

No. 07-_____

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**

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

May a criminal defendant who, despite being legally competent, is schizophrenic, delusional, and mentally decompensatory in the course of a simple conversation, be denied the right to represent himself at trial when the trial court reasonably concludes that permitting self-representation would deny the defendant a fair trial?

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PETITION FOR WRIT OF CERTIORARI

The State of Indiana respectfully petitions the Court for a writ of certiorari to the Supreme Court of the State of Indiana.

OPINIONS BELOW

The opinion of the Indiana Supreme Court is reported at *Edwards v. State*, 866 N.E.2d 252 (Ind. 2007). App. 1a-15a. The opinion of the Indiana Court of Appeals is reported at *Edwards v. State*, 854 N.E.2d 42 (Ind. Ct. App. 2006). App. 16a-31a. The trial court's decision holding that Respondent Ahmad Edwards was incompetent to represent himself at trial is unreported, but the relevant portion of the transcript is included in the Appendix. App. 32a-41a.

JURISDICTION

The Indiana Supreme Court entered judgment in this case on May 17, 2007. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. amend. VI

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 witnesses in his favor, and to have the Assistance of Counsel for his defence.

U.S. Const. amend. XIV, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT

This is the unfortunate case of a mentally impaired young man who, caught shoplifting, shot an unarmed security guard and a bystander before being subdued by a passing FBI agent. He was twice declared incompetent to stand trial, but eventually regained the mental capacity to satisfy the standard of *Dusky v. United States*, 362 U.S. 402 (1960). At trial, he insisted on defending himself, but the trial judge quite reasonably said no. This case asks whether the right to self-representation recognized in *Faretta v. California*, 422 U.S. 806 (1975), extends to a defendant whose mental impairments render him wholly incapable of presenting a coherent and meaningful defense.

1. Defendant Ahmad Edwards is thirty-four-years old and suffers from grandiose delusions, schizophrenia, and depressive and expressive language disorders. (Edwards's Appeal App. [hereinafter, "Ed.App.,"] 145-46, 282-84, 287, 632). He was diagnosed with dyslexia as a child and his family has a long history of psychiatric illness, including a sister with schizophrenia. (Ed.App. 145-46). Additionally, in 1995, Edwards was involved in a head-on collision where his car "went under a semi-tractor trailer and then the trailer rolled over [his] car." (Ed.App. 145). Edwards suffered a closed head injury and a loss of consciousness. (Ed.App. 145).

Edwards has a full-scale IQ of 91, but scored as high as the 80th-90th percentile on several tests, including immediate visual memory, delayed visual memory, immediate recall of material read to him, delayed recall of material read to him, and generative phonemic naming. (Ed.App. 148). Yet Edwards scored very low on other tests, including at the bottom percentile on spelling and in the second percentile on arithmetic. (Ed.App. 148). Doctors have at times observed that Edwards's thought process "is extremely tangential and decompensates in the course of a conversation." (Ed.App. 149). They have also said that his writings are "hard to follow, not connected, and his thoughts are not following in a logical fashion." (Ed.App. 244).

2. On July 12, 1999, Edwards took a pair of shoes from a department store in downtown Indianapolis without paying. App. 17a-18a. The store's loss-prevention officer, who was not armed, tackled Edwards outside the store on a city sidewalk. App. 18a. During the confrontation, Edwards drew a 40-caliber handgun and fired three times. App. 18a. The bullets struck the right leg of a bystander and grazed the loss-prevention officer. App. 18a. Edwards fled. App. 18a. An FBI agent who happened by chased Edwards into a parking garage. App. 18a. The agent identified himself and ordered Edwards to raise his hands, but Edwards pointed his gun at the agent's face. App. 19a. The agent repeatedly yelled, "drop the gun," but when Edwards failed to comply with his orders, the agent ultimately drew his own weapon and fired at Edwards, striking him in the thigh. App. 19a. Edwards fell to the ground and was taken into custody. App. 19a.

The State charged Edwards with attempted murder, battery with a deadly weapon, criminal recklessness, and theft. App. 17a. He was initially incarcerated in the Marion County Jail, unable to post the \$30,000 bond for his release. (Ed.App. 5, 130). The trial court appointed a public

defender to represent Edwards, but while awaiting trial, Edwards personally wrote to the judge attempting to plead guilty to battery and criminal recklessness and moving to dismiss counsel. (Ed.App. 7, 118-20). During this same period, Edwards frequently sent other letters to the court, apprising the judge of Edwards's charitable work, achievements, and future goals, including his "exceptance in a magnate program selected from 5000 as one of 5," and his being "offered job with dupety sheriff's of Indianapolis Indiana." (Ed. App. 99-102).

3. On December 7, 1999, Edwards's public defender filed a motion for a competency hearing and a notice of intent to assert insanity as a defense. (Ed.App. 13, 128-29, 282). Based on her experience with Edwards, counsel believed that he lacked the ability to participate in the proceedings and to assist in the preparation of his defense. (Ed.App. 128). The court appointed Drs. Ned P. Masbaum, a neuropsychiatrist at Methodist Hospital in Indianapolis and formerly the Lieutenant Commander and Chief of Psychiatry at the United States Naval Hospital, and Dwight W. Schuster, also a neuropsychiatrist, to examine Edwards. (Ed.App. 13, 656, 662).

Drs. Masbaum and Schuster filed their reports in late December 1999. (Ed.App. 282-83). Both documented that Edwards suffered from delusional disorder "grandiose type," but concluded that, despite Edwards's delusions, he was competent to stand trial. (Ed.App. 282-83). However, Edwards's counsel had independently retained Dr. Lance E. Trexler, a neuropsychologist, who submitted a conflicting report on February 23, 2000. (Ed.App. 283). Dr. Trexler concluded that Edwards was not competent to stand trial because he displayed signs of a major thought disorder, decompensated during the course of conversations, and experienced hallucinations. (Ed.App. 283-84).

Based on these reports, on August 16, 2000, Marion Superior Court Judge Gary L. Miller found Edwards incompetent to stand trial and committed him to the Indiana Department of Mental Health for evaluation and treatment. (Ed.App. 168). The Department of Mental Health assigned Edwards to Logansport State Hospital. (Ed.App. 175).

Several months later, on March 14, 2001, Logansport State Hospital notified the trial court that Edwards “has attained the ability to understand the proceedings and assist in the preparation of his defense.” (Ed.App. 183). In support of that finding, the Hospital’s staff psychiatrist, Steven H. Berger, found that Edwards “appears to be psychiatrically normal” and is “free of psychosis, depression, mania, and confusion.” (Ed.App. 185). Consequently, pursuant to a March 16, 2001 order from the trial court (Judge Grant W. Hawkins now presiding), Edwards was transported from Logansport to the Marion County Jail. (Ed.App. 187).

On June 26, 2001, however, Edwards filed, without the assistance of his court-appointed counsel, a document styled “Motion of Permissive Intervention.” (Ed.App. 195-215). Part A of this document began by stating, “In the year [“1999”] nineteen hundred and nindy nine. The defendant Mr. Ahmad Edwards applied for a job in the fifth largest shopeing mall in Indiana.” (Ed.App. 196). The document continued, “To relize the existence of a genuine issue as to an material fact by interrogatories of the county Marion in Indianapolis, Indiana to help cure the vital stictics, in witch negligence was being apoximated as the cause of the exacerbation of the young American citizens of the United States in Indianapolis, Indiana injury.” (Ed.App. 196-97).

In light of this “peculiar” motion, and mindful of Dr. Trexler’s previous diagnosis of delusional disorder, on September 12, 2001, Edwards’s counsel questioned the hospital’s competency determination and moved to release

Edwards's Logansport State Hospital records. (Ed.App. 225-27). That same day, the trial court ordered further psychiatric testing by Drs. Masbaum and Schuster. (Ed.App. 229, 284).

In a report filed in October 2001, Dr. Masbaum found that Edwards still suffered from a delusional disorder, but understood the charges against him and could aid counsel in his defense. (Ed.App. 232-34). Dr. Schuster found that Edwards had shown significant improvement since being diagnosed as delusional in his previous evaluation, was able to understand the charges and proceedings, and was able to assist counsel with his defense. (Ed.App. 285-86). Based on these reports, in April 2002, the trial court deemed Edwards competent and set a jury trial for September 30, 2002 (Ed.App. 282-88), but later continued it until December 2, 2002. (Ed.App. 34).

Just before trial, in November 2002, defense counsel requested that Edwards be examined yet again for competency, this time by another psychiatrist of the defense's choosing, Dr. Phillip Coons. (Ed.App. 349, 355). The court approved, and in a report dated November 26, 2002, Dr. Coons diagnosed Edwards as schizophrenic and noted Edwards's history of dyslexia and substance use. (Ed.App. 352). Dr. Coons opined that Edwards could understand the charges, but was unable to assist with his defense due to schizophrenic delusions. (Ed.App. 353-54). Based on this report, on November 27, 2002, Edwards's counsel submitted a "Suggestion of Incompetency," claiming that Edwards was incapable of effective communication with counsel and that he lacked "an adequate understanding of the role of the parties to proceed to trial." (Ed.App. 409-11).

The trial court vacated the December 2, 2002, trial, but again appointed Drs. Masbaum and Schuster to examine Edwards. (Ed.App. 38). Both doctors concluded that Edwards was legally competent to stand trial. (Ed.App. 403,

408). Dr. Masbaum found possible malingering, and Dr. Schuster observed no evidence “of delusional ideation or psychotic thinking.” (Ed.App. 402, 407). The court set a competency hearing for April 29, 2003. (Ed.App. 39).

Several months after that hearing, on November 24, 2003, the trial court again, based in part on evaluations by Drs. Coons and Trexler, found Edwards incompetent to stand trial. App. 2a-3a. The court ordered that Edwards be returned to the custody of the Indiana Department of Mental Health for evaluation and treatment. (Ed.App. 439).

During Edwards’s ensuing six-month stay at the Logansport State Hospital, the staff forensic psychiatrist observed that Edwards’s schizophrenia included “symptoms of disorganized thought processes, delusional ideation, hallucinations, and ideas of reference.” (Ed.App. 445). Edwards was treated for schizophrenia and a depressive disorder with individual and group psychotherapy, counseling, and 300 mg/day of Seroquel, an antipsychosis medication. (Ed.App. 445, 450-551).

As a result of this treatment, on July 29, 2004, the Logansport State Hospital once again certified to the court that Edwards was competent to stand trial. (Ed.App. 43, 449). The Hospital found that Edwards “has attained the ability to understand the proceedings and assist in the preparation of his defense.” (Ed.App. 449). The supporting report, by staff forensic psychiatrist Dr. Robert Sena, stated that Edwards’s mental symptoms “have greatly improved” and that he “no longer has hallucinations, delusions, and ideas of reference.” (Ed.App. 451). The doctor further observed, “His thought processes are no longer disorganized.” (Ed.App. 451).

Based on this report, Judge Hawkins ordered Edwards returned to the Marion County Jail on August 2, 2004. (Ed.App. 455). Without any further competency hearing,

Edwards received a two-day trial on June 27-28, 2005. App. 3a. He asked to proceed *pro se*, but Judge Hawkins denied his request based “primarily on the fact that [he] wanted to proceed under the defense of insanity and that that request would have caused a continuance.” App. 34a.

The jury found Edwards guilty of theft and criminal recklessness, but hung on the attempted-murder and battery-with-a-deadly-weapon charges. App. 3a. The court remanded Edwards to the custody of the Marion County Jail and withheld sentencing on the theft and criminal-recklessness convictions until after retrial on the other charges, which the court set for December 19-21, 2005. (Ed.App. 53, 59; Trial Tr. 486).

4. Prior to the second trial, Edwards formally petitioned the court to proceed *pro se*. App. 32a. The court denied Edwards’s request, finding that, while Edwards was mentally competent to stand trial and to assist counsel, his delusions, schizophrenia, communication troubles, and related problems with focus rendered him incapable of self-representation. App. 36a-37a. In so ruling, the court relied on Edwards’s long history of incompetence and observed that the present “finding of competence was conditioned by the doctors on the assistance of counsel.” App. 39a.

