No. 03-7756

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IN THE

SUPREME COURT OF THE UNITED STATES

SUPREME COURT, U.S.
FILED
NOV 21 2003
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In re JOHNATHAN S. WILLIAMS — PETITIONER

vs.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA — RESPONDENT

D. RUNNELLS, Warden, et al., — Real Party in Interest

PETITION FOR WRIT OF HABEAS CORPUS

Johnathan S. Williams
CDC # K-46368
High Desert State Prison
P.O. Box 3030
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Susanville, CA 96127

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IN PROPRIA PERSONA

QUESTION(S) PRESENTED

1. DID THE DISTRICT COURT COMMIT LEGAL ERROR BY DISMISSING THE HABEAS PETITION CITING DUNCAN v. HENRY, WHILE ADMITTING THAT THE SAME LEGAL THEORY AND FACTS HAD BEEN PRESENTED TO THE CALIFORNIA SUPREME COURT?

2. WAS THE HABEAS PETITIONER ENTITLED TO PLENARY AND DE NOVO REVIEW OF HIS HABEAS PETITION PRIOR TO ANY DISMISSAL?

3. SHOULD THE DISTRICT COURT, AS A MATTER OF LAW AND AND EQUITY HAVE ISSUED THE WRIT GIVEN THE CLEAR ERROR ON THE PART OF THE STATE DURING TRIAL WHICH WAS A STRUCTURAL ERROR, i.e. THE FARETTA, AND SIXTH AMENDMENT VIOLATIONS?

4. WAS THE PETITIONER ENTITLED TO THE ISSUANCE OF A CERTIFICATE OF APPEALABILITY ON THE LEGAL QUESTION OF THE DISMISSAL, AND OF THE FEDERAL GROUNDS FOR RELIEF WITHIN THE WRIT?

5. IS THE PETITIONER ENTITLED TO AN IMMEDIATE GRANT OF THE WRIT WHEN THE RECORD REFLECTS THAT THE TRIAL COURT DENIED HIM THE RIGHT TO FILE A HABEAS PETITION PRIOR TO TRIAL?

6. DOES THE LAW AS STATED IN 28 U.S.C.S. § 1654 APPLY TO THE SUPERIOR COURTS OF CALIFORNIA AND PRECLUDE CALIFORNIA SUPERIOR COURTS FROM DENYING CRIMINAL DEFENDANTS THE RIGHT TO DEFEND THEMSELVES PERSONALLY AT ANY TIME?

STATEMENT OF THE CASE

The instant petition for original writ of habeas corpus follows a denial of mandate , but raises a question that has been the subject of much litigation in the Ninth Circuit due to the failure of some of the California Superior Courts to adhere to the stare decisis of the Faretta v. California, decision. This has had the adverse effect of costing the federal system enormous amounts of time and the unjustified waste of judicial resources.

Thus, petitioner submits for the Court the proposition that perhaps it is time for the Court to revisit Faretta, and clarify the rights of a citizen to represent himself when he desires to do so. The Court has on numerous occasions denied certiorari on the "bright-line" Ninth Circuit Rule, and has never decided a Faretta question under the new A.E.D.P.A. procedural rules. The Faretta question was presented to the Court in similar circumstances in Calderon v. Moore, 518 US 149 (1996). There, as here, a defendant in California sought to represent himself prior to trial but was denied same. While that case dealt with a prisoner under sentence of death, and was therefore insured a full review of the record, petitioner's case involves a sentence of "living death" or life imprisonment.

California's "within a reasonable time prior to trial[,]" standard is inconsistently applied (see People v. Windham, 19 Cal.3d 121, 127-128). Furthermore, the state's own arguments consistently go against the "bright-line rule for timeliness of Faretta requests" set by the Ninth Circuit as "a gloss to Faretta". (See Moore v. Calderon, 108 F.3d 261, 264-265 (9th Cir. 1997), (holding Faretta requests "timely if made before jury is empaneled, unless it is shown to be a tactic to secure

delay.) (citing cases, bold emphasis added). given the number of legal opinions engendered by the "bright-line" standards legal limitation that is placed on defendants who rely on the strict holding of Faretta, petitioner prays that the Court will revisit Faretta, and rule on the differences of opinion that are wide spread across the circuits.

In the state proceedings the petitioner not only sought to represent himself, but had motions he submitted pro se ruled upon by the trial court. The trial court denied over twelve (12) motions filed by petitioner even writing on the documents that the defense "strategy" was counsels right to choose. Since Faretta relies upon Adams v. United States ex rel. McCann, 317 US 269 (1942), petitioner relies upon the dispositive legal holding in **both** cases for relief here. Adams held specifically that "the Constitution does not force a lawyer upon a defendant." Id., at 279, 87 L.Ed 268. However, any examination by the Court of the trial record will reveal that from the moment that V. Gray replaced attorney C. Cervantes (who had declared a conflict of interest) the petitioner sought to have her removed as his attorney.

