

In the Supreme Court of the United States

EUGENE WRIGHT, PETITIONER,

v.

ILLINOIS, RESPONDENT.

**On Petition for a Writ of Certiorari
to the Illinois Supreme Court**

BRIEF IN OPPOSITION

LISA MADIGAN
Attorney General of Illinois
DAVID L. FRANKLIN
Solicitor General
MICHAEL M. GLICK*
GARSON S. FISCHER
Assistant Attorneys General
100 West Randolph Street
Chicago, Illinois 60601
(312) 814-2566
gfischer@atg.state.il.us
eserve.criminalappeals@atg.state.il.us

**Counsel of Record*
Attorneys for Respondent

QUESTION PRESENTED

Whether a defendant's waiver of counsel can be knowing and voluntary where the trial court admonishes him about his right to counsel, the dangers and disadvantages of self-representation, the nature of the charges against him, and the range of allowable punishments, but errs in its calculation of the maximum possible sentence.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF AUTHORITIES	iii
STATEMENT.....	2
REASONS FOR DENYING THE PETITION	5
I. The Decision Below Rests on the Illinois Supreme Court's Interpretation of Illinois Law.....	5
II. There Is No Split Among Lower Courts Regarding Whether the Sixth Amendment Requires an Accurate Admonishment Regarding a Defendant's Maximum Possible Sentence Before Accepting His Waiver of Counsel.	6
CONCLUSION.....	9

TABLE OF AUTHORITIES

	Page(s)
Cases:	
<i>Adams v. McCann</i> , 317 U.S. 269 (1942)	5
<i>Faretta v. California</i> , 422 U.S. 806 (1975).....	<i>passim</i>
<i>Iowa v. Tovar</i> , 541 U.S. 77 (2004)	1, 5, 6
<i>Patterson v. Illinois</i> , 487 U.S. 285 (1988)	5
<i>State v. Diaz</i> , 274 Conn. 818 (2005)	7
<i>United States v. Forrester</i> , 512 F.3d 500 (9th Cir. 2008)	6, 7
<i>United States v. Ruiz</i> , 536 U.S. 622 (2002).....	5
Statutes and Court Rules:	
28 U.S.C. 1257	6
Ill. S. Ct. R. 401.....	<i>passim</i>

BRIEF IN OPPOSITION

The Sixth Amendment to the United States Constitution guarantees a criminal defendant the right to proceed without counsel. *Faretta v. California*, 422 U.S. 806, 832-34 (1975). But a defendant's waiver of counsel must be voluntary, knowing, and intelligent. *Id.* at 835. In Illinois, acceptance of a defendant's waiver of counsel is also governed by Illinois Supreme Court Rule 401(a), which requires the trial court to inform the defendant of his right to counsel, the nature of the charge against him, and the minimum and maximum possible sentences before permitting him to waive counsel. Ill. S. Ct. R. 401(a).

The Illinois Supreme Court's decision below addresses a state-law issue: whether a trial court substantially complies with Rule 401(a) where it admonishes a defendant about the maximum possible sentence but miscalculates what that sentence could entail. Petitioner attempts to recast this as a federal question: whether *Faretta* requires strict compliance with the admonishments that Illinois happens to have codified in Rule 401(a). He argues that courts are split on that question. He is incorrect. This Court has declined to "prescribe[] any formula or script to be read to a defendant who states that he elects to proceed without counsel," *Iowa v. Tovar*, 541 U.S. 77, 88 (2004), and petitioner has identified no federal circuit court or state high court that has held that a defendant's waiver of counsel is necessarily not voluntary, knowing, and intelligent if the trial court has miscalculated the maximum possible sentence. For these reasons, this Court should deny certiorari.

STATEMENT

1. Petitioner and a codefendant were charged with armed robbery with a firearm in connection with a 2010 robbery of a Bakers Square restaurant on Chicago's north side. Pet. App. B at 2. At his arraignment, petitioner informed the court that he would not agree to any continuances. *Ibid.* Petitioner's appointed counsel stated that she was not ready for trial and sought a continuance to conduct discovery. *Ibid.* Petitioner told the court that he wanted to hire an attorney, and the case was continued. *Ibid.*

2. Two weeks later, petitioner informed the court that he instead wanted to proceed *pro se*. *Ibid.* The court admonished petitioner that he was charged with two armed robberies (he was also charged with the armed robbery of a different Bakers Square restaurant in an unrelated case) and that he could face up to 60 years in prison. *Id.* at 2-3. The court told petitioner:

You do have the right to represent yourself and I have given you all the bases and tried to give you as much information so that you could understand how serious this case is and how it would be quite challenging for you to do this on your own and if you are convicted after handling this case on your own. . . . Understanding that, I believe you are making a very big mistake and I am afraid it may be something that you might regret.

