No. 22-7829

IN THE SUPREME COURT OF THE UNITED STATES

JAMES JOSEPH PLATTE JR. #285651
Petitioner,

V

SARAH SCHROEDER [WARDEN]
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

JAMES JOSEPH PLATTE JR. #285651
Baraga Correctional] Facility
13929 Wadaga Rd.
Baraga Michigan 49908

QUESTIONS PRESENTED

DID THE TRIAL COURT'S SUBSTITUTION OF HYBRID REPRESENTATION OVER SELF-REPRESENTATION VIOLATE PETITIONERS CONSTITUTION RIGHTS?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

TABLE OF CONTENTS

A. **INDEX TO APPENDIX A:** The U.S. Court of Appeals Order denied Petition for Rehearing dated April 3, 2023;

B. The U.S. Court of Appeals Order denied Petitioner's Writ of Habeas Corpus, dated March 10, 2023;

C. The U.S. Court of Appeals Order setting forth a Briefing Schedule on the claims certified by the U.S. District Court, dated August 3, 2022;

D. Petition for Rehearing. March 17, 2023.

E. The U.S. District Court Opinion denied Petitioner's Application for a Writ of Habeas Corpus, granting a certificate of Appealability and granting leave to appeal in forma pauperis, dated March 30, 2022;

F. The Michigan Supreme Court Order denied Motion for Reconsideration dated October 30, 2018;

G. The Michigan Supreme Court Order denied Petitioner's Application for leave to appeal dated July 27, 2018;

H. The Michigan Court of Appeals Order denied Petitioner's Application for leave to appeal dated September 17, 2017;

I. The OTSEGO Trial Court Order denied Petitioner's Motion for Reconsideration, dated October 11, 2016;

J. The OTSEGO Trial Court Order denied Petitioner's Motion for Relief from Judgement dated September 15, 2016;

K. The U.S. Supreme Court Order denied Petitioner's Writ of Certiorari dated October 5, 2015;

L. The Michigan Supreme Court Order denied Application for Leave to Appeal dated February 3, 2015;

M. The Michigan Court of Appeals Order denied Petitioner's Application for leave to appeal dated May 15, 2014;

N. The OTSEGO Trial Court Order denied Petitioner's Motion to dismiss counsel and represent himself; dated September 20, 2011;

O. Motion to waive counsel, August 15, 2011;

P. The OTSEGO Trial Court Order denied Petitioner's Motion for Reconsideration dated June 2, 2010.

Q. Criminal Jury Trial T.T., 1-13, 74-93, 86-97. March 25, 2010.

R. Defendant's Motion to Compel Discovery of Ring or exclude testimony of Ring from trial, Motion for Clarification of Order Appointing Attorney, Exparte Motion RE: Funds for Accident reconstructionist, Defendant's Motion to adjourn trial, Peoples Motion in Limine, March 11,2010.

S. Motion for Clarification of order Appointing Stand by counsel. March 4, 2010.

T. Defendants Motion to Exclude DNA sample, Competency Hearing February 12, 2010.

U. Miscellaneous hearing October 7, 2011;

V. Motion for Reconsideration, May 18, 2010;

W. Arraignment hearing, November 13, 2008.

INDEX OF AUTHORITIES

OTHER:

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Petitioner respectfully prays that a Writ of Certiorari issue to review the Judgement below.

OPINIONS BELOW

A. The U.S. Court of Appeals Order denied Petition for Rehearing dated April 3, 2023;

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JURISDICTION

(1) The U.S. Court of Appeals Order denied Petition for Rehearing dated April 3, 2023;

(2) This petition for writ of certiorari is filed within 90 days of the Sixth Circuit Court of Appeals denial of his Petition for Rehearing.

(3) The Jurisdiction of this Court is invoked under 28 § USC 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

AMENDMENT SIX: RIGHT TO SPEEDY TRIAL, CONFRONTATION OF WITNESSES:

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

AMENDMENT 14: CITIZEN RIGHTS

> 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

Petitioner James Joseph Platte Jr. was convicted by a Jury in Case 09-3995-FC of (1) Assault with Intent to Murder, contrary to MCL 750.83; (2) Fail to Stop Accident Serious Impairment, contrary to MCL 257.617; (3) Domestic Violence, contrary to MCL 750.81a (2); and as a Habitual 4th Offender, contrary to MCL 769.12, in the State of Michigan in the 46th Circuit Court for the County of Otsego on October 18, 2011.

