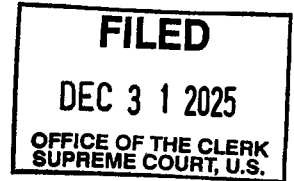


25-7482

ORIGINAL

No.



IN THE

Supreme Court of the United States

DJAVON HOLLAND

Petitioner(s)

v.

UNITED STATES OF AMERICA

Respondent(s)

On Petition For Writ Of Certiorari
TO THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

DJAVON HOLLAND 74124-509
FEDERAL CORRECTIONAL INSTITUTION
LORETTO LOW
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GRESSON, PENNSYLVANIA 16630

QUESTION PRESENTED

- 1.) Whether the Sixth Amendment, Due Process, and Fundamental Fairness Clause, require that a criminal appellant be afforded a meaningful, timely opportunity to review any appellate brief proposed to be filed on his behalf before the brief is filed?
- 2.) Whether filing an opening brief, without first ensuring that appellate counsel gave the defendant an adequate and informed opportunity to review the brief and decide whether to file the brief or proceed pro se violates fundamental fairness, due process, and the Sixth Amendment of the United States Constitution?
- 3.) Whether 28 U.S.C. § 1654 gives a defendant the right to proceed pro se on direct appeal?
- 4.) Whether the Third Circuit's delay in deciding whether Mr. Holland shall proceed pro se is causing an unnecessary delay, prejudice, and irreparable harm, in violation of fundamental fairness, and the due process clause of the United States Constitution?

LIST OF PARTIES

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 judgement is the subject of this petition is as follows:

Petitioner: Djavon Holland

Respondent: United States Of America

RELATED CASES

Case Name: United States v. Djavon Holland

Case Number: 3:21-cr-00871-RK

Case Name: United States v. Djavon Holland

Case Number: 25-1019

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner, Mr. Holland, respectfully prays that a writ of certiorari before judgement to review the order of the United States Court of Appeals for the Third Circuit (No. 25-1019) be issued by the Honorable Justice Alito, to review the following:

OPINIONS AND ORDERS

The Third Circuit's November 5, 2025 Order denying petitioner's motion to file a pro se supplemental brief is attached to this motion, as APPX 1.

Mr. Holland's November 6, 2025 letter is APPX 16.

Mr. Holland's November 12, 2025 letter is APPX APPX 5.

Mr. Holland's motion to appoint New Counselk or Proceed Pro se is attached to this motion as APPX 6.

Appellant Counsel's motion to withdraw as counsel is attached as APPX 18.

Appeal counsel's letter informing Mr. Holland that the courts recieved the motions but did not make a decision. APPX 25

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STATEMENT OF JURISDICTION

This Court has Jurisdiction Pursuant to 28 U.S.C. § 1254.
This motion is filed in accordance with Supreme Court Rule 11.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- 1.) U.S. Const. Amend. 5th
- 2.) U.S. Const. Amend. 6th
- 3.) U.S. Const. Amend. 14th
- 4.) 28 U.S.C. § 1654

STATEMENT OF THE CASE

On October 29, 2025, petitioner Djavon Holland filed a motion in the Third Circuit seeking permission either to (a) proceed pro se for the presentation of appellate arguments within his filed 117 page brief or, (b) filed a pro se supplemental brief in addition to any brief filed by appointed counsel. (See Appeal Docket #93 & #94). On the same day of October 29, 2025 appointed counsel (The Federal Public Defender) filed the opening brief on the merits, on behalf of Mr. Holland without giving Mr. Holland a chance to review the brief prior to them filing it. On November 5, 2025, the Third Circuit denied Mr. Holland's motion to file a pro se supplemental brief and cited 3d Cir. L.A.R. 31.3 and United States v. Turner, 677 F.3d 570 (3d Cir. 2012), for the proposition that, except in Anders cases, parties represented by counsel may not file pro se briefs. The Third Circuit's order further stated that any pro se brief would be forwarded to counsel under L.A.R. 31.5 and Turner and directed counsel to review Turner regarding obligations to pro se arguments.

On November 12, 2025 Mr. Holland asked counsel to fire herself so that I could proceed pro se. Mr. Holland also wrote the Third Circuit, requesting them to fire my appeal counsel and invoke my statutory right to plead my own cause in accordance with 28 U.S.C. § 1654. (See attached letters. On November 26, 2025, the Third Circuit referred Mr. Holland's motions to the merits panel. (See Appeal Docket #107).

On February 13, 2026 The Honorable Justice Alito denied my motion to stay the proceeding until my rule 11 motion was decided. Mr. Holland asked Justice Sotomayor to reconsider the motion, due to the Third Circuit's refusal to answer my motions causing an irreparable harm to my appeal by not being answered.

