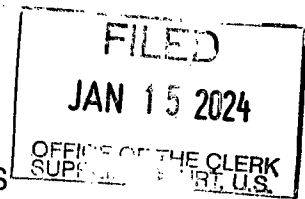


No. 23-6758 ORIGINAL

\_\_\_\_\_  
IN THE  
SUPREME COURT OF THE UNITED STATES



Frank Bernard Johnson — PETITIONER  
(Your Name)

vs.

Solicitor General of the United States — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Court of Appeals of Virginia  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

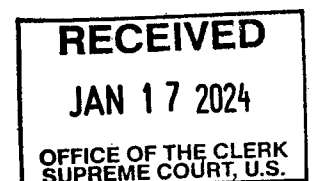
PETITION FOR WRIT OF CERTIORARI

Frank Bernard Johnson  
(Your Name)

2300 South Nelson Street  
(Address)

Arlington Virginia 22206  
(City, State, Zip Code)

202-983-0427  
(Phone Number)



## Questions Presented

Frank Bernard Johnson

1. In any trial in which a guilty verdict can result in a criminal conviction: is it lawful to have compulsory pro se representation by the defendant?
2. If a defendant is unaware of the scope, duties, and procedural obligations of pro se representation, does this in any way hinder or infringe upon their right to a fair trial?
3. If a defendant has been diagnosed with a neurological or psychological condition that is associated with mental debilitation, is it unconstitutional to have that person represent themselves without having their condition and its potential impact on the trial assessed?
4. In a trial in which the defendant is represented pro se: does proceeding with a trial in the absence of components such as stenography, evidence and witnesses align with the United States Constitution's as it relates to the VI amendment?
5. In a Pro se trial in which a "stay of judgment" has been issued to allow for a court ordered mental health or substance abuse evaluation to be conducted immediately following the trial due to a judge's skepticism in the legitimacy of a defendant's neurodivergence or cognitive deficit, in any way infringe upon that defendant's Constitutional rights to a fair and impartial trial. Moreover, are the results of those findings sufficient for establishing a conviction or dismissal?
6. Is it lawful to deny a defendant the opportunity to furnish proof of compliance with a court order?
7. Is it lawful for a court order to be rescinded on the grounds of a violation of probation or contempt of court regarding such an order without due process related to the alleged violations?
8. Is it lawful for the prosecution in a pro se case to inform the opposing counsel that the reception and review of video evidence of the alleged crime is contingent upon the defendant's decision to waive their constitutional right to a trial by jury?
9. Is it lawful for a defendant in a pro se trial to assume the role of counsel if they have expressed doubt in their ability to effectively represent themselves?
10. In a judicial system which supports the Constitution of the United States: what assurance do defendants in trials of compulsory pro se have that their rights will be upheld and not infringed upon?
11. As it relates to the United States of America: In a judicial system that supports fair and equal protection under its constitution, what provisions exist to ensure all defendants regardless of their letic aptitude ,competency or literacy receive a fair trial when pro se representation is compulsory in their defense?
12. In a trial or case in which a defendant is represented pro se and multiple orders have been declared, rescinded, redacted, altered or otherwise modified in any way: is it lawful not to inform or make aware to the defendant who is presently acting in a counsel capacity: of their legal and procedural duties ,responsibilities and potential courses of action associated with both the role and its objective of maintaining an effective assistance of counsel?

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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 \_\_\_\_\_ 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 \_\_\_\_\_ 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**

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- Amdt6.6.2.2 Modern Doctrine on Right to Have Counsel Appointed
- Amdt6.6.3.1 Overview of When the Right to Counsel Applies
- Amdt6.6.3.2 Pretrial Judicial Proceedings and Right to Counsel
- Amdt6.6.3.5 Post-Conviction Proceedings and Right to Counsel
- Amdt6.4.3.3 Petty Offense Doctrine and Maximum Sentences Over Six Months
- Amdt6.6.5.1 Overview of the Right to Effective Assistance of Counsel
- Amdt6.6.5.2 Deprivation of Effective Assistance of Counsel by Court Interference
- Amdt6.6.5.4 Deprivation of Effective Assistance of Counsel by Defense Counsel
- Amdt6.6.5.5 Deficient Representation Under Strickland
- Amdt6.6.5.6 Prejudice Resulting from Deficient Representation Under Strickland

## JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_.

☐ 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 October 16th 2023.  
A copy of that decision appears at Appendix A.

☐ 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).