On November 8, 2011, Petitioner was sentenced to concurrent terms of Count (1): 30 years to 50 years; (2) 30 years to 50 years; and (3) 2 years to 15 years.

Petitioner was represented at the trial court proceedings and sentencing by Gary Gelow (P33031).

The facts relevant to the Sixth and Fourteenth Amendment issues are set forth in the Eastern District of Michigan March 30, 2022 Opinion, (Appendix A, Exhibit E).[1]

> Petitioner sought to conduct his own defense at his 2nd trial, after his first trial ended in a mistral caused by a deadlocked jury. In his amended petition for a writ of habeas corpus, petitioner argues that the trial court violated his Sixth Amendment rights when it denied his request for self-representation following a *Faretta* hearing (Ground One) and when it failed to rule on and/or conduct the required hearing in any regard upon Petitioners clear request to waive counsel. (Ground Two) In support of his 2nd claim, petitioner asserts that he repeatedly moved for self-representation between December 2010 and September 2011, but that the trial court neither conducted a *Faretta* hearing, nor ruled on these requests. Instead the trial court required him to proceed with appointed counsel.
>
> Petitioner's allegations that the trial court repeatedly failed to act on his request to represent himself are borne out by the record. At a motion hearing on December 7, 2010, the following exchange occurred between petitioner and trial court:
>
> **COURT**: You now want to represent yourself again, Mr. Platte?
>
> **DEFENDANT**: Yes, Your Honor.
>
> **COURT**: Well, we've been down that road and—
>
> **DEFENDANT**: Well, that was a different road and this is--this here –

COURT: I permitted it and at--then I had to rescind that.

DEFENDANT: That's because my waiver at that point was unequivocal, and at this time, its—or my waiver was equivocal, and at this time, it's an unequivocal waiver. I wish to notify the Court at this time of my intentions to—to proceed in pro se, I guess, or to exercise my right to self-representation.

COURT: Well, I'm not prepared to deal with it today. I don't have the materials that I need to go through. I don't--want to make sure that it's an equivocal waiver-

DEFENDANT: I see.

COURT: -- and that I properly do it with you.

DEFENDANT: What would be the best time for this matter to be raised, Your Honor? I just don't want It to be on the eve of trial and then we have to go through--you know, have another reason or another discussion about this being not untimely (sic)

***

COURT: --you must know by now that I don't do things on the fly. I like to do them in a researched, deliberate manner. So, I'm not prepared to make a-proper record today.

At the time of this hearing, the second trial was scheduled for February. However, at the next motion hearing, held on January 4, 2011, the trial court noted that the trial would be adjourned. The Court again declined to hear petitioner's motion, after the prosecutor (Attorney Erin M. House) raised the issue:

HOUSE: Your Honor, the other issue--I don't think We've ever ruled on the defendant's motion last time we were here about representing himself.

COURT: And I'm not gonna get to that today.

HOUSE: Okay.

COURT: I'd be inclined to permit him to address me and maybe file motions in addition to his attorney, but I'm not really inclined to permit full self-representation, and I don't have time to actually make a record on that today.

Toward the hearing's conclusion, the court mentioned Petitioner's motion to represent himself along with other pending motions, stating that they should all be re noticed. Presumably, I'm gonna have time in early, February. However, the issue of self-representation did not come up again until September 2011. In the interim, petitioner continued to be represented by appointed counsel, although the court permitted him to advance motions and argue on his own behalf.

At a September 7, 2011, motion hearing, the trial court once again, delayed acting on petitioner's request to exercise his right to self-representation:

DEFENDANT: Your honor, can we—can we cease these proceedings on these motions and proceed with the Motion to Withdraw Counsel at this point?

COURT: I'm gonna take it in the order in which I want to hear it.

At the end of the hearing the Court noted that it would have to reschedule "to a later time", Petitioner's motion to waive counsel and represent himself.

