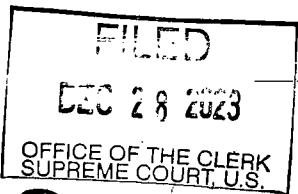


No. 23-6706



IN THE
SUPREME COURT OF THE UNITED STATES
1 1st Street N.E.
Washington, D.C. 20543-0001

ORIGINAL

LONNIE RARDEN-PETITIONER

Vs.

BUTLER COUNTY COURT OF COMMON PLEAS, et al.-RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF OHIO
PETITION FOR WRIT OF CERTIORARI

LONNIE RARDEN #547-085
LONDON CORRECTIONAL INSTITUTION
P.O. BOX 69
LONDON, OHIO 43140

QUESTIONS PRESENTEDN FOR REVIEW

1. Does this Court no longer recognize this Court's long standing precedent in *Johnson v. Zerbst*, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938), that a violation of right to counsel, either entirely or during a critical phase of the proceeding as an error divesting the trial court of jurisdiction?
2. Does a trial court violate a defendant's six amendment right when it fails to conduct a *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed. 2d 399 (1976), hearing at each stage?
3. Does a waiver of counsel at one stage of a proceedings continue or carry over to each subsequent stages of a case unless it is expressly revoked by the defendant?
4. Does res judicata apply to a sixth amendment violation of right to counsel?
5. Does law of the case doctrine apply when the Ohio Supreme Court relies upon *Johnson v. Zerbst* in 2021 and then in 2023 over turns the 2021 case without any new rulings from this Court to over turn that case?

LIST OF ALL PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceedings in the court whos judgment is the subject of this petition is as follows:

Judge Daniel Haughey
Butler County Common Pleas Court
Government Service Center
315 High Street, 3rd Floor
Hamilton, Ohio 45011

Michael Greer
Butler County Assistant Prosecutor
Government Service Center
315 High Street, 11th Floor
Hamilton, Ohio 45011

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APPENDIX B: The opinion of the Twelfth District Court of Appeals the opinion was unreported.

APPENDIX C: Petitioner's sentencing transcripts from March 21, 2007.

APPENDIX D: Petitioner's re-sentencing transcripts from April 14, 2010.

APPENDIX E: Petitioner's transcripts from February 21, 2007 hearing waiving his right to counsel for trial.

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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 be issued to review the judgment below.

OPINIONS BELOW

For cases from federal courts: N/A

For cases from State courts: The opinion of the highest state to review the merits appear at State of Ohio ex rel., Lonnie Rarden v. Butler County Common Pleas Court, 2023-Ohio-3742; 2023 Ohio LEXIS 2055; 2023 WL 6814420 (Ohio October 17, 2023), see Appendix A.

The opinion of the Twelfth District Court of Appeals was un-reported. A copy of the courts decision is attached. See Appendix B.

JURISDICTION

For cases from the federal courts: The date on which the United States Court of Appeals decided my case was: N/A.

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: N/A.

An extension of time to file the petition for writ of certiorari was granted: N/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 October 17, 2023. A copy of that decision appears at Appendix A.

A timely petition for rehearing was never filed in this case. An extension of time to file the petition for a writ of certiorari was never requested in this case.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The sixth amendment of the United States Constitution holds: "In all prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crimes shall have been committed which district shall have 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."

Ohio Rules of Criminal Procedure, Rule 44. Assignment of counsel states: "(A) Counsel in serious offenses. Where a defendant charged with a serious offense is unable to obtain counsel, counsel shall be assigned to represent the defendant at every stage of the proceedings from the initial appearance before the court through appeal as of right, unless the defendant after being fully advised of their right to assigned counsel, knowingly, intelligently, and voluntarily waives their right to counsel.

(B) Counsel in petty offenses. Where a defendant charged with a petty offense is unable to obtain counsel, the court may assign counsel to represent the defendant. When a defendant charged with a petty offense is unable to obtain counsel, no sentence of confinement may be imposed upon the defendant, unless after being fully advised by the court, the defendant knowingly, intelligently, and voluntarily waives assignment of counsel.

(C) Waiver of counsel. Waiver of counsel shall be in open court and the advice and waiver shall be recorded as provided in Rule 22.

(D) Assignment procedure. The determination of whether a defendant is able or unable to obtain counsel shall be made in a recorded proceeding in open court.

STATEMENT OF THE CASE

This case arises out of a violation of petitioner's sixth amendment right to counsel at his original sentencing hearing and a re-sentencing hearing held three years later.