## Statement Of Case

As a pro se defendant throughout the duration of this case, I've found difficulty in reconciling my position as a defendant with those of the duties of counsel; which as I currently understand are to assist in assuring that the Constitution of the United States is upheld in legal proceeding.

I can unequivocally say that the gathering of the necessary materials to perform these actions have at times been overwhelming and filled with frustrations regarding my ability to effectively fulfill these duties. I continue to relive the events of the evening in question, which ultimately resulted in my arrest. The precise reasoning and causality of my arrest are unbeknown to me however, conjecture and speculation as to why I was removed from my residence prompts numerous reasons, many of which I've found to be erroneous in both manner and execution.

The facts supporting both my arrest and conviction are scarce and if required to be substantiated with any evidence apart from the testimony of those who initiated the arrest; I can say with certainty that none exist. I say this from the position of a defendant as well as witness to all that has transpired. My perspective from the position of counsel affords me only that I was arrested at my residence for the charge of drunk in public. I was taken to Arlington County jail and remained there for approximately 12 hours. Upon my release I was issued a temporary restraining order that stated I could not return to my residence.

When I eventually appeared in court, shortly before my trial's commencement; I inquired about the issued restraining order as well as requested any video footage associated with



me on the night in question. Furthermore; I inquired about what resources someone with cognitive impairments could obtain to assist with their defense.

I met with the opposing counsel in my case shortly before entering my plea of not guilty. I was propositioned that if I were to waive my right to a trial by jury I would receive a copy of the footage associated with my arrest, I would also agree to perform 20 hours of community service with the caveat that if either the footage or Officer Patterson's report showed evidence that I was "mouthing off" or "combative" in any way, that the 20 hours of community service would be increased to a far greater number but if completed by my next court date a motion to dismiss would be issued. I agreed to this proposition and subsequently waived my right to a trial by jury.

On my next appearance I went before the Judge and expressed the agreement proposed to me by the opposing counsel; to which the prosecution stated that he did recall making an agreement as it related to community service and dismissal of the charge but did not recall providing footage of the arrest as being a part of the agreement. The judge then excused both the prosecution and I from the courtroom, where we once again met, this time Officer Patterson was present and provided the prosecution with a laptop that contained footage of me at the time of the incident. I was shown a muted excerpt of video and was told by the prosecutor that he wasn't required to use any of this footage to establish a conviction nor did he intend to. He informed me of his familiarity with the Judge presiding in my case and expressed that he was aware of his rulings in previous proceedings and could therefore say with certainty that I would "lose" if I proceeded with a trial. He instructed me that the best course of action at this juncture was to perform the aforementioned community service

and change my plea from "Not Guilty " to a plea of "No contest". He reiterated several times the futility I would be met with if proceeding with to trial.

When the opposing counsel I returned from the recess, I requested the Judge allow me to obtain the video footage of Officer Patterson's body-cam as well as those of the other officers involved in my arrest. The Judge stated that if I would simply accept 20 hours of community service proposed by the Commonwealth, the charge would be dismissed and I therefore would have no need to receive or review any footage related to the incident. I found it strange that so much emphasis was being placed on not affording me opportunity to view the events that led to my arrest. I replied to the judge by stating that I was not opposed to performing community service but I was however; unfamiliar with the distinction between the "dismissal" of the charge, opposed to its "acquittal" and whether or not those terms were synonymous with each other. I was then asked to have a seat and the judge informed me that my trial would begin immediately.

The prosecution made their opening argument and then called upon Officer Patterson to give his testimony. I had the opportunity to cross-examine Officer Patterson which at one point I asked him to describe my behavior that night and he mentioned that I had slurred speech. I went on to ask Officer Patterson if I appeared to have a lisp in the courtroom to which he said I did, along with a stutter. I then asked how he would define a lisp and he stated that he did not know how to define a lisp and I followed his statement by asking how it was so that he could identify that I have a lisp, but was uncertain on how to define what a lisp was. I noticed non-verbal communication between the judge and the prosecution

through the use of head shakes and hand movements. I went on to ask additional questions. All of which officer Patterson stated the words "I do not recall" each and every question appeared to have the identical answer of "I do not recall" I inquired about things such as, had he reviewed the video footage, how much time had elapsed between his arrival and my arrest, had he been wearing a face mask at the time that he stated detecting the smell of alcohol on my breath. While conducting the cross-examination I attempted to recall all that I could about that evening in realtime and each question was met with "I do not recall" by officer Paterson. At some point I took a long pause as I tried to form a pertinent and impromptu question related to establishing my innocence. During that pause which may have lasted between 60 and 90 seconds of complete silence by me but felt exponentially longer; the Judge asked me "Mr. Johnson how much longer are you going to take?" followed by the assertion "because this trial is going to end today". The duplicity in my thinking at that time was that of counsel and as a defendant. I felt anxiety in the desperation of needing to prove my case as well as a hopelessness and resignation to the very real possibility that the verdict in my case had already been reached. I rested my case soon after with a silent reluctance that was pacified with the belief that regardless of any further questions I may have proposed, they would all be met with a response of "I do not recall" by officer Patterson.

