No._____

IN THE SUPREME COURT OF THE UNITED STATES

WILLIAM EARL SWEET,
PETITIONER,

VS.

STATE OF FLORIDA,
RESPONDENT.

ON PETITION OF CERTIORARI TO
THE SUPREME COURT OF FLORIDA

PETITION FOR WRIT OF CERTIORARI

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ATTORNEY OF RECORD FOR PETITIONER

CAPITAL CASE

QUESTIONS PRESENTED

The Petitioner unequivocally asserted his right to self-representation as guaranteed by the United States Constitution. As this Court has made explicit, that should have been the end of the matter. The trial court, however, ignored his assertion of this right. The Petitioner fared no better on appeal when the Florida Supreme Court ignored the very nature of the error and applied a perverse and forbidden harmless error analysis. The Petitioner was denied the justice that he was entitled after a ruling that his habeas petition was untimely because he sought to exhaust a claim for federal review based on this Court's decision in *Ring v. Arizona*. Despite a well-trodden path to review, the Florida Supreme Court denied relief. The Petitioner seeks a remedy for the clear denial of his right to self-representation and presents two questions for review.

1. Whether the Petitioner's right to self-representation was violated when the trial court denied the Petitioner's request to proceed pro se and the Florida Supreme Court affirmed this denial despite the Florida Supreme Court's decision that the trial court's inquiry fell short of *Faretta*, and even its own rule that protected the right to self-representation, then proceeded to apply the factors that this Court has made clear are irrelevant in *Godinez v. Moran*.

2. Whether the Florida Supreme Court's most recent decision denying relief from a manifest injustice denied Mr. Sweet's rights under the Due Process Clause and Equal Protection Clause of the Fourteenth Amendment to the United States Constitution when the court has the mechanism under Florida law to provide the remedy that Mr. Sweet was always entitled and has treated similarly situated defendants differently?

LIST OF PARTIES

All parties are listed in the caption.

NOTICE OF RELATED CASES

Per Supreme Court Rule 14.1(b)(iii), these are the related cases:

Underlying Trial:
Circuit Court of Duval County, Florida
State of Florida v. William Sweet, 1991-CF-2899
Judgment Entered: August 30, 1991

Direct Appeal:
Florida Supreme Court
Sweet v. State, 624 So. 2d 1138 (Fla. 1993)
Judgment Entered: August 5, 1993 *(rehearing denied* October 14, 1993)

Supreme Court of the United States
Sweet v. Florida, 510 U.S. 1170 (1994)
Petition for Writ of Certiorari
Judgment Entered: February 28, 1994

First Postconviction Proceedings:
Circuit Court of Duval County, Florida
State of Florida v. William Sweet, 1991-CF-2899
Judgment Entered: March 30, 2000

Florida Supreme Court
Sweet v. State, 810 So. 2d 854 (Fla. 2002)
Judgment Entered: January 31, 2002

Florida Supreme Court
Sweet v. Moore, 822 So. 2d 1269 (Fla. 2002)
Judgment Entered: June 13, 2002

United States District Court for the Middle District of Florida
Sweet v. Crosby, 2005 WL 1924699 (M.D. 2006)
Case No. 3:03-cv-00844-HES
Judgment Entered: August 8, 2005

United States Court of Appeals for the Eleventh Circuit
Sweet v. Secretary, Dept. of Corrections, 467 F.3d 1311 (11th DCA 2006)
Judgment Entered: October 23, 2006 (*rehearing denied* November 29, 2006)

Supreme Court of the United States
Sweet v. McDonough, 550 U.S. 922 (2007)
Judgment Entered: April 30, 2007

Second Postconviction Proceedings:
Circuit Court of Duval County, Florida
State of Florida v. William Sweet, 1991-CF-2899
Judgment Entered: February 11, 2004

Florida Supreme Court
Sweet v. State, 900 So. 2d 555 (Fla. 2004)
Judgment Entered: December 20, 2004 (*rehearing denied* March 24, 2005)

Third Postconviction Proceedings:
Circuit Court of Duval County, Florida
State of Florida v. William Sweet, 1991-CF-2899
Judgment Entered: July 11, 2005

Florida Supreme Court
Sweet v. State, 934 So. 2d 450 (Fla. 2006)
Judgment Entered: June 16, 2006

Fourth Postconviction Proceedings:
Circuit Court of Duval County, Florida
State of Florida v. William Sweet, 1991-CF-2899
Judgment Entered: September 3, 2009

Fifth Postconviction Proceedings:
Circuit Court of Duval County, Florida
State of Florida v. William Sweet, 1991-CF-2899
Judgment Entered: September 20, 2013

Sixth Postconviction Proceedings:
Circuit Court of Duval County, Florida
State of Florida v. William Sweet, 1991-CF-2899
Judgment Entered: September 29, 2017

Florida Supreme Court
Sweet v. State, 248 So. 3d 1060 (Fla. 2018)
Judgment Entered: May 24, 2018 (*rehearing denied* July 9, 2018)

Second Federal Habeas Petition
United States District Court for the Middle District of Florida
Dismissed without prejudice 2020 WL 6505043 *Sweet v. Sec'y, Florida Dep't of Corr.,* 3:18-CV-874-J-34JRK, 2020 WL 6505043 (M.D. Fla. Nov. 5, 2020) (Unreported).
Judgment entered: November 5, 2020

United States Court of Appeals for the Eleventh Circuit
In Re: William Sweet
Case No. 20-14547
Application For Leave To File A Second Or Successive Habeas Corpus Petition 28 U.S.C. § 2244(B) By A Prisoner In State Custody
Judgment Entered: December 28, 2020

Seventh Postconviction Proceedings:
Circuit Court of Duval County, Florida
State of Florida v. William Sweet, 1991-CF-2899
Judgment Entered: March 3, 2017

Florida Supreme Court
Sweet v. State, 234 So. 3d 646 (Fla. 2018)
Judgment Entered: January 24, 2018

Eighth Postconviction Proceedings (*present petition*):
Circuit Court of Duval County, Florida
State of Florida v. William Sweet, 1991-CF-2899
Judgment Entered: January 7, 2019

Florida Supreme Court
Sweet v. State, 293 So. 3d 448 (Fla. 2020)
Judgment Entered: February 27, 2020 (*rehearing denied* April 21, 2020)

United States Supreme Court
Sweet v. Florida, 141 S. Ct. 909 (2020)
Judgment entered: December 7, 2020

Second Habeas Petition (at issue in this Petition)
Florida Supreme Court

Sweet v. Dixon, SC21-1074, 2021 WL 5550079, at *1 (Fla. Nov. 29, 2021), *reh'g denied*, SC21-1074, 2022 WL 130019 (Fla. Jan. 14, 2022)

Judgment entered: November 29, 2021 (*rehearing denied* January 14, 2022)

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CONSTITUTIONAL PROVISIONS:

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

The opinion of the Florida Supreme Court appears at Appendix A to the petition and is unreported. *Sweet v. Dixon*, SC21-1074, 2021 WL 5550079, at *1 (Fla. Nov. 29, 2021).

The order of the Florida Supreme Court denying rehearing appears at Appendix B to the petition and is unreported.

The opinion of the Florida Supreme Court affirming judgment and sentence appears at Appendix C to the petition is reported at *Sweet v. State*, 624 So. 2d 1138 (Fla. 1993).

JURISDICTION

The date the Florida Supreme Court decided the case was November 29, 2021. A timely petition for rehearing was denied by the Florida Supreme Court on January 14, 2022. A copy of the order denying rehearing appears at Appendix B.

