

No. 23-7709

In the
Supreme Court of the United States

PERCY LEROY JACOBS,
Applicant,

v.

UNITED STATES OF AMERICA,
Respondent.

On Application for Stay of the Mandate Issued by the
United States Court of Appeals for the Fourth Circuit

**APPLICATION FOR A STAY TO CHIEF JUSTICE JOHN ROBERTS
OF THE FOURTH CIRCUIT'S MANDATE PENDING RULING ON
THE PETITION FOR WRIT OF CERTIORARI**

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QUESTIONS PRESENTED

The questions presented are:

- I. Whether, for a waiver of the Sixth Amendment right to trial counsel to be effective, a defendant must understand the elements of the charged offenses – as part of the defendant’s understanding of the “nature of charges,” *Von Moltke v. Gillies*, 332 U.S. 708, 724 (1948) (plurality op.)). During petitioner’s waiver colloquy with the district judge, the district judge failed to inquire whether petitioner understood the elements of the charges; failed to assure that petitioner understood that the maximum “years” of penalties that he faced were years of *imprisonment* (as opposed to years of probation); and failed to inquire about petitioner’s education.
- II. Whether the district court violated the Speedy Trial Act.
- III. Whether the petitioner will be irreparably harmed if the requested stay is not granted.

PARTIES TO THE PROCEEDING

The applicant is the Petitioner, Percy Leroy Jacobs.

The respondent is the United States of America (or “government”).

RELATED PROCEEDINGS

The following proceedings are directly related to this case:

- *United States v. Percy Leroy Jacobs & Sandra Denise Curl*, No. 8:19-cr-444, United States District Court for the District of Maryland. Judgment entered on February 4, 2023.
- *United States v. Percy Leroy Jacobs & Sandra Denise Curl*, Nos. 23-4122 & 23-4123, United States Court of Appeals for the Fourth Circuit. Judgment entered on April 23, 2024.

INTRODUCTION

On September 25, 2019, in an 18-page indictment, a federal grand jury charged petitioner, Percy Jacobs, and a codefendant, Sandra Curl, with multiple felony offenses related to their filing of income tax returns. Both petitioner and Curl, who represented themselves at a jury trial presided over by former U.S. District Judge George Hazel, were convicted by the jury on March 22, 2022. On February 23, 2023, Judge Hazel sentenced both petitioner and Curl to terms of 30 months in the Federal Bureau of Prisons.

At the time of his *Faretta* hearing, petitioner was a 56-year-old man who had dropped out of high school in the twelfth grade (and who never obtained a high school diploma or a GED). He had one prior criminal conviction from 1997 for Loan Fraud in the US District Court for the District of Maryland.

On November 18, 2019, petitioner made his initial appearance before a federal magistrate judge, qualified for appointed counsel, and was appointed an attorney from the court's Criminal Justice Act panel. On that same day, petitioner was released on bail.

On August 5, 2020, the Petitioner's appointed attorney filed a Motion to Withdraw as counsel. As a result of contents of that filing, a *Faretta* hearing was held on August 17, 2020. The arraignment was held on that date also.

The *Faretta* Hearing was deficient in the following ways:

Significantly, the transcript of Judge Hazel's Zoom colloquy with petitioner, which primarily consisted of yes-or-no-type questions, shows that Judge Hazel did *not* ask petitioner:

1. Whether petitioner had any level of formal education (including whether he had a high school diploma or GED) – instead, only asking him whether he had ever “studied law”;
2. Whether petitioner could read and write the English language in a manner that would permit him to represent himself;
3. Whether petitioner suffered from any mental health or physical health condition that affected his ability to represent himself;
4. Whether petitioner understood the *elements* of the charged tax offenses, including the heightened “willfulness” *mens rea* required by *Cheek v. United States*, 498 U.S. 192 (1991); and
5. Whether petitioner understood that the potential “sentence” that he faced upon conviction was a *prison* sentence (as neither Judge Hazel nor the prosecutor ever referred to “prison” or “imprisonment” or any similar word in describing the “years” mentioned by the prosecutor in summarizing the maximum “penalty” that petitioner faced).
6. Judge Hazel asked the prosecutor to “read off the charges.” The prosecutor responded by stating: “He has been charged with conspiracy to defraud the United States under 18 U.S.C. Section 371; also with aiding and assisting the preparation of a false return on a number of counts under 26 U.S.C. 7206(2); also with theft of government property under 18 U.S.C. 641; and aiding and abetting, 18 U.S.C. Section 2, and then various forfeiture-related counts.” *Id.* at 6. Judge Hazel asked petitioner whether he understood the fact that he was “charged with those counts” – as opposed to asking him whether he understood the *nature* of those charges – to which he responded, “Yes.”
7. Judge Hazel asked the prosecutor to advise petitioner of the “maximum penalty for those counts,” to which the prosecutor responded: “For Section 371, it’s five years; for Section 7206(2), it’s three years; and for the Section 641 charge, it’s 10 years.” The prosecutor never clarified that “years” meant years of “prison,” “imprisonment,” or “incarceration.” In response to Judge Hazel’s question, petitioner responded that he understood the potential penalties.

