

No. 24-6239

IN THE SUPREME COURT OF THE UNITED STATES

**ORIGINAL**

CHARLES RANDY BOWLDS, PETITIONER,

vs.

STATE OF OKLAHOMA, RESPONDENT

Supreme Court, U.S.  
FILED

OCT 10 2024

OFFICE OF THE CLERK

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ON PETITION FOR WRIT OF CERTIORARI TO THE  
OKLAHOMA COURT OF CRIMINAL APPEALS

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**PETITION FOR WRIT OF CERTIORARI**

Petitioner, pro se

Charles Randy Bowlds  
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P.O. Box 97  
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## QUESTIONS PRESENTED

- I. Whether the Petitioner's Waiver of Counsel resulted in a dilemma of Constitutional Magnitude.
- II. Whether the Petitioner's Waiver of trial Counsel was rendered Void and resulted in an invalid waiver Considering he was led to believe, by the Court, that he had a right to later seek Counsel.
- III. Whether the Logan County District Court committed a **CHRONIC** violation when the Honorable Judge Phillip Gorley denied the Petitioner's Motion for Appointment of Counsel For Final Sentencing.
- IV. Whether the Oklahoma Court of Criminal Appeals approached this *matter of first impression*, **re-appointment of counsel after a valid waiver of counsel**, in a manner that was in contradiction with clearly established Supreme Court and Tenth Circuit precedence.

## LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

## RELATED LIST OF ALL PROCEEDINGS

I. Charles R. Bowlds v. Carrie Bridges  
No. 5:23-cv-00210-R (Unpublished).

United States District Court for the  
Western District of Oklahoma.

Final judgment ordered July 3, 2023.

II. Charles R. Bowlds v. Oklahoma Indigent  
Defense System, et. al.  
No. 5:24-cv-00220-SLP; 2024 WL 4148766.

United States District Court for the  
Western District of Oklahoma.

Final judgment ordered September 11, 2024

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### State Court:

The opinion of the highest state court to review the merits appears at **Appendix A** to this petition and is reported at 554 P.3d 244, 2024 OK CR 20.

The Judgment and Sentence of the Logan County District Court appears at **Appendix B** to this petition and is unpublished.

## JURISDICTION

The date on which the highest state court decided my case was July 18, 2024. A copy of that decision appears at **Appendix A**.

Pursuant to Rule 14.1(5) the Clerk of the Court, Susan Frimpong, determined the Petitioners Petition was submitted timely and in good faith, however was not in a form that complied with Rule 14.1 et seq. The letters from Clerk Frimpong appear at **Appendix L**, and extended the time for filing this Writ of Certiorari to January 20, 2025.

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

## CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment of the United States Constitution provides in relevant part:

In all criminal prosecutions, the accused shall enjoy the right to . . . have the Assistance of Counsel for his defense.

The Fourteenth Amendment of the U.S. Constitution provides in relevant part:

No State shall . . . deprive any person of life, liberty, or property, without due process of law.

The Fifth Amendment of the U.S. Constitution Provides in relevant Part:

No Person shall\*\*\* be deprived of life, liberty, or property, without due process of law\*\*\*

## STATEMENT OF THE CASE

This case arises from a domestic altercation which led to Mr. Bowlds being convicted, after trial by jury, of Kidnapping, Assault and Battery with a Dangerous Weapon, and Domestic Assault and Battery. The Logan County District Court imposed twenty-year sentences for the conviction of kidnapping, and Assault and Battery with a Dangerous Weapon, a one-year sentence and fine of \$5,000 for the Domestic Assault and Battery. The Court ordered each sentence to be served consecutively. From this judgment and Sentence Mr. Bowlds appealed.

Mr. Bowlds and Ginger Williams<sup>2</sup> began dating in February of 2012. Ginger had two daughters, Corbee Williams, who was eleven years old at the time, and Chloe Williams, who was ten years old at the time. Mr. Bowlds and Ginger produced two more children, and resided together for four years in Edmond Oklahoma.

