

24-7029 **ORIGINAL**

No. _____

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

DeNeal Lee Smith — PETITIONER
(Your Name)

vs.

Jeff Howard — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Sixth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DeNeal Lee Smith
(Your Name)

4533 W. Industrial Park Drive
(Address)

Kincheloe, Michigan 49786
(City, State, Zip Code)

906-495-2282
(Phone Number)

QUESTION(S) PRESENTED

Mr. Smith alleges his Sixth Amendment constitutional right to self-representation under *Faretta v. California*, 422 U.S. 806, 45 L. Ed. 2d 562, 95 S. Ct. 2525 (1975) was violated when the trial court denied his timely unequivocal requests. Mr. Smith first requested to represent himself with the assistance of co-counsel. The trial court immediately informed Mr. Smith his attorney will either represent him or not. He subsequently made several clear pro se requests that superseded the initial co-counsel request. Although Mr. Smith argued the unequivocal nature of these subsequent requests to the United States Court of Appeals for the Sixth Circuit, the Court did not acknowledge or analyze these claims of invocations by Mr. Smith to his right. In its decision to deny a certificate of appealability, the Sixth Circuit reasoned only the initial co-counsel request essentially saying a defendant who makes an equivocal or unclear pro se request can never thereafter invoke his constitutional right under *Faretta*. The case thus presents the following questions.

Can a criminal defendant invoke his Sixth Amendment right to self-representation under *Faretta* after an equivocal request?

Did the United States Court of Appeals err by not acknowledging and addressing each one of Mr. Smith's claims of invocation to his Sixth Amendment right under *Faretta* individually?

Was Mr. Smith's Sixth Amendment constitutional right to self-representation violated when the trial court denied his clear unambiguous requests?

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:

RELATED CASES

People v. Smith, No. 353734, 2022 WL 814619 (Mich. Ct. App. Mar. 17, 2022)

People v. Smith, 981 N.W.2d 727 (Mich. Dec. 7, 2022)

Smith v. Bauman, No 2:23-cv-110, U.S. District Court for the Western District of Michigan. Judgment entered May 3, 2024

Smith v. Howard, No. 24-1535, U.S. Court of Appeals for the Sixth Circuit. Judgment entered Dec. 2, 2024

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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 federal courts:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

[] For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was December 2, 2024.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: Feb. 11, 2025, and a copy of the order denying rehearing appears at Appendix D.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

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

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONST., AMEND. VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

28 U.S.C. § 2254

(a) The Supreme Court, a Justice thereof, a circuit judge, a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

(b)(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that-

(A) the applicant has exhausted the remedies in the courts of the State; or

(B)(i) there is an absence of available State corrective process; or

(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.

(3) A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the

State, through counsel, expressly waives the requirement.

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim-

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceedings.

(e)(1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.

(2) If the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that-

(A) the claim relies on-

(i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and

(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no

reasonable factfinder would have found the applicant guilty of the underlying offense.

(f) If the applicant challenges the sufficiency of the evidence adduced in such State court proceeding to support the State court's determination of a factual issue made therein, the applicant, if able, shall produce that part of the record pertinent to a determination of the sufficiency of the evidence to support such determination. If the applicant, because of indigency or other reason is unable to produce such part of the record, then the State shall produce such part of the record and the Federal court shall direct the State to do so by order directed to an appropriate State official. If the State cannot provide such pertinent part of the record, then the court shall determine under the existing facts and circumstances what weight shall be given to the State court's factual determination.

(g) A copy of the official records of the State court, duly certified by the clerk of such court to be a true and correct copy of a finding, judicial opinion, or other reliable written indicia showing such a factual determination by the State court shall be admissible in the Federal court proceeding.

(h) Except as provided in section 408 of the Controlled Substance Act, in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel for applicant who is or becomes financially unable to afford counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

(i) The ineffectiveness or incompetence of counsel during Federal and State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254.

