point of being incompetent to conduct the proceedings by himself. To that end, [Petitioner] filed pro se discovery motions and a demand for speedy trial, conducted voir dire examination of the potential jurors by himself, cross-examined witnesses, argued evidentiary objections, and even requested a special jury instruction derived from the federal standard instructions. In fact, the record reveals several instances where [Petitioner's] pro se representation could easily be mistaken for the work of a veteran trial attorney.

Pet. App. 15. The court added this to its finding:

> [Petitioner] points out that some individuals with bipolar disorder exhibit "confusion and poor judgment" and "potential disordered thinking," but these are only *possible* symptoms of bipolar disorder. When asked how bipolar disorder affected him personally, [Petitioner] told the trial court that prior to taking Tegretol (which he claimed was very effective at treating his symptoms), he experienced "[m]ood swings, just stuff like that." Mood swings, without more, do not indicate that a defendant is suffering from a severe mental illness to the point of incompetency. Accordingly, on this record, knowledge of [Petitioner's] bipolar disorder did not require the court to go beyond a *Faretta* inquiry before granting [Petitioner's] request to proceed pro se.

Pet. App. 16. The Florida Supreme Court ultimately stated "nothing in the record shows . . . that the court was required to find that [Petitioner] suffered from severe mental illness to the point of incompetency." Pet. App. 17.

REASONS FOR DENYING THE WRIT

Petitioner seeks review of the Florida Supreme Court's denial of his claim that the trial court erred in allowing him to waive his right to counsel and proceed to trial

as his own attorney without "first inquiring and making a determination as to representational competence under the heightened standard." Pet. i. This Court should deny certiorari review because (1) this claim was decided on the basis of state law; (2) the majority of Petitioner's claim was never presented to, and considered by, the Florida Supreme Court; (3) there is no split of authority or conflict with this Court's precedent; (4) this Court would have to reject facts found by the lower court and assume facts claimed by the Petitioner in order to accept his claim; and (5) the decision below is correct.

The Sixth Amendment guarantees a criminal defendant the right to the assistance of counsel, but also the right to waive counsel and represent himself. *See Faretta v. California*, 422 U.S. 806, 818-21 (1975). Before a defendant may represent himself, a court must ensure that decision is "intelligent and voluntary." *Godinez v. Moran*, 509 U.S. 389, 402 (1993); *Faretta*, 422 U.S. at 835 (noting that a criminal defendant must be "made aware of the dangers and disadvantages of self-representation"). Further, just as a defendant must be competent to stand trial, he must also be competent to waive his right to counsel. *Godinez* at 396. A defendant is competent to stand trial if he has "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and "a rational as well as factual understanding of the proceedings against him." *Id.* (quoting *Dusky v. United States*, 362 U.S. 402 (1960)). This Court held that the constitutional standard for determining competency is the same as the standard for waiving a right to counsel. *Godinez* at 402.

In *Edwards*, this Court noted that "*Godinez* involved a State that sought to *permit* a gray-area defendant to represent himself" and that "*Godinez*'s constitutional holding is that a state may do so." *Edwards*, 554 U.S. at 173. *Edwards* presented a different question, namely whether a state "may *deny* a gray-area defendant the right to represent himself." *Id.* This Court held that "the Constitution permits States to insist upon representation by counsel for those competent enough to stand trial under *Dusky* but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves." *Id.* at 178.

I. The question presented was neither raised nor passed on below.

Certiorari review should be denied because this Court's jurisdiction is limited to only those federal constitutional issues that were properly presented and considered by the court below. *Illinois v. Gates*, 462 U.S. 213, 217-19 (1983); *Webb v. Webb*, 451 U.S. 493, 496-97 (1981); *Adams v. Robertson*, 520 U.S. 83, 86-87 (1997). This is because "[q]uestions not raised below are those on which the record is very likely to be inadequate since it certainly was not compiled with those questions in mind." *Cardinale v. Louisiana*, 394 U.S. 437, 439 (1969).

