



**Faretta v.**  
**California**

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The Right to Self  
Representation

# Farett v. California

(1974) 422 U.S. 806

The question before us now is whether a defendant in a state criminal trial has a constitutional right to proceed without counsel when he voluntarily and intelligently elects to do so. Stated another way, the question is whether a State may constitutionally haul a person into its criminal courts and there force a lawyer upon him, even when he insists that he wants to conduct his own defense.

# FACTS

- Grand Theft Prosecution
- The Public Defender was appointed to represent  $\Delta$ .
- “Well before the date of the trial,”  $\Delta$  asks the trial court to permit him to represent himself.
- The judge told  $\Delta$  he was making a mistake and that he would receive no special favors, but after informing the court that he had a high school education and had represented himself in the past, the trial court preliminarily granted  $\Delta$ ’s request.
- Weeks before trial, the court held a hearing and asked questions of  $\Delta$  regarding hearsay and jury selection.
- Unsatisfied with  $\Delta$ ’s answers, the court reversed its preliminary ruling and denied the motion for self-representation.



## Farettav. California Analysis

The Sixth Amendment does not provide merely that a defense shall be made for the accused; it grants to the accused personally the right to make his defense. It is the accused, not counsel, who must be "informed of the nature and cause of the accusation," who must be "confronted with the witnesses against him," and who must be accorded "compulsory process for obtaining witnesses in his favor." Although not stated in the Amendment in so many words, the right to self-representation -- to make one's own defense personally -- is thus necessarily implied by the structure of the Amendment. The right to defend is given directly to the accused; for it is he who suffers the consequences if the defense fails.

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We confront here a nearly universal conviction, on the part of our people as well as our courts, that forcing a lawyer upon an unwilling defendant is contrary to his basic right to defend himself if he truly wants to do so . . .

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## How Can a Trial Where a Defendant is Representing Themselves Be Fair?

The right to defend is personal. The defendant, and not his lawyer or the State, will bear the personal consequences of a conviction. It is the defendant, therefore, who must be free personally to decide whether in his particular case counsel is to his advantage. And although he may conduct his own defense ultimately to his own detriment, his choice must be honored out of "that respect for the individual which is the lifeblood of the law."



# EXERCISE OF THE RIGHT TO SELF-REPRESENTATION

When an accused manages his own defense, he relinquishes, as a purely factual matter, 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. Although a defendant need not himself have the skill and experience of a lawyer in order competently and intelligently to choose self-representation, **he should be made aware of the dangers and disadvantages of self-representation**, so that the record will establish that "he knows what he is doing and his choice is made with eyes open."

## Godinez v. Moran (1993) 509 U.S. 389

“This case presents the question whether the competency standard for pleading guilty or waiving the right to counsel is higher than the competency standard for standing trial. We hold that it is not.”

- Nevada prosecution for 3 counts of Murder.
- $\Delta$  was examined by 2 doctors and deemed to be competent to stand trial.
- $\Delta$  advised court that he wanted to represent himself and plead guilty.

# Definition of Incompetence to Stand Trial

A defendant is mentally incompetent for purposes of this chapter if, as a result of a mental health disorder or developmental disability, the defendant is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner.

- Cal Pen Code § 1367

# Admonition of Defendant

- The Court advised Δ:
  - Of the “dangers and disadvantages” of self-representation, AND
  - The Court inquired into Δ’s understanding of the proceedings AND
  - Δ’s awareness of his rights asking why he had chosen to represent himself.
- The Court then accepted Δ’s Waiver of Counsel.
- The Court advised Δ of his rights and Δ then pled guilty.

