No.18-238

In the Supreme Court of the United States

STATE OF SOUTH CAROLINA, *Petitioner,*
vs.
LAMONT ANTONIO SAMUEL, *Respondent.*

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

Even Samuel does not defend the South Carolina Supreme Court's holding that "a defendant's improper motive or unethical conduct is not enough to preclude him from exercising his right to self-representation." Pet. App. 16-17. Yet that was the precise reason why the court found a *Faretta* violation even though Samuel lied to the trial judge. *Ibid.* And decisions by myriad federal and state appellate courts have rejected that rule and have upheld denials of *Faretta* motions based on the "defendant's improper motive or unethical conduct." Pet. 11-18.

Instead of defending the rule of law announced by the Supreme Court of South Carolina, Samuel focuses on the specific facts of his case and insists that his conduct was a mere annoyance. BIO 28, 29. While wrong,[1] it misses the point. The State asks this Court to address a purely legal question: whether (as the Supreme Court of South Carolina held) "a trial court may not deny a criminal defendant's motion to represent himself based on the 'defendant's improper motive or unethical conduct.'" Pet. i. That legal rule formed the basis of the lower court's decision, it conflicts with the legal rule adopted by other courts, and is manifestly wrong. This Court should grant certiorari and

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1 His lying to the judge "involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society." *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246 (1944).

reverse, leaving any alternative arguments Samuel may have for remand.

I. The Conflict Among the Courts is Real

Samuel does not dispute that no other court has adopted the South Carolina Supreme Court's rule that "a defendant's improper motive or unethical conduct is not enough to preclude him from exercising his right to self-representation." Nor does he seriously dispute that the South Carolina Supreme Court's rule cannot be reconciled with numerous federal court of appeals and state high court decisions upholding denials of *Faretta* motions based on "improper motive or unethical conduct." Instead, he maintains that those other appellate decisions are irrelevant because the defendants' specific conduct was different from, and worse than, his own conduct. BIO 10-17. Aside from being wrong, that misses the point.

Had they embraced the South Carolina Supreme Court's sweeping "improper motive and unethical conduct don't matter" rule, many federal and state appellate decisions would have come out the other way. For example, in *United States v. Bush*, 404 F.3d 263 (4th Cir. 2005), the Fourth Circuit held that "a district court can deny a request for self-representation when the request is made for purpose of manipulation." *Id.* at 271. Put another way, improper motive *can* justify denying a defendant's request to represent himself; and in *Bush* it *did* justify the denial. *Ibid.* Yet, the South

Carolina Supreme Court rules out that basis — improper motive — for denying *Faretta* motions.

Samuel attempts to distinguish *Bush* and similar decisions as involving whether the defendant clearly and unequivocally invoked his right to self-representation, not so-called "judicial override of a properly asserted right." BIO 9. That is a distinction without a difference. The trial court here did not grant Samuel's *Faretta* motion and then withdraw it based on later conduct. She denied the motion in the first place based on Samuel's deceptive conduct — just as the district court did in *Bush* based on the defendant's manipulative conduct. Samuel acknowledges (BIO 12) that the Supreme Court of South Carolina cited to Fourth Circuit precedent allowing a trial judge "to distinguish between a manipulative effort to present particular arguments and a sincere desire to dispense with the benefits of counsel." *United States v. Frazier-El*, 204 F.3d 553, 560 (4th Cir. 2000). The Sixth Circuit likewise found that "[t]he timing and circumstances of [appellant's] request" supported the conclusion that the defendant's conduct was manipulative, where he had not made his motion in the two years between indictment and the trial date, he only made his motion after a firm trial date was set, and "his request was based at least in part on the refusal of counsel to file frivolous documents." *United States v. Powell*, 847 F.3d 760, 777 (6th Cir. 2017), *cert. denied*, 138 S.Ct. 143 (2017).

