

24-7522

No. \_\_\_\_\_

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

RACHAEL LYNN BOEHME- PETITIONER

vs.

STATE OF OREGON - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE DECISION OF THE OREGON COURT OF  
APPEALS (A181368) CONTROL A181437, S071780 ON  
AN APPEAL FROM THE JUDGEMENT OF THE  
CIRCUIT COURT FOR MULTNOMAH COUNTY  
CASE NOS. 19CR80435, 21CR06630  
HONARABLE JUDGE RIMA GHANDOUR, JUDGE

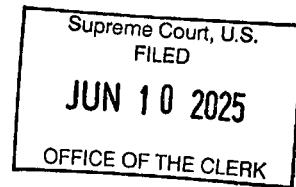
PETITION FOR WRIT OF CERTIORARI

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## QUESTION(S) PRESENTED

When trial court would neither agree to relieve defense counsel, even after he took positions that were plainly adverse to his client, nor permit the defendant to proceed pro se, does this constitute reversible error?

When court appointed counsel has intentionally failed to act as accused's "compulsory process for obtaining and presenting witnesses and evidence in her favor" and the court has denied substitution of counsel, is she entitled to act in pro se?

Does a trial court err by failing to conduct a meaningful colloquy about defendant's request to represent herself in the face of what the state admits was ineffective assistance of counsel, and then by denying defendant's motion to proceed pro se, without conducting a proper inquiry, does this constitute reversible error?

## 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:

### STATE OF OREGON - RESPONDENT(S)

THE DECISION OF THE OREGON COURT OF  
APPEALS (A181368) Control A181437  
ON AN APPEAL FROM THE JUDGEMENT OF THE  
CIRCUIT COURT FOR MULTNOMAH COUNTY  
CASE NOS. 19CR80435, 21CR06630  
HONARABLE JUDGE RIMA GHANDOUR, JUDGE  
(OREGON SUPREME COURT DENIAL OF REVIEW  
S071780)

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI  
Petitioner respectfully prays that a writ of certiorari issue  
to review the judgment below.

**OPINIONS BELOW**

[X] For cases from state courts:

The decision of the highest state court, Oregon Court of Appeals, to review the merits was affirmed without opinion and appears at Appendix A to the petition and

[ X] is unpublished.

The decision of the Oregon Supreme Court appears at Appendix B to the petition and

[ X] is unpublished. Denied Review.

**JURISDICTION**

[X] For cases from state courts:

The jurisdiction of this Court is invoked under 28 U.S. C. § 1257(a). The petitioner having asserted below and in this court a deprivation of rights secured by the Constitution of the United States.

The date on which the highest state court decided my case was January 09, 2025, A copy of that decision appears at Appendix A.

The Oregon Supreme Court denied petition for review on April 24, 2024 and a copy of the order denying rehearing appears at Appendix B.

The petition for a Writ of Certiorari is timely filed on May 27, 2025.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment as made applicable to the States by the Fourteenth guarantees that a defendant in a state criminal trial has an independent constitutional right of self-representation and that he may proceed to defend herself without counsel when she voluntarily and intelligently elects to do so; and in this case the state courts erred in forcing petitioner against her will to accept a state-appointed public defender and in denying her request to conduct her own defense. U.S.C.A Const. Amends. 6

Language and spirit of Sixth Amendment contemplate that counsel, like other defense tools guaranteed by it, shall be an aid to willing defendant, and not an organ of state interposed between an unwilling defendant and her right to defend herself personally. U.S.C.A Const. Amends. 6; 28 U.S.C.A § 1654; Fed Rules Crim Proc. Rule 44, 18 U.S.C.A.

Sixth Amendment rights of accused in all criminal prosecutions to be informed of nature and cause of accusation, to be confronted with witnesses against her, to have compulsory process for obtaining witnesses in her favor and to have assistance of counsel for her defense are part of the "due process of law" that is guaranteed by Fourteenth Amendment to defendants in the criminal courts of state. U.S.C.A Const. Amends. 6, 14.

