

No.

23-5479

IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL

Supreme Court, U.S.
FILED

JUL 10 2023

OFFICE OF THE CLERK

Lee Edward Peyton
(Your Name)

— PETITIONER

vs.

Theresa Cisneros

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals, For The Ninth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Lee Edward Peyton
(Your Name)

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(Address)

Ione, Ca 95640
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. Do Farett's procedural and substantive rules require a trial court to engage in a Farett-compliant inquiry with the accused in the face of a clear and unequivocal invocation of the right to proceed pro se? Does the complete failure to conduct this inquiry result in error as a matter of law, and require automatic reversal?
2. Is not the whole purpose of the Farett inquiry for the trial court to gather essential information through questioning the accused on the record, focused on the knowing, intelligent and voluntary nature of the request in order to make an informed decision whether to deny or grant self-representation?
3. On direct or collateral review under the Antiterrorism Effective Death Penalty Act (AEDPA), what is the clearly established inquiry called for by longstanding Supreme Court case law, when: a trial court fails to conduct a contemporaneous and comprehensive Farett-compliant inquiry and summarily denies a clear and unequivocal, timely, good faith request to proceed pro se.
4. Where is the guarantee or protection of "Due Process of Law" where the reviewing Courts having sworn to uphold, protect and defend the Constitution, ignore or refuse to address the actual claim raised, and ignore evidence highly probative and central to Petitioner's properly presented constitutional claim; has due process been met?
5. Does a District Court induce a defect in the constitutional institution of habeas proceedings governed by AEDPA, when it evaluates a Farett claim, according to unpublished district court opinions and pre-AEDPA circuit precedent, rather than Supreme Court case law?
6. Where the Appellate Court adopts the District Court's legal errors and integrates them into its analysis of a Farett claim, does that error induce a defect that affects and contaminates the entire proceedings - where due process is concerned?

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:

RELATED CASES

Peyton V. Cisneros, No. 20-56185, U.S. Court of Appeals for the Ninth Circuit. Judgment entered Dec. 20, 2022.

Peyton V. Diaz, No. 19-cv-9249, U.S. District Court for the Central District of California. Judgment entered Oct. 2, 2020.

People V. Peyton, No. B283608, California Court of Appeal for the Second Appellate District. Judgment entered Aug. 16, 2018.

People V. Peyton, No. 5251297, California Supreme Court. Judgment entered Oct. 24, 2018.

In Re Peyton, No. 285613, California Court of Appeal for the Second Appellate District. Judgment entered Aug. 16, 2018.

In Re Peyton, No. 5254862, California Supreme Court. Judgment entered Oct. 9, 2019.

Peyton V. California, No. 19-6437, U.S. Supreme Court. Judgment entered January 13, 2020.

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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 A 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 B 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 D 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 N/A 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 December 20, 2022.

☐ 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: Jan. 30, 2023 and Apr. 10, 2023, and a copy of the order denying rehearing appears at Appendix C.

☐ 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 Aug. 16, 2018.
A copy of that decision appears at Appendix D.

☐ A timely petition for rehearing was thereafter denied on the following date: N/A, 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

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. (U.S. Const. amend VI.)

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. (U.S. Const. amend XIV.)

The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States. (28 U.S.C. § 2254 (a))

An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State Court proceedings unless the adjudication of the claim—

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.”
(28 U.S.C. § 2254 (d)).

STATEMENT OF THE CASE

Petitioner filed a prose Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 challenging his 2017 conviction. Petitioner asserted claims of denial of his right to self-representation and substantive due process of law; a pattern of the courts' refusal to apply the correct legal standards under AEDPA. This case graphically illustrates a collective disconcert for facts and the law, as will be shown below.

On June 15, 2016, Petitioner explained to the trial court his dissatisfaction and distrust in his appointed counsel, who's representation he had not requested during a substitution of counsel hearing. That request was denied.

On June 22, 2016, Petitioner invoked his right to self-representation in clear and unequivocal form. The trial court summarily denied the request and failed to engage in the required Faretta-compliant inquiry with Petitioner. Appendix H.

On June 28, 2016, Petitioner filed a verified Motion requesting Self-Representation and before a new trial court. That trial court took the motion under submission for several days, until July 6, 2016, when it gave Petitioner the ultimatum of returning to the previous court with his motion or withdrawing the motion; which he chose to return to the previous court, which ultimately summarily denied Petitioner's written motion this same day. Appendix J.

Again, on January 5, 2017, Petitioner made a third request for self-representation before a different court, and that court summarily denied the request, and like the

previous trial court summarily denied the request, and like the previous court failed to engage in a Farella-compliant inquiry with Petitioner.

Petitioner's trial began about 5 months later on May 9, 2017. The jury convicted Petitioner on May 24, 2017, and the trial court on June 12, 2017, sentenced him to 66 years to life.