In *People v. Watts*, 173 Cal.App.4th 621, 630, 92 Cal.Rptr.3d 806 (Cal. Ct.App. 2009), *reh. denied* (May 19, 2009), *review denied* (Aug 19, 2009), the

court affirmed the trial judge's refusal to allow self-representation based on the defendant's manipulative pretrial conduct. *Ibid. Watts* explains the problem of allowing a defendant who engages in pretrial manipulative conduct, like Samuel, o represent himself at trial: "It would be a nonsensical and needless waste of scarce judicial resources to [grant a motion for self-representation and] proceed to trial when, as here, defendant has shown by his conduct during pretrial proceedings that he is unable to conform to procedural rules and protocol." *Id.* Manifestly, Samuel's repeatedly lying under oath demonstrated his inability "to conform to procedural rules and protocol." *Id.*

Samuel's efforts to distinguish cases based upon whether the defendant's conduct was "opprobrious," [2] as opposed to manipulative, is simply a distinction without any difference. In both situations, the defendant has shown that he cannot or will not "abide by rules of procedure and courtroom protocol," *McKaskle v. Wiggins*, 465 U.S. 168, 173 (1984), and that permitting self-representation at trial will threaten an orderly and fair trial.

Thus, the rule adopted by the Supreme Court of South Carolina is in conflict with *United States v. Pryor*, 842 F.3d 441, 449 (6th Cir. 2016), *cert.*

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2 The Meriam-Webster online dictionary defines "opprobrious" as an adjective "expressive of opprobrium." https://www.merriam-webster.com/dictionary/opprobrious#synonyms. In turn, "opprobrium" is defined as "something that brings disgrace." https://www.merriam-webster.com/dictionary/opprobrium. There cannot be any doubt that lying to a judge, under oath, "brings disgrace" to the trial, itself.

denied, 137 S.Ct. 2254 (2017) (defendant's refusal to give any answer to the trial judge's questions "justified the magistrate judge's conclusion of the [pretrial] colloquy"); *United States v. Brock*, 159 F.3d 1077, 1078, 1081 (7th Cir. 1998) (upholding district court's revocation of the defendant's right to proceed pro se based on his disruptive pretrial conduct in refusing "to answer the [c]ourt's questions or to cooperate in any way with the proceedings"); *United States v. Mosley*, 607 F.3d 555, 557-59 (8th Cir. 2010) (affirming denial of right where both the magistrate judge and the district court denied the motion for self-representation based upon defendant's refusal to answer the magistrate judge's questions in the hearings held on his request); *United States v. Raulerson*, 732 F.2d 803, 809 (11th Cir. 1984), *reh'g denied*, 736 F.2d 1528, *cert. denied*, 469 U.S. 966 (1984) (defendant waived his request for self-representation by voluntarily walking out of the courtroom during his pretrial *Faretta* hearing).

II. The Rule Announced by the South Carolina Supreme Court is Constitutionally Indefensible.

Faretta and its progeny establish that a defendant may be denied the right to represent himself based on "improper motive or unethical conduct." *Faretta* itself made clear that the right is not absolute, and that it is "not a license to abuse the dignity of the courtroom." 422 U.S. at 834. Among other things, this means that the "government's interest in ensuring the integrity and

efficiency of the trial at times outweighs the defendant's interest in acting as his own lawyer." *Martinez v. Court of Appeal*, 528 U.S. 152, 162 (2000). Lying to the trial judge during the *Faretta* colloquy itself surely undermines the dignity and integrity of the judicial proceedings and justifies denying the motion.

As this Court has stated, "There is no gainsaying that arriving at the truth is a fundamental goal of our legal system." *United States v. Havens*, 446 U.S. 620, 626 (1980) (citation omitted). An accused has absolutely "no right whatever — constitutional or otherwise — ... to use false evidence." *Nix v. Whiteside*, 475 U.S. 157, 173 (1986). But if the South Carolina Supreme Court's rule stands, a defendant giving otherwise satisfactory answers during a *Faretta* colloquy would be entitled to represent himself at trial despite deceiving the court.