Starting in December of 2018, Mr. Bowlds began noticing suspicious behavior from Corbee. Mr. Bowlds testified that he was home from work one day and one of Corbee's older phones<sup>3</sup> was "*blowing up*" while she was at school. When he looked at the phone to see who was calling it, the phone displayed "*Bestie*" with a heart. Mr. Bowlds took a picture of the phone display and sent it to Corbee in a text message asking who it was that was calling the phone. Corbee immediately called Mr. Bowlds and told him that it was a "*gay boy*" named "*Teon*" in one of her classes. Mr. Bowlds later discovered that the boy attended a completely different school, and that he had a reputation for "*sleeping with all the girls.*"

Mr. Bowlds also testified that Corbee had been exhibiting erratic, aggressive behavior. That due to her behavior, Mr. Bowlds and Ginger took Corbee to her Primary Care Physician, who examined Corbee and diagnosed her with an "*overactive thyroid.*" Mr. Bowlds testified that "*the overactive thyroid condition caused Corbee to have anger attacks,*" and caused her to "*overreact to situations.*" Mr. Bowlds testified that the overactive thyroid conditions caused Corbee to have "*mood issues,*" which "*caused her to escalate from zero to 120.*" She would also start physical altercations with her younger sister, and literally began breaking dishes, and became physically

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<sup>2</sup> Because there are three individuals with the last name *Williams*, Ginger Williams, Corbee Williams, and Chloe Williams each individual will be referred to by their first name.

<sup>3</sup> The older phone had no service, but was connected to the home wi-fi in order to be used.

aggressive one time when she was simply asked to do the dishes. Mr. Bowlds testified that Corbee's condition was the trigger to Ginger's anxiety attacks.

Mr. Bowlds testified that around this time he started getting notifications from the home security system while he was at work, which would show Corbee on surveillance cameras at home from school in the middle of the day. Soon after Corbee would arrive home, the security cameras would be shut off. She would also shut off her phone, or forward her phone to voice mail and refuse to answer any calls.

Mr. Bowlds testified that on March 4, 2019, he made it home from work earlier in the day than normal. Upon entering the house, he could hear Corbee on the phone in her room. Corbee was very emotional and ironically discussing her last encounter at the house with Teon. Mr. Bowlds decided he would record what he could of the conversation so that he could bring it to the attention of Ginger, and confront Corbee in regards to her bringing someone into the house. Later that evening, when Ginger made it home from work, Mr. Bowlds confronted Corbee and a verbal altercation ensued. The verbal altercation ceased when Ginger began having an anxiety attack. The anxiety attack led to Mr. Bowlds taking Ginger to the hospital.

The next day, March 5, 2019, Mr. Bowlds testified that he made it home from work around 10:30. The house was flooded from the washing machine, and he began tending to all the water on the floors. Mr. Bowlds testified that Corbee asked him to take her to the store, and he agreed. On the way to the store, the two agreed that they would talk about the incident from the day before. When Mr. Bowlds tried to get Corbee to listen to the phone recording of her phone conversation with Teon, she refused. Instead, she became very irate and tried jumping out of the car. Mr. Bowlds accelerated multiple times to prevent her from jumping out of the car. When she eventually agreed

to listen to the recording, Mr. Bowlds testified she faked like she was going to take an earbud, but instead, she opened the car door and took off running. Mr. Bowlds testified that he chased after her, caught her, and tried to get her back in the car on the passenger side. He testified, as he tried to get her back in the car, a physical altercation began, and Corbee headbutted him several times, one of which knocked a tooth loose. In response, Mr. Bowlds headbutted her back. Mr. Bowlds testified that, once he got Corbee back into the car on the passenger side, as he was walking around the front end of the vehicle to get back in on the driver side, he noticed Corbee climbing over the center console and getting into the driver's seat. Fully positioned in the driver's seat, Corbee began to drive off. He testified, as she began to drive off, he was able to get back into the vehicle, on the passenger side, put the car in park, and pull Corbee out of the driver's seat. Another physical altercation took place at this point, and Corbee pulled a taser from the center console. As Mr. Bowlds attempted to take the taser from her she resisted, pulled back and hit herself in the face with the taser. Mr. Bowlds pulled her from the driver's seat, and pulled her back into the passenger seat. He testified, that once he got her back in the passenger seat he told her to climb into the back seat. Corbee complied, however, she jumped out of the vehicle again and took off running. This time Mr. Bowlds refused to chase her.

Mr. Bowlds testified he returned home to put on more clothes, grab a spot light, and return to the area where Corbee jumped out of the car. When Mr. Bowlds returned to the area, he saw police everywhere, so he went to a friend's house. Once at the friend's house Mr. Bowlds formulated a plan to turn himself in, but he wanted to tie up affairs that needed to be tied up before he did. He testified he called Ginger, and told her he was coming back to the house, but she warned him that Corbee's father and his friends, (Blood gang members), were at the house. Ginger also

warned Mr. Bowlds that law enforcement was threatening to kill him if they caught him and that Mr. Bowlds "*better run, and better leave the state.*" Mr. Bowlds asserted, that officers from the Logan County Sheriff's Department called his brother and lied to him, saying Mr. Bowlds had killed Corbee.