An extension of time to file the petition for a writ of certiorari was granted by Justice Thomas dated March 10, 2022 extending the time for seeking certiorari to May 16, 2022.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution 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 defence."

Section One of the Fourteenth Amendment to the United States Constitution provides in relevant part, "No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

On June 28, 1990, William Sweet was arrested for one count of first-degree murder of Felicia Bryant, three counts of Attempted First Degree Murder of Marcene Cofer, Mattie Bryant and Sharon Bryant, and one count of armed burglary to a dwelling with an assault. A jury trial began on May 20, 1991. Mr. Sweet was convicted and sentenced to death.

The issues raised occurred before trial and penalty phase. Mr. Sweet sought to represent himself and was denied this right. Mr. Sweet raised this issue in a timely appeal to the Florida Supreme Court. *Sweet v. State*, 624 So. 2d 1138 (Fla. 1993). The court described the issue as being "that the trial court erred by failing to adequately inquire into whether Sweet wanted to represent himself." *Id.* at 1139.

The court's opinion recounted:

> Sweet was arrested on June 28, 1990. During a pretrial hearing, Sweet objected to his counsel's request for a continuance and stated that he wanted to go to trial immediately. The conversation proceeded as follows:
>
> THE DEFENDANT: I don't want to file for continuance. You told me on the 24th that this was going to be my trial. I want to make sure—I want to go to trial this week with Mr. Gazaleh. I'm not—he filed motions to continue. I'm not willing to. I want to go ahead and go to trial.
> THE COURT: You have the right to represent yourself. You don't have to have a lawyer. If you want to represent yourself and you say you're ready to try the case this week we could do it.
> THE DEFENDANT: Can't he go with me?
> THE COURT: He's not ready.
> THE DEFENDANT: If I get convicted—I don't have anybody if I get convicted? The law says you can't go to trial unless your lawyer is—
> THE COURT: You're talking about your life here, Mr. Sweet.
> THE DEFENDANT: I know that. I want to go to trial. I want to pick the jury.
> THE COURT: Well, your lawyer is not ready.
> THE DEFENDANT: Yes, sir. I want to pick the jury today and go to trial

sometime this week.
THE COURT: And face the electric chair?
THE DEFENDANT: Yes, sir.
THE COURT: The law is very clear. If he is not ready to go to trial I can't make him. If you want to fire him and represent yourself that's your privilege. But I think it's probably a short walk to the electric chair to do that and that you're going to have lawyers working against you.
THE DEFENDANT: If that's the case I want to go ahead and pick the jury today and go ahead and elect Mr. Gazaleh.
THE COURT: Then you can do that.
THE DEFENDANT: Let's pick the jury then, Your Honor.
THE COURT: You want Mr. Gazaleh or do you—
THE DEFENDANT: If he don't want to represent me today and go to trial then I'll take my chances and just go ahead and go to trial.
THE COURT: Why do you want to go to trial today as opposed to a few weeks from now?
THE DEFENDANT: I want to make sure—they've left me sitting down where I ain't got no business down here. They've got me sitting down here—
....
THE COURT: Do you have any witnesses subpoenaed to testify for you, Mr. Sweet?
THE DEFENDANT: I have no witnesses.
THE COURT: Do you know who the State is going to call as witnesses against you?
THE DEFENDANT: The State ain't got no witnesses. They haven't took no depositions who they going to put on. They haven't, who they going to put.
THE COURT: They don't have to take depositions.
THE DEFENDANT: I have got the right to meet my accused. Who are they going to put on the stand?
THE COURT: They have got a whole bunch of police officers and detectives.
THE DEFENDANT: Police officers ain't the ones that initiated and orchestrated this crime. They ain't got no key witnesses. They ain't got—
THE COURT: They don't have to have depositions to go to trial. Depositions are for the defense, not for the State.
THE DEFENDANT: Then go to trial.
THE COURT: Well, Mr. Sweet, I don't think you're capable of representing yourself because you don't understand anything that happens at a trial, do you? Have you been through a jury trial before?
....
THE DEFENDANT: I went all the way through trial but it was mistrial. The jury had deliberated. They didn't come up with a verdict.
THE COURT: Mr. Sweet, under the circumstances I'm afraid that if I

don't grant Mr. Gazaleh's motion for continuance and proceed to trial I'm going to waste everybody's time because the Supreme Court is going to send it right back here to be tried again and you're not going to get this thing disposed. It's going to take longer.

....

THE COURT: Hear me out. I listened to you, you listen to me. The Supreme Court automatically will review your case if you get the electric chair. When they do and I see what happened they're going to send it right back here about six months from now and say Judge Haddock, put a lawyer back on the case and try him again. The way you did it wasn't right. So what have we gained.

THE DEFENDANT: Same way—the State ain't ready to go to trial neither.

THE COURT: They can get ready.

THE DEFENDANT: Get ready. Let's go.

THE COURT: I'll note the defendant's objection and overrule it and grant Mr. Gazaleh's motion for continuance.

....

THE COURT: Go ahead and set your depositions and then maybe somebody—

THE DEFENDANT: Excuse me. Can you fire him and can we go to trial then? I cannot wait, set here for the first of the year.

THE COURT: I don't want to try your case twice, Mr. Sweet. I only want to try it once.

THE DEFENDANT: I'm ready to go to trial. If we talking about the first of the year that ain't that much time to get no case going. Go ahead and fire him and then we go to trial.

THE COURT: We'll set the case for January the 14th for jury trial.

Id. at 1139-41 (footnote omitted).

The court held:

It is clear from the above conversation that Sweet's overriding concern was proceeding to trial immediately. It is also clear Sweet mistakenly believed that if he was tried immediately the State would be unprepared and he would be acquitted. Sweet had a fundamental misunderstanding of the State's case against him and of the nature of the preparation of a defense. He obviously did not understand that the fact there were no depositions taken of State witnesses did not inure to his benefit, but to the benefit of the State. While the court's inquiry fell short of the requirements of *Faretta v. California*, 422 U.S. 806 [ ] (1975), and Florida Rule of Criminal Procedure 3.111(d), the court could not have reasonably permitted Sweet to represent himself and go to trial immediately when it was evident that he was unprepared to do so.

> Further, Sweet later voluntarily withdrew his pro se demand for speedy trial filed January 30, 1991, indicating his concern for an immediate trial had diminished. Sweet ultimately proceeded to trial in May of 1991 with a different attorney, and at his sentencing Sweet spontaneously pronounced his satisfaction with counsel's performance. Therefore, while it appears that Sweet unequivocally requested discharge of counsel, and the court failed to conduct an adequate inquiry into Sweet's ability to represent himself, under the circumstances of this case the failure was rendered moot by Sweet's subsequent acceptance of and satisfaction with new counsel and by the dissipation of his reason for wanting counsel removed. *See Scull v. State*, 533 So.2d 1137, 1139–41 (Fla.1988) (failure to adequately inquire into request to discharge attorney rendered moot by defendant's subsequent expressions of satisfaction with attorney's performance), *cert. denied*, 490 U.S. 1037 [ ] (1989).

Id. at 1141-42.

Mr. Sweet has filed a number of pleadings in state and federal court after the direct appeal. Following this Court's decision in *Ring v. Arizona*, 536 U.S. 584 (2002), Mr. Sweet, through counsel, filed a successive motion, as many other similarly situated condemned individuals did at this time. The trial court summarily denied the motion, and Mr. Sweet appealed. *Sweet v. State*, 900 So. 2d 555 (Fla. 2004).

Mr. Sweet filed a habeas petition in Federal Court. *Sweet v. Crosby*, 3:03-cv-844-J-20 (M.D. Fla.). That case was dismissed by the district court because the Court found the petition was untimely.

