No. 21-6393

IN THE SUPREME COURT OF THE UNITED STATES

MICHAEL LAWRENCE WOODBURY, PETITIONER

v.

STATE OF FLORIDA, RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

The Florida Supreme Court's decision is contrary to the reasoning and constitutional objectives of *Indiana v. Edwards*, 554 U.S. 164 (2008), in which this Court established a "higher [competency] standard" for determining whether a "gray-area" mentally competent criminal defendant should be permitted to proceed to trial pro se, and held that under this heightened standard courts may preclude such a defendant, even if he has been found "competent enough to stand trial," from representing himself at trial when the defendant "still suffer[s] from severe mental illness to the point where [he is] not competent to conduct trial proceedings by [himself]." 554 U.S. at 173, 178. *Edwards* recognized that the right to self-representation may be foreclosed because a more fundamental right is at stake. 554 U.S. at 176-78. For those mentally ill defendants who are incompetent to represent themselves, exercising the self-representation right impermissibly impairs "the most basic of the Constitution's criminal law objectives, providing a fair trial." *Id.* at 176-77.

Edwards involved the denial of a defendant's self-representation request, and, thus, this Court did not address whether a court must apply a heightened competency standard when, as occurred here, it grants a "gray-area" mentally competent defendant's request to proceed to trial pro se.

The reasoning and vital constitutional objectives of this Court as expressed in *Edwards* should not be limited to the specific facts in *Edwards*. Rather, this Court's reasoning should apply in all instances where a "gray-area" mentally competent defendant seeks to conduct trial proceedings pro se. If exercise of the self-representation right would impair "the most basic of the Constitution's criminal law objectives, providing a fair trial," then the defendant must be afforded counsel and foreclosed from self-representation-not as a matter of discretion, but of constitutional demand. *Id.* at 176-77.

Furthermore, despite the Respondent's arguments to the contrary, the present appeal provides the right opportunity for this Court to resolve the question of whether due process requires a trial court to determine representational competence prior to allowing a "gray-area" mentally competent defendant to proceed to trial pro se.

I. THIS CASE IS APPROPRIATE FOR RESOLUTION BY THIS COURT

Respondent asserts that review should be denied because Woodbury never argued to the Florida Supreme Court that the trial court's inquiry and determination on representational competence was insufficient under the Sixth and Fourteenth Amendments. (Br. in Opp. 12). However, this is simply untrue. The crux of Woodbury's argument was that he was denied his constitutional right to a fair trial because the trial court failed to make such an inquiry. Specifically, in his initial brief, Woodbury argued that "[t]he courts failure to sufficiently inquire into Woodbury's severe mental illness denied Woodbury due process in violation of the Fifth, Sixth and Fourteenth Amendments to U.S. Constitution." (App. 53).

Furthermore, the initial brief contained extensive references to federal precedent and repeated discussions on the need for the heightened standard to ensure the federal due process right to a fair trial. (App. 27-28, 41, 43, 46-47, 53). The above references show that the Florida Supreme Court had a fair opportunity to address the federal question but declined to do so.

In the same respect, a state court cannot evade federal court review by simply refusing to discuss the federal issue. Thus, while the Florida Supreme Court couched its opinion in state law, and declined to address the federal question, this does not bar review.

There is no discernible reason for the Florida Supreme Court's failure to explicitly acknowledge that the foundation Woodbury's claim was this Court's holding in *Edwards* and the Fourteenth Amendment. At best, the Florida Supreme Court's omission was the result of inartful drafting, which should not inure to the benefit of the State. At worst, it is an attempt by the Florida Supreme Court to obfuscate the reliance of its ruling on an issue of federal law in order to avoid review by this Court. *See Minnesota v. Nat'l Tea Co.*, 309 U.S. 551, 557 (1940) ("[I]t is … important that ambiguous or obscure adjudications by state courts do not stand as barriers to a determination by this Court of the validity under the federal constitution of state action.")

Furthermore, by holding that the trial court's inquiries and determinations into competency to waive counsel were sufficient to grant self-representation, the Florida Supreme Court necessarily denied the federal question of whether due process requires an inquiry and determination as to representational competence prior to granting self-representation.

Florida Rule of Criminal Procedure 3.111(d) does not, as the State argues, preclude this Court's review by providing an independent state ground to resolve Woodbury's claim because its application depends on a federal constitutional ruling- namely this Court's holding in *Indiana v. Edwards*. The State of Florida adopted verbatim the language contained in *Edwards* and failed to provide a representational competence standard or a procedure for determining such competence. Thus, Rule 3.111(d) is read in conjunction with the factors articulated by this Court in *Edwards*, as evidenced by the references to *Edwards* in the rare Florida cases applying Rule 3.111(d). *See e.g.*, *Loor v. State*, 240 So. 3d 136 (Fla. 3d DCA 2018); *Losada v. State*, 260 So. 3d 1156 (Fla. 3d DCA 2019).