The trial court finally took up petitioner's motion during a *Faretta* hearing held on September 15, 2011. The Court ruled from the bench, noting that petitioner "would be disruptive to the court" because he had been" hostile and aggressive", had outbursts, and been held in contempt twice during his first trial. The court followed up with a written order on September 21, 2011, which cited *Faretta* and repeated the factors the court had discussed at the hearing. The order noted petitioner's assaultive history, concluding that permitting him to represent himself would result in an undue burden, on the courts safety and security interests and would likely extend the trial beyond its scheduled duration.
Id at 11-16 (see Appendix A, Exhibit E).

Any additional facts are retained within the arguments infra, (Transcript references).[ii]

REASONS FOR GRANTING THE WRIT

CERTIORARI IS APPROPRIATE WHERE THE TRIAL COURTS SUBSTITUTION OF HYBRID REPRESENTATION OVER SELF REPRESENTATION VIOLATED PETITIONER'S CONSTITUTIONAL RIGHTS

A. INTRODUCTION:

This case embodies a precise question that needs to be addressed to resolve a split between the various courts, and to solidify particular constitutionality recognized standards as deriving from United States Supreme Court precedent, to prevent any further harm to a citizen's constitutional rights during a criminal trial.

B. DISCUSSION

A criminal defendant has a right to appear pro se or by counsel, a right protected by the Sixth Amendment to the United States Constitution. *Faretta* v *California*, 422 U.S. 806, 807 832; 95 S Ct 2525; 45 LEd2d 562 (1975); U S Const. VI.[iii]

The *Faretta* Court recognized that in exercising the right to self-representation, a defendant necessarily waives his correlative Sixth Amendment right to counsel. Consequently, a knowing and intelligent waiver of the right to counsel was deemed by the Court to be an essential prerequisite to the right to proceed pro se:

> 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. 458, 464-465; 58 S Ct 1019; 82 LEd 1461 (1938). Cf. *Van Moltke* v *Gillies*, 332 U.S. 708, 723-724; 68 S Ct 316; 92 LEd 309 (1948) (plurality opinion of Black J.). Although a defendant need not himself have the skill and experience of a lawyer in order to competently and intelligently 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 *U.S. ex rel. McCann*, 317 U.S. 269, 279; 63 S Ct 236; 87 LEd 268 (1942) *Faretta*, supra 422 U.S. 835.

In *Johnson* v *Zerbst*, supra, p 464, cited in *Farette*, the Court first defined effective waiver in the context of a defendant's right to counsel as "an intenional relinquishment or abandonment of a known right or privilege." The *Johnson* Court held that Courts Must indulge every reasonable presumption against waiver, and that the effectiveness of waiver, "should be clearly determined by the trial court, and it would be fitting and appropriate for that determination to appear upon the record." *Id* pp 464-465.

In Von Moltke v *Gillies*, supra, pp 723-724, which also cited in *Faretae*, Justice Black, speaking for a plurality of the Court, stated:

> [I]n light of the strong presumption against waiver of the constitutional right to counsel, a judge must investigate as long and as thoroughly as the circumstances of the case before him demand. The fact that an accused may tell him that he is informed of his right to counsel and desires to waive his right, does not automatically end the judge's responsibility. To be valid, such a waiver must be made with an apprehension of the nature of the charges, the statutory offenses, included within them, the range of allowable punishments thereunder, possible defenses to the charges and circumstances, in mitigation thereof, and all other facts essential to a broad understanding of the whole matter. A judge can make certain that an accused's professed waiver of counsel is understandingly and wisely made only from a penetrating and comprehensive examination of all the circumstances under which such a plea is tendered.

In *Adams* v *McCann*, supra, at 279, the court explained the importance of the fact that a defendant's choice be made with "**eyes open**":

> The right to assistance of counsel and the correlative right to dispense with a lawyer's help are not legal formalisms. They rest on considerations that go to the substance of an accused's positions before the law. The public conscience must be satisfied that fairness dominates the administration of justice. An accused must have the means of presenting his best defense. He must have time and facilities for investigation and for the production of evidence. But evidence and truth are of no avail unless they can be adequately presented. Essential fairness is lacking if an accused cannot put his case effectively in court. But the Constitution does not force a lawyer upon a defendant. He may waive his Constitutional right to assistance of counsel if he knows what he is doing and his choice is made with "**eyes open.**"
>
> Justice Marshall later summarized the holdings in *Faretta*, as follows:

