No. 07-208

IN THE

Supreme Court of the United States

STATE OF INDIANA,

Petitioner,

v.

AHMAD EDWARDS,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of the State of Indiana

REPLY IN SUPPORT OF THE PETITION

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REPLY BRIEF FOR PETITIONER

I. Robust and Intractable National Lower Court Conflict Warrants Review

1. In its Petition, the State demonstrated that *Godinez v. Moran*, 509 U.S. 389 (1993), has created judicial conflict and confusion, which must be resolved by this Court. Pet. 11-18. While Respondent Ahmad Edwards unconvincingly attempts to minimize the extent of this conflict and confusion, he acknowledges that it exists.

Specifically, many lower courts—including the Indiana Supreme Court in this case—have concluded they are required by *Faretta v. California*, 422 U.S. 806 (1975), and *Godinez* to apply the *Dusky v. United States*, 362 U.S. 402 (1960), competence-to-stand-trial standard to determinations of competence for self-representation. Pet. 15-17. This can result in great inequities where a mentally impaired defendant would be permitted to present a farcical defense. The justice system is disserved and fundamental fairness is foregone when mentally ill but competent defendants represent themselves.

However, some courts, including the supreme courts of Maryland, Wisconsin, Utah, and Wyoming as well as the Seventh Circuit, have read *Godinez* as allowing States to impose a higher standard for competency with respect to self-representation. *See Brooks v. McCaughtry*, 380 F.3d 1009, 1013 (7th Cir. 2004) (holding that Wisconsin's higher standard for competency for self-representation does not "violate[] the rule of *Godinez*"); *Gregg v. State*, 833 A.2d 1040, 1060 (Md. 2003) ("Although the Supreme Court has

found that the states are free to adopt a higher standard for assessing competency to waive counsel than required by the federal Due Process Clause, Maryland has not done so . . . .") (internal citations omitted); *State v. Arguelles*, 63 P.3d 731, 751 (Utah 2003) (holding that the "minimum requirements for competency to waive assistance of counsel are no greater than the requirements for competency to stand trial," but acknowledging that "[s]ome states have established additional requirements for competency to waive counsel"); *State v. Klessig*, 564 N.W.2d 716, 724 (Wis. 1997) ("In Wisconsin, there is a higher standard for determining whether a defendant is competent to represent oneself than for determining whether a defendant is competent to stand trial. The higher standard is not based on the requirements of the Sixth Amendment, but stems from the independent adoption of the higher standard by the State as allowed under *Godinez*."); *Hauck v. State*, 36 P.3d 597, 602 (Wyo. 2001) (holding that "*Godinez* does represent the very minimum that the standard could be" for self-representation, but acknowledging that the state constitution might offer additional protections). This interpretation allows courts to avoid unjust trials where a defendant is competent under *Dusky*, but incapable of presenting any meaningful defense.

Edwards attempts to minimize the conflict by discounting cases from every jurisdiction, except Wisconsin, because the courts in those jurisdictions have not articulated a standard for competence to waive counsel. Edwards' Br. 12 ("In *none* of the many other cases petitioner collects did a court hold that a defendant who was competent to stand trial . . . was not competent to exercise the constitutional

right to self-representation—as a matter of either state or federal law."). However, Edwards does not, and cannot, deny that all of these courts explicitly recognized that States may impose a higher standard of competency for self-representation. Just because those courts have not taken the next step in defining the standard for competency to self-represent does not mean that the conflict does not exist. In fact, it underscores the confusion and uncertainty that prevails. Many courts are willing to acknowledge that States may impose a higher standard, but have been hesitant to do so. The courts' hesitance stems from the lack of guidance as to the proper balance between the defendant's right to self-representation and the State's interests in providing a fair trial. This Court's guidance is necessary to clear up this confusion.

