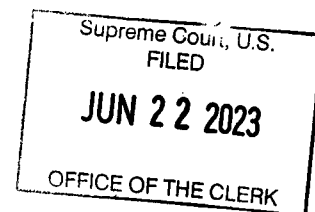


No. _____
23-5324

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



Michael David Beiter, Jr. — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Eleventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Michael David Beiter, Jr.
(Your Name)

FCI Bennettsville, P.O. Box 52020
(Address)

Bennettsville, SC 29512
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

This case presents an important issue concerning what constitutes "the right to have the assistance of counsel" under under the Sixth Amendment to the U.S. Constitution and 18 U.S.C. §3006(A).

1. Whether a district court can force counsel upon a defendant even though a district court did not inquired the provisions set forth in 18 U.S.C. §3006(A); and

2. Whether a district court can force counsel upon a defendant despite that the defendant, time and again, fired such forced counsel during open court, and after the fact that the district court acknowledged that the defendant never waived his/her right to assistance of counsel.

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:
- The Petitioner herein, who was the defendant-Appellant below, is Michael David Beiter, Jr., henceforth, Mr. Beiter, Jr.
- The respondent herein, which was the Plaintiff-Appellee below, is the United States of America.

RELATED CASES

This case arises from the following proceedings in the United States Court of Appeals for the Eleventh Circuit and the United States District Court for the Southern District of Florida, Ft. Lauderdale Division:

UNITED STATES v. Michael David Beiter, Jr.

Case No. 22-14052

UNITED STATES v. Michael David Beiter, Jr.

Case No. 0:11-CR-60273-WPD

There are no other proceedings in state or federal trial or appellate courts.

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix 1 to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix 2 to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was May 31st, AD2023.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the U.S. Constitution provides:

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

18 U.S.C. §3006(A) provides: "(a) Choice of plan. Each United States district court, with the approval of the Judicial Council of the circuit, shall place in operation throughout the district a plan for furnishing representation for any person financially unable to obtain to obtain adequate representation in accordance with this section...Each plan shall provide the following:

(1) Representation shall be provided for any financially eligible person who--

(H) is entitled to appointment of counsel under the Sixth Amendment of the Constitution."

STATEMENT OF THE CASE

On November 21st, AD2022, Mr. Beiter, Jr. filed a Motion for Definitive Ruling and Correction of the Record in district court (see APPENDIX 3). Said Motion sought the record to reflect that CJA Attorney, Mr. Mervis, did not represent Mr. Beiter, Jr. in any capacity whatsoever, for he was repeatedly fired during open court, and if he did, he did so illegally, id est, forced upon Mr. Beiter, Jr. in violation to his constitutional and statutory rights.

On November 23rd, AD2022, the district court denied Mr. Beiter, Jr.'s Motion (see APPENDIX 2).

On November 30th, AD2022, Mr. Beiter, Jr. filed a timely Notice of Appeal.

On December 22nd, AD2022, Mr. Beiter, Jr. filed his Initial Brief on Appeal with the Eleventh Circuit Court of Appeals (see APPENDIX 4).

On February 2nd, AD2023, the government filed a Motion for Summary Affirmance against Mr. Beiter, Jr.'s appeal (see APPENDIX 5).

ON March 6th, AD2023, Mr. Beiter, Jr. filed his reply Brief to the government's Motion for Summary Affirmance (see APPENDIX 6).

On May 31st, AD2023, the Eleventh Circuit Court of Appeals issued its Opinion, denying Mr. Beiter, Jr.'s relief (see APPENDIX 1).

Today, Mr. Beiter, Jr. asks this Court if the lower courts are allowed to force counsel upon a defendant who (a)

never waived his right to assistance of counsel; (b) never was subject to an 18 U.S.C. §3006(A) inquiry into his financial abilities; and (c) repeatedly fired the forced counsel during open court, when such forced counsel admitted to the court he was time and again fired.