> Just as we must be watchful not to find a waiver of the right to counsel where none was intended, so must we be cautious not to overlook an asserted right to proceed pro se, in our well-meant effort to protect the right to counsel. Accordingly, in *Faretta*, we indicated that a defendants clear and unequivocal assertion of a desire to represent himself must be followed by a hearing in which he "is 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**." A *Faretta* hearing offers a court ample opportunity to assure that a defendant understands and accepts the consequences of his decision and to create a record to support its finding of a knowing waiver. *As a result, once a defendant affirmatively states his desire to proceed pro se, a court should cease other business and make the required inquiry.* It is through this hearing that the right to counsel is protected.
>
> The forgoing makes clear then that If a trial court judge holds a *Faretta* hearing when the accused clearly asserts his desire to proceed pro se, the result will not do harm to the right of counsel. At the same time, the failure to hold a *Faretta* inquiry at this time will do injury to the right recognized in *Faretta*

Raulerson v *Wainwright*, 469 U.S. 966, 969-970; 105 S Ct 366; 83 LEd2d 302 (1984) (Marshall J. dissenting from order denying Certiorari) (emphasis added) (footnote omitted) (citation omitted).

Further, this court has explained "the right to self-representation, is either respected or denied; its deprivation cannot be harmless." *McKaskle* v *Wiggins*, 465 U.S. 168, 177, n 8; 104 S Ct 944; 79 LEd2d 122 (1984). "Errors that are not amenable to harmless error analysis are considered "**STRUCTURAL DEFECTS**". *U.S.* v *Gonzalzs-Lopez*, 548 U.S. 140, 148; 126 S Ct 2557; 165 LEd2d 409 (2006). "Errors of this type are so intrinsically harmful as to require automatic reversal...without with regard to their effect on the outcome." Neder v *U.S.*, 527 U.S. 1, 7; 119 S Ct 1827; 144 LEd2d 35 (1999).

As a threshold matter, is the need to settle the controversy revolving around the condition regarded as "hybrid representation". Initially, it has been determined that there is no right to Hybrid representation, that would result in simultaneous or alternating self-representation and representation by counsel. *U.S.* v *Mosely*, 810 F2d 93, 97 (6th Cir 1987). Nevertheless, while a defendant does not have a right to Hybrid representation, a Court has discretion to permit it. *McKaskle*. 465 U.S. at 183; *Mosely* at 97-98. In *McKaskle*, the Court held that the pro se

defendant's right to self-representation was not violated where the defendant vehemently objected to standby counsel's involvement prior to and at the beginning of trial, but subsequently agreed to or acquiesced in Hybrid representation.

When a Court does allow hybrid representation, there is a debate among authorities, whether the defendant must be warned of the dangers and disadvantages of self-representation. Some courts have been clear that a defendant's Sixth Amendment right to counsel is affected, and therefore must be validly waived whenever the defendant undertakes any of the "core functions of counsel". See *U.S.* v *Davis*, 269 F3d 514, 519-520 (5th Cir 2001) (Hybrid or no, the representation sought by (the defendant) entailed a waiver of his Sixth Amendment right to counsel that required the safeguards specified in *Faretta*; U.S. v *Turnbull*, 888 F2d 636, 638 (9th Cir 1989) ("If the defendant assumes any of the "core function" of the lawyer, however, the hybrid scheme is only acceptable if the defendant has voluntarily waived counsel.") See also 3 Wayne R LaFave et al; Criminal Procedure § 11.5 (a)(1999)("Of course, since hybrid representation is in part pro se representation, allowing it without a proper *Feretta* inquiry can create constitutional difficulties."); *Hill* v *Commonwealth*, 125 SW3d 221 (Ky 2004) (failure to hold an *Faretta* hearing, to give *Faretta* warnings, or to make a finding that defendant's limited waiver of counsel, to allow hybrid representation, was knowing, intelligent, and voluntary resulted in a structural error, requiring automatic reversal of defendant's conviction); *State* v *Martin*. 103 Ohio St3d 385, 2004 Ohio 5471; 816 Nt.2d 227(2004)(representation requires the waiver of the assistance of counsel, as one of the difficulties of hybrid representation, is that it cannot be determined until after the trial, whether the defendant actually received the representation that would not require a full waiver.); *Parren* v *State*, 309 Md 260; 523 A2d 597 (1987) (since there is no clear boundary line between hybrid representation and self-representation assisted by standby counsel, and since hybrid representation is not constitutionally

recognized, the trial court must conduct a waiver of counsel inquiry as proscribed by state rule for pro se proceedings).

