
In the Supreme Court of the United States

WILLIAM LEE WRIGHT, JR.,

Petitioner,

v.

STATE OF CALIFORNIA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF CALIFORNIA

BRIEF IN OPPOSITION

ROB BONTA

Attorney General of California

MICHAEL J. MONGAN

Solicitor General

LANCE E. WINTERS

Chief Assistant Attorney General

JAMES WILLIAM BILDERBACK II

Senior Assistant Attorney General

AIMEE FEINBERG

Deputy Solicitor General

DANA MUHAMMAD ALI

Supervising Deputy Attorney General

STEPHANIE C. SANTORO*

Deputy Attorney General

300 South Spring Street, Suite 1702

Los Angeles, CA 90013-1230

(213) 269-6135

Stephanie.Santoro@doj.ca.gov

**Counsel of Record*

**CAPITAL CASE
QUESTION PRESENTED**

Two days before trial, petitioner moved to represent himself under *Faretta v. California*, 422 U.S. 806 (1975), and requested a continuance to prepare. The trial court agreed that petitioner could proceed pro se but denied his request to postpone the trial. Upon learning that no continuance would be granted, petitioner informed the court that he would proceed with counsel. The trial court denied petitioner's *Faretta* motion as untimely, and the state supreme court affirmed on that same basis. The question presented is:

Whether the denial of petitioner's motion violated his Sixth Amendment right to self-representation.

DIRECTLY RELATED PROCEEDINGS

California Supreme Court:

People v. William Lee Wright, Jr., No. S107900 (judgment entered December 16, 2021, opinion modified on denial of rehearing March 9, 2022).

Los Angeles County Superior Court:

People v. William Lee Wright, Jr., No. KA048285-01 (judgment entered June 18, 2002).

TABLE OF CONTENTS

| | Page |
|-----------------|-------------|
| Statement | 1 |
| Argument | 9 |
| Conclusion..... | 14 |

TABLE OF AUTHORITIES

| | Page |
|---|---------------|
| CASES | |
| <i>Bunnell v. Armant</i> 475 U.S. 1099 (1986) | 12 |
| <i>Crespo v. New York</i> 140 S. Ct. 148 (2019) | 11 |
| <i>Faretta v. California</i> 422 U.S. 806 (1975) | <i>passim</i> |
| <i>Johnson v. California</i> 141 S. Ct. 1394 (2021) | 11 |
| <i>Kelley v. United States</i> 577 U.S. 877 (2015) | 12 |
| <i>Martinez v. Court of Appeal</i> 528 U.S. 152 (2000) | 10, 11, 12 |
| <i>McKaskle v. Wiggins</i> 465 U.S. 168 (1984) | 10, 11 |
| <i>Moriel v. Prunty</i> 520 U.S. 1230 (1997) | 12 |
| <i>Morris v. Slappy</i> 461 U.S. 1 (1983) | 13 |
| <i>People v. Marsden</i> 2 Cal. 3d 118 (1970) | 2 |
| <i>Ungar v. Sarafite</i> 376 U.S. 575 (1964) | 13 |
| <i>United States v. Gonzalez-Lopez</i> 548 U.S. 140 (2006) | 9 |
| CONSTITUTIONAL PROVISIONS | |
| U.S. Const., 6th Amend. | 9, 13 |

STATEMENT

1. Petitioner William Lee Wright, Jr. was convicted and sentenced to death for two separate drug-related robbery shootings in 2000 that left one victim dead and four others wounded. Pet. App. A 1. In one incident, petitioner entered an apartment to purchase drugs. *Id.* at 1-2. Upon finding none, he stabbed one occupant and shot the other occupant twice in the head. *Id.* at 2-4. Both victims survived. *Id.* at 4.

In a second drug-related robbery, petitioner entered an apartment to purchase cocaine and shot the three occupants when he discovered no drugs. Pet. App. A 4-5. One man died at the scene; the other two victims survived. *Id.* at 5-6. One of the surviving victims lost a kidney and 100 feet of intestines. *Id.* at 6. His injuries required the use of a colostomy bag, and he had trouble eating and drinking long-term. *Id.*

2. In September 2001, the parties appeared before the trial court and set a trial date of March 12, 2002. Pet. App. A 13. At the next hearing in December 2001, the parties confirmed they would be ready to proceed to trial on the scheduled March trial date and did not have any pending motions. *Id.*

On March 4, 2002, defense counsel moved to continue the trial on the grounds that he was still receiving discovery and was still identifying and interviewing potential witnesses. Pet. App. A 13. One week later, defense counsel proposed, and the prosecution and the trial court agreed to, a new trial date of April 29, 2002. *Id.*

The next month, on April 11, 2002, the court held a hearing to determine the admissibility of certain penalty-phase evidence. Pet. App. A 22. Multiple witnesses testified, and petitioner's counsel cross-examined them. 1 Reporter's Transcript 105:12 to 210:23.