On direct review, Petitioner argued that the trial court applied an incorrect standard when it denied his requests for self-representation. The State Appellate Court expressly declined to review Petitioner's constitutional claim. It instead declined to evaluate the Farella claim under the clearly established structural error standard of analysis, and argued that the Petitioner invoked his right to proceed pro se for the purpose to disrupt or delay proceedings, and affirmed his conviction.

The State Supreme Court denied discretionary review.

Petitioner filed an original habeas corpus petition in the State Appellate and Supreme Courts, which denied the same. He argued that the trial court failure to engage in a Farella-compliant inquiry with Petitioner, its application of an incorrect legal standard in denying his self-representation requests, and the state courts' application of the wrong legal standard to his Farella claim was contrary to, and an unreasonable application of clearly established Supreme Court case law, et alia.

Petitioner filed his Federal Petition for Writ of Habeas Corpus and argued that the trial court violated his Sixth Amendment right to self-representation when it summarily denied his requests to proceed pro se and failed to engage in a

Faretta-compliant inquiry with Petitioner on the record, and applied an incorrect legal standard in denying his requests. He further argued that the states reviewing courts applied the wrong legal standards and framework to the Petitioner's Faretta claim.

The District Court ignored and disregarded Petitioner's claim that the trial courts failure to engage him in a Faretta-compliant inquiry violated his Sixth Amendment right to self-representation, and its application of an incorrect legal standard was contrary to, and an unreasonable application of Faretta and its progeny. He also argued that the states reviewing courts applied the wrong legal standard and framework to his Faretta claim, which require structural error analysis.

The District Court evaluated Petitioner's Faretta claim according to unpublished district court opinions and pre-AEDPA circuit court precedent, rather than clearly established Supreme Court case law. It ignored record evidence that Petitioner's unequivocal and timely requests were made in good faith; law that required it to directly address the trial courts failure to conduct the Faretta-compliant inquiry, and the use of an erroneous legal standard in denying Petitioner's requests. Instead, the District Court ruled that none of the trial courts errors were contrary to, or an unreasonable application of Supreme Court law, or based on an unreasonable determination of the facts in light of the evidence presented. The District Court ignored evidence in Petitioner's written motion and then concluded, et alia, that Petitioner's pre-trial exercise of his right to "make motions" were disruptive and such pretrial conduct in the current case

afforded a strong indication that Petitioner would disrupt proceedings in the courtroom, and dismissed the petition with prejudice.

The Ninth Circuit Court of Appeals granted Petitioner's request for certificate of appealability on the questions whether the trial court's failure to perform the required inquiry and use of improper standards; the state and district courts' applications of erroneous legal standards to the Fareta claim and the disregard for evidence highly probative and central to the Petitioner's claims, and the deprivation of due process, but the circuit court declined to address these claims it granted a "CDA" to address. ~~It~~ ruled without addressing it that the District Court's evaluation of the Fareta claim according to unpublished opinions and pre-AEDPA circuit precedent, rather than Supreme Court case law, was not error under AEDPA; that the district court's conclusion was correct under AEDPA; and that the state appellate court's conclusion was neither contrary to, nor an unreasonable application of, Fareta, nor an unreasonable determination of facts in light of the evidence presented. Appendix. A.

Petitioner filed a Petition for Panel Rehearing, asking the circuit court to correct its factual and legal errors, but the court immediately denied the petition. Appendix. C.

Petitioner also filed a Petition for en banc Rehearing, but again, the original panel denied the petition.

REASONS FOR GRANTING THE PETITION

Petitioner invoked his right to self-representation on June 21, and 28, 2016, and January 5, 2017, after complaining of his distrust and dissatisfaction in appointed counsel. The representation sought by Petitioner entailed a waiver of his Sixth Amendment right to counsel safeguards specified in *Faretta v. California*, 422 U.S. 806 (1975), the leading decision of this Court to reach a holding on the Sixth Amendment right to self-representation. *Id.* at 834-35. The trial court after each invocation refused to conduct the required *Faretta*-compliant inquiry and denied Petitioner's requests.

Petitioner prays this Court would answer whether a trial court's failure or refusal to conduct a *Faretta*-compliant inquiry in the face of a clear and unequivocal request to proceed pro se, results in a decision that is contrary to, or an unreasonable application of, *Faretta*. Only this Court may answer the question(s) presented, 28 U.S.C. 2254 (d)(1).