Id. at 14-15. Petitioner reiterated his desire to represent himself, *id.* at 15, and the following week, the court again admonished petitioner, informing him that if convicted, he faced a sentence of 21 to 60 years in prison, *id.* at 3. Petitioner informed the court that he had two years of college and prior experience with the criminal justice system. *Ibid.*

3. Following a jury trial at which he represented himself, petitioner was found guilty of armed robbery. *Id.* at 9. At sentencing, the State informed the judge that petitioner was eligible for a maximum sentence of 75 years in prison due to his prior convictions and an applicable firearm enhancement. *Ibid.* The State asked for a 60-year sentence, and the court sentenced petitioner to 50 years in prison. *Ibid.*

4. On appeal to the intermediate appellate court, petitioner raised several arguments, including that the court failed to properly admonish him under Rule 401(a) before allowing him to waive his right to counsel. *Id.*; Pet. App. A at 9. The appellate court recognized that the issue was forfeited, but reviewed it under Illinois's plain error doctrine because "failure to comply with Rule 401(a) denies a defendant his or her fundamental right to be represented by counsel." *Ibid.* The court held that by informing petitioner that he faced up to 60 years in prison when, in fact, he faced up to 75 years in prison, the trial court had failed to comply with Rule 401(a)'s requirement that the court "inform defendant of and determine that he understands" his maximum sentence prior to accepting his waiver. *Id.* at 10. The court acknowledged that substantial, rather than strict, compliance with Rule 401(a) suffices under state law if the record reveals that the waiver was knowing and voluntary "*and* the admonishment the defendant received did not prejudice his rights." *Ibid.* (emphasis in original). Specifically, although an omission in the admonishments does not prejudice a defendant where the defendant already knew the omitted information or where his degree of legal sophistication makes clear his

awareness of the omitted information, the court held that these exceptions did not apply in this case, and it reversed petitioner's conviction. *Id.* at 13.

5. The Illinois Supreme Court disagreed. It held that the trial court substantially complied with Rule 401(a) because it properly admonished petitioner except the statement that he faced a maximum sentence of 60 years in prison. Pet. App. B at 21. The court reasoned, "Each case . . . must be evaluated on its own particular set of facts," and based on the facts of this case, petitioner's waiver was voluntary, knowing, and intelligent. *Ibid.* In so holding, the court emphasized petitioner's age and education, his prior experience representing himself on a felony appeal, the trial court's admonishments about the risks of self-representation, and petitioner's assertion that he wanted to represent himself due to speedy trial concerns (on which point the court's error regarding the sentencing range had no bearing). *Ibid.* The court also concluded that petitioner's rights were not prejudiced by the error because (1) petitioner did not allege that he would not have represented himself had he known he faced a possible 75, rather than 60, years in prison, and (2) petitioner received only a 50-year sentence. *Id.* at 21-22.

REASONS FOR DENYING THE PETITION

I. The Decision Below Rests on the Illinois Supreme Court's Interpretation of Illinois Law.

Petitioner now contends that this case involves a split among lower courts regarding the application of *Faretta*. Pet. Br. at 7. It does not. Rather, this case presents solely a question of state law: namely, whether the state trial court substantially complied with Illinois Supreme Court Rule 401(a). While this Court has held that defendants have a Sixth Amendment right to self-representation, and that the waiver of counsel must be voluntary, knowing, and intelligent, it has also declined to “prescribe[] any formula or script to be read to a defendant who states that he elects to proceed without counsel.” *Tovar*, 541 U.S. at 88. The Court has described a knowing waiver as one where the defendant “knows what he is doing and his choice is made with his eyes open.” *Ibid.* (quoting *Adams v. McCann*, 317 U.S. 269, 279 (1942)). “The law ordinarily considers a waiver knowing, intelligent, and sufficiently aware if the defendant fully understands the nature of the right and how it would likely apply *in general* in the circumstances — even though the defendant may not know the *specific detailed* consequences of invoking it.” *Tovar*, 541 U.S. at 92 (quoting *United States v. Ruiz*, 536 U.S. 622, 629 (2002) (emphases in original)). “If the defendant lacked a full and complete appreciation of all of the consequences flowing from his waiver, it does not defeat the State’s showing that the information it provided to him satisfied the constitutional minimum.” *Tovar*, 541 U.S. at 92 (quoting *Patterson v. Illinois*, 487 U.S. 285, 294 (1988) (internal quotation marks omitted)).

