

No. **25-6890**

**ORIGINAL**

Supreme Court, U.S.  
FILED  
**DEC 02 2025**  
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

TIFFANY BROWN – PETITIONER

Vs,

UNITED STATES – RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

11<sup>TH</sup> CIRCUIT COURT OF APPEALS

PETITION FOR THE WRIT OF CERTIORARI

TIFFANY BROWN

FCI MARIANNA

PO BOX 7006

MARIANNA, FL 32446-7006

(678) 651-5650



QUESTIONS PRESENTED

1. Whether Petitioner was denied effective assistance of appellate counsel when court-appointed counsel failed to file or consult Petitioner about filing, a petition for panel rehearing under Federal rule of Appellate Procedure 40 or a petition for rehearing en banc under Rule 35, resulting in the complete forfeiture of appellate review on Counts 1-29.
2. Whether procedural forfeiture (default) caused solely by counsel's neglect or abandoned as opposed to any informed or strategic decision by the defendant must be excused under this Court's decision in *Maple v Thomas*, 565 U.S. 266 (2012), *Holland v Florida*, 560 U.S. 631 (2010), and *Garza v Idaho*, 139 S. Ct. 738 (2019).
3. Whether an indigent defendant may be denied the right to proceed pro se on direct appeal, and whether the denial of that right followed by counsel's subsequent forfeiture of all appellate remedies constitutes structural error the Sixth Amendment.



## PARTIES

The Petitioner is Tiffany Brown and the Respondent is United States.

## RELATED CASES

United States v Tiffany Brown No. 25-113717-D. United States Courts of Appeal for the 11<sup>th</sup> Circuit. Judgement entered July, 9, 2025.

United States v Tiffany Brown No 1:22-cr-0035-TWT-JEM-1. United States District for Northern District of Georgia. Judgement entered January 17, 2025.

United States v Tiffany Brown. No. 25-11785. United States Courts of Appeal for the 11<sup>th</sup> Circuit. Judgement entered September 3, 2025.

## CORPORATE DISCLOSURE STATEMENT

There is no parent or publicly held company has an interest in the outcome of this case.

TABLE OF CONTENTS

TABLES OF AUTHORITIES .....6

JURISDICTION .....9

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....10

STATEMENT OF THE CASE .....11

REASONS FOR GRANTING THE WRIT .....13

    I. The Trials of the Indigent Defendant .....13

    II. Ineffective Assistance of Counsel Resulted in the Complete Loss of Petitioner’s  
    Appellate Rights.....15

    III. Procedural forfeiture (default) Caused Solely by Attorney Neglect Must Be  
    Excused Under Maple, Holland, Garza and Related Precedent .....16

    IV. This Case Presents Recurring and Nationally Significant Issues Concerning  
    the Protection of Appellate Rights .....20

CONCLUSION .....23

INDEX TO APPENDICES

APPENDIX A.....24

APPENDIX B.....25

## TABLES OF AUTHORITIES

### CASES

Butcher v Marquez, 758 F. 2d 373 (D.C. Cir 1985).....	16
DG Shelter Products Co v Forest Products Co (1985).....	18
Douglas v California, 372 U.S. 353 (1963).....	14, 16
Evitts v Lucey, 469 U.S. 387 (1985).....	14, 16
Faretta v California. 422 U.S. 806 (1975).....	19, 21, 22
Garza v Idaho, 139 S. Ct. 738 (2019) .....	2, 16, 18
Holis v United States (1984).....	19
Holland v Florida, 560 U.S. 631 (2010) .....	2, 16, 18
Jackson v Washington Monthly Co, 569 F. 2d 119 (D.C. Cir. 1977) .....	17
Johnson v Zerbst (1938) .....	14
Maples v Thomas, 565 U.S. 266 (2012) .....	2, 16
McKaskle v Wiggins, 465 U.S. 168 (1984).....	20
McMann v Richardson (1970) .....	13
Roe v Flores-Ortega, 528 U.S. 470 (2000) .....	15
Ross v Varano, 712 F. 3D 784 (3d Cir. 2013) .....	17