The United States circuit courts of appeals are divided on this same important matter; whereas, the Third, Fifth, Sixth and Ninth circuits have held that a trial court's failure to conduct the required *Faretta*-compliant inquiry is error requiring automatic reversal, see e.g., *United States v. Peppers*, 302 F.3d 120, 133-34, 137 (3d Cir. 2002); *United States v. Cano*, 519 F.3d 512, 516-17 (5th Cir. 2008); *Batchelor v. Cain*, 682 F.3d 400, 412-13 (5th Cir. 2012); *Moore v. Haviland*, 531 F.3d 393, 403-04 (6th Cir. 2008); *Cassano v. Shoop*, 1 F.4th 458, 467, 470 (6th Cir. 2021); *United States v. Hernandez*, 203 F.3d 614, 625 (9th Cir. 2000); and *United States v. Walthall*, 782 Fed Appx. 578, 579-80 (4th Cir. 2019), while the Sixth, Tenth and Eleventh circuits have held that it is not error and does not require reversal. See *Hill v. Curtin*, 792 F.3d 670, 677-78 (6th Cir. 2015); *United States v. Vann*, 776 F.3d 746, 763

(10th Cir. 2015), and *United States v. Stanley*, 739 F.3d 633, 645 (11th Cir. 2014).

In *Faretta*, this Court held that an accused in a state criminal case has a constitutional right to proceed without counsel when he voluntarily, knowingly and intelligently chooses to do so, and the state may not constitutionally force a lawyer upon him. 422 U.S. at 835. In *Faretta*, this Court clearly established that the presiding court had to inquire into the accused understanding of the right to proceed pro se and had to warn him of the dangers involved in order to ensure he had full knowledge of the consequences of exercising his constitutional right to self-representation. *Id.* This obligation to conduct such an inquiry with the accused arises under the Constitution, and it applies to the state and federal courts.

It is undisputed that the trial court in this case never conducted a *Faretta*-compliant hearing. None of the lower state or federal courts disputed that *Faretta* required the trial court to inform Petitioner of the dangers and disadvantages of self-representation, but never did so. Rather, the lower courts each failed to address and adjudicate Petitioner's claim that *Faretta* clearly established that trial courts are required to meaningfully address the substance of a defendant's request for self-representation, and establishes that a trial court applies *Faretta* unreasonably if it does not engage in a *Faretta*-compliant inquiry after the unequivocal and timely assertion of the right to self-representation. 422 U.S. at 835.

Petitioner contends that the trial court violated his substantive due process of law by failing to conduct a Farella-compliant inquiry and failing to preserve an adequate record. The trial court repeatedly refused to conduct the requisite Farella inquiry after Petitioner asserted his right to represent himself unequivocally. Rather than determine whether Petitioner was waiving his right to counsel voluntarily and with full awareness of the consequences, the trial court summarily denied Petitioner's requests. This complete failure to conduct any sort of inquiry violated Farella's mandate that the trial court must investigate a litigant's request to proceed without counsel. 422 U.S. at 807, 835; See also Moore, 581 F.3d at 403-04; Peppers, 302 F.3d at 133-34; and Hernandez, 203 F.3d at 624-25. Accordingly, Petitioner is entitled to relief because the California Courts unreasonably applied federal law. 28 U.S.C. § 2254 (d) (1).

Farella, incorporated against the states a criminal defendant's right to self-representation via the Fourteenth Amendment's Due Process Clause. 422 U.S. at 819-20.

Once an accused unequivocally and timely asserts his constitutional right to self-representation, the trial court must conduct a colloquy (Farella inquiry) with the accused to determine that his waiver of his right to counsel is knowing and voluntary and to inform him of the nature of the charges, the possible penalties and dangers of self-representation and properly warned that if he proceeds pro se he would be obliged to follow rules of procedure, evidence and decorum. Id. at 807, 835.

This Fareta-compliant inquiry must be held without delay. Justice Marshall summarized the holding of Fareta 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 Fareta we indicated that a defendant's 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 Fareta 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 failure to hold a Fareta inquiry at this time will do injury to the right recognized in Fareta. *Raulerson v. Wainwright*, 469 U.S. 966, 969-70 (1984) (Marshall, J., dissenting from an order denying certiorari).

Similarly, this Court in *Patterson v. Illinois* 487 U.S. 285, 300 n.13 (1988) ~~suggests~~ the Bench Book for U.S. District Court Judges provides helpful information regarding topics that are appropriate and important for trial courts to dive into when assessing the knowing and intelligent nature of an accused waiver of counsel.

Since *Faretta*, this Court has repeated its directive to the lower courts to warn defendants about the dangers of self-representation. See *McKaskle v. Wiggins*, 465 U.S. 168, 173 (1984); *Iowa v. Tovar* 541 U.S. 77, 88-89 (2004), and while revisiting various aspects of self-representation the Court rejected arguments in favor of a "higher" standard, see *Godinez v. Moran*, 509 U.S. 389, 399 (1993), for a "more specific standard" and to "overrule *Faretta*." See *Indiana v. Edwards*, 554 U.S. 164, 178 (2008). This Court has simply relied on its opinion in *Faretta* as stating the correct inquiry the trial court must conduct. Absent a proper inquiry the trial court has no basis upon which to deny or to grant a defendant's request for self-representation. *Faretta*, 422 U.S. at 807, 835.