On April 29, 2002, the court held a trial-readiness conference and set the trial to start two days later, on May 1, 2002. Pet. App. A 13. At that conference, defense counsel stated that, the week before, petitioner had indicated for the first time that he was considering representing himself. *Id.* When the court asked petitioner why he wished to proceed without counsel, he replied, "I have a right under *Faretta*, don't I?" The trial court agreed that he did and asked petitioner to provide his reasons. *Id.* Petitioner responded: "[c]onflict between me and my attorney." *Id.*

Based upon petitioner's assertion that he had a conflict with his attorney, the court cleared the courtroom and held a hearing under *People v. Marsden*, 2 Cal. 3d 118 (1970), which requires trial courts to allow a defendant seeking the substitution of counsel the opportunity to state specific examples of allegedly inadequate representation. *See* Pet. App. A 13. Petitioner asserted that counsel had failed to obtain helpful information from petitioner's girlfriend. *Id.* at 14. Counsel responded that he had spoken to petitioner's girlfriend "numerous times" and also had his investigator contact her, but "[n]othing helpful ha[d] come forward." *Id.* Petitioner additionally expressed his view that counsel was failing to mount an adequate defense. *Id.* at 14-15.

The trial court found there was insufficient conflict to warrant changing counsel and denied the motion for substitution of counsel. *Id.* at 15.

The trial court next turned to petitioner's request to represent himself. Pet. App. A 15. The court began by recognizing that petitioner had the right to proceed without counsel: "you can always represent yourself. I am required, as you know, to let you do that as long as you understand what you are getting yourself into." *Id.* The court then advised petitioner of how the trial would unfold and the consequences of self-representation. The court reminded petitioner that the trial was scheduled to begin two days later, whether or not counsel continued to represent him. *Id.* The court explained that the trial date had been set, "[w]e have 200 jurors coming in," "[w]e have cleared this court's calendar," "[t]he witnesses have been subpoenaed for that particular date," and "[t]here is no good cause to put the matter over." *Id.* The court also warned petitioner that he would not be in the pro per module in the county jail by the time trial started, would be treated as an attorney, and would not receive assistance from the court. *Id.* at 15-16.

Petitioner responded that he understood the court's admonitions, but said he would need time to prepare. Pet. App. A 16. The court explained that it would not postpone the trial. *Id.* The court stated that, if petitioner was not prepared to proceed in two days, he would not be able to represent himself. *Id.* But the court reiterated that petitioner could proceed pro se at the trial, which would begin in two days. *Id.*

The trial court also asked petitioner why he had not moved to represent himself sooner. Pet. App. A 16. Petitioner responded that it had “[j]ust really transpired when I talked to my lawyer to cross-examine one of the deputies [at the April 11 hearing]. I feel he wasn’t aggressive enough, and this is a death penalty case.” *Id.*

Petitioner repeated that he needed time to prepare and objected that two days was insufficient. Pet. App. A 16. He then told the court: “you can either just deny me and I put it up for appeal, or grant me my motion[.]” 1 RT 226:19-21. Viewed that way, the court observed, “[i]t seems to me you are setting up another issue for appeal that you are not really . . . taking to be serious.” 1 RT 226:22-23. Petitioner disagreed and again asserted that two days to prepare was inadequate. 1 RT 226:27 to 227:2.

After additional discussion, the trial court held a recess to allow petitioner to decide whether to proceed pro se or with counsel. Pet. App. A 17. The court also gave petitioner a pro per advisement form to complete. *Id.*

When the court reconvened, it noted that petitioner had not completed portions of the form. Pet. App. A 17. It asked petitioner how much time he sought for a continuance, to which petitioner responded, “I don’t know. A month, two.” *Id.*

The trial court also addressed the timing of petitioner’s request. Pet. App. A 17-18. It noted that petitioner had been represented by the same attorney throughout the proceedings and had an opportunity to evaluate counsel’s

ability to cross-examine witnesses at the preliminary hearing, which had occurred one year earlier. *Id.*; 1 Clerk’s Transcript 211-213. When the court asked petitioner why he did not raise the issue at that time, he said he did not notice the issue until recently. Pet. App. A 17-18. Petitioner then volunteered: “If the court [is] going to deny me time to prepare for my case, I will proceed with [counsel].” *Id.* at 18.