REASONS FOR GRANTING THE PETITION

This Court needs to provide a bright line guidance, preventing the lower courts from disavowing this Court's jurisprudence as well as their own circuit's binding jurisprudence and panel precedent rule. for if this Court takes no action, other defendants standing in Mr. Beiter, Jr.'s shoes will face the risk of having counsel both thrust and forced upon them, even if a defendant never waived any rights, was never subject to an appropriate 18 U.S.C. §3006(A) inquiry, and regardless of repeatedly firing a forced counsel in open court.

This case presents a delicate issue of national importance in that this Court's standing jurisprudence has been subject to cancel culture, thus the abandonment of societal norms and the rule of law. That the lower courts are the perpetrators is all the more alarming. In short, untenable. "Where law ends, tyranny begins." Merritt v. Welsh, 26 L.Ed. 896, 104 U.S. 694 (1882); "It would be well to take heed of what Kenneth Culp Davis teaches: 'Where law ends tyranny begins.' I think that in our system of government, where law ends tyranny need not begin. Where law ends, discretion begins, and the exercise of discretion may mean either beneficence or tyranny, either justice or injustice, either reasonableness or arbitrariness." Davis, Discretionary Justice, 3 (1969)." Inmates of the Boys' Training School et al. v. John Affleck, 346 F.Supp/ 1354, 1972 U.S. Dist. LEXIS 12562 (D.R.I. July 28, 1972).

This Court, at three distinct cases, has laid forth Congressional intent with regards to the Sixth Amendment's assistance of counsel, to wit-

1. Johnson v. Zerbst, 304 U.S. 458, 463, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938):

Holding that "[t]he Sixth Amendment withholds from federal courts, in all criminal proceedings, the power and authority to deprive an accused of his life or liberty **'UNLESS'** he has or waives the assistance of counsel." (emphasis added).

2. Faretta v. California, 422 U.S. 806, 807, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975):

Holding that "[w]hen a defendant **'CHOOSES'** to have a lawyer manage and represent his case, law and tradition may allocate to counsel the power to make binding decisions of trial strategy in many areas. **'This allocation can ONLY be justified, however,'** by the defendant's consent, at the outset, to accept counsel as his representative. An unwarranted counsel **'represents'** the defendant only through a tenuous unacceptable legal fiction. **'UNLESS'** the accused **'ACQUIESCED'** in such representation, the defense presented is not the defense guaranteed him by the Constitution, for in a very real sense, **'it is not his own defense.'**" (emphasis added).

3. United States v. Gonzalez-Lopez, 548 U.S. 140, 144, 147 S.Ct. 2557, 165 L.Ed.2d 409 (2006):

Holding that "[a] trial court's erroneous deprivation of a criminal defendant's **'CHOICE'** of counsel entitles him to a reversal of his conviction." (emphasis added). Here, a defendant's constitutional rights under the Sixth Amendment as well as this Court's jurisprudence were either ignored or violated by the lower courts. For example, as the district court and court of appeals records reflect:

- A. No inquiry into the eligibility of counsel as

required by 18 U.S.C. §3006(A)(a)(1) & (2) was ever performed neither by the magistrate judge nor by the district court.

B. Mr. Beiter, Jr. NEVER waived any of his rights, including but not limited to his right to assistance of counsel.

C. Mr. Beiter, Jr. filed a Notice of Fraud in district court regarding counsel that was being forced upon him without his permission, consent, or consent by assent. Said Notice was stricken by the district court (see APPENDIX 7).

D. Although Mr. Beiter, Jr., in fact, explained to counsel the type of defense of his choosing, defense counsel time and again ignored and rejected to present the defense Mr. Beiter, Jr. wanted (see APPENDIX 4 at EXHIBIT C; see also, APPENDIX 6 at EXHIBIT B). Thus, Mr. Beiter, Jr., time and again, FIREd defense counsel.