"[T]his is a court of final review and not first view." *Adarand Constructors, Inc. v. Mineta*, 534 U.S. 103, 110 (2001) (citation omitted). For that reason, this Court has "[w]ith 'very rare exceptions' . . . adhered to the rule in reviewing state court judgments under 28 U.S.C. § 1257 that [it] will not consider a petitioner's federal claim unless it was either addressed by, or properly presented to, the state court." *Adams*, 520 U.S. at 86 (quoting *Yee v. City of Escondido*, 503 U.S. 519, 533 (1992)).

Petitioner never argued to the Florida Supreme Court that "the trial court's inquiry . . . under the lower standard of competency to waive counsel" was insufficient under the "Sixth and Fourteenth Amendments." Pet. i; *see* Pet.'s Init. Br.; *Woodbury v. State*, 320 So. 3d 631 (Fla. 2021); Pet.'s Reply Br. Nor was this raised in a petition for rehearing, *see* Fla. R. App. P. 9.330, thus preventing the Florida Supreme Court from ruling or passing on this argument. Moreover,

> [w]hen the highest state court is silent on a federal question before us, we assume that the issue was not properly presented, and the aggrieved party bears the burden of defeating this assumption by demonstrating that the state court had "a fair opportunity to address the federal question that is sought to be presented here."

Adams, 520 U.S. at 86-87 (citations omitted). Petitioner can satisfy no such burden.

Petitioner's claim of error in the Florida Supreme Court was "[t]he trial court erred in granting [Petitioner's] request for self-representation without adequately assessing whether his severe mental illness impacted his ability to conduct trial proceedings by himself in violation of Rule 3.111(d)." Pet. App. 25. The argument acknowledged that "states may limit the right of self-representation by mentally-ill defendants" and that post-*Edwards* "Florida adopted a higher level of competency." Pet. App. 27; 29. Petitioner's argument in the Florida Supreme Court was that he was suffering from a severe mental illness and that the trial court erred in allowing his waiver of counsel under a state rule of criminal procedure:

> In the case at bar, the trial court failed to adequately inquire into Woodbury's severe mental illness. Given the serious nature of Woodbury's mental illness, the questions asked of Woodbury by the court were insufficient to determine, as required by Rule 3.111(d)(3), whether he

> suffered from a severe mental illness to the point where he was not competent to conduct trial proceedings by himself.

Pet. App. 29. Here, Petitioner has included extensive references to unverified sources contained outside of the trial record in an attempt to augment the claim of severe mental illness. Pet. App. 44-45; 47-49. Petitioner also relies heavily upon a psychological report which was completed months after the trial concluded and which only purpose was to provide the trial court with potential mitigation—not assess Petitioner's competency. Pet. App. 38-40; 49; 51.

However, in his petition for writ of certiorari, Petitioner alleges an error of "procedural due process" occurred when the Petitioner, a "severely mentally ill defendant" was allowed to represent himself without the trial court determining "representational competence" under a "heightened standard." Pet. ii. Because Petitioner has now significantly expanded his original argument, the specific issue that Petitioner now raises in his petition for writ of certiorari was not properly presented to the Florida Supreme Court below. On this basis, certiorari review should be denied. *Webb*, 451 U.S. at 496-97.

II. The decision below rests on state, not federal constitutional law.

If a state court's decision is based on a separate state law, this Court "of course, will not undertake to review the decision." *Florida v. Powell*, 559 U.S. 50, 57 (2010) (citation omitted). Because the decision of the Florida Supreme Court involves state court procedure and rules of evidence, this Court should deny the writ.