> The one-year limitation period in Petitioner's case began to run on April 24, 1996. *See Guenther v. Holt,* 173 F.3d 1328, 1331 (11th Cir.1999) ("For prisoners whose convictions became final prior to the effective date of the AEDPA, the one-year statute of limitations instituted by the AEDPA began to run on its effective date, i.e., April 24, 1996.") (citations omitted), *cert. denied,* 528 U.S. 1085, 120 S. Ct. 811, 145 L. Ed. 2d 683 (2000). Accordingly, Petitioner should have filed this action on or before April 24, 1997, unless any periods of time can be excluded from this one-year grace period because Petitioner was pursuing a properly filed application for state post-conviction relief.

On the date the AEDPA was enacted, Petitioner's first motion for post-conviction relief was pending in state court. *See* Ex. 39. Petitioner filed an amended motion for post-conviction relief on June 30, 1997. *Id.* The amended motion was denied on March 30, 2000. Ex. 40. Petitioner appealed, and on January 31, 2002, the Florida Supreme Court affirmed the trial court's order. Ex. 59. The mandate issued on March 4, 2002. Ex. 61.

On December 31, 2001, while the appeal of the order denying his motion for post-conviction relief was pending, Petitioner filed a petition for writ of habeas corpus in the Florida Supreme Court. Ex. 56. The Florida Supreme Court denied the petition on June 13, 2002. Ex. 60. Thus, the one-year grace period began to run on June 14, 2002, and expired on June 14, 2003, unless any other applications for state post-conviction relief further tolled the one-year grace period.

On May 8, 2003, Petitioner filed a second motion for post-conviction relief in state court. Ex. 62. Petitioner filed an amended motion for post-conviction relief on November 21, 2003. Ex. 63. On February 11, 2004, the trial court denied the amended motion, concluding that it was untimely and facially insufficient. Ex. 65. In the alternative, the court denied Petitioner's motion on the basis that the Florida Supreme Court had repeatedly rejected the claim raised by Petitioner (that Florida's capital sentencing scheme is violative of *Ring v. Arizona,* 536 U.S. 584, 122 S. Ct. 2428, 153 L. Ed. 2d 556 (2002)). *Id.* Petitioner appealed, and on December 20, 2004, the Florida Supreme Court affirmed the trial court's order, stating the following:

> William Earl Sweet appeals the circuit court's order summarily denying his successive motion to vacate judgment and sentence wherein he challenges the validity of his death sentence under *Ring v. Arizona,* 536 U.S. 584, 122 S. Ct. 2428, 153 L. Ed. 2d 556 (2002). The circuit court's order is hereby affirmed.

Ex. 69. The mandate issued on April 11, 2005.

Here, the trial court properly found that Petitioner's second motion for post-conviction relief was untimely. Rule 3.851(d)(1) of the Florida Rules of Criminal Procedure requires that a death-sentenced inmate file his motion for post-conviction relief within one year after his sentence becomes final. Rule 3.851(d)(2) of the Florida Rules of Criminal Procedure states that:

> No motion shall be filed or considered pursuant to this rule if filed beyond the time limitation provided in subdivision (d)(1) unless it

> alleges that
>
> > (A) the facts on which the claim is predicated were unknown to the movant or the movant's attorney and could not have been ascertained by the exercise of due diligence, or
> > (B) the fundamental constitutional right asserted was not established within the period provided for in subdivision (d)(1) and has been held to apply retroactively, or
> > (C) postconviction counsel, through neglect, failed to file the motion.
>
> Because *Ring* has not been held to apply retroactively to cases that are final on direct review, Petitioner could not claim that his second motion was timely filed pursuant to Fla. R.Crim. P. 3.851(d)(2)(B). Clearly, the other exceptions to the one-year limitation period under Fla. R.Crim. P. 3.851(d)(2)(A) and Fla. R.Crim. P. 3.851(d)(2)(C) were inapplicable in his case. Thus, the time in which the Petitioner's second motion for post-conviction relief and the appeal from the denial of his second motion for post-conviction relief were pending did not toll the federal one-year limitation period. *See Pace v. DiGuglielmo,* 544 U.S. 408, ---- - ----, 125 S. Ct. 1807, 1811-12, 161 L. Ed. 2d 669 (2005) (finding that when a post-conviction motion is untimely under state law, it is not "properly filed" and does not toll the federal one-year limitation period under the AEDPA). Accordingly, Petitioner's Petition, filed January 18, 2005, is untimely because the federal one-year limitation period expired on June 14, 2003.

Sweet v. Crosby, 3:03-CV-844-J-20, 2005 WL 1924699, at *1–2 (M.D. Fla. Aug. 8, 2005) (footnote omitted). The Eleventh Circuit Court of Appeals affirmed. *Sweet v. Sec'y, Dep't of Corr.,* 467 F.3d 1311 (11th Cir. 2006). This Court denied certiorari. *Sweet v. McDonough,* 550 U.S. 922 (2007).

Mr. Sweet raised the federal questions at issue here repeatedly; most recently exhausting the issues before this Court in a petition for writ of habeas corpus, filed in the Florida Supreme Court, under the court's original jurisdiction. *Sweet v. Dixon*, SC21-1074, 2021 WL 5550079, at *1 (Fla. Nov. 29, 2021), *reh'g denied*, SC21-1074, 2022 WL 130019 (Fla. Jan. 14, 2022). These issues rely on the Florida Supreme

Court's error during the direct appeal, as discussed above. *See Sweet v. State*, 624 So. 2d 1138 (Fla. 1993). In the petition he argued under Ground I:

> The Trial Court Violated *Faretta v. California* and Committed a Structural Error When It Inadequately Inquired Into Mr. Sweet's Request to Self-Representation at Trial.

The argument that followed pleaded that Mr. Sweet was deprived of his Sixth Amendment right to self-representation under *Faretta v. California,* 422 U.S. 806 (1975). Citing to this Court's landmark decision, Mr. Sweet quoted that the "Sixth Amendment . . . guarantees that a defendant in a state criminal trial has an independent constitutional right of self-representation and that he may proceed to defend himself without counsel when he voluntarily and intelligently elects to do so." As this Court clarified:

> When an accused manages his own defense, he relinquishes, as a purely factual matter, many of the traditional benefits associated with the right to counsel. For this reason, in order to represent himself, the accused must 'knowingly and intelligently' forgo those relinquished benefits. *Johnson v. Zerbst*, 304 U.S., at 464-465, 58 S. Ct., at 1023. *Cf. Von Moltk v. Gillies*, 332 U.S. 708, 723-724, 68 S. Ct. 316, 323, 92 L. Ed. 309 (plurality opinion of Black, J.). Although a defendant need not himself have the skill and experience of a lawyer in order competently and intelligently to 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. United States ex rel. McCann*, 317 U.S., at 279, 63 S. Ct., at 242.

Id. at 835. This error was structural because *Faretta* protects "the fundamental legal principle that a defendant must be allowed to make his own choices about the proper way to protect his own liberty." *Weaver v. Massachusetts*, 137 S. Ct. 1899, 1908 (2017). As Mr. Sweet pointed out in his petition, the Florida Supreme Court's original decision affirmed the denial of Mr. Sweet's right to self-representation based on

"Sweet's lack of legal knowledge" and "inability to mount a successful defense." *Id*. at 1140-41. Those factors were "not relevant to [Mr. Sweet's] assertion of his right to self-representation." *Godinez v. Moran*, 509 U.S. 389, 399-400 (1993). "A defendant need not be technically competent in the law to act in his or her own defense but must be competent to make the choice to proceed pro se." *Orazio v. Dugger*, 876 F.2d 1508, 1512 (11th Cir. 1989). "The right to defend is personal" and a defendant's choice in exercising that right "must be honored out of 'that respect for the individual which is the lifeblood of the law.'" *Faretta*, 422 U.S. at 834. The Florida Supreme Court's denial of relief was based on these illicit considerations and fundamentally wrong.