On June 1, 2006, petitioner was arrested in Butler County, Ohio for a number of charges which include: two counts of felonious assault; inducing a panic; menacing by stalking and violation of a protection order, Butler County Case No. CR2006-06-1027. Petitioner was offered a plea deal of three years of imprisonment in the Ohio Department of Rehabilitation and Corrections (hereinafter "ODRC") and he accepted it.

While awaiting to be transported to the ODRC, petitioner racked up several other charges that arose while in the Butler County Jail. Those charged include: Escape, Butler County Case No. CR2006-07-1271; one count of retaliation; one count of tampering with evidence; two counts of complicity to perjury; one count of menacing by stalking and seventeen counts of violating a protection order, Butler County Case No. CR2006-09-1593. Petitioner was appointed counsel (David Brewer) for both cases.

Petitioner's ex-wife and sister both work for the Butler County Court system and both told petitioner not to trust Mr. Brewer because he worked part time as a magistrate and was married to a Butler County Assistant Prosecutor (Pamela Cox) at the time. Petitioner's ex-wife and sister told him that whatever he told Mr. Brewer about his case that Mr. Brewer would relate it to his wife and she would spread it on to the Assistant Prosecutor working on petitioner's case, (Lance Salyer). Subsequently, petitioner filed a number of pro se motions. Specifically, on December 11, 2006, petitioner filed a pro se motion to proceed to trial as "co-counsel." On February 21, 2007, the respondent held a hearing on all of petitioner's pending pro se motions. At that hearing the respondent(s) held a colloquy about petitioner proceeding to trial as "co-counsel." Respondent(s) told petitioner that in Ohio, a defendant had to proceed to trial with counsel, or proceed to trial in pro se. At the conclusion of that colloquy, respondent(s) determined that petitioner had knowingly, intelligently and voluntarily waived his right to counsel and would proceed to trial in pro se. See Appendix C.

At trial a month later, (on March 21, 2007) petitioner was found guilty on all counts in Butler County case No.'s CR2006-07-1271 and CR2006-09-1593. Respondent(s) proceeded directly into the sentencing phase. Respondent(s) did not inquire at all if petitioner wanted to continue to represent himself, or if he wanted counsel for sentencing. Respondent(s) proceeded to sentence petitioner to maximum consecutive sentences in both cases that resulted in twenty-six and one half years in the ODRC.

See Appendix C.

On March 26, 2007, Petitioner filed a pro se "Notice of Appeal" and "Motion for Appointment of Counsel" Butler County Case No. CA2007-03-077. On April 5, 2007, the trial court appointed Attorney Charles Conliff to plaintiff's direct appeal. Mr. Conliff filed petitioner's direct appeal brief as well as a motion for additional jail time credit on October 30, 2007 with the trial court. Petitioner's direct appeal was affirmed by the Twelfth District Court of Appeals, Butler County Case No. CA2007-03-077, (April 21, 2008 unreported) and the Supreme Court of Ohio denied review, State v. Rarden, 2008 Ohio LEXIS 2418, 110 Ohio St.3d 1449, 2008-Ohio-4487, (2008).

Three years later, Petitioner filed a pro se motion to be re-sentenced claiming that his sentences were void because the trial court did not follow Ohio's sentencing statute. The trial court agreed and on April 14, 2010 conducted a "re-sentencing hearing." At that re-sentencing hearing, the respondent(s) did not ask petitioner if he wished to continue to represent himself. Moreover, respondent(s) did not even notify petitioner that he had a right to counsel for re-sentencing. At that re-sentencing hearing, respondent(s) again, sentenced petitioner to the maximum consecutive sentences, resulting in a twenty-six and one-half year sentence in the ODRC. See Appendix D.

On August 4, 2022, petitioner filed a verified complaint for writ of mandamus and/or prohibition pursuant to a recent case decision from the Supreme Court of Ohio, Butler County Case No. CA2022-08-0074. In State of Ohio ex rel., Ogle v. Hocking

County Common Pleas Court, et al., 2021-Ohio-4453 at ¶12; 2021 Ohio LEXIS 2523; 21 WL 6048868 (2021) the Supreme Court of Ohio held that since Ogle was denied the right to counsel at sentencing that her sentence was void pursuant to this Court's precedent in *Johnson v. Zerbst*, 304 U.S. 458, 467-68; 58 S.Ct. 1019, 2024, 63 L.Ed. 1461; 1938 U.S. LEXIS 896; 146 A.L.R. 357, (1938) which states: "A court's jurisdiction at the begining of trial may be lost 'in the course of the proceedings' due to failure to complete the court as the Sixth Amendment requires by providing counsel for an accused who is unable to obtain counsel, who has not intelligently waived this constitution guaranty, and who's life or liberty is at stake. If this requirement of the Sixth Amendment is not complied with, the court no longer has jurisdiction to proceed. The judgment of conviction pronounced by the court without jursidiction is void."