Although this Court has never decided whether a trial court's failure to engage in a *Faretta*-compliant inquiry with the accused is an unreasonable application of the Sixth Amendment, the split among the circuit courts of appeals on this same important matter presents compelling reasons granting the Petition for Writ of Certiorari.

The conflict among the U.S. courts of appeals on this same important matter necessitates review by the Court on the ground that the Sixth, Tenth and Eleventh Circuits decided the important "Faretta inquiry" question in a way that conflicts with relevant decisions of this Court, other U.S. courts of appeals decisions, and decided that question at issue in a way that departs from the accepted and usual course of judicial proceedings or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power. See *Hill v. Curtin*, 792 F.3d 670, 678 (6th Cir. 2015) (en banc) ["habeas relief is not required on the ground that the trial court did not inquire into the basis of Hill's self-representation request"]; *Vann*, 776 F.3d at 763 ["a Faretta hearing is only 'a means to an end' of ensuring a voluntary and intelligent waiver, and the absence of that means is 'not error as a matter of law'"]; *Stanley*, 739 F.3d at 645 ["the failure to hold a Faretta hearing 'is not error as a matter of law'"]; Compare *Peppers*, 302 F.3d at 137 ["trial court's failure to make a proper inquiry is error in assessing whether a defendant may represent himself and is structural requiring a new trial"]; *Batchelor*, 682 F.3d at 412 ["the trial court's failure to conduct the required Faretta colloquy is an indication of the trial court's error"]; *Cano*, 519 F.3d at 516-17 ["summary denial of a motion to proceed pro se is error requiring reversal"]; *Moore*, 531 F.3d at 403-04 ["For the judge not to have engaged in a Faretta-compliant colloquy upon reading the defendant's written request to proceed pro se was contrary to and an unreasonable application of Faretta"]; *Cassano*, 1 F.4th at 470 ["Because trial court denied the waiver of

counsel without holding a Fareta hearing, the defendant's conviction could not stand, and was entitled to habeas relief under 28 U.S.C. § 2254]; Hernandez, 203 F.3d at 625 [if the court fails to explain the consequences and dangers of self-representation and then denies a defendant's request for self-representation, the government is not entitled to an affirmance of the conviction it subsequently obtains and the defendant is entitled to reversal and an opportunity to make an informed and knowing choice]; Watthall, 782 Fed Appx. at 574-80 [Failure of trial court to fulfill its obligation to conduct requisite Fareta-compliant inquiry violates the defendant's Sixth Amendment right of self-representation and requires reversal]. See also Raulerson, 469 U.S. at 970 [On review, a court need look only to the character of the assertion, and not beyond, to assure no error was committed.]

In this case, Fareta required the trial court to inform petitioner of the dangers and disadvantages of self-representation, via a Fareta-compliant inquiry, but the trial court never did so. Given the complete lack of inquiry into the three unequivocal and timely requests to defend himself, petitioner was unconstitutionally denied the right to represent himself, and the state court's conclusion that petitioner's right to self-representation was not violated was an unreasonable application of Fareta's mandate that the trial court must investigate a litigant's request to proceed without counsel. Fareta, 422 U.S. at 835.

On direct review and habeas corpus petitions the state court of appeals declined to address or make findings on Petitioner's claims that the trial court used an erroneous legal standard in denying his requests for self-representation and failed to conduct the requisite Faretti-compliant inquiry. The court applied the states non-structural error standard and concluded Petitioner's requests to defend himself were equivocal, et alia, because he invoked his right of self-representation after the trial court denied his motion for substitution of counsel. But the court never addressed whether the trial court's failure to conduct the mandated Faretti-compliant inquiry and its application of the wrong legal standard was contrary to, and an unreasonable application of, Faretti. See Appendix D at 8-10.

Petitioner contends that contrary to the state courts application of non-structural error standard, this Court's case law establishes unequivocally that a violation of the right to self-representation recognized in Faretti is structural and thus is not susceptible to state error review. See *McKaskle v. Wiggins*, 465 U.S. at 177 n.8. Because the state appellate court applied a rule that contradicts the governing law set forth in this Court's precedents, Petitioner satisfied the § 2254(d)(1) standard for the grant of habeas relief.

On federal habeas corpus, and in the district courts view, the state courts failure to address or make findings on Petitioner's claims that the trial courts use of erroneous legal standard, failure to conduct a Faretti-compliant inquiry; and the application of state standards in evaluating the

Faretta claim, rather than structural error analysis, was not contrary to, or an unreasonable application of, Faretta, nor based on an unreasonable determination of the facts in light of the evidence presented.

