

No. 21A34

In the Supreme Court of the United States

TIM SHOOP, Warden,
Applicant,

v.

AUGUST CASSANO,
Respondent.

CAPITAL CASE – NO EXECUTION DATE SET

**REPLY IN SUPPORT OF UNOPPOSED APPLICATION TO RECALL AND
STAY THE MANDATE OF THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT PENDING RESOLUTION OF WARDEN TIM
SHOOP’S PETITION FOR A WRIT OF *CERTIORARI***

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Because Cassano does not oppose the Warden’s application, the Warden will not burden this Court with a lengthy reply. He will, however, briefly respond to Cassano’s one merits-focused argument.

According to Cassano, the Supreme Court of Ohio erred by stating that Cassano’s “initial demand to represent himself focused on hybrid representation,” and that “Cassano’s only written motion on that point” before April 1999 “was made in September 1998.” Resp.2 (quoting *State v. Cassano*, 96 Ohio St.3d 94, 100 (2002)). Cassano says that is wrong. According to Cassano, he first asked to represent himself in May 1998, in the “waiver of counsel” he filed alongside his request for the appointment of counsel. *See* Application 3–4 (discussing that “waiver of counsel”). Thus, Cassano says, the Supreme Court of Ohio either unreasonably determined the facts, or simply overlooked the *Faretta* claim relating to Cassano’s May 1998 “waiver of counsel,” when it said the September 1998 filing was Cassano’s only “written” “demand to represent himself” before April 1999. Resp.2–3.

Not so. The Supreme Court of Ohio referred to the September 1998 filing as Cassano’s initial demand to represent himself because the court determined that his May 1998 “waiver of counsel” *did not constitute* a demand for self-representation. And as the Warden already explained, that determination was reasonable: nothing compelled the Ohio Supreme Court to conclude that a “waiver of counsel” filed on the same day as a request for *new* counsel constituted a demand for any form of self-representation. Application 18–20. Given that, the Supreme Court of Ohio was unambiguously correct when it wrote:

Cassano's initial demand to represent himself focused on hybrid representation. Cassano's only written motion on that point was made in September 1998 and related solely to hybrid representation.

Cassano, 96 Ohio St. 3d at 100. The phrase "that point" refers to either: (a) "hybrid representation" specifically; or (b) all forms of self-representation, including both hybrid representation and true self-representation. Either way, the statement is true. If Cassano did not "demand to represent himself" in May 1998, as the court reasonably concluded, then Cassano's request for hybrid representation was his only request pertaining to the "point" (hybrid representation, or self-representation more broadly) at issue.

*

The Court should recall and stay the Sixth Circuit's mandate pending disposition of the Warden's petition for a writ of *certiorari*.

Respectfully submitted,

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