STATEMENT OF THE CASE

DeNeal Lee Smith, a Michigan prisoner was convicted by a jury on February 28, 2020 of two counts of armed robbery and one count of forth-degree fleeing and eluding for the armed robbery of a gas station and subsequent slow-speed short pursuit. The trial court sentenced Mr. Smith to concurrent prison terms of 30 to 45 years for each armed robbery conviction and 2 to 15 years for fleeing and eluding conviction. Mr. Smith was found not guilty of 3 felony firearm charges. He has maintained his innocence.

During a Motion for Self-Representation hearing on June 25, 2019, eight months before trial Mr. Smith initially requested to represent himself with the assistance of his attorney as "co-counsel". The trial court immediately denied this request. The court informed Mr. Smith the attorney will either represent him or not. Although presenting the request as "co-counsel" the trial court realized Mr. Smith was actually seeking stand-by counsel. After this understanding between the trial court and Mr. Smith a Faretta inquiry was held during which Mr. Smith unambiguously stated his desire to completely take over his own defense several times invoking his Sixth Amendment constitutional right to self-representation under Faretta. The trial court itself and Mr. Smith amended and clarified the initial request. The trial court denied Mr. Smith's request reasoning it does not believe he understand the disadvantages of self-representation and he do not have the ability to represent himself. These two reasons for denying Mr. Smith's pro se request were unconstitutional. The record does not support the trial court's conclusion that he did not understand the disadvantages. The record is contrary to this conclusion. Also nothing distinguished Mr. Smith's legal abilities from Faretta's, which this Supreme Court found were irrelevant as to whether Faretta could represent himself. Faretta, 422 at 807, 835.

Mr. Smith appealed to the Michigan Court of Appeals. Seeing the trial court's reasons for denying Mr. Smith's pro se request were unconstitutional the state appellate court upheld his conviction but changed the reasoning. The state appellate court reasoned Mr. Smith's request was equivocal because he indicated during the Faretta hearing he preferred to be represented by a retained attorney. App.F. That ruling was contrary to, and an unreasonable application of Faretta. Faretta requested three times to be appointed an

attorney not from the public defender's office. Faretta, 422 U.S. at 810 n.5. This suggest he too would have preferred representation under certain circumstances. The Michigan Supreme Court declined Mr. Smith's application for leave to appeal. App.G.

Mr. Smith sought habeas corpus action under 28 U.S.C. § 2254. The district court saw the state court's reasoning for its conclusion was contrary to, and an unreasonable application of Faretta and also contradicted its decision in Jones v. Jamrog, 414 F.3d 585 (6th Cir. 2005) (holding the state courts unreasonably applied Faretta by concluding that Jones' "waiver was involuntary solely because there were identifiable - yet purely hypothetical-circumstances under which Jones would have preferred a lawyer.") The district court denied relief but the reasoning was changed yet again. The court reasoned Mr. Smith did not invoke his constitutional right to self-representation due to an accompanied request for co-counsel's assistance. App.B. This was only Mr. Smith's initial request. He subsequently made several unambiguous pro se requests. The district court's opinion mentions several of Mr. Smith's clear invocations to his constitutional right during its Discussion of the case. But the court does not acknowledge these requests as potential invocations or make a ruling although Mr. Smith made this argument in his petition for habeas corpus relief. The court denied a certificate of appealability. The district court also denied a rehearing. App.E.

Mr. Smith argument that he mistakenly requested co-counsel was to show his genuine intentions were that of seeking the assistance of stand-by counsel thereby in context making this too an unequivocal pro se request. At the time of his pro se request Mr. Smith, a layman of the law had never heard of the term "stand-by" counsel thought co-counsel was the correct terminology for what he was seeking. Mr. Smith asked the trial court if his current counsel could stay on only to "educate" him on technical and procedural matters. Faretta explicitly contemplates that a defendant can both invoke his right to self-representation and request assistance from counsel. Faretta, 422 U.S at 834,n.