At this point Mr. Bowlds surmised that he did not feel safe, and decided to leave the state. Mr. Bowlds was apprehended by Federal Marshal's on his way back to Oklahoma from California to turn himself in with family member's.

After Conviction, and on appeal, Mr. Bowlds raised two counseled propositions of error:

- I. STRUCTURAL ERROR OCCURRED WHEN THE ONLY MINORITY JUROR WAS STRUCK BY THE PROSECUTION WITHOUT A NON-PRETEXTUAL, RACE-NEUTRAL REASON, REQUIRING A REVERSAL OF THE CONVICTIONS FOR A NEW TRIAL.
- II. THE TRIAL COURT ERRED IN ORDING THE SENTENCES TO RUN CONSECUTIVELY.

Mr. Bowlds raised the following *pro se* propositions of error:

- I. THE DENIAL OF APPELLANT'S MOTION FOR APPOINTMENT OF COUNSEL FOR FINAL SENTENCING WAS ARBITRARY AND VIOLATED APPELLANT'S SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.
- II. APPELLANT'S MOTION FOR SELF-REPRESENTATION WAS NOT INTELLIGENTLY NOR VOLUNTARILY MADE AND THEREFORE RESULTED IN REVERSIBLE CONSTITUTIONAL ERROR
- III. TRIAL COUNSEL ALBERT HOCH, JR. WAS UNPREPARED, INCOMPETENT AND INEFFECTIVE DEPRIVING APPELLANT OF HIS SIXTH AMENDMENT RIGHT TO THE UNITED STATES CONSTITUTION.

IV. THE TRIAL COURT ABUSED ITS DISCRETION BY ARBITRARILY AND CAPRICIOUSLY DENYING HIS HANDWRITTEN *PRO SE* MOTION FOR NEW TRIAL.

The Appellant Court determined that *under the law and evidence, Appellant is not entitled to relief*. Mr. Bowlds is now petitioning this Court for a Writ of Certiorari.

Additional facts will be discussed as they become relevant.

### **REASONS FOR GRANTING THE PETITION**

This case involves, "*A matter of first impression*" presented to the Oklahoma Court of Criminal Appeals. As submitted by the Assistant Attorney General Michel Trapasso, in his brief of Appellee, "*It appears this Court has not addressed whether and to what extent a defendant has a right himself to cease his self-representation and have counsel reappointed.*" See **APPENDIX D.** at pg. 23. (Appellee, The State Of Oklahoma Brief); See **APPENDIX F.** at pg. 3 (Appellee's Motion For Publication And Brief In Support).

In a Summary Opinion written by the Honorable Judge Lumpkin, Judge Lumpkin wrote, "*It appears this court has not addressed re-appointment of counsel after a valid waiver of counsel.*" See **Appendix A** at pg. 7. (The Oklahoma Court Of Criminal Appeals Summary Opinion).

In an attempt to seek guidance in regards to this matter, both the State and the Court relied upon *United States v. Merchant*, 992 F.2d 1091, 1095 (10<sup>th</sup> Cir. 1993). In *Merchant*, The Tenth Circuit, examining this issue, held:

In reviewing requests for the substitution of counsel, courts consider, *inter alia*, the degree to which a defendant **has shown good cause and the timeliness of the request**. "It is well within the discretion of the court to deny as untimely request for counsel made after meaningful trial proceedings have begun."

*Merchant*, 992 F.2d at 1095 (internal citations omitted). Petitioner, herein after referred to as Mr. Bowlds, his case is inapposite to *Merchant*. In *Merchant*, following the fourth government witness, the government called Merchant's girlfriend, 'Dossett' to testify. At this time, *Merchant* informed the Court that he could not handle cross-examination of Dossett because he was in love with her. Merchant asked the court to allow the Federal Public Defender to undertake his defense. Following an extended discussion, the Federal Public Defender related that she was not prepared to try the matter, that she would need a continuance to prepare herself and to talk to the witnesses, and that she and the court had scheduling problems the up-and-coming week. The Court denied Merchant's request, and ruled that Merchant must continue representing himself. *Id* at 1093.

In *Merchant*, the Tenth Circuit found no abuse of discretion in the District Court's refusal to reappoint counsel where the appellant "*did a satisfactory job in proceeding pro se*" and his request for reappointment of counsel "*was clearly untimely*," as it was "*made after meaningful trial proceedings had begun and after the government had completed nearly two-thirds of its case.*" *Id.* At 1095-1096.

