No. 24-7301

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Dennis **Rydbom**, #3571836 -- PETITIONER

vs.

Jonathan **Frame**, Superintendent of the
Mt. Olive Correctional Complex -- RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Dennis Rydbom, #3571836
Mt. Olive Correction Complex
One Mountainside Way
Mt. Olive, WV 25185

QUESTION PRESENTED

Rydbom sought self-representation to gain strategic control of his criminal defense. Judge Reed insisted that represented defendants already control their defenses (e.g., what motions to file, what witnesses to call, & how the defense is prepared). After much debate, Rydbom yielded to the trial judge's defense scenario. Did Judge Reed mislead Rydbom on the Assistance of Counsel clause?

LIST OF PARTIES

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

RELATED CASES

- State v. Rydbom, No. 97-CA-16, 1998 Ohio App. LEXIS 1652. Judgment entered April 14, 1998. (affirming Ohio lacks territorial jurisdiction).

- State v. Rydbom, No. 97-F.87, Wood County, W.Va. Circuit Court. Judgment entered May 27, 1998. (criminal indictment).

- Rydbom v. Meritt, No. 99-P-9, Wood County Circuit Court. Judgment entered March 9, 1999. (1st state habeas).

- State v. Rydbom, No. 990272, Supreme Court of Appeals for West Virginia. Judgment entered June 1, 1999. (criminal direct appeal).

- Rydbom v. Commissioner, No. 99-P-228, Wood County Circuit Court. Judgment entered 23 February 2000. (2nd state habeas).

- Rydbom v. Reed, No. 33507, Supreme Court of Appeals for West Virginia. Judgment entered October 22, 2007. (converted mandamus).

- Rydbom v. Ballard, No. 6:07-cv-00711, U.S. District Court for the Southen District of W.Va. Judgment entered February 6, 2009. (premature habeas).

- Rydbom v. Ballard, No. 00-P-62, Wood County Circuit Court. Judgment entered December 22, 2016. (3d state habeas).

- Rydbom v. Ames, No. 17-0068, Supreme Court of Appeals for West Virginia. Judgment entered December 20, 2019. (state habeas appeal).

- Rydbom v. Ames, No. 19-7448, Supreme Court of the United States. Judgment entered March 30, 2020. (cert. petition re: state habeas).

- Rydbom v. Ames, No. 2:20-cv-00043, U.S. District Court for the Southern District of W.Va.. Judgment entered March 31, 2023. (federal habeas).

- Rydbom v. Superintendent, No. 23-6351, U.S. Court of Appeals for the Fourth Circuit. Judgment entered January 13, 2025. (federal habeas appeal).

TABLE OF CONTENTS

LIST OF APPENDICES

TABLE OF AUTHORITIES

United States Supreme Court

Federal Cases

West Virginia Law

State Cases

Statutes & Rules

Other Authorities

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

- Order from the Fourth Circuit Court of Appeals denying the petition for rehearing and rehearing en banc was issued 17 March 2025, and is not reported. However, it does appear in (Appendix G).

- Order from the Fourth Circuit Court of Appeals denying certificate of appealability is reported at *Rydbom v. Ames*, 2025 U.S. App. LEXIS 666 (4th Cir., Jan 13, 2025).

- Order from the U.S. District Court denying Rydbom's Motion to Alter or Amend Judgment is reported at *Rydbom v. Ames*, 2023 U.S. Dist. LEXIS 84152 (S.D. W.Va., May 11, 2023).

- Order from the U.S. District Court denying certificate of appealability is reported at *Rydbom v. Ames*, 2023 U.S. Dist. LEXIS 67526 (S.D. W.Va., Apr. 12, 2023).

- Judgment from the U.S. District Court denying federal habeas relief is reported at *Rydbom v. Ames*, 2023 U.S. Dist. LEXIS 56555 (S.D. W.Va., Mar 31, 2023).

- U.S. Magistrate Judge's Proposed Findings and Recommendation denying habeas relief is reported at *Rydbom v. Superintendent*, 2022 U.S. Dist. LEXIS 240778 (S.D. W.Va., Aug. 17, 2022)

- U.S. Magistrate Judge's Order denying Rydbom's Motion to Compel Respondent to Furnish Relevant Documents as being moot and as irrelevant is reported at *Rydbom v. Ames*, 2022 U.S. Dist. LEXIS 244426 (S.D. W.Va., Feb. 25, 2022).

- Order from the Supreme Court of the United States denying certiorari is reported at *Rydbom v. Ames*, 140 S.Ct. 2576 (Mar. 30, 2020).

- Memorandum Decision from the W.Va. Supreme Court of Appeals denying habeas appeal is reported at (*Rydbom v. Ames*, 2019 W.Va. LEXIS 663 (W.Va. Dec. 20, 2019).