E. Defense counsel admitted being FIREd by Mr. Beiter, Jr. Nevertheless, despite having admitted this fact, defense counsel continued filing UNWANTED motions and the like into the district court's record (see APPENDIX 4 at EXHIBIT D, at 25:15-16). Hence, the district court forced counsel upon a defendant in violation of his constitutional and statutory rights (revisit APPENDIX 4). And despite this fact, the Eleventh Circuit, disregarding Congress's intent in 18 U.S.C. §3006(A), this Court's jurisprudence, as well as its own binding jurisprudence and panel precedent rule, supported such constitutional and statutory violations upon a defendant.

i. For example, in United States v. Jimenez-Antunez, 820 F.3d 1269, 1270 (11th Cir. 2016), the eleventh Circuit held

that "[a] defendant may substitute a retained or appointed counsel 'regardless of the quality of representation he received.'" And that "[a] defendant exercises the right to counsel of choice when he moves to dismiss retained counsel, regardless of the type of counsel he wishes to engage afterward." It further held that "[t]he Sixth Amendment right to counsel of choice means that a defendant has a right to 'FIRE' his retained...lawyer...for ANY REASON or [for] NO REASON.'" (quoting United States v. Rivera-Corona, 678 F.3d 976, at 980 (9th Cir. 2010) (alterations in original) (emphasis added)).

ii. Hence, if in fact the Sixth Amendment as well as this Court's jurisprudence in Zerbst, Faretta, and Gonzalez-Lopez stand as both, case law and jurisprudence, then relief for the egregious denial and/or neglect of constitutional and statutory rights as presented here should be granted, for to force a defendant into trial with an unwanted counsel, **REPEATEDLY FIRED IN OPEN COURT (revisit APPENDIX 5)** will only profoundly advance the guarantee of a higher rate of mass incarceration of defendants for whom the Sixth Amendment and 18 U.S.C. §3006(A) was written for.

iii. As the Eleventh Circuit itself recognized, "[i]t is one thing to hold that every defendant has the right to assistance of counsel, and **QUITE ANOTHER** to say that a state may compel a defendant to accept a lawyer that he does not want." United States v. Garey, 540 F.3d 1267, at 1263 (11th Cir. 2008) (quoting Faretta, 422 U.S. at 833).

iv. Furthermore, as held by this Court, "[t]he right to defend is personal. The defendant, and not his lawyer or the state, will bear the personal consequences of a conviction. It is the defendant, therefor, who must be free personally to decide whether in his particular case counsel is to his advantage." Faretta, 422 U.S. 806, at 834 (1975). "A defendant who does not require counsel enjoys both the right to effective assistance of counsel and the right to choose who will represent him." Gonzalez-Lopez, 548 U.S. 140, 144, 147 (2006). "The right to select counsel of one's choice...has been regarded as the root meaning of the constitutional guarantee." id. at 147-148.

v. "The Sixth Amendment right to counsel encompasses two distinct rights: a right to adequate representation and a right to choose one's own counsel. The adequate-representation right applies to all defendants and focuses on the adversarial process, not on the accused's relationship with his lawyer as such." Daniels v. Lafler, 501 F.3d 735, at 738 (6th Cir. 2007) (quoting United States v. Cronin, 466 U.S. 648, 657 n.21 S.Ct. 2039, 80 L.Ed.2d 657 (1984)). "The denial of right to counsel is a structural error." Gonzalez-Lopez, at 150. "The Sixth Amendment right to counsel of choice means that a defendant has a right to **FIRE** his retained...lawyer...for any reason or [for] no reason." Jimenez-Antunez, at 1271. "A defendant may substitute a retained or appointed counsel regardless of the quality of representation he received." id. at 1270.

vi. **WHEREFORE**, above premises considered, this Court is urged to conduct a complete review of **APPENDIX 6** for a

thorough analysis concerning this claim of constitutional and statutory violations, id est, this Court is urged to set a bright line standard for the lower courts to follow in order to prevent other similarly situated defendants from having their rights violated by the lower courts.

CONCLUSION

The Petition for Writ of Certiorari should be **GRANTED.**

Respectfully submitted on this 4 day of August, Year of YAHWEH 2023.



Michael David Beiter, Jr. PRO SE

Reg. No. 91383-004