Unlike Merchant, Mr. Bowlds waived his right to counsel due to ineffective assistance of counsel. *See APPENDIX G.* et. seq. (Transcripts of the October 16, 2020 hearing). Mr. Bowlds submitted to the court, that his waiver of right to counsel *was not a voluntary waiver*, but rather a *forced waiver*, as set out in *United States v. Padilla*, 819 F.2d 952, 955 (10<sup>th</sup> Cir. 1987)<sup>4</sup>. *See APPENDIX I* (Transcripts of the October 20, 2020 proceedings at pgs. 475 lines 20-25 and 476 lines 1-2); *Also See APPENDIX C* (Appellants Pro Se Supplemental Brief at pgs. 4-5 subtitle B).

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<sup>4</sup> In *United States v. Padilla*, *supra*., the Court held, "*A Defendant forced to choose between incompetent or unprepared counsel and appearing pro se faces a dilemma of constitutional magnitude*" *Id* at 955

Mr. Bowlds maintained counsel through the beginning of trial, but subsequently moved for self-representation due to counsel being unprepared and incompetent to petitioner's case.

The Honorable Judge Phillip Corley provided Mr. Bowlds with a Waiver of Right To Attorney form. *See APPENDIX H.* On the second page of the waiver, under the subtitle *waiver*, the waiver informs Mr. Bowlds that he ***shall not*** be precluded from seeking his right to an attorney in ***future proceedings***. The Court further informed Mr. Bowlds that he had an ***unlimited right*** to later change his mind and seek an attorney in the matter. *See APPENDIX I. at pg. 470 lines 14-19.*

Unlike *Merchant*, Mr. Bowlds successfully completed the jury trial proceedings without standby counsel, or requesting reappointment of counsel. Trial concluded on October 21, 2021 and the Court set final sentencing for December 18, 2020. Prior to final sentencing, Mr. Bowlds filed a *Pro Se Motion For Appointment of Counsel For Final Sentencing*. *See APPENDIX J et. seq.* He submitted to the Court in his motion that his "*current health conditions*" compelled him to seek counsel. In the Motion For Appointment of Counsel For Final Sentencing, Mr. Bowlds informed the Court:

*"On Monday November 23, 2020 the Petitioner began feeling ill with COVID like symptoms. On Thursday November 26, 2020 the Petitioner's symptoms became worse and his temperature was 102.5. On Saturday November 28, 2020, The Petitioner blacked out twice, hitting his head on a metal table seat and then on the floor"*

Mr. Bowlds went on to inform the Court:

*"The Petitioner has been seeking medical treatment since November 28, 2020. His memory has been affected, his cognitive thinking, his level of concentration . . . and that he was, now locked in a cell, with no access to the law library and is essentially unable to represent himself"*

**APPENDIX J** *et. seq.* (reproduced in relevant part). Irrespective, the Court denied the motion for appointment of counsel for final sentencing. The Court's failure to grant the motion for appointment of counsel denied Mr. Bowlds of his Sixth and Fourteenth Amendment Rights to the United States Constitution. See *United States v. Cronic*, 466 U.S. 648, 659 (1984).

The Oklahoma Court Of Criminal Appeals erroneous ruling, and unreasonable determination of the facts, in regards to the case at bar should warrant a review from this Court. The fact that the Court chose to publish Mr. Bowlds summary opinion, discloses not only that the court considered it's ruling correct, but also that the court intends on utilizing this case as *stare decisis* in future similar circumstances. Mr. Bowlds also ask this court to review and grant this writ because (1) The challenged event is capable of repetition, yet evading review, *Southern Pacific Terminal Co. v. Interstate Commerce Commission*, 219 U.S. 498, 515, 31 S.Ct. 279, 283, 55 L.Ed 310 (1911), quoted in *Row v. Wade*, 410 U.S.113, 125, 93 S.Ct. 705, 713, 35 L.Ed.2d 147 (1973), and (2) The question presented is of broad public interest. *Marquette v. Marquette*, 686 P.2d 990, 992 (Okla.Ct.App.1984). Furthermore, the issue left uncontested is capable of costly, repetitive litigation.

**1. Mr. Bowlds Waiver Of Trial Counsel Was Not Voluntarily Made And Therefore Resulted In A Dilemma Of Constitutional Magnitude.**

Mr. Bowlds first respectfully directs this Courts attention to **Appendix K** (Pro Se Motion For New Trial *see specifically* proposition I, II and III). In the Motion For New Trial Mr. Bowlds detailed several instances as to why trial counsel Mr. Hoch was unprepared, incompetent, and ultimately ineffective. Also see **Appendix C** (Appellant's Supplemental Pro Se Brief; *see specifically* at pages 6 – 10). See **Appendix E** (Appellant's Supplemental Pro Se Reply Brief; *see*

specifically at pages 5 – 10).