- *Rydbom v. Ballard*, No. 00-P-62, Wood County Circuit Court. Opinion and Order denying state-level habeas corpus relief, entered December 22, 2016, is not published. But, it does appear in (Appendix F).

JURISDICTION

The date on which the United States Court of Appeals denied Rydbom's request for a Certificate of Appealability was 13 January 2025; a copy of which appears at (Appendix A).

A timely petition for Rehearing and Rehearing en banc was denied by the United States Court of Appeals on 17 March 2025; a copy of which appears at (Appendix G).

This Court has jurisdiction under 28 U.S.C. §1254(1) and 28 U.S.C. §2254.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Assistance of Counsel clause of the **Sixth Amendment** to the United States Constitution, which provides in pertinent part that: "In all criminal prosecutions, the accused shall enjoy the right to ... have the Assistance of Counsel for his defence."

A represented criminal defendant cedes the power to make binding decisions of trial strategy in many areas. Faretta v. California, 422 U.S. 806, 820 (1975).

And, the right to counsel equals the right to effective assistance of counsel without improper state interference. Strickland v. Washington, 466 U.S. 668, 686-89, 692 (1984).

This case also involves the **Fourteenth Amendment** to the United States Constitution, which provides in pertinent part that: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Rydbom sought self-representation to gain strategic control of his criminal defense. Judge Reed insisted that represented defendants already control their defenses (e.g., what motions to file, what witnesses to call, & how the defense is prepared). After much debate, Rydbom yielded to the trial judge's defense scenario. Did Judge Reed mislead Rydbom on the Assistance of Counsel clause?

1. Rydbom sought self-representation so as to gain strategic control of his criminal defense.

Rydbom sought strategic control of his criminal defense by moving to represent himself. (Appendix H). A hearing on the matter was held on 05 November 1997 hearing (Appendix I, pp. 1-41).

During the hearing Rydbom asked that counsel still be allowed to help him since Rydbom was jailed with no law library access, no typewriter, etc.; so long as Rydbom was in control of his defense. (Appendix I, pg. 8).

Rydbom expressed his belief that a person's right to represent himself is the inverted side of the same assistance-of-counsel coin and, "if I don't have to totally abolish the side that has the assistance of counsel, than I'm not going to do that. But if I do have to do that in order to be allowed to represent myself, then I will." (Appendix I, pp. 11-12).

Rydbom also argued that it was his, "understanding that attorneys who represent clients have the right to decide strategically how their defense is going to be run." (Appendix I, pg. 12).

Other statements in support of Rydbom's position include: (Appendix I) **pg. 9** ("if I have attorneys I cannot file motions ... then I have to rely on other people ... if that's not done, then there's nothing I can do ... if I am allowed to ... represent myself, then I will have that [] opportunity and authority to file these motions on my own behalf and the responsibility will be mine, and I don't have to worry about whether [] somebody else is going to take care of that..." **pg. 12** (question witnesses, make opening statements) ("make the decisions"); **pg. 17** ("have the reins and make the strategic decisions"), **pg. 19** ("I want ... the authority and responsibility to make strategic decisions."); **pg. 20** (same); **pg. 36** ("be the ultimate decider of what's going on ... to be in charge of the case"); **pg. 35** ("I also stated I would like to examine witnesses or make statements to the jury). *See also*, Appendix H, **pg. 1** ("control over his defense"); **pg. 2** ("Defendant believes that his interests would be better served if he represented himself ..."); **pg. 3** ("Defendant invokes his right to proceed pro se in this matter, and asks that this court dismiss Defendant's attorneys as counsel of record.").

2. Judge Reed misled Rydbom on the law, insisting that represented criminal defendants *already* personally control their defenses.

Judge Jeffrey B. Reed, however, repeatedly insisted (Appendix I, pp. 1-41) that criminal defendants *already* have strategic control over their defenses -- (e.g. what motions to file, what witnesses to call -- and even how their cases are prepared). Examples include: **pg. 8** ("the client always controls what happens.");

pg. 9 ("you (client) have control of what happens, what [m]otions are filed, you know -- when they're filed"); **pg. 12** ("You (client) make that decision anyway."), **pg. 21** ("ultimately it is the defendant's decision."); **pg. 31** ("the Defendant has said he wants to be able to ... make strategic decisions. I thought, still think, that he always has had that right"); **pg. 36-37** ("[Y]ou (client) are ultimately the one who makes the final decision as to whatever course of action is taken ... you still have the final decision as to what is done in terms of strategy, in terms of what motions are filed, in terms of what witnesses are questioned --" (Rydbom: "How the case is prepared?") (Judge Reed: "Right.")).