The trial court denied petitioner’s motion for self-representation as untimely. Pet. App. A 18. The court noted that petitioner’s failure to complete portions of the advisement form indicated that he did not fully comprehend it. *Id.* The court also observed that defense counsel was “doing a very good job” representing petitioner. *Id.* But it reiterated that the “issue is the time limits.” 1 RT 230:18-19; *see also* Pet. App. A 18 (trial court denied the motion as untimely and noted petitioner “clearly would need time to prepare”).

Jury selection began two days later as planned, on May 1, 2002. Pet. App. A 18. Following the trial, the jury convicted petitioner of first-degree murder, four counts of attempted murder, and robbery. *Id.* at 1. The jury found true the special circumstance allegations that petitioner committed the murder during the commission of a robbery and burglary, making him eligible for the death penalty. *Id.* Following a penalty-phase trial, the jury returned a death verdict. *Id.*

3. The California Supreme Court affirmed. Pet. App. A 1. As relevant here, the court concluded that petitioner’s request for self-representation was

properly denied as untimely. *Id.* at 18-25. The court recognized that in *Faretta v. California*, 422 U.S. 806 (1975), this Court held that the Constitution protects a defendant's ability to represent himself at a criminal trial. Pet. App. A 18. It observed that a trial court must grant a request for self-representation if it is "made within a reasonable time prior to the commencement of trial, is unequivocal, and is made voluntarily, knowingly, and intelligently." *Id.* at 18-19. If the request is untimely, the trial court retains the discretion to decide whether to allow a defendant to proceed pro se. *Id.* at 19.

The court further explained that, under its precedents, a *Faretta* motion is timely if it is made "within a reasonable time prior to" the start of trial. Pet. App. A 19 (internal quotation marks omitted). This timeliness requirement, the court reasoned, may "not be used as a means of limiting a defendant's constitutional right of self-representation," but rather is intended "to prevent the defendant from misusing the *Faretta* mandate as a means to unjustifiably delay a scheduled trial or to obstruct the orderly administration of justice." *Id.* (internal quotation marks and alterations omitted). The court acknowledged that its prior cases had not identified a specific deadline after which a self-representation motion is untimely. *Id.* Instead, its precedents directed trial courts to consider the "totality of circumstances," including "not only the time between the motion and the scheduled trial date, but also such factors as whether trial counsel is ready to proceed to trial, the number of witnesses and the reluctance or availability of crucial trial witnesses, the complexity of the

case, any ongoing pretrial proceedings, and whether the defendant had earlier opportunities to assert his right of self-representation.” *Id.*

Looking to the circumstances of this case, the court first emphasized the timing and conditional nature of petitioner’s request. Pet. App. A 21. Petitioner “brought this motion two days before the scheduled trial date and conditioned his motion on the grant of a continuance, telling the court that if he did not have time to prepare, he would proceed with counsel.” *Id.* Petitioner likewise could not “identify with any degree of precision” the amount of additional time he would need, “opining perhaps a month or maybe two.” *Id.*

The court also explained that the record failed to support petitioner’s contention that he could not have asserted his *Faretta* right sooner. Pet. App. A 21-22. Petitioner stated that he was concerned with counsel’s cross-examination of a witness. *Id.* at 22. But the hearing at which the cross-examination occurred took place 18 days before petitioner moved to represent himself; and counsel had explained his trial strategy to petitioner “numerous times prior.” *Id.* Petitioner’s additional concern that counsel had not communicated with petitioner’s girlfriend “was an ongoing issue between [petitioner] and counsel and not something that arose just before [petitioner] made his *Faretta* motion.” *Id.*

The court likewise recognized the trial court’s “skepticism concerning whether [petitioner] intended to seriously represent himself or whether he merely sought to delay trial.” Pet. App. A 22. Petitioner did not respond to the

trial court's effort to help resolve concerns about communications between his girlfriend and counsel. *Id.* And when the trial court stated that it would not continue the trial, petitioner "interrupted . . . and challenged" the court by stating that the court could either grant the request or deny it and create an issue on appeal—a statement the trial court interpreted as casting doubt on petitioner's true intent in seeking self-representation. *Id.*