In reaching this conclusion, the court no doubt had in mind (among other things) Edwards’s voluminous correspondence with the court—including a crossed-out list of bedding supplies, a dress code, and a fictitious business letter. (Ed.App. 99-103, 125, 153-66, 188-223, 252-81, 289-348, 377-99, 419-34, 458-91, 553-68, 620-31, 646). As one example of this correspondence, in a “Petition for Hearing” dated November 1, 2004, Edwards urged the court to “consult, the best position to advise the groups of any, recourse that may be available established and to be action of law, certain of the rules admissions not to fail responsibilities of other officials, counterproductive resolved in the court

system therein any action that might be construed as interference.” (Ed.App. 488). He also wrote, in a “Motion to Dismiss” dated December 19, 2005, “Defendant moves the grounds of this court to dismiss this cause: if any notation of grand avoids a bill immunity proceeding at criminal information true-bill grounds. Defendant prays psalm 15.5 for innocent of court property to be dismissed wherefore, so shall it be done.” (Ed.App. 624).

5. Edwards’s second trial proceeded as scheduled on December 19, 2005. Edwards himself would have argued that he fired at the unarmed loss-prevention officer in self-defense. App. 34a-35a. However, because witnesses unequivocally testified that Edwards had begun to walk away from the officer before turning back to fire while the officer lay prone on the sidewalk, his counsel jettisoned the self-defense theory and instead argued that Edwards lacked the requisite intent for murder. App. 35a. More specifically, counsel contended that Edwards was trying to miss—otherwise the officer would have been killed. As counsel put it to the officer on cross-examination, “the only [other] explanation is that the bullet didn’t leave the barrel of that gun and travel in a straight direction toward your head.” (Trial Tr. 166). Counsel even tried to show that the loss-prevention officer was wrong about where Edwards was aiming by having the officer demonstrate for the jury how the physical confrontation played out. (Trial Tr. 144).

These efforts notwithstanding, the jury convicted Edwards of attempted murder and battery with a deadly weapon. App. 3a. The court sentenced Edwards on all four convictions to the presumptive sentence on each count, running concurrently, for a total executed sentence of 30 years. App. 3a.

6. On appeal, Edwards argued that his convictions for attempted murder and battery with a deadly weapon were invalid because the trial court had improperly denied

Edwards the right to represent himself, in violation of the Sixth Amendment. App.17a. The Indiana Court of Appeals agreed, concluding it was bound to reach this holding by *Godinez v. Moran*, 509 U.S. 389, 391 (1993). App. 17a, 24a. Still, the Court of Appeals' sentiments were with the trial court, stating that "we are entirely sympathetic to the conclusion reached by the trial court and appreciate that it was simply trying to ensure that Edwards received a fair trial." App. 24a.

On discretionary review, the Indiana Supreme Court likewise ruled that Edwards's right to self-representation had been violated, but acknowledged that the trial court's finding that Edwards was "incapable of adequate self-representation was, at a minimum, reasonable." App. 14a. Because improper denial of the right to self-representation is structural error, harmless-error analysis could not save the convictions. App. 14a; *see also McKaskle v. Wiggins*, 465 U.S. 168, 177 n.8 (1984). Accordingly, the court reversed Edwards's convictions for attempted murder and aggravated battery. App. 15a.

The Indiana Supreme Court's decision rested solely on federal law. 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); *see also* App. 13a-14a (holding that *Faretta* and *Godinez* compelled the court's result). The court observed that *Martinez v. Court of Appeal of Cal.*, 528 U.S. 152, 156 (2000), cast some doubt on the historical rationale for the right to self-representation. App. 12a-13a (citing the concurring opinions of Justices Kennedy, Breyer, and Scalia). However, it ultimately concluded that while "these separate opinions clearly acknowledge that *Martinez* cast doubt on *Faretta* . . . neither *Martinez* nor any other Supreme Court decision has overruled *Faretta* or *Godinez*." App. 13a. The court therefore rejected the State's argument that the standard for

competency to waive counsel should be something more than the *Dusky* standard—even though it found that argument had “some force”—because ultimately the court was “bound by United States Supreme Court precedent.” App. 4a.

REASONS FOR GRANTING THE PETITION

The Court should grant certiorari to resolve the deep conflict among the federal circuits and state courts regarding whether States may impose a higher competency standard for self-representation than the minimal competency required to stand trial under *Dusky v. United States*, 362 U.S. 402 (1960). Allowing criminal defendants such as Edwards to represent themselves undermines fair trials and erodes public confidence in criminal convictions and the criminal-justice system generally. See *Massey v. Moore*, 348 U.S. 105, 108 (1954) (“No trial can be fair that leaves the defense to a man who is insane, unaided by counsel, and who by reason of his mental condition stands helpless and alone before the court.”).

I. There is a Conflict Among Federal Circuits and State Supreme Courts over Whether Legally Competent but Mentally Impaired Criminal Defendants May Be Denied Self-Representation

Criminal defendants have the constitutional right to waive trial counsel when they “voluntarily and intelligently elect[] to do so.” *Faretta v. California*, 422 U.S. 806, 807 (1975). Further, due process does not *require* criminal courts to impose a higher standard of competency to waive counsel than to stand trial—a standard that asks only whether a defendant understands the charges and is able to assist counsel. See *Godinez v. Moran*, 509 U.S. 389, 402 (1993) (citing *Dusky v. United States*, 362 U.S. 402 (1960)). However, the Court explained in *Godinez* that “States are free to adopt competency standards that are *more elaborate*

than the *Dusky* formulation,” even though “the Due Process Clause does not *impose* these additional requirements.” *Godinez*, 509 U.S. at 402 (emphasis added).

The “free to adopt” statement has prompted judicial disarray with respect to the right to self-representation at trial. In the wake of *Godinez*, a well-developed, growing conflict has emerged among federal circuits and state supreme courts as to whether courts may deny self-representation at trial to defendants who, though competent under *Dusky*, are functionally unable to defend themselves owing to a mental impairment. Many courts read *Godinez* to permit a different standard for waiving counsel than for standing trial, but many others read it to require the same standard as for trial competency.

1. Cases Reading *Godinez* to Permit Different Standards:

a. On one side of the conflict, some courts after *Godinez* have held—in contrast to the decision below—that States may adopt a standard for waiving counsel that is higher than the competence standard for standing trial. According to the Utah Supreme Court, because *Godinez* holds that “the minimum requirements for competency to waive assistance of counsel are no greater than the requirements for competency to stand trial . . . [s]ome states have established additional requirements for competency to waive counsel.” *State v. Arguelles*, 63 P.3d 731, 751 (Utah 2003).

The Wisconsin Supreme Court, to begin, has reaffirmed its pre-*Godinez* precedent establishing a higher standard of competency for waiving counsel. *See State v. Klessig*, 564 N.W.2d 716, 724 (Wis. 1997). The court explained that Wisconsin’s “higher standard” survived *Godinez* because it was not based solely on the Due Process Clause, but was “primarily” decided “on a careful contemplation of public

policy.” *Id.* at 723. Wisconsin trial courts may deny self-representation based on “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.” *Id.* at 724.

For its part, the Seventh Circuit, in reviewing the Wisconsin standard, accepted the proposition that *Faretta* and *Godinez* leave room for States to limit the right to self-representation beyond the mere competency to stand trial. *See Brooks v. McCaughtry*, 380 F.3d 1009, 1013 (7th Cir. 2004). Judge Posner, writing for a unanimous court, concluded that “[n]o federal policy, whether found in the due process clause of the Fourteenth Amendment or anywhere else, is offended by” a State’s preventing mentally impaired defendants from representing themselves, even if doing so “may allow some of its criminal defendants to whipsaw it.” *Id.* at 1012. Accordingly, “we do not think that Wisconsin’s approach violates the rule of *Godinez*.” *Id.* at 1013.

b. Other courts, perhaps in an attempt to avoid the harsh rule they believe *Godinez* imposes upon them, have used the “knowing and voluntary waiver” portion of the *Faretta* rule to impose a higher standard on those wishing to exercise their right of self-representation. For example, in the semblance of determining whether a defendant voluntarily, knowingly, and intelligently waived the right to counsel, Rhode Island has effectively adopted a higher standard of mental competence to waive counsel. In *State v. Thomas*, 794 A.2d 990, 994 (R.I. 2002), the court explained that it previously had “determined that a defendant is subjected to a heightened standard of competency when he attempts to waive counsel and appear *pro se*.” Rhode Island trial courts may consider, among other things, “the background, the experience, and the conduct of the defendant at the hearing, including his age, his education, and his physical and mental health.” *State v. Briggs*, 787 A.2d 479, 486 (R.I. 2001).

The Illinois Supreme Court has similarly embraced a standard for waiving counsel that incorporates mental-competency considerations beyond what *Faretta* and *Dusky* demand. In *People v. Lego*, 660 N.E.2d 971, 978-80 (Ill. 1995), the court granted post-conviction relief to a defendant who had represented himself at trial, citing the defendant's mental illness as a reason to question his capacity to make a knowing and intelligent waiver of counsel.

c. Still other state supreme courts—those of California, Maryland, Utah, and Wyoming—have recognized that States have the freedom to apply a higher standard of competency for self-representation, but have (for the moment at least) chosen not to exercise that freedom. See *People v. Welch*, 976 P.2d 754, 777 (Cal. 1999); *Gregg v. State*, 833 A.2d 1040, 1060 (Md. 2003); *Arguelles*, 63 P.3d at 751; *Hauck v. State*, 36 P.3d 597, 602 (Wyo. 2001); see also *People v. Woods*, 931 P.2d 530, 534 (Colo. Ct. App. 1996); *Commonwealth v. Pamplona*, 789 N.E.2d 160, 164 (Mass. App. Ct. 2003).¹

¹ In *Commonwealth v. Barnes*, 504 N.E.2d 624, 627-28 & n.3 (Mass. 1987), the Supreme Judicial Court of Massachusetts held that a hearing on the defendant's competence to waive counsel, and possibly a psychiatric examination, was required where there was substantial evidence of the defendant's "mental disorder or impairment." It imposed a "vaguely higher" standard of competence to waive counsel than to stand trial because "the waiver of counsel necessarily embraces an assessment of the defendant's mental capacity to conduct his own defense." *Id.* at 628 n.3. Following *Godinez*, in *Commonwealth v. Simpson*, 704 N.E.2d 1131, 1135 n.5 (Mass. 1999), the court cited *Barnes* (among other cases) with approval and said that proving a defendant's competence "to act as his own lawyer (with standby counsel) may require a greater showing than that the defendant is competent to stand trial." However, the

2. Cases Reading *Godinez* to Prohibit Different Standards: On the other side of the conflict, while the Seventh Circuit allows different standards for waiving counsel than for standing trial, several other federal circuits—the Third, Fourth, Fifth, Eighth, Ninth, Tenth, and D.C. Circuits—mandate use of the same standard—although they acknowledge that waiver must be knowing and voluntary. See *United States v. Ellerbe*, 372 F.3d 462, 466 (D.C. Cir. 2004) (“The Supreme Court has expressly held . . . that a defendant who is competent to stand trial is also competent to waive his right to assistance of counsel—all that is necessary is that he do so intelligently and voluntarily.”); *Shafer v. Bowersox*, 329 F.3d 637, 650 (8th Cir. 2003) (finding “no distinction between the competency required to stand trial and the competency to waive constitutional rights,” and allowing that mental disorder can impede a knowing and voluntary waiver only if it precludes understanding the consequences of the waiver); *United States v. Peppers*, 302 F.3d 120, 131 n.9 (3d Cir. 2002) (“[T]he standard for competency to stand trial is the same as the standard to plead guilty or to waive counsel, except that a person seeking to waive a constitutional right must also demonstrate that the waiver is knowing and voluntary.”); *United States v. Frazier-El*, 204 F.3d 553, 559 (4th Cir. 2000) (“[T]he standard of competence for waiving counsel is

court then alluded to the knowing-and-voluntary standard and acknowledged that *Godinez* states that the constitutional standards for standing trial and for waiving trial counsel are the same. See *id.* *Simpson* did not resolve the matter, however, as it remanded the case over defendant’s *Dusky* competency. See *id.* at 1136. Then, in *Pamplona*, the Massachusetts Appeals Court seemingly applied a heightened standard for “competence to waive counsel” by considering that the defendant “conducted himself appropriately” before the court by cross-examining a witness and introducing evidence. See *Pamplona*, 789 N.E.2d at 164.

identical to the standard of competence for standing trial.”); *Dunn v. Johnson*, 162 F.3d 302, 307-08 (5th Cir. 1998) (“The level of competence required to waive the right to counsel is the same as that required to stand trial. As we hold above, Dunn was competent to stand trial. It necessarily follows that he also was competent to waive the right to counsel.”); *United States v. Hernandez*, 203 F.3d 614, 620 n.8 (9th Cir. 2000) (“[T]he Supreme Court held that a defendant’s competence to waive the right to counsel is measured by the same standard under which competence to stand trial is evaluated.”); *United States v. Boigegrain*, 155 F.3d 1181, 1186 (10th Cir. 1998) (“In *Godinez*, the Court held that the degree of competence necessary to waive the right to counsel is identical to the degree of competence necessary to stand trial.”).