Petitioner requested that the Twelfth District Court of Appeals issue an order that respondents' actions in Butler County Case No.'s CR2006-07-1271 and CR2006-09-1593 to convict and/or sentence petitioner on March 21, 2007 and re-sentence him on April 14, 2010 were patently and unabiguously actions unauthorized by law and therefore unlawful and void because respondent(s) violated his Sixth Amendment right and the court should vacate the judgment of conviction entries from both sentencing hearings.

Petitioner attached undisputed copies of records in which provided evidence that on March 21, 2007 at petitioner's original sentencing hearing and April 14, 2010 at petitioners

re-sentencing hearing, respondent chose to and did:

1. Exercised judicial power over petitioner to convict and/or sentence petitioner for an alleged number of felonies and misdemeanors;
2. and that said exercise of judicial power was unauthorized by law;
3. and that said acts were in absolute absence of jurisdiction to convict and/or sentence petitioner for the alleged crimes and punishment of twenty-six and one half years that was imposed upon him was and continues to be patently and unambiguously unauthorized by and in violation of law;
4. and that pursuant to unlawful and void sentencing hearings held on March 21, 2007 and April 14, 2010, in the Butler County Common Pleas Court in Case No.'s CR2006-07-1271 and CR2006-09-1593 against petitioner, respondent(s) took subsequent actions against petitioner by way of the March 21, 2007 and April 14, 2010 judgment of conviction entries declaring that the court accepted the jury's verdict in both cases and entered judgments of conviction finding petitioner guilty of escape in Case No. CR2006-07-1271 and in Case No. CR2006-09-1593 retaliation, two counts of complicity to purjury, complicity to tampering with evidence, menacing by stalking and seventeen counts of violation of a protection order;
5. and ordering sentences of imprisonment of twenty-six and one-half years in the ODRC.

Rarden has set forth that respondents exceeded their authority while serving as a judicial authority of the Butler County Common Pleas Court on March 21, 2007 and April 14, 2010 in the above stated acts in violation of petitioner's Sixth Amendment right to counsel.

Petitioner stated that the undisputed copies of the transcripts of the March 21, 2007 original sentencing hearing (Appendix C) and April 10, 2010 re-sentencing hearing (Appendix D) provided clear and convincing evidence that:

1. Petitioner was not accompanied by counsel or "stand by counsel" at his original sentencing hearing, or his re-sentencing hearing;
2. Respondent(s) did not advise petitioner that he had a right to counsel for his original sentencing hearing, or his re-sentencing hearing;
3. Petitioner did not ever sign any waiver of counsel form;
4. Petitioner did not waive his right to counsel orally at his original sentencing hearing, or his re-sentencing hearing;
5. Respondent(s) did not hold a hearing regarding petitioner's inability to obtain counsel but continued with the original sentencing hearing and re-sentencing hearing against petitioner;
6. No warnings, dangers or disadvantages were advised to petitioner by respondents regarding self-representation before involuntarily waiving his right to counsel and continuing with original sentencing hearing and

re-sentencing hearing against him;

7. Petitioner did not knowingly, intelligently or voluntarily waive his right to counsel as required by the Sixth Amendment;
8. No inquiry was made to determine how petitioner could have understood that he had relinquished his right to counsel for or during the original sentencing hearing or the re-sentencing hearing in any way in order for respondent(s) to establish that petitioner had made some sort of effective waiver of right to counsel for or during the original sentencing hearing or re-sentencing hearing in accordance with law;
9. There was no compliance whatsoever with Criminal Rule 44 during the original sentencing hearing or the re-sentencing hearing;
10. Appendix C and D clearly establish that petitioner was made to stand alone at both, his original sentencing hearing and his re-sentencing hearing.

On August 22, 2022, respondents filed a motion to dismiss petitioner's complaint for mandamus and/or prohibition in pursuant to Civil Rule 12(B)(6) for failure to state a claim because petitioner waived his right to counsel for trial on February 21, 2007, (see Appendix E) and did not expressly revoke his right to self-representation for his March 21, 2007 sentence hearing and his April 14, 2010, re-sentencing hearing.