Rydbom eventually yielded to Judge Reed's defense set up, which Judge Reed insisted was already the law: Rydbom would have strategic control of his defense, but would not represent himself or actively participate in the trial (Appendix I, **pg. 37**) unless Rydbom submitted a specific request as to a specific witness, etc., ten (10) days before trial so the prosecutors could have a chance to participate. (Appendix I, **pp. 34**). Judge Reed also reminded counsel that they were required to pursue the motions that Rydbom wanted filed (Appendix I, **pg. 41**) -- an order that was only sometimes followed, infra.

The written Amended Order (filed 17 April 1998) said:

> "The Court FINDS that the Defendant has the right to have authority over the strategic decisions concerning his case, that his counsel shall remain counsel of record and the defendant must inform the court ten (10) days prior to trial as to who and what questions he wants asked."

(Appendix J).

Judge Reed's ten-days-before-trial rule turned out to be 100% impossible:

First: Nobody disclosed a witness list until trial, after Judge Reed's 10-days-before-trial rule expired. (Appendix N, pg. 59).

Second: Many questions don't arise until *after* trial begins -- in response to whatever witnesses & evidence are produced.

Third: Counsel's failure to follow Rydbom's orders did not become apparent until *after* trial started. (Appendix N, pp. 65-66).[1]

3. Judge Reed's defense format improperly interfered with defense counsel's "constitutionally protected independence," "wide latitude," and "professional judgment."

Rydbom's habeas corpus petition gave several examples of defense counsel NOT representing Rydbom in the manner that counsel deemed best -- proving that Judge Reed's defense set up interfered with defense counsel's "constitutionally protected independence," "wide latitude," and "professional judgment."

For example: It was Rydbom who wanted defense counsel to not move to strike certain jurors for cause; it was Rydbom who wanted defense counsel to waive letting the jury consider giving mercy (possible parole after 15 years); and, it was

---

[1]. Defense counsel admitted at sentencing that he didn't follow Rydbom's orders to object to improper prosecutor comments during summation. (Appendix, N pg. 74, and Appendix, L pg. 26). Prosecutor Conley asserted personal knowledge of Rydbom's guilt (Trial: 03 Feb. 1998, pg. 3536 ("*And one thing we know for sure is that Dennis John Rydbom murdered* Sheree Ann Petry"), and vouched for the honesty of four of her witnesses (Trial: 02 Feb. 1998, pp. 3530-3531 ("*Well, they were honest with you. Leon Saja, Susan Morris, Howard and Sharon Rowsey, they got up here and they told you what they knew and remembered.*"). – Way past Judge Reed's 10-day-before-trial time limit.

Rydbom who wanted counsel to waive cautionary instructions regarding "threats" and "flight." (Appendix N, pp. 56-57).

4. Judge Reed's defense format did not give Rydbom the strategic control over his defense that was promised.

At other times, however, Judge Reed's defense format did **not** give Rydbom the strategic control over his defense that was promise. Twenty-five (25) of such episodes were raised in Rydbom's habeas petition. (Appendix N, pp. 62-77).

For example, (a) counsel did not follow Rydbom's strategic decisions, (b) counsel acted against Rydbom's defense-related efforts, and (c) counsel waived Rydbom's rights without Rydbom's informed consent.

A. Defense counsel didn't follow Rydbom's decisions.

Counsel failed to follow Rydbom's ethical and relevant instructions. For example: After six months of negative publicity against Rydbom in the local media, Steve Rutter began telling his wife and other people that he saw Rydbom at the dead-end street where the victim's body was dumped.

For Rutter's alleged sighting of Rydbom to have been honest & accurate, at least five (5) other witnesses (e.g. Barbara Thompson, Scott Zeoli, Craig Nichols, Edee Starcher, Gary Pickenpaugh) would had to have been lying or wrong. (Appendix N, 36-40, 68-69). Since defense counsel never explained this to the jury, or even mentioned Rutter at all during summation, it would have been a crap shoot, at best, for jurors to piece this crucial fact together on their own.

Rydbom told defense counsel well before trial to get the help of an eyewitness ID expert, but counsel's failure did not become apparent until after prosecutors rested their case-in-chief -- twenty days after trial began. (Appendix N, pp. 65-66).

B. Defense counsel acted against Rydbom's defense-related efforts.

Rydbom's claim of innocence is well and publicly documented. And, counsel knew of Rydbom's wish to challenge Rutter's ID story. Why else would Rydbom want an eyewitness identification expert? And, yet ...