In Ground II, Mr. Sweet took issue with the Florida Supreme Court applying the functional equivalent of a harmless error analysis to deny Mr. Sweet the relief he was entitled. As he stated in the heading,

> Mr. Sweet's Later Acceptance of Trial Counsel Does Not Waive His Prior Request for Self-Representation Nor Does It Correct the Structural Error Caused by The Trial Court's Inadequate *Faretta* Inquiry.

Finally, as discussed in far greater detail below, Mr. Sweet pleaded in Ground III that, his petition was properly before the Florida Supreme Court with no insurmountable barriers to adjudication on the merits. He argued that under a well-developed body of Florida case law, the court had jurisdiction to remedy a manifest injustice because the constitutional issues that he raised were not precluded by stare decisis, the law of the case, collateral estoppel or res judicata.

The Florida Supreme Court stated in full:

> Petitioner, William Earl Sweet, a prisoner under a sentence of death, has filed a petition for writ of habeas corpus contending that this Court's decision in *Sweet v. State*, 624 So. 2d 1138 (Fla. 1993), incorrectly

> analyzed his self-representation claim and that he should be granted habeas relief based on this previously rejected claim. Having considered the petition, the response, and the reply, we deny the petition. *See Denson v. State*, 775 So. 2d 288, 289 (Fla. 2000) ("[A]n extraordinary writ petition cannot be used to litigate or relitigate issues that were or could have been raised on direct appeal or in prior postconviction proceedings.").

Sweet v. Dixon, SC21-1074, 2021 WL 5550079, at *1 (Fla. Nov. 29, 2021), *reh'g denied*, SC21-1074, 2022 WL 130019 (Fla. Jan. 14, 2022).

Mr. Sweet filed a motion for rehearing seeking to have his claims heard and raising the constitutional error that the court's terse dismissal created:

> Whether this Court ultimately agrees with Mr. Sweet on whether relief is required is a later question. The initial question is whether Mr. Sweet presented a "manifest injustice." This question may only be answered after this Court fully engages his arguments and the facts of his case. This Court's order shows no such analysis having taken place. This Court should grant rehearing to engage in the necessary analysis to determine whether Mr. Sweet suffered a manifest injustice that would allow this claim to be heard.
>
> This Court has at least evaluated claims that were decided previously that may have constituted a manifest injustice. Mr. Sweet respectfully submits that the failure to do so here would be even greater constitutional error because the denial of consideration of Mr. Sweet's manifest injustice would deny his rights under the United States Constitution's Fourteenth Amendment's Due Process Clause and the Equal Protection Clause (e.g., *Yick Wo v. Hopkins*, 118 U.S. 356 (1886); *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942)), and his right against arbitrary infliction of the punishment of death under the Eighth Amendment to the Constitution of the United States (e.g., *Godfrey v. Georgia*, 446 U.S. 420 (1980); *Espinosa v. Florida*, 505 U.S. 1079 (1992) (per curiam)).

Motion for rehearing page 7. The Florida Supreme Court denied the motion for rehearing on January 14, 2022. Mr. Sweet filed an application for an extension of the date that the petition would be due. The Honorable Justice Clarence Thomas granted the application and extended the date until May 16, 2022. Application (21A492).

REASONS FOR GRANTING THE PETITION

The United States Constitution guaranteed Mr. Sweet's right to represent himself. Mr. Sweet asserted that right, unequivocally. The law required that he do nothing more and imposed no further qualifications for him to exercise that right. This petition seeks the remedy that Mr. Sweet was denied. The disparate treatment Mr. Sweet received compared to other similarly situated individuals created additional and more severe constitutional violations that justify this Court granting certiorari.

GROUND ONE

MR. SWEET HAD A RIGHT TO SELF-REPRESENTATION THAT WAS WRONGFULLY DENIED BASED ON IMPROPER CONSIDERATION THUS CREATING A STRUCTURAL ERROR THAT MUST BE CORRECTED.

In *Faretta v. California,* 422 U.S. 806, 806 (1975), this Court declared that the "Sixth Amendment . . . guarantees that a defendant in a state criminal trial has an independent constitutional right of self-representation and that he may proceed to defend himself without counsel when he voluntarily and intelligently elects to do so." However, this Court clarified:

> When an accused manages his own defense, he relinquishes, as a purely factual matter, many of the traditional benefits associated with the right to counsel. For this reason, in order to represent himself, the accused must 'knowingly and intelligently' forgo those relinquished benefits. *Johnson v. Zerbst*, 304 U.S., at 464-465, 58 S. Ct., at 1023. *Cf. Von Moltk v. Gillies*, 332 U.S. 708, 723-724, 68 S. Ct. 316, 323, 92 L. Ed. 309 (plurality opinion of Black, J.). Although a defendant need not himself have the skill and experience of a lawyer in order competently and intelligently to 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. United States ex rel. McCann*, 317 U.S., at 279, 63 S. Ct., at 242.

Id. at 835.

The trial court denied Mr. Sweet's Sixth Amendment right to self-representation under *Faretta*. At a pretrial hearing on October 24, 1990, Mr. Sweet's case was set for trial on November 5, 1990. At this hearing, the trial court stated that jury selection would begin on that date. However, on November 5, 1990, unbeknownst to Mr. Sweet, his trial attorney requested a continuance. Mr. Sweet objected to his trial counsel's request for a continuance and stated that he wanted to go to trial immediately. The colloquy that followed was reproduced in the Florida Supreme Court's opinion. *Sweet v. State*, 624 So. 2d 1138, 1139-41 (Fla. 1993).

From the colloquy, it was obvious that Mr. Sweet *unequivocally* requested to discharge counsel and expressed his clear desire to go to trial, with or without the assistance of counsel. The trial court violated *Faretta* by not allowing Mr. Sweet to represent himself. The court's inquiry did not ask any questions or make any determination as to whether Mr. Sweet knowingly and intelligently waived his right to counsel so that he could represent himself. Whatever concerns the trial court might have had about Mr. Sweet representing himself were irrelevant. The trial court should have asked the appropriate questions to determine whether Mr. Sweet was validly waiving counsel. Any concerns, however, about whether Mr. Sweet was prepared or capable of representing himself were irrelevant to whether Mr. Sweet had the right to represent himself. It would be a rare case in which a pro se individual was either prepared or capable of self-representation in a capital death case. The

right to self-representation does not balance on these concerns.

Mr. Sweet raised this denial of self-representation on direct appeal following his guilty verdicts and death sentence. The Florida Supreme Court agreed that "the court's inquiry fell short of the requirements of *Faretta v. California,* 422 U.S. 806 (1975), and Florida Rule of Criminal Procedure 3.111(d)." *Sweet*, 624 So. 2d at 1141.[1] However, the court stated that the trial court "could not have reasonably permitted Sweet to represent himself and go to trial immediately when it was evident that he was unprepared to do so." *Id.* The court pointed to Mr. Sweet's misunderstanding of the State's case against him, the nature of preparation of a defense, and the fact that the lack of State depositions did not benefit Mr. Sweet's case. *Id.* Again, none of these concerns were sufficient to overcome Mr. Sweet's constitutional right to self-representation.