Judge Hazel found that the defendant had knowingly and voluntarily waived his right to counsel and that he was, in fact, competent to make this decision and allowed the defendant to represent himself.

On appeal, petitioner, represented by appointed counsel, and Curl, who was separately represented, contended that their purported waivers of the right to counsel were invalid based on numerous deficiencies in the waiver colloquies conducted by Judge Hazel. The three-judge panel of the Court of Appeals disagreed and found the waiver by the petitioner to be valid.

On appeal, petitioner, represented by appointed counsel, and Curl, who was separately represented, contended that their purported waivers of the right to counsel were invalid based on numerous deficiencies in the waiver colloquies conducted by Judge Hazel. The three-judge panel of the Court of Appeals rejected their arguments without mentioning the specific deficiencies. Although petitioner's briefs extensively addressed several specific defects in Judge Hazel's waiver colloquy, including (1) his failure to discuss the elements of the charged offenses, (2) his failure to inquire about the petitioner's educational background, and (3) his failure to provide an unambiguous explanation of the penalties that petitioner faced, the Fourth Circuit's opinion did not mention those specific defects.

I.

THERE IS A REASONABLE PROBABILITY THAT THIS COURT WILL GRANT CERTIORARI:

A. THE FARETTA ISSUE

There is a reasonable probability that this Court will grant certiorari in Order to Resolve the Wide Division Among the Lower Courts Concerning the Content of a Colloquy Required to Assure a Valid Waiver of a Criminal Defendant's Sixth Amendment Right to Trial Counsel and also to Clarify Confusion Concerning the Factors Set Forth in the Plurality Opinion in *Von Moltke v. Gillies*, 332 U.S. 708 (1948).

Since this Court's 1975 decision in *Faretta v. California*, 422 U.S. 806 (1975), which permitted criminal defendants to represent themselves at trial, the lower courts increasingly have been divided over the question of what information a trial judge must convey to a criminal defendant who wishes to waive his right to trial counsel in order for the defendant's waiver to be constitutionally valid. *See, e.g., McDowell v. United States*, 484 U.S. 980, 980 (1987) (White, J., joined by Brennan, J., dissenting from the denial of certiorari) (discussing the division among state and federal appellate courts concerning the type of colloquy required by *Faretta* when a defendant wishes to represent himself at trial.). The disagreements among the lower courts include whether the factors identified by the plurality in *Von Moltke v. Gillies*, 332 U.S. 708 (1948), are mandatory factors to be addressed by a trial judge in a waiver colloquy with the defendant. As discussed below, petitioner's case presents this Court

with an excellent vehicle to address the recurring and important questions concerning the required content of a *Faretta* waiver colloquy.

In petitioner's case, Judge Hazel did not satisfy "the serious and weighty responsibility upon the trial judge of determining whether there is an intelligent and competent waiver [of the right to counsel] by the accused;" his insufficient questioning thus failed to overcome the "strong presumption against waiver of the constitutional right to counsel." *Von Moltke*, 332 U.S. at 723; *see also Faretta v. California*, 422 U.S. 806, 835 (1975) ("When an accused manages his own defense, he relinquishes . . . many of the traditional benefits associated with the right to counsel. For this reason, in order to represent himself, the accused must 'knowingly and intelligently' forgo those relinquished benefits.") (citing, *inter alia*, *Von Moltke*).