Similarly, a large group of state courts of last resort has read *Godinez*’s “free to adopt” statement only to permit a single standard for *both* competence to stand trial *and* competence to waive counsel. These courts will overturn a trial judge’s decision to require counsel wherever the defendant has been deemed competent to stand trial, no matter how mentally incapable a defendant may be to defend himself. *See State v. Day*, 661 A.2d 539, 548 (Conn. 1995); *Lamar v. State*, 598 S.E.2d 488, 491 (Ga. 2004); *State v. Rater*, 568 N.W.2d 655, 660 (Iowa 1997); *State v. Camacho*, 561 N.W.2d 160, 172 (Minn. 1997); *State v. Wise*, 879 S.W.2d 494, 507 (Mo. 1994); *State v. Jordan*, 804 N.E.2d 1, 8 (Ohio 2004); *Commonwealth v. Starr*, 664 A.2d 1326, 1339 (Pa. 1995); *State v. Raymond*, 563 N.W.2d 823, 827 (S.D. 1997); *Ex parte Mines*, 26 S.W.3d 910, 912 (Tex. Crim. App. 2000); *In re Fleming*, 16 P.3d 610, 614 (Wash. 2001); *see also State v. Turner*, 2000 WL 674583, at *3-4 (Tenn. Crim. App. 2000).

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These distinct groups of state and federal decisions stand in direct, meaningful conflict. Many jurisdictions would have concurred with the decision below, but others would have affirmed Edwards's convictions given his history of serious mental illness, notwithstanding his technical legal competency. The table below charts this post-*Godinez* conflict, which comprises 29 jurisdictions (including three state intermediate appellate decisions). Since *Godinez*, in at least 60 cases nationwide a legally competent but mentally impaired defendant has sought to waive the right to trial counsel.² The issue thus remains vital, and the conflict will not abate without the Court's intervention.

² In addition to cases already cited, see *United States v. Lazo-Romero*, 2007 WL 1545184 (9th Cir. 2007); *Folsom v. Franklin*, 2007 WL 1445920 (10th Cir. 2007); *Maynard v. Boone*, 468 F.3d 665 (10th Cir. 2006); *United States v. Zedner*, 193 F.3d 562 (2d Cir. 1999); *Sobey v. Britten*, 2007 WL 1291085 (D. Neb. 2007); *Souza v. United States*, 2006 WL 3692921 (N.D. Ohio 2006); *People v. Jackson*, 2007 WL 754749 (Cal. Ct. App. 2007); *People v. Houston*, 2007 WL 1519548 (Cal. Ct. App. 2007); *People v. Lyles*, 2007 WL 1519778 (Cal. Ct. App. 2007); *People v. Robinson*, 2007 WL 1536786 (Cal. Ct. App. 2007); *People v. Blaylock*, 2006 WL 330557 (Cal. Ct. App. 2006); *People v. Reyes*, 2006 WL 416949 (Cal. Ct. App. 2006); *People v. Pullett*, 2006 WL 1731300 (Cal. Ct. App. 2006); *People v. F.J.*, 2006 WL 3291759 (Cal. Ct. App. 2006); *Moon v. Superior Court*, 36 Cal. Rptr. 3d 854 (Cal. Ct. App. 2005); *State v. Caracoglia*, 895 A.2d 810 (Conn. Ct. App. 2006); *Alston v. State*, 894 So.2d 46 (Fla. 2004); *Fleck v. State*, 956 So.2d 548 (Fla. Ct. App. 2007); *People v. Coleman*, 660 N.E.2d 919 (Ill. 1995); *State v. Gauthier*, 941 So.2d 642 (La. Ct. App. 2006); *People v. Smith*, 2004 WL 1057741 (Mich. Ct. App. 2004); *State v. Khaimov*, 1998 WL 747138 (Minn. Ct. App. 1998); *State v. Cassell*, 590 S.E.2d 333 (N.C. Ct. App. 2004); *Johnson v. State*, 17 P.3d 1008 (Nev. 2001); *State v. Pruitt*, 2004 WL 3017252 (Ohio Ct. App. 2004); *Commonwealth v. Jermyn*,

**The Multi-Jurisdictional
Post-*Godinez* Conflict**

	Federal Circuits	State Courts of Last Resort	Other State Appellate Courts
Different Standard Allowed	CA7	CA IL MD RI UT WI WY	CO MA
Same Standard Required	CA3 CA4 CA5 CA8 CA9 CA10 CADC	CT GA IN IA MN MO OH PA SD TX WA	TN

709 A.2d 849 (Pa. 1998); *Carrillo v. State*, 2006 WL 2925378 (Tex. Crim. App. 2006); *Moore v. State*, 999 S.W.2d 385 (Tex. Crim. App. 1999); *Edwards v. Commonwealth*, 644 S.E.2d 396 (Va. Ct. App. 2007); *State v. Bean*, 762 A.2d 1259 (Vt. 2000); *State v. Pollard*, 657 A.2d 185 (Vt. 1995); *State v. Marquardt*, 705 N.W.2d 878 (Wis. 2005).

II. Review is Warranted because Allowing the Mentally Impaired to Represent Themselves at Trial Erodes the Integrity of the Criminal-Justice System

As noted, the trial-competence standard of *Dusky* requires only that a criminal defendant be aware of the charges against him and be able to assist counsel with his defense. *See Dusky v. United States*, 362 U.S. 402, 402 (1960). This inquiry, however, explicitly presumes that the defendant will *not* represent himself; it therefore cannot conceivably be understood to test whether the defendant has the minimum cognitive capacity to do so. App. 6a. There is no reason, as a matter of logic or common sense, why someone who is competent to assist counsel (and therefore can stand trial) has the minimum capacity to present a case such that the resulting trial comports with due process.

The criminal-justice system at a minimum is supposed to be fair. *See Ford v. Wainwright*, 477 U.S. 399, 424 (1986) (Powell, J., concurring) (explaining that “fundamental fairness is the hallmark of the procedural protections afforded by the Due Process Clause”). Affording self-representation to the mentally impaired undermines this important goal and often leaves the system with a black eye. Although criminal defendants have different motivations for seeking to represent themselves, many *pro se* defendants “are so totally out of touch with reality that they believe they can do it all themselves.” John F. Decker, *The Sixth Amendment Right to Shoot Oneself in the Foot: An Assessment of the Guarantee of Self-Representation Twenty Years After Faretta*, 6 Seton Hall Const. L.J. 483, 487 (Spring 1996). Frequently, those who choose self-representation are the least up to the task, leading to trials that “make a mockery of justice.” *Id.* at 485.

1. Take the trial of Scott Panetti, which this Court reviewed just last term. *See Panetti v. Quarterman*, ___ U.S.

___, 127 S. Ct. 2849 (2007). After a jury found Panetti competent to stand trial, “Mr. Panetti experienced his ‘April Fool’s Day revelation’ that God had cured his schizophrenia.” *Panetti*, Pet. Br. at 10. Thus “cured,” Panetti asked to represent himself, and the court said yes. *See id.* at 11. Panetti thereafter came to court wearing a cowboy outfit described by his standby counsel as a “‘Tom Mix’ style costume like an old TV western . . . It was a joke. It was like out of a dime store novel.” *Id.* at 11 n.9. Panetti’s defense was “not guilty by reason of insanity,” and he explained to the jury in his opening statement that “only an insane person could prove insanity.” *Id.* at 11. Panetti asked the court “for over 200 subpoenas, including John F. Kennedy, the Pope, and Jesus.” *Id.*

Panetti explained during voir dire that “[t]he death penalty doesn’t scare me, sure but not much. Be killed, power line, when I was a kid. I’ve got my Injun beliefs as a shaman. I sent the buffalo horn to my sister. Adjustment, Jesus wrote . . . I was named ‘He who doesn’t cry’ because I didn’t cry when I should have, and I must admit, though, in Gillespie County Jail when I was in my little suicide box where there was an old boy committed suicide, I went through about a week of pretty much scuba diver’s tears; although, I don’t scuba.” *Id.* at 12. Panetti questioned prospective witnesses about nonsensical things like belt buckles, explaining that this line of questioning “has to do with jailhouse religion. It has to do what some men would do for a belt buckle. It has to do with the difference between a rodeo hand and a buckaroo poet. It has to do with my whole outlook and this will come up, God forbid, in the punishment stage.” *Id.* at 13. Panetti assumed an alternate personality named “Sarge” when he testified about the crime. *See id.* at 14. Panetti’s standby counsel summarized this behavior at trial as “‘bizarre’” and “‘scary,’” making “the trial ‘truly a judicial farce, and a mockery of self-representation.’” *Panetti*, 127 S. Ct. at 2849.

Not surprisingly, Panetti received the death penalty. *See id.* at 2847-48. Over 12 years later, after several rounds of appeals in the Texas state courts and two prior petitions for certiorari, the Court finally interceded because it appeared an insane man was about to be executed. *See id.* The case is still not over—several more rounds of trial and appellate litigation over his mental state are in the offing. *See id.* at 2863 (remanding so that the district court could develop an evidentiary record to resolve constitutional claims). This entire quagmire over Panetti’s punishment might have been avoided had Panetti not been allowed to represent himself in the first instance. *Cf. Panetti v. Cockrell*, 2003 WL 21756365, at *3-4 (5th Cir. 2003) (rejecting the argument that *Panetti* was incompetent to waive counsel in light of *Godinez*).

Unfortunately, Scott Panetti is just one example. Consider also the case of Colin Ferguson, the Long Island Railroad killer, who fired his lawyers for questioning his competence and told the jury that there was a 93-count indictment against him only because the crimes occurred in 1993. *See Decker*, 6 Seton Hall Const. L.J. at 487 n.7. Or serial killer Ted Bundy who, instead of presenting mitigating evidence at trial, “insisted on performing a mock wedding ceremony with his fiancée” in front of the jury. *See Bundy v. Dugger*, 816 F.2d 564, 567 (11th Cir. 1987); *see also Bundy v. Dugger*, 850 F.2d 1402, 1412 (11th Cir. 1988). These cases demonstrate the problems inherent in allowing the mentally ill to represent themselves and give sad substance to Justice Blackmun’s dissent in *Godinez*: “To try, convict, and punish one so helpless to defend himself contravenes fundamental principles of fairness and impugns the integrity of our criminal justice system.” *Godinez v. Moran*, 509 U.S. 389, 417 (1993) (Blackmun, J., dissenting).