Mr. Bowlds also expressed his unwillingness to voluntarily waive his right to counsel before the Trial court during the October 16, 2020 proceedings. *See Appendix G et. seq.* (see specifically at page 7 lines 22 – 25; and page 8 lines 1 – 14). Mr. Bowlds informed the court:

*“And so, for that matter, we had a disagreement yesterday. And that’s where the notion For self-representation came into play. But I’ve studied this. You know, I’ve studied it extensively. I understand the dangers and disadvantages of representing myself. I also understand the cons of it. You know, like I said, I already -- where it says it’s like you are trying to perform surgery upon yourself inside your own kitchen. So it’s not something I’m going to do voluntarily -- I’m not going to voluntary waive my right to counsel. So this would rather -- this would -- you know, better be a request for substitute counsel again. And I’m not trying to burden the court. I’m not trying to be a menace to the court. But I want to be properly prepared and adequately represented before I go into a jury trial, in which my life can be based upon.”*

**Appendix G** at page 7, lines 22 – 25; and page 8, lines 1 – 14. (*emphasis added*).

Also see **Appendix G** at page 12, lines 14 – 25. The following colloquy occurred:

THE COURT: *We are having the trial on Monday, so that’s all irrelevant at this point in time. You can preserve everything for appeal, if it gets there, but the trial is going to be on Monday. So the big question is: Do you want to have counsel represent you or do you want to represent yourself?*

DEFENDANT BOWLDS: *I am not going to voluntarily waive my right to counsel, Your Honor.*

**Appendix G** at page 12, lines 14 – 25. (*emphasis added*).

Finally, See **Appendix I** (Transcripts of the October 20, 2020 Proceedings; see specifically at page 475, lines 20 – 25; and 476, lines 1 and 2). The following colloquy occurred:

THE COURT: Anything else, Mr. Bowlds, that you want to say?

DEFENDANT CHARLES BOWLDS: Yes, sir. I would like the record to reflect that I stand, again, as I've said before upon *United States v. Padilla*, and that is that I'm being compelled to face a jury trial with - - with an unprepared counsel, and so I feel as if I'm being forced to proceed *pro se*. I have no other choice.

A defendant has a Constitutional right to waive his right to counsel and to represent himself at a criminal trial. *Faretta v. California*, 422 U.S. 806, 834-35, 95 S.Ct. 2525, 2540-41, 45 L.Ed.2d 562 (1975); *United States v. Willie*, 941 F.2d 1384, 1388 (10<sup>th</sup> Cir. 1991), *cert. denied*, 502 U.S. 1106, 112 S.Ct. 1200, 117 L.Ed.2d 440 (1992). To be valid, however, the waiver of this Fundamental Constitutional Guarantee **MUST** be *Voluntary, Knowing, and Intelligent*. *United States v. Allen*, 895 F.2d 1577, 1578 (10<sup>th</sup> Cir. 1990). Ideally, the trial judge should conduct a thorough and comprehensive formal inquiry of the defendant on the record to demonstrate that the defendant is aware of the nature of the charges, the range of allowable punishments and possible defenses, and the risks of proceeding *pro se*. *Willie*, 941 F.2d at 1388 (citing *Faretta*, 422 U.S. at 835, 95 S.Ct. at 2541).

In *United States v. Padilla*, 819 F.2d 952 (10<sup>th</sup> Cir. 1987), the Court held, "When a defendant is given a clear choice between waiver of counsel and another course of action, such as retaining present counsel, the choice is voluntary as long as it is not Constitutionally offensive." quoting *Maynard v. Meachum*, 545 F.2d 273, 278 (1<sup>st</sup> Cir. 1976). The Court went on to convey, "A defendant forced to choose between incompetent or unprepared counsel and appearing Pro Se faces a dilemma of constitutional magnitude . . . The question of voluntariness therefore turns on whether defendant's objections to present counsel are such that he has a right to new counsel." The Court further held, "To warrant a substitution of counsel, the defendant must show good cause, such as a conflict of interest, a complete breakdown of communication or an irreconcilable conflict

which leads to an apparently unjust verdict.” quoting *McKee v. Harris*, 649 F.2d 927, 931 (2d Cir 1981), *cert denied*, 456 U.S. 917, 102 S.Ct. 1773, 72 L.Ed.2d 177 (1982).

In the case at bar, Mr. Bowlds, like *Padilla*, contends the record fails to establish “*a clear and unequivocal declaration*” of his desire to represent himself. Instead, the record discloses, he at best chose between “*the lesser of two perceived evils*” and made the decision to proceed pro se involuntary. see *United States v. Washington*, 596 F.3d 926, 938 (8<sup>th</sup> Cir. 2010); *Pouncy v. Palmer*, 846 F.3d 144, 161 (6<sup>th</sup> Cir. 2017); *United States v. Padilla*, *supra*.