Only a colloquy with "a penetrating and comprehensive examination of all the circumstances" by the trial judge permits a reviewing court to determine whether the waiver was knowingly and intelligently made. *Von Moltke*, 332 U.S. at 724. As this Court has stated: "[R]ecognizing the enormous importance and role that an attorney plays at a criminal trial, we have imposed the most rigorous [requirements concerning] the information that must be conveyed to a defendant, and the procedures that must be observed, before permitting him to waive his right to counsel at trial." *Patterson v. Illinois*, 487 U.S. 285, 298 (1988) (citing *Faretta* and *Von Moltke*).

Although this Court has not "prescribed any formula or script to be read to a defendant who states that he elects to proceed without counsel," this Court has held

that the “information a defendant must possess in order to make an intelligent election . . . depend[s] on a range of case-specific factors, including the defendant’s education or sophistication [and] the complex or easily grasped nature of the charge ” *Iowa v. Tovar*, 541 U.S. 77, 88 (2004).

Judge Hazel’s colloquy with petitioner, who lacked a high school diploma and GED, and who faced complex federal tax offenses charged in the 18-page indictment, failed to satisfy the “rigorous” requirements required by this Court’s precedent. The Fourth Circuit’s decision also conflicts with decisions of other circuits, as discussed below. Among other things, before accepting their waivers of counsel, Judge Hazel failed:

- (1) to inquire about petitioner’s mental health issues or his level of formal education or literacy;
- (2) to explain the elements of the charged offenses – a procedure which the Tenth Circuit requires in a *Faretta* colloquy (in order to assure a defendant understands the “nature” of a charged offense), *United States v. Hamett*, 961 F.3d 1249, 1257 (10th Cir. 2020), and which this Court requires in an analogous context, *see Bradshaw v. Stumpf*, 545 U.S. 175, 183 (2005) (“Where a defendant pleads guilty to a crime without having been informed of the crime’s elements, this [due process] standard is not met and the plea is invalid.”);
- (3) to assure that petitioner, understood even the general nature of the complex criminal tax charges – about which he previously had expressed confusion at his initial appearance and in his *pro se* filings;

4) to assure that appellants understood potential defenses to the complex tax charges (including a lack of a “willfulness” *mens rea*, see *Cheek*, 498 U.S. 192), see *Von Moltke*, 332 U.S. at 724 (“To be valid such waiver must be made with an apprehension of . . . possible defenses to the charges and circumstances in mitigation thereof”);

(5) to “unambiguously” explain to petitioner that he faced potential *imprisonment*, as the Eleventh Circuit requires, *United States v. Hakim*, 30 F.4th 1310, 1324-25 (11th Cir. 2022).

Furthermore, these deficiencies in the waiver colloquy were exacerbated by Judge Hazel’s use of simple yes-or-no questions. Furthermore, these deficiencies in the waiver colloquy were exacerbated by Judge Hazel’s use of simple yes-or-no questions.

The use of yes or no questions fails to accomplish the “penetrating and comprehensive examination” required for there to be a constitutionally valid waiver of the Sixth Amendment right to counsel. *Von Moltke*, 332 U.S. at 724. The Fourth Circuit’s approval of Judge Hazel’s *Faretta* colloquy with petitioner conflicts with decisions of these other circuits and also failed to satisfy the “rigorous” requirements set forth many decades ago in *Von Moltke*. Significantly, the lower federal and state courts are divided about the precedential value of the plurality opinion *Von Moltke* with respect to the types of information that a trial judge must convey to a defendant wishing to represent himself. Compare, e.g., *United States v. Hamett*, 961 F.3d 1249, 1255- 56 (10th Cir. 2020) (“A proper *Faretta* hearing apprises the defendant of the following: ‘the nature of the charges, the statutory offenses included within them, the range of allowable