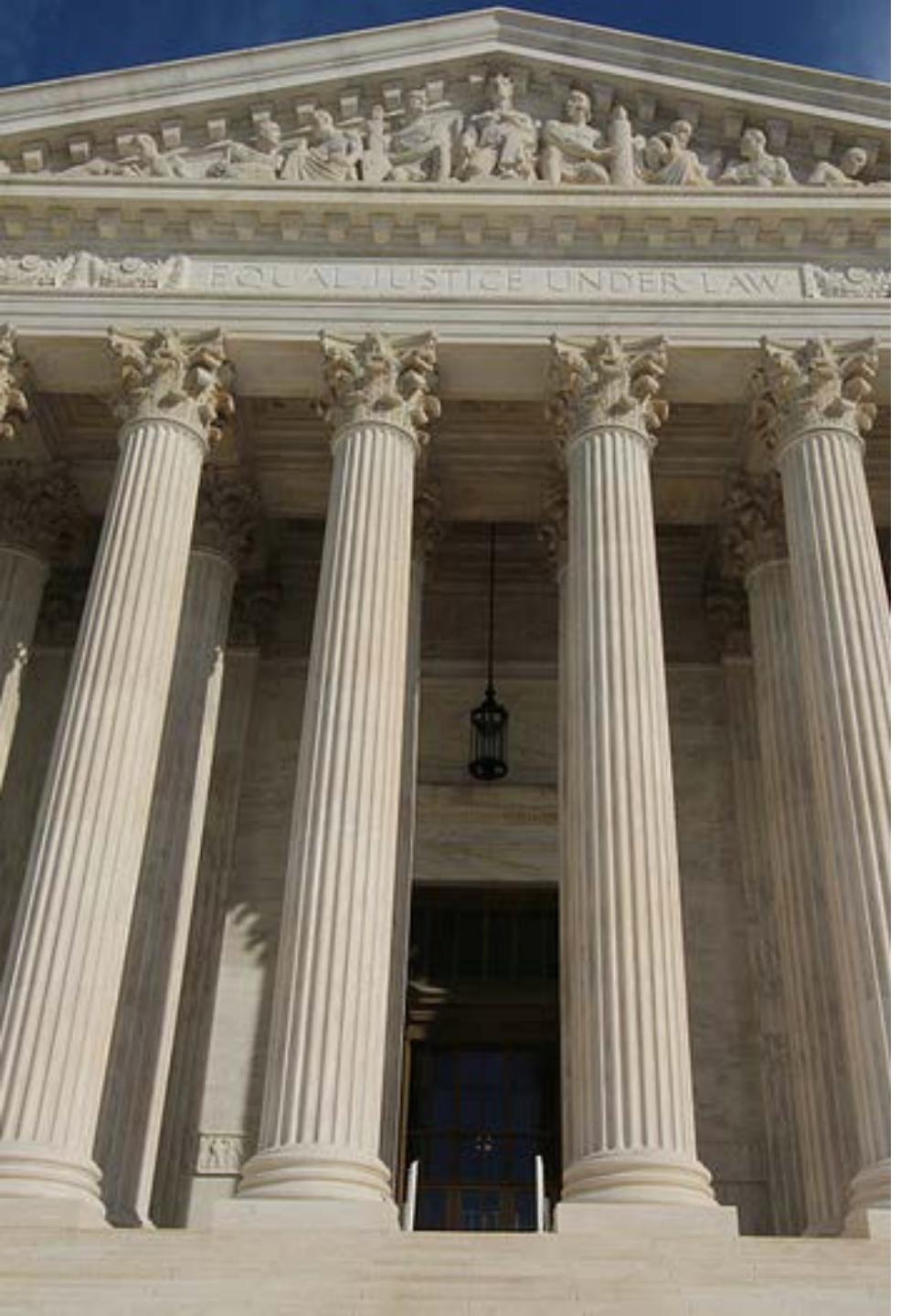
Δ was ultimately sentenced to death.



# Writ of Habeas Corpus

- Δ claimed he was mentally incompetent to waive his right to an attorney.
- Respondent argued that the finding of competence to stand trial established Δ's competence to waive his right to counsel and represent himself.
- Ninth Circuit disagreed and held,

“[T]he state court's postconviction ruling was premised on the wrong legal standard of competency . . . Competency to waive constitutional rights . . . requires a higher level of mental functioning than that required to stand trial.”



# The United States Supreme Court

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- If the *Dusky* standard is adequate for defendants who plead not guilty, it is necessarily adequate for those who plead guilty. Nor do we think that a defendant who waives his right to the assistance of counsel must be more competent than a defendant who does not, since there is no reason to believe that the decision to waive counsel requires an appreciably higher level of mental functioning than the decision to waive other constitutional rights.
- Importantly, the Court held, “[T]he competence that is required of a defendant seeking to waive his right to counsel is the competence to waive the right, **not the competence to represent himself.**”

# HOLDING

A finding that a defendant is competent to stand trial, however, is not all that is necessary before he may be permitted to plead guilty or waive his right to counsel. In addition to determining that a defendant who seeks to plead guilty or waive counsel is competent, a trial court must satisfy itself that the waiver of his constitutional rights is **knowing and voluntary**. In this sense there is a "heightened" standard for pleading guilty and for waiving the right to counsel, **but it is not a heightened standard of competence**.