Petitioner filed a memorandum in opposition arguing that there was a case from another District directly on point with petitioners argument. In City of Columbus v. Abrahamson, (10th Dist.), 2014-Ohio-3930, 2014 Ohio App. LEXIX 3849, Mr. Abrahamson was facing ninety days in jail for some zoning violations. Mr. Abrahamson waived his right to counsel. The trial court set his sentencing out for a later date. When Mr. Abrahamson returned for sentencing three months later, the trial court failed to ask Mr. Abrahamson if he wanted to continue to represent himself at sentencing. The Tenth District Court of Appeals found that the trial court violated Mr. Abrahamson's Sixth Amendment right to counsel and the court was without jurisdiction to sentence Mr. Abrahamson. In a supplemental motion in opposition. Petitioner cited a case from the Twelfth District Court of Appeals directly on point with petitioner's argument as well. In, In re M.T., (12th Dist.), 2007-Ohio-2446; 2007 Ohio App., LEXIS 2258, the court held that even though the defendant waived his right to counsel at the adjudication hearing, the trial court was still mandated to re-advise the defendant of his right to counsel at his disposition hearing. *Id.* at ¶24.

On October 14, 2022, the Twelfth District Court of Appeals dismissed petitioner's writ requesting mandamus and/or prohibition stating that when petitioner waived his right to counsel for trial, that waiver of counsel continues into the sentencing phase and that it could not find any precedent stating otherwise, see Appendix B.

On direct appeal to the Supreme Court of Ohio, petitioner argued the Sixth Amendment to the United States Constitution guarantee criminal defendants brought to trial in any federal or state court the right to the assistance of counsel before they can be validly convicted and punished. *Powell v. Alabama*, 287 U.S. 45, 53 S.Ct. 792, 77 L.Ed. 158 (1932) and *Gideon v. Wainwright*, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed. 2d 799, (1963). The Ohio Constitution Article I, Section 10 guarantees the right to counsel as well. The defendant may waive that right to counsel after a colloquy with the trial court until the trial court is satisfied that the defendant knowingly, intelligently and voluntarily waives that right to counsel. *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed. 2d 399, (1976) (hereinafter Faretta hearing). The state of Ohio adopted that concept of a Faretta hearing in *State v. Gibson*, 45 Ohio St.2d 366, 345 N.E.2d 399, (1976) and Criminal Rule 44. Moreover, this Court has long held that in addition to a defendant having a right to counsel at trial a defendant shall not stand alone at any stage of the prosecution, formal or informal, in court or out, where counsel's absence might derogate from the accused's right to a fair trial. *United States v. Wade*, 388 U.S. 218, 226, 87 S.Ct. 1926, 18 L.Ed. 2d 1149 (1967). Also see *Iowa v. Tovar*, 541 U.S. 77, 80, 124 S.Ct. 1379, 158 L.Ed.2d 209, (2004). This Court has also long held that sentencing is a critical stage of the proceedings and that the defendant has legitimate interest in the character of the procedure which leads to the imposition of sentence even if he may have no right to object to particular result of the sentencing.

process. *Gardner v. Florida*, 430 U.S. 349, 358, 97 S.Ct. 1197, 18 L.Ed2d 393, (1977).

Meanwhile, after *Ogle*, *supra*, was remanded back to the Fourth District Court of Appeals as being void pursuant to *Zerbst*, *supra*. The Fourth District Court of Appeals then determined that *res judicata* applied to *Ogle*'s case. *Ogle* then filed a direct appeal with the Supreme Court of Ohio arguing that *res judicata* did not apply to her case because the merits of her issue was never addressed by the courts and *res judicata* does not apply to void sentences. On October 3rd, 2023, the Supreme Court of Ohio overruled its decision a year earlier in *State of Ohio ex rel., Ogle v. Hocking County Common Pleas Court, et al.*, 2021-Ohio-4453, 2021 Ohio LEXIS 2523, 21 WL 6048868 (2021) without any rhyme or reason. See *State of Ohio ex rel. Ogle v. Hocking County Common Pleas Court*. ____ Ohio St.3d ___, 2023-Ohio-3534, ____ N.E.3d _____. Justice Stewart dissented claiming that *Zerbst*, *supra*, is still good law and that this Court did make any rulings within the past year to determine otherwise. Therefore, the law of the case doctrine should be applied.

On October 17, 2023, the Supreme Court of Ohio used *Ogle*, *supra*, to affirm petitioner's argument in the case at bar. See Appendix A.