Sixth Amendment right to notice, confrontation and compulsory process, taken together, guarantee that criminal charge may be answered in manner now considered fundamental to fair administration of American justice, through calling and interrogation of favorable witnesses, cross-examination of adverse witnesses, and orderly introduction of evidence; in short, Sixth Amendment constitutionalizes right in an adversary criminal trial to make defense as we know it. U.S.C.A

### Const. Amends. 6

Sixth Amendment does not provide merely that defense shall be made for accused but grants to accused personally the right to make a defense; right to self-representation to make one's own defense personally is necessarily implied by structure of the amendment. U.S.C.A Const. Amends. 6; 28 U.S.C.A § 1654; Fed Rules Crim Proc. Rule 44, 18 U.S.C.A.

It is accused, not counsel, who must be informed of nature and cause of accusation, who must be confronted with witnesses against her, and who must be accorded compulsory process for obtaining witnesses in her favor. U.S.C.A Const. Amends. 6

Because courts are reluctant to find that a defendant has waived fundamental constitutional rights, a court will not presume a waiver of the right to counsel from a silent record. U.S.C.A Const. Amends. 6; Or. Const. art. 1, § 11.

### STATEMENT OF THE CASE

On January 29, 2025 Court of Appeals of Oregon affirmed defendants appeal without opinion and on April 24, 2025, the Oregon Supreme Court denied review. In this prosecution for Burglary, defendant believes trial court committed reversible error in denying defendant's midtrial request to defend pro se where, court record showed defendant had also been denied three times prior to trial for substitution of counsel. The dates of those hearings were November, 04, 2020, August 08, 2022, and on April 21, 2023 (App Br ER 18, 19, 21, 24, 26 - Judicial Officer: Albrecht, Cheryl A) Defendant also submitted a letter dated April 20, 2023 (App Br ER 20) to the court attempting to address concerns about ineffective assistance of counsel, particularly counsel's unwillingness to introduce exculpatory video evidence and call witnesses during the trial. Defendant unequivocally demanded to proceed pro se, no motion for continuance was made,

request was not made for purpose of delaying, disrupting or obstructing trial, and record did not establish defendant's lack of mental capacity or willingness or unwillingness to knowingly and intelligently waive right to counsel.

Procedural History is as follows: In Multnomah County case number 19CR80435 (A181368), the state charged defendant with two counts of first-degree burglary (Counts 1 and 3), ORS 164.225; two counts of possession of a burglary tool (Counts 2 and 4), ORS 164.235; and aggravated first-degree theft (Count 5), ORS 164.057. Indictment (19CR80435), at ER 1. In Multnomah County Case number 21CR06630 (A181367), the state charged defendant with second-degree burglary (Count 1), ORS 164.215; first-degree theft (Count 2), ORS 164.055; and two counts of identity theft (Counts 3 and 4), ORS 165.800. Indictment (21CR06630), at ER 3. The court joined those cases for trial.

After the state presented its case, defense counsel informed the court that defendant "elected not to testify" and that the defense was prepared to rest. Defendant was not in agreement with defense counsel about resting the case but instead wanted defense counsel to continue providing exculpatory evidence that was agreed upon before trial as well as calling specific witnesses. (Tr 636). The trial court then told defendant that the decision "to testify or not to testify [was her] choice alone, " and asked whether she "ha[d] any questions about that[.]" (Tr 636). Defendant did not respond to that question but instead complained about her trial counsel as follows:

"THE DEFENDANT: I mean overall, I feel like I haven't had a relationship with my attorney. \* \* \* [In] this whole process, I'm not understanding what to be expecting. What's – you know, none of the questions that I've wanted

to have asked to the witnesses have been asked. He refuses to provide any evidence. I feel like my counselor has not provided a defense for me.”

“In fact, I feel the opposite of that. And this whole time I’ve been trying to get him to communicate with me about what is going on. And I feel very misguided. And you know, I’ve tried several times to get alternate counsel, or to fire him or I’m not sure the correct terminology, but I feel misled by my attorney.” (Tr 636-37)

The trial court then stated that it seemed that defendant was “making a motion that you want to substitute another attorney” Id and defendant responded that she had already had three substitution of counsel hearings that were unfairly denied due to Covid, shortage of available public defenders as well as it being hard to find one that wasn’t an associate to the “Law firm” case ultimately having conflict of interest. None of these reasons were due to actions of the defendant.

Defendant then stated “I want to represent myself.” (Tr 637).

Then the judge “shushed” the defendant.