punishments thereunder, possible defenses to the charges and circumstances in mitigation thereof, and all other facts essential to a broad understanding of the whole matter.’ [citing prior Tenth Circuit cases] (noting that these factors are known as the “*Von Moltke* factors,” as such areas of inquiry are taken from the Supreme Court’s opinion in *Von Moltke*, 332 U.S. at 724). Importantly, this Court has reiterated that the *Von Moltke* factors ‘must be conveyed to the defendant by the trial judge and must appear on the record so that our review may be conducted without speculation.’ *United States v. Padilla*, 819 F.2d 952, 957 (10th Cir. 1987).”); *United States v. Peppers*, 302 F.3d 120, 131-32 (3d Cir. 2002) (requiring district court to address *Von Moltke* factors during a *Faretta* colloquy); *State v. Parsons*, 437 S.W.3d 457, 481 (Tenn. Crim. App. 2011) (noting that the Tennessee Supreme Court in *State v. Northington*, 667 S.W.2d 57, 60 (Tenn.1984), required the *Von Moltke* factors to be addressed during a *Faretta* colloquy), with *United States v. Bailey*, 675 F.2d 1292, 1299 (D.C. Cir. 1982) (refusing to require a trial court to address the *Von Moltke* factors in a *Faretta* colloquy); *Washington v. State*, 539 So.2d 1089, 1092-93 (Ala. Crim. App. 1988) (same); see also *Smith v. Grams*, 565 F.3d 1037, 1046 (7th Cir. 2009) (“The Supreme Court has not provided extensive direction on the nature of the ‘rigorous restrictions . . . [and] procedures’ that a court must observe before finding valid waiver of a defendant’s right to trial counsel. See [*United States v.] Moya-Gomez*, 860 F.2d [706,] 732 [(7th Cir. 1988)]; see also *United States v. Hill*, 252 F.3d 919, 925 (7th Cir. 2001) (expressing doubt ‘that any [procedural] list

can be mandated'). *But see Von Moltke*, 332 U.S. at 724 (Black, J., plurality opinion) (stating that a valid waiver 'must be made with an apprehension of the nature of the charges, the statutory offenses included within them, the range of allowable punishments thereunder, possible defenses to the charges and circumstances in mitigation of, and all other facts essential to a broad understanding of the whole matter').").

B. THE SPEEDY TRIAL ISSUE

This Court Should Grant Certiorari in Order to ensure that the Constitutional Right to a Speedy Trial is preserved for this Defendant. "The trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs." 18 U.S.C. § 3161(c). As noted above, Appellant Jacobs had his initial appearance on November 18, 2019. The trial in this case did not commence until March 21, 2022. Section 3161(h) includes a list of filings or events that toll the 70-day speedy trial "clock." They include: (1) "delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion," § 3161(h)(1)(D); and (2) "delay reasonably attributable to any period, not to exceed thirty days, during which any proceeding concerning the defendant is actually under advisement by the court." 18 U.S.C. § 3161(h)(1)(H).

In this case, the speedy trial “clock” began running on November 18, 2019 when Jacobs had his initial appearance. The sole “pretrial motion” that was filed in the four-month period thereafter was the government’s “motion for disclosure” (seeking a protective order concerning taxpayer information), which was filed on December 24, 2019. That motion remained pending until January 7, 2021, when it was orally granted by the district court at a pretrial status conference. Yet, as explained below, because that motion did not require a hearing (and was not granted after a hearing), it only tolled the speedy trial clock for 30 days under § 3161(h)(1)(D). Therefore, the clock began running again on January 24, 2020. Because no additional motions were filed until March 31, 2020 – 67 days later – the total time not tolled between November 25, 2019, and March 31, 2020, was well over 70 days, the Speedy Trial Act was violated.

II. THERE IS MORE THAN A “FAIR PROSPECT” THAT THIS COURT WILL REVERSE THE DECISION BELOW

The conflicts between the Fourth Circuit and the other circuits discussed above are part of a broader division among the lower courts over the type of waiver colloquy required by *Faretta* before a defendant may represent himself at a trial. This division has existed for several decades, as reflected in an opinion dissenting from denial of certiorari by Justice White in 1987. *See McDowell v. United States*, 484 U.S. 980, 980 (1987) (White, J., joined by Brennan, J., dissenting from the denial of certiorari) (discussing the division among state and federal appellate courts concerning the type of colloquy required by *Faretta* when

a defendant wishes to waive his right to counsel and represent himself at trial); *see also Dallio v. Spitzer*, 343 F.3d 553, 563 n.4 (2d Cir. 2003) (noting the division among the lower courts); *Buhl v. Cooksey*, 233 F.3d 783, 798 n.17 (3d Cir. 2000) (same); *United States v. Bell*, 901 F.2d 574, 577 n.2 (7th Cir. 1990) (noting “a split in the circuits over the extent of inquiry necessary before allowing an accused to waive his right to counsel”; citing cases); *see generally* Wayne R. LaFave *et al.*, 3 CRIM. PROC. § 11.5(c) (“Requisite Warnings and Judicial Inquiry”) (4th ed. Dec. 2023 update) (discussing the differing approaches of federal and state appellate courts concerning the requirements of a proper *Faretta* colloquy).

