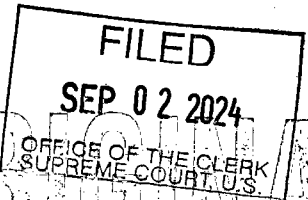


24-5842

No. _____



IN THE

SUPREME COURT OF THE UNITED STATES

Dallas Joseph Staden — PETITIONER
(Your Name)

VS.

Louisiana — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States 5th Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Dallas Joseph Staden
(Your Name)

1630 Prison Road
(Address)

Cottonport, LA. 71321
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. If standby's representation over the defendant's objection is allowed to morph into hybrid representation, can the defendant then seek review of hybrid's ineffective assistance of counsel under the 6th Amendment?
2. Does an advisory/standby/hybrid counsel have unfettered access to a judge's chambers (sole trier of fact) and permission to approach the bench by himself with or without ADA for or against pro se defendant's behalf constitute unsolicited participation of *McKaskle v. Wiggins*?
3. When standby, due to judge's urging, is ineffective in his unclear role as standby or advisory counsel, does that counsel violate defendant's 6th Amendment right along with *Faretta* and its progeny *McKaskle v. Wiggins*?
4. Did the ambiguities and erroneous nature of standby/advisory counsel appointment as well as his ~~appointment~~ participation over defendant's objection violate defendant's right to a fair trial?
5. Is standby or advisory counsel's unsolicited participation in pro se litigant's stand hybrid representation and does all subsequent actions by same run afoul of the doctrine of *McKaskle v. Wiggins* and the right to self representation?
6. Can advisory, standby or hybrid counsel and/or the appointment thereof violate defendant's right to a fair trial and the 6th Amendment be violated and if not, is that harmless error?
7. If standby's role is that he 'must' be ready to assume normal attorney responsibilities in the event self-representation is terminated, does standby's admitted refusal to prepare for such a possibility prior to and after his appointment render him ineffective? And under the 6th Amendment right to fair trial, does a judge abuse his discretion by appointing such a standby while acknowledging his lack of preparedness? And what is the remedy for such failure of discretion?
8. Is failure of judge from onset of bench trial of self-represented defendant to differentiate whether counsel was standby or advisory counsel reversible error?
9. During bench trial of self-represented defendant, is it the role of the sole trier of fact to not allow standby counsel's representation to morph into hybrid representation? Especially if standby's participation (outside of *McKaskle*'s limitations) is unknown to defendant?
10. What is the role and scope of advisory attorney or standby counsel's participation in pretrial and post trial plea bargaining as well as sidebar or in chambers conferences?
11. Is misconduct of standby counsel ineffective assistance of counsel? If not, what is the remedy and by what lawful vehicle can misconduct by standby counsel be claimed and adjudicated?
12. If counsel's actions are in deed unobjectionable and his actions aren't hybrid representation and don't run afoul of the 6th Amendment, does standby's actions allow for an ineffective assistance of counsel claim?
13. Is the appointment of standby counsel fundamentally unfair under the 6th Amendment right to counsel when the judge permits and standby counsel commits hybrid representation against the objection of petitioner?
14. Does an admittedly intentionally unprepared standby counsel violate a defendant's 6th Amendment right to counsel once representation morphs into hybrid representation?
15. Can *Faretta*'s rights be 'eroded' absent a full violation and the 6th Amendment right to self-representation remain intact? And ~~is it~~ would such a situation be the same as harmless error?
16. If under normal standby functions counsel does everything right, yet while hybrid counsel he violated petitioner's rights, what is the correct standard by which to adjudicate petitioner's allegations?
17. If standby at anytime was hybrid counsel or if standby representation is allowed to drift into hybrid representation what then is the test to ascertain whether the attorney rendered ineffective or effective assistance of counsel?
18. How can the US 5th Circuit not recognize hybrid representation of which there is no constitutional right yet retroactively permit it but only to say that a defendant can't claim ineffective assistance of counsel or to say that defendant did not object to some action in which the standby may have taken? And is such practice in the circuit conflict when some circuits allow hybrid representation why some don't yet offer a version of it?

