

United States Supreme Court
Case NO. 20-15278 9th circuit

Jacob Smith
Appellant

✓

Isidro Baca, Warden
Respondent

D.C. NO 3:14-cv-00512
MMD CLB District of
Nevada, Reno

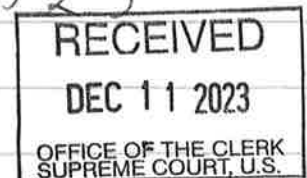
Motion For Continuance

Comes now Jacob Smith As a Pro Se litigant
I am asking For a continuance. Due to
The Flu. And excessive bed moves.

I am asking For a 60 day continuance

The Law library is shutdown due to the
Thanks Giving Holiday.

Dated on November 23, 2023



NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 24 2023

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JACOB SMITH,

Petitioner-Appellant,

v.

ISIDRO BACA, Warden; ATTORNEY
GENERAL FOR THE STATE OF
NEVADA,

Respondents-Appellees.

No. 20-15278

D.C. No.

3:14-cv-00512-MMD-CLB

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Miranda M. Du, Chief District Judge, Presiding

Submitted August 21, 2023**
San Francisco, California

Before: BUMATAY, KOH, and DESAI, Circuit Judges.

Nevada state inmate Jacob Smith appeals the district court's denial of his 28 U.S.C. § 2254 habeas corpus petition challenging his conviction for first-degree murder. A screening panel of this court granted Smith's application for a certificate

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See Fed. R. App. P. 34(a)(2).*

Here, Smith challenges the justice court's decision to not allow him to proceed *pro se* during the preliminary hearing. He cannot show that this decision was contrary to clearly established Federal law because the Supreme Court has not spoken on whether *Faretta* rights apply at a preliminary hearing. Smith identifies no dispositive Supreme Court case on this point. While *Faretta* established the right to self-representation *at trial*, 422 U.S. at 834, no Supreme Court case extends that right of self-representation to a preliminary hearing. Accordingly, we cannot say that the justice court's decision was contrary to Federal law under *Faretta*.

2. Under Circuit Rule 22-1(e), we construe Smith's briefing on the uncertified issues regarding *Faretta* rights at trial before the state district court, prosecutorial misconduct,¹ and burden of proof as a motion to expand the certificate of appealability. After considering Smith's amended arguments, we deny the motion. Smith cannot make a substantial showing of the denial of a constitutional right. *Pham v. Terhune*, 400 F.3d 740, 742 (9th Cir. 2005) (quoting *Nardi v. Stewart*, 354 F.3d 1134, 1138 (9th Cir. 2004)).

AFFIRMED.

¹ On August 16, 2023, the court received Smith's *pro se* motion to amend his opening brief to amend his uncertified issues to include prosecutorial misconduct. Dkt. No. #76. We **GRANT** the motion and accept Smith's amended arguments regarding uncertified issues. Dkt. No. #77.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

SEP 22 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JACOB SMITH,

Petitioner-Appellant,

v.

ISIDRO BACA, Warden; ATTORNEY
GENERAL FOR THE STATE OF
NEVADA,

Respondents-Appellees.

No. 20-15278

D.C. No.

3:14-cv-00512-MMD-CLB

ORDER

Before: BUMATAY, KOH, and DESAI, Circuit Judges.

The panel unanimously voted to deny the petition for panel rehearing. Fed. R. App. P. 40. To appeal to the United States Supreme Court, Petitioner must file a petition for a writ of certiorari directly in the Supreme Court, rather than a Notice of Appeal in the U.S. Court of Appeals for the Ninth Circuit. A petition for certiorari in the Supreme Court does not require a certificate of appealability. Any petition for writ of certiorari must meet the requirements set forth by the U.S. Supreme Court. The petition for panel rehearing is therefore DENIED.

certificate of Service

I Jacob Smith hereby certify that this is a true and correct copy of a Motion For Continuance.

Date 11-23-23

Jacob Smith.