- Counsel did not investigate Rutter's ID story (e.g. never obtained the taped interview and photo spread with cops). (Appendix N, pp. 62-64).
- Counsel made no motions challenging the admissibility of Rutter's ID. (Appendix N, pp. 64-65).
- Counsel did not follow Rydbom's orders to seek help of an eyewitness identification expert. (Appendix N, pp. 65-66).
- Counsel told the jury, during opening statements, that he believed Rutter's story of seeing the killer drive that dirty white car. (Appendix N, pp. 67-68).
- Counsel failed to impeach Rutter's trial testimony with Rutter's prior inconsistent statements. (Appendix N, pp. 34-36, 62-64).
- Counsel waived Gary Pickenpaugh's story told to police/media on the day of Petry's murder, which directly contradicted Rutter's story told six months later. Pickenpaugh was subpoenaed, but died during trial, without testifying, and counsel inexplicably dropped this evidence. (Appendix N, pp. 39, 68-69).
- Counsel sought no cautionary (witness ID) instructions. (Appendix N, pp. 66-67).
- Counsel offered no challenge to Rutter's credibility or story during closing arguments. (Appendix N, pg. 67).

At bare minimum, such an expert could have taught defense counsel a thing or two on how to defend against false identifications.

C. Defense counsel waived Rydbom's rights without Rydbom's informed consent.

At Judge Reed's suggestion, and in another example of Judge Reed misstating the law, defense counsel waived – without Rydbom's informed consent – Rydbom's state-created right to exercise peremptory strikes against alternate jurors. One of the alternates actually became a regular juror on the fourth (and final) day of deliberations. (Appendix N, pp. 76-77).

5. Judge Reed denied Rydbom his State-level constitutional self-representation rights (discretionary direct appeal).

During the direct appeal stage, after continued problems with defense counsel, Rydbom again sought to represent himself, refusing this time to accept the same representation scheme that Judge Reed continued to insist upon. (Appendix K, Appendix L, & Appendix M).

Judge Reed, however, forcibly imposed counsel on Rydbom in violation of the W.Va. Constitution (Article 3, §14 & §17), which lets people represent themselves in all legal proceedings unless the record shows a clear attempt to obstruct justice.

Rydbom complained of this in his State & Federal habeas corpus petitions, under the 14th Amendment's Due Process clause. (Appendix N, pp. 54, 61).

The state courts ignored this ground.

The U.S. District Court, however, denied this ground saying that, "[Rydbom] does not allege a violation [of a] federal constitutional right by asserting the alleged violation of the West Virginia Constitution." (Appendix C, pg. 60).

Rydbom believes that some state-created constitutional rights are important enough to trigger the 14th Amendment's Due Process clause. However, even if there's no Federal Due Process right to have a State obey, or even address, its own constitution, this issue still sheds more light on Judge Reed's incompetent legal advice and interference with Rydbom's representation rights.

6. State-level habeas proceedings.

Rydbom's May 2000 state-level habeas petition alleged in pertinent part that Judge Reed interfered with Rydbom's Sixth Amendment representation rights.

Judge Reed denied relief (22 Dec. 2016), ruling in pertinent part that:

> the court was of the opinion that a criminal defendant had the authority to maintain strategic control over the case in a traditional attorney-client relationship. ...
>
> If the court was incorrect and [Rydbom] did not have the strategic control of the case before [the 05 Nov. 1997 hearing], then the court gave [Rydbom] what he wanted most - strategic control over the defense.
>
> ....this decision would have fallen into one of the hybrid situations that defense counsel was arguing the court had the authority to implement under the controlling law. ...
>
> the court specifically ruled that if, as the defense develops its case and as the case proceeded toward trial, the Petitioner wanted to have more involvement in the case, ... [Rydbom] could bring the issue back before the court. ...
>
> Neither defense counsel nor [Rydbom] ever asked to change the roles of the defense team. ... [Rydbom] cannot complain ... when he agreed to the relationship, had the ability to change the relationship, and yet he failed to bring the issue back before the court.

(Appendix C, pp. 57).

In a memorandum decision (December 2019), the Supreme Court of Appeals for West Virginia affirmed Judge Reed's denial of habeas relief. (Appendix E).

In March 2020, Certiorari to the Supreme Court was denied (Appendix D).

7. Federal habeas proceedings

In his January 2020 federal petition, 28 U.S.C. §2254, Rydbom continued to allege that Judge Reed interfered with Rydbom's Sixth Amendment representation rights.

The U.S. District Court denied relief on 31 March 2023; ruling in pertinent part:

> [T]he undersigned finds that the hybrid representation situation created by the Circuit Court giving [Rydbom] strategic control over his defense did not result in a violation of [Rydbom's] constitutional rights.
>
> [Rydbom] argues that hybrid representation is inherently unconstitutional because a criminal defendant must have either full representation or proceed pro se.
>
> In support, [Rydbom] cites *Taylor v. Illinois*, 484 U.S. 400 (1988) and *Jones v. Barnes*, 463 U.S. 745 (1983).
>
> Citing *Taylor* [Rydbom] argues that the attorney must maintain control in a representation.
>
> The issue in *Taylor*, however, was not one of hybrid representation but one of whether defendant is bound by an attorney's malfeasance.
>
> Citing *Jones*, [Rydbom] argues that a criminal defendant has only limited authority to make fundamental decisions.
>
> Although ... the Court in *Jones* determined that a criminal defendant has only limited authority to make fundamental decisions, the *Jones*

> Court did not hold that a criminal defendant is confined to *only* the fundamental choices noted in the decision. ...
>
> Thus, [Rydbom] ...failed to demonstrate that hybrid representation created by the trial court wherein [Rydbom] was allowed to strategic decision was a violation of [Rydbom's] constitutional rights.