These also are only a few of the self-representation cases that have captured the public eye—and are likely the tip of iceberg when it comes to mentally impaired but legally

competent defendants who have chosen to try their own cases. The consequences often are disastrous for both the defendants and the integrity—not to mention dignity—of the criminal-justice system.

2. Unfortunately, attempts to gather empirical data about *pro se* defendants, their reasons for choosing self-representation, and their success rates have not been fruitful. *See, e.g.*, Erica J. Hashimoto, *Defending the Right of Self-Representation: An Empirical Look at the Pro Se Felony Defendant*, 85 N.C. L. Rev. 423, 441-46 (Jan. 2007) (presenting results of an empirical study that the author acknowledged to be flawed because of a small sample size, missing data, and selection bias). But there can be no doubt that mentally ill defendants all too frequently attempt self-representation, with bad outcomes for themselves and the entire criminal-justice system. *See* n.1, *supra*.

Moreover, the lack of aggregate quantitative data hardly matters to a public that learns the stories of defendants such as Panetti—and perhaps one day Edwards if he ultimately represents himself at trial. Allowing mentally ill defendants to elect self-representation casts doubt on the integrity of the criminal-justice system, pure and simple. *See, e.g.*, Jessica McBride, *How Can an Insane Man Defend Himself?*, Milwaukee J. & Sentinel, Feb. 15, 2004, at J1, *available at* 2004 WLNR 4682593, at *4 (quoting a doctor who had treated Panetti as saying, “My God. How in the world can our legal system allow an insane man to defend himself?”); Ralph Blumenthal, *Insanity Question Lingers as Texas Execution is Set*, N.Y. Times, Feb. 4, 2004, at A12, *available at* 2004 WLNR 5530429, at *2 (quoting the executive director of the defender service as saying, “Allowing a schizophrenic in a cowboy costume to represent himself in a death penalty case gives new meaning to the term ‘frontier justice.’”); Howard Wiit, *Inmate Granted Stay*, Chi. Trib., Feb. 5, 2004, at 16, *available at* 2004 WLNR 19909681, at *3 (“Some of Panetti’s former doctors and lawyers, who

watched in the courtroom as Panetti rambled disjointedly, badgered witnesses and menaced the jury, later pronounced the trial a ‘farce’ and a ‘circus.’”).

There must be some limit on *Faretta* in order to ensure that all defendants, even those who are mentally ill, receive fair trials, and in order to assure the public of the same.

3. Limiting *Faretta* rights for the mentally impaired would not require a rollback of precedent or a leap of logic. The Court in many ways has already laid the doctrinal groundwork. *Faretta* itself recognized that, under a long line of cases, “the help of a lawyer” has been regarded as “essential to assure the defendant a fair trial.” *See Faretta v. California*, 422 U.S. 806, 832-33 (1975). The Court nonetheless recognized a right to waive trial counsel, but in doing so, it principally rejected the notion that a defendant’s lack of technical legal competence could be a reason to deny waiver. *See id.* at 836. That holding is not implicated here. The State asks only that the Court conclude that, at some point, permitting a defendant with profound mental impairments to represent himself at trial may tax the fairness of the criminal-justice system more than it can bear, even if the defendant is legally competent to stand trial.

Nor does *Godinez* present doctrinal obstacles. *Godinez* recognized a difference between competency to *waive* the right to counsel and competency to *represent* oneself. *See Godinez*, 509 U.S. at 396. It held that, as far as the Due Process Clause is concerned, a defendant who is competent to stand trial *need* be no more competent to waive the right to counsel. *See id.* at 399. The Court in *Godinez* did not, however, purport to create new constitutional law regarding a trial-competent defendant’s inherent mental capacity to represent himself. It merely quoted *Faretta* for the point that lack of technical competence in the law cannot limit the right of self-representation. *See id.* at 399-400. The question remains whether any *other* limits on *Faretta* rights, such as

where their exercise would undermine the integrity of the proceedings, may exist.

In *Martinez v. Court of Appeal of Cal.*, 528 U.S. 152, 161-62 (2000), the Court suggested that some such limits might in fact exist when it refused to apply *Faretta* to appellate proceedings. The Court reasoned that the right to self-representation is not absolute because “the defendant’s interest in acting as his own lawyer” is at times outweighed by “the government’s interest in ensuring the integrity and efficiency of the trial.” *Id.* at 162. The Court even suggested that future cases could further limit the right of self-representation where it squarely conflicts with fundamental fairness and due process. *See id.* at 162-63.

This is just such a case. Indeed, it is precisely because trying a mentally impaired defendant without counsel so squarely conflicts with fundamental fairness that many state courts already impose minor limits on *Faretta*. *See* Part I-1, *supra*. Further, one federal circuit has repeatedly and openly invited the Court to address this clash of criminal due-process rights that *Faretta* sometimes precipitates. *See United States v. Erskine*, 355 F.3d 1161, 1167 (9th Cir. 2004) (noting the “difficulty inherent in preserving . . . simultaneously” the *Faretta* right and the “paramount right to a fair and reliable trial”); *United States v. Hernandez*, 203 F.3d 614, 625 & n.18 (9th Cir. 2000) (questioning the wisdom of *Faretta* given its tension with the right to counsel).

The Court should therefore take this case to resolve whether the Sixth Amendment and fundamental fairness permit courts to deny self-representation to defendants competent to stand trial under *Dusky*, but too mentally impaired to conduct a lucid defense alone.

III. Edwards was Twice Found Incompetent Even to Stand Trial, Which Makes this an Excellent Case for Considering Whether Courts May *Ever* Deny Defendants Self-Representation at Trial

Because of Edwards's borderline legal competency, this case is an especially useful vehicle for examining the limits of the *Faretta* right with respect to the mentally impaired. App. 14a. The Court may use this case to examine whether just about *any* record of mental impairment can justify denying a legally competent defendant the right to waive counsel. App. 14a (“The record in this case . . . presents an opportunity to revisit the holdings of *Faretta* and *Godinez*, if the Supreme Court of the United States decides that is to be done.”).

To recap, throughout his nearly six years in state custody awaiting trial—either in the Marion County Jail or at Logansport State Hospital—Edwards has demonstrated a fundamental inability to communicate lucidly with the court—and at times even with his lawyer. His communication deficiencies have twice scuttled Edwards's trial under the minimal *Dusky* competency standard. (Ed.App. 168, 435-39). Edwards has now regained enough cognition to consult with his lawyer, but that is not nearly enough to communicate coherently with the court or a jury.

For example, as trial commenced and the court was considering Edwards's motion to dismiss his attorney, Edwards repeatedly interjected with gibberish objections—even after being told by the court that it was not his turn to speak. App. 33a-40a. Yet, during this same court session, Edwards consulted with counsel regarding whether, if allowed to represent himself, he would present the insanity defense. App. 34a. With little apparent trouble, Edwards was able to explain to his counsel that he would instead present a theory of self-defense. App. 34a-35a. Thus, while

Edwards demonstrated that he *could not* communicate coherently with the court (or conform to courtroom rules and procedures), he also demonstrated that he *could* assist his lawyer—and thus that he remained legally competent under *Dusky*.

This case, therefore, provides the Court with an excellent record for determining whether a criminal defendant who is so mentally impaired that he cannot communicate cogently with a court or a jury, but who is nonetheless legally competent to stand trial, must be permitted to represent himself at trial.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

**APPENDIX TO
PETITION FOR A WRIT OF CERTIORARI**

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**IN THE
INDIANA SUPREME COURT**

No. 49S02-0705-CR-202

AHMAD EDWARDS,

Appellant (Defendant below),

v.

STATE OF INDIANA,

Appellee (Plaintiff below).

Appeal from the Marion Superior Court
No. 49G05-9907-CF-121975
The Honorable Grant Hawkins, Judge

On Petition To Transfer from the Indiana Court of Appeals
No. 49A02-0602-CR-144

May 17, 2007

Boehm, J.

We hold that the federal constitutional right to self-representation requires that a defendant who is competent to be tried for a crime be permitted to proceed pro se if that is the defendant's choice.

Facts and Procedural Background

On July 12, 1991, Ahmad Edwards fired three gunshots after being confronted on a downtown Indianapolis street by Ryan Martin, a department store loss prevention officer who had seen Edwards steal a pair of shoes. One of the shots grazed Martin's back, and one struck a bystander in the ankle. Edwards fled. Special Agent Thomas Flynn of the FBI was in the vicinity and pursued Edwards into a parking garage where he found Edwards in a "crouched position" placing some items in a shaded corner. After several requests that Edwards drop his weapon, Flynn shot Edwards in the thigh and apprehended him. Three days later, Edwards was charged with attempted murder, battery with a deadly weapon, criminal recklessness, and theft.

Two disinterested psychiatrists found Edwards to be schizophrenic, and the trial court declared him incompetent to stand trial. In 2001, two years after evaluation and treatment, Edwards was evaluated by a staff psychiatrist at the Logansport State Hospital and found competent to stand trial. However, in November 2003, the trial court ordered a second examination by two different disinterested psychiatrists, and Edwards was once again found

incompetent. Finally, in July 2004, after another evaluation by a staff psychiatrist at the Logansport State Hospital, Edwards was found competent to stand trial. Edwards moved to proceed pro se, but the trial court denied that request, explaining that Edwards had stated his intention to raise insanity as a defense. The first trial took place in June 2005 and resulted in convictions of criminal recklessness and theft but a hung jury as to attempted murder and battery with a deadly weapon. The court declared a mistrial and scheduled a new trial on the latter two counts.

On August 3, 2005, Edwards moved to proceed pro se at the retrial, and his counsel moved to withdraw. The trial court granted both motions. It is unclear whether Edwards then had new appointed trial counsel. In any event, on August 31, 2005, Edwards again moved to proceed pro se, and the trial court denied that motion. On December 13, 2005, Edwards filed a final motion to proceed pro se. The motion was heard on the morning of December 19, 2005, the first day of Edwards's retrial. At that hearing the trial court denied Edwards's motion to proceed pro se. The trial court found that Edwards was competent to stand trial but lacked the additional capability required to conduct a defense.

After a three-day trial, Edwards was convicted of attempted murder and battery with a deadly weapon. He was sentenced to presumptive terms on those two counts and the two convictions from the first trial, with all four sentences to be served concurrently. This resulted in a sentence of thirty years, the presumptive sentence for attempted murder. Edwards appealed, claiming that he was denied his Sixth Amendment right to self-representation at his second trial. The Court of Appeals agreed and reversed and remanded this case for retrial of the attempted murder and battery counts. Edwards v. State, 854 N.E.2d 42, 45 (Ind. Ct. App. 2006). The State seeks transfer, which is granted by order concurrent with this opinion.

The Right to Self-Representation

The State contends that the trial court properly found Edwards incompetent to represent himself because he was incapable of presenting a “meaningful” defense. The State argues that due process and fundamental fairness of a criminal trial are overriding considerations that limit the right to self-representation. Edwards responds that the Sixth Amendment to the Federal Constitution guarantees an accused the right to self-representation.¹ He cites precedent from the Supreme Court of the United States confirming this broad right to self-representation and holding that the standard for competence to waive the right to counsel is the same as that for competence to stand trial. Thus, Edwards contends that the trial court committed reversible error in finding him competent to stand trial but denying his request to represent himself. The State responds that more recent authority casts doubts on the continued vitality of the authorities on which Edwards relies. We agree that this contention has some force, but we conclude that we are bound by United States Supreme Court precedent and that the State must address its contention to that Court.

A. *Faretta v. California*

¹ The right to counsel under Article 1, section 13 of the Indiana Constitution includes the right to appointed counsel for indigent defendants. See *Stroud v. State*, 809 N.E.2d 274, 279 (Ind. 2004). This right was recognized in Indiana before *Gideon v. Wainwright*, 372 U.S. 335 (1963) established a Fourteenth Amendment right to counsel in state court proceedings. *State v. Minton*, 234 Ind. 578, 581, 130 N.E.2d 226, 228 (1955); *Taylor v. State*, 227 Ind. 131, 135-36, 84 N.E.2d 580, 581 (1949). Edwards makes no separate argument under the Indiana Constitution. Because we conclude that Edwards had a right under the Federal Constitution to proceed pro se, whether he also enjoys the right under the Indiana Constitution is academic, and we do not address the issue.