Powell v Ala (1932).....13

Strickland v Washington, 466 U.S. 668 (1984) .....15

Thompson v United States, 504 F.3d 1203 (11<sup>th</sup> Cir. 2002) .....19

United States v Cochrane, 20 F. 3d 787 (7<sup>th</sup> Cir. 1994) .....16

Woodmore v Git n Go (1996).....18

STATUTES AND RULES

US Constitution Amendment VI .....10, 13, 18

28 U.S.C. 1254 (I) .....9, 10

Fed R. App. P. 35 .....10, 14

Fed R. App. P.40 .....10, 14

Sup. Ct. R. 13 .....10

Sup. Ct. R. 14 .....10

OTHER AUTHORITIES

Eleventh Circuit Mandate (October 3, 2025).....App. B

Emails from Appellate Counsel.....App. A

## OPINIONS BELOW

- United States v Tiffany Brown. Unpublished. 2025 US App Lexis 22636 No. 25-11785. United States Courts of Appeal for the 11<sup>th</sup> Circuit. Judgement entered September 3, 2025.
- United States v Tiffany Brown. Published. 2025 US App Lexis 16984 No. 25-11317. United States Courts of Appeal for the 11<sup>th</sup> Circuit. Judgement entered July, 9, 2025.
- The opinion of the United States Court of Appeals for the Eleventh Circuit was entered on September 3, 2025. The Eleventh Circuit issued its Mandate on October 3, 2025. The decision is unpublished. Copies of the mandate appear in Appendix B.

## JURISDICTION

The judgment of the court of appeals was entered on September 3, 2025, and the mandate issued on October 3, 2025. This Petition is timely under Supreme Court Rule 13. The Court's jurisdiction rest of 28 U.S.C. § 1254 (1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides: “In all criminal prosecutions, the accused shall enjoy the right...to have the Assistance of Counsel for his defense.”

Relevant provisions include:

- 28 U.S.C. §1254 (1)
- Federal Rule of Appellate Procedure 35
- Federal Rule of Appellate Procedures 40
- Supreme Court Rules 13 and 14

## STATEMENT OF THE CASE

Petitioner Tiffany Brown was convicted in the United States District Court for the Northern District of Georgia in Case No 1:22-cr-0035-TWT-JEM-1. Following sentencing, Petitioner sought to preserve her appellate rights by filing a notice of appeal due to uncertainty regarding whether trial counsel would timely file one.

Petitioner formally requested permission to proceed pro se on direct appeal, citing concerns regarding counsel's performance and communication. The Eleventh Circuit denied that request solely on the basis that Petitioner was entitled to appointed counsel as an indigent defendant. The court did not inquire into whether Petitioner's has the ability, is knowing, and intelligent. The district court subsequently appointed substitute appellate counsel to represent. Petitioner is currently on direct appeal in the 11<sup>th</sup> Circuit in the Court of Appeals Case No. 25-11317.

Beginning in July 2025, Petitioner made repeated efforts to obtain information from appellate counsel regarding the status of her appeal. Petitioner wanted to follow up on the record on appeal, and upcoming deadlines. Appellate counsel provided minimal communication, did not schedule legal calls, and did not provided Petitioner with docket updates or copies of filings. (See Appendix A)

On September 3, 2025, the Eleventh Circuit entered its judgement, which resulted in the dismissal of all appellate claims arising from Counts 1-29 of the indictment. Appellate counsel did not notify Petitioner of the judgement. Counsel also failed to file either a petition for panel rehearing as permitted under Federal Rule of Appellate Procedure 40 or a petition for rehearing en banc under Rule 35. Each filing was subject to a mandatory fourteen day deadline, which expired without action or consultation with Petitioner.

The Eleventh Circuit issued its mandate on October 3, 2025. Petitioner learned of the judgment and mandate only after received mailed documents at her residence. Appellate counsel did not alert Petitioner to the judgement, the expiration of the rehearing deadlines, or the issuance of the mandate. No legal call occurred, and no strategy discussion took place.

As a result of counsel's omissions, Petitioner was deprived of any opportunity to seek panel rehearing, en banc review, or substantive consideration of her appellate claims, the complete loss of appellate review was caused solely by the conduct of counsel and not by any decision or omission by Petitioner.

This petition follows the issuance of the Eleventh Circuit's mandate.

## REASONS FOR GRANTING THE WRIT

### I. The Trials of the Indigent Defendant

Procedural forfeiture (default) occurs when a claim is lost because a required procedural step was not timely; when the failure stems from counsel's neglect or abandonment. This has occurred in this case. By not communicating properly or missing deadlines that are critical is an example of trial and appellate counsel actions that has caused the procedural forfeiture.