Other Courts, reasoning from the absence of a Sixth Amendment right to hybrid representation, have held that no waiver is required when the court grants a request for some slim forms of hybrid representation. See *U.S.* v *Leggett*, 81 F3d 220, 223; 317 U.S. App D.C. 125 (D.C. Cir 1996) (holding that granting defendants request to have defense counsel to ask some questions suggested by the defendant, against the advice of counsel, and later personally to ask a few questions of three prosecution witnesses after defense counsel's examination did not require a waiver of his Sixth Amendment right to counsel); *Banks* v *Horn*, 271 F3d 527, 539 (3rd Cir 2001) (holding that insistence on testifying and having certain exhibits admitted during his testimony, against advice of counsel, at most constituted hybrid representation, and that the failure to obtain a waiver was not contrary to clearly established precedent of the United States Supreme Court, although, it was perhaps against the Sixth Amendment.); *People v Jones*, 53 Cal. 3rd 1115, 282 Cal. Rpt 465; 811 P.2d 757 (1991) (As there are only two types of representation, self-representation and professional representation, hybrid representation must be deemed a form of professional representation, with counsel retaining "complete control over the extent and nature of the defendant's participation and all tactical and procedural decisions"; *Faretta*, - type of warnings therefore are not required because "the defense counsel retains control over the case", even where defendant is allowed to actively participate"); *State* v *Hunter*, 840 SW2d 850 (MO 1992) (written waiver requirement does not apply to cases with hybrid counsel).

In *Wilson* v *Hurt*, 29 F Appx 324, 328 (6th Cir 2002) the Court agreed with the former line of cases and found that "a trial court must obtain a waiver of the defendant's Sixth Amendment right to have counsel conduct the entire trial before it permits so called hybrid representation to proceed". Nevertheless, because that case was governed by the AEDPA, the Court denied relief, finding "we

also cannot find that such a denunciation is required by the 'clearly established Federal law, as determined by the Supreme Court of the United States'. 28 USCA §2254(D)(1)." *Id.* See also *Childress* v *Booker*, 2014 U.S. Dist (E.D. Mich) Lexis 66029 ("If this case were before the court on direct review. it might be bound by *Wilson* v *Hurt*, 29 F Appx 324 to find that the absence of warnings violated *Faretta,* but, this case is governed by the AEDPA, and because the U.S. Supreme Court has not clearly held that *Faretta,* warnings are required in cases of hybrid representation, petitioner has failed to demonstrate entitlement to relief.)

Childress had thereafter proceeded to join in, yet another line of cases, factoring in 'expressed waiver', and there, citing to *U.S.* v *Cromer*, 389 F3d 662 (6th Cir 2004), reiterated the district court's holding that "(t)he Supreme Court has never held that a defendant must be warned of the risks of self-representation before proceeding with hybrid representation", and added, definitively, "nor have we". *Childress* v *Booker*, NO 14-1617, 2015 3814788, at *3 (6th Cir June 19, 2015); *Cromer*, supra, as *Childress*, were analyzed pursuant to a legal principle involving the lack of expressed waiver, thus conclusively negating the necessity of *Faretta* warnings.

In *Cromer* the court resolved that the defendant did not waive his right to counsel when proceeding with hybrid representation, and therefore, a warning was not required. *Id* at 681-683 (citing *Buhl* v *Cooksey* 233 F3d 783 790 (3rd Cir 2000) ("Court's must indulge every reasonable presumption against a waiver of counsel. In order to overcome this presumption, and conduct his/her own defense, a defendant must clearly and unequivocally ask to proceed pro se". (citation omitted); Islam v *Miller*, 166 F3d 1200 (table) NO 98-2080, 1988 WL 907692 at *3 (2nd Cir 1998) (finding no *Faretta* inquiry necessary because defendant did not "clearly and unequivocally" waive his right to counsel and proceed pro se, but, rather, participated in his own defense along with his counsel); and several others on the issue. *Id).*