In March of 2026, Mr. Holland filed a writ of Mandamus to Justice Jackson asking for the Court to compel the Third Circuit to answer my

pro se bail motion and motion to proceed pro se. Mr. Holland also asked for the Attorney general to be compelled to protect my constitutional rights that are being violated, in accordance with her ministerial duties.

REASON FOR GRANTING THE APPLICATION

This case presents urgent and fundamental constitutional questions about fundamental fairness, due process, and ineffective assistance of counsel on direct appeal.

28 U.S.C. § 1654 gives an appellant a statutory right to conduct his own case personally. See 28 U.S.C. § 1654; See also Price v. Johnson, 334 U.S. 266 (1948). Where appointed counsel files an opening brief without first giving the client a real opportunity to decide whether to waive counsel and proceed pro se, 28 U.S.C. § 1654 is effectively nullified, and the appellant's due process rights are violated due to appellate counsel's ineffectiveness.

The Third Circuit's reliance on Turner and local rule 31.3 to deny Mr. Holland's request, while doctrinally defensible as a rule about filing pro se briefs where counsel represents a party, does not address the constitutional imperative that an appellant have an opportunity to choose self representation before counsel's filing forecloses that choice. Turner and L.A.R. 31.3 govern whether a represented party may file pro se briefs once counsel has filed. They do not, and cannot logically, authorize courts or counsel to preemptively file briefs without first ensuring the appellate have an opportunity to make an knowing, voluntary, and intelligent decision to waive counsel.

The Third Circuit's order explicitly acknowledges that counsel had already filed a brief before providing Mr. Holland a meaningful chance to review and decide how to proceed. Counsel's filing functions as a de facto waiver of issues that the defendant might have chosen to press or preserved if allowed to proceed pro se, or to file a supplemental brief. This procedural posture presents a live constitutional deprivation. The rule that federal courts do not consider waived arguments is premised on the adversarial nature of our system of justice; that litigants, not the

courts, choose the facts and arguments to present. *Greenlaw v. United States*, 554 U.S. 237, 244, 128 S.Ct. 2559, 171 L. Ed. 2d 399 (2008); *Arizona v. California*, 530 U.S. 392, 413, 120 S. Ct. 2304, 147 L.Ed. 2d 347 (2000), (observing that the principle of party presentation is basic to our system of justice). Counsel's failure to give Mr. Holland a fair opportunity to review their brief prior to them filing it, creates an irreparable harm and prejudice to Mr. Holland that cannot be properly remedied. All of Mr. Holland's facts and claims that he wished to present on appeal would forever be waived and barred from being heard in any other proceeding, and a § 2255 motion has strenuously high bars that must be satisfied before Mr. Holland would be able to have his claim heard on the merits.

The right to be heard and to make fundamental choices about the presentation of one's case is reinforced by congressional intent codified in 28 U.S.C. § 1654, the Due Process Clause of the United States Constitution, principles expressed in *McKaskle v. Wiggins*, 465 U.S. 168 (1984), and the concerns voiced in Justice Brennan's and Justice Marshall's dissents in appellate representation context. *McKaskle v. Wiggins*, recognizes that when a defendant proceeds pro se, the court must take care to preserve the defendant's control over the case. By parity, courts must also ensure that represented defendants who seek to proceed pro se actually have the chance to do so before counsel's filings moot that right.

Justice Brennan's dissent in *Jones v. Barnes*, 463 U.S. 745 (1983) cautions against permitting counsel's decisions to extinguish the client's voice. Justice Brennan stated that "clients, if they wish, are capable of making informed judgements about which issues to appeal, and when they exercise their prerogative their choices should be respected." Justice Brennan also asked a question in the *Jones* case, of whether the attorney or client should have the ultimate authority to decide which

nonfrivolous issues should be presented on appeal? He also quoted *Faretta v. California*, 422 U.S. 806 (1975), to emphasize, "to force a lawyer on a defendant can only lead him to believe that the law contrives against him." Justice Brennan acknowledged that indigent clients like myself often mistrust lawyers appointed to represent them. In the Jones case which was decided in 1983, Justice Brennan said "In the end, what the court hopes to gain in effectiveness of appellate representation by the rule it imposes today may well be lost to decreased effectiveness in other areas of representation. In the year 2026 his warning to the nation is ringing true and is ripe for this court to adjudicate and remedy.

