

No. 17-7609
IN THE
SUPREME COURT OF THE UNITED STATES

EUGENE WRIGHT, Petitioner,
-vs-

PEOPLE OF THE STATE OF ILLINOIS, Respondent.

On Petition For Writ Of Certiorari
To The Supreme Court Of Illinois

**REPLY TO RESPONDENT'S BRIEF IN OPPOSITION
TO PETITION FOR WRIT OF *CERTIORARI***

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TABLE OF CONTENTS

Table of Authorities	ii
Reply Brief to Respondent's brief in opposition to petition for writ of certiorari	1
Conclusion	7

TABLE OF AUTHORITIES

Cases:	Page
Federal Cases:	
<i>Faretta v. California</i> , 422 U.S. 806 (1975)	1, 2
<i>Iowa v. Tovar</i> , 541 U.S. 77 (2004).	5
<i>Johnson v. Zerbst</i> , 304 U.S. 458 (1938)	2
<i>United States v. Erskine</i> , 355 F.3d 1161 (9th Cir. 2004)	3
<i>United States v. Forrester</i> , 512 F.3d 500 (9th Cir. 2008).	3, 4
<i>United States v. Turner</i> , 644 F.3d 713 (8th Cir. 2011)	4
State Cases:	
<i>People v. Campbell</i> , 224 Ill. 2d 80.	1
<i>People v. Haynes</i> , 174 Ill. 2d 204 (1996).	2
<i>People v. Wright</i> , 2017 IL 119561	<i>passim</i>
<i>State v. Diaz</i> , 274 Conn. 818 (2005)	4, 5
Constitutional and Statutory Provisions:	
U.S. Const. Amend. VI	1, 2
S. Ct. R. 401(a).	1, 2

**REPLY TO RESPONDENT'S BRIEF IN OPPOSITION
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The Illinois Supreme Court's decision finding a knowing waiver of counsel when the trial court understated the maximum sentence Wright faced by 15 years provides this Court with the opportunity to resolve a split in authority on whether the defendant must be aware of the sentencing range for there to be a valid waiver of counsel.

Respondent contends that review is not warranted for two reasons: (1) the Illinois Supreme Court's *Wright* decision rests on an interpretation of state law; and (2) there is no split in authority on whether the record must establish that the defendant is aware of the maximum sentence he faces for there to be a knowing waiver of counsel. Neither of these arguments withstands scrutiny and this Court should not be dissuaded from granting certiorari to address this important question regarding waiver of the right to counsel.

Respondent first argues that this case presents solely a question of state law: namely, whether the trial court substantially complied with Illinois Supreme Court Rule 401(a). (Resp. Br. 5-6) The Illinois Supreme Court clearly pronounced that it was deciding a Federal Constitutional issue. The court emphasized that "The sixth amendment to the United States Constitution (U.S. Const., amend VI) guarantees an accused in a criminal proceeding both the right to the assistance of counsel and the correlative right to proceed without counsel." *People v. Wright*, 2017 IL 119561 ¶ 39. Citing *Faretta v. California*, 422 U.S. 806, 832-35 (1975), the *Wright* court recognized that a waiver of counsel must be voluntary, knowing, and intelligent. *Wright*, 2017 IL 119561 at ¶ 39.

Illinois Supreme Court Rule 401(a) merely enshrines the constitutional principle that there must be a knowing and intelligent waiver of counsel on the record before a

defendant is allowed to represent himself at criminal proceedings. *People v. Campbell*, 224 Ill. 2d 80, 84 (2006). To that end, Rule 401(a) mandates that the trial court shall not permit a waiver of counsel without informing the defendant in open court, and ensuring that he understands: (1) the nature of the charge; (2) the minimum and maximum sentence prescribed by law; and (3) that he has a right to counsel and, if he is indigent, to have counsel appointed for him by the court. Ill. S. Ct. R. 401(a).

Thus, Rule 401(a) mirrors this Court's requirement that the trial court has the burden of ensuring a knowing waiver and that a knowing waiver will not be construed from a silent record. *Johnson v. Zerbst*, 304 U.S. 458, 460, 464-65 (1938). In fact, Respondent below acknowledged in the Illinois Supreme Court that this was an issue of Federal Constitutional law stating:

It is well established that the Sixth Amendment guarantees an accused in a criminal proceeding both the right to the assistance of counsel and the correlative right to proceed without counsel. *Haynes*, 174 Ill. 2d at 235. The purpose of Rule 401(a) is to ensure that a waiver of counsel is knowingly and intelligently made. *Id.* at 241. Rule 401 requires that "certain admonishments must be given by the trial court before a defendant may be found to have knowingly and intelligently waived counsel." *Id.* at 235-36. (Resp. Brief in Illinois Supreme Court, p. 21-22)

Here, the trial court did not comply with Rule 401(a) because it understated the maximum sentence Wright faced when admonishing about his waiver of counsel. The question below was whether Wright's waiver of counsel was knowing despite the trial court's faulty admonishments. In *Wright*, the Illinois Supreme Court citing the Sixth Amendment and this Court's decision in *Faretta* acknowledged that the record must show that a defendant's waiver of counsel was knowing and intelligent. *People v. Wright*, 2017 IL 119561 ¶¶ 39, 41. The Constitutional issue raised there is the same Constitutional issue Wright is asking this Court to address: does the Sixth Amendment

require that the record show the defendant knew the correct sentencing range for there to be a knowing waiver of counsel. The Illinois Supreme Court answered that question in the negative while other courts have held that the record must show the defendant knew the sentencing range he faced when he waived his right to counsel. *See United States v. Forrester*, 512 F.3d 500, 506 (9th Cir. 2008) (defendant's waiver was not knowing because trial court misinformed him about the sentencing range); *United States v. Erskine*, 355 F.3d 1161, 1164-64 (9th Cir. 2004) (same). Because resolution of this question concerns waiver of the Sixth Amendment right to counsel, state law does not control.