The district court ruled that the Petitioner's requests to defend himself were unequivocal, but the court then failed to address and make findings on Petitioner's claim that the trial court's failure to engage in a Faretta-compliant inquiry violated the Sixth Amendment. It failed to address the contention that the state court's evaluation of the Faretta claim according to state law standards, rather than the federal constitutional standards was contrary to, and an unreasonable application of, Supreme Court case law, and hence a denial of due process of law. Instead, the district court proceeded to evaluate the Faretta claim according to unpublished district court opinions and pre-AEDPA circuit precedent, rather than this Court's cases, and concluded that the state court's conclusion that Petitioner's right to self-representation was not violated, was not contrary to, or an unreasonable application of, Faretta, nor based on an unreasonable determination of the facts. It also concluded that Petitioner's exercise of his right to make motions disrupted court proceedings, et alia, and that Petitioner requested to proceed pro se for the purpose of disrupting and delaying the proceedings, and the trial court could have reasonably concluded Petitioner's pretrial conduct in the current case "afforded a strong indication that Petitioner would disrupt the proceedings in the courtroom. Appendix B at 10-15.

Under 28 U.S.C. § 2254 (d)(1), the district court (like the state courts) was required to evaluate the Farett claim according to this Court's precedents and determine whether Petitioner's requests to proceed prose were clear, unequivocal and timely, and whether the trial court violated the Sixth Amendment by failing to conduct a Farett inquiry. It did not do so.

Rather the district court proceeded to evaluate the Farett claim according to unpublished district court opinions and pre-AEOPA circuit precedent (see Appendix B at 13 n.16, 12, 14, 15) rather than the Farett framework. The question presented is whether it is contrary to, or an unreasonable application of, Farett, for a trial court to apply an incorrect legal standard to an accused request to proceed prose and failure to conduct a Farett inquiry. Farett's answer to this question is unambiguous. 422 U.S. at 807, 835. Ignoring the substantive question of whether the trial court violated the Sixth Amendment by failing to conduct a Farett inquiry, whether the requests were unequivocal and timely, the district court preferred to obfuscate the real issue in this case with conclusions like, "in deciding whether a defendant should be allowed to represent himself, 'pretrial activity' is relevant" if it affords a strong indication that the defendants will disrupt the proceedings in the courtroom, "a defendant's conduct in prior cases may be indicative of his likelihood for disruption in a current case", and "the trial court could have reasonably concluded Petitioner's pretrial conduct in the current case" afforded a strong indication that Petitioner would disrupt proceedings in the courtroom (Appendix B at 12, 13, 15).

Under Farett's framework, once the district court found

that Petitioner's request to proceed pro se was unequivocal; (see Appendix B at 13). AEDPA, 28 U.S.C. § 2254(d)(1), required the court to evaluate and make findings on whether the trial court's failure to conduct the requisite Fareta-compliant inquiry and its application of erroneous legal standards resulted in a decision that was contrary to, or an unreasonable application of, Fareta, or was based on an unreasonable determination of the facts in light of the evidence presented. But it refused to conduct this analysis. In fact, it gave Fareta no operation or function in its evaluation of the Fareta claim. Its analysis illustrates its error, in violation of AEDPA's strictures.

In the district court's view, the motions Petitioner filed requesting substitution of counsel constituted pretrial activity that afforded a strong indication that Petitioner would disrupt the proceedings in the courtroom. The court relied on the following sentence from *United States v. Flewitt*, 874 F.2d 669 (4th Cir. 1989):

"Pretrial activity is relevant only if it affords a strong indication that the defendants will disrupt the proceedings in the courtroom." *Id.* at 674.

The district court read and relied on that sentence to hold that Petitioner's requests for substitute counsel (which he had a right to do) amounted to pretrial conduct which afforded a strong indication that Petitioner would disrupt the proceedings in the courtroom, and that the state court's denial of his self-representation requests were not in violation of the Sixth Amendment. The unpublished district court opinions and *Flewitt* relied on by the district court

to evaluate the Farett claim did not constitute clearly established Supreme Court law. See *Glebe v. Frost*, 135 S.Ct. 429, 431 (2014) [admonishing the Ninth Circuit for substituting circuit court decisions in lieu of decisions from the Supreme Court when operating under AEDPA standard of review]; *Kernan v. Cuero*, 138 S.Ct. 4, 9 (2017) (same); See also *Lopez v. Smith*, 574 U.S. 1, 7 (2014) (per curiam) [criticizing the Ninth Circuit in particular for applying a legal standard nowhere found in AEDPA]; *Knowles v. Mirzayance*, 556 U.S. 111, 121 (2009) [error based in large measure, on its application of an improper standard of review].