The Sixth Amendment to the United States Constitution guarantees criminal defendants the assistance of counsel. This was based upon *McMann v Richardson* (1970) the court cites precedent to the effect that a defendant facing felony charges are entitled to effective assistance of competent counsel.

Most of the Supreme Court decision interpreting the Sixth Amendment right to counsel, at its expenses, to assist an indigent defendant. The Amendment also guarantees a defendant's right to utilize counsel retained at the defendant's own expense, but that right is so well established by the Sixth Amendment's history and language that it rarely has been directly challenged the statute or judicial practice.

A constitutional right of an indigent defendant to the assistance of court appointed counsel was first recognized by the Supreme Court in *Powell v Alabama* (1932). Despite its limited holding, the Powell opinion strongly suggested that in all

but exceptional cases, the appointment of counsel would be necessary to ensure the indigent a fair trial.

In *Johnson v Zerbst* (1939), the Court relied heavily upon Powell's discussion of the general need for representation by counsel in holding that the Sixth Amendment required federal courts to provide indigent defendants with appointed counsel in all felony cases

Notwithstanding these differences, the Court has established an automatic constitutional right to counsel in limited appellate setting that is similar to the Sixth Amendment's automatic right to counsel at trial. *Douglas v California* (1963) established an equal protection right of the indigent defendant to appointed counsel on a first appeal granted as a matter of right under state law. *Evitts v Lucey* (1985) held that the Douglas ruling also had a due process foundation and therefore established as a well a right to presentation by retained counsel on first appeal of right.

However the indigent defendant has evolved in the later decades. Sometimes the defendant, due to undue scrutiny of the media attention that has a trickle-down effect, which makes it difficult to fight a case and make a decent living. Further, most criminal cases require a minimum of sixty to one hundred thousand dollars upfront for legal representation. Which can be difficult for most even upper middle class citizens. So the defendant becomes reclassified as an indigent. But should American citizens be allowed to represent oneself if that person have the ability to do so? Should American citizens only gain proper legal representation only if that

citizen is wealthy? Representing Pro Se in trial is a large leap forward in understanding for most novices. But representing oneself at the appellate level can be attainable. Especially for someone like Petitioner that has attended one year of law school, a master's degree and doctorate in public policy with almost of decade of post doctorate research.

## II. Ineffective Assistance of Counsel Resulted in the Complete Loss of Petitioner's Appellate Rights

Under *Strickland v Washington*, 466 US 668, 687 (1984), ineffective assistance requires (1) objectively unreasonable and (2) prejudice. In the appellate context, prejudice is presumed where counsel's deficient performance results in "the forfeiture of a proceeding itself." *Roe v Flores-Ortega*, 528 US 470, 483 (2000).

Appellate counsel's deficiencies in this case were extensive:

1. Failure to notify Petitioner that the Eleventh Circuit had entered judgement on September 3, 2025;
2. Failure to file a petition for panel rehearing within the fourteen day deadline required by Rule 40;
3. Failure to file a petition for rehearing en banc under Rule 35;
4. Failure to consult Petitioner regarding the decision not to pursue rehearing;
5. Failure to respond to Petitioner's inquiries regarding the appeal;
6. Failure to monitor deadlines;

7. Failure to arrange legal calls or provide docket information.

These omissions fall below any standard of reasonable professional performance. See *Evitts v Lucey*, 469 U.S. 387, 394-96 (1985) (effective assistance on appeal is constitutionally required); *Douglas v California*, 372 U.S. 353, 357-58 (1983) (same). Failure to pursue essential appellate procedures constitutes ineffective assistance. *United States v Cochrane*, 20 F 3d 787, 788-89 (7<sup>th</sup> Cir 1994). Failure to file critical appellate documents cannot be justified as strategy. *Butcher v Marquez*, 758 F 2d 373, 376-77 (DC Cir 1985).

Because counsel's omissions resulted in the total extinguishment of Petitioner's ability to obtain review on any claim arising from Counts 1-29 of the indictment, prejudice must be presumed under *Garza v Idaho*, 139 S. Ct. 738, 744-47 (2019). The Eleventh Circuit's dismissal to restore Petitioner's appellate rights warrants this Court's review and presents a recurring question: How far may procedural forfeiture (default) extend when the default arises from counsel neglect rather than client's choice?