## California Caselaw – Competence to Stand Trial = Competence to Represent Oneself People v. Nauton (1994) 29 Cal.App.4<sup>th</sup> 976

- Assault with a Firearm prosecution.
- Δ is initially represented by a Public Defender.
- Δ requests that the Court allow him to represent himself.
- Without ruling on the request, the Court put the case over 1 day for Δ to reconsider his request.
- The next day, defense counsel declared a doubt regarding Δ's competency to stand trial.
- Following the receipt of doctors' reports, Δ was found competent.
- One of the examining physicians noted Δ was "bizarre," "eccentric" and noted Δ should not be permitted to represent himself.
- Δ's *Faretta* motion is denied.



# California Courts' Application of *Godinez*

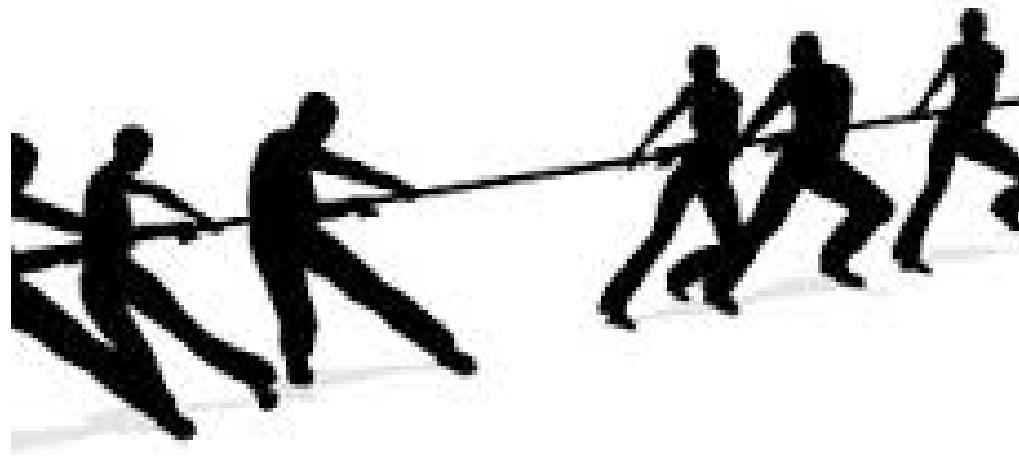
Once defendant asserts [the right to self-representation], the court must determine whether he has the mental capacity to make a voluntary and intelligent waiver of the right to counsel. In making this determination, "[t]he trial court is not concerned with the wisdom of defendant's decision to represent himself, or with how well he can do so. The sole relevant question is whether the defendant has the mental capacity to knowingly waive counsel while realizing the probable risks and consequences of self-representation. . . ."

In the present case, the court found defendant competent to stand trial but "not competent to make the decision to represent yourself or, in effect, [to] represent yourself." These rulings are antithetical.