Edwards cites Faretta v. California, 422 U.S. 806 (1975) as establishing his Sixth Amendment right to self-representation. In Faretta, the Supreme Court of the United States stated that the question as whether a state court may “hale 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.” 422 U.S. at 807. The Court concluded that it could not. Id. In reaching this conclusion, the Court cited the structure of the Sixth Amendment, which provides:

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 witness 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. Faretta observed that these rights are guaranteed in state proceedings by the Fourteenth Amendment. Faretta, 422 U.S. at 818. Although the Sixth Amendment makes no explicit reference to a right to proceed pro se, Faretta found this right implicit because the right to defend is given to the accused, and counsel is to assist, not conduct, the defense. Id. at 818-20. The defendant therefore has a federal constitutional right to be the “master” of the defense. Id. at 820. The Faretta majority conceded that most criminal defendants would be better defended by counsel. Id. at 834. But to force unwanted counsel on a defendant “violates the logic” of the Sixth Amendment. Id. at 820.

Faretta also held that an accused must “knowingly and intelligently” forego his right to counsel and that the defendant need not possess the skill and experience of a lawyer in order to represent himself. Id. at 835 (quoting Johnson v. Zerbst, 304 U.S. 458, 464-65 (1938)). The Court observed that the record clearly demonstrated that Faretta

was “literate, competent, and understanding, and the he was voluntarily exercising his informed free will.” Id. Noting that the trial judge informed Faretta that he would be required to follow the rules a lawyer would be required to follow, the court concluded that

We need make no assessment of how well or poorly Faretta had mastered the intricacies of the hearsay rule and the California code provisions that govern challenges of potential jurors on voir dire. For his technical legal knowledge, as such, was not relevant to assessment of his knowing exercise of the right to defend himself.

Id. at 836 (footnote omitted).

Chief Justice Burger dissented in Faretta, joined by Justices Blackmun and Rehnquist. In his view, public confidence in the criminal justice system requires a capable defense, and right of the accused did not warrant converting it into an “instrument of self destruction.” Id. at 839-40. Justice Blackmun filed a separate dissent, expressing a concern that self-representation could transform a trial into a “vehicle for personal or political self-gratification.” Id. at 849.

B. Godinez v. Moran

A defendant is competent to stand trial if he has “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding” and has a “rational as well as factual understanding of the proceedings against him.” Dusky v. United States, 362 U.S. 402, 402 (1960). In Godinez v. Moran, 509 U.S. 389 (1993), the Supreme court of the United States reaffirmed the Dusky standard and held that the standard of competence to waive the right to counsel is the same as the standard of competence to stand trial. Moran was charged with three

murders and found competent to stand trial. Godinez, 509 U.S. at 391. He informed the court that he wished to plead guilty and discharge his counsel. Id. at 392. After advising Moran of his rights and warning him of the disadvantages of proceeding pro se, the trial court accepted his waiver of counsel and guilty pleas, concluding that Moran had “knowingly and intelligently” waived counsel and had entered his pleas “freely and voluntarily.” Id. at 392-93.

Moran was sentenced to death for each of the three murders, and two of these were affirmed on appeal. Id. at 393. Two years later, Moran filed a petition for post-conviction relief alleging that he had been “mentally incompetent to represent himself.” Id. After the state courts denied relief, Moran sought federal habeas corpus. Id. The Ninth Circuit reversed the district court’s denial of habeas, concluding that competence to waive the right to assistance of counsel requires a higher level of mental function than is required to stand trial. Id. at 394.

The Supreme Court granted certiorari to address Moran’s contention that a pro se defense requires “greater powers of comprehension, judgment, and reason than would be necessary to stand trial with the aid of an attorney” and therefore the standard of competence to waive counsel should be higher. Id. at 399. The Supreme Court rejected this claim, holding that “the 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.” Id. The Supreme Court reiterated its observation in Faretta that “technical legal knowledge” has no relevance to the determination of whether a defendant is competent to waive his right to counsel and concluded that the standard of competence for waiving that right is not higher than that required to stand trial. Id. at 400.

Godinez also rejected Moran’s claims based on Westbrook v. Arizona, 384 U.S. 150 (1966). In Westbrook,

a two-paragraph per curiam opinion, the Court had vacated a judgment affirming the petitioner's conviction because there had been "a hearing on the issue of [the petitioner's] competence to stand trial" but "no hearing or inquiry into the issue of his competence to waive his constitutional right to the assistance of counsel." 384 U.S. at 150. In Godinez, the Ninth Circuit reiterated its view, first expressed in Sieling v. Eyman, 478 F.2d 211, 214 (9th Cir. 1973), that Westbrook implied that the standard for competence to stand trial was not sufficient for waiver of counsel. Moran v. Godinez, 972 F.2d 263, 266 (9th Cir. 1992). The Supreme Court concluded that the Ninth Circuit had read too much into Westbrook. Godinez, 509 U.S. at 397. Rather, "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." Id. at 399.

Godinez did, however, state that:

A finding that a defendant is competent to stand trial, however, is not all that is necessary before he may be permitted to . . . waive his right to counsel. In addition to determining that a defendant who seeks to . . . 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 . . . waiving the right to counsel, but it is not a heightened standard of *competence*.

Id. at 400-01 (internal citations omitted).²

² In Sherwood v. State, 717 N.E.2d 313, 135 (1999), we expressed the same thought: "[w]hereas the competency inquiry focuses on the ability to understand the proceedings, the 'knowing and voluntary' inquiry focuses on whether the defendant actually understands the significance and consequences of his choice and whether the decision is uncoerced." We explicitly recognized the

C. The Trial Court's Denial of Edward's Request to Proceed Pro Se.

Faretta established that before permitting a pro se defense the trial court must inform the defendant of the “dangers and disadvantages of self-representation.” 422 U.S. at 835. Although [t]here are no prescribed ‘talking ‘points’” that the court must convey, the court must be satisfied that waiver of counsel is “voluntary, knowing, and intelligent.” Poynter v. State, 749 N.E.2d 1122, 1126 (Ind. 2001) (citing Leonard v. State, 579 N.E.2d 1294, 1296 (Ind. 1991)). Several courts have held that a defendant’s conduct may effect a waiver of the right to counsel. Here, the trial court concluded that Edwards was not capable of conducting a defense and therefore could not knowingly and voluntarily waive his right to counsel.

Edwards properly asserted his Sixth Amendment right to proceed pro se. If the trial court accepts a waiver and permits a pro se defense, a record that is silent on the issue of voluntariness requires reversal. Poynter establishes that the record must establish that the defendant was cautioned as to the pitfalls of self-representation. 749 N.E.2d at 1128. At the retrial the trial court rejected Edwards’s attempt to waive the right to counsel. As a result, there was no need to make a record that Edwards was informed of the risks of self-representation.³ In short, the trial court’s conclusion that

“longstanding distinction between competence to choose self-representation, which is measured by competence to stand trial, and competence to represent oneself effectively, which the defendant is not required to demonstrate.” Id.

³ The record at Edwards’s second trial includes references by the trial court to cautions given in connection with the first trial. Edwards was found competent to stand trial on July 29, 2004, and his first trial took place a year later. At the time the trial court

Edwards could not proceed pro se was based on a determination that Edwards was not competent, not that his decision was involuntary or that he was unaware of the risks of self-representation. For the reasons given below, we conclude that this ruling deprived Edwards of his Sixth Amendment right to represent himself.

At the hearing on the eve of Edwards's second trial, after Edwards again moved to proceed pro se, the trial court reviewed the psychiatric evaluations of Edwards and observed the references to "rambling writings" showing "an inability to stay focused."⁴ The trial court concluded that

denied Edwards's request to represent himself in the second trial, the court noted that at Edwards's first trial in June 2005, the court had interrogated Edwards as to the several aspects of trial and trial preparation identified in footnote five. Edwards responded that he understood that he would be responsible for these portions of the trial. The trial court did not rely on the continued validity of this exchange.

⁴ The record supports these observations. For example, the following is an excerpt from a document that Edwards attached to his presentence investigation report entitled "Defendant's Version of the Instant Offense."

The appointed motion of permissive intervention filed therein the court superior on, 6-26-01 caused a stay of action and apon [sic] it's [sic] expiration or thereafter three years the plan to establish a youth program to and for the coordination of aspects of law enforcement to prevent and reduce crime among [sic] young people in Indiana became a diplomatic act as under the Safe Streets Act of 1967, "A omnibuc [sic] considerate agent: I membered [sic] clients within the public and others that at/production of the courts actions showcased causes. The costs of the stay (Trial Rule 60) has a derivative property that is: my knowledged [sic] events as not unexpended [sic] to contract the membered [sic] clients is the commission of finding a facilitie [sic] for this plan or project to become organization of

competence to waive the right to counsel requires “more than just an understanding of the “Sherwood fifteen points.”⁵ In denying Edward’s request to proceed pro se, the court explained:

The easiest thing for me to have done would have been to say sure, let him defend himself, get the case done in a couple of days and not really care whether justice had been done or not. I think he last time satisfied the Sherwood points by saying he

administrative recommendations conditioned by governors.

⁵ This is apparently a reference to our discussion in Sherwood of the matters the trial court had discussed with the defendant in that case. In that case, we noted that

Sherwood confirmed that he knew he would be solely responsible for conducting voir dire, challenging prospective jurors, making opening and closing statements, making objections and motions, making arguments, subpoenaing witnesses, and preserving issues for appeal, at both the guilt and sentencing phases. The trial court cautioned Sherwood that an attorney would be better at investigation and interrogation, that Sherwood’s incarceration would be a disadvantage in preparing a defense, and that an attorney would generally have greater skills.

The court further admonished Sherwood that the State would be represented by an attorney, that Sherwood could be in the awkward position of questioning himself if he chose to testify, and that Sherwood would have to abide by the same rules of evidence as an attorney. The trial court advised Sherwood against proceeding pro se. After this colloquy, Sherwood again stated that he voluntarily, knowingly and intelligently waived his right to counsel, knowing that the consequence could be death and that the State had superior resources and experience.

Sherwood, 717 N.E.2d at 136.

understood he would be responsible for certain portions of the trial. . . . The report upon which we relied in finding that Mr. Edwards was competent was the report of Doctor Robert Sena from July 27, 2004, from Logansport, still found that there was schizophrenia of an undifferentiated type; found that Mr. Edwards acknowledged his need for counsel; found that Mr. Edwards was able to plan a legal strategy in cooperation with his attorney.

The trial court relied on Edward's schizophrenia, his admission at his first trial that he needed counsel, and the judge's own experience to determine that Edwards could not adequately defend these charges.

D. *Faretta as Binding Precedent*

The State relies on the dissenting opinions of Justices Burger and Blackmun in Faretta and the several opinions in Martinez v. Court of Appeal of California, 528 U.S. 152 (2000) as support for its position that the denial of Edwards's request for self-representation was required by due process and fundamental fairness. In Martinez, the Court held that there is no constitutional right to self-representation in an appeal. 528 U.S. at 161. In reaching this conclusion, the Court distinguished Faretta and, the State argues, thereby cast doubt on the reasoning in Faretta. Most significantly, Martinez concluded that "[t]he historical evidence relied upon by Faretta as identifying a right of self-representation is not always useful because it pertained to times when lawyers were scarce, often mistrusted, and not readily available to the average person accused of crime." 528 U.S. at 156. Thus, if a defendant could not obtain a lawyer, self-representation or no defense at all were the only options left. Id. at 158. As Martinez put it, "a government's recognition of an indigent defendant's right to represent himself was comparable to bestowing upon the homeless beggar a 'right' to take shelter in the sewers of Paris." Id.