Mr. Smith appealed to the Sixth Circuit for a certificate of appealability. The Court of Appeals relied only on the initial co-counsel request in its decision. App.A. This was NOT Mr. Smith's only argument for the unequivocal nature of his request. This was NOT Mr. Smith only claim

of invocation to his constitutional right. But the Court of Appeals used this to equivocate the entirety of Mr. Smith pro se request ignoring the trial court's actions of holding a Faretta inquiry and only denying his pro se request because the court believed his request was not intelligently made. The Court ignored Mr. Smith's main argument which is he made several subsequent pro se request that superseded the prior co-counsel request thereby invoking his Sixth Amendment constitutional right. The Court of Appeals opinion did not expressly address or make a conclusion to this argument. The Court denied a rehearing and rehearing en banc. App. C & D.

REASONS FOR GRANTING PETITION

I. THE SIXTH CIRCUITS MISAPPLICATION OF THE FARETTA STANDARD WARRANTS THIS COURT'S ATTENTION.

Faretta v. California, 422 U.S. 806, 45 L. Ed. 2d 562, 95 S. Ct. 2525 (1975), emphasizing that to invoke his Sixth Amendment right under Faretta, a defendant does not need to recite some talismanic formula hoping to open the eyes and ears of the court to his request. Insofar as the desire to proceed pro se is concerned, "[an accused] must do no more than state his request, either orally or in writing, unambiguously to the court so that no reasonable person can say that the request was not made." No fair minded jurist could conclude that on June 25, 2019 during a Motion for Self-Representation hearing Mr. Smith did not request to represent himself several times. The Sixth Circuit decision in this case clearly goes against the governing precedent the Honorable Supreme Court set in Faretta. The Faretta standard does not require a defendant to shed tears and plead for self-representation. Mr. Smith did this EXACTLY. He is on record literally begging and pleading with the trial court to be allowed to represent himself. It is completely impossible for Mr. Smith request to have been more clearer. He very specifically told the trial judge he himself wanted to present the facts of his case to a jury. No defendant in U.S. history has been required to do more than what Mr. Smith did in order to invoke their Sixth Amendment right under Faretta.

Mr. Smith initial pro se accompanied with a request for co-counsel's assistance was ruled equivocal. But the United States Court of Appeals ignored the fact Mr. Smith made several subsequent invocations of his constitutional right during the Motion for Self-Representation hearing. The Court concluded Mr. Smith did not invoke his Sixth Amendment right under Faretta. The Sixth Circuits decision in this case has essentially said a criminal defendant who initially makes an equivocal pro se request can never subsequently invoke his constitutional right under Faretta. This raises the Faretta standard.

The trial court's dialogue with Mr. Smith during the Faretta inquiry is evidence he invoked his Sixth Amendment constitutional right. During the Faretta hearing the trial court spends a substantial amount of time asking Mr. Smith all of the federal standard questions of a defendant who has invoked

his constitutional right under Faretta. "Have you ever represented yourself before?" "What's your educational background?" Do you know the Rules of Evidence?" "Do you know how to do jury selections?" Mr. Smith's response to this specific question was, "That's what I was going to finish my retainer from [Attorney] Mr. Lambert, if he would educate me." The trial court goes on to inform Mr. Smith of the prosecutor's level of legal experience as a deterrence but to no avail. The fact that this was a Motion for Self-Representation hearing and the trial court went on to perform a Faretta inquiry speaks volume to the unequivocal nature of his request. This Faretta inquiry is step two after a defendant has invoked his constitutional right. The trial court was firm in the beginning when it said the attorney will either represent Mr. Smith or not. So co-counsel type of representation was off the table immediately. This Faretta hearing was solely about Mr. Smith completely taking over his defense. The opinions of the district court and Sixth Circuit implicitly acknowledges this.