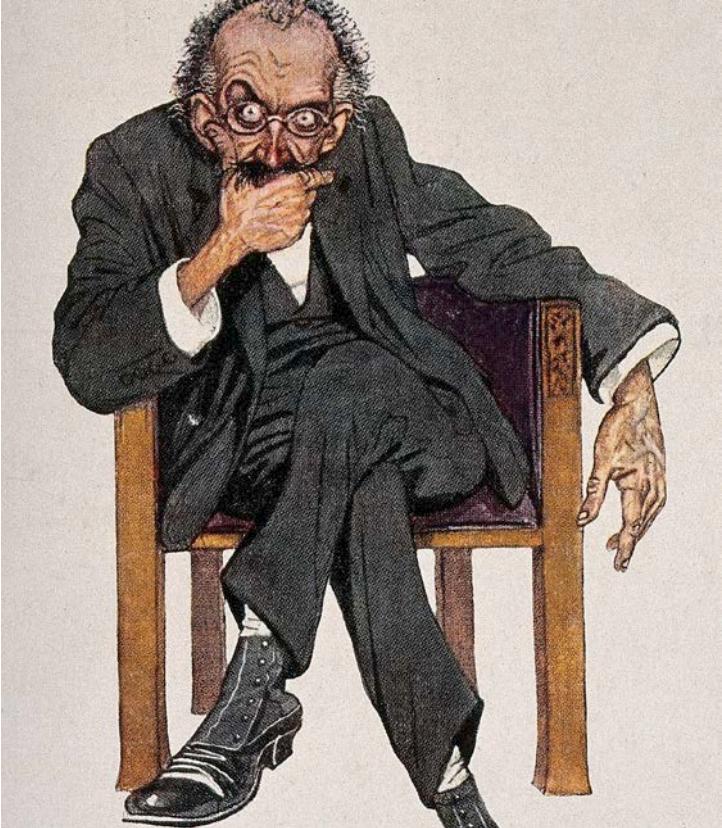


# Indiana v. Edwards(2008) 554 U.S. 164

- Δ steals a pair of shoes, is pursued by security, fires a gun, and wounds a bystander.
- 5 months after his arrest, and after receipt of doctors' reports Δ is declared incompetent to stand trial. 7 months later Δ is restored.
- Defense attorney again declares a doubt and additional doctors examine Δ. Δ is declared competent to stand trial.



# FINAL COMPETENCY PROCEEDING



- Defense counsel presented psychiatric testimony that  $\Delta$  suffered from “serious thinking difficulties and delusions” and that he “could understand the charges against him, but he was ‘unable to cooperate with his attorney in his defense because of his schizophrenic illness’; ‘[h]is delusions and his marked difficulties in thinking make it impossible for him to cooperate with his attorney.’”
- $\Delta$  was declared incompetent. 8 months later he was restored.

# JURY TRIALS

## TRIAL #1

- $\Delta$  made a *Farett*a motion just prior to trial and indicates that he will need a continuance. The motion is denied and  $\Delta$  is convicted of theft and criminal recklessness, but hung on the attempted murder charge.

## TRIAL #2 (Re-Trial on Attempted Murder)

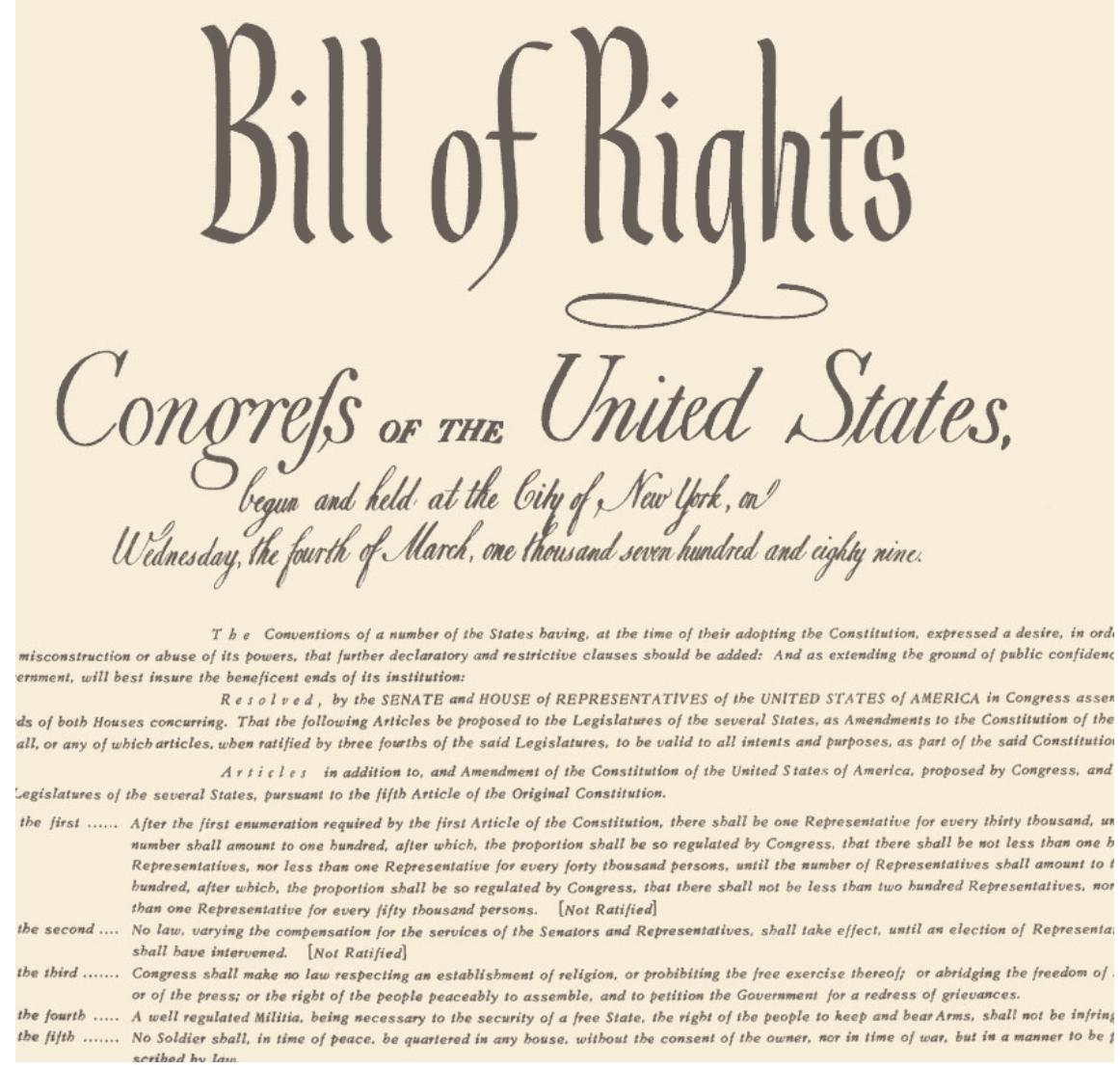
- $\Delta$  renewed his *Farett*a motion. The Court denied the motion referencing the volume of doctors' reports and concluding  $\Delta$  was "competent to stand trial but . . . not . . . competent to defend himself."  $\Delta$  was convicted.