Once the Florida Supreme Court recognized the insufficient *Faretta* inquiry by

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[1] Florida Rule of Criminal Procedure 3.111(d)(2) and (3) states:

> (2) A defendant shall not be considered to have waived the assistance of counsel until the entire process of offering counsel has been completed and a thorough inquiry has been made into both the accused's comprehension of that offer and the accused's capacity to make a knowing and intelligent waiver. Before determining whether the waiver is knowing and intelligent, the court shall advise the defendant of the disadvantages and dangers of self-representation.
> (3) 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.

the trial court, the analysis should have ended; relief should have been granted. Indeed, the Florida Supreme Court has made this clear. *See State v. Young,* 626 So. 2d 655, 657 (Fla. 1993) ("We conclude that the United States Supreme Court decision in *Faretta* and our rule 3.111(d) require a reversal when there is not a proper *Faretta* inquiry."). The Florida Supreme Court's post hoc rationalization for the trial court's failure to follow *Faretta*, (that Mr. Sweet was evidently unprepared to represent himself at trial), does not absolve the trial court's structural error. Mr. Sweet was entitled to the same result as in *Young*. The Florida Supreme Court readily admitted that there was not a proper *Faretta* inquiry, *Sweet*, 624 So. 2d at 1141, yet Mr. Sweet received no relief.

In *Faretta*, this Court recognized a "right to self-representation" grounded in the Sixth Amendment right to counsel. *Faretta*, 422 U.S. at 818, 821. Thus, denial of this right has been deemed a structural error. "Structural error, to which harmless error analysis does not apply, occurs only with 'extreme deprivations of constitutional rights, such as denial of counsel, denial of self-representation at trial, and denial of a public trial.'" *Ross v. United States*, 289 F.3d 677, 681-82 (11th Cir. 2002) (quoting *United States v. Nealy*, 232 F.3d 825, 830 n.4 (11th Cir. 2000)); *see also McCoy v. Louisiana*, 138 S. Ct. 1500, 1511 (2018) ("An error might also count as structural when its effects are too hard to measure, as is true of the right to counsel of choice."). An error may be ranked structural if the right at issue protects "the fundamental legal principle that a defendant must be allowed to make his own choices about the proper way to protect his own liberty." *Weaver v. Massachusetts*, 137 S. Ct. 1899, 1908

(2017).

The Florida Supreme Court even specifically acknowledged Mr. Sweet's assertion of his Sixth Amendment secured right to self-representation under *Faretta* stating: "Therefore, while it appears that Sweet **unequivocally** requested discharge of counsel, and the court failed to conduct an adequate inquiry into Sweet's ability to represent himself, under the circumstances of this case the failure was rendered moot by Sweet's subsequent acceptance of and satisfaction with new counsel and by the dissipation of his reason for wanting counsel removed." *Id.* at 1141 (emphasis added; citations omitted). Nothing was rendered moot by the trial court's denial of Mr. Sweet's unequivocal request to represent himself. After being denied this right, any subsequent "dissipation" and "acceptance" of counsel, was irrelevant and an illicit consideration by the Florida Supreme Court.

The Florida Supreme Court also affirmed the decision of the trial court based upon Mr. "Sweet's lack of legal knowledge" and "inability to mount a successful defense." *Id.* at 1140-41. However, those factors "are not relevant to the assessment of the defendant's assertion of his right to self-representation." *Godinez v. Moran*, 509 U.S. 389, 399-400 (1993). "A defendant need not be technically competent in the law to act in his or her own defense but *must be competent to make the choice* to proceed pro se." *Orazio v. Dugger*, 876 F.2d 1508, 1512 (11th Cir. 1989)(emphasis in original). "The right to defend is personal" and a defendant's choice in exercising that right "must be honored out of 'that respect for the individual which is the lifeblood of the law.'" *Faretta*, 422 U.S. at 834.

Mr. Sweet attempted to correct this error in the Florida Supreme Court's reasoning in his first federal habeas corpus petition under 28 U.S.C. § 2254. On August 8, 2005, the district court dismissed the petition with prejudice. *Sweet v. Crosby*, 2005 WL 1924699 (M.D. 2006). The district court found that the habeas petition was time barred because postconviction counsel improperly relied on Mr. Sweet's first successive postconviction motion to toll the time for filing a federal habeas petition. Mr. Sweet appealed the district court's dismissal with prejudice. The Eleventh Circuit Court of Appeals held that the dismissal was proper. *Sweet v. Sec'y, Dep't of Corr.*, 467 F.3d 1311, 1322 (11th Cir. 2006); *cert denied Sweet v. McDonough*, 550 U.S. 922 (2007).

Mr. Sweet was effectively shut out of federal court without any adjudication on the merits of his claim because his then assigned postconviction counsel miscalculated the filing deadline. Without any opportunity for federal review of the violation of his Sixth Amendment secured autonomy right to self-representation under *Faretta*, Mr. Sweet was afforded no "guard against that extreme malfunction in the state criminal justice system." *Harrington v. Richter*, 562 U.S. 86, 102-03 (2011) (citing *Jackson v. Virginia*, 443 U.S. 307, 332, n.5 (1979)); *McKaskle v. Wiggins*, 465 U.S. 168, 176-77 (1984) ("The right to appear *pro se* exists to affirm the dignity and autonomy of the accused").

"Our duty to search for constitutional error with painstaking care is never more exacting than it is in a capital case" *Kyles v. Whitley*, 514 U.S. 419, 422 (1995). *See also Schiro v. Farley*, 510 U.S. 222, 229 (1994) (when "a legal issue appears to

warrant review, we grant certiorari in the expectation of being able to decide that issue"). The Florida Supreme Court's decision denied Mr. Sweet a remedy for the denial of his right to self-representation that occurred at the trial level. The initial constitutional error in this case requires no search by this Court because it is so apparent.

A. Mr. Sweet's later acceptance of trial counsel does not waive his prior request for self-representation, nor does it correct the structural error caused by the trial court's inadequate *Faretta* inquiry.

After finding the *Faretta* colloquy inadequate, the Florida Supreme Court stated:

> Further, Sweet later voluntarily withdrew his pro se demand for speedy trial filed January 30, 1991, indicating his concern for an immediate trial had diminished. Sweet ultimately proceeded to trial in May of 1991 with a different attorney, and at his sentencing Sweet spontaneously pronounced his satisfaction with counsel's performance. Therefore, while it appears that Sweet unequivocally requested discharge of counsel, and the court failed to conduct an adequate inquiry into Sweet's ability to represent himself, under the circumstances of this case the failure was rendered moot by Sweet's subsequent acceptance of and satisfaction with new counsel and by the dissipation of his reason for wanting counsel removed. *See Scull v. State,* 533 So. 2d 1137, 1139–41 (Fla. 1988) (failure to adequately inquire into request to discharge attorney rendered moot by defendant's subsequent expressions of satisfaction with attorney's performance), *cert. denied,* 490 U.S. 1037, 109 S. Ct. 1937, 104 L. Ed. 2d 408 (1989).

Sweet, 624 So. 2d at 1141.

Mr. Sweet's later acceptance of trial counsel did not overcome the structural error of the trial court denying Mr. Sweet's right for self-representation. The Florida Supreme Court essentially applied a harmless error analysis to the facts of Mr. Sweet's case. This was clearly erroneous. If a deprivation of the right to represent

oneself is found, the doctrine of harmless error does not apply. "Unlike other constitutional rights, the right to represent oneself is not 'result-oriented.'" *Chapman v. United States,* 553 F.2d 886, 891 (5th Cir. 1977); *see also Orazio v. Dugger*, 876 F.2d 1508, 1512 (11th Cir. 1989). The harmless error analysis cannot be applied to a structural error because it is impossible to tell how deeply the error has impacted the proceedings. The very nature of a structural error is that it "pervades the entire trial." *Kaley v. United States*, 571 U.S. 320, 336 (2014), and "undermine[s] the fairness of a criminal proceeding as a whole." *United States v. Davila*, 569 U.S. 597, 611 (2013). In the face of a structural error, "a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence, and no criminal punishment may be regarded as fundamentally fair." *Arizona v. Fulminate*, 499 U.S. 279, 310 (1991); *see also Sullivan v. Louisiana*, 508 U.S. 275, 279 (1993) (stating that structural error "will always invalidate the conviction").