Respondent alternatively maintains there is no split in authority on whether an accurate admonishment of the sentencing range is required for a knowing waiver of counsel. (Resp. Br 6-8) Respondent claims that *Forrester* is consistent with the Illinois Supreme Court's decision in *Wright* because both courts held that deficient admonishments do not require automatic reversal when the record as a whole reveals a knowing and intelligent waiver. *Forrester*, 512 F.3d at 506; *Wright*, 2017 IL 119561 at ¶ 55. Respondent, however, misreads *Forrester* as that decision is in direct conflict with the *Wright* decision.

While it is true that both courts looked to the entire record to determine whether there was a knowing waiver of counsel, the courts reached entirely different conclusions regarding what the record must show. (Petition at 15) In *Forrester*, the Ninth Circuit Court of Appeals reversed the defendant's conviction because the trial court misstated the sentencing range and the record did not show that he otherwise knew the correct range. *Forrester*, 512 F.3d at 508. In *Forrester*, the court only looked

to the record for evidence the defendant knew the correct range despite the incorrect admonishments. *Id.* The court rejected the government's contention that the waiver was knowing on the grounds that the incorrect admonishments did not impact the defendant's decision to waive counsel. Conversely, the *Wright* court found the defendant's waiver was knowing because the record showed the incorrect admonishments did not impact his decision to waive counsel. *Wright*, 2017 IL 119561 at ¶ 55. The *Forrester* court held that speculating on the impact of the deficient admonishments would constitute a harmless error analysis that is improper in the context of waiver of counsel. *Forrester*, 512 F.3d at 508

Forrester and *Wright* provide distinct and contrary approaches for courts reviewing a defendant's waiver of counsel before a criminal trial. Under the approach taken in *Forrester*, if the trial court provides deficient or erroneous admonishments regarding the sentencing range, the record must show that the defendant knew the sentencing range for there to be a knowing waiver of counsel. *Forrester*, 512 F.3d at 507-09. Under the approach taken in *Wright*, knowledge of the sentencing range is not a requirement for a knowing waiver of counsel if the reviewing court finds that the decision to waive counsel was not impacted by the fact that the defendant did not know the correct sentencing range. *Wright*, 2017 IL 119561, ¶¶ 53-56. *See also United States v. Turner*, 644 F.3d 713, 722 (8th Cir. 2011) (knowledge of the sentencing range is "technical legal knowledge" that is not relevant to his knowing waiver of counsel). More simply, one approach holds that the record must establish knowledge of the sentencing range for there to be a knowing waiver of counsel while the approach taken in *Wright* does not.

Respondent also maintains that state courts are not divided on whether knowledge of the sentencing range is required for a knowing waiver of counsel because the decision in *State v. Diaz*, 274 Conn. 818 (2005) is consistent with the *Wright* decision. (Resp. Br. 7-8) The *Diaz* decision, however, outlines the same conflict between *Forrester* and *Wright*. In *Diaz*, the trial court did not admonish the defendant about the sentencing range. The government in *Diaz* argued that the waiver was knowing because the defendant was told that he faced a substantial amount of prison time if convicted. *Diaz*, 274 Conn. at 832. The Connecticut Supreme Court held the defendant's waiver of counsel was not knowing and intelligent because the trial court did not inform the defendant of the sentencing range he faced before accepting his waiver of counsel. *Diaz*, 274 Conn. at 831-32. The fact that the defendant knew he faced substantial prison did not establish that the defendant received a realistic picture regarding the magnitude of his decision to proceed to trial without counsel. Accordingly, the *Diaz* court reversed his conviction. *Id.* at 833-34.

Respondent asserts that in *Iowa v. Tovar*, 541 U.S. 77, 88 (2004), this Court declined to prescribe a formula or script to be read to a defendant who wishes to waive counsel. (Resp. Br. 5) *Wright*, however, is not asking this Court to provide a script, he is asking this Court to resolve a question that has divided the lower courts: must the record establish that the defendant is aware of the possible penalties he faces for there to be a knowing waiver. In *Tovar*, this Court held that the defendant's waiver of counsel before a guilty plea proceeding passes constitutional muster when the trial court informs the accused of the nature of the charges against him, of his right to be counseled regarding his plea, and of the range of allowable punishments attendant

upon the entry of a guilty plea. *Tovar*, 541 U.S. at 81. Wright asks this Court to provide guidance to the lower courts on whether the record must show that a defendant who waives counsel before a trial is aware of the potential penalties he faces. The courts are split on this question of Federal Constitutional law.

This Court should grant review because this case will allow the resolution of two important issues regarding a defendant's waiver of counsel: 1) is knowledge of the applicable sentencing range necessary for a knowing waiver of counsel, and 2) where the trial court misstates the sentencing range and the record does not establish that the defendant otherwise knew the correct sentencing range, can the reviewing court find a knowing waiver of counsel.

CONCLUSION

For the foregoing reasons, petitioner, Eugene Wright, respectfully prays that a writ of certiorari issue to review the judgment of the Illinois Supreme Court.

Respectfully submitted,



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