Given Faretta's clear recognition of the Court's prior ruling in Snyder v. Massachusetts, 291 US 97 (1934) that petitioner was entitled to "conduct the trial himself[,]" the trial record shows California Supreme Court's affirmance of the denial of "fundamental rights", did "imprison [petitioner] in his privileges and call[ed] it the Constitution." Faretta, supra, 422 US at 815-818. Petitioner posits that these holdings of the Court were not given full faith and obedience by the trial court and then the ruling was upheld by the reviewing courts when by law it should have been summarily reversed. Likewise the denial of the ability to file a habeas petition prior to trial or at ANY time.

At the same time this utilization of the application of basic constitutional fairness, will avoid improper delay, expense,clarify issues, and avoid interference with the State's interest in finality. Since the writ has been called an "equitable remedy", it does not authorize any court to ignore any statutes, rules, or precedents."There is no such thing in the Law as Writs of Grace and Favor issuing from the Judges." Opinion on the Writ of Habeas Corpus, Wilm. 77, 87, 97 Eng. Rep. 29, 36 (1758) (Wilmot, J.). As Selden pointed out decades ago,"the alternative is to use each [judges] conscience as a measure of equity, which alternative would be as arbitrary and uncertain as measuring distance by the length of each [judges] foot. See 1 J. Story, Commentaries on Equity Jurisprudence.

Therefore while the limen for reversal of a district court's denial of a motion is high, "to say that a district court may excercise discretion is not to say that such discretion is unreviewable." Discretionary choices "are not left to a court's inclination, but to its judgement, and its judgement is to be guided by sound legal principles." Albermarle Paper Co. v. Moody, 422 US 405,416, 45 L.Ed 2d 280 (1975) Here, petitioner challenges BOTH the denial of the writ on procedural grounds, as well as a violation of procedural due process requesting summary reversal, disposition, and judgement in his favor in light of the precedent established by United States Supreme Court Justice O'Connor in the case of Moore v. Calderon, 108 F.3d 261 (9th Cir. 1997), as these facts cannot be disputed:

1. On 10/10/96,"day 10 of 10" for trial (see DAG's Motion to Dismiss, hereafter M.D., at pg. C-152), long before empanelment of jury or start of trial; [t]he trial court...denied the [petitioner's] Faretta motion as untimely." (See Appendix A, at pages 8-10, Cal. App. Opinion)

2. Seeing his Federal constitutional rights being violated petitioner sought to seek relief via habeas corpus but was denied. See exhibit #31.

3. On 12/02/96, the trial court denied a Faretta request as "untimely" (App. A

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at page 10) and refused to rule on motions submitted by petitioner (who had asked trial counsel to either submitt the motions or join in them).

4. On 12/04/96, after more vituperative conflict with trial counsel, counsel stated, "I've offered for him to go pro per if he wants."(Appendix A, at p. 11-12)

The DAG's M.D. states that "Appellant does not dispute that his motions to proceed pro per on December 2, 4, and 6 were untimely"(M.D. at C-166),this completely misstates one of petitioner's central arguments, and is yet another example of the California Attorney Generals Office's use of **preter legal litigation tactics**. As not only was petitioner challenging the Faretta violations in a **concomitant habeas petition** (this petition in fact, grounds, and substance), but petitioner's state appointed appellate counsel was also challenging the Faretta issues both directly on appeal and in yet another habeas petition. See M.D. page E-220.

It is clear from the Cal. App. Opinion at p 13-15, that the California Appellate Court **did not apply the correct legal standard cited in Moore, supra.** Although the appellate court admits, as is must for the record is clear, that the jury was NOT impanelled until 12/04/96, and that on 12/06/96, the following colloquy occurred:

(see Appendix A, pages 11-12) "I would like to renew my motion for pro per status. I would like to make a standing objection to [defense counsel] continuing as my counsel because she's doing nothing in my best interest." The trial court stated, "thank you very much. [¶] Right now we are going to proceed."

At Appendix A, p. 8-9, the appellate court states the Faretta Standard as, when the request is made "within a reasonable time prior to the commencement of trial."citing, People v. Windham 19 Cal 3d at pp. 127-128, which fails to follow the case law of Faretta and More, supra. Thus, the resolution of this case should logically follow the Court's resolution of Moore v. Calderon, 108 F.3d 261 (9th Cir. 1997).