(Appendix C, pp. 62-64).

For the record, the accusation of Rydbom having "hybrid representation" is false, since Rydbom did not partly represent himself. Court-appointed counsel remained "counsel-of-record" throughout the criminal case, and Rydbom never actively participated in his defense; per court order.

Also, per Judge Reed's orders, Rydbom was prohibited from "bring[ing] the issue back before the court" after the 10-day-before-trial time limit had passed.

In April 2023, Rydbom asked the Fourth Circuit Court of Appeals for a Certificate of Appealability -- which was denied on 13 January 2025. (Appendix A).

Rydbom's petition for rehearing and rehearing en banc was denied on 17 March 2025. (Appendix G).

REASONS FOR GRANTING THE PETITION

Rydbom sought self-representation to gain strategic control of his criminal defense. Judge Reed insisted that represented defendants already control their defenses (e.g., what motions to file, what witnesses to call, & how the defense is prepared). After much debate, Rydbom yielded to the trial judge's defense scenario. Did Judge Reed mislead Rydbom on the Assistance of Counsel clause?

1. Summary of Rydbom's claim.

Judge Reed misled Rydbom on the Sixth Amendment's Assistance-of-Counsel clause, contravening Supreme Court precedent.

By misleading Rydbom on the law, Judge Reed also misled Rydbom into an improper and impracticable defense format; one where Rydbom would remain under representation, and not actively participate in his defense, under the assurance that Rydbom would have strategic control of his defense.

Even *if* the defense scheme had been legal in theory, it was still unlawful in practice because defense counsel violated the terms of Judge Reed's defense set up.

2. Judge Reed misled Rydbom on the Sixth Amendment's Assistance of Counsel clause.

In order to gain strategic control of his defense, Rydbom filed a pro se motion to represent himself and to have appointed counsel removed as counsel of record.

During the ensuing hearing, Rydbom asked if counsel could still be allowed to help Rydbom, as long as Rydbom was the one calling the shots. Bear in mind that

Rydbom was jailed without bail, with no access to a typewriter, copy machine, law library, etc. (Appendix I, pg. 8).

Rydbom also told Judge Reed his belief that self-representation is the inverse of the same assistance of counsel coin and that, "if I don't have to totally abolish the side that has the assistance of counsel, then I'm not going to do that. But if I do have to do that in order to be allowed to represent myself, then I will." (Appendix I, pp. 11-12).

In response, Judge Reed repeatedly insisted that criminal defendants already have strategic control of their cases; including what motions to file, what witnesses to call, and even how the defense is to be prepared. (Appendix I, pp. 8, 9, 12, 13, 21, 31, 36-37).

After much debate, Rydbom eventually yielded to Judge Reed's version of assistance-of-counsel law. Rydbom was to remain represented by appointed counsel, Rydbom was not to actively participate in the trial. And counsel was to follow Rydbom's decisions.

The defense set up that Judge Reed talked Rydbom into accepting contravenes all U.S. Supreme Court precedent regarding defense counsel's role in criminal cases under the Sixth Amendment's Assistance of Counsel clause. For example:

Jones v. Barnes, 463 U.S. 745, 751 (1983) (a "rule that the client, not the professional advocate, must be allowed to decide what issues are to be pressed ...

seriously undermines the ability of counsel to present the client's case in accord with counsel's professional evaluation.").

Strickland v. Washington, 466 U.S. 668, 686 (1984) ("Government violates the right to effective assistance when it interferes in certain ways with the ability of counsel to make independent decisions about how to conduct the defense.").

Taylor v. Illinois, 484 U.S. 400 (1988) --

> ("Although there are basic rights that the attorney cannot waive without the fully informed and publicly acknowledged consent of the client, the lawyer has - and must have - full authority to manage the conduct of the trial. ...
>
> Moreover, given the protections afforded by the attorney-client privilege and the fact that extreme cases may involve unscrupulous conduct by both the client and the lawyer, it would be [] impracticable to require an investigation into their relative responsibilities.
>
> ... Putting to one side the exceptional cases in which counsel is ineffective, the client must accept the consequences of the lawyer's decision to forgo cross-examination, to decide not to put certain witnesses on the stand, or to decide not to disclose ... certain witness [before] trial.").

Taylor, 484 U.S. at 417-418.