III. ABESENT A STAY FROM THIS COURT THE PETITIONER WILL SUFFER IRREPARABLE HARM

The third factor considers whether the applicant “would ... suffer irreparable harm were the stay not granted.” *Karcher*, 455 U.S. at 1306. Here, the threat of irreparable injury if the Fourth Circuit’s mandate is not stayed is clear and manifest. The petitioner is a small business owner who operates several businesses in the Washington D.C. area.

Mr. Jacobs also owns Dominion Construction Firm, LLC. They have signed contracts for a number of building projects. Dominion has 12 employees as well as separate contracting crews for plumbing and electrical who will lose their jobs if Mr. Jacobs is incarcerated.

For all of these events there are 12 employees who have families who are counting on these signed contracts for employment from June 2024 - October 2024

who would be placed in a financial hardship and destitute without Mr. Jacobs presence.

Mr. Jacobs also owns a playground doing business as The Playhouse located at Iverson Mall in Temple Hills which has 15 employees. This venue has several events scheduled in the coming months. All of these employees will also lose their jobs if Mr. Jacobs is incarcerated.

IV. THE BALANCING EQUITIES STRONGLY FAVORS A STAY

As stated above the livelihood of numerous individuals depends on Mr. Jacobs presence in the community. If he is incarcerated not only will he and his employees suffer irreparable economic harm but his reputation as a businessman will be damaged because he will not be able to fulfill the contracts he has agreed to perform.

V. THE RELIEF SOUGHT IS NOT AVAILABLE FROM ANY OTHER COURT

The United States Court of Appeals affirmed Mr. Jacobs conviction on April 23, 2024. The Mandate was issued by the Court of Appeals on June 11, 2024. On June 17, 2024, pursuant to a Motion filed by the government to revoke bond the U.S. District Court ordered the defendant to surrender to the Bureau of Prisons on July 1, 2024.

CONCLUSION

This Court should stay the Fourth Circuit's mandate pending resolution of Percy Jacobs petition for certiorari in this Court.

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UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-4122

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

PERCY LEROY JACOBS, a/k/a Percy El Jacobs, a/k/a Percy Jacobs El, a/k/a
Minister Percy El Jacobs,

Defendant - Appellant,

No. 23-4123

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

SANDRA DENISE CURL, a/k/a Sandra Curl Jacobs, a/k/a Sandra Curl-Jacobs El,
a/k/a Minister Sandra El,

Defendant - Appellant.

Appeals from the United States District Court for the District of Maryland, at Greenbelt.
George Jarrod Hazel, District Judge. (8:19-cr-00444-GJH-2; 8:19-cr-00444-GJH-1)

Submitted: December 15, 2023

Decided: April 23, 2024

Before WILKINSON, KING, and RUSHING, Circuit Judges.

Affirmed by unpublished per curiam opinion.

ON BRIEF: Brent Evan Newton, Gaithersburg, Maryland; Marc G. Hall, Greenbelt, Maryland, for Appellants. David A. Hubbert, Deputy Assistant Attorney General, S. Robert Lyons, Chief, Criminal Appeals & Tax Enforcement Policy Section, Katie Bagley, Joseph B. Syverson, Hannah Cook, DEPARTMENT OF JUSTICE, Washington, D.C.; Erek L. Barron, United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Baltimore, Maryland, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Percy Leroy Jacobs and Sandra Denise Curl¹ (collectively, “Appellants”), appeal their convictions following a jury trial for conspiracy to defraud the United States, in violation of 18 U.S.C. § 371; multiple counts of aiding and assisting the preparation of a false return, in violation of 26 U.S.C. § 7206(2); and aiding and abetting theft of government property, in violation of 18 U.S.C. §§ 2, 641. The district court sentenced them each to 30 months’ imprisonment. On appeal, Appellants contend that the district court (1) erred by granting their requests to waive their right to counsel, and (2) violated the Speedy Trial Act, 18 U.S.C. § 3161. Finding no error, we affirm.

