

# The Burger Court Opinion Writing Database

## *Faretta v. California*

422 U.S. 806 (1975)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



✓  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

November 29, 1974

Re: No. 73-5772 - Faretta v. California

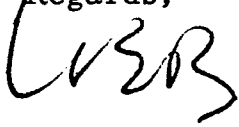
MEMORANDUM TO THE CONFERENCE:

If, as it tentatively appears, the Court holds that an accused has a constitutional right to defend himself without the "assistance of counsel" called for by the Sixth Amendment, I will write a dissent.

In my view the Constitution gives no right to a pro se defense; rather, it is a matter of discretion in the trial judge to be exercised most sparingly in cases with a potential of significant imprisonment. That, I had thought, was what Gideon and Argersinger were really all about.

Meanwhile, my review of my notes leads me to amend my conference comment on the quality of the arguments. The petitioner's counsel was somewhat above mediocre but the State's case was miserably presented.

For the record, with little thought it will attract much support, I move we set this case for reargument and at least appoint amicus curiae for California and begin our drive to force the States to abandon their on-the-job training of their lawyers in this Court.

Regards,  


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U.S. SUPREME COURT RECORDS

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

March 20, 1975

Re: 73-5772 - Faretta v. California

MEMORANDUM TO: Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

As I advised on November 29, I am developing a dissent in this case and have been waiting to see whether anyone could really compose a rationale for the proposed result. With the appalling pile-up of cases tried by lawyers for three days that ought to be three hours, I am mildly appalled (can one be mildly appalled?) by the prospect of adding to the burden. But we seem to continue our process of results in search for reasons.

Regards,



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To: Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall ✓  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

From: The Chief Justice

Circulated: JUN 23 1975

Recirculated: \_\_\_\_\_

Faretta v. California, No. 73-5772

MR. CHIEF JUSTICE BURGER, dissenting.

This case, like Herring v. New York, \_\_\_ U.S. \_\_\_ (1975), announced today, is another example of the judicial tendency to interpret the Constitution according to what is thought "good." That effort fails on its own terms here, because there is nothing desirable in permitting even the most uneducated, inexperienced person to insist upon conducting his own defense to criminal charges.<sup>1/</sup> Moreover, there is no constitutional basis for the Court's holding and it can only add to the burdens upon our criminal justice system. I therefore dissent.

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<sup>1/</sup>  
See next page.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

June 26, 1975

Re: No. 73-5772 - Faretta v. California

Dear Harry:

Please show me as joining your dissenting  
opinion of June 20.

Regards,

WRB

Mr. Justice Blackmun

Copies to the Conference

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THE MANUSCRIPT DIVISION

RECEIVED BY ADVISORY

stylistic changes throughout.  
see 1-5, 7, 9-11

154-3

To: Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

From: The Clerk of the Court

2d  
3rd DRAFT

Circulated:

Recirculated: JUN 27 1975

## SUPREME COURT OF THE UNITED STATES

No. 73-5772

Anthony Pasquall Faretta, } On Writ of Certiorari to the  
Petitioner, } Court of Appeals of Cali-  
v. } fornia for the Second Ap-  
State of California } pellate District.

[June —, 1975]

MR. CHIEF JUSTICE BURGER, with whom MR. JUSTICE BLACKMUN and MR. JUSTICE REHNQUIST join, dissenting.

This case, like *Herring v. New York*, — U. S. — (1975), announced today, is another example of the judicial tendency to constitutionalize what is thought "good." That effort fails on its own terms here, because there is nothing desirable or useful in permitting every accused person, even the most uneducated and inexperienced, to insist upon conducting his own defense to criminal charges.<sup>1</sup> Moreover, there is no constitutional basis for the Court's holding and it can only add to the problems of an already malfunctioning criminal justice system. I therefore dissent.

<sup>1</sup> Absent a statute giving a right to self-representation, I believe that trial courts should have discretion under the Constitution to insist upon representation by counsel if the interests of justice so require. However, I would note that the record does not support the Court's characterization of this case as one in which that occurred. Although he requested, and initially was granted, permission to proceed *pro se*, petitioner has expressed no dissatisfaction with the lawyer who represented him and has not alleged that his defense was impaired or that his lawyer refused to honor his suggestions regarding how the trial should be conducted. In other words, to use the Court's phrase, petitioner has never contended that "his defense" was not fully presented. Instances of overbearing or ineffective counsel can be dealt with without contriving broad constitutional rules of dubious validity.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

March 26, 1975

Dear Potter:

In 73-5772, FARETTA v. CALIF.  
please join me in your opinion.

*W O Douglas*  
William O. Douglas

Mr. Justice Stewart

cc: The Conference

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U.S. SUPREME COURT RECORDS

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

March 18, 1975

RE: No. 73-5772 Faretta v. California

Dear Potter:

I think this is a splendid opinion and  
I am happy to join it.

Sincerely,

*Bill*

Mr. Justice Stewart

cc: The Conference



PS  
Please join me  
TM.

Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

Mr. Stewart  
MAR 17 1975

Circulated: \_\_\_\_\_  
Recirculated: \_\_\_\_\_

1st DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 73-5772

Anthony Pasquall Faretta, } On Writ of Certiorari to the  
Petitioner, } Court of Appeal of Cali-  
v. } fornia for the Second Ap-  
State of California. } pellate District.

[March —, 1975]

MR. JUSTICE STEWART delivered the opinion of the Court.

The Sixth and Fourteenth Amendments of our Constitution guarantee that a person brought to trial in any state or federal court must be afforded the right to the assistance of counsel before he can be validly convicted and punished by imprisonment. This clear constitutional rule has emerged from a series of cases decided here over the last 50 years.<sup>1</sup> 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 hail 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. It is not an easy question, but we have concluded that a State may not constitutionally do so.

<sup>1</sup> See *Powell v. Alabama*, 287 U. S. 45; *Johnson v. Zerbst*, 304 U. S. 458; *Betts v. Brady*, 316 U. S. 455; *Gideon v. Wainwright*, 372 U. S. 335; *Argersinger v. Hamlin*, 407 U. S. 25.

STYLISTIC CHANGES THROUGHOUT.

28-30

To: Justice  
Justice Douglas  
Justice Brennan  
Justice White  
Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

Filed: \_\_\_\_\_  
MAR 26 1975

2nd DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 73-5772

Anthony Pasquall Faretta,	} On Writ of Certiorari to the
Petitioner,	
v.	
State of California.	Court of Appeal of California for the Second Appellate District.

[March —, 1975]

MR. JUSTICE STEWART delivered the opinion of the Court.

The Sixth and Fourteenth Amendments of our Constitution guarantee that a person brought to trial in any state or federal court must be afforded the right to the assistance of counsel before he can be validly convicted and punished by imprisonment. This clear constitutional rule has emerged from a series of cases decided here over the last 50 years.<sup>1</sup> 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 hail 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. It is not an easy question, but we have concluded that a State may not constitutionally do so.

<sup>1</sup> See *Powell v. Alabama*, 287 U. S. 45; *Johnson v. Zerbst*, 304 U. S. 458; *Betts v. Brady*, 316 U. S. 455; *Gideon v. Wainwright*, 372 U. S. 335; *Argersinger v. Hamlin*, 407 U. S. 25.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

June 17, 1975

MEMORANDUM TO THE CONFERENCE

Re: Case Held for No. 73-5772, Faretta v. California

No. 73-6064, Huston v. California

I shall vote to grant the petition for certiorari, vacate the judgment, and remand the case for reconsideration in light of Faretta.

The petitioner was convicted in a California trial court on charges of escape from state prison and auto theft. The California Court of Appeal affirmed the conviction. The California Supreme Court denied a hearing. We held the case for Faretta. The sole question raised by the petition is whether a criminal defendant has a federal constitutional right to represent himself at trial. The petitioner on five occasions asked that he be permitted to proceed without counsel, and these requests were denied. In this case, just as in Faretta itself, the California appellate court relied on People v. Sharp, 7 Cal. 3d 448, 103 Cal. Rptr. 233, 499 P.2d 489 (1972), holding that a criminal defendant has no constitutional right of self-representation at his trial. Our decision in Faretta is precisely to the contrary.

P.S.

✓

Supreme Court of the United States  
Washington, D. C. 20543

✓

CHAMBERS OF  
JUSTICE BYRON R. WHITE

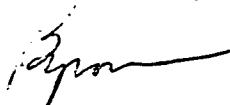
March 18, 1975

Re: No. 73-5772 - Faretta v. California

Dear Potter:

Please join me in this very good job. My  
only question I have discussed with you.

Sincerely,



Mr. Justice Stewart

Copies to Conference

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U.S. DEPARTMENT OF JUSTICE

✓  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

March 25, 1975

Re: No. 73-5772 -- Anthony Pasquall Faretta v. State of  
California

Dear Potter:

Please join me.

Sincerely,

*T.M.*

T. M.

Mr. Justice Stewart

cc: The Conference

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U.S. DEPARTMENT OF COMMERCE

✓  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

March 27, 1975

Re: No. 73-5772 - Faretta v. California

Dear Potter:

I am waiting for the dissent in this case.

Sincerely,



Mr. Justice Stewart

cc: The Conference

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U.S. SUPREME COURT RECORDS

10: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Powell  
Mr. Justice Rehnquist

From: Blackmun, J.

Circulated: 6/20/75

Recirculated: \_\_\_\_\_

No. 73-5772 - Faretta v. California

MR. JUSTICE BLACKMUN, dissenting.

Today the Court holds that the Sixth Amendment guarantees to every defendant in a state criminal trial the right to proceed without counsel whenever he elects to do so. I find no textual support for this conclusion in the language of the Sixth Amendment. I find the historical evidence relied upon by the Court to be unpersuasive, especially in light of the recent history of criminal procedure. Finally, I fear that the right to self-representation constitutionalized today frequently will cause procedural confusion without advancing any significant strategic interest of the defendant. I therefore dissent.

