No. 21-7913

In The
Supreme Court of the United States

WILLIAM EARL SWEET,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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

BRIEF IN OPPOSITION TO CERTIORARI

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CAPITAL CASE
QUESTIONS PRESENTED

Sweet was sentenced to death in 1991. In 1993, the Florida Supreme Court rejected the same Sixth Amendment right-to-self-representation argument that he raises now. This Court found his self-representation argument uncertworthy in 1994.

In 2021, Sweet asked the Florida Supreme Court to reconsider its nearly thirty-year-old rejection of his self-representation claim. The Florida Supreme Court below declined his invitation by citing a well-established, state-law bar to re-litigation of issues decided on direct appeal. Now, Sweet asks this Court to reconsider its nearly thirty-year-old denial of certiorari. But (unlike thirty years ago) this Court lacks jurisdiction to do so because the Florida Supreme Court's refusal to let Sweet relitigate his self-representation claims thirty years after the fact is an unchallenged, independent and adequate state law bar precluding review.

The elapse of nearly thirty years has not made Sweet's claims more certworthy. His equal protection claim is also patently meritless. This Court should decline certiorari jurisdiction over the following questions presented:

I. Did the Florida Supreme Court incorrectly reject Sweet's self-representation claim in 1993 when (in context) Sweet invoked the right contingent upon going to trial immediately and later (after counsel conflicted off his case) asked when he would get a new attorney and to exercise his Sixth Amendment right to be co-counsel?

II. Did the Florida Supreme Court Violate Due Process or Equal Protection by citing a state-law procedural bar against relitigation when it has never permitted a litigant to overcome that bar based simply on the fact that his self-representation claim was incorrectly decided before?

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The Florida Supreme Court's decision petitioned for review appears as *Sweet v. Dixon*, No. SC21-1074, 2021 WL 5550079, at *1 (Fla. Nov. 29, 2021), *reh'g denied*, No. SC21-1074, 2022 WL 130019 (Fla. Jan. 14, 2022).

JURISDICTION

This Court has jurisdiction over the question of whether the Florida Supreme Court violated due process and equal protection in deciding Sweet's case below. *See* 28 U.S.C. § 1257(a); 28 U.S.C. § 2101(d). However, as explained below, this Court lacks jurisdiction over Sweet's first question presented because the Florida Supreme Court clearly and unequivocally rejected that claim on state law grounds.

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution:

> 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.

The Fourteenth Amendment to the United States Constitution, section one:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State 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

Sweet murdered thirteen-year-old Felicia Bryant and shot three other surviving victims in 1990 in an attempt to cover up a robbery. *Sweet v. State*, 624 So. 2d 1138, 1139 (Fla. 1993). For that, he was convicted and sentenced to death in a judgment that has remained undisturbed for over thirty years. *See Sweet*, 2021 WL 5550079, at *1. This certiorari petition arises from his latest[1] failed attack on finality: a declined request for the Florida Supreme Court to revisit its nearly thirty-year-old decision rejecting Sweet's Sixth Amendment self-representation claim. *Id.*

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[1] Over the past thirty years, Sweet has unsuccessfully sought postconviction relief an inordinate number of times. *See Sweet v. State*, 810 So. 2d 854, 858 (Fla. 2002) (affirming denial of Sweet's initial postconviction motion); *Sweet v. State*, 293 So. 3d 448, 449 (Fla. 2020) (affirming summary denial of Sweet's "eighth successive" postconviction "motion"). He appeared in the Florida Supreme Court approximately nine times before the case below. *Sweet v.* 624 So. 2d at 1139 (direct appeal); *Sweet*, 810 So. 2d at 858 (affirming denial of initial postconviction motion); *Sweet v. Moore*, 822 So. 2d 1269, 1270 (Fla. 2002) (denying Sweet's first original habeas petition filed in this Court); *Sweet v. State*, 880 So. 2d 578 (Fla. 2004) (remanding for the trial court to make specific findings before replacing Capital Collateral Regional North with registry counsel); *Sweet v. State*, 900 So. 2d 555 (Fla. 2004) (affirming the denial of a successive motion for postconviction relief); *Sweet v. State*, 934 So. 2d 450 (Fla. 2006) (affirming the denial of a successive motion for postconviction relief); *Sweet v. State*, 234 So. 3d 646 (Fla. 2018) (denying *Hurst v. State*, 202 So. 3d 40 (Fla. 2016), relief); *Sweet v. State*, 248 So. 3d 1060, 1061 (Fla. 2018) (affirming denial of Sweet's "sixth successive motion for postconviction relief"); *Sweet*, 293 So. 3d at 449 (affirming denial of Sweet's "eighth successive" postconviction "motion"). Sweet's federal habeas proceedings were dismissed as untimely and that dismissal was affirmed. *Sweet v. Sec'y, Dept. of Corr.*, 467 F.3d 1311, 1312 (11th Cir. 2006). His successive habeas petition was dismissed and his subsequent attempts to gain authorization to file a successive petition were unsuccessful.