This Court clearly explained this issue in *United States v. Gonzalez-Lopez*:

> The Government acknowledges that the deprivation of choice of counsel pervades the entire trial, but points out that counsel's ineffectiveness may also do so and yet we do not allow reversal of a conviction for that reason without a showing of prejudice. But the requirement of showing prejudice in ineffectiveness claims stems from the very definition of the right at issue; it is not a matter of showing that the violation was harmless, but of showing that a violation of the right to effective representation *occurred*. A choice-of-counsel violation occurs *whenever* the defendant's choice is wrongfully denied. Moreover, if and when counsel's ineffectiveness "pervades" a trial, it does so (to the extent we can detect it) through identifiable mistakes. We can assess how those mistakes affected the outcome. To determine the effect of wrongful denial of choice of counsel, however, we would not be looking for mistakes committed by the actual counsel, but for differences in the defense that would have been made by the rejected counsel—in matters ranging from questions asked on *voir dire* and cross-examination to

> such intangibles as argument style and relationship with the prosecutors. We would have to speculate upon what matters the rejected counsel would have handled differently—or indeed, would have handled the same but with the benefit of a more jury-pleasing courtroom style or a longstanding relationship of trust with the prosecutors. And then we would have to speculate upon what effect those different choices or different intangibles might have had. The difficulties of conducting the two assessments of prejudice are not remotely comparable.

United States v. Gonzalez-Lopez, 548 U.S. 140, 150-51 (2006).

The fact that Mr. Sweet, approximately nine months after the trial court outright denied him his right to self-representation, stated that the trial counsel who was forced upon him did an adequate job, in no way renders his demand for self-representation harmless. *See Ross v. United States*, 289 F.3d 677, 681 (11th Cir. 2002) (quoting *U.S. v. Nealy*, 232 F.3d 825, 830 n.4 (11th Cir. 2000)) ("Structural error, to which harmless error analysis does not apply, occurs only with 'extreme deprivations of constitutional rights, such as denial of counsel, denial of self representation at trial, and denial of a public trial.'"). The right to self-representation is either respected or it is not; any additional analysis is irrelevant.

There was only **one** statement made by Mr. Sweet regarding his appointed attorney after the trial had concluded: "Yes, sir, I feel I was represented properly according to the material that the defense had to go on." This sole statement made during his sentencing hearing can hardly do much to overcome Mr. Sweet's prior request to represent himself. Further, after trial, Mr. Sweet filed numerous post-conviction motions alleging ineffective assistance of counsel during both the guilt and penalty phases against the very same trial attorney he was forced to accept by the court.

Furthermore, the Florida Supreme Court's analysis of Mr. Sweet's *Faretta* claim as moot due to his later acceptance of counsel merely *presumed* that Mr. Sweet has waived his prior request for self-representation. This is also inappropriate. "While a trial judge may presume that an abuse of the right to assistance of counsel can be interpreted as a request by a defendant to exercise the right of self-representation, a defendant may not be presumed to have waived the separate right to assistance of counsel absent a *Faretta* inquiry." *Young*, 626 So. 2d at 657. For a waiver of constitutional right to be valid there must be an "intentional relinquishment or abandonment of a known right" by the defendant and not simply a presumption of waiver by the court. *Fairey v. Tucker*, 567 U.S. 924 (2012) (citing *United States v. Olano*, 507 U.S. 725, 733 (1993)). "Presuming waiver from a silent record is impermissible. The record must show, or there must be an allegation and evidence which show, that an accused was offered counsel but intelligently and understandingly rejected the offer. Anything less is not waiver." *Carnley v. Cochran*, 369 U.S. 506, 516 (1962).

In this case, Mr. Sweet was never granted the right to represent himself and therefore had no right to waive. *See Brown v. Wainwright*, 665 F.2d 607, 612 (5th Cir. 1982) (This opinion should not "be read to indicate that a defendant, to avoid waiver, must continually renew his request to represent himself even after it is conclusively denied by the trial court. After a clear denial of the request, a defendant need not make fruitless motions or forego cooperation with defense counsel in order to preserve the issue on appeal."). Nor did the trial court conduct a proper inquiry into whether

Mr. Sweet was intentionally and knowingly abandoning his right to represent himself. The Florida Supreme Court's assessment of his acceptance of trial counsel nine months later was irrelevant to the analysis here. Once the trial court denied Sweet the right to represent himself, Mr. Sweet could not recapture his right of self-representation. This fundamental right is either granted or denied; it is either respected by the court or not. There is no middle ground. The denial of this fundamental right occurred at the moment of the trial court's inadequate inquiry and later actions cannot deem it moot.

GROUND TWO

THE FLORIDA SUPREME COURT'S REFUSAL TO ENGAGE MR. SWEET'S MANIFEST INJUSTICE ARGUMENT WAS ITS OWN SUBSTANTIVE VIOLATION OF MR. SWEET'S RIGHTS UNDER THE CONSTITUTION.

The Florida Supreme Court, when confronted with its error on direct appeal in Mr. Sweet's latest State habeas petition, refused to engage Mr. Sweet's manifest injustice argument under well-settled Florida law. This denied Mr. Sweet his rights to equal protection and due process under the Fourteenth Amendment to the United States Constitution. Because this denial was so egregious, this Court should grant certiorari to remedy this injustice.

A. The petition was properly before the Florida Supreme Court with no insurmountable barriers to adjudication on the merits.

The grounds for habeas relief presented above should have been decided on the merits in Mr. Sweet's last state habeas petition. Mr. Sweet established that all

conceivable obstacles that the State may have presented did not overcome the Florida Supreme Court's jurisdiction and duty to remedy the manifest injustice in Mr. Sweet's case. Deciding Mr. Sweet's case contrary to *Faretta* was contrary to the principle that "selective application of [ ] rules violates the principle of treating similarly situated defendants the same." *See Griffith v. Kentucky,* 479 U.S. 314, 323 (1987). This disparate treatment is strikingly obvious when compared with the outcome in *State v. Young,* 626 So. 2d 655 (Fla. 1993). The *Faretta* and equal protection violations in Mr. Sweet's case are obvious when to compared to *Young*. The Florida Supreme Court denied Mr. Sweet the remedy that Young received, despite the existence of an inadequate *Faretta* inquiry in both cases. There was no conceivable difference at all. The same is true regarding the Florida Supreme Court's unwillingness to apply its own doctrines to reach Mr. Sweet's issue despite the Court regularly reaching such issues when confronted with a manifest injustice such as Mr. Sweet suffered. Mr. Sweet was in the same position as many other Florida petitioners, especially Young, but the Florida Supreme Court simply decided to not apply well-established law to him. This cannot stand.

Mr. Sweet has no court to turn to besides this Court to remedy a denial of rights that has plagued him since his trial. This Court should provide a remedy for this manifest injustice.