My mother was in attendance and when asked by the Judge if I had any other witnesses I was reluctant to say "yes" because I hadn't asked her to testify previously nor did I know I would be engaging in a trial that day without a stenographer, subpoenaed witnesses, or any physical evidence in my defense. I didn't have so much as a writing implement or

paper to take notes and quantify questions. I went to court with the expectation and perhaps naivete that I would be receiving access to the video footage related to my arrest with the opportunity to review and present the evidence found therein.

My mother gave her testimony and was cross examined by the prosecution. I made it a point to ask her about previous police presence at our home and the circumstances surrounding those events. Alcohol and substance use was never among the mentioned events including the night in question.

When it came time for the Judge to reach his verdict he harkened back to my early line of questioning of Officer Patterson by saying "Officer Patterson may not be able define a lisp but I can " he continued by stating he had paid close attention to my conduct throughout the proceeding and noticed that "at times you display a stutter and other times you don't, at times you appear to have trouble pronouncing your "S's " and other times you don't..I have no doubt that you are putting on an act in the courtroom...". He further went on to state that he could find me guilty that very instant but instead would order " a stay of judgment" and I was to undergo a mental health and substance abuse evaluations. He asked me how I would describe my "drinking" and I replied "social" as in someone who consumes alcohol in a social setting more often than in solitude. He appeared irritated by my response and his following questions appeared to restate a similar theme and inquiry to which I responded through examples such as the places and occasions in which I engage in the consumption of alcohol and to the extent in which I do so. He stated that he believed I was lying and I responded "I've been truthful about everything I've said here today your Honor" and his response was "then prove me wrong". I was then told to report to the Sequoia mental health building and inform them that I had been court ordered to undergo

a mental health and substance abuse evaluations. This concluded my trial and I was never given any documents pertaining to the court order, only the instruction to tell the staff at the Sequoia building that I had been court ordered to undergo said evaluations.

I promptly proceeded to the Sequoia mental health building and informed them of the court order and they began the intake process which included a urine sample, questionnaire and preliminary evaluation. I was provided a date to return and did so on that date.

When I returned to court, I had already completed several appointments with mental health specialists from the Sequoia building however they did not have the appropriate staff available onsite to perform a substance abuse evaluation at time of my visits with the exception of one appointment that was canceled shortly after my arrival due to time constraints. I presented copies of email correspondence regarding those visits including the cancellation. The prosecution skimmed through the pages and said that he didn't see any evidence of compliance with the court's order. I asked the judge if he would review the documents, to which he declined interest. I was then asked by the judge what I expected from this court and I replied by saying "an opportunity to prove my innocence". He responded by saying "I've already found you guilty"; which confused me because it seemed in contradiction of the "stay of judgment" he declared in my previous court appearance; pending the results of the mental health and substance abuse evaluations, in which I had complied with including the date of the cancellation. He then asked whether or not I was willing to be placed on probation to which I agreed that I was. He then ordered for me to

undergo 6 months of probation. The prosecution then asked "what type of probation your Honor?" And the judge replied " just see that he complies with his mental health counseling". No other orders were given. No other questions were asked and I was excused from the courtroom. In the hallway of the courthouse I was approached by the prosecution and provided a piece of paper with the address of the probation office and was told to report there the following day.