Likewise, rulings permit the dispensing with *Faretta* warnings **even in the face of asserted waiver**. In *U.S.* v *Jones*, 489 F3d 243 249 (6th Cir 2007), rhg en banc, denied 2007 U.S. App Lexis 23743 a case regarding the right to self-representation at sentencing, the panel reasoned that the professionally represented defendant had no 'strategy disagreements' or instances where appointed counsel 'undermined defendant's' arguments' during the period of his ignored requests to waive counsel and self-represent. Where, throughout, *Jones* "was allowed to submit multiple motions to the district court, introduce evidence and make arguments at the sentencing hearing and address the court on his own behalf", notwithstanding its findings that no hearing on the waiver request occurred—and therefore self-representation did not commence—*Jones* was conclusively categorized as a 'pro se defendant' (and counsel of record as 'standby counsel') in furtherance of its analysis; while further providing:

> "We observe, however, that the district court may have erred in this case by not ruling on *Jones* request to represent himself. We have held that once a defendant has clearly and unequivocally asserted his right to proceed pro se", as Jones did, the district court must give the defendant particular warnings designed to ensure that the defendants waiver of counsel is knowing and voluntary

Id. (citation omitted) Nonetheless, *Jone's* denial of self-representation claim was doomed to the implications of his initial 'categorizations':

> "Thus, had *Jones* and his counsel conflicted on questions of strategy, for example, reversal may have been warranted. If the district court resolved the conflict in favor of counsel Jones right to self-representation would have been violated; and if the district court resolved the conflict in favor of *Jones*, we would likely conclude that he represented himself without knowingly and voluntarily waiving the right to counsel. The circumstances of this case demonstrates that *Jones* was not denied his right to self-representation, but we note that similar errors by the district court may very well require reversal in different circumstance".

In the case at bar, as one analogous to *Jones* in many respects, a similar analysis was conducted to decide the matter. While seemingly distinguished inasmuch as a *Faretta* hearing did

occur in the lower court proceedings in the instant matter, the deciding factors of the ultimate ruling as set forth at the September 15, 2011, hearing, and in following opinions issued September 20, 2011 (Appendix A, Exhibit N), and September 15. 2016[iv] (Appendix A, Exhibit J), are concededly not dispositive of the issue presented, as initially determined by the Habeas Court:

> Petitioner claims that his Sixth and Fourteenth Amendment rights to self-representation were violated: **FIRST** by the Trial Courts September 15, 2011, denial of his request to conduct his own defense following a hearing on the issue; and **SECOND** by its failure to rule on his repeated unequivocal requests that he be permitted to do so over the nine-month period preceding the September 2011 hearing. [...]
>
> However, the trial courts September 15, 2016 decision on Petitioner's Motion for Relief from Judgement does not provide a relevant rationale. The Court relied exclusively on its September 15, 2011 *Faretta* hearing order to reject Petitioner's Sixth Amendment claims, even though Petitioner's motion challenged more than the trial courts September 2011, ruling. Rather, Petitioner clearly claimed that his right to self-representation was violated over the several months of court proceedings prior to that ruling, during which time, the Court failed to rule on his three unequivocal request to represent himself. Petitioner made these requests on December 7, 2010, January 4, 2011 and September 7, 2011.
>
> Petitioner **further** distinguished these two issues in his ineffective assistance of appellate counsel claim, which he included in his motion for relief from judgement. In that motion, he argued that appellate counsel was ineffective for raising the *Faretta* hearing decision, but omitting the self-representation claim that was based on his various ignored request."

Id. pp 9-10 (Appendix A, Exhibit E) (emphasis added) (footnoted omitted). Hence it was concluded that the September 2011 ruling issue remained subject to §2254(d) while the failed rulings issue was not. *Id.* 11; 20-21.

Indeed, the September 2011, hearing itself was not prompted by Petitioner's earlier requests, but on motion subsequently bought by unwanted counsel on August 15, 2011. (Appendix A, Exhibit O) *Id.*

Moreover, the court's latter reasoning for denying that motion at the time had in no way reflected the actual conditions of the extensive court proceedings spanning the approximate 18-

month period between trials one and two in this case; nor the actual 'concerns' previously set forth at the December 7, 2010, subject waiver attempt occurrence:

> **COURT**: You now want to represent yourself again, Mr. Platte?
> **DEFENDANT**; Yes, Your Honor.
> **COURT**; Well, we've been down that road and—
> **DEFENDANT**: Well, that was a different road, and this is—this here—
> **COURT**: I permitted it and at—then I had to rescind it.[v]
> **DEFENDANT**: That's because my waiver at that point was...equivocal...and at this time, it's an unequivocal waiver.
> **COURT**: Well, I'm not prepared to deal with it today...I don't—want to make sure that it's an equivocal waiver...and that I properly do it with you.