FARETTA CLAIM FACTS

The facts undergirding Sweet's 1993 *Faretta*[2] claim are central to his present Petition. On November 5, 1990, the state trial court held a status conference in Sweet's case. (SC60-78629 Vol. 8 at 1–11.) Defense counsel Gazaleh requested a continuance over Sweet's objection. (SC60-78629 Vol. 8 at 3.) The following exchange took place between Sweet and the court:

> 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?

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

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 a 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.

Sweet, 624 So. 2d at 1140–41.

On November 28, 1990 (23 days later), defense counsel moved to withdraw due to a conflict of interest. (SC60-78629 Vol. 9 at 4.) The following exchange took place between Sweet and the court:

THE COURT: It appears that is a conflict. Mr. Sweet, do you have a disagreement with it?

THE DEFENDANT: No, sir. *When do you think I'll get another attorney*?

THE COURT: We'll get you another one today if I can. I wish I could think of a way to say it's not a conflict if you have be [sic] representing the other guy --.

[DEFENSE COUNSEL GAZALEH]: He has a pending case right now.

THE COURT: I'll grant Mr. Gazaleh's motion to withdraw, and I'm going to appoint Mr. Charles Adams to represent Mr. Sweet. I'm going to phone him today, Mr. Sweet, to see if I can get him to see you right away. I will set the case for, let's see, this is when I'll set it for Friday November, the 30th for you to have a pretrial where Mr. Adams can be

with you.

THE DEFENDANT: Yes, sir. I would like to make an oral motion to dismiss if the State will not carry me to trial. *I would like to exercise my sixth amendment right to be co-counsel with Mr. Adams.*

THE COURT: Let me get Mr. Adams and set the case for November 30th for pretrial and appearance of counsel.

(SC60-78629 Vol. 9 at 4–5) (emphases added).

In January 1991, Sweet filed a pro se demand for speedy trial. *Sweet*, 624 So. 2d at 1141. Less than a month later, Sweet voluntarily withdrew that demand. (SC60-78629 Vol. 9 at 6–7.) After his conviction, Sweet spontaneously stated that he "was represented properly according to the material that the defense had to go on." (SC60-78629 Vol. 28 at 130.)

1993 Direct Appeal Analysis

On August 5, 1993, the Florida Supreme Court issued its opinion affirming Sweet's judgment and sentence. The opinion expressly rejected his self-representation claims based on the following analysis:

> 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, 95 S.Ct. 2525, 45 L.Ed.2d 562 (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).

Sweet, 624 So. 2d at 1141–42 (footnote omitted). This Court denied Sweet's certiorari petition—which exclusively raised his right to self-representation claim—a year later. *Sweet v. Florida*, 510 U.S. 1170 (1994).

Successive State Habeas Petition Below

In 2021, Sweet filed a successive habeas petition in the Florida Supreme Court alleging that the court's 1993 decision incorrectly denied him relief on his Sixth Amendment self-representation argument under *Faretta v. California*, 422 U.S. 806 (1975).[3] His petition raised no claim dealing with either equal protection or due process. Neither did his reply.

Decision Below

The Florida Supreme Court issued a brief, unanimous opinion refusing to

[3] The pleadings in Sweet's case below are available at http://onlinedocketssc.flcourts.org/DocketResults/LTCases?CaseNumber=1074&CaseYear=2021.

revisit its nearly 30-year-old decision rejecting Sweet's self-representation claim. *Sweet*, 2021 WL 5550079, at *1. The Courts opinion read:

> 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.").

Id.

Rehearing Phase

Sweet moved for rehearing. He argued the Florida Supreme Court's "brief order failed to consider whether Mr. Sweet met the standard for showing a manifest injustice." In his view, the Florida Supreme Court should have granted "rehearing to engage in the necessary analysis to determine whether Mr. Sweet suffered a manifest injustice that would allow this claim to be heard."

Finally, Sweet argued:

> 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 an 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)).

The Florida Supreme Court denied rehearing. Sweet timely filed this Petition after successfully seeking an extension. This is the State's Brief in Opposition.

REASONS FOR DENYING THE WRIT

Sweet seeks certiorari review of the Florida Supreme Court's decision rejecting his claims as barred under State law based on two questions presented: (1) whether the Florida Supreme Court incorrectly rejected his self-representation claim in 1993 and (2) whether the Florida Supreme Court denied him equal protection and due process while rejecting his claim below by failing to either explain why he did not show a manifest injustice, or failing to let him relitigate his claim, or both (Sweet's arguments are unclear).

The State will deal with each question presented in turn, but neither warrant this Court's review. This Court denied certiorari review of the first question presented in 1994 and the past twenty-eight years have made it no more certworthy than it was then. The second question presented is an outgrowth of the first, meritless under well settled law, and should be denied as such.

I.

This Court, in 2022, Should not Review the Florida Supreme Court's 1993 Decision Denying Sweet's Self-Representation Claim that this Court Refused to Review in 1994.

For his first question presented, Sweet asks this Court to do what it refused to do twenty-eight years ago: grant certiorari review on the Florida Supreme Court's 1993 decision rejecting Sweet's self-representation claim. This Court declined to review this exact issue (the sole issue presented in Sweet's certiorari petition) in 1994.