Samuel contends that the State's only recourse when a defendant lies during a *Faretta* hearing is to prosecute him for perjury. BIO 18. Indeed, he finds it "bizarre" that the State would maintain that lying to the judge might justify denial of a *Faretta* motion when the perfectly satisfactory remedy of a perjury prosecution exists. *Ibid.* To the contrary, what would be bizarre is the notion that a trial court is foreclosed from denying a *Faretta* motion where the defendant is lying to the judge's face just because the State has the option of pursing another remedy.

Samuel suggests that the trial judge erred by denying his motion without undertaking several procedural steps, such as warning him of the

consequences of testifying falsely in the *Faretta* colloquy and first considering alternatives to denial of his motion. *See* BIO 4, 21-22, 26-27. Yet, this Court has never held that a trial judge is required to undertake these various procedural steps before denying a *Faretta* request on these grounds.[3] And his characterization of denial of his motion as "overriding" ignores the trial judge's concern for his primary right, which is the right to counsel. *See Martinez,* 528 U.S. at 161.

Samuel elsewhere interprets the "serious and obstructionist" language from *Faretta*, 422 U.S. at 834 n.46, as requiring "extreme disruption," such as that in *Illinois v. Allen*, 397 U.S. 337, 343 (1970). BIO 20-21. This position lacks merit. Nowhere do *Faretta* or later cases require — before a *Faretta* motion may be denied — misconduct so egregious that it requires mistrial; nor do they remove perjury as a basis for denying such a motion.

III. This Case is an Excellent Vehicle

Samuel offers six (!) reasons why this case is a "poor" vehicle to address the question presented. BIO 24-29. Review of those reasons only confirms why this Court's review is warranted.

First, pointing to the State's motion for rehearing, he argues (at 24-25) that the South

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3 His claim of necessity to warn of potential punishment for testifying falsely ignores that Rule 601(b), SCRE, permits a judge to disqualify a witnesses "incapable of understanding the duty ... to tell the truth," and that he took an oath to testify truthfully. See Rule 603, SCRE (requiring all testimony to be under oath or affirmation).

Carolina Supreme Court is in conflict with itself. To be sure, the State had asserted that the ruling in this case could not be reconciled with an alternative ground for a decision in an earlier ruling, *City of Columbia v. Assa'ad-Faltas*, 800 S.E.2d 782, 790-91 (S.C. 2017) (per curiam), *cert. denied*, 139 S.Ct. 72 (2018). Pet. App. 60-68. That case, however, involved courtroom disruption by a defendant. The State contended in its rehearing petition that lying to the court, like disruption, is grounds to deny a *Faretta* motion. The South Carolina Supreme Court disagreed and instead adhered to its decision in *State v. Barnes*, 774 S.E.2d 454, 455 n. 1 (S.C. 2015) (*Barnes II*), that "a defendant's improper motive or unethical conduct is not enough to preclude him from exercising his right to self-representation" under this Court's decision in *Faretta*. App. 16-17. That is now unequivocally the law in South Carolina.

Second, Samuel argues that "the issue is completely fact-bound," and that the "South Carolina Supreme Court expressly agreed with the legal standard other courts . . . apply in these cases." BIO 25. But Samuel looks at the wrong part of the court's opinion, altogether ignoring its holding that "a defendant's improper motive or unethical conduct is not enough to preclude him from exercising his right to self-representation." That holding distills the court's prior ruling in *Barnes II* that

> [e]ven if we believe that a criminal defendant's exercise of his constitutional rights stem from impure motives, that motivation alone is not a basis to deny him these rights.

> Further, while it is unethical for an attorney to engage in conduct which tends to pollute the administration of justice (Rule 7(a)(5), Rule 413, SCACR), we are unaware that this principle applies to a criminal defendant.