2. Edwards admits that Wisconsin imposes a higher standard for competency to represent oneself. Edwards' Br. 11-12. Yet, he argues that, even under the Wisconsin standard, "[i]t is unclear . . . if even the Wisconsin courts would deny Edwards his right to represent himself." Edwards' Br. 11-12. Quite to the contrary, the Wisconsin standard seems designed to protect defendants very much like Edwards. It tests "the defendant's education, literacy, fluency in English, and any physical or psychological disability which may significantly affect his ability to communicate a possible defense to the jury" and demands a record that demonstrates "an identifiable problem or disability that may prevent [the] defendant from making a meaningful defense." *State v. Marquardt*, 705 N.W.2d 878, 891-92 (Wis. 2005). Edwards has little education (Ed.App. 633), his literacy is questionable (Ed.App.

99-103, 125, 153-66, 188-223, 252-81, 289-348, 419-34, 458-91, 553-68, 620-31, 646), and he most definitely suffers from a psychological disability that would affect his ability to communicate with a jury. (Ed.App. 149) (describing Edwards' thought process as "extremely tangential," and noting that he "decompensates in the course of a conversation"). On the record in this case, there can be little doubt that, using the Wisconsin standard, Judge Hawkins would have found "an identifiable problem or disability that may prevent" Edwards "from making a meaningful defense." *Marquardt*, 705 N.W.2d at 892.

Regardless, in light of the highly fact-bound nature of the Wisconsin test, Edwards' contention to the contrary hardly diminishes the need for Supreme Court review. The concern is that Wisconsin employs such a test at all, while Indiana and several other States do not. Without guidance from this Court as to what greater protections may be constitutionally valid, state courts will continue to yield results that that may have turned out differently elsewhere based on different understandings of the Sixth Amendment.

II. Edwards' Proposed Solutions Merely Mask Underlying Incompetence Problems or Force States to Choose Between Trying Defendants and Allowing Them to Represent Themselves

Edwards recognizes that some defendants who are competent to stand trial should not be allowed to represent themselves at trial. Edwards' Br. 31-32. Indeed, he ultimately embraces the notion of

protecting "vulnerable defendants (and systemic interests)" from the circus-like atmosphere that can prevail where a mentally disabled defendant attempts to represent himself. Edwards' Br. 33. He just prefers that trial courts be more tactful and employ higher standards for self-representation through the vehicle of asking whether the defendant has made a "knowing and voluntary waiver." Edwards' Br. 33-34.

Some courts have followed this course and attempted to avoid failures of justice by intermingling the competency determination with the knowing-and-voluntary-waiver inquiry. *See State v. Thomas*, 794 A.2d 990, 994 (R.I. 2002) (holding that there is a "heightened standard of competency when [a defendant] attempts to waive counsel," but setting forth a heightened analysis of whether the defendant's waiver of counsel was knowing and voluntary); *People v. Lego*, 660 N.E.2d 971, 979 (Ill. 1995) ("If by virtue of delusion occasioned by mental illness a defendant believes falsely that his legal skills equal or exceed those of virtually any attorney who might represent him, he can hardly be said to be aware of the dangers and disadvantages of self-representation or to know what he is doing and to be making his choice with eyes open.").

However, this solution is untenable. Asking whether a defendant knows that he is waiving his right to counsel and is doing so voluntarily does not address whether the defendant can communicate in any minimal way with a jury. A strict application of the knowing-and-voluntary-waiver requirement provides no protection to defendants, such as

Edwards, who meet the minimal requirements of *Dusky*, but are unable to mount a coherent defense.

Moreover, even if the knowing-and-voluntary inquiry has properly metamorphosed into a *de facto* competence review, this Court should still grant certiorari. It is far better to be up front about this change and give guidance as to what can properly be considered in the knowing-and-voluntary-waiver determination. Moreover, if the knowing-and-voluntary-waiver standard is heightened for Sixth Amendment waiver of counsel, this Court must ensure that this heightened standard does not bleed into the knowing-and-voluntary-waiver analysis for other constitutional rights.

Edwards' other suggested alternative—to deny the defendant a trial altogether—is rather astounding. Edwards' Br. 31. Edwards posits that the State was not required to bring him to trial upon a finding of competency. Edwards' Br. 31 ("[P]etitioner obviously could have avoided any difficulties posed by self-representation in this case simply by declining to try a defendant who . . . possessed only 'borderline legal competency.'") However, the State is not free to delay trials indefinitely. The Sixth Amendment requires that States give defendants a speedy trial, which obligates States to try competent defendants within a reasonable period. *See Barker v. Wingo*, 407 U.S. 514, 530 (1972).