In Petitioner's direct appeal, the issue presented to the Florida Supreme Court was, "[t]he trial court erred in granting Woodbury's request for self-representation

without adequately assessing whether his severe mental illness impacted his ability to conduct trial proceedings by himself in violation of Rule 3.111(d)." Pet. App. 25. Not unsurprisingly, the court below rejected Petitioner's claim on state-law grounds, citing a state court case—*Wall v. State*—which itself relied on state-law authority to reject the argument that *Edwards* required a state to do anything affirmative. Pet. App. 15. "The competency standard to waive one's right to counsel is the same as the competency standard to stand trial, whereas the competency standard to conduct trial proceedings without assistance is somewhat higher." Pet. App. 15, citing *Wall v. State*, 238 So. 3d 127, 140 (Fla. 2018).. In *Wall*, the Florida Supreme Court acknowledges that the competency standard to conduct trial proceedings is indeed higher than the competency to stand trial. This heightened protection is not required by the federal constitution and is a standard that was voluntarily implemented by the Florida Supreme Court upon amendment of a rule of criminal procedure. Because of this, the heightened protection afforded a defendant is nothing more than a creature of state statute.

Petitioner currently argues that this Court should review this case because it involves "a question left unresolved by *Indiana v. Edwards*." Pet. 12. Assuming, arguendo, that the current claim is sufficiently related to the one presented below, it was rejected on an adequate and independent state law ground.[4] There, the Florida Supreme Court relied primarily upon Florida Rule of Criminal Procedure 3.111(d)(3),

[4] That Petitioner's current claim of error is not sufficiently related to the issue Petitioner presented to the Florida Supreme Court is discussed in the next section.

which allows a court to deny a criminal defendant's request to waive his right to counsel. Because *Edwards* did not require states to implement this holding—it simply concluded that the constitution permitted it—the State of Florida offers greater protections to mentally ill defendants than the federal constitution demands. 554 U.S. at 177-78.

The decision of the Florida Supreme Court below rests on Florida Rule of Criminal Procedure 3.111(d)(3), which provides:

> Regardless of the defendant's legal skills or the complexity of the case, the court shall not deny a defendant's unequivocal request to represent himself or herself, if the court makes a determination of record that the defendant has made a knowing and intelligent waiver of the right to counsel, and does not suffer from severe mental illness to the point where the defendant is not competent to conduct trial proceedings by himself or herself.

Id. The words "and does not suffer from severe mental illness to the point where the defendant is not competent to conduct trial proceedings by himself or herself" were added to the rule after this Court's decision in *Edwards* and is consistent with the *Edwards* holding in that it allowed a court to take a defendant's mental health into consideration before permitting a waiver of counsel.[5] *In re Amends. to Fla. Rule of Crim. Pro. 3.111*, 17 So. 3d 272 (Fla. 2009). Moreover, the Florida Supreme Court's ruling not only incorporates the verbiage of this state rule into its reasoning, it also

[5] The Florida Supreme Court offered this comment upon their modification, "As previously adopted by this Court, see Amendment to Florida Rule of Criminal Procedure 3.111(d)(2)-(3) . . . , rule 3.111(d)(3) does not permit the trial court to take into consideration a defendant's mental capacity to represent himself. Accordingly, in light of *Edwards*, we proposed amending rule 3.111(d)(3) on our own motion."

relies on a state supreme court decision as the legal precedent to support its holding. Pet. App. 15.

Edwards does not support Petitioner's position because it shows that before 2008, irrespective of mental health, federal law was such that the Constitution guaranteed a defendant who knowingly and voluntarily waives the right to counsel, the right to proceed pro se at his trial. *Faretta*, 422 U.S. 806. "A mentally ill defendant who knowingly and voluntarily elects to proceed *pro se* instead of through counsel receives a fair trial that comports with the Fourteenth Amendment." *Edwards*, 554 U.S. at 179-80 (Scalia, J., dissenting), quoting *Godinez*, 509 U.S. 389. *Edwards* neither elevated the federal requirement nor required any action from states; it simply permitted states to implement a higher standard as they saw fit. As such, the clearly established federal law required only that Petitioner show that he was competent to waive his right to counsel—not competent to defend himself. *See id.* at 172. Any analysis surrounding the trial court's decision to allow Petitioner to proceed pro se would necessarily be grounded solely on a discretionary standard implemented by the Supreme Court of Florida. "But it has never been thought that such cases establish this Court as a rule-making organ for the promulgation of state rules of criminal procedure. And none of the specific provisions of the Constitution ordains this Court with such authority." *Spencer v. State of Texas*, 385 U.S. 554, 564 (1967). "The States possess primary authority for defining and enforcing the criminal law. In criminal trials they also hold the initial responsibility for vindicating constitutional rights. Federal intrusions into state criminal trials frustrate both the States'