In the district court's view, an unequivocal and timely request for self-representation may be summarily denied without conducting a Farett-compliant inquiry, if pretrial activity affords a strong indication that the defendant will disrupt the proceedings in the courtroom. Appendix B at 12-15, citing *Flewitt*, 874 F.2d at 674. That conclusion is contrary to Farett. 28 U.S.C. § 2254(d)(1).

Under Farett and the cases that followed require trial courts to meaningfully address the substance of a defendant's self-representation request. This inquiry is the heartbeat of Farett. AEDPA requires a district court to evaluate the denial of a defendant's request to proceed without counsel under Farett framework, which requires the court to inquire into the nature of a defendant's request - i.e., whether it is voluntary and intelligent, unequivocal and timely, and whether the defendant is willing to follow the rules of procedure and courtroom protocol. Farett's unequivocal focus is on the voluntary and intelligent inquiry and it is an

unreasonable application of that case to conclude that it permits a trial court to reject a self-representation request on substantive grounds without making inquiry into whether the request is voluntary and intelligent, whether he can follow the rules of court, and why the request is being made at that time. *Faretta*, 422 U.S. at 835; *McKaskle*, 445 U.S. at 173. The complete failure to conduct any sort of analysis under *Faretta* framework violated AEDPA's mandate that federal courts evaluate federal claims according to Supreme Court cases. Accordingly, Petitioner is entitled to relief because the district court unreasonably applied federal law when it applied a legal standard nowhere found in AEDPA. *Lopez*, 574 U.S. at 7.

The district court also incorrectly concluded that the Petitioner received the process he was entitled to, as the trial court held hearings on his *Faretta* requests, Appendix B at 10 n.8; that the record supported the state court findings that Petitioner's motion was made for the purpose of disrupting and delaying the proceedings (*Id.* at 13); that Petitioner did not cite a Supreme Court case holding that a trial court cannot consider a defendant's prior behavior in a prior unrelated case in determining whether the defendant's future conduct will be disruptive to the integrity and efficiency of the trial, and in the absence of such precedent it could not conclude that the state court's decision to deny Petitioner's *Faretta* request was contrary to, or an unreasonable application of clearly established federal law. *Id.* at 14-15. These conclusions are factually erroneous.

It is undisputed that the trial court in this case never conducted a Farella-compliant inquiry. Appendix J and K. This failure to conduct the Farella inquiry induced a structural defect in the constitutional institution of the Farella proceedings. The district court had no justification for relying on district court opinions and pre-AEDPA circuit precedent to evaluate the Farella claim, or making findings that are contrary to the record facts and law. The reporter's transcript shows clear and convincing evidence that the trial court did not conduct a Farella-compliant inquiry during the June 22, 2016 and the July 6, 2016 proceedings. Thus, it was an unreasonable determination of the facts in light of the evidence presented for the lower state and federal courts to conclude otherwise. 28 U.S.C. § 2254 (d) (2) and (c) (1).

In the district court's view, the state courts reasonably concluded that Petitioner's motions for self-representation were made for the purposes of disrupting and delaying the proceedings, because Petitioner invoked his right to self-representation after the trial court denied his requests for new counsel. Appendix D at 9-10; Appendix B at 13.

Contrary to the district court's conclusion, the trial court did not find that the Petitioner's motions were equivocal, insincere, made on a whim or for purpose of disrupting or delaying the proceedings. Nor did the trial court find Petitioner's motions for new counsel delayed the proceedings or meritless or that Petitioner's pretrial conduct afforded a strong indication that Petitioner would disrupt the proceedings in the courtroom. Instead, the record shows the trial court summarily denied Petitioner's Farella motion on the ground that Petitioner in a prior case

allegedly demonstrated an inability to conform his behavior to the rules of procedure and courtroom protocol; and possible disruption. But denial on such a basis plainly violated federal law as clearly established by *Faretta*. And contrary to the trial court's misapplication of clearly established Supreme Court law: under *Faretta*, a defendant's constitutional right to self-representation is not a matter of reaching back into his past, but respecting his present - and his presence, *Faretta*, 422 U.S. at 834, fn. 46, respecting his entitlement to the benefit of a presumption both that he is innocent of prior criminal conduct and that he has no intention to commit any offense in the immediate future. *Coffin v. United States*, 156 U.S. 432, 453; *Taylor v. Kentucky*, 436 U.S. 478, 485; See also *Cf. McGinnis v. Royster*, 416 U.S. 263, 273; *Stack v. Boyle*, 342 U.S. 14. These cases demonstrate this presumption of innocence, colors all of the government's actions against persons not yet convicted. Accordingly, *Faretta* considered and rejected denying self-representation on the ground of "possible disruption." *Faretta*, 422 U.S. at 835, fn. 46, citing *United States v. Dougherty*, 473 U.S. 1113, 1124-25 (D.C. Cir. 1972). See also *United States v. Taylor*, 21 F. 4th 94, 100 (3d Cir. 2021) [a court should refrain from denying a defendant's initial request to represent himself on this ground where disruption is predicted but has not occurred, citing *Edwards*, 554 U.S. at 85-86 (Scalia, J., dissenting); *U.S. v. Smith*, 836 F.3d 803, 810 (8th Cir. 2016) [Challenges to courts jurisdiction, governments authority to prosecute or validity of laws are not disruptive or defiant in this case]; *Walshall*, 782 Fed. Appx. at 579-80 [termination of self-representation would have been warranted if defendant was disruptive or engaged in obstructionist behavior after he was afforded