Gonzalez v. United States, 553 U.S. 242, 249 (2008) ("Giving the attorney control of trial management matters is a practical necessity.).

3. Magistrate judge misconstrued two Supreme Court cases and ignored all other relevant (and cited) Supreme Court precedent.

In denying habeas relief, the magistrate judge -- whose PF&R was fully adopted by the District Court -- grossly misconstrued two Supreme Court cases, i.e.

Jones v. Barnes, 463 U.S. 745, 751 (1983) and Taylor v. Illinois, 484 U.S. 400, 417-418 (1988), while flatly ignoring all other Supreme Court precedent (cited by Rydbom) addressing counsel's lawful and traditional right to exercise strategic control over the client's criminal defense. (Appendix C, pp. 62-63).

The Supreme Court continues to follow *Taylor* when giving counsel "full authority to manage the conduct of the trial," in cases *not* involving attorney malfeasance. *See e.g.*, New York v. Hill, 528 U.S. 110, 114-115 (2000); Gonzalez v. United States, 553 U.S. 242, 248-249 (2008). Also, it necessarily follows that, if a criminal defendant is bound by his attorney's malfeasance then, he is certainly bound by counsel's *non*-malfeasance.

As for Jones v. Barnes, 463 U.S. 745 (1983) (saving counsel from raising every non-frivolous point requested by the client): The magistrate judge said that, "the *Jones* Court did not hold that a criminal defendant is confined to ***only*** the fundamental choice noted in the decision". (bold added).

However, as the Supreme Court in Jones succinctly and importantly stated:

> [NO] other decision of this Court suggests, however, that the indigent defendant has a constitutional right to compel appointed counsel to press nonfrivolous points requested by the client, if counsel, as a matter of professional judgment, decides not to present those points.

Jones v. Barnes, 463 U.S. at 751.

Also, every subsequent Supreme Court case addressing the matter has continued to confine a represented criminal defendant's authority to only fundamental "personal" choices akin to the *Jones* decision.

In Strickland v. Washington, the Court held:

> Any ("particular set of detailed rules for counsel's conduct") would interfere with the constitutionally protected independence of counsel and restrict the wide latitude counsel must have in making tactical decisions.

Strickland v. Washington, 466 U.S. 668, 688-689 (1984). Other relevant Supreme court cases include: Evitts v. Lucey, 469 U.S. 387, 394 (1985); New York v. Hill, 528 U.S. 110, 114-115 (2000); Florida v. Nixon, 543 U.S. 175, 187 (2004); Gonzalez v. United States, 553 U.S. 242, 249-252 (2008); McCoy v. Louisiana, 584 U.S. 414, 422 (2018); Garza v. Idaho, 586 U.S. 232, 240 (2019).

Two potential distinctions of note:

In Taylor v. Illinois, 484 U.S. 400, 417-418 (1988) (footnote 24), the Supreme Court did note that a personal waiver may be required from the defendant of his personal right to be present during jury trial.

Also, some argue that McCoy v. Louisiana, 584 U.S. 414, (2018) added "admitting guilt" to the list of decisions reserved for the defendant. Rydbom argues, however, that McCoy merely *equated* the admission of guilt with a decision already reserved for the defendant (i.e. pleading guilty).

Never, however, has the Supreme Court ever suggested letting the state give strategic control of a criminal defense to a defendant, who remains represented by counsel of record, and who does not actively participate in his own defense.

4. Judge Reed's defense format was improper and impracticable.

In denying habeas relief, Judge Reed said that, even if Rydbom did not have strategic control prior to the 05 November 1997 hearing, "then the court ***gave*** [Rydbom] strategic control over the defense." (emphasis added) (Appendix C, pg. 57). Judge Reed's ruling had three fundamental flaws:

- The defense format, which Judge Reed misled Rydbom into, improperly "interfere[d] with the constitutionally protected independence of counsel and restrict[ed] the wide latitude counsel must have in making tactical decisions." *See e.g.*, Strickland v. Washington, 466 U.S. 668, 688-89 (1984).

- Also, it is impracticable for a criminal defendant, who is represented by counsel of record, and who is *not* actively participating in his defense, to effectively exercise strategic control of his defense.

- Plus, defense counsel did not follow some of Rydbom's defense-related decisions: Meaning that what Rydbom was promised (control of his defense), in exchange for keeping defense counsel and not actively participating in his defense, was NOT given or done -- making Judge Reed's defense scheme an illegal or void contract, of sorts; or at least a breach of contract.

A. Judge Reed's defense format improperly interfered with counsel's "constitutionally protected independence," "wide latitude," and "professional judgment."

Contrary to Judge Reed's version of the law: Under all relevant Supreme Court precedent, "binding decisions of trial strategy," "deciding what issues are pressed," "full authority to manage the conduct of the trial," "professional evaluation" -- all of that stuff is counsel's province; not the represented criminal defendant's.