The following day I arrived at the probation office and remained there for nearly two hours as they attempted to ascertain whether or not I was in the correct building. I was never provided any official documents from the court to present them. Ultimately I was provided a probation officer's card and given a date and time in which to return to the probation office the following week, once they had resolved whether or not I was in the correct location. Upon my return the following week I was assigned to probation officer Moore and during our visit I was photographed and provided my fingerprints to be entered into a federal database and then was escorted to a room where I was presented a packet of documents that required signatures. I expressed to officer Moore my concerns about signing these documents without legal counsel to inform me of what my obligations were as well as clarification about the type of probation I would be subjected to. At my previous court appearance at no time was supervised probation discussed by the Judge or prosecution and Officer Moore's supervisor who was also in attendance confirmed that supervised probation wasn't mentioned during my last court appearance. I requested to have counsel appointed to me to explain my rights as it relates to supervised and unsupervised probation and the distinctions thereof. I was then ordered by officer Moore to

return immediately to the Sequoia building and undergo a psychiatric crisis evaluation to which I complied. When I arrived at Sequoia building, I expressed to the crisis intervention counselor my frustrations surrounding my arrest and how the events that followed had an adverse affect on my mental health. I expressed that I had experienced misconduct by the police and that I had been assaulted and ridiculed and that I perceived the actions of the court as a deliberate attempt to prevent those experiences from being addressed. I disclosed to the counselor that in my meeting with Officer Moore I had informed her of these experiences and she showed a lack of interest in addressing those concern and instead appeared only to be concerned with my signature on the documents she presented me. I voiced my concerns about signing the documents without having legal representation and my concerns about the uncertainty of what I may be subjected to if I were to sign.

After my visit I was in constant contact with officer Moore and received multiple visits by her and her supervisor and continued to meet with a counselor from the Sequoia building. Officer Moore informed me that my signature was no longer required but I was to continue to be in contact with her as well as continue my “therapy sessions” at the Sequoia building. I expressed to Officer Moore my confusion about the initial order to undergo mental health and substance abuse evaluation and how my visit appear to consist of therapy sessions in which I’m addressing the events I experienced but no actions are being taken to investigate the night of my arrest and the police misconduct I received and how it was disheartening to me. Days after that conversation I received a summons to appear in court for the charge of “contempt of court”.

When I next appeared in court, officer Moore gave a report regarding the status of my probation as well as the crisis evaluation she ordered during my previous visit to the probation office. She made no mention of the police misconduct that I alleged to have experienced nor my concerns about the type of probation I was to be placed on, nor my interest in having a lawyer review the documents in which she wanted me to sign and the ramifications of doing so. When asked to answer the charge of "contempt of court" I stated to the Judge that I had continued to comply with the court's orders as well as subsequent orders given by officer Moore. I stated that officer Moore had told me that my signature was no longer required, only my compliance with the orders given by her and the court. I stated my confusion regarding the ambiguity surrounding the type of probation I would be agreeing to be subject to and to the best of my ability I had followed the orders given to me by the court. I was then asked by the judge my age and reply that I was 33 years old. He then asked me whether or not I wanted to proceed as a 13-year-old or 33-year-old. I again answers by stating my age was 33 years of age. The judge then said that he would set a date in which I would stand trial for the charge of contempt of court and that there was a very real possibility that I would be serving 6 months of incarceration. I then ask to judge if I would be provided legal counsel when answering to this charge, and he stated that I would not. I then asked about the lawfulness of proceeding with a charge that could ultimately lead to my incarceration without legal counsel; he then asked what my income level was and I stated that it was under \$30,000. He then stated that I made too much to be appointed counsel. I asked for the opportunity to gather my financial documents



because I strongly believed that my income level was eligible for a court appointed attorney. The judge then declined my request. He set a date for me to answer to the charge of contempt of court as well as ordered that I meet with Officer Moore the following day.

The following day I visited officer Moore at the probation office. I expressed to her that I felt her representation of my compliance was disingenuous. I expressed to her my concern that more effort had been placed on convicting me of crimes than effort into proving that they were warranted. Officer Moore presented me another set of documents, to which I said that in light of the penalties in front of me I wanted to sign but could not do so in good conscience. I expressed to her my fearfulness of being incarcerated and she assured me if I were to sign the documents presented before me that the fear of incarceration could be avoided. I ultimately declined to sign the documents but I did inquire whether or not I could expect another contempt of court to be issued. Officer Moore stated that I made a wise decision to at least appear at the probation office because failing to do so would have resulted in another violation. Officer Moore then informed me that my presence was no longer required until the date of my trial for the contempt of court violations.