the opportunity to represent himself); United States V. Leveto, 540 F.3d 200, 220 (3d Cir. 2008) [even well founded suspicions of intentional delay and manipulative tactics can provide no substitute for the inquiries necessary to protect a defendant's constitutional rights.]

Faretta and the cases that followed tell trial courts the three element test it must apply in determining whether a request for self-representation is clear, unequivocal and timely. Faretta, 422 U.S. at 807, 835; McKaskle, 465 U.S. at 173; Patterson, 487 U.S. at 298, 300 n.13; Iowa V. Tovar, 541 U.S. 77, 88-89 (2004); Edwards, 554 U.S. at 170. See also United States V. Wright, 923 F.3d 183, 188 (D.C. Cir. 2019) [court determines waiver by "conducting a short discussion on the record" about the dangers and disadvantages of self-representation. Known as a Faretta colloquy pursuant to the Supreme Court decision in Faretta].) Thus, contrary to the district court's conclusion there is clearly established Supreme Court law directing what a trial court is to consider once a defendant requests to proceed pro se. Also the court's conclusion that Petitioner's motions requesting new counsel afforded a strong indication that he would disrupt the proceedings is erroneous. See McKaskle, 465 U.S. at 174 [pro se defendant's right to make motions, argue points of law, and address the court at appropriate points.]

It needs to be emphasized that this is not a case of one request to proceed pro se or two, but a case where Petitioner made four requests for self-representation on June 26, 22, and 28, 2016 and January 5, 2017. In this regard the district

court's conclusion that Petitioners Faretti motions were made for purpose of disrupting and delaying the proceedings replicates the state appellate court's error by treating the Faretti motions as mere privilege rather than innovations of the Sixth Amendment right to self-representation.

The district court refused to evaluate Petitioners claim under Faretti's framework, which induced a structural defect in the constitutional institution of the habeas proceedings. See *Wofford v. Woods*, 964 F.3d 685, 696 (6th Cir. 2019) [stating a district court's failure to apply the AEDPA standards is error]. The district court simply had no justification to evaluate the Petitioners claim according to district court opinions and pre-AEDPA circuit precedent rather than Faretti's framework. See *Lopez*, 574 U.S. at 7.

In this case, Petitioner invoked his right to self-representation because he did not trust appointed counsel which he explained to the trial court during hearings for new counsel. See Appendix J. The approach Petitioner selected was to forgo his right to counsel in order that he could review all of the evidence, control the organization and content of his own defense, and do counter-investigative work in preparation for his defense at trial. Petitioner took one position and stuck to it. The Sixth Amendment, as interpreted in Faretti, required the trial court to honor his requests.

In neither Faretti's case nor Petitioner's were there questions of competency, coercion, or sincerity. Each defendant asserted his wish to proceed pro se clearly and repeatedly;

each had to contend with a real-world obstacle that frustrated his ability to conduct the preparation he thought was necessary for an effective defense. In Farettas case, the Supreme Courts holding was informed by these realities. In Petitioners case, the lower state and federal courts became wrapped up in irrelevant hypotheticals, which led them to unreasonably apply Farettas and conclude that Petitioners election to represent himself was not knowing, intelligent or voluntary. This was a structural error, McKaskle, 465 U.S. at 117, n.8, the remedy for which is a new trial.

As noted, the district court found that the Petitioners requests for self-representation were unequivocal, but then ruled that the trial courts denial of the requests was neither contrary to, or an unreasonable application of clearly established federal law. Appendix, B at 13, 15. The Ninth Circuit Court of Appeals saw no reason to disagree; this is perplexing.

In the circuit courts view, the district courts evaluation of the Farettas claim according to district court opinions and pre-AEDPA circuit precedent was not contrary to, or an unreasonable application of clearly established Supreme Court law. It also concluded that the state court of appeals ruling that Petitioner invoked his right to self-representation to delay or disrupt the proceedings was not contrary to, or an unreasonable application of, Farettas, nor an unreasonable determination of the facts in light of the evidence presented. Appendix, A. That interpretation belies the record.