## Indiana v. Edwards (2008) 554 U.S. 164 - HOLDING

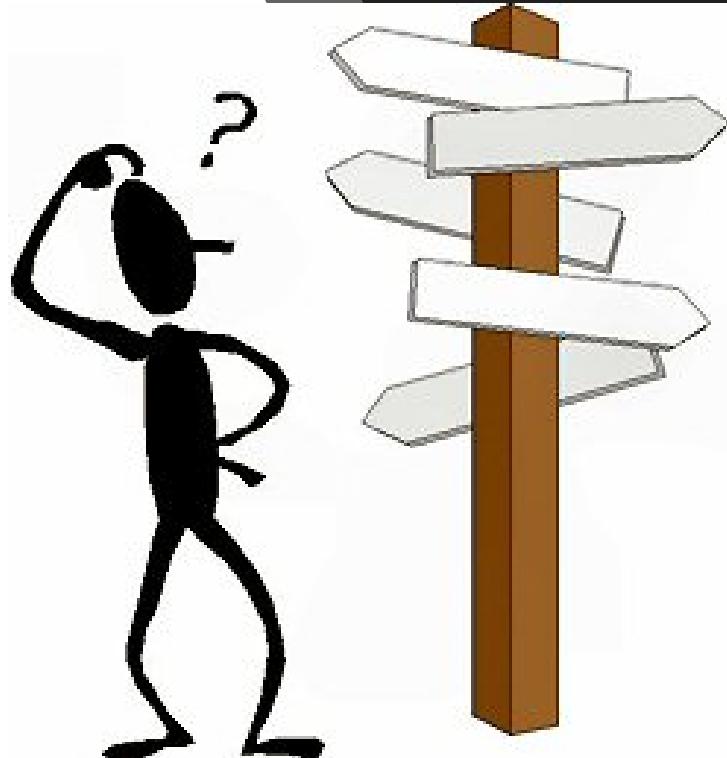
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We consequently conclude that the Constitution permits judges to take realistic account of the particular defendant's mental capacities by asking whether a defendant who seeks to conduct his own defense at trial is mentally competent to do so. That is to say, **the Constitution permits States to insist upon representation by counsel for those competent enough to stand trial under *Dusky* but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves.**



## So What Now???

People v. Taylor (2009) 47 Cal. 4th 850



- Capital Murder prosecution.
- Δ had several disputes with his counsel and after expressing a desire to defend himself, defense counsel declared a doubt as to his competency.
- Two doctors' reports were generated noting Δ was competent, but that he had borderline low IQ with several cognitive deficits and “would have some difficulty in representing himself without an attorney.”
- Δ was found competent to stand trial, but *Faretta* was initially denied. After several requests to represent himself and an inquiry by the Court, Δ's motion was granted.
- Δ was convicted and sentenced to death.