Beginning with Appellants’ waiver of their right to counsel, “[t]he Sixth Amendment guarantees to a criminal defendant the right to the assistance of counsel before he can be convicted and punished by a term of imprisonment.”² *United States v. Ductan*, 800 F.3d 642, 648 (4th Cir. 2015). But it also guarantees a defendant’s right to self-representation. *Faretta v. California*, 422 U.S. 806, 821 (1975). Thus, a defendant may relinquish the right to counsel upon a valid waiver. A waiver of the right to counsel is valid if it is “(1) clear and unequivocal, (2) knowing, intelligent, and voluntary, and (3) timely.” *United States v. Ziegler*, 1 F.4th 219, 226 (4th Cir. 2021) (internal quotation marks omitted).

¹ Curl also used the name Sandra Kenan during the underlying proceedings.

² The parties dispute the standard of review applicable to these claims. We need not resolve this issue because Appellants’ arguments fail under their requested standard of de novo review.

“The Supreme Court has not prescribed any formula or script to be read to a defendant who states that he elects to proceed without counsel.” *United States v. Roof*, 10 F.4th 314, 359 (4th Cir. 2021) (internal quotation marks omitted). And a court need not conduct a “searching or formal inquiry” for a waiver of the right to counsel to be valid. *Ductan*, 800 F.3d at 649 (internal quotation marks omitted). In other words, “no particular form of interrogation is required” for a valid waiver. *Ziegler*, 1 F.4th at 229 (internal quotation marks omitted).

Accordingly, a district court must simply “assure itself that the defendant knows the charges against him, the possible punishment and the manner in which an attorney can be of assistance, as well as the dangers and disadvantages of self-representation,” *Roof*, 10 F.4th at 359 (cleaned up), such that the defendant “knows what he is doing and his choice is made with his eyes open,” *Ziegler*, 1 F.4th at 229 (cleaned up). The district court does this “by examining the record as a whole and evaluating the complete profile of the defendant and the circumstances of his decision as known to the . . . court at the time.” *Roof*, 10 F.4th at 359 (internal quotation marks omitted).

Here, the district court had the Government review the charges against Appellants and the maximum potential penalties, which Appellants confirmed they understood. The court warned Appellants of the risks of proceeding pro se and advised them that it would be in their best interests to continue being represented by counsel. And it confirmed Appellants were freely and voluntarily choosing to relieve counsel and proceed pro se. The colloquies satisfied the district court’s obligation to ensure Appellants’ waivers of their

right to counsel were knowing, intelligent, and voluntary. On the facts of these cases, no more searching inquiry was required.

“We review a district court’s decision to exclude time under the Speedy Trial Act de novo and its factual findings for clear error.” *United States v. Pair*, 84 F.4th 577, 582 (4th Cir. 2023). “The Speedy Trial Act requires that a criminal defendant’s trial commence within seventy days from the filing date of the indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs.” *Id.* (cleaned up). However, it also “specifies various periods of delay that are excluded from the speedy trial clock.” *Id.* As relevant here, such excludable delay includes any “delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion.” 18 U.S.C. § 3161(h)(1)(D). The filing of a pretrial motion “stops the speedy trial clock from running automatically.” *United States v. Tinklenberg*, 563 U.S. 647, 653 (2011).

The parties agree that Appellants’ speedy trial clock commenced on November 25, 2019. And Appellants concede that the district court properly tolled all time from March 31, 2020, through the start of their trial. Accordingly, the relevant period for this appeal covers the 127 days from November 25, 2019, to March 30, 2020. Our review of the record reveals that all but 11 days of this period were tolled by Curl’s December 6, 2019, motion for a *Faretta* hearing. Contrary to Appellants’ contentions on appeal, this filing was a motion within the meaning of § 3161(h)(1)(D). The motion said Curl wished to waive her right to counsel and specifically requested a *Faretta* hearing, and the district court

ultimately granted that request and held a hearing. That hearing was necessary for the district court's resolution of the motion, as the court could not permit Curl to waive her right to counsel without first holding the requested hearing. The filing of this motion thus automatically tolled the speedy trial clock from December 6 through the date of that hearing, which was held after the period Appellants challenge in this appeal. *See United States v. Henderson*, 476 U.S. 321, 326-30 (1986); *see also United States v. Harris*, 491 F.3d 440, 445 (D.C. Cir. 2007); *United States v. Bush*, 404 F.3d 263, 274 (4th Cir. 2005).

