

No. ____

IN THE
SUPREME COURT OF THE UNITED STATES

THOMAS HILL,
Petitioner,

v.

MICHIGAN,
Respondent.

On Petition for Writ of Certiorari to the
Michigan Supreme Court

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

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MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Petitioner Thomas Hill respectfully asks this Honorable Court for leave to proceed *in forma pauperis* so that he may file the accompanying Petition for Writ of Certiorari with this Court.

Petitioner is indigent, and is currently incarcerated in a state prison in Michigan, where he is not receiving any significant income.

Mr. Hill has been represented by appointed counsel throughout the proceedings in the state courts.

RESPECTFULLY SUBMITTED,

BY: _____

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Attorney for Petitioner

Date: January 14, 2010

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APPEARANCE OF COUNSEL

The **STATE APPELLATE DEFENDER OFFICE/CHRISTINE A. PAGAC** hereby enters her appearance as counsel for the Petitioner, **THOMAS HILL**, in this matter.

RESPECTFULLY SUBMITTED,

BY: _____

CHRISTINE A. PAGAC
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PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

- I. **Must a court honor a defendant's assertion of his constitutional right to represent himself where that request was made before jury selection began and not done for purposes of delay?**

PARTIES

All parties appear in the caption of the case on the cover page.

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Thomas Hill

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Thomas Hill respectfully petitions for a writ of certiorari to the Supreme Court of the State of Michigan in *People v Hill*, Wayne County criminal case number 07-011713-01.

OPINION BELOW

The order of the Michigan Supreme Court affirming the Court of Appeals' conclusion that Mr. Hill was not denied his right to self-representation was unpublished and is attached hereto as Appendix A. The published opinion of the Michigan Court of Appeals, reported at 766 N.W.2d 17 (Mich.App. 2009), is attached hereto as Appendix B. A copy of the portion of the transcript in the trial court where Petitioner sought to represent himself and the trial court's denial of that request is attached hereto as Appendix C.

JURISDICTION

The Michigan Supreme Court issued its order affirming the Court of Appeals' conclusion that Mr. Hill's right to self-representation was not denied, but for reasons other than those stated by the lower court, on October 16, 2009. Appendix A. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

This case arises under the Sixth and Fourteenth Amendments to the United States Constitution. The Sixth Amendment provides in part, "In all criminal prosecutions, the accused shall enjoy the right . . . to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense." U.S. Const. amend. VI. The

Fourteenth Amendment to provides in part, “[N]or shall any state deprive any person of life, liberty, or property, without due process of law ...“U.S. Const. amend XIV.

STATEMENT OF THE CASE

In *Faretta v California*, 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975) this Court held that a defendant has “a constitutional right to proceed without counsel.” *Faretta* does not place a limit on when the defendant must make such a request, although the Court’s opinion does note that *Faretta*’s request had come weeks before trial. *Id.* at 835. In *Martinez v Court of Appeal*, 528 U.S. 152, 162, 120 S. Ct. 684, 145 L.Ed. 2d 597 (2000), this Court noted that most courts require defendants to assert the right to self-representation in a timely manner. This Court, however, has never addressed when a request is timely (or if there is such a requirement). While all courts agree that generally timely requests must be honored, the lower federal courts and the state courts have split as to when a request is timely. With its decision that a request made before a jury is empanelled is untimely, without any evidence the request was made to delay the trial, Michigan joins the position taken by the minority of the courts.

1. On the morning of his trial, before the jury was empanelled, Petitioner Thomas Hill asked to be allowed to represent himself. Pet. App. C at 3. That request was summarily denied by the trial court:

No. The court is not going to allow that, especially at the last minute. Also, it’s not going to be helpful. There is no early indication of this. We are ready to proceed with the trial at this time. To be prepared for that, and to inform the Defendant and have him prepared for following the rules of asking questions and rules of evidence, the court is going to have to do that during the trial. So at this point it’s not going to work.

You may consult with your attorney. We are going to have you sitting right next to him. If you would like paper and pen to tell him what you would like, how you would like things, you can do that.

We expect and want you to have all the participation you want. We also want you to have a legal representative to follow the rules of the courtroom. So at this time it is denied.

Pet. App. C at 3-4.

2. After trial, where he was represented by counsel, Mr. Hill was convicted of armed robbery and carjacking and sentenced to 20 to 40 years in prison. Pet. App. B at 1. Mr. Hill timely appealed his conviction to the Michigan Court of Appeals, arguing among other things that he was entitled to a new trial because his right to self-representation had been denied.

3. The Michigan Court of Appeals affirmed. Pet. App. B. In its opinion, the court held that Mr. Hill had not effectively waived his right to counsel because Mr. Hill's counsel, rather than Mr. Hill himself, had informed the trial court of Mr. Hill's desire to proceed pro se. Pet. App. B at 7-8. The dissenting judge would have held that the trial court had wrongfully denied Mr. Hill his Sixth Amendment right to self-representation and granted him a new trial. Pet. App. B at 11-12.