Question(s) Presented (continued) 'A'

19. Is defendant's initial invocation to proceed pro se sufficiently an objection to the appointment of advisory standby counsel as well as unsolicited participation or subsequent actions stand by make take?
20. Under *McKaskle v. Wiggins*, does a pro se litigant's failure to object to an advisory attorney's unsolicited participation in chambers and bench conferences and dismissal of witnesses negate the stand-by's conduct under the sixth amendment?
21. Is a potential violation of defendant's 6th Amendment rights listed in the *McKaskle v. Wiggins* doctrine nullified due to petitioner's election of a waived jury trial ie outside the presence of jury?
22. Does the exclusion of a pro se defendant from chambers and bench conferences during a waived jury trial violate defendant's right to be at every critical stage and his right to self representation and his right to a fair trial?
23. Does a pro se defendant who validly waived his right to a jury have standing to urge a *McKaskle v. Wiggins* and *Faretta* violation?
24. At bench and chambers' conferences where defendant was not allowed, was defendant represented by standby or advisory counsel or because the US 5th doctrine of no hybrid counsel, was defendant unrepresented at a critical stage of his trial and does it violate his right under *Faretta* and *McKaskle* and the 6th Amendment as well as his right to a fair trial and was such circumstances unconstitutional ex parte communications between stand by, trier of fact judge and ADA?
25. Does an ADA's dismissal of a pro se litigant's defense witness at behest of judge and a stand by constitute prosecutorial misconduct or violations of a fair trial?

Question(s) Presented (continued) 'B'

26. Can a defendant's valid claim that judge, ada and standby counsel violated his right to be represented at a critical stage be susceptible to the harmless error analysis?
27. Is the ability to determine one's own witnesses a "matter of importance" to which McKniskle's limitations applies.
28. Does standby counsel represent a defendant? And can a judge as the sole trier of fact obligate standby to represent a self-represented client where he has excluded the self-represented defendant from a critical stage of the trial?
29. What is standby's role in pretrial and sidebar or in chambers' proceedings under McKniskle and does this role respect the 5th Circuit prohibition of hybrid representation and ignore the other circuits permitting of hybrid representation?
30. Does pro se defendant's 6th Amendment rights extend to sidebar and in chambers' conferences from which he is barred?
31. Did standby's participation in chambers conferences, sidebars and dismissing witnesses violate pro se defendant's 6th Amendment rights under *Paretti*, *McKniskle* and *Frantz v. Harzey*?
32. Is a defendant's separate claims for review even after reviewing courts rebranded as cumulative error and subsequently rules that the cumulative error is unexhausted? See Appendix I
33. Is the fundamental miscarriage of justice exception amendable to the failure of courts (lower) to hold a fair trial for defendant?

Question(s) Presented (continued) 'c'

34. Is the lower courts procedural rulings and those of the courts below contrary to Supreme Court precedent by creating new test and standards not recognized by this Court?
35. Is lower court's determination that standby counsel was an asset to defendant who objected to his appointment and his subsequent conduct the correct standard of review?
36. Is the Court's holding in *McKaskle v. Wiggins* unconstitutionally vague?
37. Is intra Circuit conflict a basis to review the issue of the role of Stand by counsel's conduct in trials in and outside the presence of the jury?
38. Does petitioner not having a jury nullify or invalidate or condone alleged misconduct by advisory stand by counsel *McKaskle v. Wiggins* holding?
39. Did reviewing Court's procedural analysis of petitioner's case in light of actual innocence claim correct?
40. Does the district court's analysis of petitioner's case, however substantial or not exceed the standards set forth in *McKaskle v. Wiggins*, *Faretta* and their progeny?

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:

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TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Foretta v. California 422 US 806, 820, 95 S.Ct. 2525 L.Ed.2d 562
Maskle v. Wiggins 465 US 168, 177, 104 S.Ct. 944, 79, L.Ed.2d 122
Frantz v. Hazy
United States v. McDermott
Lefevre v. Cain

STATUTES AND RULES

OTHER

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 H 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 G 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

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was ~~6/24/24~~ 6/3/24

☒ 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 _____.
A copy of that decision appears at Appendix _____.

☐ 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

?

I tried to understand this. I don't get it. I don't know where to find this or the difference of what's been asked for

STATEMENT OF THE CASE

At his arraignment, petitioner waived his right to trial and elected to represent himself. Petitioner was subsequently appointed the Office of Public Defender who two weeks later resigned due to a never-disclosed conflict of interest. Petitioner again asserted his right to self representation and his right to waive the jury. Petitioner appeared at a status conference as his own attorney and at several hearings thereafter.