Id., pp.11-13 (Appendix A, Exhibit E).

On Appellate review, the Court of Appeals declined to grant an expansion to the District Courts Certificate of Appealability to include the September 2011 *Faretta*, ruling issue, finding that the Trial Court told Petitioner, that, proceeding in pro per would be disruptive to the Court and the administration of the court's business because he had shown himself to be hostile and aggressive in the past, (i.e. during proceedings that took place before and during his first trial.) *Id* * 2 (Appendix A, Exhibit C), further setting the issue apart. The Habeas Courts subsequent use of the September 2011 ruling belies reason and is critically misplaced. Moreover, it suggests an impermissible 'harmless error' analysis *McKaskle*, 465 U.S. at 177, n 8, where such factors had been of a deciding nature.

Likewise, was the courts turning, as in *Jones*, on an assessment of attorney-client strategy disagreements in a post hoc 'grab' to establish a pretext for the blatant failure to either "respect or deny" self-representation-where said deprivation cannot be harmless. *Id.* 465 U.S. at 174-175.

This Court, however, has held that, in determining whether a defendant's *Faretta* rights, have been respected, the primary focus must be on whether the defendant had a fair chance to present his case in his own way. *Id.* While *Faretta* certainly requires a determination of a knowing and intelligent waiver of counsel prior to a trial court permitting self-representation, *Id.* 422 U.S. 835,

as found in lacking in the *Jones* case, and in the instant case--which otherwise resolves the argument in favor of the affected defendants, -- Petitioner proposes that, under the circumstances of these cases, the effects of the criminal defendant's participation may be of some importance to the discussion at hand

In *Raulerson* supra, the opinion limited the question of injurious effect to the "forcing of a defendant to proceed with counsel, in whom he has no confidence and whom he may distrust", where the *Faretta* Court contended the "personal" right to defend, with the choice of self-representation be "honored out of" that respect for the individual which is the lifeblood of the law". *Id.* 422 U.S. 833-834. While *Jones* had apparently taken his participation to the conclusion of the trial court proceedings in *his* case, in effect of the September 2011, ruling, Petitioner was stripped of even *this* accommodation. Further, as alluded to by the habeas court, following the aforementioned hearing, the strategy disagreements between Petitioner and unwanted counsel continued through trial. The Court noted:

> "For example, Petitioner contends that motions he successfully litigated on his own behalf--including the assertion of physician patient privilege and subsequent stipulation, and additional court orders, ...(i.e. -- the order to preclude the use of the term 'victim', for example), were not honored or adhered to by counsel."

Id p 15, n. 6 (Appendix A, Exhibit E). The Court also noted references to the resulting waiver to be present at trial following the denial. *Id.* p. 3. Petitioner expounded on these factors more thoroughly in the Petition for Rehearing to the U.S. Court of Appeals. *Id* pp 1-8, 11-13 (Appendix A, Exhibit D). At the referenced hearing, Petitioner extended into the trial record his affidavit and waiver of presence at trial. *Id* M.H., generally (Appendix A, Exhibit U). (See further Appendix A, Exhibit D) Affidavit of James Platte Jr. attached thereto as Exhibit E". Expounding on the matter. Petitioner articulated:

> For the past year and a half, in between trials, I've been going about things under the presumption that when trial came, I would be presenting my own defense in