sovereign power to punish offenders and their good-faith attempts to honor constitutional rights." *Engle v. Isaac*, 456 U.S. 107, 128 (1982).

As in other contexts, a state may offer greater protection in this area than the federal constitution commands. Indeed, Petitioner himself acknowledges that the State of Florida did just that after *Edwards* was decided. Pet. 18. By recognizing the fact that the rule relied upon is not mandated by the federal constitution, Petitioner essentially admits that the ruling is based on state law. This fact alone should preclude review. *Cardinale*, 394 U.S. at 438 (reaffirming that this Court has no jurisdiction to review a state court decision on certiorari review unless a federal question was raised and decided in the state court below); *see also Gates*, 462 U.S. at 222.

Petitioner's argument that *Edwards* requires the trial court to explicitly evaluate mental competence prior to granting self-representation flips *Edwards*' holding from *permitting* states to use a higher standard to *requiring* states to do so. To put it simply, the "Constitution *may* have allowed the trial judge to block his request to go it alone, but it certainly didn't require it." *United States v. Berry*, 565 F.3d 385, 391 (7th Cir. 2009).

Florida's analysis of Petitioner's competence to waive counsel rule rests solely on matters of state law. This fact alone militates against the grant of certiorari in this case.

III. Review is not warranted to resolve a conflict among the lower courts.

Petitioner cites to a host of cases claiming they stand for the proposition that the decision below conflicts with the decisions of other federal and state courts. Pet. 16-19. Notably, however, Petitioner does not, and cannot, claim that any of those decisions would have required a different result. *See id.* And for good reason: Each of the states cited by Petitioner implemented a standard or a rule which **allow** a court to deny a criminal defendant's request to proceed without counsel. These states offer a greater protection than is federally mandated, thus all decisions are based on individualized state law. Because of this, any potential "conflicts" are irrelevant in a federal analysis.

As Petitioner sees it, the cases that conflict with the decision below have led to inconsistent standards amongst states. Petitioner claims that these inconsistencies require the implementation of a "standard to ensure that the safeguard is uniformly applied to all similarly situated defendants" which would then require trial courts to "specifically enunciate their individualized, case-specific reasons for determining representational competence. . . ." Pet. 12.

The very basis of this argument acknowledges that each of the states referenced have codified a law or a rule to guide their courts procedurally when managing a defendant who has a mental illness and who wishes to proceed pro se—as they were allowed to do post *Edwards*. This argument ignores the basic premise of state sovereignty and disregards the *Edwards* holding that states are not required to offer additional protections. "As a result, it would not be an unreasonable

determination of clearly established federal law for the state court to decline to impose a heightened standard of competency, as *Edwards* announced no such requirement." *Wright v. Bowersox*, 720 F.3d 979, 986 (8th Cir. 2013).

Petitioner further argues that certiorari should be granted to "correct the state of the law of Florida and in the minority of states that mandate the use of a higher standard" when assessing a defendant's competence to waive counsel "to the *Dusky* standard for competence to stand trial." Pet. 27. Petitioner's stated reason for this is because currently "there is no case law which mandates the specific procedures necessary to satisfy constitutional due process." *Id.* It is axiomatic that there is no standardized test required of states in this area—this Court has already specifically declined to require one.