Justice Marshall's dissent in *Strickland v. Washington*, 466 U.S. 668 (1984) similarly highlights the dangers of insulating strategic choices from the client. In the *Strickland* case Justice Marshall reasoned that the *Strickland* standard will do more hurt in the assistance of counsel than help. Even in Justice Alito's dissenting opinion in *United States v. Gonzalez-Lopez*, 548 U.S. 140 (2006) favors a quality analysis of a lawyers performance to take the place of the reasonable standard set forth in the *Strickland* case. As Justice Marshall reasoned in the *Strickland* case, "to tell a lawyer to be reasonable is to tell them nothing at all." The concerns of Justice Brennan and Justice Marshall are squarely implicated in Mr. Holland's case where appellate counsel filed their opening brief without affording Mr. Holland a true opportunity to review the filing of the arguments presented on his behalf and determine whether he was satisfied with what was being filed on his behalf.

The Sixth Amendment and Due Process applies to appellate counsel. *Smith v. Robbins*, 528 U.S. 529 (2000). Due process and fundamental fairness requires an appellate counsel to give a client an opportunity to review their opening brief prior to filing it. This will assure that a client is satisfied with the issues being filed on his behalf and also assure that

the client is aware that whatever issues are not in the filing are being forfeited and waived. Counsel in Mr. Holland's case did not give him an opportunity to review the brief because they knew that when they showed Mr. Holland a brief that he was not satisfied with, he would elect to proceed pro se in order to have all his claims heard and none of his rights or claims forfeited or waived.

The Third Circuit stated in the Turner case that "We caution that a motion to discharge appellate counsel after counsel has filed a brief is likely to be denied. See *Martinez v. Court of Appeal of Cal.*, 528 U.S. 152, 163, 120 S.Ct. 684, 145 L.Ed. 2d 597 (2000) (no right to self representation on appeal)." But I think that the Third Circuit misunderstands the legal philosophy and ruling of the Supreme Court *Martinez* case. In the *Martinez* case, the Supreme Court did not say that there is no right to self representation on appeal. That case says that a state appellate cannot be deprived of a federal constitutional right to represent himself on appeal. In that case he used *Faretta v. California* case, and the 6th Amendment of the United States Constitution. In Mr. Holland's case, Mr. Holland is saying that counsel violated Due process by filing their brief without giving me a fair opportunity to review their brief prior to them filing it, and there is a statutory right to self representation codified in 28 U.S.C. § 1654 that allows a person to personally plead his cause in all courts of the United States, including the Third Circuit Court of Appeals. The Turner case nor the Supreme Court *Martinez* case that the Third Circuit quotes within the Turner case supports their conclusion of there being no right to self representation on appeal. *Price v. Johnson*, 334 U.S. 266 (1948) acknowledges a defendant's right to plead his cause in all courts of the United States.

The procedural facts here shows prejudice and renders subsequent review inadequate unless this court intervenes before final disposition.

Mr. Holland sought leave to proceed pro se or to file a supplemental brief on October 29, 2025. Counsel filed their brief on the same day. After filing their brief counsel told Mr. Holland to file a motion to go pro se if he was unsatisfied with the brief they filed. (They told me this over a phone call on October 29, 2025 without ever showing me the final brief they filed.) The Third Circuit denied Mr. Holland's pro se request on November 5, 2025. Counsel never afforded Mr. Holland a fair opportunity to review their brief before filing it. Counsel for Mr. Holland foreclosed Mr. Holland's ability to request dismissal of counsel, and to exercise his statutory right to proceed pro se in accordance with 28 U.S.C. § 1654.

Once counsel's brief is filed and the appeal proceeds, issues that were not raised will be deemed waived for appellate purposes and for 28 U.S.C. § 2255 purposes. The harm is irreparable and after the fact restoration of the right to self representation cannot remedy the loss of the opportunity to control what was presented and preserved at the critical stage of the appeal. This Court's intervention before judgement is warranted because the ordinary appellate process has not and will not adequately protect Mr. Holland's statutory right to self representation on appeal and Mr. Holland's due process rights that are guaranteed by the United States Constitution.

Certiorari before judgement is appropriate where immediate review is necessary to prevent harm that cannot be remedied after final judgement. See Sup. Ct. R. 11. If the Third Circuit's November 5, 2025 order is allowed to stand and the appeal proceeds under counsel's brief, Mr. Holland's ability to make the fundamental choice about self representation, and to determine what claims and issues he personally wishes to present, will be foreclosed in ways that cannot be undone by later review.

CONCLUSION

For the foregoing reasons, Mr. Holland respectfully request for Justice Alito and this Honorable Court to grant leave to file a Writ of Certiorari before Judgement in the Third Circuit in accordance with Supreme Court Rule 11.

Respectfully Submitted,

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