This Court should (again) decline review of this question presented, but this time for four reasons. First, this Court lacks jurisdiction over this question because the Florida Supreme Court refused to revisit its 1993 decision below on state law grounds. Second, this case is a poor vehicle to expand or clarify *Faretta*'s contours. Third, Sweet's request to represent himself (in context) was not unequivocal. Fourth, Sweet abandoned his right to self-representation by asking for counsel and asking to "exercise" his "Sixth Amendment right to be co-counsel."

A. This Court Lacks Jurisdiction Over this Question Presented.

At least one thing has changed since Sweet last asked this Court to review his self-representation claim. Nearly thirty years ago, the Florida Supreme Court disposed of the issue on the merits. But last year, the Florida Supreme Court held that Sweet could not relitigate his claim based on a state-law procedural bar. This change deprives this Court of jurisdiction.

Independent and adequate state law grounds precluding relief deprive this Court of jurisdiction over the underlying issue. *Foster v. Chatman*, 578 U.S. 488, 497, (2016). If it is clear from the state court's opinion that the decision rests on state law grounds, this Court has no jurisdiction to directly review a state court judgment. *See Michigan v. Long*, 463 U.S. 1032, 1042 (1983). However, a state court's decision to address the merits of a federal claim while mentioning a state law bar may provide this Court with jurisdiction, at least where the merits are not a clear alternative holding. *Harris v. Reed*, 489 U.S. 255, 266 (1989). This Court has specifically held that Florida's bar against relitigation is an independent and adequate state law bar

precluding this Court's jurisdiction. *Durley v. Mayo*, 351 U.S. 277, 281, 283–285 (1956) (dismissing for lack of jurisdiction where the Florida Supreme Court's decision below "might have rested"[4] on res judicata).

Recently, this Court held it had jurisdiction over a claim where the "doctrine of res judicata" had at least been mentioned as a reason to deny the claim. *Foster*, 578 U.S. at 497. There, the relevant state court noted Georgia's argument that the claim had already been litigated. *Id.* But the state court went on to review the "*Batson* claim as to whether [Foster] has shown any change in the facts sufficient to overcome the res judicata bar." *Id.* The state court engaged in "four pages" of analysis of the *Batson* claim, including the original trial record and new evidence. *Id.* The state court ultimately concluded the claim was without merit. This Court held that since the state court engaged with the claim in this manner, any res judicata bar was not "independent of the merits of his federal constitutional challenge." *Id.* As a result, this Court had jurisdiction. *Id.*

The Florida Supreme Court below did exactly what the state court in *Foster* did not. It relied solely on a well-established, state-law procedural bar to relitigating direct-appeal issues and engaged with the issue no farther. *Sweet v. Dixon*, No. SC21-1074, 2021 WL 5550079, at *1 (Fla. Nov. 29, 2021). Judge Martin on the Eleventh

[4] The State recognizes that this Court's jurisdictional test has changed since *Durley*. *See Long*, 463 U.S. at 1042. But that makes no difference here since this Court need not guess whether the Florida Supreme Court relied on a relitigation bar, the court below explicitly did so.

Circuit has used a similar bar (that the claim should have been raised on direct appeal) to deny a certificate of appealability on the denial of a procedurally defaulted *Faretta* claim in federal habeas. *Crayton v. Sec'y, Dept. of Corr.*, No. 17-15290-C, 2019 WL 2374452, at *6 (11th Cir. May 15, 2019). Since the Florida Supreme Court's decision rests exclusively and explicitly on Florida's bar to relitigation of direct-appeal issues, this Court lacks jurisdiction over this question presented. *Durley*, 351 U.S. at 285.

B. This Case is a Poor Vehicle to Answer this Question.

Even if this Court were inclined to clarify *Faretta* jurisprudence in some way, this case is a poor vehicle to do so because this is a postconviction, rather than direct appeal, case. As a result, this Court would need to grapple with the appropriate constitutional standard for relief when a defendant, in a successive habeas petition, relitigates a nearly thirty-year-old claim decided against him on direct appeal. And under the correct standard, Sweet would not obtain relief.

The fact that a denial of self-representation is structural error on direct appeal does not mean it should automatically serve to vacate a judgment and sentence thirty years later. This Court's own recent jurisprudence confirms that errors that are structural on direct appeal do not necessarily require this Court to presume prejudice in postconviction proceedings. *See Weaver v. Massachusetts*, 137 S.Ct. 1899, 1907–14 (2017) (holding failure to preserve structural error does not require a presumption of prejudice in an ineffective assistance of counsel claim). The rationale for this rule is that not all structural errors "will in fact lead to a fundamentally unfair trial." *Id.* at

1911. This Court also emphasized that the "systemic costs of remedying" structural error on direct appeal "are diminished." *Id.* at 1912. "That is because, if a new trial is ordered on direct review, there may be a reasonable chance that not too much time will have elapsed for witness memories still to be accurate and physical evidence not to be lost." *Id.*