> Indiana has also asked us to adopt, as a measure of a defendant's ability to conduct a trial, a more specific standard. . . . We are sufficiently uncertain, however, as to how that particular standard would work in practice to refrain from endorsing it as a federal constitutional standard here. We need not now, and we do not, adopt it.

Edwards, 554 U.S. at 178. Petitioner further states that this Court should "clarify the law" in this area. Pet. 40. But there is no need for clarity. Every court who has addressed this issue has understood that the constitution does not require a heightened competency standard before allowing self-representation by a defendant who is competent to stand trial. *See, e.g.*, *United States v. Luscombe*, 950 F.3d 1021 (8th Cir. 2020); *Washington v. Boughton*, 884 F.3d 692 (7th Cir. 2018); *Noetzel v. State*, 2021 WL 5226620 (Fla. Nov. 10, 2021); *State v. Burden*, 467 P.3d 495 (Kan.

2020); *Hart v. Warden, N.H. State Prison*, 202 A.3d 573 (N.H. 2019), *aff'd*, 2020 WL 2128869 (D. N.H. May 5, 2020); *People v. Mickel*, 385 P.3d 796 (Cal. 2016).

While Petitioner suggests that this Court's guidance is necessary "to ensure uniform application of this procedural safeguard and to provide meaningful appellate review," and "to address whether *Edwards* heightened competency standard for self-representation at trial governs all motions in which a 'gray-area' mentally competent defendant seeks to proceed pro-se . . . ," Pet. 24; 40; this guidance is unnecessary. This Court has already explained that the "trial judge . . . will often prove best able to make more fine-tuned mental capacity decisions, tailored to the individualized circumstances of a particular defendant." *Edwards*, 554 U.S. at 177.

Petitioner also contends that this Court, contrary to decades of jurisprudence, should mandate "an assessment as to whether [a defendant] has the cognitive abilities needed to argue his case adequately." Pet. 36. This, too, is a well-established area of law. This Court has held that a "defendant's 'technical legal knowledge' is 'not relevant' to the determination whether he is competent to waive his right to counsel . . . , and emphasized that although the defendant 'may conduct his own defense ultimately to his own detriment, his choice must be honored.'" *Godinez*, 509 U.S. at 400 (citations omitted). For that reason, and based on additional considerations set forth below, Petitioner fails to show that the decision below conflicts with this Court's precedent.

IV. This case is a poor vehicle.

A. As a threshold matter, Petitioner misconstrues *Edwards*.

A key premise of Woodbury's petition is that the Due Process Clause of the Fourteenth Amendment, as construed by this Court in *Edwards*, requires a court to make a "representational competency" assessment before allowing a defendant to waive his right to counsel. Pet. 12. As *Edwards* itself makes clear, and more recent cases confirm, Petitioner is mistaken.

Edwards did not announce a rule for determining competency when a defendant desires to waive his right to counsel. *Edwards* allows, but does not require, a state to employ a heightened standard. 554 U.S. at 178. The defendant, Edwards, was charged with several serious crimes. Prior to trial he underwent three competency hearings and made several requests to represent himself. The trial court, who had been privy to the competency hearings and corresponding information, expressed concerns that while Edwards may be competent to stand trial, he was not competent to represent himself. *Id.* at 169. The court denied Edwards' request to represent himself and his trial proceeded with appointed counsel. *Id.*

This Court held that the constitution permits a state to limit a defendant's self-representation right by "insisting upon representation by counsel at trial—on the ground that the defendant lacks mental capacity to conduct his [own] trial." *Id.* at 174. Further, this Court specifically declined to adopt a more specific standard that would apply in cases where a court seeks to deny a defendant the right to represent himself. *Id.* at 178. "We are sufficiently uncertain, however, as to how that particular

standard would work in practice to refrain from endorsing it as a federal constitutional standard here. We need not now, and we do not, adopt it." *Id.*

Petitioner claims that "[t]his Court's attention is needed to sort out and resolve the question of whether constitutional due process required the trial court to inquire into representational competence prior to granting self-representation to defendants with severe mental illness," Pet. 27, while at the same time recognizing that "the Court in *Edwards* declined to adopt a particular representational competence standard. . . ." Pet. 31. It seems clear that the Court has already declined to set a federal standard, instead allowing, but not requiring, states to set a heightened standard if they so choose. *Jones v. Norman*, 633 F.3d 661, 669 (8th Cir. 2011).

