No. 21-8063

In The
Supreme Court of the United States

WILLIAM LEE WRIGHT, JR.,

Petitioner,

v.

STATE OF CALIFORNIA,

Respondent.

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

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

MARY K. MCCOMB
State Public Defender

ALYSSA C. MELLOTT
Senior Deputy State Public Defender
Counsel of Record

1111 Broadway, Suite 1000
Oakland, CA 94607
510-267-3300
alyssa.mellott@ospd.ca.gov

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Federal Cases

State Cases

Court Rules

Other Authorities

REPLY BRIEF

Respondent concedes the split of authority: "courts do not follow a uniform approach to determining timeliness" under *Faretta v. California,* 422 U.S. 806 (1975). Op. Cert. 12. Respondent argues that this Court should not resolve the conflict because the lower courts here adhered to the principle recognized by this Court that the "government's interests in the integrity and efficiency of a criminal trial can outweigh a defendant's right to self-representation" and because this case is a poor vehicle to consider the issue presented. Op. Cert. 9. Respondent's arguments based on the merits and the vehicle are unpersuasive and only highlight the need for clarity from this Court.

I. Respondent's merits arguments do not address the issue that the defendants in a small minority of states may lose their constitutional right to self-representation without knowing when in the pendency of their case it may be lost.

Respondent fails to undermine Mr. Wright's argument, supported with authorities from every federal circuit and all 50 states, that his *Faretta* motion would have likely been granted in all of the federal circuits and all but seven states (including California), and that the standard for determining timeliness leaves defendants in those

states unable to gauge when in the stage of the proceedings they may lose their right of self-representation. Cert. Pet. 13-22.

As respondent notes, Mr. Wright acknowledges that at some point in the pendency of a criminal case, a defendant's interest in acting as their own lawyer may be outweighed by "the government's interest in the integrity and efficiency of the trial." Op. Cert. 10, citing *McKaskle v. Wiggins*, 465 U.S. 168, 173 (1984). Mr. Wright is asking this Court to provide guidance as to the circumstances under which that shift may occur. In *McKaskle*, this Court explained that in *Faretta,* the Court held that the right of self-representation is conditioned on the accused's ability and willingness "to abide by rules of procedure and courtroom protocol." *McKaskle*, 465 U.S. at 173. But this Court also emphasized, in the context of advisory counsel, that, "[i]n determining whether a defendant's *Faretta* rights have been respected, the primary focus must be on whether the defendant had a fair chance to present his case his own way." *McKaskle*, 465 U.S. at 177.

Defendants in California and in other jurisdictions applying a totality of the circumstances approach to the *Faretta* timeliness question, and in jurisdictions with ill-defined rules governing when a trial commences for purposes of *Faretta*, do not currently have that fair chance. One reason this approach does not provide a defendant a fair

chance to present his case is that there are no clear guidelines instructing a defendant when his or her *Faretta* motion will be considered timely. Thus, a defendant who has differences with counsel over the presentation of his defense cannot know at what point in the proceedings he needs to decide to make the motion.

Respondent's discussion of the merits of Mr. Wright's case illustrates the problem. Respondent argues that the trial court's denial of Mr. Wright's motion was proper because his case was pending for over a year, he had the opportunity to observe his attorney's cross-examination of witnesses at the preliminary hearing, and defense counsel had explained his trial strategy to Mr. Wright previously. Op. Cert. 10-11. As an initial matter, while a misdemeanor case pending for a year before trial may be a long time, that length of time may not be long for a capital trial. As Mr. Wright argued below, "[t]he case had been in the superior court for approximately eight months, well short of the two-year average for capital cases in Los Angeles Superior Court." Opening Br. 57.

More fundamentally, respondent ignores other events that transpired during the pendency of the case. Mr. Wright was not made aware of the prosecution's penalty phase evidence against him and his counsel's defense strategy for addressing that evidence until very late in the proceedings. While it is true that Mr. Wright observed his

defense counsel's cross-examination of witnesses at the preliminary hearing, and defense counsel had explained his trial strategy to Mr. Wright, the prosecution was still providing discovery related to the penalty phase to defense counsel at least through the hearing on April 11. See Cert. Pet. 4. It was not until after the *Marsden* hearing that the court asked Mr. Wright why he brought the *Faretta* motion when he did, as pointed out by respondent: "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."" Op. Cert. 4. Mr. Wright could not have made that determination sooner because, as detailed in his petition to this Court, the prosecutor did not provide the penalty phase discovery until many months *after* the preliminary hearing. Cert. Pet. 2-4. Further, Mr. Wright did not observe how his counsel planned to cross-examine the penalty phase witnesses until the April 11 hearing. *Id.* at 4. Mr. Wright brought his motion at the next possible court date, April 29, after he was able to discuss the matter with his counsel. *Id.* at 4-5.

Respondent's reliance upon the circumstances that it was 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" strikes at the

question of the balance of interests raised in *McKaskle,* that is, when can the government's interests outweigh a defendant's right to self-representation? Op. Cert. 11. While it is true that defense counsel, the prosecution, and the trial court were ready to proceed on May 1, there was no indication that the same trial could not have been held in one to two months, as Mr. Wright requested, without detriment to the prosecution's case or to judicial administration. The prosecution never raised a concern about its ability to present witnesses or other evidence if the trial was continued. Likewise, the trial court did not claim that the May 1 jurors could not have been rerouted to another trial nor identify any other negative effect to the administration of the court if the trial was continued.