## ARGUMENT ON APPEAL

- Indiana v. Edwards affirmed that there is a higher standard for competency to represent oneself vs. competency to stand trial.



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# HOLDING

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*Edwards* did not alter the principle that the federal constitution is not violated when a trial court permits a mentally ill defendant to represent himself at trial, even if he lacks the mental capacity to conduct the trial proceedings himself, if he is competent to stand trial and his waiver of counsel is voluntary, knowing and intelligent.”

*Edwards* thus does not support a claim of federal constitutional error in a case like the present one, in which defendant's request to represent himself was **granted**.

# TAKEAWAY

1

Granting *Faretta* status to a competent but mentally ill Δ will comport with Constitutional requirements.

2

Denying *Faretta* status to someone who is competent to stand trial, but suffers “severe mental illness” is permitted when “they are not competent to conduct trial proceedings by themselves.”

# Timeliness: People v. Lynch (2010)

50 Cal. 4th 693

- A self-representation motion may be denied if untimely.
- The purpose of the [timeliness] requirement is “to prevent the defendant from misusing the motion to unjustifiably delay trial or obstruct the orderly administration of justice.”
- What factors are considered in between “eve of trial” (untimely) and “long before trial” (timely).
- “Consideration of the totality of the circumstances that exist in the case at the time the self-representation motion is made.”

## Totality of the Circumstances?

- The time between the motion and the scheduled trial date;
- Trial counsel is ready to proceed to trial;
- The number of witnesses and the reluctance or availability of crucial trial witnesses;
- The complexity of the case;
- any ongoing pretrial proceedings;
- Earlier opportunities to assert his right of self-representation;
- Elderly Victims (even when conditional exams have been done);
- Marsy's Law: The victims and the prosecution had a right to a speedy trial.

# People v. Williams (2013) 58 Cal. 4th 197

## Revocation of *Farettta* Status



- Capital murder prosecution.
- $\Delta$  made 8 *Marsden* motions and had been in *Farettta* status for over 10 months. Despite being given a deadline for trial readiness 5 months earlier, he had failed to do any trial preparation.
- $\Delta$  filed 3 motions to disqualify the judge, 1 motion to recuse the DA, 1 change of venue motion, orally moved to have standby counsel relieved, and did not subpoena any witnesses or turn over any discovery.  $\Delta$ 's investigator asked to be relieved because  $\Delta$  was “impossible to work with.”
- The prosecutor argued  $\Delta$  actions constituted delay tactics and asked *Farettta* status be revoked.
- During his colloquy with the court,  $\Delta$  acknowledged being “in over his head.”
- Court revoked his *Farettta* status.

# People v. Williams (2013) 58 Cal. 4th 197

## HOLDING

- “[T]he right of self-representation is not absolute.”
- “[The] government's interest in ensuring the integrity and efficiency of the trial at times outweighs the defendant's interest in acting as his own lawyer.”
- “The right of self-representation is not a license to abuse the dignity of the courtroom. Neither is it a license not to comply with relevant rules of procedural and substantive law.”
- [A] trial court must undertake the task of deciding whether a defendant is and will remain so disruptive, obstreperous, disobedient, disrespectful or obstructionist in his or her actions or words as to preclude the exercise of the right to self-representation. The trial court possesses much discretion when it comes to terminating a defendant's right to self-representation and the exercise of that discretion ‘will not be disturbed in the absence of a strong showing of clear abuse.

## Advisory Counsel People v. Garcia (2000) 78 Cal. App. 4th 1422

- $\Delta$  charged with Murder and Attempted Murder arising out of a drug debt.
- $\Delta$  makes motion and is granted *Farettta* status.
- At trial,  $\Delta$  conducts limited cross-examination and has difficulty grasping the difference between testifying in his own defense and argument.
- Following his conviction,  $\Delta$  appealed claiming "he was incompetent in presenting a defense, and thus his convictions must be reversed, because the court did not appoint "advisory counsel" to assist him."