On the other hand, with structural-error claims raised in postconviction proceedings, "the costs and uncertainties of a new trial are greater because more time will have elapsed in most cases. The finality interest is more at risk." *Id.* Additionally, "direct review often has given at least one opportunity for an appellate review of trial proceedings." *Id.* "These differences justify a different standard for evaluating a structural error depending on whether it is raised on direct review or raised instead in a claim alleging ineffective assistance of counsel." *Id.*

These same differences justify requiring a defendant to point to more than a structural error when he seeks to relitigate a self-representation claim. The *Faretta* issue Sweet asks this Court to review was decided against him on direct appeal, and this Court denied certiorari of the exact same issue twenty-eight years ago. Granting Sweet relief now would require this Court to unsettle a judgment and sentence that have been final for nearly thirty years.

But perhaps even more importantly, even if Sweet was incorrectly denied his right to self-representation (the State disputes he was), that denial does not go to the fundamental fairness of Sweet's trial. Far from it. "It is undeniable that in most criminal prosecutions defendants could better defend with counsel's guidance than

by their own unskilled efforts." *Faretta v. California*, 422 U.S. 806, 834 (1975); *see also id.* at 852 (Blackmun, J., dissenting with Rehnquist, J.) ("If there is any truth to the old proverb that 'one who is his own lawyer has a fool for a client,' the Court by its opinion today now bestows a constitutional right on one to make a fool of himself."); *United States v. Farhad*, 190 F.3d 1097, 1107 (9th Cir. 1999) (Reinhardt, J., concurring) (the right to self-representation "frequently, though not always, conflicts squarely and inherently with the right to a fair trial"); *United States v. Moya-Gomez*, 860 F.2d 706, 741 (7th Cir. 1988) (rejecting a formerly pro se defendant's argument that he did not have a fair trial because "he was incompetent to defend himself"). As Juge Martin on the Eleventh Circuit recently noted, the "passage of time has done nothing to allay these fears." *Moody v. Commr., Alabama Dept. of Corr.*, 682 F. Appx. 802, 812 (11th Cir. 2017) (Martin, J., concurring). Indeed, "experience has taught us that a pro se defense is usually a bad defense, particularly when compared to a defense provided by an experienced criminal defense attorney." *Martinez v. Court of Appeal of Cal., Fourth Appellate Dist.*, 528 U.S. 152, 161 (2000). These concerns are even more acute, and the repercussions more severe, in capital cases like Sweet's. *See Moody*, 682 F. Appx. at 813–14 (Martin, J., concurring) (explaining the unusually extreme disadvantage a pro se capital defendant is in while representing himself).

In determining the appropriate standard for postconviction review, this Court has placed great emphasis on whether the direct-appeal structural error went to the fundamental fairness of the trial or was structural for some other reason. *Weaver*, 137 S.Ct. at 1908. In *Weaver*, this Court specifically stated that the right to self-

representation is structural error based on the underlying right it vindicates, not fundamental fairness. *Id.* It is beyond reasonable dispute that Sweet's capital trial and sentencing hearing were inestimably more fair than they would have been had he represented himself pro se with the full force of the State marshaled against him. *See Gideon v. Wainwright*, 372 U.S. 335, 345 (1963) (explaining the dangers of pro se representation). Since this Court would need to grapple with the correct standard for evaluating a relitigated structural error claim almost thirty years later (an argument the State raised below) even if it found Sweet's *Faretta* claim would have had merit on direct appeal, this case is a poor one to clarify or expand on *Faretta*'s contours.

Additionally, under the correct, *Weaver*-like analysis, Sweet would have to show prejudice (that he would have received a lesser sentence or been acquitted had he represented himself pro se) before he could obtain relief on his self-representation claim this late in the game. *Cf. Weaver*, 137 S.Ct. at 1908–14; *United States v. Rozier*, 685 F. Appx. 847, 851 (11th Cir. 2017) (explaining manifest injustice prejudice means "that there is a reasonable probability of a different result in the outcome of" the case.) He cannot do so, leaving this case unworthy of this Court's review.

C. Sweet's Self-Representation Request was Not Unequivocal in Context.

Trial courts are only required to hold a *Faretta* inquiry when the defendant unequivocally requests to represent himself. *Gill v. Mecusker*, 633 F.3d 1272, 1293 (11th Cir. 2011). Determining whether a request is unequivocal requires this Court to view the request "in context with the prior and subsequent proceedings." *Gibbs v.*

State, 623 So. 2d 551, 553 (Fla. 4th DCA 1993); *see also United States v. Seugasala*, 702 F. Appx. 572, 574 (9th Cir. 2017) (holding a defendant's "comments to the effect that he would rather represent himself—made at the end of a lengthy hearing about his request for substitute counsel—were equivocal when viewed in context"); *Gill*, 633 F.3d at 1295 (The "record supports the district court's conclusion that Gill's statements at the subsequent hearings regarding the motion were qualified and conditioned in such a way as to render his request equivocal.").