Of course, States are free to adopt rules to guide courts in the acceptance of waivers of the right to counsel, including rules that require more than the constitutional minimum, but compliance with these state-law rules is not required by the United States Constitution. *Tovar*, 541 U.S. at 94. And that is precisely the situation here. Illinois adopted Rule 401(a) to guide trial courts when a defendant seeks to waive his right to counsel. The rule requires an accurate admonishment of the maximum possible sentence before such a waiver is accepted. The only question here is whether a court can substantially comply with Rule 401(a) despite miscalculating the maximum sentence. Resolution of that question depends solely on Illinois Supreme Court Rule 401(a) and Illinois cases interpreting it. It does not implicate this Court's Sixth Amendment jurisprudence in any way. This Court should deny the petition because the case presents a question of Illinois law as interpreted by the Illinois Supreme Court. *Cf.* 28 U.S.C. 1257(a) (granting this Court jurisdiction to review questions arising under federal statutes or Constitution).

II. There Is No Split Among Lower Courts Regarding Whether the Sixth Amendment Requires an Accurate Admonishment Regarding a Defendant's Maximum Possible Sentence Before Accepting His Waiver of Counsel.

Contrary to petitioner's assertion, Pet. Br. at 7, no split of authority exists over whether compliance with the constitutional minimum — that an waiver of counsel be voluntary, knowing, and intelligent — necessarily requires an accurate admonishment regarding the defendant's sentencing exposure. Petitioner cites *United States v. Forrester*, 512 F.3d 500 (9th Cir. 2008), for the proposition that the

Sixth Amendment requires that a defendant be admonished about the range of possible sentences before a court may accept his waiver. Pet. Br. 8. There, the Ninth Circuit “gleaned a three-factor test from *Faretta*,” under which a court must determine that the defendant understands (1) the charges against him, (2) the possible penalties, and (3) the dangers and disadvantages of self-representation before it accepts a waiver of the right to counsel. *Forrester*, 512 F.3d at 506. But that court also allowed for an exception “when the record as a whole reveals a knowing and intelligent waiver.” *Ibid*. In other words, while the Ninth Circuit has identified three factors to guide its analysis, it also recognizes that the federal Constitution requires only that the waiver be knowing and intelligent based on the record as a whole. The factors identified by the Ninth Circuit are nearly identical to those in Illinois’s Rule 401(a), and *Forrester* tracks the Illinois courts’ practice of excusing strict compliance when the record demonstrates that the waiver was, nevertheless, knowing and intelligent.

Petitioner’s allegedly conflicting state-court cases are similarly consistent with the standard the Illinois Supreme Court applied here. For example, in *State v. Diaz*, 274 Conn. 818 (2005), the sole state high court decision on which petitioner relies, the Supreme Court of Connecticut held that Diaz’s waiver of his right to counsel was not knowing and intelligent when he was not informed of the maximum possible sentence, as required by Connecticut law. 274 Conn. at 831. But that court also stated:

The defendant, however, does not possess a constitutional right to a specifically formulated canvass with respect to this inquiry. His

constitutional right is not violated as long as the court's canvass, whatever its form, is sufficient to establish that the defendant's waiver was voluntary and knowing. . . . In other words, the court may accept a waiver of the right to counsel without specifically questioning a defendant on each of the factors listed in Practice Book § [44-3] if the record is sufficient to establish that the waiver is voluntary and knowing.

Ibid. In other words, just as in Illinois, Connecticut law guides courts accepting waivers of counsel, but does not require strict compliance so long as the record demonstrates that the defendant's waiver was knowing and intelligent.

Accordingly, this Court should deny the petition because petitioner has identified no split of authority.

CONCLUSION

The petition for a writ of certiorari should be denied.

LISA MADIGAN

Attorney General of Illinois

DAVID L. FRANKLIN

Solicitor General

MICHAEL M. GLICK*

GARSON S. FISCHER

Assistant Attorneys General

100 West Randolph Street

Chicago, Illinois 60601

(312) 814-2566

gfischer@atg.state.il.us

eserve.criminalappeals@atg.state.il.us

**Counsel of Record*

Attorney for Respondent

APRIL 2018