Petitioner's interpretation of *Edwards* is also inconsistent with this Court's express recognition of the holding in *Godinez*—that the constitution permits a defendant who is competent to stand trial to represent himself. *Edwards*, 554 U.S. at 172. In *Godinez* a defendant waived his right to counsel so that he could change his plea to guilty. *Id. Edwards* did not limit the holding in *Godinez* to those specific facts, it simply noted that *Godinez* "does not answer the question before us now." *Id.* at 173. Thus, according to *Godinez*, Petitioner satisfied the requirements to waive his right to counsel and proceed pro se.

While subsequent cases confirm the scope of both *Edwards* and *Godinez*, this Court has not further addressed the issues or modified holdings from either of those landmark cases and Petitioner presents no legitimate reason for this Court to do so now.

B. To squarely rule on the question presented, this Court would have to reject verities found by the lower court and endorse Petitioner's unsuccessful factual claims.

To accept Petitioner's argument, this Court would have to ignore the lower court records which support that both the trial court and the Florida Supreme Court were correct in finding Petitioner was competent to proceed as his own attorney. Petitioner fails to acknowledge two antecedent issues that make the question presented and his case a poor vehicle. First, Petitioner's argument requires that this Court accept the assertion that Petitioner was "suffering from a severe mental illness." Pet. ii. Second, it would also require this Court to disregard the incontrovertible fact that Petitioner actually conducted his own trial, from start to finish, consistently receiving positive comments on strategy and behavior from the trial court. This fact is squarely at odds with the requirement in *Edwards* which allows a court to deny a request to proceed without counsel only when a defendant is not competent to conduct trial proceedings by themselves. 554 U.S. at 173. That Petitioner did proceed as his own attorney supports the rulings of the lower courts.

The basis for Petitioner's claim is far from clear. Petitioner does not contest that the opinion below correctly recognized that the State of Florida has adopted a heightened standard for determining a defendant's competency to act as his own lawyer. Pet. 20. Petitioner further concedes that the opinion below included the standard which considers, "the defendant is 'unable to carry out the basic tasks needed to present his own defense without the help of counsel.'" Pet. 21; Pet. App. 15 (*Woodbury*, 320 So. 3d at 646, quoting *Edwards*, 554 U.S. at 175-76). The opinion

recognizes that specific facts must be considered and included a detailed summary of Petitioner's performance throughout his pre-trial and trial proceedings. Pet. App. 15-16. The opinion recognized that the trial court needed to find that Petitioner "knowingly and intelligently rejected the court's offer of counsel" and that nothing in the record showed that Petitioner "suffered from severe mental illness to the point of incompetency." Pet. App. 17.

The real dispute in this case is over the facts. As discussed, both the trial court and the Florida Supreme Court agreed that Petitioner was competent to present his own defense without the help of counsel. It should go without saying that a person who is competent to stand trial is also competent to waive his right to counsel and proceed as his own attorney. *Godinez*, 509 U.S. at 391. Petitioner argues that a trial court should consider whether the defendant has "the prerequisite cognitive capacity to construct, mount, and modify an effective defense." Pet. 35. This question is irrelevant and is beyond any trial court's valid inquiry or concern. Petitioner may have been ineffective at mounting his own defense, but he knowingly and voluntarily waived his right to counsel, and "a defendant who elects to represent himself cannot thereafter complain that the quality of his own defense amounted to a denial of 'effective assistance of counsel.'" *Faretta*, 422 U.S. at 834 n.46; *see also United States v. Reed*, 668 F.3d 978, 987 (8th Cir. 2012) (noting that "the competence required is the competence to waive the right, not the competence to represent himself" (emphasis omitted) (citation omitted)); *United States v. Johnson*, 610 F.3d 1138, 1140 (9th Cir. 2010) (noting that after validly waiving the right to counsel, defendants "had