Courts have routinely recognized that a defendant's requests to proceed pro se based on his desire to go to trial more quickly may be expressions of frustration rather than unequivocal requests for self-representation. *See, e.g.*, *Woods v. Sinclair*, 764 F.3d 1109, 1122 (9th Cir. 2014) (affirming, on federal habeas review, a Washington Supreme Court's decision that a defendant's request to proceed pro se was equivocal because it was based on his frustration at a continuance requested by counsel); *Bowden v. State*, 588 So. 2d 225, 229 (Fla. 1991) (finding written self-representation request equivocal where the defendant demanded a speedy trial and stated he wanted to represent himself if his lawyer did not wish to go forward quickly); *Peede v. State*, 474 So. 2d 808, 815–16 (Fla. 1985) (holding a defendant's request was not unequivocal where it was based on a disagreement with counsel on whether to request a continuance).

Viewed in context, Sweet's self-representation request was equivocal. Sweet's request arose based on his frustration with his counsel requesting a continuance. *See Sweet*, 624 So. 2d at 1140. When the trial court told Sweet he could represent himself,

Sweet responded, "Can't [counsel] go with me?" and objected that the law required him to have a lawyer at trial. *Id.* When the state court mentioned his self-representation right, Sweet stated he wanted to pick a jury that day "and elect" defense counsel too. *Id.* The trial court clarified that he wanted defense counsel and Sweet stated he would take his chances and go to trial even if counsel was not prepared. *Id.* Finally, at the end, Sweet requested to fire defense counsel *so he could go to trial immediately. Id.* As the Florida Supreme Court noted on direct appeal, "Sweet's overriding concern was proceeding to trial immediately." *Id.* His request for self-representation was clearly contingent on the trial court permitting him to go to trial that day, something the court was not required to do even if it granted his self-representation request. In short, Sweet never requested to represent himself unless the trial court would let him go to trial that day. Sweet later confirmed this—after his counsel conflicted off his case—by requesting new counsel and asking to be co-counsel (not represent himself). (SC60-78629 Vol. 9 at 4–5.)

Viewed in context, Sweet's requests were equivocal and vacillating. These requests did not trigger the requirement for the court to conduct a *Faretta* colloquy. Therefore, even if this Court was inclined to engage in simple error correction, there was no error to correct nearly thirty years ago. There is still no error to correct today.

D. Sweet Abandoned his Self-Representation Request.

"Although *Faretta* recognized the importance of the right to self-representation, 'courts have assumed that the right to self-representation and the right to representation by counsel, while independent, are essentially inverse aspects

of the Sixth Amendment and thus that assertion of one constitutes a de facto waiver of the other.'" *Koon v. Rushton*, 364 F. Appx. 22, 27 (4th Cir. 2010) (quoting *United States v. Singleton*, 107 F.3d 1091, 1096 (4th Cir.1997).) "Of the two rights, however, the right to counsel is preeminent and hence, the default position." *United States v. Singleton*, 107 F.3d 1091, 1096 (4th Cir. 1997); *Tuitt v. Fair*, 822 F.2d 166, 174 (1st Cir. 1987) ("Where the two rights are in collision, the nature of the two rights makes it reasonable to favor the right to counsel which, if denied, leaves the average defendant helpless.") "Courts indulge in every reasonable presumption against waiver" of the right to counsel. *Brewer v. Williams*, 430 U.S. 387, 404 (1977).

As a result, even after unequivocally invoking his right to counsel, a self-representation "right may be waived through defendant's subsequent conduct indicating he is vacillating on the issue or has abandoned his request altogether." *Brown v. Wainwright*, 665 F.2d 607, 611 (5th Cir. 1982) (en banc); *Koon*, 364 F. Appx. at 28 (collecting cases); *United States v. Bennett*, 539 F.2d 45, 51 (10th Cir. 1976) (affirming a denial of self-representation where the defendant vacillated on the request before trial). Indeed, "unlike other constitutional rights, the right to be one's own counsel can easily be overlooked or waived if a defendant does not properly invoke the right or inadvertently waives it through some procedural misstep." *Dorman v. Wainwright*, 798 F.2d 1358, 1365 (11th Cir. 1986).

This Court has recognized this same concept in the related sphere of standby counsel. *McKaskle v. Wiggins*, 465 U.S. 168, 182–83 (1984) ("A defendant can waive his *Faretta* rights."); *see United States v. Long*, 597 F.3d 720, 724 (5th Cir. 2010)

(citing *McKaskle* for the premise that "the defendant may waive his right to self-representation through subsequent conduct indicating an abandonment of the request.). Indeed, a "defendant's invitation to counsel to participate in the trial obliterates any claim that the participation in question deprived the defendant of control over his own defense." *Id.* at 182. "Even when he insists that he is not waiving his *Faretta* rights, a *pro se* defendant's solicitation of or acquiescence in certain types of participation by counsel substantially undermines later protestations that counsel interfered unacceptably." *Id.* "Once a *pro se* defendant invites or agrees to any substantial participation by counsel, subsequent appearances by counsel must be presumed to be with the defendant's acquiescence, at least until the defendant expressly and unambiguously renews his request that standby counsel be silenced." *Id.* at 183.