Moreover, Martinez, observed that criminal defendants now have a constitutional right to the assistance of appointed counsel at trial. Thus, “an individual’s decision to represent himself is no longer compelled by the necessity of choosing self-representation over incompetent or nonexistent representation.” Id. at 158. The Martinez majority view was not shared by all of the Justices. Justice Kennedy, in a separate concurring opinion, stated that “[t]o resolve [Martinez] it is unnecessary to cast doubt upon the rationale of Faretta v. California.” Id. at 164 (internal citation omitted). Justice Breyer, also concurring, stated:

I note that judges closer to the firing line have sometimes expressed dismay about the practical consequences of [Faretta’s] holding. . . . And without some strong factual basis for believing that Faretta’s holding has proved counterproductive in practice, we are not in a position to reconsider the constitutional assumptions that underlie that case.

Id. at 164-65 (internal citation omitted). Finally, Justice Scalia, concurring in Martinez wrote:

I do not share in the apparent skepticism of today’s opinion concerning the judgment of the Court (often curiously described as merely the judgment of “the majority”) in Faretta v. California While I might have rested the decision upon the Due Process Clause rather than the Sixth Amendment, I believe it was correct.

Id. at 165 (internal citation omitted). These separate opinions clearly acknowledge that Martinez cast doubt on Faretta. However, neither Martinez nor any other Supreme Court decision has overruled Faretta or Godinez. Indeed, Martinez made no reference to Godinez. As it stands, Supreme Court precedent from Faretta and Godinez binds us, just as it was held to be controlling by the New Jersey

Supreme Court in New Jersey v. Reddish, 859 A.2d 1173, 1189 (N.J. 2004) despite acknowledged criticism of Faretta and recognition of the Martinez concurring opinions.

We agree with the State that the trial court's conclusion that Edwards was incapable of adequate self-representation was, at a minimum, reasonable. We understand the trial court's purpose to ensure that Edwards received a fair trial, which is a fundamental requirement of due process. Ward v. State, 810 N.E.2d 1042, 1048 (Ind. 2004) (citing In re Murchison, 349 U.S. 133, 136 (1955)). However, we agree with the conclusion of the Court of Appeals that the Supreme Court of the United States has held that competency to represent oneself at trial is measured by competency to stand trial. Edwards, 854 N.E.2d at 48. Edwards was found competent to stand trial on July 29, 2004, and no party contends he was not competent to stand trial in December 2005. Similarly, as the Court of Appeals pointed out, there has been no claim by the State that Edwards's waiver of counsel was not knowing and voluntary. Here we have a determination by an experienced trial judge that Edwards was incapable of presenting a defense. That determination is necessarily based on factors better valued by, as Justice Breyer put it, "judges closer to the firing line." Martinez, 528 U.S. at 164. We have sympathy for the view that a trial could should be afforded come discretion to make that call. The record in this case presents a substantial basis to agree with the trial court and thus presents an opportunity to revisit the holdings of Faretta and Godinez, if the Supreme Court of the United States decides that is to be done. However, as it stands today, we are bound by these authorities as Supreme Court precedent. Accordingly, we hold that because Edwards was found competent to stand trial he had a constitutional right to proceed pro se and it was reversible error to deny him that right on the ground that he was incapable of presenting his defense.

Conclusion

Edwards's convictions for attempted murder and battery with a deadly weapon are reversed and this case is remanded for further proceedings. We summarily affirm the Court of Appeals as to issues not addressed in this opinion. See Appellate Rule 58(A).

Shepard, C.J., and Dickson, Sullivan, and Rucker, JJ., concur.

BAKER, Judge

Appellant-defendant Ahmad Edwards appeals from his convictions for Attempted Murder,¹ a class A felony, Battery With a Deadly Weapon,² a class C felony, Criminal Recklessness,³ a class D felony, and Theft,⁴ a class D felony. Edwards also argues that the trial court erred in imposing his sentences. Specifically, Edwards raises the following arguments: (1) the trial court erred in refusing to permit Edwards to represent himself in Edwards's second trial on the attempted murder and battery charges; (2) the trial court erred in denying his motions for discharge because he was denied his right to a speedy trial; (3) the trial court erred in imposing Edwards's sentences because it considered an improper aggravating circumstance; and (4) the trial court imposed sentences that are inappropriate in light of the nature of the offenses and Edwards's character.

We and the trial court alike are bound by the precedent of the United States Supreme Court. Consequently, we are compelled to conclude that the trial court erred in denying Edwards's request to represent himself in his second trial, inasmuch as it had already found him competent to stand trial. Finding no other error, we affirm in part, reverse in part, and remand with instructions to vacate Edwards's convictions for attempted murder and battery and to hold a new trial on those charges.

FACTS

On July 12, 1999, shortly after noon, Ryan Martin, a loss prevention officer at the Parisian Department Store in downtown Indianapolis, received a telephone call from a

¹ Ind. Code §§ 35-41-5-1, 35-42-1-1.

² Ind. Code § 35-42-2-1.

³ Ind. Code § 35-42-2-2.

⁴ Ind. Code § 35-43-4-2

sales associate in the store's shoe department regarding a suspiciously-acting patron. Martin observed the patron, later identified as Edwards, on the store's surveillance system, and noticed Edwards place a pair of shoes into a bag and then walk out of the store.

Martin exited the store, approached Edwards on a street corner, and identified himself as a Parisian loss prevention officer. Edwards turned and appeared to be preparing to flee, so Martin grabbed Edwards in a "bear hug" and held onto him until Martin heard a gunshot. Tr. p. 98-100, 144. Martin then observed that Edwards had a gun in his hand, at which time Martin let go of Edwards and rolled away. Martin then heard a second gunshot.

At that point, Martin was on the ground with one hand on the ground and the other hand in the air to show Edwards that he was unarmed. Edwards began to walk away but then stopped, turned around, pointed the gun at Martin's head from approximately seven feet away, and fired a third shot. The bullet missed Martin and struck the lower right leg of a bystander. Martin later realized that one of the bullets had struck him, grazing his back.

After firing the third shot, Edwards ran away from the store on Washington Street. Thomas Flynn, a special agent with the Federal Bureau of Investigation, happened to be driving down Washington Street at that time. Agent Flynn heard what sounded like a large-caliber weapon being fired and observed that people on the street bore an expression that "told [him] unmistakably that something bad was occurring" Tr. p. 357. The agent then observed Edwards, who had a different expression on his face than the other people on the street, running toward him. Edwards was running between vehicles and people "seemed to be trying to get away from" him. Id. at 359. Agent Flynn exited his vehicle and chased after Edwards, following him down an alley and watching as he entered a parking garage.

Agent Flynn looked into the parking garage and observed Edwards crouching in a corner. The agent identified himself and ordered Edwards to raise his hands, observing that Edwards had a “large caliber semiautomatic handgun” in his hand. *Id.* at 367. Edwards pointed his gun toward the agent’s face and started to move away from Agent Flynn, who was yelling constantly at Edwards to drop the gun. Edwards eventually turned and again pointed the weapon at Agent Flynn, who raised his own weapon and fired at Edwards. Edwards was struck in his thigh by the agent’s bullet and fell onto the ground. Eventually, Edwards complied with Agent Flynn’s order to drop the gun.

On July 15, 1999, the State charged Edwards with class A felony attempted murder, class C felony battery with a deadly weapon, class D felony criminal recklessness, and class D felony Theft. On August 16, 2000, Edwards was found incompetent to stand trial, but on March 14, 2001, Edwards was certified as competent to stand trial. On November 24, 2003, Edwards was again found incompetent to stand trial, but was certified as competent to stand trial on July 29, 2004.

A jury trial was held on June 27 and 28, 2005. The jury found Edwards guilty of theft and criminal recklessness but was unable to reach a verdict on the attempted murder and battery charges. The trial court declared a mistrial with respect to the attempted murder and battery charges and scheduled a new trial on those charges.

On August 3, 2005, Edwards moved to proceed pro se and his trial counsel moved to withdraw.⁵ The trial court

⁵ Apparently, Edwards also moved to proceed pro se before his first trial began. But at the hearing prior to Edwards’s second jury trial, the trial court commented that it had denied that motion because Edwards intended to raise the defense of insanity, which

granted both motions. Appellant's App. p. 54. Apparently, at some point not reflected in the Chronological Case Summary, the trial court again appointed counsel to represent Edwards. On August 31, 2005, Edwards again moved to proceed pro se, and the trial court summarily denied that motion. On December 13, 2005, Edwards filed another petition to proceed pro se, and following a hearing on the morning of Edwards's second jury trial, the trial court denied the request, finding that although Edwards was competent to stand trial he was incapable of representing himself.

On December 19-21, 2005, a second jury trial was held on the attempted murder and battery with a deadly weapon charges. The jury found Edwards guilty of both charges. On January 17, 2006, the trial court sentenced Edwards to the presumptive term on all counts-thirty years for attempted murder, four years for battery with a deadly weapon, and one and one-half years each for criminal recklessness and theft. The trial court ordered all sentences to be served concurrently, for a total executed sentence of thirty years. Edwards now appeals.

DISCUSSION AND DECISION

I. Right of Self-Representation

Edwards first argues that the trial court erred in denying his request to represent himself at his second trial. The extent of a criminal defendant's right to self-representation under the Sixth Amendment to the United States Constitution was articulated by the United States Supreme Court in Faretta v. California, 422 U.S. 806, 95 S. Ct. 2525, 45 L.Ed.2d 562 (1975); see also Sherwood v. State, 717 N.E.2d 131 (Ind. 1999) (describing and following the Faretta

would have required a continuance. Tr. p. 3-4. Edwards does not appeal that order.

decision). The Faretta Court held that a state may not “constitutionally hale 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.” 422 U.S. at 807, 95 S. Ct. 2525. More specifically, the Court noted that the Sixth Amendment grants to the accused “personally the right to make his defense.” Id. at 819, 95 S. Ct. 2525. Thus, “[u]nless the accused has acquiesced in such representation, the defense presented is not the defense guaranteed him by the Constitution, for, in a very real sense, it is not *his* defense.” Id. at 821, 95 S. Ct. 2525 (emphasis in original). Although a pro se defendant will lose the advantage of an attorney’s training and experience and may conduct his defense to his own detriment, he has the constitutional right to do so. Id. at 834, 95 S. Ct. 2525.

More recently, the United States Supreme Court considered what, if any, difference there is between competency to stand trial and competency to represent oneself. Godinez v. Moran, 509 U.S. 389, 113 S. Ct. 2680, 125 L.Ed.2d 321 (1993). In Godinez, the Court concluded that the competency standard for waiving the right to counsel is not higher than the competency standard for standing trial. Id. at 391, 113 S. Ct. 2680. More specifically, “[t]he Court reiterated the longstanding distinction between competence to choose self-representation, which is measured by competence to stand trial, and competence to represent oneself effectively, which the defendant is not required to demonstrate.” Sherwood, 717 N.E.2d at 135 (analyzing Godinez, 509 U.S. at 399-400, 113 S. Ct. 2680) (emphasis added).

The Godinez Court did, however, recognize a separate constitutional prerequisite for waiving the right to counsel—the requirement that such a waiver be knowing and voluntary. 509 U.S. at 400, 113 S. Ct. 2680. As explained by our Supreme Court,

[w]hereas the competency inquiry focuses on the ability to understand the proceedings, the ‘knowing and voluntary’ inquiry focuses on whether the defendant actually understands the significance and consequences of his choice and whether the decision is uncoerced. In addition, this Court has held that the right to represent oneself must be clearly and unequivocally asserted within a reasonable time before the trial begins.

Therefore, a defendant who is competent to stand trial and who knowingly, intelligently and voluntarily makes a timely and unequivocal waiver of counsel is entitled to exercise the right of self-representation

Sherwood, 717 N.E.2d at 135 (citations omitted).