1. Manifest injustice.

Mr. Sweet's assertion of a manifest injustice was twofold. The first is that because of a terseness in the opinion affirming his denial of his successive

postconviction motion based on *Ring*, Mr. Sweet was denied his right to seek federal habeas relief because of the wording of the lower court's order. Mr. Sweet would have been granted relief based on the *Faretta* claim in federal court, but he was found to have filed his petition untimely. Mr. Sweet filed a successive motion based on *Ring* as in *Bottoson v. Moore*, 833 So. 2d 693 (Fla. 2002), *abrogated by Hurst v. Florida*, 577 U.S. 92 (2016) and *King v. Moore*, 831 So. 2d 143 (Fla. 2002). In both of those cases, the Florida Supreme Court denied *Ring* relief because *Ring* had not been held to apply to Florida by this Court, not because of timeliness. Regardless of how the Florida Supreme Court ruled, Mr. Sweet had a right to raise a claim based on the significant development in the Florida courts and to exhaust a *Ring* claim for federal review. His case was unnecessarily found to be untimely by the lower court. The Florida Supreme Court's brief rote affirmance of the lower court with little exposition, bound Mr. Sweet to the gratuitous ruling below.

Before Mr. Sweet could obtain the remedy he was entitled to for the Florida courts' denial of his rights under *Faretta*, this Court issued *Pace v. DiGuglielmo*, 544 U.S. 408 (2005) holding that a state petition rejected by the state courts as untimely failed to toll the time for filing a federal habeas petition. The federal district court dismissed Mr. Sweet's federal habeas petition based on the timeliness of that petition. *Sweet v. Crosby*, 3:03-CV-844-J-20, 2005 WL 1924699, at *2 (M.D. Fla. Aug. 8, 2005). The Eleventh Circuit affirmed. *Sweet v. Sec'y, Dep't of Corr.,* 467 F.3d 1311 (11th Cir. 2006). When Mr. Sweet filed his *Ring* successor, this Court had not issued *Pace*. Mr. Sweet's counsel had no way of telling that a mere technicality in the lower court's

order would result in a full denial of any remedy in federal court. There could not have been a greater manifest injustice than for Mr. Sweet to be denied relief because of a gratuitous timeliness finding that was not established in either *Bottoson* or *King*. Those cases were decided on the merits as Mr. Sweet's claim should have been. This Court must correct this manifest injustice.

The second, as pleaded above, was that the Florida Supreme Court denied relief when relief should have been granted. The court's earlier decision, as explained above, was outright wrong. There can be no greater manifest injustice than Mr. Sweet's continued incarceration and death sentence that was obtained contrary to the rights Americans hold sacrosanct. This was an optimal case for the Florida Supreme Court to exercise the jurisdiction it has long acknowledged the court possessed.

> We think it should be made clear however, that an appellate court should reconsider a point of law decided on a former appeal only as a matter of grace, and not as a matter of right; and that an exception to the general rule binding the parties to the "law of the case" at the retrial and at all subsequent proceedings should not be made except in unusual circumstances and for the most cogent reasons—and always, of course, only where "manifest injustice" will result from a strict and rigid adherence to the rule.

Strazzulla v. Hendrick, 177 So. 2d 1, 4 (Fla. 1965); *W. Virginia Oil & Gas Co. v. George E. Breece Lumber Co.*, 213 F.2d 702, 704 (5th Cir. 1954) ("two principles of judicial administration founded on sound public policy, namely, that litigation must finally and definitely terminate within a reasonable time and that justice must be done unto the parties"). Here justice was never done because the Florida Supreme Court refused to engage in the analysis that was possible under Florida law.

The Florida Supreme Court has "exclusive jurisdiction to review all types of collateral proceedings in death penalty cases . . ." *Farina v. State*, 191 So. 3d 454, 454-55 (Fla. 2016). This is such a case; the Florida Supreme Court just chose to not engage Mr. Sweet's manifest injustice arguments.

2. The law of the case, collateral estoppel, and res judicata did not prevent relief in this case.

The Florida Supreme Court has repeatedly allowed procedural bars to fall by the wayside when a manifest injustice was at issue. The Florida Supreme Court explained in *State v. Owen*, 696 So. 2d 715 (Fla. 1997):

> Generally, under the doctrine of the law of the case, "all questions of law which have been decided by the highest appellate court become the law of the case which must be followed in subsequent proceedings, both in the lower and appellate courts." *Brunner Enters., Inc. v. Department of Revenue,* 452 So. 2d 550, 552 (Fla. 1984). However, the doctrine is not an absolute mandate, but rather a self-imposed restraint that courts abide by to promote finality and efficiency in the judicial process and prevent relitigation of the same issue in a case. *See Strazzulla v. Hendrick,* 177 So. 2d 1, 3 (Fla. 1965) (explaining underlying policy). This Court has the power to reconsider and correct erroneous rulings in exceptional circumstances and where reliance on the previous decision would result in manifest injustice, notwithstanding that such rulings have become the law of the case. *Preston v. State,* 444 So. 2d 939 (Fla. 1984).
>
> An intervening decision by a higher court is one of the exceptional situations that this Court will consider when entertaining a request to modify the law of the case. *Brunner,* 452 So. 2d at 552*; Strazzulla,* 177 So. 2d at 4.

Id. at 720. While Mr. Sweet cited to no intervening decision, he argued that the Florida Supreme Court should be no less duty bound to overcome the law of the case when the manifest injustice is so apparent, and the remedy sought by Mr. Sweet is so well-established by *Faretta*. Relying on the previous decision in Mr. Sweet's case

was a manifest injustice that cannot stand.

The Florida Supreme Court has also found that a manifest injustice can overcome collateral estoppel and res judicata. In *State v. McBride*, 848 So. 2d 287 (Fla. 2003) the Florida Supreme Court acknowledged the clear principle,

> "that res judicata will not be invoked where it would defeat the ends of justice. *See deCancino v. E. Airlines, Inc.*, 283 So. 2d 97, 98 (Fla. 1973); *Universal Constr. Co. v. City of Fort Lauderdale*, 68 So. 2d 366, 369 (Fla. 1953). The law of the case doctrine also contains such an exception. *See Strazzulla v. Hendrick*, 177 So. 2d 1, 4 (Fla. 1965).

Id. at 291. The court found that there was no similar precedent on collateral estoppel so the court held "that collateral estoppel will not be invoked to bar relief where its application would result in a manifest injustice." *Id*. at 292. As with the law of the case, the manifest injustice in this case would overcome any obstacle based on other legal theories that would deny Mr. Sweet relief; except that the Florida Supreme Court refused to do so.

B. Certiorari should be granted because the Florida Supreme Court's recent decision violated equal protection and due process.

This Court should grant certiorari because the Florida Supreme Court's refusal to engage Mr. Sweet's manifest injustice arguments and grant relief violated equal protection and due process. This Court has stated:

> The Equal Protection Clause of the Fourteenth Amendment commands that no State shall "deny to any person within its jurisdiction the equal protection of the laws," which is essentially a direction that all persons similarly situated should be treated alike. *Plyler v. Doe,* 457 U.S. 202, 216, 102 S. Ct. 2382, 2394, 72 L. Ed. 2d 786 (1982)."

City of Cleburne, Tex. v. Cleburne Living Ctr., 473 U.S. 432, 439 (1985). And also:

> Our cases have recognized successful equal protection claims brought by a "class of one," where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment. See *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441, 43 S. Ct. 190, 67 L. Ed. 340 (1923); *Allegheny Pittsburgh Coal Co. v. Commission of Webster Cty.*, 488 U.S. 336, 109 S. Ct. 633, 102 L. Ed. 2d 688 (1989). In so doing, we have explained that " '[t]he purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents.' " *Sioux City Bridge Co.*, supra, at 445, 43 S. Ct. 190 (quoting *Sunday Lake Iron Co. v. Township of Wakefield*, 247 U.S. 350, 352, 38 S. Ct. 495, 62 L. Ed. 1154 (1918)).