774 S.E.2d at 455. Whether that proposition of law is correct is not "fact-bound." Just the opposite. And, as discussed, Samuel can point to no other court that has embraced it. That is precisely why certiorari should be granted.

Third, Samuel repeats his contention that the trial judge failed to comply with supposed "procedural requirements." As discussed above, however, this Court has never adopted those requirements and they did not form the basis for the lower court's opinion. They also have no bearing on the answer to the question presented.

Samuel's fourth and fifth reasons (at 27) are not vehicle arguments at all. The former simply notes that the trial court could always revoke his self-representation if he later obstructs proceedings. True, but irrelevant. Lying to the court cannot somehow be excused because the court can take action based on later, different misconduct. His fifth argument is that the Court can let this issue "percolate." Numerous courts, however, have already addressed when *Faretta* motions may be denied based on the defendant's conduct, and none — until the decision in this case — had ever held that improper motive and unethical conduct cannot be considered by the judge. Further percolation

cannot possibly eliminate the conflict or cure the South Carolina Supreme Court's error.

Lastly, Samuel contends (at 28) that the issue is unimportant because "[m]ost defendants do not choose ... to proceed *pro se* in felony cases." Yes, but many do. His own dated source shows that about 1,680 defendants represented themselves in federal district court in 1998.[4] Every year there are many thousands more defendants who represent themselves in state courts throughout the nation. Indeed, in South Carolina, four defendants have appeared *pro se* in capital cases alone.[5] The question presented simply is not "unlikely to figure in another case for many years to come." *McCoy v. Louisiana*, 138 S.Ct. 1500, 1514 (2018) (Alito, J. dissenting).

A final point: Lurking beneath many of Samuel's arguments is his insistence that what he did wasn't so bad. There was merely a "misalignment" between his representations to the trial judge about Grant's involvement in the case

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4 *See* Caroline Wolf Harlow, U.S. Dep't of Justice, Off. of Justice Programs, Bureau of Justice Statistics Special Report: Defense Counsel in Criminal Cases 3 (2000) (Table 2) (multiplying 0.3 percent by the 56,046 defendants in felony cases).

5 Specifically, the following defendants appeared pro se: *State v. Roberts*, 632 S.E.2d 580 (S.C. 2006) *reh. denied, cert. denied*, 549 U. S. 1279 (2007); *State v. Starnes*, 698 S.E.2d 604 (S.C. 2010), *reh. denied, cert. denied*, 562 U.S. 1233 (2011); *State v. Brewer*, No. 2004-UP-219, 2004 WL 6251498 (S.C. Ct. App. Mar. 30, 2004) (unpublished); *State v. Brewer*, 328 S.C. 117, 120–21, 492 S.E.2d 97, 99 (1997) (finding Brewer was entitled to proceed pro se with the assistance of stand-by counsel); *State v. Brown*, 347 S.E.2d 882, 885 (S.C. 1986).

and Grant's testimony. BIO i, 4. Why all the fuss? Even putting to the side the indefensible constitutional rule his case produced — and which prompts the question presented to this Court — Samuel's conduct was deceptive and unacceptable.

His false statements went to the heart of his invocation of his right to self-representation. He claimed that he had received coaching and would receive further coaching on the law as support for his invocation. That was "misleading," as the Supreme Court of South Carolina acknowledged. Pet. App. 16. Indeed, it was lie on an important matter, for Samuel inextricably tied Grant's alleged involvement in assisting him to his desire for self-representation. R. 34-38; 44-45. Assuming he believed his lie, which we now know to be untrue, he was delusional and his invocation could not possibly have been a proper, knowing and intelligent one with a full understanding of the dangers and disadvantages he faced by waiving the right to counsel. The Sixth Amendment — if not shackled by the South Carolina Supreme Court's sweeping and insupportable rule — permitted the trial court to deny *Faretta*'s motion.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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