The court further observed that petitioner failed to "address how a sudden switch to self-representation could have occurred without unduly disrupting" the proceedings. Pet. App. A 23. In particular, the court reasoned that petitioner's requested continuance could have impaired the prosecution's ability to produce one of the victims to testify at trial, in light of the victim's ongoing health issues resulting from the shooting. *Id.*

Finally, the court rejected petitioner's challenge to the constitutionality of a timeliness requirement. Pet. App. A 25. The court had repeatedly held that a *Faretta* motion may be denied if not asserted within a reasonable time before trial, and petitioner failed to "present a persuasive reason to revisit precedent on this matter." *Id.*

The California Supreme Court thus affirmed the trial court's denial of petitioner's *Faretta* motion as untimely. Pet. App. A 24. It subsequently denied petitioner's rehearing petition after modifying the opinion in two minor respects that did not affect the judgment. *Id.* at B 1-2.

ARGUMENT

Petitioner asks this Court to grant certiorari to consider whether a request under *Faretta v. California*, 422 U.S. 806 (1975), is timely if it is made before trial or if courts may instead consider the totality of the circumstances in determining the timeliness of such a request. Pet. i. This Court has previously denied petitions asking this Court to consider a uniform rule for determining the timeliness of a *Faretta* motion, and nothing in this case warrants a different result. This Court has recognized that the government’s interests in the integrity and efficiency of a criminal trial can outweigh a defendant’s right to self-representation. Here, the lower courts acted well within the bounds of that principle in concluding that petitioner’s request—asserted only two days before trial and conditioned on delaying the start of trial—should be denied. In any event, this case would be a poor vehicle in which to consider the question of the proper inquiry for measuring the timeliness of a *Faretta* motion. Unlike the cases on which petitioner principally relies, the trial court here expressly *allowed* petitioner to represent himself—but it was petitioner who abandoned his request and chose to proceed with counsel when the trial court declined to postpone the trial’s start date.

1. In *Faretta*, this Court recognized that defendants have a “right to self-representation” that is “necessarily implied by the structure of the [Sixth] Amendment.” 422 U.S. at 819. The improper denial of that right is structural error entitling a defendant to automatic reversal. *United States v. Gonzalez-Lopez*, 548 U.S. 140, 149 (2006). This Court has made clear, however, that the

right to self-representation “is not absolute.” *Martinez v. Court of Appeal*, 528 U.S. 152, 161 (2000). Rather, “the government’s interest in the integrity and efficiency of the trial at times outweighs the defendant’s interest in acting as his own lawyer.” *Id.* at 162; *see also McKaskle v. Wiggins*, 465 U.S. 168, 173 (1984) (right of self-representation is conditioned on the accused’s ability and willingness “to abide by rules of procedure”). To seek self-representation, a defendant must “voluntarily and intelligently” elect to do so, and “most courts require him to do so in a timely manner.” *Martinez*, 528 U.S. at 161-162 (citations and internal quotation marks omitted). Petitioner acknowledges the same. Pet. 9.

The trial court here properly concluded that petitioner’s self-representation request, brought two days before trial, was untimely. Petitioner’s case had been pending for over one year. Pet. App. A 16-17. He had been represented by the same attorney since the preliminary hearing stage. *Id.* at 17. The issue petitioner complained of—that his attorney was not aggressive enough in the cross-examination of certain witnesses—would have been apparent to petitioner as early as the preliminary hearing, where he observed his attorney’s cross-examination of witnesses. *Id.* Defense counsel told the court that he had explained his trial strategy to petitioner numerous times during the course of the representation. *Id.* at 15. Petitioner did not dispute this. *Id.* And even in the weeks preceding trial—and certainly by April 11, which was the most recent hearing in which cross-examination occurred—

petitioner never moved to proceed without counsel. *Id.* at 22. When petitioner ultimately raised the issue, it was only two days before the start of a complex, multi-offense capital trial, where defense counsel and the prosecution were ready to proceed, several witnesses had been subpoenaed, and 200 jurors were scheduled to arrive. *Id.* at 15, 21, 23.