> pro se. Mr. Gelow was under the same presumption. We were in the back rooms and there was nothing we needed to discuss. All he had to do was sign my motions and file em (sic) and notice em (sic) for hearing, and then I would come to court and I would argue my own motions, obviously. And that's on the record. I think of the 30 plus motions that I filed that Gelow may have [submitted] on my behalf, four of em (sic), for which the attorney personally drafted in the case. [...]
>
> There's been hundreds and thousands of hours and hundreds to thousands of dollars spent on my defense on my side with being (an) indigent' defendant having my family help me prepare for [pro se representation] at this trial, over all this time, *of delayed rulings*. And I didn't have time to fill [Mr. Gelow] in on anything. It just wasn't in the cards, because since the trial court's ruling, reappointing Mr. Gelow back in May of 2010, I made my intentions known, that I objected to his appointment, but I would move to have him removed [exercising) my right to self-representation. That was back then. And the court didn't feel comfortable' doing that or going through the procedures, even at that time. So I had to continue on with Mr. Gelow as counsel of record, but doing it my own way.
>
> "And I think [the court] recognized that because, it kind of gave me a co-counsel pass Every time I came into the courtroom I would argue my own motions with Mr. Gelow's signature on it. It was common knowledge in this Courtroom."
>
> M.H. pp 20-23 (Appendix A, Exhibit U)

Indeed, Petitioner had taken on the '*core functions*' of counsel, since Mr. Gelow was ordered back on TO the case by the trial judge; well in advance of the actual December 7, 2010 waiver-assertion. Significantly, of the initial motions advanced by Petitioner was the motion to reconsider Gelow's reappointment. *Id.* (Appendix A, Exhibit V). Attorney Gelow had been removed previously by another judge of the court at an earlier point in the case *Id* A.H. pp 17-18. In ruling without a hearing, the trial court provided the following:

> "There is no other contract attorney available to represent the Defendant. Defendant's motion is denied."

Id p. 2 (Appendix A, Exhibit P). Thereafter, Petitioner was made to function under the prevailing conditions as the foregoing provides, only to be compounded by the Court's January 4, 2011 holdings:

> "*I'd* be Inclined to permit Petitioner to address me and maybe file motions in addition to his attorney, but I'm not really Inclined to permit full self-representation and I don't have time to actually make a record on that today."

Id. p. 14 (Appendix A, Exhibit E). The Court would not make time, either, until the latter date; and on counsel's motion, nonetheless. The waiver of presence at trial came just three days before the commencement thereof, i.e. October 7, 2011.[vi] (Appendix A, Exhibit U)

Attorney Gelow failed to call the witnesses, Petitioner, through the hybrid scheme, established as necessary and under endorsement; see *Id.* pp 8; 11-13 (Appendix, A, Exhibit D) nor had he protected the rights established through the preclusion orders. *Id.* Petitioner's case was certainly not his own, resulting in an unjust conviction, contrary to the Sixth and Fourteenth Amendments to the U.S. Constitution.

CONCLUSION

Petitioner **James Joseph Platte** Jr. respectfully requests that this Court grant this petition for a writ of certiorari and any other relief that it deems is just and proper in this case.

Respectfully Submitted,

J. Platte, Jr.

JAMES JOSEPH PLATTE JR. 285651
Baraga Correctional Facility
13924 Wadaga Rd.
Baraga MI. 49908

VERIFICATION

I, James Joseph Platte, Jr., swears with his signature below, that the foregoing is true and accurate pursuant to 28 USC §1746. Executed on June 6th, 2023.

J. Platte, Jr.

James Joseph Platte Jr. 285651

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[i] The Habeas proceedings were before the Honorable Bernard A. Friedman, pursuant to 28 U.S.C.§ 2254.

[ii] Arraignment Hearing Transcripts, November 13, 2008, shall be known by "A.H." and then the number of the page of transcripts. (Appendix A, Exhibit-W). Miscellaneous Hearing Transcripts October 7, 2011, will be known by: "M.H." and then the number of the page of transcripts. (Appendix A, Exhibit- U). Waiver Haring Transcripts, February 12, 2010, shall be known by "W.H." and then the number of the page of transcripts (Appendix A, Exhibit T), Clarification Hearing Transcripts March 11, 2010, shall be known by "C.H", and then the number of the page of transcripts (Appendix A, Exhibit –R). Likewise, Trial Transcripts of March 25, 2010, shall be known by J.T.-1 and then the number of the page of transcripts. (Appendix A, Exhibit- Q).

[iii] The Sixth Amendment is applicable to the States through U.S. Const. AM XIV. *Gideon* v *Wainwright*, 372 U.S. 335, 343-344 (1963).

[iv] On April 16, 2016, Petitioner returned to the trial court pursuant to Michigan Court Rule (MCR) 6.500 following the initial direct appeal, in the case, raising the delayed ruling issue for the first time in the State collateral proceeding.