the right to represent themselves [at trial] and go down in flames if they wished, a right the district court was required to respect").

The findings by both the trial court and the Florida Supreme Court show that Petitioner knowingly and voluntarily waived his right to counsel, not just once, but 12 separate times throughout the course of his proceedings. Pet. App. 15. This provides a sufficient record to show the trial court recognized the importance of ensuring Petitioner's mental health did not degrade over the course of his many appearances. These findings are important because this Court "reviews judgments, not opinions." *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842 (1984). Petitioner's objection to the result below is meritless and unworthy of this Court's attention. Petitioner's fact-bound argument ignores both the conflicts in the record, and the procedural posture of this case, which requires that all factual disputes be viewed in the light most favorable to the respondent and precludes appellate determination of which facts are genuinely in dispute. *See, e.g.*, *Behrens v. Pelletier*, 516 U.S. 299, 309, 313 (1996); *Johnson v. Jones*, 515 U.S. 304, 318 (1995).

In this case, Petitioner's claim is completely dependent upon his position that he was "severely mentally ill." Pet. ii. That conclusion relies entirely upon Petitioner's self-serving claims and lengthy citations contained solely outside of the trial court's factual record. While Petitioner references discrete examples of behavior exhibited at the trial court level, the lower courts considered these facts when they found that Petitioner was wholly capable of waiving counsel and conducting his own trial. Pet. App. 15. Courts have consistently held that a trial court is in the best position to make

an individualized assessment regarding mental competency. *See Edwards*, 554 U.S. at 177; *United States v. Ziegler*, 1 F.4th 219, 226 (4th Cir. 2021); *United States v. Bernard*, 708 F.3d 583, 593 (4th Cir. 2013).

Importantly, "the presence of some degree of mental illness is not to be equated with incompetence. . . ." *Hall v. United States*, 410 F.2d 653, 658 (4th Cir. 1969). Petitioner conflates the undisputed fact that Petitioner was suffering from (and was medicated for) bi-polar disorder to satisfy his claim that he suffers from a "severe mental illness." In the proceedings below, the lower courts unanimously concluded that Petitioner's mental health diagnosis did not render him "unable to carry out the basic tasks needed to present his own defense without the help of counsel" as would be required by *Edwards*. *Edwards*, 554 U.S. at 175-76; Pet. App. The trial court found, and the Florida Supreme Court agreed, that Petitioner was both competent to waive his right to counsel, and highly capable of conducting his own trial proceedings, comparing his performance to that of a "veteran trial attorney." Pet. App. 15. That fact-intensive conclusion does not warrant this Court's review; and, even if it did, the record amply supports the lower court's finding. Thus, under any conceivable interpretation of *Edwards*, Petitioner cannot show that he was "unable to carry out the basic tasks needed to present his own defense without the help of counsel" as is necessary to support their claim. *Id.* Because of this, this case is a poor vehicle to support his claim.

V. The decision of Florida Supreme Court was correct.

Ultimately, Petitioner asks this Court to decide whether the Florida Supreme Court's application of the permissible higher standard authorized in *Edwards* violated "procedural due process" by not conducting "a searching inquiry into a criminal defendant's mental illness" and determining "representational competence" before allowing Petitioner to act as his own attorney. Pet. 20. That this standard is not required is undisputed, and Petitioner offers no persuasive reason for the Nation's court of last resort to overrule its own precedent and mandate a standardized test.