Finally, respondent claims that "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 the trial." Op. Cert. 11. The record does not support this contention. Respondent extracts one sentence — "I don't have enough time to go - - you can either just deny me and I put it up for appeal, or grant me my motion to - -."—that Mr. Wright uttered in frustration after the trial court had told him for the *fifth* time that it would not grant him a continuance to prepare his defense. (See 1RT 224-26.) It was only following this statement that the trial court questioned whether Mr.

Wright was serious. Mr. Wright responded, "I am serious. You telling me to be ready for a death penalty case in 2 days." (1RT 226.) The trial court then continued to question Mr. Wright about the timing of his request, gave further admonishments regarding self-representation, paused the proceedings for Mr. Wright to fill out the *Faretta* waiver form, and ultimately found the motion untimely. (1RT 227-31.) The trial court made no findings that Mr. Wright had a dilatory intent or was not serious about his desire to represent himself.

Respondent concludes that the trial court's ruling was consistent with the principles underlying *Faretta* citing to *Martinez* and *McKaskle*. Op. Cert. 11. Mr. Wright's request for a one-to-two-month continuance to prepare his defense upon finally be presented with the prosecution's entire case against him and his counsel's trial strategy to meet that evidence neither jeopardized "the government's interest in ensuring the integrity and efficiency of the trial," *Martinez v. Court of Appeal of Cal. Fourth Appellate Dist.*, 528 U.S. 152, 162, (2000), nor demonstrated that Mr. Wright was not "able and willing to abide by rules of procedure and courtroom protocol," *McKaskle,* 465 U.S. at 173. The *Faretta* opinion was silent as to the issue of the timing of a defendant's self-representation motion except to note that Mr. Faretta made his motion "weeks before trial." *Faretta*, 422 U.S. at 835. Mr. Wright respectfully asks this Court to provide guidance on the

question of when and under what circumstances a request for self-representation under *Faretta* may be deemed untimely.

II. Respondent's vehicle arguments are meritless.

Respondent argues that this case is not a good vehicle to address what constitutes a timely *Faretta* request. Op. Cert. 11-14. Respondent claims that "[t]his Court has recently denied other requests to consider a uniform rule for when a trial court may deem a *Faretta* motion untimely." Op. Cert. 11. This claim is supported only by citations to denials of writs of certiorari. *Id.,* citing *Johnson v. California*, No. 20-5085, *cert. denied*, ___ U.S. ___, 141 S. Ct. 1394 (2021); *Crespo v. New York*, No. 18-7694, *cert. denied*, ___ U.S. ___, 140 S. Ct. 148 (2019); *Kelley v. United States*, No. 15-248, cert. denied, 577 U.S. 877 (2015); *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). Of course, as this Court has "'often stated, the denial of a writ of certiorari imports no expression of opinion upon the merits of the case.'" *Teague v. Lane*, 489 U.S. 288, 296 (1989), quoting *United States v. Carver*, 260 U.S. 482, 490 (1923) (Holmes, J.).

Next, respondent claims that Mr. Wright argued to this Court that his request was timely "simply" because it was made before trial, but argued below that in determining timeliness, the consideration should be whether granting Mr. Wright's *Faretta* motion would disrupt

proceedings or obstruct the orderly administration of justice. Op. Cert. 12. In his petition to this Court, Mr. Wright argued that he was tried in one of the few jurisdictions in the nation "that would have denied his self-representation motion asserted two days before jury selection was to begin and without a finding by the trial court that his purpose was to delay or disrupt the trial" and asked this Court to address the split in authority in assessing timeliness of a *Faretta* motion. Cert. Pet. 10. Respondent implies a discrepancy in Mr. Wright's arguments when there is none.

Finally, respondent argues that this case is not a good vehicle to address the split of authority regarding the timeliness component of *Faretta* because the trial court granted Mr. Wright's *Faretta* motion, which Mr. Wright then abandoned because the trial court denied Mr. Wright's request for a continuance, a ruling subject to a less onerous abuse of discretion standard. Op. Cert. 13-14. Neither the trial court nor the California Supreme Court treated Mr. Wright's *Faretta* motion and request for a continuance in the manner suggested by respondent. If respondent were correct, the California Supreme Court would have found the *Faretta* issue forfeited and addressed the continuance request as a separate issue, but it did not. *See People v. Wright*, 12 Cal. 5th 419, 435-40 (2021). Respondent's argument only serves to highlight another murky area for defendants, courts, and practitioners in

navigating *Faretta* motions, that is, how to weigh a defendant's concurrent request for a continuance to prepare to represent themselves upon a triggering event occurring later in the proceedings in the determination of the timeliness of a *Faretta* motion.

It is time for this Court to consider the parameters of the timeliness consideration that lower courts are implementing. Respondent does not dispute that few if any courts outside of California would find untimely a *Faretta* motion made two days before jury selection was to begin and without a finding by the trial court that the defendant's purpose was to delay or disrupt the trial. The outcome of a motion made by a criminal defendant seeking to exercise the constitutional right to self-representation is currently dependent on the jurisdiction in which that defendant is tried. It is fundamental that certiorari should be granted to resolve this split of authority regarding the exercise of a fundamental constitutional right. Sup. Ct. R. 10.

//

//

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Dated: September 22, 2022

Respectfully Submitted,

Mary K. McComb
State Public Defender

/s/ Alyssa Mellott
Alyssa Mellott
Senior Deputy State Public Defender
Counsel of Record

Office of the State Public Defender
1111 Broadway, Suite 1000
Oakland, CA 94607
Alyssa.Mellott@ospd.ca.gov
Tel.: 510-267-3300
Counsel for Petitioner William Lee Wright, Jr.