**2. Mr. Bowlds Waiver Of Trial Counsel Was Not Knowingly, Nor Intelligently Made And Therefore Rendered The Waiver Void And Resulted In An Invalid Waiver.**

Mr. Bowlds first directs this courts attention to **Appendix H** (Waiver Of Right To Attorney). On the second page of the waiver of right to attorney, under the subtitle *waiver* the waiver provides the following:

*Further, I understand that my waiver of my right to an attorney at this time [S]hall Not preclude me from seeking my right to an attorney in [F]uture proceedings in this case, and I have been so informed by the court.*

**Appendix H** (reproduced in relevant part; emphasis added).

Mr. Bowlds next directs this courts attention to **Appendix G** (Transcripts of the October 16, 2020 proceedings. See Specifically at page 470, lines 14 – 19). The following colloquy occurred:

THE COURT: If you now choose to represent yourself and waive your right to an attorney, you do have an unlimited right to later change your mind and seek an attorney to represent you in this matter. Do you understand that?

DEFENDANT CHARLES BOWLDS: Yes Sir Your Honor.

**Appendix G** at page 470, lines 14 – 19.

As set out in Mr. Bowlds Supplemental Pro Se Brief, before the Oklahoma Court Of Criminal Appeals, The trial concluded on October 21<sup>st</sup> 2020. Final sentencing commenced approximately two months later, essentially making the final sentencing a “*Future Proceeding*” in which the court informed Mr. Bowlds that he would **[Not]** be precluded from his **[U]nlimited right**, to seek an attorney at. The Courts failure to grant Mr. Bowlds Pro Se Motion For Appointment Of Counsel For Final Sentencing rendered the Waiver of Right to Attorney void, unknowingly, and unintelligently made and resulted in a *Geders/Cronic* violation. *See Geders v. United States*, 425 U.S. 80, 91, 96 S.Ct. 1330, 1337, 47 L.Ed.2d 592; *United States v. Cronic*, 466 U.S. 648, 659 (1984).

**3. The Court Of Criminal Appeals Decision Was Contrary To United States v. Cronic, 466 U.S. 648 (1984) And Bell v. Cone, 535 U.S. 685 (2002)**

When a defendant is unrepresented at a critical stage, prejudice flowing from a lawyer’s absence is presumed. Under *Cronic* *supra*. This Court identified three situations in which a defendant could prove ineffective assistance of counsel where prejudice is presumed so that the defendant need not litigate the merits of the underlying claim. *People in Interest of Uwayezuk*, 2023 COA 69, 24; *see also Bell v. Cone*, *supra*. The three situations are: (1) the defendant is denied counsel at a critical stage of the proceedings; (2) counsel entirely fails to subject the prosecution’s case to meaningful adversarial testing; and (3) circumstances are such that although counsel is available to assist the accused during trial, the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that a presumption of prejudice is appropriate

without inquiry into the actual conduct of the trial. *Cronic*, 466 U.S. at 659-60.

Mr. Bowlds seeks to take advantage of the presumption-of-prejudice analysis due to him being denied the right to counsel at sentencing. It is well settled that sentencing is a critical stage in the proceedings to which the right to counsel attaches. *Mempa v. Rhay*, 389 U.S. 128, 88 S.Ct. 254, 19 L.Ed.2d 336 (1967); *Gardner v. Florida*, 430, U.S. 349, 358, 97 S.Ct. 1197, 51 L.Ed.2d (1977); see also *Robinson v. Ignacio*, 360 F.3d 1040, 1059 (9<sup>th</sup> Cir. 2006) (holding, that a defendant who has waived his right to counsel may reassert that right at sentencing and counsel should not be denied without sufficient reason); *Rodgers v. Marshall*, 678 F.3d 1149, 1160 (9<sup>th</sup> Cir. 2012) (Setting forth numerous other federal circuit courts that have held that a court must give due consideration to a request for counsel at a post-trial proceeding ... “*Five federal circuit courts have interpreted the Supreme Court’s Amendment jurisprudence ‘to mean that the right to counsel is so integral to the fair administration of our justice system that a defendant who has waived his right to counsel may nonetheless re-assert it’; no circuit court has ruled to the contrary*”). *Menefield v. Borg*, 881 F.2d 696, 700 (9<sup>th</sup> Cir. 1989) (We are certainly unwilling to deny counsel because of some conception that the defendant’s initial decision to exercise his *Faretta* right and represent himself is a choice cast in stone).