A trial judge cannot just ***give*** such authority to the "represented" defendant and order defense counsel to follow the defendant's strategic decisions; not without "interfer[ing] with the constitutionally protected independence of counsel and restrict[ing] the wide latitude counsel must have in making tactical decisions." Strickland v. Washington, 466 U.S. 668, 688-689 (1984).

It has long been held that, when a criminal defendant accepts counsel for his defense, law and tradition allocates to counsel the power to make binding decisions of trial strategy. Faretta v. California, 422 U.S. 806, 820 (1975).

There were times when defense counsel did NOT represent Rydbom in the manner that counsel deemed best -- proving that Judge Reed's defense format interfered with defense counsel's "independence" and "wide latitude" (e.g., (i) not striking jurors for cause, (ii) waiving mercy (parole eligibility after 15 years), and (iii) waiving cautionary instructions). (Appendix N, pp. 56-57).

Ordinarily, these matters would be within the realm of defense counsel's judgment. In fact, the Supreme Court's stance has always been that, to satisfy the Constitution, defense counsel must function as an active advocate for the defendant as opposed to being a mere friend of the court. United States v. Cronic, 466 U.S. 648, 656-657 (1984); Evitts v. Lucey, 469 U.S. 387, 394-395 (1985) (citations in both cases omitted). But not under Judge Reed's defense format.

B. Judge Reed's defense format did not give Rydbom the strategic control over his defense that was promised.

There were other times, however, where (a) counsel did NOT follow Rydbom's strategic decisions; (b) counsel acted against Rydbom's defense-related efforts; and (c) counsel waived Rydbom's rights without Rydbom's informed consent.

Twenty-Five (25) of these episodes were raised in Rydbom's habeas petition (Appendix N, pp. 62-77).

These episodes show that Rydbom did NOT actually have the control over his defense that was promised to him by Judge Reed in exchange for Rydbom not actively participating in his defense and remaining under representation.

One prime example that counsel admitted to during trial: Counsel did not follow Rydbom's orders to seek help from an eyewitness identification expert.

> In appropriate cases, some States also permit defendants to present expert testimony on the hazards of eyewitness identification evidence. State v. Clopten, 223 P.3d 1103, 1113 (Utah 2009) ("We expect...that in cases involving eyewitness identification of strangers [], trial courts will routinely admit expert testimony [on the dangers of such evidence].").

Perry v. New Hampshire, 565 U.S. 228, 247 (2012).

The *Statement of the Case*, listed numerous failures of counsel to defend Rydbom from Steve Rutter's false ID of Rydbom (see also, Appendix N, pp. 62-69); failures which otherwise would have been normal actions of competent counsel engaged in defending against a false eyewitness ID case.

Normally, counsel's refusal to seek the help of an expert would not necessarily be presumptively prejudicial. "Even the best criminal defense attorneys would not defend a particular client in the same way." Strickland, 466 at 689.

However, in Judge Reed's defense scheme, defense counsel had no such discretion. Instead, the trial court ordered that Rydbom would remain under representation, without actively participating in his defense and, in turn, Rydbom would have strategic control of his defense, and defense counsel was ordered to pursue the issues that Rydbom wanted pursued.

This promise, under Judge Reed's defense format, of Rydbom having strategic control over his defense was not kept; nor could it be – at least not effectively.

5. The lower courts falsely accused Rydbom of engaging in hybrid representation.

In denying habeas relief, the lower courts falsely accused Rydbom of engaging in hybrid representation. (Appendix C, pp. 57, 62-65).

A. The issue of hybrid representation should be irrelevant if Judge Reed misled Rydbom on the law.

The lower courts' "Hybrid representation" accusation should be irrelevant if Judge Reed misled Rydbom on the Assistance of Counsel clause.

Jenkins v. Anderson, 447 U.S. 231, 240 note 6 (1980) (elementary fairness violated when a trial court misleads a defendant on a fundamental right).

Padilla v. Kentucky, 559 U.S. 356, 385 (2010) (Alito, J., concurring in judgment) ("Incompetent advice distorts the defendant's decisionmaking process

and seems to call the fairness and integrity of the criminal proceeding itself into question.").

B. "Hybrid representation" is when the defendant partly represents himself with co-counsel.

"Hybrid representation" occurs when a defendant is represented partly by counsel and partly (pro se) by himself.

That's what the Fourth Circuit says: United States v. Miller, 54 F.4th 219, 227 (4th Cir. 2022).

That's the classic definition: United States v. Hill, 526 F.2d 1019, 1024 (10th Cir. 1975) (citing several cases).

That's the dictionary definition: Black's Law Dictionary, 11th ed., (2009): ("hybrid representation" = a lawyer who acts as co-counsel alongside a defendant).

