

NO. 23-6187

IN THE
Supreme Court of the United States

JAMAR GREEN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent,

PETITION FOR REHEARING

Cary S. Greenberg (VSB 27456)

Counsel of Record

GREENBERG COSTLE & BRADLEY,
PC

8027 Leesburg Pike, Suite 302

Tysons Corner, Virginia 22182

Tel: (703) 448-3007

Fax: (703) 821-1144

Counsel for Appellant

COMES NOW JAMAR GREEN, Petitioner herein, and moves this Honorable Court to reconsider its denial of the Petition for Writ of Certiorari filed in this matter, and grant the Petition, vacate the holding of the Fourth Circuit, and remand the matter for Fourth Circuit for appellate review.

Although Mr. Green raised several issues on appeal, his primary focus, and that of the government in response to the appeal, was whether he was properly advised of the perils of self-representation before he was permitted to proceed *pro se*. Several of his other issues were related to this factor. The Fourth Circuit denied him any consideration of this question holding that

“Green waived [this challenge] when he entered his valid, unconditional guilty plea; Green’s assertion that his guilty plea was invalid because it was not counseled is without merit.”

United States v. Green, 21-4336, *3 (4th Cir. Aug 10, 2023).

Mr. Green did not receive review appellate review of this issue of whether he received a proper warning about waiving counsel pursuant to *Faretta v. California*, 422 U.S. 806 (1975), instead the Fourth Circuit Court determined that his appeal of that issue was meritless because he waived the right to appeal that issue when he entered an uncounseled plea of guilt.

In its Brief in Opposition to Mr. Green’s Petition for Writ of Certiorari, the United States conceded that “a guilty plea to a felony charge entered without counsel and without waiver of counsel is invalid.” *See Brief in Opposition at 14 (quoting Brady v. United States*, 397 U.S. 742, 748 n.6 (1970)). The United States further

conceded that the Fourth Circuit **erred** in refusing to consider this issue on appeal. *See* Br. in Opp. at 14. The United States agrees with Mr. Green that an uncounseled defendant's felony guilty plea does not waive consideration on direct appeal of whether the defendant's purported waiver of counsel was valid. Br. in Opp. at 13-15.

Given that the United States concedes plain error, Mr. Green submits that this Court should reconsider its denial of Writ of Certiorari and grant the Petition, vacate the Fourth Circuit's finding in error, and remand this matter for the proper Fourth Circuit consideration. *See Lawrence v. Chater*, 516 U.S. 163, 168 (1996) (discussing applicability of GVR when the respondent or appellee confesses error in the judgment below).

It is fundamentally unfair that a defendant would be permitted to proceed *pro se* without proper warning, especially where, as in Mr. Green's case, the Court repeatedly denied him the right to proceed without counsel during the course of the litigation because he did not demonstrate that he knowingly, voluntarily, and intelligently could make such a decision. Then he is further denied the procedural safeguards of appellate review when the Fourth Circuit erroneously denies him any review at all. Respect for the law is a paramount consideration and such respect requires that certain fundamental protections are strictly adhered to. Mr. Green is entitled to a plenary appellate review - especially on an issue such as whether he knowingly, intelligently and voluntarily chose to proceed without an attorney.

Given the plain error committed by the Fourth Circuit, conceded by the government, this Honorable Court should grant this petition for rehearing, grant the Petition for Writ of Certiorari, vacate the erroneous ruling of the Fourth Circuit, and remand the case for further consideration.

WHEREFORE, Mr. Green prays that this Honorable Court grant this motion and remand this matter to the Fourth Circuit for appellate review.

Dated: August 30, 2024.

/s/ Cary S. Greenberg
Cary S. Greenberg (VSB 27456)
Counsel of Record
GREENBERG COSTLE & BRADLEY, PC
8027 Leesburg Pike, Suite 302
Tysons Corner, Virginia 22182
Tel: (703) 448-3007
Fax: (703) 821-1144
csg@greenbergcostle.com
Counsel for Appellant

CERTIFICATE OF SERVICE

Counsel certifies that the grounds specified in his Motion are consistent with Rule 44 of the Supreme Court Rules. Counsel overlooked the remedy provided by the GVR docket. Considering the Government's concession in its Brief that the Fourth Circuit applied the wrong standard of review and deprived Petitioner of his right to appellate review, Counsel requests that the Supreme Court grant his Petition for Certiorari, vacate the Fourth Circuit's Opinion, and remand this matter for proper appellate review and determination.

Counsel also hereby asks the Court to take notice that he was the Appellant's Court appointed lawyer by the Fourth Circuit and requests that the Court waive the filing fee associated with the Petition.

I hereby certify that on this 14th day of June 2024, that the above referenced motion was served to the opposing counsel pursuant to the electronic filing system.

Respectfully Submitted,

/s/ Cary S. Greenberg

Cary S. Greenberg (VSB 27456)
Counsel of Record
GREENBERG COSTLE & BRADLEY, PC
8027 Leesburg Pike, Suite 302
Tysons Corner, Virginia 22182
Tel: (703) 448-3007
Fax: (703) 821-1144
csg@greenbergcostle.com
Counsel for Appellant