Edwards does not make clear which remaining bad alternative he would prefer the State to follow. He surely cannot be suggesting that the State simply release suspected criminals who cannot satisfy a

more broadly heightened competency standard. But the State's only remaining recourse for protecting both society and constitutionally competent but mentally impaired defendants would be to institute civil commitment proceedings. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972) ("[A] person charged by a State with a criminal offense who is committed solely on account of his incapacity to proceed to trial cannot be held more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future. If it is determined that this is not the case, then the State must either institute the customary civil commitment proceeding that would be required to commit indefinitely any other citizen, or release the defendant."); *see also* Ind. Code § 12-26-7-1 *et seq.*

Surely, it is preferable for the State to foist counsel upon a mentally impaired but constitutionally competent defendant rather than to commit him in an institution indefinitely.

III. This Case is an Excellent Vehicle for Review

A. The State has consistently argued that denial of self-representation here is consistent with Sixth Amendment rights

Edwards complains that the State has been inconsistent in its arguments about what *Godinez* permits. Edwards' Br. 23-26. However, the central issue in this case has always been what is permitted by the *Sixth Amendment*, not *Godinez* or *Faretta*. In

the briefs before the Indiana Supreme Court and the Indiana Court of Appeals, the State argued that fundamental fairness requires consideration of a defendant's ability to present a defense. *See* State's Ind. C.A. Br. 7, State's Pet. to Transfer 5-7. Thus, the underlying question has always been whether providing additional protections would violate the Sixth Amendment.

Following the Indiana Supreme Court's decision below, in evaluating whether this case is suitable for consideration by this Court, the State discovered that the "free to adopt" language from *Godinez* had created judicial disarray regarding whether the Sixth Amendment permits additional protections. *See Godinez v. Moran*, 509 U.S. 389, 402 (1993). The presentation of this conflict is not a new issue, but instead shows that other jurisdictions are also grappling with the limitations of present Sixth Amendment self-representation doctrine.

Furthermore, it would have been artificial and contrived for the State to have argued to the Indiana appellate courts that Edwards should have been afforded additional protections under state law, as *Godinez* arguably permits. This was not the basis of the trial court's denial of self-representation. App. 36a-37a. Instead, the trial court's denial was based on *Sherwood v. State*, 717 N.E.2d 131, 135 (Ind. 1999), where the Indiana Supreme Court interpreted *Godinez* as requiring "that the competency standard for waiving the right to counsel may be not be higher than the competency standard for standing trial." The trial judge found that a third, novel determination was necessary for self-representation, in addition to determining competency and whether the

waiver was voluntary and knowing. App. 36a ("I'm going to carve out a third exception [to the right of self-representation], and if I'm wrong . . . and there's a conviction, we'll just try this case again . . . ").

Moreover, even if the trial court had been aware of the "free to adopt" language in *Godinez*, it still would have had to fabricate, ad hoc, proposed new protections because (as discussed in Part I, *supra*) it is unclear what greater protections are constitutionally permissible. Therefore, the central question on appeal would still have been what protections the Sixth Amendment permits. Because of the existing judicial disarray, only this Court can answer that question.

B. The unremarkable prospect of remanding the case after a ruling for the State does not create a vehicle problem

This Court should not deny certiorari merely because remand may ultimately be necessary. Edwards' Br. 26 n.9. Under the self-representation doctrine as is currently exists, *any* case would present the same procedural requirement because a ruling in favor of the State would likely announce a new standard that a trial court would not have known to apply.

For the same reason, Judge Hawkins cannot be faulted for his ad hoc approach in this case. The trial court did not attempt to lay out criteria for additional protections, but instead only found that self-representation "requires abilities" above and beyond the "doctors' findings" of ability to assist in

his defense. App. 36a-37a. It makes no difference whether the trial court attempted to discern any other proper criteria. With the doctrine in as much disarray as it is, it would only be happenstance if plenary review affirmed the exact criteria employed by a trial judge to gauge competence for self-representation.