At the same time, the record in this case casts doubt on whether petitioner truly sought to represent himself or whether he instead merely sought to disrupt the proceedings and delay trial. Pet. App. A 22. Petitioner declined efforts to resolve concerns with his counsel and challenged the trial court to “either just deny me and I put it up for appeal, or grant me my motion”—a statement the trial court understood as reflecting petitioner’s lack of seriousness in invoking his right to self-representation. 1 RT 226:19-23; *see* Pet. App. A 22. The trial court’s decision to deny petitioner’s request under these circumstances was not inconsistent with the principles underlying *Faretta*. *See Martinez*, 528 U.S. at 162; *McKaskle*, 465 U.S. at 173.

2. Petitioner further contends that this Court should grant review to resolve a conflict among the lower courts “as to what constitutes a timely *Faretta* request.” Pet. 9. This Court has recently denied other requests to consider a uniform rule for when a trial court may deem a *Faretta* motion untimely. *See Johnson v. California*, No. 20-5085, *cert. denied*, 141 S. Ct. 1394 (2021); *Crespo v. New York*, No. 18-7694, *cert. denied*, 140 S. Ct. 148 (2019);

Kelley v. United States, No. 15-248, *cert. denied*, 577 U.S. 877 (2015).¹ It should deny this one as well.

While there is general agreement that a *Faretta* motion can be denied if it is untimely, *see Martinez*, 528 U.S. at 162, courts do not follow a uniform approach to determining timeliness. As petitioner asserts, California and certain other States direct courts to engage in a multi-factor inquiry under which a pre-trial *Faretta* motion may be denied as untimely after consideration of factors such as proximity to the trial date, delay in bringing the motion, and delays to the trial itself. *See* Pet. 20-21. Other jurisdictions have adopted more specific inquiries, allowing defendants to bring *Faretta* motions up to some definite point in the proceedings, such as when the jury is empaneled. *See id.* at 14-15.

This case, however, would not be a good vehicle for considering the proper test to measure the timeliness of a *Faretta* request. As an initial matter, petitioner did not argue below (as he does here) that his request was timely simply because it was made before trial. Instead, petitioner argued to the California Supreme Court that a *different* consideration should be dispositive in determining the timeliness of a *Faretta* motion—namely, whether granting the motion would disrupt proceedings or obstruct the orderly administration of justice. Opening Br. 37-47; Reply Br. 4; *see also* Pet. 39 (“The timing of the

¹ *See also Moriel v. Prunty*, No. 96-1501, *cert. denied*, 520 U.S. 1230 (1997); *Bunnell v. Armant*, No. 85-1305, *cert. denied*, 475 U.S. 1099 (1986).

motion in and of itself is not dispositive; it is merely a factor to be considered in assessing whether granting the motion would likely disrupt the trial or obstruct the orderly administration of justice.”).

In addition, the record in this case reflects that the trial court *allowed* petitioner to represent himself, while denying his request for a continuance to prepare. *See supra* p. 3; *see also* Pet. App. A 16. When petitioner learned that the trial date would not be postponed, he elected to proceed with counsel—effectively abandoning his self-representation request. *See supra* pp. 4-5; *see also* Pet. App. A 17-18. These particular facts make this case a poor vehicle for considering the legal standard for determining timeliness, which, according to the petition, should turn solely on the date on which the request is made. *See* Pet. i.

Moreover, to the extent petitioner’s ultimate inability to proceed *pro se* was tied to the trial court’s denial of his request for a continuance, the propriety of that ruling raises a different question from the one presented in the petition. This Court has made clear that the “matter of [a] continuance is traditionally within the discretion of the trial judge.” *Ungar v. Sarafite*, 376 U.S. 575, 589 (1964). In the related context of the constitutional right to counsel, this Court has explained that “only an unreasoning and arbitrary ‘insistence upon expeditiousness in the face of a justifiable request for delay’” violates the Sixth Amendment. *Morris v. Slappy*, 461 U.S. 1, 11-12 (1983). For the reasons explained above, nothing about the trial court’s decision to deny a

continuance—or to deny petitioner’s *Faretta* motion conditioned on that continuance—reflected any abuse of discretion or any departure from this Court’s precedents.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

ROB BONTA

Attorney General of California

MICHAEL J. MONGAN

Solicitor General

LANCE E. WINTERS

Chief Assistant Attorney General

JAMES WILLIAM BILDERBACK II

Senior Assistant Attorney General

AIMEE FEINBERG

Deputy Solicitor General

DANA MUHAMMAD ALI

Supervising Deputy Attorney General

/s/ Stephanie Santoro

STEPHANIE C. SANTORO

Deputy Attorney General

Dated: September 6, 2022