Here, the trial court acknowledged Sherwood but concluded that it could carve out an exception to the rule for situations, such as this one, where the defendant was competent to stand trial but unable to represent himself:

Well, I’m, you know, the easiest thing for me to have done would have been to say sure, let him defend himself, get the case done in a couple of days and not really care whether justice had been done or not I spent some time going over [the reports of numerous doctors who had evaluated Edwards’s competency and mental health] Each and every report where a . . . neurological exam was performed found either delusions, a delusional disorder of the grandiose type or schizophrenia of an undifferentiated type Several of the reports refer to rambling writings as an indication of an inability to stay focused. The report upon which we relied in finding that Mr.

Edwards was competent . . . still found that there was schizophrenia of an undifferentiated type; found that Mr. Edwards acknowledged his need for counsel; found that Mr. Edwards was able to plan a legal strategy in cooperation with his attorney With these findings, he's competent to stand trial but I'm not going to find he's competent to defend himself. So the request to proceed pro se will be denied.

Tr. p. 7-9. Supporting the trial court's conclusions are the reports of the doctors who examined Edwards and the voluminous pages of pro se correspondence drafted by Edwards and sent to the trial court. As an example of Edwards's correspondence, we refer to his version of the instant offenses attached to the presentence investigation report:

The appointed motion of permissive intervention filed therein the court superior on, 6-26-01 caused a stay of action and upon [sic] its [sic] expiration or thereafter three years the plan to establish a youth program to and for the coordination of aspects of law enforcement to prevent and reduce crime among [sic] young people in Indiana became a diplomatic act as under the Safe Streets Act of 1967, "A omnibuc [sic] considerate agent: I membered [sic] clients within the public and others that at/production of the courts actions showcased causes. The costs of the stay (Trial Rule 60) has a derivative property that is: my knowledged [sic] events as not unexpended [sic] to contract the membered [sic] clients is the commission of finding a facilitie [sic] for this plan or project to become organization of administrative recommendations conditioned by governors.

Appellant's App. p. 646.

We are entirely sympathetic to the conclusion reached by the trial court and appreciate that it was simply trying to ensure that Edwards received a fair trial. We also acknowledge the authority cited by the State-including more recent separate opinions of a number of Justices on the United States Supreme Court-that criticizes the holdings of Faretta and Godinez. Appellee's Br. p. 8-9. But Faretta and Godinez have never been overruled, and the rules announced therein and further articulated in Sherwood leave little wiggle room. The Supreme Courts of the United States and of Indiana have pronounced that one's competency to represent oneself at trial is measured by one's competency to stand trial and that the standard for the former may not be higher than the standard for the latter.

Here, Edwards was found competent to stand trial. He made multiple timely and unequivocal requests to represent himself prior to his second trial, and there has been no suggestion that his requests were unknowing or involuntary. Consequently, it was incumbent upon the trial court to grant his request. Similarly, it is incumbent upon us to reverse Edwards's convictions for attempted murder and battery with a deadly weapon and to remand for a retrial on those charges.

We emphasize that on remand, if Edwards still desires to represent himself, the trial court must ensure that his waiver of his right to representation by counsel is both knowing and voluntary and that Edwards is made aware of the nature, extent, and importance of the right and the consequences of waiving that right. If the trial court concludes that Edwards is incapable of making a knowing and voluntary waiver and/or understanding the consequences of this waiver, it should articulate the factors causing it to arrive at that conclusion.

We will consider Edwards's arguments regarding his right to a speedy trial and the sentences imposed by the trial court only with respect to his remaining convictions for criminal recklessness and theft.

II. Speedy Trial

Edwards next argues that the trial court erred in denying his motion for discharge pursuant to Indiana Criminal Rule 4(C). In particular, he argues that he was denied his right to a speedy trial as guaranteed by the Sixth Amendment to the United States Constitution and Article I, section 12 of the Indiana Constitution.

Indiana Criminal Rule 4 establishes deadlines by which time trials must begin:

(B) Defendant in Jail—Motion for Early Trial.

- (1) If any defendant held in jail on an indictment or an affidavit shall move for an early trial, he shall be discharged if not brought to trial within seventy (70) calendar days from the date of such motion, except where a continuance within said period is had on his motion, or the delay is otherwise caused by his act, or where there was not sufficient time to try him during such seventy (70) calendar days because of the congestion of the court calendar. Provided, however, that in the last-mentioned circumstance, the prosecuting attorney shall file a timely motion for continuance as set forth in subdivision (A) of this rule. Provided further that a trial court may take note of congestion or an emergency without the necessity of

a motion, and upon so finding may order a continuance. Any continuance granted due to a congested calendar or emergency shall be reduced to an order, which order shall also set the case for trial within a reasonable time.

* * *

(C) Defendant Discharged. No person shall be held on recognizance or otherwise to answer a criminal charge for a period in aggregate embracing more than one year from the date the criminal charge against such defendant is filed, or from the date of his arrest on such charge, whichever is later; except where a continuance was had on his motion, or the delay was caused by his act, or where there was not sufficient time to try him during the period because of congestion of the court calendar

Although the duty to bring the defendant to trial within one year is an affirmative one resting with the State, the time for trial is extended for delays caused by the defendant's own act or a continuance had on the defendant's own motion. Cook v. State, 810 N.E.2d 1064, 1066-67 (Ind. 2004). Furthermore, if a defendant "seeks or acquiesces in any delay which results in a later trial date, the time limitations of the rule are also extended by the length of those delays." Wooley v. State, 716 N.E.2d 919, 924 (Ind. 1999). We review a trial court's ruling on a Rule 4 motion for discharge for an abuse of discretion. Smith v. State, 802 N.E.2d 948, 951 (Ind. Ct. App. 2004).

Here, Edwards first claims that he was entitled to discharge pursuant to Rule 4(C). He moved for discharge pursuant to that rule on September 13, 2004, and November 1, 2004, and argues that the trial court erred in denying those motions. Initially, we observe that although Edwards was represented by counsel at the time, he filed both motions pro

se. Consequently, the trial court was not required to rule on or consider those motions, and, in fact, it struck the discharge motion filed on September 13, 2004. See Underwood v. State, 722 N.E.2d 828, 832 (Ind. 2000) (holding that after counsel was appointed, the defendant spoke to the court through counsel and the court was not required to respond to a pro se request of or objection by the defendant).

The pro se nature of the motions notwithstanding, we will address the merits of Edwards's argument. The State is charged with the lapse of time between July 15, 1999, and October 18, 1999—a total of 95 days—at which time the trial was continued because of a congested calendar. Subsequently, on December 8, 1999, Edwards filed a claim of incompetence and was not found competent until March 19, 2001—a period of time that is charged to Edwards. See Pettiford v. State, 619 N.E.2d 925, 927 (Ind. 1993) (holding that delays resulting from a claim of incompetence and the period of time to regain competency are not charged against the State).

After Edwards was found competent on March 19, 2001, the State is charged with the time between that date and May 16, 2001—a total of 58 days—at which time Edwards requested a continuance. The State is also charged with the days that passed between May 29, 2001, and August 1, 2001—a total of 64 days—at which time it requested that Edwards be reexamined by psychiatrists for the purpose of determining his competency. Edwards was subsequently found incompetent and was committed to a state hospital until August 4, 2004, at which time he was declared competent and returned to jail. As noted above, delays resulting from a claim of incompetence and the period of time required to regain competency are not charged against the State. Pettiford, 619 N.E.2d at 927. The State is charged with the time that passed between August 4, 2004, and November 1, 2004—a total of 89 days—the date on which Edwards filed the most recent discharge motion. As of November 1, 2004,

however, the State was only charged with a delay of 306 days. Consequently, the trial court properly denied Edwards's motion for discharge.

Furthermore, Edwards subsequently waived any claim for discharge pursuant to Rule 4(C) because he failed to object during pretrial conferences held on December 3, 2004, February 22, 2005, June 29, 2005, and September 16, 2005, when subsequent trial dates were set beyond the one-year limit. See Brown v. State, 725 N.E.2d 823, 825 (Ind. 2000) (holding that a defendant waives the right to discharge unless he objects at the earliest opportunity to a trial date outside the one-year period). Thus, Edwards is not entitled to relief under Rule 4(C).

Edwards next claims that he is entitled to relief under Rule 4(B). To invoke this rule, a defendant must maintain a position reasonably consistent with his request for a speedy trial and must object, at his earliest opportunity, to a trial setting that is beyond the seventy-day time period. Hill v. State, 777 N.E.2d 795, 798 (Ind. Ct. App. 2002). The failure at any point to maintain a consistent position with the motion constitutes an abandonment of the request and the speedy trial motion ceases to have legal viability. Sholar v. State, 626 N.E.2d 547, 549 (Ind. Ct. App. 1993).

Edwards argues that the trial court should have granted his pro se September 13, 2004, motion for discharge based upon Rule 4(B). As noted above, however, the trial court was entitled to, and did, strike this motion because Edwards was represented by counsel at that time. Even if the trial court had ruled upon it, however, Edwards was not entitled to relief. Prior to September 13, 2004, Edwards's most recent request for a speedy trial was made on May 29, 2001. In the intervening period of time, Edwards requested a continuance and failed to object to trial dates set outside the 70-day period. Consequently, Edwards was not entitled to be discharged pursuant to Rule 4(B) on September 13, 2004.

See *Hill*, 777 N.E.2d at 798.

III. Sentencing Arguments

A. Aggravating Factor

Edwards argues that the trial court erred in imposing his sentence for his criminal recklessness because it considered an improper aggravating factor. Specifically, he argues that the trial court erred in finding the “danger to society” caused by Edwards’s actions to be an aggravator because it is an element of the crime of criminal recklessness.⁶ Tr. p. 498.

Sentencing determinations are within the sound discretion of the trial court, and we will only reverse for an abuse of discretion. *Krumm v. State*, 793 N.E.2d 1170, 1186 (Ind. Ct. App. 2003). An abuse of discretion occurs if the trial court’s decision is clearly against the logic and effect of the facts and circumstances before the court. *Id.* In a sentencing statement, a trial court must identify all significant aggravating and mitigating factors, explain why such factors were found, and balance the factors in arriving at the sentence. *Bryant v. State*, 841 N.E.2d 1154, 1156 (Ind. 2006). A trial court may not use a material element of an offense as an aggravating factor. *McCann v. State*, 749 N.E.2d 1116, 1120 (Ind. 2001).

Here, the trial court imposed the presumptive⁷ sentence of one and one-half years for Edwards’s criminal recklessness conviction, explicitly noting that but for the “danger to society” aggravator, “a sentence well below the

⁶ Edwards does not argue that this aggravator is improper with respect to his theft conviction.

⁷ Indiana’s sentencing statutes were amended by P.L. 71-2005, sec. 7, with an emergency effective date of April 25, 2005, to alter “presumptive” sentences to “advisory” sentences.

presumptive would be appropriate.” Tr. p. 499. It is apparent that, although it did not spell it out in so many words, the trial court intended to consider the nature and circumstances of the crime as an aggravating factor. Specifically, the trial court noted that Edwards’s actions amounted to “a shootout at high noon downtown,” therefore causing a “danger to society” Id. p. 498. The nature and circumstances of a crime is a proper aggravator so long as the trial court takes into consideration facts not needed to prove the elements of the offense. McCann, 749 N.E.2d at 1120. Here, Edwards opened fire on a public sidewalk in the middle of downtown Indianapolis at noon on a weekday. It is apparent that the trial court was within its discretion to consider the nature and circumstances of this crime to be an aggravating factor. Additionally, we emphasize that the trial court did not enhance Edwards’s sentence; to the contrary, it imposed the presumptive term. Under these circumstances, we cannot conclude that the trial court abused its discretion in sentencing Edwards.

B. Appropriateness

Finally, Edwards argues that the sentence imposed by the trial court is inappropriate in light of the nature of the offenses and his character. Ind. Appellate Rule 7(B). Specifically, Edwards urges that we should carefully consider his long-standing history of mental illness in analyzing the appropriateness of his sentence.