Edwards' attempt to infuse a lingering state-law claim is irrelevant. Edwards' Br. 26 n.9. The Indiana Supreme Court clearly ruled based on the federal Constitution. App. 4a n.1 (refusing to address whether Edwards had a right to proceed *pro se* under the Indiana Constitution because federal law was binding). Edwards makes no credible argument that there is an adequate and independent state-law ground for the court's decision.

C. The richly detailed record shows Edwards could functionally assist his lawyer but not speak for himself

The present record amply shows that Edwards was incapable of self-representation at the time of trial, despite meeting the *Dusky* requirements. In denying self-representation, the trial court relied on the same doctors' examinations that established Edwards' competency to stand trial. App. 36a. Those examinations found continued "schizophrenia of an undifferentiated type." App. 36a. The court also observed that "[e]ach and every" prior neurological examination "found either delusions, a delusional disorder of the grandiose type or schizophrenia of an undifferentiated type." App. 36a.

Also, Edwards' correspondence and pleadings to the court following the finding of competency to stand trial demonstrated continued confusion, delusions, and an inability to present cogent thoughts. (Ed.App. 484-85, 487-89, 543-45, 547, 558). On December 15, 2005, only four days prior to the trial, Edwards wrote one among many incomprehensible letters to the judge, which stated, in part:

> TRY TO DO YOUR BEST OLD MAN TO ISOLATE THE YOUNG BOY IN ME AT THIS. THE DEFENCE HELPS ME FACE MY LODGE FOR OUR 35TH DEGREE WE CALL IT THE PASSING OF THE HANDS TO THE THUMB. AND IT IS VERY IMPORTANT TO ME TO WORK AGAIN FOR MY FAMILY LODGE.

(Ed.App. 571). However, other filings illustrate that Edwards had at least a basic understanding of the proceedings and could assist his counsel. (Ed.App. 460-64, 474-76, 559-62, 566-67).

Contrary to Edwards' contention that he was completely lucid by the time of trial, the record plainly demonstrates that his mental problems continued. Eight days after the final denial of his *pro se* requests and five days after he was convicted by the jury, Edwards submitted a document as part of the presentence investigation entitled "DEFENDANT'S VERSION OF THE INSTANT OFFENSE." App. 44a. ("The costs of the stay [Trial Rule 60] has a derivative property that is: My knowledged events as not unexpended to contract the membered clients is the commission of finding facilme for this plan or

project to become organization of administrative recommendations ~~carry~~ conditioned by governors."). This document plainly exhibits Edwards' continued inability to present cogent statements.

Furthermore, it is not significant that on August 3, 2005, approximately four months before trial, the trial court granted Edwards permission to proceed *pro se*. (Ed.App. 54, 540). His *pro se* representation lasted only through one pre-trial conference on August 30, 2005. (Ed.App. 54-56). At that conference, Edwards appeared with stand-by counsel and, the very next day, the court denied a request for continued self-representation. (Ed.App. 56-57). During this short period of self-representation, Edwards filed a petition in the trial court asserting claims against the Logansport State Hospital, including the following claim:

> DEFENDANTS DAMAGE IS MITIGATOR BALLISTICS SHAVE DONALD RUMSFELD INSTRUMENT DISCOUNT RATES AT THE SERIOUSNESS OF EUROPEAN UNIONS VAID AT WAR FREE TO UTILIZE COMPELLED LEX TO AND PLEADING ARGUMENT OF RESPONSIBILITY ABSENCE OF A DAY WITHIN A FULL YEAR OF CORROBORATION THE PLAINTIFF CLASS ACCEPTANCE OF A PRAGMATISM RESULT DEVIATE IN CONDUCT AS POSSIBLE/PROPERLY RECORD. RELIEF.

(Ed.App. 543).

Sadly, it appears that even during this short period of self-representation, Edwards was incapable of communicating with the court. While the record indicates that Edwards had the basic understanding of the proceedings and could aid in his defense, as required by the *Dusky* standard, he clearly was not capable of communicating with the judge or a jury or otherwise presenting any meaningful form of self-representation.

CONCLUSION

The Petition should be granted.

Respectfully submitted,

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Dated: November 16, 2007