We therefore affirm the criminal judgments. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

APPENDIX B

**Order of the Court of Appeals Denying
Rehearing *En Banc***

FILED: May 28, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-4122 (L)
(8:19-cr-00444-GJH-2)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

PERCY LEROY JACOBS, a/k/a Percy El Jacobs, a/k/a Percy Jacobs El, a/k/a
Minister Percy El Jacobs

Defendant - Appellant

No. 23-4123
(8:19-cr-00444-GJH-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

SANDRA DENISE CURL, a/k/a Sandra Curl Jacobs, a/k/a Sandra Curl-Jacobs
El, a/k/a Minister Sandra El

Defendant – Appellant

O R D E R

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Nwamaka Anowi, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA,)	
v.)	Criminal Case No. 19-cr-00444-LKG
SANDRA DENISE CURL, <i>et al.</i> ,)	Dated: June 17, 2024
Defendants.)	

ORDER ON REVOKING BOND PENDING APPEAL

On June 6, 2024, the Government filed a motion for the revocation of bond pending appeal as to Defendant **PERCY LEROY JACOBS**. ECF No. 305. On June 11, 2024, Defendant filed a response in opposition to the Government’s motion. ECF No. 309. No hearing is necessary to resolve the motion. *See* L.R. 105.6 (D. Md. 2023). For the reasons that follow, the Court: (1) **GRANTS** the Government’s motion for revocation of bond pending appeal; (2) **REVOKES** the bond pending appeal previously granted to Defendant; and (3) **DIRECTS** Defendant **PERCY LEROY JACOBS** to **SURRENDER** to the Bureau of Prisons **by 2:00 pm on July 1, 2024**.

On March 28, 2022, Defendant was convicted following a jury trial of: (1) committing a conspiracy to defraud the United States, in violation of 18 U.S.C. § 371; (2) aiding and assisting the preparation of a false tax return, in violation of 26 U.S.C. § 7206(2); and (3) theft of government property, in violation of 18 U.S.C. § 641. ECF No. 175. On February 23, 2023, the Court sentenced Defendant to a term of 30 months incarceration and ordered Defendant to pay \$959,000 in restitution. ECF No. 240. Following Defendant’s appeal of his conviction to the United States Court of Appeals for the Fourth Circuit, the Court determined that Defendant had shown that his appeal raised substantial questions law or fact regarding his *Faretta* waiver. ECF No. 295. And so, the Court granted bond pending the appeal. *Id.*

On April 23, 2024, the Fourth Circuit issued an unpublished *per curiam* opinion, affirming Defendant’s conviction. ECF No. 300. Defendant’s petition for a hearing *en banc* was subsequently denied on May 28, 2024. ECF No. 302. On June 3, 2024, the Fourth Circuit

denied Defendant's motion to stay the mandate pending the filing of a writ of *certiorari* with the United States Supreme Court. ECF No. 304.

Pursuant to Title 18, United States Code, Section 3143(b), "the judicial officer shall order that a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a writ of *certiorari*, be detained, unless the judicial officer finds—(A) by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released under section 3142(b) or (c) of this title; and (B) that the appeal is not for the purpose of delay and raises a substantial question of law or fact likely to result in— (i) reversal [or] (ii) an order for a new trial" 18 U.S.C. § 3143(b). In light of the forgoing, the Court is satisfied that Defendant no longer has a valid claim to a substantial question of law or fact in this case, which "very well could be decided the other way." *United States v. Steinhorn*, 927 F.2d 195, 196 (4th Cir. 1991). And so, the Court declines to further delay the service of the Defendant's sentence.

For the forgoing reason, the Court:

- (1) **GRANTS** the Government's motion for revocation of bond pending appeal;
- (2) **REVOKES** the bond pending appeal previously granted to Defendant **PERCY LEROY JACOBS**; and
- (3) **DIRECTS** Defendant **PERCY LEROY JACOBS** to **SURRENDER** to the Bureau of Prisons **by 2 p.m. on July 1, 2024**.

IT IS SO ORDERED.

s/ Lydia Kay Griggsby

LYDIA KAY GRIGGSBY
United States District Judge