The petitioner prays that the court understands that the trial court acted "in excess of jurisdiction" prior to and during petitioner's trial.

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A. PROCEDURAL HISTORY

1. On 12/29/01, the petitioner filed the instant petition for writ of habeas corpus, which was referred to Magistrate Judge A.I. Jones, without notification as required to comply with federal due process, and 90 Stat 2729, 28 U.S.C. § 636(b)(2).

2. On 01/19/00, the respondent was ordered to "serve and file a return... on or before **March 20, 2000.**" (See District Court Docket number 03)(hereafter DC dkt.#__). The respondent has never complied.

3. On 01/26/01, petitioner's "MOTION FOR ONGOING PRIVILEGED USAGE OF LAW LIBRARY...", was not "FILED" as required by F.R.Civ.P. 5(e), but was instead returned to petitioner, in violation of the amendment to the Civil Rules made by Congress in 1997.

4. On 03/17/00, respondent made a request for enlargement of time which contained material facts that were contested by the petitioner as untrue, and formally objected to (see DC dkt.#'s 11 and 13).

5. On 04/19/00, the respondent filed a motion to dismiss, but did NOT, as a matter of law adhere to the order of 01/19/00, which required an answer to the allegations made in the petition, as required by the "RULES GOVERNING § 2254 CASES...", Rules 04 and 05.

6. On 06/16/00, the petitioner filed a "MOTION FOR LIMITED DISCOVERY..", which was denied by the magistrate in violation of the Federal Magistrates Act and "contrary to" the Supreme Court's interpretation of same in Gomez v. United States, 490 U.S. 858 (1989) and Peretz v. United States, 501 U.S. 923 (1991). See DC dkt#'s 23 & 25.

7. On 07/31/00, the petitioner's "MOTION FOR PRELIMINARY INJUNCTION...", was filed because the petitioner sent copies to multiple

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jurisdictions, but the initial Temporary Restraining Order was never filed, violating the petitioner's First Amendment right of access to the Court. See DC dkt. #31, and Appendix C.

8. On 08/06/00, the petitioner's interlocutory appeal of the District Court's denial of "LIMITED DISCOVERY...", was stamped and "RECEIVED CHAMBERS OF STEPHEN REINHARDT U.S. CIRCUIT JUDGE". See DC dkt. #41 and Appendix B.

9. Both the motion for preliminary injunction/temporary restraining order, and the limited discovery request (including the subsequent interlocutory appeal) were denied without a hearing, **although there was NO DENIAL of the operative facts by the respondent's counsel.**

10. On 08/21/00, the petitioner's declaration of emergency was filed, but there was no investigation into the allegations made, although again there was no denial of the substantive facts.

11. On 10/24/00, the petitioner moved for sanctions, and requested a special master to investigate the conduct of the respondent. See DC dkt. #47. The motion was denied **without any hearing by the magistrate**, another violation of Gomez and Peretz, supra, further usurping the procedural rights of the petitioner to timely Article III adjudication of the petition, in conformity with F.R.Civ.P. 1.

12. On 11/01/00, the petitioner sought to vacate the magistrate, in order to obtain a timely resolution of his claims on their merits.

13. On 11/14/00, the petitioner was assigned 9th Circuit number 00-56898, on the interlocutory appeal of the denial of limited discovery, raising the "scienter" of the respondent's counsels use of procedural bars rejected by both the Supreme Court, and the 9th Circuit. The jurisdiction consistently asserted was 28 USC § 1292.

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14. On 12/13/00, the Ninth Circuit Clerk docketed as "RECEIVED", the petitioner's docketing statement (asserting jurisdiction under 28 USC § 1292), an informa pauperis application, and a request for the appointment of counsel, and a request for a court order of protection of the petitioner and the "status quo".

15. According to the circuit docketing statement (not received by the petitioner until 06/19/01, despite numerous requests for same the motions filed by the petitioner in the Ninth Circuit were "MOOT-SENT TO CASE FILE", but never reviewed by any judge of the circuit. It is therefore unknown whether ANY pleading received Article III review

16. On 04/16/01, pursuant to an order signed by Susan Gelmis, a motions attorney, the circuit court dismissed the appeal, stating, "this court lacks jurisdiction..." citing "28 U.S.C. § 1291; Chacon v. Babcock, 640 F.2d 221 (9th Cir. 1981)" as authority, however, th appeal had been expressly filed as an interlocutory pursuant to the provisions of 28 U.S.C. § 1292 (see Appendix B, and jurisdiction asserted therein, and compare circuit denial, Appendix F, attached).

17. On 04/27/01, petitioner filed a timely motion for rehearing, but was not notified that it was "FILED", until 05/18/01, which had the affect of denying plenary review of the action or any procedural attempt by the petitioner for a hearing by a Ninth Circuit Judge.