Sweet abandoned his self-representation request at a conflict hearing on November 28, 1990 (23 days after his contextually equivocal invocation). The state trial court held the hearing because Sweet's attorney had a conflict. (SC60-78629 Vol. 9 at 4.) After Sweet agreed there was a conflict, he immediately asked: "*When do you think I'll get another attorney?*" (SC60-78629 Vol. 9 at 4) (emphasis added.) And after the court appointed counsel, Sweet then stated: "I would like to *exercise my sixth amendment right to be co-counsel.*" (SC60-78629 Vol. 9 at 5) (emphasis added). He later withdrew his demand for speedy trial and expressed satisfaction with this counsel. (SC60-78629 Vol. 9 at 6–7, Vol. 28 at 130.)

By affirmatively requesting new counsel and asking to be co-counsel, Sweet

confirmed two things. First, that his initial invocation of his self-representation right really was just an expression of frustration instead of a truly unequivocal demand to proceed pro se. Second, that he actually wanted to be represented by counsel while being co-counsel. This statement mirrors his earlier statement that he wanted to proceed to trial and "elect" counsel as well. *Sweet*, 624 So. 2d at 1140. Since Sweet abandoned his request to proceed pro se, his *Faretta* claim was meritless nearly thirty years ago when this Court denied certiorari. It is still meritless and uncertworthy today.

II.

This Court Should not Review the Florida Supreme Court's 2021 Refusal to Let Sweet Relitigate his 1993 Self-Representation Claim Because that Decision Violates Neither Due Process or Equal Protection.

For his second question presented, Sweet argues that the Florida Supreme Court's 2021 refusal to let him relitigate his claim or analyze his manifest injustice argument was a substantive violation of due process and equal protection. Sweet does not offer this Court any unresolved pressing federal question that needs to be decided. Rather, he seems to be challenging the manner and method of the Florida Supreme Court's decision to reject his nearly thirty-year-old claim in state court. Consequently, Sweet fails to offer any persuasive, much less compelling, reason for this Court to exercise its certiorari jurisdiction.

Sweet's arguments in this section—and their relationship to the question he presents—are extremely unclear. He first (seemingly) argues that the Florida

Supreme Court's refusal to issue a written opinion analyzing his manifest injustice relitigation exception argument was a denial of due process and equal protection. To the extent Sweet is arguing that due process or equal protection require a court to explain all its reasons for rejecting a claim, he is just wrong. *E.g.*, *Johnson v. Williams*, 568 U.S. 289, 298–300 (2013) ("[F]ederal courts have no authority to impose mandatory opinion-writing standards on state courts"); *Coleman v. Thompson*, 501 U.S. 722, 739 (1991) ("[W]e have no power to tell state courts how they must write their opinions"); *Soadjede v. Ashcroft*, 324 F.3d 830, 832 (5th Cir. 2003) (summary affirmance procedures do not violate due process); *Denko v. I.N.S.*, 351 F.3d 717, 730 (6th Cir. 2003) (same and citing more cases). This Court has specifically recognized that busy state courts do not make a habit of discussing every claim that comes before them, particularly when the court finds the claim patently meritless. *Johnson*, 568 U.S. at 298–300. The Florida Supreme Court was well within its right to determine that analyzing the details of Sweet's meritless manifest injustice arguments was not worth the time.

All of this comes as no surprise to this Court, which routinely declines to review issues in a single sentence. *E.g.*, *Sweet v. Florida*, 510 U.S. 1170 (1994) ("Petition for writ of certiorari to the Supreme Court of Florida denied."). This Court has also summarily affirmed in a single sentence. *E.g.*, *Luetkemeyer v. Kaufmann*, 419 U.S. 888 (1974) ("The judgment is affirmed."). And (last one) this Court has denied original habeas petitions—like the one filed in the Florida Supreme Court below—in a single sentence, too. *In re McNeil*, No. 21-7649, 2022 WL 1528539, at *1 (U.S. May 16, 2022)

("The petition for a writ of habeas corpus is denied.").[5] The Florida Supreme Court did not deny either due process or equal protection by failing to analyze every nuance of Sweet's claim before determining he was barred from relitigating it any more than this Court did when it denied McNeil's habeas petition in ten words.

To the extent Sweet is arguing the Florida Supreme Court did not consider his manifest injustice arguments, he is also just wrong. The fact that the Florida Court did not explain all its reasons for rejecting Sweet's arguments does not mean the court did not carefully consider them, it just means the court found those arguments unworthy of discussion. *See Durley v. Mayo*, 351 U.S. 277, 281 (1956) (dismissing for lack of jurisdiction based on the assumption the Florida Supreme Court decided the case on state law grounds when it failed to issue an opinion); *Johnson*, 568 U.S. at 298–301 (explaining four different reasons why state courts may not address a claim, including that "a state court may simply regard a claim as too insubstantial to merit discussion"). This Court strongly presumes state courts fully adjudicate the claims brought before it. *Johnson*, 568 U.S. at 301. Sweet has failed to even acknowledge—must less rebut—the presumption that the Florida Supreme Court carefully considered his arguments, found them meritless, and therefore simply relied on the general rule barring relitigation.