In *Arizona v. Fulminante*, 499 U.S. 279, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991), This court divided Constitutional errors into two classes. The first, the Court called “*trial error*” because the errors occurred during presentation of the case to the jury and their effect may be quantitatively assessed in the context of other evidence presented in order to determine whether they were harmless beyond a reasonable doubt. *Id.*, at 307, 308, 111 S.Ct. 1246. These include most Constitutional errors. *Id.*, at 111 S.Ct. 1246. The second class of Constitutional error the

Court called “*structural defects*.” These defy analysis by harmless-error standards because they affect the framework within which the trial proceeds, and are not simply an error in the trial process itself. *Id.*, at 309, 310, 111 S.Ct. 1246. See *Neder v. United States*, 527 U.S. 1, 79, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999). Such errors include the denial of counsel. See *Gideon v. Wainwright*, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963).

This Court set out in *Cronic*, *supra*, “*first and most obvious was the complete denial of counsel*” [(*Cronic*, at p. 659, 104 S.Ct. 2039)]. This Court held: “*a trial would be presumptively unfair where the accused is denied the presence of counsel at a critical stage*” [*(ibid)*], a phrase this Court also used in *Hamilton v. Alabama*, 368 U.S. 52, 54, 82 S.Ct. 157, 7 L.Ed.2d 114 (1961), and *White v. Maryland*, 373, U.S. 59, 60, 83 S.Ct. 1050, 10 L.Ed.2d 193 (1963) (per curiam). The existence of certain structural defects in a trial, such as the deprivation of the right to counsel, requires automatic reversal of the conviction because it infects the entire trial process. See *Brecht v. Abrahamson*, 507 U.S. 619, 629-30 (1993). Also see *Weaver v. Massachusetts*, 582 U.S. 286, 137 S.Ct. 1899, 198 L.Ed.2d 420 (2017). This Court has routinely found Constitutional error without any specific showing of prejudice to a defendant when counsel is either totally absent or prevented from assisting the accused during a critical stage of the proceedings. *Cronic*, *supra*, at 659, n. 25; Also see *Satterwhite v. Texas*, 486 U.S. 249, 256 (1988); see e.g., *United States v. Mateo*, 950 F.2d 44, 48 n. 8 (1<sup>st</sup> Cir. 1991) (harmless error analysis inapplicable when counsel absent during sentencing hearing because it is a critical stage). This Court established in *Rothgery v. Gillespie Cty., Texas*, 554 U.S. 191, 212, 128 S.Ct. 2578, 171 L.Ed.2d 366 (2008), “*once the right to counsel attaches by the initiation of a criminal prosecution the defendant is entitled to the*

*presence of counsel and adequate representation during any critical stage of the proceedings.”*

In *Penson v. Ohio*, 488 U.S. 75, 84, 109 S.Ct. 346, 102 L.Ed.2d 300 (1988), while addressing the fundamental right to counsel in a criminal proceeding, This Court held, “*We have long recognized that lawyers in criminal courts are necessities, not luxuries [because] ... it is through counsel that all other rights of the accused are protected*” (citing and quoting *Gideon v. Wainwright*, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963)). The fundamental nature of the right to counsel is precisely why courts have held that the deprivation of that right at a critical stage of a defendant’s trial renders a trial unfair. *Cronic*, 466 U.S. at 659 & n.25, 104 S.Ct. 2039.

To allow the Oklahoma Court Of Criminal Appeals to deem the violation of the right to counsel harmless, or trivial, that this Court has said is inherently harmful, would allow the Oklahoma Court of Criminal Appeals to diminish this right not only in the case at bar but also in cases that will come before the appellate court in the future.

Guided by the analysis in *Merchant*, the Oklahoma Court of Criminal Appeals found that the trial court did not abuse its discretion in denying Mr. Bowlds Pro Se Motion for Appointment of Counsel, as Mr. Bowlds, “*failed to show good cause for, or timeliness of his motion.*”<sup>5</sup> The Court of appeals reasoning and conclusion was misplaced considering Mr. Bowlds in fact **Showed Good Cause**, as to why he needed counsel. Mr. Bowlds informed the trial court, by way of a properly filed motion, that it was due to COVID that compelled him to seek counsel for sentencing. Although COVID was still relatively novel to the court in 2019, the elapse of time between 2019 and now has disclosed the full magnitude of the COVID epidemic, and the impact it had upon the

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<sup>5</sup> The court also supported its conclusion upon the fact that Mr. Bowlds filed a forty-five-page motion for a new trial, just prior to the sentencing hearing, that Mr. Bowlds had previously made a knowing, voluntary waiver of his right to counsel, and therefore was “*capable and competent to represent himself at the sentencing hearing.*”

judicial system. See *United States v. Keith*, 61 F.4th 839 (10<sup>th</sup> Cir. 2023) (citing W.D. Okla. General Orders 20-13 & 20-18 dealing with the “unique challenges” related to the need for “safety protocols,” in regards to the COVID -19 epidemic in courtrooms).