4. Mr. Hill timely sought leave to appeal to the Michigan Supreme Court, which affirmed the Court of Appeals ruling, but on other grounds, in an order issued on October 16, 2009. Pet. App. A. The majority held that Mr. Hill's request had not been timely and so the trial court had not erred in denying it. Pet. App. A at 1. The dissenting justice would have found the request to have been timely and the summary denial of his request to have deprived him of his Sixth Amendment right to self-representation. Pet. App. A at 2-3. This petition followed.

REASONS TO GRANT THE WRIT

This Court should grant certiorari to resolve the split of authority as to when then assertion of the right to self-representation is timely made and so must be honored.

A defendant in a criminal case has a constitutional right to represent himself. *Faretta v. California*, 422 U.S. 806 (1975). In *Indiana v. Edwards*, ___ U.S. ___, 128 S.Ct. 2379 (2008), this Court summarized the basis for the implied right found in *Faretta* as arising from: “(1) a nearly universal conviction, made manifest in state law, that forcing a lawyer upon an unwilling defendant is contrary to his basic right to defend himself if he truly wants to do so, (2) Sixth Amendment language granting rights to the accused; (3) Sixth Amendment structure indicating that the rights it sets forth, related to the fair administration of American justice, are persona[l] to the accused; (4) the absence of historical examples of forced representation, and (5) respect for the individual.” *Id.* at 2383 (citations omitted).

In the thirty-five years since *Faretta* was decided, most courts have imposed a requirement that the assertion of the right be timely. *See, Martinez v. Court of Appeal*, 528 U.S. at 162; W. LaFave, J. Israel, N. King and O. Kerr, *Criminal Procedure* § 11.5(d) (5th ed. 2009). The question of timeliness, however, has never been addressed by this Court. The *Faretta* opinion simply stated that the request in that case had been made “well before the date of trial.” 422 U.S. at 807

Lower courts addressing the issue have not answered the question consistently. The majority position is that a request is timely if it is made before the jury is empanelled and not made for the purposes of delay. The lower federal courts have generally reached this conclusion. *See, e.g., United States v. Tucker*, 451 F.3d 1176, 1180-1181 (10th Cir. 2006) (cases collected);

Lewis v. Robinson, 67 Fed Appx 914, 919 (6th Cir 2003) (“a self-representation request is typically timely if made prior to the selection and swearing of the jury”); *United States v. Young*, 287 F.3d 1352, 1353 (11th Cir. 2002); *United States v. Betancourt-Arretuche*, 933 F.2d 89, 96 (1st Cir.) (“In general, a *Faretta* request is timely only if it is asserted before the jury is empanelled”), *cert. denied*, 112 S. Ct. 421 (1991); *Chapman v. United States*, 553 F.2d 886, 887 (5th Cir. 1977); *United States v. Price*, 474 F.2d 1223, 1227 (9th Cir.), *reh'g denied*, 484 F.2d 485 (9th Cir. 1973); *United States v. Dougherty*, 473 F.2d 1113, 1124 (D.C. Cir. 1972); *United States ex rel. Maldonado v. Denno*, 348 F.2d 12, 16 (2d Cir. 1965), *cert. denied*, 384 U.S. 1007, 86 S. Ct. 1950, 16 L. Ed. 2d 1020 (1966). Several state courts have reached the same conclusion. *Arizona v. Lamar*, 72 P.3d 831, 835-36 (Ariz. 2003); *Blankenship v. State*, 673 S.W.2d 578, 585 (Tex.Crim.App.1984); *see also Thomas v. Virginia*, 539 S.E.2d 79, 82 (2000) (citing federal cases with approval and noting the “universal” rule among the federal courts as to timeliness)

A minority of state courts have held, however, that a request is untimely if made on the day of trial. The Michigan Supreme Court’s holding in this case is only the latest. California, Indiana, Nevada and Wyoming also require that the request be made a “reasonable” time before trial commences. *California v. Windham*, 560 P.2d 1187, 1191 (1977); *Lyons v. Nevada*, 796 P.2d 210 (1990), overruled in part on other grounds, *Vanisi v. Nevada*, 22 P.3d 1164 (2001); *Williams v. Wyoming*, 655 P.2d 273, 276 (1982); *Russell v. Indiana*, 383 N.E.2d 309 (1978)

This Petition provides this Court with the opportunity to provide guidance to the lower courts as to when a request for self-representation is timely made, resolving the split that has developed in particular between the federal and state courts on the issue.

CONCLUSION

For the reasons discussed above, Mr. Hill respectfully seeks a Writ of Certiorari.

RESPECTFULLY SUBMITTED,

BY:

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