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[5] Like the Florida Supreme Court, this Court has also recognized a manifest injustice exception. *Pepper v. United States*, 562 U.S. 476, 506–07 (2011). Under Sweet's view, this Court is apparently required by due process and equal protection to thoroughly explain why that exception is inapplicable in every relitigated case that comes before it.

Sweet next appears to argue that (as a matter of state law) the Florida Supreme Court could and should have analyzed his (again state law) manifest injustice argument. He seems to raise several sub-arguments to support this overriding argument, including: (1) the 1993 decision violated equal protection because the Florida Supreme Court came to a different conclusion in *State v. Young*, 626 So. 2d 655 (Fla. 1993); (2) the fact that the Florida Supreme Court has means to overcome procedural bars and refused to utilize them in Sweet's case violates equal protection; (3) there was manifest injustice here because Sweet missed his federal habeas deadline based on the lower court's "unneccessar[y] finding" that his successive state postconviction claims were untimely; (4) he was entitled to relief in 1993.

What factors are to be considered in a state-law manifest injustice calculus permitting a defendant to overcome a state-law bar are matters for the Florida Supreme Court rather than this Court. *Durley v. Mayo*, 351 U.S. 277, 284–85 (1956) (rejecting the argument that the Florida Supreme Court was required to read an "ends of justice" exception into a statutory bar on relitigation). Elsewhere in *Durley*, this Court held that the fact the Florida Supreme Court had established a "good cause" exception to relitigation, coupled with the failure to explain its decision, required this Court to assume the Florida Supreme Court applied state law in determining good cause had not been met. *Id.*

> The issue before us on res judicata is whether, under Florida law, petitioner was or was not free to raise in the Supreme Court of Florida in 1955 the questions he attempted to raise there. We conclude that the

> Supreme Court of Florida might have rested its denial of the 1955 petition on the grounds that the several federal issues presented to it in 1955 had been previously raised within the meaning of s 79.10 and, therefore, could not be raised again under the state practice, or at least could have been raised in the prior proceedings and, accordingly, under the [Florida Supreme Court's good-cause] decisions they likewise were not available as a matter of state law.

Id. at 284. There is no reason to depart from *Durley*, particularly since the Florida Supreme Court below explicitly rested its decision on a relitigation bar.

Notably, Sweet does not argue that due process or equal protection always requires a court to lift a relitigation bar to a *Faretta* claim; he simply complains that the Florida Supreme Court misconstrued state law by refusing to let him relitigate his claim because they should have afforded more weight to his *Faretta*, due process, and equal protection arguments. But the Florida Supreme Court made clear that these arguments were irrelevant and quite simply and explicitly held that he was barred from relitigating this claim regardless of its underlying merit under state law. With the exception of Sweet's apparent argument that the Florida Supreme Court's exceptions to relitigation are discriminatorily applied, that ends the matter. *Durley*, 351 U.S. at 284. This Court lacks jurisdiction to second-guess a state court on matters of state law when it is clear the state court's opinion rests solely on state law. *Id. See also Michigan v. Long*, 463 U.S. 1032, 1042 (1983).

Nonetheless, the State will briefly tackle Sweet's meritless, conclusory sub-arguments (other than the *Faretta*-merits arguments addressed in the preceding section) in turn. Sweet's equal protection claims are based on a "class of one" theory. (Petition at 41.) To prevail on a "class of one" equal protection claim, Sweet must show

he has "been *intentionally* treated differently from others *similarly situated* and that there is *no rational basis for the difference in treatment.*" *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) (emphasis added). The "similarly situated" requirement "must be rigorously applied in the context of 'class of one' claims." *E.g., Leib v. Hillsborough Co. Pub. Transp. Commn.*, 558 F.3d 1301, 1307 (11th Cir. 2009).

Both of Sweet's equal protection sub-claims fail on all three prongs. Regarding his first one (that he was denied equal protection back in 1993) Sweet has never even alleged that the Supreme Court *intentionally* singled him out for disparate treatment. Courts make distinctions between cases all the time. Some right. Some wrong. But the mere fact a court has granted relief on a similar claim while denying relief on another does not mean the distinctions drawn between two cases automatically show intentional discrimination.

Moreover, while Sweet points to *State v. Young*, 626 So. 2d 655 (Fla. 1993) as a similarly situated defendant, there is little similarity at all. First, and most obviously, Young was forced to go to trial pro se without a *Faretta* colloquy. *Young*, 626 So. 2d at 657. Sweet, on the other hand, had counsel (the source of his complaint). Second, since he was pro se, Young never expressed satisfaction with counsel. By contrast, in 1993, the Florida Supreme Court relied on its prior holding that expressing satisfaction moots the failure to hold a *Faretta* colloquy. *Sweet v. State*, 624 So. 2d 1138, 1141 (Fla. 1993) (holding Sweet's subsequent acceptance of and satisfaction with new counsel and the dissipation of his reason for wanting counsel removed mooted the failure to hold a colloquy and citing *Scull v. State*, 533 So.2d

1137, 1139–41 (Fla.1988) for this premise.) Whether this analysis is right or wrong for Sixth Amendment purposes, it shows that Sweet is in no way similarly situated with Young. It follows that these differences are a mere rational basis (all that is required to defeat a "class of one" equal protection claim) for granting Young relief where Sweet received none.