18. On 05/29/01, the court denied the motion for rehearing without any briefing, or rebuttal by respondent, further depriving the petitioner of procedural due process, and equal protection of law.

19. On 06/06/01, the Ninth Circuit mandate issued denying case number 00-56898.

20. On 04/27/02, this Court denied rehearing in 122 S.Ct. 1637 (No. 01-7167)

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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

JONATHAN S. WILLIAMS,

Defendant and Appellant.

B111675

(Super. Ct. No. SA022409)

COURT OF APPEAL - SECOND DIST.
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JOSEPH A. LANE Clerk
G. L. VILLANUEVA Deputy Clerk

THE COURT:*

Jonathan S. Williams appeals from the judgment entered upon his conviction by jury of kidnapping for the purpose of robbery, carjacking, and possession of a firearm by a convicted felon (Pen. Code, §§ 209, subd. (b), 215, subd. (a), 12021, subd. (a)(1)), with findings by the trial court that he had sustained three prior serious felony convictions within the meaning of the Three Strikes law (Pen. Code, §§ 1170.12, subds. (a)-(d), 667, subds. (b)-(i)) and two prior serious felony convictions within the meaning of Penal Code section 667, subdivision (a), as well as two prior felony convictions for which he served

* FUKUTO, Acting P.J., NOTT, J., and ZEBROWSKI, J.

separate prison terms (Pen. Code, § 667.5, subd. (b)).[1] He was sentenced to 2 consecutive terms of 25 years to life in prison with a 10-year enhancement.

He contends (1) that his detention was unjustifiably prolonged and his trial counsel provided ineffective assistance for failing to raise this issue at the hearing on the motion to suppress evidence; (2) that the trial court denied him a reasonable continuance to prepare to represent himself; (3) that the trial court abused its discretion in failing to consider the appropriate factors relevant to his decision to represent himself; (4) that the trial court erred in sentencing him under the Three Strikes law to 25 years to life on the kidnapping for robbery count; (5) that his sentence is disproportionate to the offenses; and (6) that the trial court abused its discretion and denied him due process when it declined to strike any of his prior convictions.[2]

Respondent contends (1) that the abstract of judgment must be corrected to change the number of days of conduct credit awarded; and (2) that the judgment must be modified to impose a fine pursuant to section 1202.45.

FACTS

The evidence established that on the evening of January 30, 1995, appellant and a companion identified as Joseph returned to the home of Raffi Boujikian, a North Hollywood car dealer, to test drive a black 1989 Porsche Boujikian had for sale. A few days earlier, Boujikian had permitted Joseph and appellant, who was introduced to Boujikian as a mechanic, to meet him at his home in the evening, rather than at the dealership, to test drive the vehicle. This time, as before, appellant drove the car, accompanied by Boujikian, while Joseph remained at Boujikian's house.

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1 Unless otherwise specified, all further statutory references are to the Penal Code.

2 Appellant has filed a petition for writ of habeas corpus, case no. B127640. A separte order has will be filed in that matter.

FILED
JUL 25 2003
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: JOHNATHAN S. WILLIAMS JOHNATHAN S. WILLIAMS, Petitioner, v. UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, Respondent, A C NEWLAND, Real Party in Interest.	No. 03-71625 D.C. No. CV-99-12892-GHK Central District of California, Los Angeles ORDER

Before: LEAVY, HAWKINS and RAWLINSON, Circuit Judges

Petitioner's motion to exceed the 20 pages limit is granted.

Petitioner has not demonstrated that this case warrants the intervention of this court by means of the extraordinary remedy of mandamus. *See Bauman v. United States Dist. Court*, 557 F.2d 650 (9th Cir. 1977). Accordingly, the petition is denied.

All pending motions are denied as moot.

No motions for reconsideration, modification, or clarification of this order shall be filed or entertained.

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOHNATHAN S. WILLIAMS,

Petitioner-Appellant,

v.

A.C. NEWLAND, Warden,

Respondent-Appellee.

No. 00-56898

DC# CV-99-12892-GHK
Central California
(Los Angeles)

ORDER

Before: SNEED, KOZINSKI and RYMER, Circuit Judges

A review of the record demonstrates that this court lacks jurisdiction over this appeal because the order challenged in the appeal is not final or appealable. *See* 28 U.S.C. § 1291; *Chacon v. Babcock*, 640 F.2d 221 (9th Cir. 1981) (order is not appealable unless it disposes of all claims as to all parties). Consequently, this appeal is dismissed for lack of jurisdiction. All pending motions are denied as moot.