The following day I received another summons to appear in court, this time for the charge of "Violation of probation" which also carried with it a potential sentence of 6 months of incarceration. The date in which I was to answer to this new charge was the identical to my upcoming trial date for the previous violation of contempt of court. At some point between my second summons and my trial date; I received a

phone call from officer Moore. In that phone call I voiced my uncertainty about the future and possibility of now facing a year of incarceration and being forced to do so without the aid of counsel all of which stemmed from a none jailable offense which was the precise reason for me having to represent myself initially. I expressed that if defending my rights and freedom came at such a price I'd prefer not have either. Shortly after our call had concluded I was visited by members of Arlington County Police department and was informed that they were conducting a welfare check per the request of Officer Moore. I reiterated the dilemma in which I was experiencing and the perceived hypocrisies found therein. No further action was taken

On the date of my trial and summons I appeared before the court and officer Moore provided a status update which included her conversation with me as well as her issuance of a welfare check. Officer Moore also stated that the findings of my evaluations had concluded and that I had been diagnosed with schizophrenia and a "unspecified" substance abuse issue. The Judge then expressed he's opinion of me and made several marks most of which were disparaging in nature and included pejoratives of some kind. He informed me that he had within his power to make me comply with whatever order he saw fit but instead would simply find me guilty of the original charge of drunk in public. He then asked if I had the ability to pay the fine that day. I told him that I did not. I then asked the reasonings why and replied that I intended to appeal. He then ordered that the court cost be paid and set

**another date in which to see if I had initiated the appeal process. Since that time I've made multiple appearances regarding the status of my appeal .**

### **Reasoning For Granting Petition Of Certiorari**

I approached the composition of this document with great seriousness. I take measure of the voluminous instances in which this request for certiorari could be applied. Moreover I acknowledge the limits of my intellect and identity, my vast and unquantifiable ignorance as it relates law and how the misuse of the position in which I present you could undoubtedly lead to frivolous and malevolent implications; if not appropriately applied with provisions and limitations. However; being one such a person who would have sincerely benefited from its existence has afforded me a scope in which to see its very necessary and benevolent applications. The term "serious crime" comes to mind when writing this request. I was charged with the crime of "drunk in public" at my residence in the summer of 2021. The exact cause of my arrest is unbeknown to me and may remain so for the remainder of my life. What is known is that I differed in many aspects from those around and those distinctions ultimately contributed to my arrest; an arrest that I willingly subjected myself to, impart due to my sincere belief in our justice system. A system that since its conception has acknowledged that it itself is not complete and subject to review and revision. The alteration of this system, many times comes about from its applied practice and the results thereof. In some instances, and I would argue the most serious of instances, these results were obtained by the expenditure of both life and liberty of its beneficiaries. I regard these instances as of the utmost importance because they set the precedent for future generations of beneficiaries to enjoy an evermore complete justice system which through practice and not conjecture has reached its position. At the time of my arrest I was prepared to take part in such an endeavor. I believed in that instance as I do now that all people are created equal and that such an equality extends to those whom differ, whether or not those differences are intrinsic or extrinsic. Upon my arrest I found myself in a criminal proceeding

that neither those conducting the arrest or the lower courts found it necessary for me to receive legal counsel and the reasoning expressed to me was because the crime in which I committed was denoted as “ non-jailable offense”. I know first hand, having had to represented myself, that the “ non-jailable offense” of “drunk in public “ can quickly and exponentially metamorphosize into a criminal conviction that can result in a minimum sentence of 6 months of incarceration and in my personal experience at least 1 year of incarceration. I find the fact that our justice system has a class of offenses that are deemed as “minor” but under close observation and scrutiny in fact can result in lengthier and arguably harsher sentences than that of “major “ or more “serious” offenses. Moreover; the distinction between major and minor crimes and their subsequent penalties is not at the root of my grievance; instead it is my belief that in all cases in which the potential for incarceration amounts to any length of time, that a defendant in those cases ought to be able to enjoy the rights expressed in the VI amendment. I have experienced and possess a first hand account of the challenge and obstacles one such person may face being forced to represent themselves Pro Se. During this process I've had moments of despair, overwhelming grief ,and frustration brought on by self-doubt in my ability to adequately represent myself. However; this process has also presented me with the opportunity to self-examine as well as examine the society in which I am apart and it has afforded me the privilege to represent a portion of our society that differs from the rest; but now having personal traversed this experience can say with all certainty that in every bit as equal to the others. My position is not to weigh the pros the cons of self representation nor is it to express the duplicity in my experience; it's merely that in my humble experience I have concluded that a defendant ought not be compelled to defend themself in legal proceedings useless it is of be of their own free will and volition and not out of necessity. The request to grant certiorari in this case is

presented to you by a person who is represented by Pro Se and they do so out of necessity and not volition alone.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Frank Bernard Johnson

Date: January 15<sup>th</sup> 2024