REASONS FOR GRANTING THE PETITION

As this Honorable Court knows, the United States Supreme Court Rule 10, (b) holds: "a state court of last resort has decided an improper federal question in a way that conflicts with the decision of another state court of last resort or of

a United States court of appeals."

The reasons that this Court should grant certiorari is because not only is the issues being presented important. This Court has a duty to protect the sixth amendment of the constitution and not allow Ohio, or any other state court to dilute or water it down simply to "put a case to bed" as Justice Stewart put it in State of Ohio ex rel., Ogle v. Hocking County Common Pleas Court, _____ Ohio St.3d _____, 2023-Ohio-3534, _____ N.E.3d _____, (October 3, 2023) at ¶42 of her dissent. What the Supreme Court of Ohio did in this case and the Ogle case is clearly in conflict with holdings from fifteen other state supreme courts, see: Ex parte Pritchett, 117 So. 3d 356, 2012 Ala. LEXIS 111, 2012 WL 3871484 (Ala. September 7, 2012), In re Carmen, 48 Cal. 2d 851, 313 P.2d 817, 1957 Cal. LEXIS 236 (Cal. August 2, 1957), Wilson v. State, 90 Idaho 498, 414 P.2d 465, 1966 Ida. LEXIS 321 (Idaho May 9, 1966), State ex rel., McManamon v. Blackford Circuit Court, 229 Ind. 3, 95 N.E.2d 556, 1950 Ind. LEXIS 96 (Ind. December 1, 1950), Hamner v. State, 223 A.2d 532, 1966 Me. LEXIS 209 (Me. October 26, 1966), People v. Carpentier, 446 Mich. 19, 521 N.W.2d 195, 1994 Mich. LEXIS 2048 (Mich. August 2, 1994), State ex rel., Baker v. Utecht, 221 Minn. 145, 21 N.W.2d 328, 1946 Minn. LEXIS 446 (Minn. January 4, 1946), State v. Scott, 255 Neb. 438, 586 N.W.2d 436, 1998 Neb. LEXIS 221 (Neb. October 30, 1998), State v. McKnight, 52 N.J. 35, 243 A.2d 240, 1968 N.J. LEXIS 219 (N.J. June 3, 1968), Brooks v. Gladden, 226 Ore. 191, 358 P.2d 1055, 1961 Ore. LEXIS 246 (Or. Janauary

25, 1961), Commonwealth v. Banks, 513 Pa. 318, 521 A.2d 1, 1987 Pa. LEXIS 623 (Pa. February 13, 1987), State v. Wolf, 2014 SD 89, 857 N.W.2d 594, 2014 S.D. LEXIS 149 (S.D. December 17, 2014), State ex rel., Anglin v. Mitchell, 575 S.W.2d 284, 1979 Tenn. LEXIS 412 (Tenn. January 2, 1979), State v. Kolocotronis, 73 Wn.2d 92, 435 P.2d 774, 1968 Wash. LEXIS 600 (Was. January 25, 1968) and Smith v. Roach, 56 Wyo. 205, 106 P.2d 536, 1940 Wyo. LEXIS 36 (Wyo. October 22, 1940).

Again, as Justice Stewart stated: "This court concluded less than two years ago in this same case that a violation of a defendant's right to counsel under the Sixth Amendment to the United States Constitution renders the defendant's associated conviction void, not voidable. See 167 Ohio St.3d 181, 2021-Ohio-4453, 190 N.E.3d 594, ¶12-14 ("Ogle II"). There has been no basis for the court to revisit that decision today--there has no change in the applicable caselaw, and Ogle II and its analysis of the United States Supreme Court's decision in Johnson v. Zerbst, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938), is the law of the case." State ex rel., Ogle v. Hocking County Common Pleas Court. 2023-Ohio-3534, 2023 Ohio LEXIS 1952, 2023 WL 6395439 (October 3, 2023) at ¶28.

If this Honorable Court allows the ruling to stand in this case. This Honorable Court is basically allowing 85 years of work on the issue of jurisdiction to be swiped away at a stroke of a pen. I would also point out that if the Supreme Court of Ohio's ruling is allowed to stand, it brings up the issue that does "law

of the case doctrine" have any real meaning or can a court change its mind on a whim?

CONCLUSION

There is clearly conflict between the courts in the meaning of "jurisdiction." This case presents this Honorable Court with the opportunity to clearly define the meaning of "jurisdiction." With that said, petitioner asserts that the petition for writ of certiorari should be granted.

Respectfully Submitted,

Lonnie Rarden
Lonnie Rarden

January 1, 2024.