Two weeks before trial, the judge appointed a standby counsel Steven Moore (the District Attorney's brother) whom petitioner had never met and who knew nothing of the case. The judge acknowledged that he understood the petitioner didn't want another lawyer, but that Steven Moore would be there to assist if he was needed and take over if the need arises. He explained that he expected petitioner to have his witnesses ready to go by trial. I explained that my witnesses were indeed ready to go and that I had my list of witnesses to be subpoenaed. ~~I~~ began reading them into the record when the judge interrupted and ordered petitioner to give the list to Steven Moore. Not two weeks later, standby wrote petitioner a letter explaining what he wasn't prepared to do. He further explained that it was his understanding (even after the judge tasked him with subpoenaing the witnesses) that Petitioner was handling 'all aspects' of the trial himself and that at this point he would "not be doing any investigative work on your behalf or handling any witnesses."

According to affidavits, Steven Moore dismissed witnesses without petitioner's knowledge or permission. Standby questioned witnesses, who appeared despite his failure to subpoena other witnesses - attended bench conferences, chambers conferences, and sidebar conferences without petitioner's knowledge or permission. Standby at a bench conference colluded with the ada and the sole trier of fact judge to dismiss defense witnesses. The ~~standby~~ admitted such to Petitioner's retain post-conviction lawyers (Please see ^{Appendix X} last brief to 5th). It should be noted that standby didn't sit at the defense table but in the crowd sometimes and somewhere off to the left towards the jury box.

Assistant District Attorney Jeff W. Traylor called defense witnesses at their homes and 'set them to be here' on a day different than what the defense had told the witnesses - he later apologized to the court. ADA participated in bench conferences, chambers conferences and sidebar conferences along with the sole trier of fact and

Statement of the Case (A)

according to affidavits, dismissed at least one witnesses without alerting court or defense to the presence of the defense witness outside of the courtroom.

The reviewing state court of appeals applied the wrong standard even after identifying the right precedence. In pertinent part they concluded: there is no indication that standby counsel deviated from the case laid out by defendant. And that standby was an 'asset' to defendant - as if his job is to be anything but.

The proper analysis is contained in *McKeele v. Wiggins* and instructs reviewing courts to ensure that their analysis is whether or not a defendant had a fair chance to present his case in his own way.

The district court, through its own opinion and its adoption of the magistrates report, both of which have never ruled upon a self-representation case - completely abused their discretionary authority by misapplying the correct legal standards. The court claimed that under *McKeele*, because Petitioner had no jury he was not entitled to relief because *McKeele* dealt with a Standby's conduct in the presence of the jury. This is a new standard and contrary to all relevant law and precedents.

The US 5th Circuit Court of Appeals renamed petitioner's claims and then stated the those same claims were procedurally barred for having been raised on appeal for the first time! There is no way for me to contain this in an 'error for review.' Please see my last counseled brief, (Appendix I).

REASONS FOR GRANTING THE PETITION

This is a case of a self-represented defendant who waived his right to a jury trial and was appointed counsel to assist him. The judge, assistant district attorney and advisory counsel took several actions violating the fundamental fairness enshrined in the Sixth Amendment.

In no case located on Westlaw or LexisNexis are there any cases where a defendant waived his right to a jury trial and also elected to represent himself. Further, there are no cases with allegations of 6th Amendment violations where the standby and the defendant had never met each other and where standby was only appointed less than a month before trial while admitting to know nothing about the case and not being a criminal lawyer.

In no cases did appointed counsel ever not sit at the defense table with defendant he's supposed to be ready to take over in the circumstances arise.

This is a case of first impressions for this Court who has not yet ruled upon any case dealing with the conduct of a standby counsel at/during a bench trial. This court has not yet clearly defined the role of standby counsel and his role pre and post trial and his conduct at bench and chambers conferences or side bar conferences. This court has also never defined the role and conduct of an assistant district attorney or a judge presiding with out a jury and with a self-represented defendant.

This Court has also not ruled whether or not standby or advisory counsel is hybrid counsel which can be violative of petitioner's 6th Amendment right to self representation.