At any rate, the courts below properly applied *Faretta*, *Godinez*, and *Edwards*, to Petitioner's multiple *Faretta* inquires and his ultimate waiver of counsel. Petitioner asserts that the courts below ignored that he was suffering from "bipolar disorder, a major mental illness" and was in "an active manic state." Pet. 38. To the contrary, those courts concluded that "[Petitioner's] pro se representation could easily be mistaken for the work of a veteran trial attorney." Pet. App. 15. The record supports that conclusion. Petitioner further claims that self-representation at trial "requires that the defendant's mind be clear, sharp and without impairment." Pet. 38. This is not the standard a pro se defendant must satisfy before acting as his own counsel. In fact, this standard is not even required of a licensed and practicing attorney. It is clarifying to undertake a comparison to the circumstances outlined in *Bernard*, 708 F.3d 583.

In *Bernard*, a pro se defendant failed "to object during the Government's case-in-chief, question two of the witnesses, call witnesses on his own behalf, or otherwise

'think like a lawyer' . . . [w]hile [acting] in ways that . . . arguably appear[ed] bizarre or irrational." 708 F.3d at 593. The Fourth Circuit found no error in the district court's decision to allow the defendant to waive his right to counsel because the defendant had given opening and closing statements and testified in his own defense, and the district court was in the best position to judge the defendant's competency. *See id.* at 592-93; *see also id.* at 593 (quoting *Burket v. Angelone*, 208 F.3d 172, 192 (4th Cir. 2000) ("Likewise, neither low intelligence, mental deficiency, nor bizarre, volatile, and irrational behavior can be equated with mental incompetence to stand trial.")).

Even assuming, arguendo, that Petitioner was suffering from severe mental illness, he still cannot satisfy the second mandatory component of the test—that Petitioner was incapable of conducting his own trial. The postconviction court scoured the trial transcripts and the court record and properly determined that the trial court correctly ruled on this issue. At bottom, that is a challenge to a factual finding—the state trial court's finding that the waiver of counsel satisfied the requirements of *Faretta*. Petitioner seeks to set aside that finding, disregard the trial transcripts, and ignore the factual basis relied upon by both the lower court and the Florida Supreme Court. This Court, however, does not grant certiorari when "the asserted error consists of [an] erroneous factual finding." *See* S. Ct. R. 10. As noted, Judges who have had the opportunity to observe and question a defendant are in the best position to judge competency, especially here, where the judge has had multiple opportunities to scrutinize and interact with the defendant. *See Demosthenes v. Baal*, 495 U.S. 731, 735-37 (1990) (explaining that the trial court had the opportunity to witness and

question the prisoner and was in a better position than a court of appeals to determine competence because the court of appeals did not personally observe the prisoner). A petitioner bears the burden of rebutting the presumption of correctness by clear and convincing evidence. *See id.* Petitioner cannot satisfy this burden.

To accept Petitioner's claim, this Court would be required to disregard the factual record from the lower courts, accept unsupported claims of the Petitioner, and ignore that the record supports that the lower courts properly ruled that Petitioner was competent to proceed as his own attorney.

CONCLUSION

In sum, the petition involves a decision based entirely upon a court rule implemented by the Florida Supreme Court for which there is no federal counterpart. Further, none is federally mandated as *Edwards* simply allowed the implementation of a higher standard for self-representation. Further, this claim was not properly presented to the Florida Supreme Court, thus it has neither ruled upon nor passed on this issue. Likewise, it identifies no split of authority nor conflict with this Court's precedent. Finally, this Court should not grant review to decide a fact-intensive question whether the Florida Supreme Court erred in its application of *Godinez*, *Edwards* and *Faretta*; and, even if such case-specific error correction supplied a valid ground for seeking this Court's review, the record amply supports the lower courts' unanimous conclusion that Petitioner was competent to represent himself and that he elected to do so knowingly and intelligently.

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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