III. Procedural forfeiture (default) Caused Solely by Attorney Neglect Must Be Excused under *Maple*, *Holland*, *Garza* and Related Precedent

This Court has repeatedly held that procedural forfeiture (default) caused by attorney neglect or abandonment cannot be attributed to the defendant. *Maples v Thomas*, 565 U.S. 266, 281-84 (2012). Extraordinary attorney misconduct, including

failure to communicate and failure to meet deadlines, constitutes "causes" excusing default. *Holland v Florida*, 560 U.S. 631, 649-52 (2010).

The record here demonstrates complete abandonment:

- Counsel did not notify Petitioner of the judgment;
- Counsel missed mandatory deadlines for rehearing;
- Counsel did not respond to Petitioner's questions;
- Counsel did not provide docket access;
- Counsel did not consult Petitioner about relinquishing rehearing rights;
- Counsel did not monitor the appellate docket;
- Counsel did not contact Petitioner after the mandate issued.

Such omissions fall squarely within the category of attorney misconduct that warrants excusing procedural forfeiture (default). *Ross v Varano*, 712 F. 3d 784, 799-801 (3d Cir. 2013) (attorney neglect justifies tolling). Affirming a default caused solely by counsel undermines the core due process principles recognized in *Jackson v Washington Monthly Co.*, 569 F 2d 119, 123 (DC Cir. 1977) (sanctions for attorney misconduct may not penalize the client).

Counsel's extreme neglect including refusal to accept calls, making inaccurate statements regarding status of the appeal can amount to equitable tolling states in *Ross v Varano* (2013). This similar to my case when the appellate counsel did not alert that she missed such important deadlines but only that she

fact dependent. The standard for reasonable diligence does not require an overzealous or extreme pursuit of any and every avenue of relief. It requires the efforts that a reasonable person might be expected to deliver under his or her particular circumstances. The appellate counsel seriously crippled the directed appeal beyond repair due to the lack of panel rehearing under FRAP 40 or rehearing en banc under FRAP 35. Combined with appellate counsel ignoring multiple emails until after first opening brief deadline extension from Court of Appeals was filed and approved. Petitioner is currently incarcerated at FCI Marianna. Petitioner cannot call or hunt down her counsel if she was in the regular world. Petitioner is dependent on her appellate counsel to do right thing and keep track of all deadlines in the case. The Petitioner is now unable to address of all claims related to counts 1-29 that is in her indictment. See also Thompson v US (2002) appellate deadlines through counsel's neglect can justify restoring right grounds.

The Eleventh Circuit's refusal to remedy this violation creates an inter-circuit conflict regarding the application of Maples and Holland to cases involving loss of appellate rights. Review is necessary to resolve this conflict and to ensure uniform application of federal law.

#### IV. The Role of Being Pro Se in an Ineffective Assistance Case

*Faretta v California* (1975) held that the Sixth Amendment also guarantees to the defendant the right to proceed pro se. *Faretta* relied upon the “structure of the Sixth Amendment, as well as the English and colonial jurisprudence from which the Amendment emerged”. An analysis of the historical roots of the Sixth Amendment suggested that the founders had placed on a higher level the right of “free choice”. To force a lawyer on a defendant can only lead him to believe that the law contrives against him.

Once the court is assured that the defendant is knowingly and intelligently giving up the benefits of counsel, it must honor his decision. It matters not the defendant lacks “technical legal knowledge.” A person need not “have the skill and experience of a lawyer in order to competently and intelligently choose self-representation.”

If the defendant is improperly denied a request to proceed pro se, the state cannot argue that the error was “harmless” because counsel gave the defendant better representation than he or she could have given himself. “Since the right of representation is a right that when exercised usually increased the likelihood of a trial outcome unfavorable to the defendant, its denial is not amenable to “harmless error” analysis. *McCaskey v Wiggins* (1984).

The legal world is based on relationships. It will be difficult to find an appellate counsel that would feel comfortable with exploring the ineffective counsel

claims in the case without a significant budget to offset the damage of professional relationships. The Petitioner would like to represent herself on appeal due to her understanding of the subject and previous legal experience to clear her name. Petitioner while incarcerated has had the ample to learn the rules of civil and criminal procedures in order to write her brief about the inaccuracies in her case.