Since *Nichols v. Wiggins*, which the Court decided in 1984 there has been no mention of 'stand by' counsel or 'hybrid' representation by the Court. The role of self representation and that of standby counsel within no jury^{trial} is surrounded in an intra-circuit swamp of ambiguities.

The state's conduct as well as the judge's conduct as the sole trier of fact is ambiguous as it pertains to self-represented cases and waived jury trials with appointed standby.

The questions presented for review and this request for certiorari seek to clarify and obtain uniformity amongst the circuits concerning the role of standby, trial judge, and state at a bench trial with a self-represented defendant appointed a standby counsel who is the DA's brother and has never met the defendant he is standby for. And very simply where should standby sit and can he roam the courtroom.

Reasons for Granting the Petition (A)

Just like in *Frantz v. Haze* all I seek is an evidentiary hearing to ascertain of what nature and to what extent was standby's unsolicited conduct during ex parte communications between state judge and Ada where defendant was absent during this critical stage of the proceedings where trial strategy was discussed and where decisions to dismiss witnesses were made.

I also ask for a comprehensive procedural framework for those seeking self representation during a waived jury trial.

The Court of Appeals and the district court has arrived at a decision that is in conflict with the decision of another United States court of Appeals on the same issue of a self-representation violation by way of a 6th Amendment Due Process violation is an important matter. The district courts have so far departed from the accepted and usual course of judicial proceedings, and has sanctioned such a departure by lower court.

Most importantly, both the state court and the US Court of appeals has declined and decided important questions of federal law that has not been, but should be, settled by this Court, and has decided important federal questions in a way that conflicts with relevant decisions of this Court.

For Example: Please see Appendix I.

My understanding is that I can't argue points of law in a petition for Certiorari. I could - if my understanding is wrong I pray that this honorable Court allow me leave to correct any mistakes or misunderstandings.

Reasons For Granting The Petition (B)

In doing, if conviction is left to stand or certiorari is denied, standby counsels will be appointed to unclear, ill-defined roles; they won't have to be prepared to take over, if needed. If conviction is left to stand or certiorari is denied, standby will not be held responsible for his unconstitutional unsolicited conduct to petitioner's detriment. Standby will be permitted to dismiss witnesses he admittedly knows nothing about. He will be ordered to assist prose defendant with the subpoenaing of defense witnesses yet fail to do so with no consequences. If conviction is left to stand or certiorari is denied, standby will be permitted to dismiss witnesses and speak on matters of importance during critical stages in the trial all against the wishes of the self-represented defendant. Ultimately, in short, if conviction is left to stand or certiorari is denied, ambiguously appointed standby or advisory counsel with no clearly defined role will be permitted to be a fool - even a weapon of the state with complete autonomy and no umpire acting, at every turn against the constitutionally protected rights of an accused who dares to waive a jury and represent himself. If conviction is left to stand or certiorari is denied, an ada could speak to defense witnesses (unbeknownst to the defense) without permission and with the acquiescence of the judge who is acting as the jury. The same ada will be permitted to dismiss witnesses without permission. If conviction is left to stand or certiorari is denied, a state court can abuse its discretion by appointing a standby ~~to declare~~ ^{without clearly} defining his role or requiring standby to declare that he is indeed ready to take over in the event he should have to. If conviction is left to stand or certiorari is denied, a judge sitting as the sole trier of fact would be permitted to engage in ex parte communication with the state and standby counsel concerning critical matters of importance leaving a self represented defendant ignorant of the substance of each meeting as well as the nature of why and how such a meeting is taking place. If conviction

Reasons For Granting the Petition (C)

is left to stand or certiorari is denied, a state court will be able to order the dismissal of defense witnesses or permit the same without consent or hearing or any notice to self-represented defendant. If conviction is left to stand or certiorari is denied, a state appellate court will be permitted to apply the wrong legal standards contrary to clearly established federal law subjecting petitioner's case to the harmless error analysis which is amendable to 6th Amendment violations as it is a structural claim. If conviction is left to stand or certiorari is denied, The magistrate's judge and District Court by way of adoption will be permitted to speculate, instead of granting an evidentiary hearing as to what petitioner was doing during ex parte communications and what was the nature of such meetings. The courts below will be allowed to create new law and standards surrounding the issue of self-representation as it pertains to the conduct of standby counsel and judge's roles in such cases. Because no hearing was held, courts don't have the context that the standby didn't even sit at the defense table with defendant and was not even continuously in the courtroom during the trial. Also, because no hearing was held, this Court doesn't know that standby counsel admitted to petitioner's appellate counsel that witnesses were dismissed. See Appendix I

The state appellate court said: The defendant did not object when the trial court appointed standby counsel at the preliminary examination proceeding.