Judge Reed also falsely advised Rydbom that "hybrid representation" is **not** the same as co-counsel (or even as standby counsel). (Appendix I, pg. 36).

Finally, Judge Reed waited nineteen years (05/Nov/1997 - 22/Dec/2016) before accusing Rydbom of "hybrid representation."

C. Rydbom did not partly represent himself.

Rydbom did not represent himself (even partly). Rydbom did not actively participate in his defense. Rydbom never offered any statements or arguments before the jury. Rydbom never offered any exhibits or other evidence into the record. Rydbom never made any objections. Rydbom never questioned any witnesses. And Rydbom never spoke in court unless first addressed by the court.

This was in full compliance with Judge Reed's order that Rydbom would remain represented by "counsel of record," without actively participating in his defense -- under the assurance that Rydbom's strategic decisions would be followed.

D. "Hybrid representation" necessarily interferes with the "effective" assistance of counsel.

Because "hybrid representation" interferes with defense counsel's constitutionally protected independence, wide latitude, and professional judgment, it necessarily interferes with the Strickland's promise of the "effective" assistance of counsel in criminal cases.

As a result, "hybrid representation" should be acceptable in criminal cases if, and **only if**, accompanied by a valid waiver of the "effective assistance of counsel." *See e.g.*, Wayne R. LaFave et al., Criminal Procedure, 11.5(g) (1999) ("since hybrid representation is in part *pro se* representation, allowing it without a proper *Faretta* inquiry can create constitutional difficulties.") (citations omitted).

6. Judge Reed's defense format was structural error and presumptively pejudicial.

Rydbom's attempt to control his defense was done the honest and correct way -- by moving to represent himself.

Rydbom even argued to Judge Reed his belief that, "attorneys who represent clients have the right to decide strategically how their defense is going to be run." (Appendix I, pg. 12). It was Rydbom who was misled; not Judge Reed.

Judge Reed and the Magistrate Judge both said that Rydbom did not prove defense counsel's conduct was deficient & prejudicial. That's called a Red Herring.

The actual question is whether Judge Reed misled Rydbom on the Sixth Amendment's Assistance of Counsel clause – and, by extension, misled Rydbom into an improper and impracticable defense format.

It was Judge Reed who misled Rydbom on the law. And it was Judge Reed who misled Rydbom into an improper and unworkable defense scheme.

True, defense counsel sometimes did not comply with Rydbom's strategic wishes (ethical, and relevant wishes).

But, according to Strickland's promise of the effective assistance of counsel without improper government interference with defense counsel's "constitutionally protected independence" and "wide latitude," 466 U.S. at 686, 686-689, Rydbom and defense counsel were not supposed to be put into such a predicament in the first place.

Judge Reed's defense format was Judge Reed's idea; one that Judge Reed insisted was the law. Most importantly, though, Judge Reed's defense scheme denies a criminal defendant the benefit of an unhobbled advocate while also denying the defendant the benefits of self-representation.

Judge Reed's errors are structural and presumptively prejudicial.

There is also a logical incongruity in using Strickland 's "deficient and prejudicial performance" standard to defend counsel's conduct after having rode

roughshod over Strickland's ban against interfering with counsel's constitutionally protected "independence" and "wide latitude."

Under Strickland, defense counsel is strongly presumed to have made all significant decisions in the exercise of reasonable professional judgment, 466 U.S. at 690. But, how can that possibly be if defense counsel is not *allowed* to be an effective advocate for his client, or if a trial judge is allowed to order counsel to follow the represented client's (possibly harmful) strategic decisions?

There is a world of difference, under Strickland's philosophical framework, between *counsel's choice* to follow the client's (possibly good) advice, and a court-imposed defense scheme requiring counsel to obey the client's strategic decisions.

Likewise, how is a criminal defendant supposed to effectively exercise strategic control over his defense while sitting at the defense table with his mouth shut, and when defense counsel has the entire case file and is doing all of the work?

CONCLUSION

Rydbom asks this Court to issue an ORDER consistent with the following:

Judge Reed misled Rydbom on a fundamental right (i.e. the Sixth Amendment's Assistance of Counsel clause).

The defense format employed in Rydbom's trial -- where Rydbom remained represented by counsel of record, without actively participating in his defense, while supposedly having strategic control of his defense (and where defense counsel sometimes acted against Rydbom's decisions) -- resulted from Judge Reed's incompetent advice contravening clearly established Assistance of Counsel law as determined by the Supreme Court.

Rydbom further asks that this Court ORDER:

1. Granting habeas corpus relief or, at bare minimum, a Certificate Of Appealability; or

2. Issuing a GVR (grant, vacate, & remand) order as may be just under the circumstances.

Respectfully submitted this 21 day of May, 2025.

Dennis Rydbom #3571836
Mt. Olive Correction Complex
One Mountainside Way
Mt. Olive, WV 25185