**“THE COURT:** “ Shhh.... . little bit late in the proceeding to be bringing this up.”

**“THE COURT:** We are in the middle of the trial. So my question is more specific. Do you understand that you

have a right to testify? It's your choice and your right to do so.

“THE DEFENDANT: Yes.

“THE COURT: Okay. Do you have any additional questions about that right that you want to ask me or ask [defense counsel] before you make a final decision on what you want to do?

“THE DEFENDANT: No.

“THE COURT: Okay. And my understanding is that you don't want to testify; is that correct?

“THE DEFENDANT: I do not.

“THE COURT: Okay.” Tr 637 (emphasis added).

Defense counsel immediately rested defendant's case without presenting any evidence or defense. Tr 637. The jury found defendant guilty of each charge. Tr 762.

Defendant preserved this claim for error by complaining about the performance of her trial counsel and then requesting to represent herself.

To the extent that the state argues that defendant needed to reiterate her request in order to properly preserve it, this court's case law defeats such an argument.

“Preservation does not require a party to continue making an argument that the trial court has already rejected.”

State v. Barajas, 247 Or App 247, 251, 268 P3d 732 (2011). Had defendant violated the judge's direct order to shush, she could have been ejected from the courtroom for disrupting the trial.

Failure to conduct colloquy on defendant's request to represent herself, made midtrial during a portion of the trial where defense could present evidence, was reversible error; fact that defendant's request was made in atmosphere of her escalating dissatisfaction with her attorney suggested that defendant's purpose in making request was not to delay or stall proceedings, but rather to address her growing concerns about her attorney, and failure to conduct colloquy precluded both full assessment of purpose behind defendant's request and determination of what effect granting request would have had on proceedings.

On appeal, defendant argued that the court lacked a valid reason to deny her request to represent herself. That is, defendant argues that the trial court did not find, and could not have found based on the record, that defendant's attempt to waive her right to counsel was not knowing and voluntary or that the potential for disruption outweighed defendant's interest in representing herself. It is not necessary for us to decide whether the exchanges highlighted by the state would have warranted denying defendant's request, because, notwithstanding those occurrences, nothing in the record indicates that the court "actually weighed the relevant competing interests involved." Hightower, 361 Or. at 421, 393 P.3d 224. That is, in refusing defendant's request to represent herself, the trial court never mentioned any earlier disruptive conduct or other potential sources of disruption or delay; notably, defendant made it clear to the court that her request would not result in delay and was, in fact, necessitated by the court's denial of a request to replace counsel on the basis of the potential that replacement of

counsel would cause delay despite evidence that counsel was ineffective and in fact, did not mount a defense. State v. Fredinburg, 257 Or. App. 473, 484, 308 P. 3d 208, rev. den., 354 Or. 490, 317 P. 3d 255 (2013) Moreover, the court's comments to defendant "Shhh..... little bit late in the proceeding to be bringing this up." do not reflect an awareness that it was required to balance any such concerns against defendant's right to self-representation or right to effective assistance of counsel that would present a defense. Instead emphasized on the fact it focusing on making a clear record only regarding her right to testify saying "We are in the middle of the trial. So my question is more specific. Do you understand that you have a right to testify? It's your choice and your right to do so." The right to testify is meaningless when the right to a complete defense is denied. The decision that was made by the Judge suggests that the court failed to understand that they even held the authority to authorized defendant to proceed in Pro Se and may not have understood that the right to self-representation is constitutionally protected. In any event, the record does not demonstrate, expressly or implicitly, that the trial court engaged in the required balancing of defendant's right to self-representation against the need for an orderly and expeditious trial. Requiring that balancing. Accordingly, there is no basis on which to conclude that the court's ruling was a proper exercise of its discretion. The Court of Appeals decided this case wrongly therefore defendant prays for this court to grant Writ of Certiorari.