Although the trial court's two reasons for denying Mr. Smith's pro se request were unconstitutional they are further more evidence he invoked his constitutional right. The trial court reasoned "I don't think you understand the disadvantages of self-representation" and "I don't think you have the ability to represent yourself". Here the trial court has implicitly acknowledged her understanding of Mr. Smith's desire to take over his own defense. This is all the Faretta standard simply require in order for a defendant to invoke their Sixth Amendment constitutional right under Faretta.

According to the precedent this Honorable Supreme Court set in Faretta, when a defendant invokes his Sixth Amendment constitutional right to self-representation and the invocation is intelligent and knowingly made the request must be honored. Mr. Smith did exactly this. Mr. Smith respectfully asks to direct this Honorable Court's attention to a specific section of the Motion for Self-Representation hearing. During this invocation to his constitutional right the trial judge asked Mr. Smith "Do you want to keep [Attorney] Mr. Lambert or do you want a court appointed attorney?" Mr. Smith unambiguously answered "Your Honor, I would like to represent myself." Although this is not the answer the trial court wanted this response by Mr. Smith to the trial court's question of representation was unequivocal and satisfied the Faretta standard to constitute a clear invocation to his right. The Sixth Circuit did not acknowledge or make a ruling as to this claim of

invocation to his constitutional right by Mr. Smith or any of the other clear invocations. A fair minded jurist could find Mr. Smith transmogrified an ambiguous and equivocal pro se request into a clear and unequivocal invocation of his constitutional right.

The Faretta inquiry came to an end when Mr. Smith asked the trial court to make a record of his self-representation request. The trial court assured Mr. Smith the record reflects his desire to take over his own defense. This is further acknowledgment by the trial court of Mr. Smith's invocation of his constitutional right although she denied it. Faced with the trial court's strong admonishments to self-representation Mr. Smith stood steadfast on his position. Never once did he waver on his desire to take over his own defense during the entirety of the Faretta inquiry.

The Faretta standard only requires that the pro se request be clear to the trial court in order for a defendant to invoke his Sixth Amendment right. Faretta, 422 U.S. at 835-36. The opinions of the district court and the Sixth Circuit both acknowledges the trial court's clarity of Mr. Smith's pro se desire.

In the opinion of the United States District Court for the Western District of Michigan in this case, the court pointed out the trial court inquiring "why [Mr. Smith] does not want his attorney's representation," App.B. This alone is evidence of Mr. Smith's invocation to his constitutional right and his waiver of counsel. This is also evidence of the district court's misapplication of the Faretta standard for all Faretta requires is for a defendant to simply state his desire in order to invoke his constitutional right.

The Sixth Circuit acknowledged in their opinion the trial court explaining to Mr. Smith the trial court will not give him "special treatment" as a "pro se litigant" and he would be expected to "follow the same rules that... an experienced lawyer follows." App.A. Mr. Smith responded affirmatively to the trial court stating, "Yes ma'am. I plan on it." This is further undeniable evidence of Mr. Smith's invocation to his constitutional right. This type of warning given to a defendant by the trial court during a Faretta hearing will ONLY happen if he has successfully invoked his constitutional right. This is step TWO in the process. Step one is the invocation.

Had the Sixth Circuits decision been based on an untimely pro se

request or the waiver not being intelligent or voluntary then the denial of any subsequent request would not have been an unreasonable application of the Faretta standard. But since their decision was based ONLY on the equivocation of the request ANY clear invocations to his constitutional right must be honored. Mr. Smith invoked or attempted to invoke before being cut-off by the trial court, his constitutional right to self-representation no less than four times after the initial pro se request. The United States Court of Appeals should have acknowledged each of Mr. Smith's claims of invocation to his constitutional right and made a ruling on each claim individually. By not doing so the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings. Had the Court addressed this argument the Court would have been obligated under Faretta to acknowledge these clear invocations to his right and granted a certificate of appealability and thereafter afford Mr. Smith a new trial. A prior ambiguous pro se request does not negate a timely clear invocation to that right.