# HOLDING

- The Court distinguished and disapproved of People v. Bigelow (1984) 37 Cal.3d 731 in which Court held the trial court erred in refusing to appoint Δ in a capital prosecution advisory counsel.
- “[A] defendant who elects to represent himself or herself has no constitutional right to advisory or stand-by counsel or any other form of "hybrid" representation . . . It would seem that if a defendant who waives the assistance of counsel is competent to represent himself, he should do so, by himself; if he is not able to defend himself without the assistance of advisory counsel, then he is not competent to represent himself.”
- Moreover, “a defendant who exercises his right to represent himself cannot later complain that the quality of his defense amounted to a denial of the effective assistance of counsel.”

# Farett Admonition: People v. Burgener (2009) 46 Cal. 4th 231



The hearing at issue was a hearing on the “automatic application to the trial court to modify a death verdict.”



Δ made a *Farett* motion which the trial court granted.



On appeal, Δ claimed that court erred in granting his *Farett* motion without obtaining a knowing and intelligent waiver of his Sixth Amendment right to counsel.

# The Court's “Admonition”

— “I think I would be remiss if I didn't advise you at least with regard to certain possible pitfalls with regard to self-representation . . .”

- The trial court took the matter under advisement and put the matter over.
- At the next hearing, following confirmation it was still  $\Delta$ 's wish to proceed *pro per*, the court remarked, “It's a question of whether or not you are fully aware of the consequences of representing yourself.”
- “I think based upon the history of this particular case, and the number of times that you have been in court, and the representations that you've had, I think you're fully aware, probably more so than most of us, as to what is taking place and has taken place in this case.”
- The prosecutor urged the court to make additional inquiries regarding  $\Delta$ 's understanding of what the issues are for the motion before the court.
- $\Delta$ 's response: “I understand everything you've said.”

# ANALYSIS

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A defendant seeking to represent himself ‘should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that “he knows what he is doing and his choice is made with eyes open.”



‘No particular form of words is required in admonishing a defendant who seeks to waive counsel and elect self-representation.’



“[T]he test is whether the record as a whole demonstrates that the defendant understood the disadvantages of self-representation, including the risks and complexities of the particular case.”



“These circumstances may have justified a less searching or formal colloquy in response to defendant's request to represent himself.”

# HOLDING

- Death sentence reversed.
- “Informing a defendant that self-representation means a waiver of counsel is not an advisement of the associated dangers and disadvantages; it is merely a rephrasing of the defendant's choice.”

## SUGGESTED ADVISEMENTS

- The district attorney would be both experienced and prepared.
- $\Delta$  would receive no special consideration or assistance from the court and would be treated like any other attorney.
- $\Delta$  would have no right to standby or advisory counsel.
- $\Delta$  would be barred from challenging on appeal the adequacy of his representation.

## People v. Joseph (1983) 34 Cal.3d 936 Improper Denial of *Faretta* Constitutes Structural Error

The Court reasoned, a Harmless Error analysis to the wrongful denial of self-representation would “nullify” the right.

“Anything short of a *per se* rule is unworkable and would undermine the *Faretta* doctrine itself.”

The court observed that in most criminal prosecutions, the presence of counsel over a would-be *Faretta* defendant's objection would result in no prejudice, since, as the *Faretta* court itself observed, "[it] is undeniable that in most criminal prosecutions defendants could better defend with counsel's guidance than by their own unskilled efforts."

People v.  
Parrott (2017)  
10 Cal. App.  
5th 485  
*Farett*  
Admonitions:  
Harmless Error  
or Reversal Per  
Se

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Following a plea of guilty,  $\Delta$  showed up to court for sentencing, but his retained attorney did not.

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$\Delta$  : "He can be my lawyer at this point. Let's just go."

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The court: "Okay. If you would like to at this point, essentially, represent yourself for sentencing, you can do that as well. I think we all agreed what's going to happen."

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$\Delta$ : "Yeah, I'm ready. Let's rol[!]."

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$\Delta$  was then sentenced according to an agreed upon disposition.

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On appeal,  $\Delta$  asked for a resentencing based on a deficient *Farett* advisement.

# HOLDING

- Concluded that the harmless error analysis was the applicable standard to apply for the erroneous granting of *Farella* status.
- The Court observed,

“Given these circumstances, we can envision nothing the presence of counsel at the sentencing hearing could have contributed, and conversely, there was no prejudice whatsoever to appellant caused by counsel's absence. Reducing the sentence agreed to as part of the negotiated disposition was not possible. “