Vill. of Willowbrook v. Olech, 528 U.S. 562, 564 (2000).

To find a violation of Mr. Sweet's rights, this Court need look no further than the aforementioned Florida Supreme Court case, *State v. Young,* 626 So. 2d 655 (Fla. 1993). In *Young*, after Young refused to accept services of his third appointed counsel to represent him at his first-degree murder trial, the trial judge, comprehensibly irritated, denied a request for appointment of new counsel and a last-minute continuance. *Id.* at 656. When the prosecution recommended conducting a *Faretta* inquiry, the trial judge refused, and Young was required to represent himself with only "stand-by" counsel to advise him. *Id.* Young was convicted of murder in the Palm Beach County Circuit Court; the Florida Fourth District Court of Appeal reversed, and the State petitioned for review. *Id.* The district court certified the following as a question of great public importance: "Whether a *Faretta*-type inquiry is really required where the defendant deliberately uses his right to counsel to frustrate and delay the trial." *Id.*

The State contended that the trial judge need not have expressly determined

that Young made a knowing and intelligent waiver of his right to the assistance of counsel because these factors could be inferred from his abuse of the right to counsel. *Id.* at 657. The Florida Supreme Court accepted for purposes of its decision the State's position that, "Young's actions [were] a deliberate abuse of the right to the assistance of counsel." *Id.*

The Florida Supreme Court recognized the relevant law of this Court as placed into practice in the Florida Rules of Criminal Procedure stating:

> The United States Supreme Court has determined that a defendant in a state criminal trial has the constitutional right of self-representation and may forego the right of assistance of counsel. *Faretta*, 422 U.S. at 836, 95 S. Ct. at 2541. In so holding, the United States Supreme Court clearly stated that it is incumbent on the trial judge to examine the defendant to determine whether the waiver of this important right is made knowingly and intelligently before allowing the defendant to proceed without the assistance of counsel.
>
> To implement the United States Supreme Court decision in *Faretta*, we adopted Rule of Criminal Procedure 3.111(d), which states, in pertinent part:
>
> > (2) A defendant shall not be deemed to have waived the assistance of counsel until the entire process of offering counsel has been completed and a thorough inquiry has been made into both the accused's comprehension of that offer and the accused's capacity to make an intelligent and understanding waiver.
> >
> > (3) No waiver shall be accepted if it appears that the defendant is unable to make an intelligent and understanding choice because of a mental condition, age, education, experience, the nature or complexity of the case, or other factors.

Id. at 656. The Florida Supreme Court then proceeded to present a litany of cases in which the court recognized that a full *Faretta* inquiry is necessary under the United States Constitution and Florida law. As the court explained:

> In *Jones v. State*, 449 So. 2d 253 (Fla.), cert. denied, 469 U.S. 893, [ ] (1984), this Court affirmed the convictions of a criminal defendant who had represented himself at trial. In that case, we described the defendant as "obstreperous" and given to "contumacious behavior." *Id.* at 257-58. We determined that the defendant "burdened and delayed the court by his vacillation in not unequivocally choosing between court-appointed counsel, proceeding pro se, or obtaining his own counsel of choice." *Id.* at 258. While we found that the defendant's actions amounted to a waiver of his right to appointed counsel, we noted that the trial judge did conduct an appropriate *Faretta*-type inquiry. In that decision, we emphasized that a defendant who, without good cause, refused appointed counsel is presumed to be exercising the right to self-representation and that the "trial court should forthwith proceed to a Faretta inquiry." *Id.* at 258 (emphasis added).
>
> Similarly, in *Hardwick v. State*, 521 So. 2d 1071 (Fla. [1988]), *cert. denied,* 488 U.S. 871, 109 [ ] (1988), we recognized that
>
> > when one such as appellant attempts to dismiss his court-appointed counsel, it is presumed that he is exercising his right to self-representation. However, it nevertheless is incumbent upon the court to determine whether the accused is knowingly and intelligently waiving his right to court-appointed counsel, and the court commits reversible error if it fails to do so. This particularly is true where, as here, the accused indicates that his actual desire is to obtain different court-appointed counsel....
>
> *Id.* at 1074 (citations omitted) (first emphasis added). Because the trial judge in Hardwick had conducted an appropriate inquiry, we found no error. Finally, in *Amos v. State*, 618 So. 2d 157 (Fla. 1993), we explained that a *Faretta* inquiry is necessary even when the defendant is very familiar with the criminal justice system. *See also Taylor v. State*, 610 So. 2d 576 (Fla. 1st DCA 1993) (surveying similar Florida cases); *Burton v. State*, 596 So. 2d 1184 (Fla. 1st DCA 1992).

Id. at 656-57 (parentheticals in the original).

The Florida Supreme Court clearly recognized, in *Young* and the other cases cited therein, that even when a defendant's actions to deliberately use his right to counsel to frustrate and delay the trial suggest a competent defendant, it is incumbent upon the court conduct a proper *Faretta* inquiry. *Id.* Furthermore, piecing

together various colloquies between a defendant and trial court judge about self-representation and the right to counsel does not satisfy the requirement of a proper *Faretta* inquiry. *Id.* The Florida Supreme Court affirmed, approving the decision of the district court and holding that the lack of a "discernable" *Faretta* inquiry in Young's case amounted to reversible error. *Id*.

By the time Mr. Sweet's case was decided, the Florida Supreme Court was well aware of the need for a *Faretta* inquiry, from both the actual command of this Court's decision in *Faretta* and the Florida Rules of Criminal Procedure. The Florida Supreme Court had applied that law repeatedly as seen in *Young,* which was decided in close proximity to Mr. Sweet's case,[2] and the cases cited therein. The only difference between Mr. Sweet's case and those cases was that unlike in *Young*, Mr. Sweet did not seek to represent himself or unburden himself of counsel because he wanted to delay or thwart the State's prosecution of him. Mr. Sweet simply wanted to go to trial quickly and represent himself. He had the right to do so. There was no constitutionally justifiable reason to treat him differently than Young. Mr. Sweet had the same right to a full *Faretta* inquiry, yet the Florida Supreme Court treated him materially different for no meaningful reason at all. The Equal Protection Clause required that he be treated the same.

The decision below also implicates the Eighth Amendment's concern against

[2] *Sweet v. State*, 624 So. 2d 1138 (Fla. 1993) was decided August 5, 1993 and rehearing denied October 14, 1993. *State v. Young*, 626 So. 2d 655 (Fla. 1993) was decided October. 28, 1993.

capriciousness in capital cases "[w]hen the law lays an unequal hand on those who have committed intrinsically the same quality of offense and . . . [subjects] one and not the other" to a uniquely harsh form of punishment. *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 541 (1942); *see also Yick Wo v. Hopkins*, 118 U.S. 356 (1886). Here, Mr. Sweet was denied equal protection of the law and due process when the Florida Supreme Court treated his case differently than the court treated other individuals who presented *Faretta* claims which required relief under this Court's precedent. Compounding these denials of well-established constitutional law, the Florida Supreme Court failed to engage in the court's own well-established analysis to determine whether the previous constitutional violation by the court should be corrected.

This injustice was "invidiously discriminatory." *Schware v. Board of Bar Examiners*, 353 U.S. 232, 239 (1957). *See also Humphrey v. Cady*, 405 U.S. 504, 512 (1972); *Goss v. Lopez*, 419 U.S. 565, 576 (1975); *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 442 (1982) (opinion of Justice Blackmun, with whom Justices Brennan, Marshall, and O'Connor join). This question warrants this Court's review.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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