Because the Sixth Circuit misapplied the Faretta standard a writ of certiorari should be granted

II. THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT HAS ENTERED A DECISION IN DIRECT CONFLICT WITH A HOLDING ON THE SAME EXACT IMPORTANT MATTER.

In support of its decision to deny a certificate of appealability the United States Court of Appeals referenced Cassano v. Shoop, 1 F .4th 458, 470-71 (6th Cir 2021)(holding that the state appellate court reasonably concluded that Cassano failed to invoke his right to self-representation where he asked for his attorney to be appointed as co-counsel). But the Court completely ignored its holding in the same case that Cassano's equivocal co-counsel request had no bearing on his invocation to his right under Faretta before and after that equivocal request.

An equivocal or ambiguous pro se request is not the "end all" to criminal defendants seeking to represent themselves as the Sixth circuit decision in this case with Mr. Smith has essentially said. In accordance with Cassano v. Shoop, 1 F .4th 458 a defendant who fails to make an unequivocal self-representation request can immediately thereafter properly invoke his or her constitutional right under Faretta. There is no set time one must wait.

CASSANO'S HISTORY:

May 14, 1998 criminal defendant August Cassano filed two motions with the trial court entitled "Wavier of Counsel" and "Motion for Appointment of Substitute Counsel" to which the trial court ignored the "Wavier of Counsel" request and only appointed new counsel.

September 25, 1998 Cassano filed a motion requesting to participate in trial as co-counsel along side his new attorneys. The trial court responded that Cassano was "not going to represent [himself] in this matter" and denied the motion.

April 23, 1999, three days before trial Cassano asked the trial court "Is there any possibility I could represent my self? I'd like to go on the record." The trial judge refused.

In analyzing all three separate pro se requests, of the Court of Appeals concluded "that May 1998 Cassano had invoked his right to self-representation clearly and unequivocally despite the simultaneous, contradictory motion for substitute counsel." The trial court violated his right when it did not hold a Faretta hearing. The fact that both of Cassano's requests occurred simultaneously or back to back had no bearing on the Court of Appeals holding that Cassano still invoked his right under Faretta. In comparison Mr. Smith request for co-counsel's assistance occurring first during the Motion for Self-Representation hearing should have had no bearing on his clear invocations to his right that followed.

The Court of Appeals concluded that Cassano's September 1998 request was equivocal due to the accompanied request for co-counsel. This is said true also in Mr. Smith's case.

The United States Court of Appeals explicitly found that because "the trial court understood Cassano to be seeking to represent himself" the trial court improperly denied Cassano's April 1999 clear and unequivocal pro se request. The trial judge in the case at hand with Mr. Smith mentioned several times the court understood what Mr. Smith was requesting during the Faretta inquiry. Only because the trial judge believed Mr. Smith was not making an intelligent decision did she deny his request. Like Cassano, Mr. Smith too had asked the trial court to make a record of his request.

Faretta, Cassano and Mr. Smith cases are all closely analogous. In all three cases each defendant made unequivocal pro se requests. Each defendant pro se request was denied by the trial court. Each defendant at some point requested to proceed with co-counsel. The distinguishable difference between the cases is Faretta and Cassano co-counsel request did not negate their clear invocations to their constitutional right.

It should be noted that in Cassano the Court of Appeals wrote "Although we concluded that the trial court's failure to hold a Faretta hearing after its receipt of Cassano's May 14, 1998 waiver of counsel is alone grounds for granting Cassano's petition, we proceed to analyze the remaining two potential invocations of Cassano's right to self-representation." This suggests regardless if the two subsequent requests were equivocal, nothing negates Cassano's prior invocations to his right. The United States Court of Appeals for the Sixth Circuit concluded Cassano invoked his right under Faretta before AND after his equivocal request to be appointed co-counsel

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

DeNeal Smith

Date: March 23, 2025