Where, as here, application of the state procedural bar such as Rule 3.111(d) "depends on a federal constitutional ruling, the state-law prong of the court's holding is not independent of federal law, and [this Court's] jurisdiction is not precluded." *Ake v. Oklahoma*, 470 U.S. 68, 75 (1985); *see also Foster v. Chatman*, 578 U.S. 488, 497–98 (2016) (State's assertion of procedural bar did not preclude this Court's review because bar could not be applied independent of analysis of federal claim).

Further, to determine that Rule 3.111(d) applied to bar Woodbury's claim, the federal question had to be resolved, that is, what standard of competence applied to a gray-area defendant's motion to proceed pro se to ensure the due process right to a fair trial. Consequently, the Florida Supreme Court's application of Rule 3.111(d) is not a separate and adequate state ground for the Florida Supreme Court's decision.

Additionally, Respondent's suggestion the matter is fact-bound misconstrues the relief sought in this case. The question presented is a narrowly drawn question of law neither calling for nor requiring new or different factual determinations. Petitioner does not bring this case to this Court for determination of the facts, but rather the legal inferences that could be properly drawn from those facts.

The claim rests in whether the Constitution requires the trial court to assess Woodbury's competence to conduct trial proceedings prior to granting self-representation in light of his mental illness. There is no need for a factual determination of actual incompetency because the error lies in the complete failure of the trial court to conduct such assessment. While the trial court repeatedly made findings as to competency, it is clear that these were based on the consequence of being competent to waive counsel, and not a further inquiry into Woodbury's mental competence to conduct trial proceedings. Whether Woodbury's mental illness was severe or whether he was actually incompetent cannot be properly assessed on appeal due to the lack of inquiry. Though it is inconceivable that chronic bipolar disorder with histrionic episodes of mania and psychosis would not be deemed to be severe mental illness. However, the Florida Supreme Court declined to determine whether Woodbury suffered from severe mental illness, despite Woodbury's request that it do so. In fact, Florida has yet to provide a definition of severe mental illness.

Furthermore, Respondent does not fairly characterize the factual record. Respondent claims that "Petitioner has included extensive references to unverified sources contained outside of the trial record." (Br. in Opp. 13, 25). Woodbury has not cited to any sources contained out of the record, rather the information is detailed in the psychological report contained in the state appellate record. This report was ordered at the request of the State of Florida and based on materials provided to the psychologist by the State. The information would have been developed in court but for the trial court's failure to provide a defense counsel to develop the evidence. And, significantly, the psychological report was not "completed months after the trial concluded," but rather weeks preceding the start of the penalty phase trial. (Br. in Opp. 13).

Lastly, Respondent's assertion that review is not warranted to resolve a conflict among lower courts because "[e]very 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" is incorrect. (Br. In Opp. 19). While Florida does not require the inquiry on a federal constitutional basis, Alaska, Iowa, and North Dakota hold, as a matter of constitutional law, that *Edwards* requires courts to determine whether a defendant is competent to conduct trial proceedings without counsel. *State v. Jason*, 779 N.W. 2d 66, 76 (Iowa Ct. App. 2009) (remanding under "the standards established in *Edwards* and subsequent cases that have recognized a constitutional violation when a defendant who is not competent to present his own defense without the help of counsel is allowed to do so" (footnote omitted)); *Shorthill v. State*, 354 P. 3d 1093, 1110 (Alaska Ct. App. 2015) (under *Edwards*, where a defendant cannot accomplish "basic tasks" necessary for a defense, "the right of self-representation must give way to society's interest in having a fair trial"); *State v. Dahl*, 776 N.W. 2d 37, 44, 45 (N.D.

2009) (under *Edwards*, "an additional determination is required" and court "has a continuing responsibility ... to determine whether a self-represented defendant is competent to present his or her own defense"). Thus, *Edwards* has resulted in differing applications across jurisdictions.

The division over the question of whether the Constitution requires a determination of representational competence prior to granting self-represesntation to mentally ill defendants will not abate without this Court's guidance. As this Court explained, "spar[ing] [state] courts from having to confront [a] legal quagmire" of conflicting federal- and state-court precedent justifies this Court's intervention. *Virginia v. LeBlanc*, 137 S. Ct. 1726, 1729-30 (2017) (per curiam). This Court should grant review to resolve this conflict. The right of self-representation cannot trump the guarantee of a fair trial.

In conclusion, Woodbury's claim that the Constitution requires a trial court to apply a heightened standard of competence prior to granting self-representation to mentally ill defendants is an issue of critical importance to the integrity and fairness of our criminal justice system, and is an issue that arises frequently given the rate with which criminal defendants, especially those with serious mental illness, seek to proceed to trial pro se. *See, e.g., Massey v. Moore*, 348 U.S. 105, 108 (1954) ("No trial can be fair that leaves the defense to a man who is insane, unaided by counsel, and who by reason of his mental condition stands helpless and alone before the court.").; *Edwards*, 554 U.S. at 176-77 ("[I]nsofar as a defendant's lack of capacity threatens an improper conviction or sentence, self-representation in that exceptional context undercuts the most basic of the Constitution's criminal law objectives, providing a fair trial."). It is a matter worthy of this Court's review.

CONCLUSION

For the foregoing reasons, as well as those set forth in the Petition, a writ of certiorari should be granted.

Respectfully submitted,

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JANUARY 31, 2022