Additionally, this argument falls well outside the question Sweet has presented for this Court's review. Sweet's question presented asks this Court to determine whether the Florida Supreme Court denied him equal protection in 2021, not 1993. Sup. Ct. R. 14.1.(a) ("Only the questions set out in the petition, or fairly included therein, will be considered by [this] Court."). This belated argument should not factor into this Court's certiorari decision at all. Sweet has also raised it thirty years too late, since it could have been decided on direct appeal and certiorari sought from there. *Cf. Greene v. Fisher*, 565 U.S. 34, 41 (2011) (explaining the defendant had the ability to petition for certiorari in a prior case before refusing to grant relief).

Regarding Sweet's second equal protection claim (that the Florida Supreme Court's failure to let him relitigate his claim violated equal protection because it has let other defendants overcome the relitigation bar), it fails for similar reasons. Sweet has provided no evidence that the Florida Supreme Court intentionally treated him differently than other individuals seeking to relitigate their claims. He would certainly be hard pressed to do so since the Florida Supreme Court has used this procedural bar to dispense with countless claims over the past sixty-six years. *E.g.*, *Green v. Dixon*, No. SC22-399, 2022 WL 1548559, at *1 (Fla. May 17, 2022); *Quince*

v. State, 477 So. 2d 535, 536 (Fla. 1985); *Durley*, 351 U.S. at 283–285.

There is also no allegation that any of the defendants who have been allowed to relitigate their claims were similarly situated with Sweet. The Florida Supreme Court has, in exceptionally narrow circumstances, permitted litigants to overcome the bar on relitigating direct appeal issues. These circumstances include when: (1) a biased judge overrode a life sentence and imposed a capital one; and (2) intervening caselaw from this Court compelled reconsideration. *Porter v. State*, 723 So. 2d 191, 197 (Fla. 1998); *State v. Owen*, 696 So. 2d 715, 720 (Fla. 1997). But there is no case the State is aware of—and Sweet has certainly not pointed to any—where the Florida Supreme Court has permitted a defendant to relitigate a *Faretta* claim on the ground that it was incorrectly decided on direct appeal. Therefore, Sweet is not similarly situated with any of the defendants who have been allowed to relitigate their claims.

For the same reason, there is a rational basis to distinguish between those defendants and Sweet. This Court's equal protection jurisprudence is abundantly clear that narrow exceptions to a general system do not violate equal protection if there is a rational basis for the exception. *Nordlinger v. Hahn*, 505 U.S. 1, 15 (1992); *see also Regan v. Tax'n With Representation of Washington*, 461 U.S. 540, 550 (1983) (tax exemption for veterans groups did not violate equal protection even though exemption denied to other nonprofit lobbying groups). Sweet's equal protection arguments do not warrant this Court's review.

Likewise, it is difficult to see how Sweet's failure to obtain federal habeas review under the Antiterrorism and Effective Death Penalty Act's exacting standards

should factor into a manifest injustice analysis. The Florida Supreme Court decided his claim on direct appeal and this Court had the opportunity to grant certiorari of the issue then. No further review was required, and it is unlikely Sweet would have succeeded under the AEDPA's rigid requirements for the merits-based reasons addressed in the preceding section. More fundamentally, this Court should not countenance Sweet's apparent premise that miscalculating the federal habeas deadline means state courts are constitutionally required to give him a second shot at review of already-rejected claims. The AEDPA was designed to bring timely finality to litigation. Sweet's escape-hatch reasoning does not comport with it at all.

Finally, Sweet argues that the decision below "implicates the Eighth Amendment's concern against capriciousness in capital cases." But there is no need to dwell long on this conclusory argument because it falls squarely outside of the questions Sweet presented. Sup. Ct. R. 14.1.(a) ("Only the questions set out in the petition, or fairly included therein, will be considered by [this] Court.") It suffices to say that Sweet having counsel for his capital trial and penalty phase greatly increased (not diminished) the reliability of the capital sentence and first-degree murder conviction imposed in this case. *Moody v. Commr., Alabama Dept. of Corr.*, 682 F. Appx. 802, 811–14 (11th Cir. 2017) (Martin, J., concurring) (recognizing a pro se "capital defendant is not likely able to give the jury the information it needs to make a fair and reliable decision about not only his guilt, but his punishment.").

For all these reasons, this Court should decline to review the Florida Supreme Court's refusal to let Sweet relitigate his 1993 *Faretta* claim in 2021.

CONCLUSION

This Court lacks jurisdiction over this petition over the first question presented and the second does not warrant this Court's review. This Court should therefore take the same action it took twenty-eight years ago when Sweet asked this Court to review his self-representation claim: deny the petition. Therefore, the Respondent respectfully submits that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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