This was mentioned to insinuate that the defendant had to acquiesced to unconstitutional conduct of the standby.

The law is clear: "The primary focus must be on whether the defendant had a fair chance to present his case in his own way." Further, the law ^{is clear} says: When counsel is appointed only to advise, the initial invocation of the right of self-representation is generally sufficient to establish that any participation by standby

Reasons For Granting the Petition (B)

counsel other than for the routine matters mentioned in McKaskle is 'over the defendant's objection.'"

In similarly situated cases including *Frantz v. Haze* and *United States v. McDermott*. Those courts determined the defendant's failure to object to his exclusion from conferences was not fatal to his claim. Petitioner argues that the same standard should apply to his case.

Also, Petitioner argues that the same standard should apply as he was under no obligation to object ever and that the reviewing courts reliance on such created standards should be judged as erroneous as Petitioner's federal claims are structural nullifying the contemporaneous objection standard. See *State v. Langley* and *State v. Hongo*.

Petitioner admits that the first circuit may have not had all of the documents supporting petitioner's contentions during its first ruling, but they definitely had the same evidence the trial court based its erroneous decision on, yet they refused to correct or even discuss the error they claim wasn't supported in their first ruling.

The reviewing courts have never adjudicated the petitioner's federal claims on their merits, the reviewing courts have merely noted its doubts (See Appendix G) about the merits of the claim and then proceeded to assess the harmlessness of the error.

Lastly, the District Court in its own opinion scrutinizes petitioner's claims viciously, but erroneously.

District Court says: Petitioner's claims suffer from defects which prove insurmountable as the claims are likely unexhausted and procedurally defaulted due to the substance of the claim never being presented to the highest available court.

Petitioner has in fact submitted its claims to the highest court's in great substance of the claims. However, the court's in previous

Reasons For Granting the Petition (E)

☐ Filings inexplicably renamed petitioner's claims and then deemed
☐ those same claims as unexhausted. Secondly, so long as the supplement
☐ of a claim doesn't substantially alter the claim then the claim
has been fairly presented. Please see Appendix I.

Next, that court's puzzling appreciation of petitioner's claims concerning bench conferences and or chambers conferences ignores the fact that for them to even happen is a violation of petitioner's rights. Though it only takes one violation, there are multiple instances ignored by the district court. See Appendix I.

The district court has decided to ignore the record where standby ask for a side bar, where standby refers to a meeting with the judge. The Court has ignored the existence of the affidavits it says aren't in the petition. They are and each speaks to the very things the District Court says there's no evidence for. See Appendix I.

The Standby asked at least once to approach the bench. That alone was a violation. It's plain from reading the transcript that they discussed witnesses because at the conclusion of this particular meeting the judge brought up a witness he'd earlier jailed for an outburst and admonished her and subsequently sequestered her. According to multiple affidavits Steven Moore stated that he had spoken with the judge and they didn't want the witness to testify. Several affidavits described the same kind of intrusion by the ADA and judge.

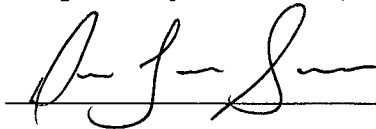
For the District Court to not order an evidentiary hearing to ascertain these uncontested material facts in dispute is an abuse of discretion. What are they so afraid of that a hearing would uncover or reveal? All cases similar a hearing was granted to ascertain the validity. PLEASE HOLD THESE PEOPLE ACCOUNTABLE, PLEASE OVERTURN THIS CONVICTION AND REMAND. THE LAW AND THE SYSTEM REQUIRE SUCH A DECISION. PLEASE ADD CLARITY TO THE POSITION OF STANDBY OUTSIDE OF A JURY AS WELL AS JUDGE'S & ADA'S CONDUCT.

CONCLUSION

I am innocent. If there are any mistakes in this petition, please allow me an opportunity to supplement or/and correct. I have all my paper work. This is my last step. Please read. Thanks.

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 6/11/2024