The trial court failed to address, “*the timeliness of the request.*” However, although Mr. Bowlds informed the court, by way of Motion, approximately two weeks prior to the commencement of the final sentencing hearing, the Oklahoma Court of Criminal Appeals concluded that the timeliness of Mr. Bowlds request was *untimely*. The appellate court based its conclusion upon Rule 4(e), *Rules for District Courts of Oklahoma*, Title 12, Ch. 2, App. (2021).

The Court held, “*This was untimely as opposing parties are generally allowed fifteen days in which to file a response to a motion.*” The Courts reliance upon Rule 4(e) is misplaced. The Pro Se Motion For Appointment of Counsel For Final Sentencing was an *ex parte* motion. The Motion didn’t require response from the District Attorney, or any other opposing party.

Furthermore, Mr. Bowlds was beyond the start of *Meaningful Trial Proceedings*. As mentioned, Mr. Bowlds successfully completed the jury trial proceedings without standby counsel, or requesting reappointment of counsel. The court was not faced with the same challenges that would be present had Mr. Bowlds tried to request counsel after “*meaningful trial proceedings had begun.*” See *Rodgers v. Marshall*, 678 F.3d 1149, 1160 (9<sup>th</sup> Cir. 2012). In *Marshall*, relying upon *Robinson v. Ignacio*, 360 F.3d 1040 (9<sup>th</sup> Cir.2006), the Court held:

Because the right to counsel is so central to our concepts of fair adjudication, we are reluctant to deny the practical fulfillment of the right -even once waived- absent a compelling reason that will survive constitutional scrutiny.... Therefore, although we

recognize the right to counsel -once waived- is no longer absolute, we start with the strong presumption that a defendant's *post-trial* request for the assistance of an attorney **should not be refused**.

*Id.* at 1160. quoting *Menefield v Borg*, 881 F.2d 696 (9<sup>th</sup> Cir. 1989).

The court went on to hold:

We then emphasized that trial courts have discretion to deny request for the appointment of counsel in some instances, "such as when requests are made on the eve of trial for the purposes of delay." *Id.* (citing *Menefield*, 881 F.2d at 700). But, there is a "substantial practical distinction between delay on the eve of trial and delay at the time of a post-trial hearing." *Id.* Indeed, "post-verdict continuances [are] far less likely to 'substantially interfere with the courts or the parties' schedules.'" *Id.* (quoting *Menefield*, 881 F.2d at 700-01). Therefore, absent extraordinary circumstances, "a defendant's *post-trial* revocation of his waiver should be allowed unless the government can show that the request is made 'for a bad faith purpose.'" *Id.* (citing *Menefield*, 881 F.2d at 701). As explained in *Ignacio*, the conclusion that a defendant retains his right to re-assert the right to counsel *post-trial* is " 'foreordained by the Sixth Amendment and Supreme Court precedent.' " *Id.* at 1058 n. 7 (citing *Bell*, 190 F.3d at 1092-93).

*Id.* at 1160.

Finally, the court went on to detail numerous other federal circuit courts that have also held that a trial court must give due consideration to a request for counsel at a post-trial proceeding, **despite a previous waiver of trial counsel.** *Id.* at 1160. The court held:

Five other federal circuit courts have interpreted the Supreme Court's Sixth Amendment jurisprudence "to mean that the right to counsel is so integral to the fair administration of our justice system that a defendant who has waived his right to counsel may nonetheless

re-assert" it; No circuit has ruled to the contrary. *Ignacio*, 360 F.3d 1059. Given these convergent holdings, as well as the general principles underlying the Supreme Court's Sixth Amendment jurisprudence, it is "clearly established federal law" that a defendants reassertion of the right to counsel at a post-trial proceeding cannot be denied simply "on the grounds that the defendant has previously waived" it. *Ignacio*, 360 F.3d at 1059.

*Id* at 1160.

### **In conclusion**

For the foregoing reasons, and in the interest of justice, Mr. Bowlds respectfully requests, and prays, this Honorable Court grant certiorari review, and ultimately vacate his judgment and sentence, or reverse and remand his case for a new trial.

*December*  
Dated: December 23, 2024.

Respectfully submitted,

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