Proposed Rule of Law

The answer to all questions presented is Yes. Under Article I, section 11, a defendant has a right to either represent herself or be represented by counsel. Once trial has begun, the trial court has discretion to deny a defendant's motion to represent herself to ensure the fairness, integrity, and orderliness of the trial. To properly exercise that discretion and allow for meaningful

appellate review, the trial court must make a record of how it weighed the competing interests, and under the Supreme Court's opinion in *Hightower*, 361 Or 412, a trial court errs as a matter of law if it denies a midtrial request for self-representation based on its legal conclusion that a defendant may not assert that right after trial has commenced and during a portion of the trial where defense counsel refused to provide any evidence or testimony for defense. A trial court's statement in response to midtrial request for self-representation that it is "too late" to make that request is akin to the kind of reasoning that is insufficient under *Hightower* and ultimately the right for a defendant to represent herself has long been acknowledged in the federal courts. *Faretta v. California*, 422 U.S. 806, 813 (1975) even more so "The Sixth Amendment grants a criminal defendant 'personally the right to make her defense.'" *United States v. Engel*, 968 F. 3d 1046, 1050 (9th Cir. 2020)

The "United States Supreme Court has recognized a limited category of errors which violate constitutional rights so basic to a fair trial that their infraction can never be treated as harmless." *Chapman v. California*, 386 U.S. 18 (1967.) Included in this category is denial of self-representation at trial. This error is "structural" and requires a new trial regardless of whether prejudice has been shown because they constitute a defect affecting the framework within which the trial proceeds, rather than simply an error in the trial process itself. *Arizona v. Fulminante*, 499 U.S. 279 (1991). "Errors of this kind compromise the fundamental fairness expected in a criminal trial." *McCoy v. Louisiana*, 584 U.S. 414 (2018). "The consequences of structural errors are difficult to assess and therefore unamendable to the 'outcome based' analysis of harmless-error review. When the prejudicial effects of a constitutional violation are unquantifiable and indeterminate, any assessment of the effect of the outcome of the trial becomes purely speculative." *United States v. Gonzales-Lopez*, 548 U.S. 140 (2006). And harmless error analysis is "irrelevant" when "the constitutional right violated protects an interest other

than an erroneous conviction." Id. Given the importance of the right at stake and the extent of the deprivation to a complete defense, the district's denial constitutes a defect affecting the entire trial framework and is therefore structural error.

Oregon courts have not adopted the "structural error" doctrine with respect to violations of state law. *State v. Wilson*, 216 Or App 226, 232, 173 P3d 150 (2007), 228 Or App 363 (2009). The Oregon Supreme Court has repeatedly admonished that the concept of "structural error" is inapposite to Oregon law. The reasons the Oregon Supreme Court has given for not adopting the structural-error doctrine include its absence in statute or constitutional provision and its inconsistency with article VII, § 3, of the Oregon Constitution, which provides that the appellate court, after considering all matters submitted, must affirm the lower court if it is of the opinion that the outcome was correct despite any errors during trial. *Ryan*, 338 Or at 294-297.

In this case the District court's inquiry into defendant's request to proceed pro se was inadequate, inasmuch as court did not seek to determine whether defendant understood full range of risks and structural limitations of self-representation, but instead focused on ways in which defendant could be accommodated by counsel's representation during her own testimony if she elected to do so, and thus had no basis upon which to deny request. U.S. Const. Amend VI. *U.S v. Peppers*, 302 F. 3d 120 (3d Cir. 2002)

#### REASONS FOR GRANTING THE PETITION

The Court of Appeals decision to Affirm is wrong. By the Oregon Supreme Court denying review it shows that they are not being consistent with their rulings. This case presents a significant issue of law where constitutional rights have been violated. I pray you grant certiorari, as the United States Supreme Court has held that a defendant in a state criminal trial has a

constitutional right to **proceed** without counsel when he voluntarily and intelligently elects to do so, and that the state may not force a lawyer upon him when he insists that he wants to conduct his own defense. I beg you resolve that refusal to permit a defendant to argue her case is in direct violation of state constitution and a defendant is not required to beg the court to sustain her rights in order to preserve them but that failure to conduct a colloquy once when the defendant asserts a right to represent herself without a lawyer is reversible error. The denial of the Sixth Amendment right to **proceed pro se** cannot be harmless, and a violation requires a new trial. The Court of Appeals' wrong decision shows that the court as well as the State of Oregon, needs additional guidance from this court to remain consistent with legal rulings.

## CONCLUSION

I respectfully thank you for your time and pray that the right to defend **pro se** is a fundamental ingredient of due process, and its denial to petitioner requires reversal. I humbly request that review be allowed, and that the decisions of the Oregon Court of Appeals and the judgement of the trial court be reversed and remanded.