Further twenty-six years ago Petitioner left law school with perspective she did not have a personal connection to the law. Petitioner now has the personal connection. Petitioner plans to attend law school after clearing her name and to help others that are wrongfully accused on pro bono basis. She add this to career path while in continuing her career as a clothing designer.

The Supreme Court serves as the court of the last resort for cases from the federal system. The Supreme Court is the ultimate interpreter of the Constitution and federal statutes. The Honorable Court perspective is needed.

V. This Case Presents Recurring and Nationally Significant Issues Concerning the Protection of Appellate Rights

This Court grants certiorari where issues are recurring, constitutional in nature and subject to divergent treatment across the circuits. This case meets all criteria.

First, the question of how attorney abandonment affects Procedural forfeiture (default) arises in federal courts nationwide. The circuits are divided on whether

attorney neglect that results in forfeiting appellate rights should be treated as “cause” excusing default.

Second, the proper scope of the Faretta right on appeal especially when the denial results in the forfeiture of appellate review is a matter of constitutional significance requiring clarification.

Third, the complete loss of appellate review arising from counsel’s omissions implicates the integrity of the appellate process and raises structural questions essential to the fair administration of justice.

This case present a clean vehicle for resolving these issues because the record squarely presents (1) a knowing request to proceed pro se, (2) attorney abandonment, and (3) total forfeiture of appellate remedies.

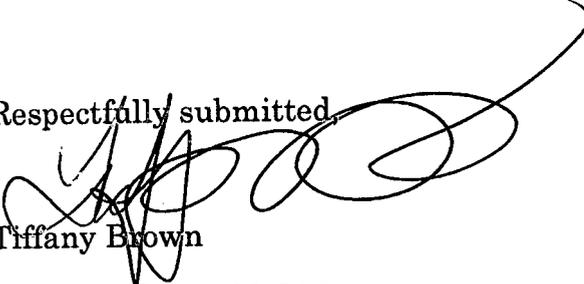
Only this Court can resolve the constitutional questions presented and ensure uniform protection of the Sixth Amendment right to effective assistance and the autonomy guaranteed by Faretta.

## CONCLUSION

Law is the set of rules that governs the conduct of individuals and entities in our society. The rules are applied in cases or controversies by the judicial branch of government of United States. Right to effective counsel is the bedrock principle to American justice system. When the foundation is damaged like this case, a remedy must be provided.

For the foregoing reasons, the petition for a writ of certiorari should be granted. Petitioner respectfully requests that this Court vacate the judgment and mandate of the United States Court of Appeals for the Eleventh Circuit, reinstate Petitioner's appellate rights, and remand with instructions that Petitioners be permitted to proceed pro se on direct appeal or be afforded such other relief as justice requires.

Respectfully submitted,



Tiffany Brown

Register No 26499-510

FCI Marianna

Petitioner, Pro Se

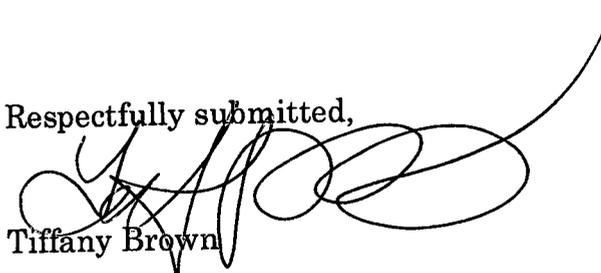
## APPENDIX A

### CERTIFICATION OF EMAIL CORRESPONDENCE FROM APPELLATE COUNSEL

Petitioner, Tiffany Brown, hereby certifies that the documents included in Appendix A are true and correct copies of written email correspondence between Petitioner (in addition to her family) and court appointed appellate counsel. These communications reflect counsel's failure to notify Petitioner of the judgement entered by the United States Court of Appeals for the Eleventh Circuit, failure to file petitions under Federal Rules of Appellate Procedure 35 and 40, failure to monitor appellate deadlines, and failure to consult with Petitioner regarding critical appellate decisions.

These documents are included pursuant to Supreme Court Rule 14.1 (i) (iii) to demonstrate the factual basis for petitioner's claims of ineffective assistance of counsel and attorney abandonment.

Respectfully submitted,



Tiffany Brown

Register No 26499-510

FCI Marianna

Peticicner, Pro Se