I

The starting point, of course, is the language of the Sixth Amendment:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously

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U.S. DEPARTMENT OF JUSTICE

June 21, 1975

Re: No. 73-5772 - Faretta v. California

Dear Chief:

In view of my being so committed next week, and away, I have felt I should wait no longer for the Faretta dissent. I am therefore circulating one of my own for such value as it may have. My fear is that there would not be time for me to go over your writing in time to vote by June 30.

Sincerely,

HAB

The Chief Justice



✓  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 26, 1975

Re: No. 73-5772 - Faretta v. California

Dear Chief:

Please join me in your dissenting opinion.

Sincerely,

*Harry*

The Chief Justice

cc: The Conference

✓  
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To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Powell  
Mr. Justice Rehnquist

From: Blackmun, J.

Circulated: \_\_\_\_\_

Recirculated: 6/26/75

2 *m*

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 73-5772

Anthony Pasquall Faretta, } On Writ of Certiorari to the  
Petitioner, } Court of Appeal of Cali-  
v. } fornia for the Second Ap-  
State of California. } pellate District.

[June — 1975]

*with whom the Chief Justice and Mr. Justice Rehnquist join*  
MR. JUSTICE BLACKMUN, dissenting.

Today the Court holds that the Sixth Amendment guarantees to every defendant in a state criminal trial the right to proceed without counsel whenever he elects to do so. I find no textual support for this conclusion in the language of the Sixth Amendment. I find the historical evidence relied upon by the Court to be unpersuasive, especially in light of the recent history of criminal procedure. Finally, I fear that the right to self-representation constitutionalized today frequently will cause procedural confusion without advancing any significant strategic interest of the defendant. I therefore dissent.

### I

The starting point, of course, is the language of the Sixth Amendment:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and 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 wit-

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MANUSCRIPT DIVISION

U.S. DEPARTMENT OF JUSTICE

March 19, 1975

No. 73-5772 Faretta v. California

Dear Potter:

Would you be willing to add to your fine opinion something along the following lines:

"Nor may such a defendant claim as error a failure on his part, due to ignorance or inexperience, to comply with relevant rules of procedural and substantive law".

Perhaps this thought could be added at the very end of Part IV on page 29.

I understand - through the clerk grapevine - that you are changing or eliminating footnote 47, which I would like.

I think your opinion is excellent and will join it.

Sincerely,

Mr. Justice Stewart

lfp/ss

March 25, 1975

No. 73-5772 Faretta v. California

Dear Chief:

I am afraid your note of March 20, concerning the above case came to me under a misapprehension.

I voted with the majority in this case, and will join Potter. In view of our long experience with the federal statute, I doubt that even the publicity of a decision by this Court will result in many defendants electing to represent themselves. Those who do will be foreclosed, as Potter's opinion states, from claiming subsequently that they were denied effective assistance of counsel.

Like most of our cases, this was another close one. I have always thought that a defendant has an inalienable right to represent himself if he is foolish enough to undertake it.

Sincerely,

The Chief Justice

lfp/ss

✓

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

March 26, 1975

No. 73-5772 Faretta v. California

Dear Potter:

Please join me.

Sincerely,

*L. F. Powell*

Mr. Justice Stewart

lfp/ss

cc: The Conference

✓

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U.S. DEPARTMENT OF JUSTICE  
LIBRARY OF CONGRESS

June 24, 1975

No. 73-5772 Farett v. California

Dear Chief:

I have read with care and interest your dissent, which is powerful and persuasive.

It falls short, however, of quite persuading me to change the view that I have held throughout our consideration of this case. I suppose I read the Sixth Amendment broadly (I know you think incorrectly) because of a conviction that few things in life are more personal and important to the individual than his defense against a criminal charge by the state. If, knowingly and intelligently, he believes it to be in his own interest to defend himself, I think he should have a right to do so. It is not just "good" in any societal sense. Indeed I doubt that the exercise of the right will work to the advantage of many defendants or of society. I simply view it as a rather fundamental personal right, inherent in the concept of the Sixth Amendment.

We live in a time when the "state" undertakes to tell citizens too often what is good for them. The concept that "the state knows best" does not appeal to me. I am not unaware of the state's interest in the fairness of a trial, but in final analysis no interest is quite as high as that of the defendant himself. If he wishes to conduct his own defense, I do not think the state should decide that it is "best" for someone else to do it for him.

Having said all of this, I recognize that your opinion certainly expresses - and very well indeed - the other side

- 2 -

of this argument. The question is close, but I find myself more comfortable with the view I have expressed above.

Sincerely,

The Chief Justice

lfp/ss

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 23, 1975

Re: No. 73-5772 - Faretta v. California

Dear Harry:

Please join me in your dissenting opinion.

Sincerely,

W

Mr. Justice Blackmun

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 23, 1975

Re: No. 73-5772 - Faretta v. California

Dear Chief:

Please join me in your dissenting opinion.

Sincerely,

*WRM*

The Chief Justice

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OFFICE OF THE CLERK OF THE SUPREME COURT