This case is riddled with errors, which began with trial court's failures to conduct the requisite Farettá-compliant inquiries and use of the wrong legal standards to the state appellate court's evaluation of the Farettá claim according to state law non-structural error standards, and inventing a hypothetical alternative rational sequence of events to justify that which simply did not happen, et, alia, to the district court's application of legal standards nowhere found in AEDPA, and ignoring evidence presented, as well as the substantive question of whether the trial court violated the Sixth Amendment by failing to conduct a Farettá inquiry.

Petitioner submits that there is strong reason to question whether the court of appeals evaluated the significance of the district court's errors under the correct standard. The court of appeals erred by failing to recognize the procedural posture of this case and by ignoring the substantive question of whether the trial court violated the Sixth Amendment by failing to conduct a Farettá-compliant inquiry. This error is compounded by the fact that the Ninth Circuit's own precedent holds that the failure to conduct a Farettá inquiry amounts to structural error and requires reversal under Farettá. See *Hernandez*, 203 F.3d at 625; *Walshall*, 782 Fed Appx. at 579-80.

The state appellate court ruled that the Petitioner's request to proceed pro se was equivocal and made for the purpose to disrupt or delay the proceedings because the Petitioner invoked his right to self-representation after the trial court denied his request for new counsel. But not that part of the procedural background of Farettá that this

Court analyzed and incorporated into Farettas holding? In Faretta the defendant was faced with essentially the same obstacle that confronted Petitioner - all the attorneys likely to be assigned his case were overloaded with work and therefore not likely to be committed to it. Faretta, 422 U.S. at 807. Faretta exercised his right to be heard, to file motions, and to due process, requested leave to act as co-counsel, to make motions in his own behalf, and requested three times for the appointment of a lawyer other than the public defender, but the trial court refused. Id at 811 n.5. Faretta then announced his intention to represent himself and the trial judge warned him against it. Nevertheless, Faretta stood his ground. Even so, said this Court, because the record showed that Faretta was literate, competent and understanding, and that he was voluntarily exercising his free will, and because he clearly and unequivocally declared to the trial judge that he wanted to represent himself, "this Court held that it was constitutional error not to honor that request. Id at 835-36.

Thus, a request to proceed pro se is neither equivocal or made to disrupt or delay the proceedings, in a request that counsel be removed, and, if not removed, that defendant wants to represent himself; nor is the "conditional nature of a defendants request evidence of purpose to disrupt or delay proceedings. Id at 807, 835. See also Hernandez, 203 F.3d at 621-22 [the fact that defendant requested self-representation only because the court was unwilling to grant his request for new counsel is not evidence that the request was equivocal].) It was unreasonable for the

state appellate court to conclude that the Petitioners requests for self-representation were equivocal or made for the purpose of disrupting or delaying the proceedings. There can be no fairminded disagreement on this point. It was also error for the circuit court to conclude that the state appellate court decision was not contrary to, or an unreasonable application of, *Faretta*, and that the district court correctly concluded the state courts conclusions were not erroneous under AEDPA. No fairminded jurist could conclude that neither the state or district courts conclusions were not clearly erroneous, or objectively unreasonable.

Petitioner argues the circuit court, like the state and district courts, ignored the substantive question whether the trial court violated the Sixth Amendment by failing to conduct a *Faretta*-compliant inquiry. It also deprived Petitioner of due process by refusing also to address or make findings on the Petitioners contentions presented to this Court. It abdicated its duty on habeas to search for constitutional error with painstaking care, *Kyles v. Whitley*, 514 U.S. 419, 422 (1995), and adopted the district courts legal errors and integrated them into its analysis of Petitioner's *Faretta* claim. The circuit court rubber stamped the district courts evaluation of the *Faretta* claim according to district court opinions and pre-AEDPA circuit precedent rather than this Courts opinion in *Faretta*. At what point does a lower court(s) disregard for the rule of law become a reversible error where the error itself is of a structural magnitude? See *Weaver v. Massachusetts*, 137 S. Ct. 1899, 1908 (2017) [holding an error has been deemed structural

if the error always results in fundamental unfairness)) But in the case where the lower court bases its ruling on a erroneous view of the law and on a clearly erroneous assessment of the evidence, what is the correct analysis and framework where the error necessarily and always induces a defect in the constitutional institution of the proceedings?"

Equal Justice Under Law is the Pillar of this Court. Petitioner seeks to be accorded the due process he was - entitled to, but denied. The questions presented in this case -- whether a trial courts failure to conduct a Faretti-compliant inquiry is an unreasonable application of, Faretti, and the application of standards nowhere found in AEDPA, are important and warrant review and an answer.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Lec Peyton

Date: July 7, 2023