Turning first to the nature of the offenses, we again observe that Edwards stole property from Parisian, opened fire in the middle of a public sidewalk in downtown Indianapolis at noon on a weekday, shot a security guard and a bystander, fled from a federal agent, and pointed a loaded gun at the agent. Edwards’s actions evince a lack of concern for the safety of pedestrians and disrespect for authority.

As to the nature of Edwards's character, we note that his criminal history includes five prior adult arrests and prior convictions for operating a vehicle while intoxicated and criminal trespass. We are mindful of Edwards's history of mental illness and it is apparent from a review of the record that the trial court was also mindful of that factor. Given the nature of the offenses and Edwards's character, we cannot conclude that the trial court's imposition of concurrent presumptive sentences was inappropriate.

The judgment of the trial court is affirmed in part, reversed in part, and remanded with instructions to vacate Edwards's convictions for attempted murder and battery and to hold a new trial on those charges.

VAIDIK, J., and CRONE, J., concur.

STATE OF INDIANA VERSUS AHMAD EDWARDS
CAUSE NUMBER 49G05-9907-CF-121975
JURY TRIAL – DECEMBER 19, 20 AND 21, 2006
SENTENCING JANUARY 17, 2006
HONORABLE GRANT W. HAWKINS
MR. HOLLINGSWORTH FOR STATE
MC. MCSHANE FOR DEFENDANT

FIRST DAY OF TRIAL
DECEMBER 19, 2005

THE COURT: This is State of Indiana versus Ahmad Edwards, cause number 99-121975. Mr. Edwards is here with Mr. McShane, State by Mr. Hollingsworth. The matter comes on for trial by jury this morning. I have been advised—I'm sorry, Friday I was told, last week I was told Mr. Edwards wanted to proceed *pro se* and we would have to think about that today. I have a copy of **Sherwood** up here somewhere, so let me walk through it.

MR. MCSHANE: Wouldn't do you any good, Judge, I don't ever look at it until night.

THE COURT: I hear you. At any rate, as you are aware, Mr. Hollingsworth e-mailed me his concern, a concern he discussed with you, that there be a hearing on Mr. Edwards' request and that I not rely on the record made previously. That's where my research was leading me but I responded that I appreciated his thoughtful comments on the issue.

MR. MCSHANE: That's, that's right, Judge, and Mr. Hollingsworth and I, for the record, heard about this on Friday, he asked if I had any objection if he contacted the Court about it, I said none whatsoever and what you just stated is consistent with what he told me on Friday.

MR. HOLLINGSWORTH: We'll get you a copy of the e-mail if you'll have it.

THE COURT: I had no doubt about it; as a matter of fact, I think I printed the e-mail and put it in the file somewhere. The file's voluminous so who knows where.

MR. EDWARDS: Objection, Your Honor. Objection, Your Honor.

THE COURT: What's your objection?

MR. EDWARDS: My objection is me and my attorney actually had discussed a defense, I think prosecution had mentioned that, and we are in disagreement with it. He has a defense and I have a defense that I would like to represent or present to the Judge.

THE COURT: What does that have to do with what I've been saying so far?

MR. EDWARDS: I just wanted to make the record with that objection. This is the most present opportunity that I had. Thank you.

THE COURT: All right.

MR. EDWARDS: Thank you, Your Honor.

THE COURT: Mr. Hollingsworth, consistent with the note you sent me and that note being consistent with the conversation you and Mr. McShane had, I believe during the last trial I inquired of Mr. Edwards regarding the fifteen points mentioned in the **Sherwood** case. At that time I asked Mr. Edwards if he understood that he would be responsible for certain portions of the trial and he indicated yes. I didn't inquire into his ability to actually perform those functions

because performance, I don't think, is necessarily a criteria anymore as long as the person understands he has the obligations. The denial last time, I think, was based primarily on the fact that Mr. Edwards wanted to proceed under the defense of insanity and that that request would have caused a continuance which, which is a basis the Court can use for denying the opportunity to proceed *pro se*. Mr. McShane, does your client—if your client proceeded *pro se*, would he be seeking the invocation of that defense?

MR. MCSHANE: Let me double-check with him, if I may.

THE COURT: Okay.

DEFENSE CONFERS WITH DEFENDANT OFF THE RECORD

THE COURT: Any progress, Mr. McShane?

MR. MCSHANE: Just one more moment if I could, Judge. Thank you for the time, Your Honor. I'm always a little bit shy about getting into attorney/client matters but I would say this is a matter of a conclusion, having spoken with Mr. Edwards here. It appears to me that he does not wish to pursue the defense of insanity at trial, should he represent himself. I should state for the record I have no intention of doing that or we would have filed the appropriate documents with the court to put that specific statutory defense motion with respect to the pre-trial requirements under the Indiana competency and insanity clause. If Mr. Edwards were allowed to represent himself, and I should make it clear my position is the same as it was last week when this matter came before the Court and that is, he has an absolute right to do that, which I believe he is, and two, that it not delay the proceedings or otherwise interrupt the efficient and fair administration of justice such as requirement a continuance. What he's indicated to me is that were he to proceed to trial, representing himself, that his defense would be self-defense.

He is prepared to go forward with that defense on his own today. That is not the defense that I would be intending to advance to the jury in this case. And for the record, as his counsel, and I really haven't wavered from this since I first became familiar with this case, I believe that the defense that would be most in Mr. Edwards' interests to be advanced at trial would be basically that he didn't intend to kill anybody, not that . . .

THE COURT: Whereas he would be arguing he intended to kill but was doing so in self-defense?

MR. MCSHANE: Well, he intended to protect himself under . . .

THE COURT: Using deadly force?

MR. MCSHANE: Using deadly force.

MR. EDWARDS: Objection, Your Honor.

THE COURT: It's not time for you to object right now.

MR. EDWARDS: All right, okay.

MR. MCSHANE: So those, from my vantage point anyway, those defenses are different in the case and again, regardless of my views, I think that his right to represent himself under the Sixth Amendment of the United States Constitution and the parallel provision of the Indiana Constitution, the section of which escapes me right now, he still has an absolute right to do that as long as he doesn't run afoul of what I perceive to be the only two exceptions here, so that's our position.

THE COURT: Well, I'm, you know, the easiest thing for me to have done would have been to say sure, let him defend himself, get the case done in a couple of days and not really

care whether justice had been done or not. I think he last time satisfied the **Sherwood** points by saying he understood he would be responsible for certain portions of the trial. This time you're telling me that there would be no delay caused. I spent some time going over Doctor Richard Sena's report of July 27, 2004; Doctor Sena's report of May 28, 2004; Doctor Dwight Schuster's report of December 31st, 2002; Doctor Philip Coons's report of November 26th, 2002; Doctor Ned Masbaum's report of October 3, 2001; and Doctor Steven Berger's report of February 27, 2001; and finally Doctor Lance E. Trexler's report of February 23, 2000. Let me say that that—I think it was August of 2000 or so Judge Miller found Mr. Edwards to be incompetent, it was before I was presiding here. I think it was before Mr. Hollingsworth was assigned to this court, and we have so many reports—and this is not a complete list of the reports—we have so many reports because of findings prior to the prior, I'm sorry, reports prior to initial finding, then we have reports from a private doctor employed by the Public Defender agency, Doctor Trexler; reports from Logansport doctors; re-reports from doctors Masbaum and Schuster. Each and every report where a mental state—I'm sorry, where a neurological exam was performed found either delusions, a delusional disorder of the grandiose type or schizophrenia of an undifferentiated type, that's (inaudible) one. Several of the reports refer to rambling writings as an indication of an inability to stay focused. The report upon which we relied in finding that Mr. Edwards was competent was the report of Doctor Robert Sena from July 27, 2004, from Logansport, still found that there was schizophrenia of an undifferentiated type; found that Mr. Edwards acknowledged his need for counsel; found that Mr. Edwards was able to plan a legal strategy in cooperation with his attorney. So I'm going to carve out a third exception and if I'm wrong we'll just—if I'm wrong and there's a conviction, we'll just try this case again but I think it requires more than just an understanding of **Sherwood** fifteen points; requires more than just a plan that doesn't cause a continuance. I think it requires abilities that

exclude the doctors' findings, if you will. With these findings, he's competent to stand trial but I'm not going to find he's competent to defend himself. So the request to proceed *pro se* will be denied.

MR. EDWARDS: Objection, Your Honor.

THE COURT: Objection noted. Now are there any preliminary matters, Mr. Hollingsworth?

MR. HOLLINGSWORTH: If he's not going *pro se*, no.

THE COURT: Are there any . . .

MR. MCSHANE: I, I suppose I should probably just complete the record on this issue, Judge. I take exception to the Court's ruling. I don't believe that **Sherwood** allows for the Court to recognize the exception you just described on the record . . .

THE COURT: Actually I don't think **Sherwood** addresses that particular possibility. Tell you what, let me . . .

MR. MCSHANE: As I heard it, as I heard the Court's announcement of the ruling here, the Court's of the view that Mr. Edwards is competent to essentially cooperate with his lawyer and share in the responsibility in his defense to that extent, but not to do it on his own. I think . . .

MR. EDWARDS: Objection, Your Honor.

MR. MCSHANE: I think in discussing this issue, it does come up in **Sherwood**—excuse me, Judge.

**DEFENSE COUNSEL CONFERS WITH DEFENDANT
OFF THE RECORD**

MR. MCSHANE: That in **Sherwood**, citing **McCaskey versus Wiggins**, a U.S. Supreme Court case from 1984, the Court indicates quote “the right to speak for one’s self entails more than the opportunity to add one’s voice to a cacophony of others” end quote. That’s one of those five dollar words which I think is synonymous with like a chorus of others and I, I think really goes to the heart of the opportunity to represent one’s self. It describes the singular nature of that right and truly, under the Bill of Rights, the personal character of that right. So I, with all due respect, would just make that statement in support of our continued position that Mr. Edwards should be able to go forward representing himself alone in this case without what he perceives to be unwarranted interference from counsel that he disagrees with, but we only have a disagreement here and I think a disagreement in and of itself is not sufficient to deny Mr. Edwards’ request. He’s indicated to me again, Judge, that he wishes to address the Court.

MR. HOLLINGSWORTH: May I – I’m sorry.

THE COURT: The ruling’s been made. Any other preliminary issues, Mr. McShane?

MR. MCSHANE: No, Your Honor.

THE COURT: Mr. Hollingsworth?

MR. HOLLINGSWORTH: I would just like to comment on the ruling myself, for the record.

THE COURT: Okay.

MR. HOLLINGSWORTH: I actually—I’ve had a dilemma because as a prosecutor, although partisan here, I am also concerned the defendant gets a fair trial and reading through the medical records on the defendant, seeing his conduct in court I don’t know—I agree with you, sir, I don’t

know—that **Sherwood** truly addressed the issue of a seriously mentally ill defendant proceeding *pro se*. I don't know how that could be . . .

THE COURT: I'm sorry, let me interrupt, I forgot to mention, and Mr. McShane, I'm sorry, the voluminous writings shared with the Court by your client.

MR. MCSHANE: I have been provided copies of those.

THE COURT: Just keys into what some of the doctors were saying and if you'll remember, the finding of competence was conditioned by the doctors on the assistance of counsel.

MR. HOLLINGSWORTH: Yes.

THE COURT: So he's competent with counsel. Please proceed.

MR. HOLLINGSWORTH: I agree. I agree and I think, unfortunately I think justice would not be served in fairness to the defendant by his proceeding *pro se*. Clearly, his wish is not an intelligent one. Obviously this case will be scrutinized, possibly on appeal, but I think the Court has made the right decision to see that justice is done and hopefully this case will make a caveat to **Sherwood**. There's also some indication of not only mental illness but of some serious brain damage that defendant suffered about a decade ago in an automobile accident so that, I believe, has been documented. I can't recall the report. So I'm just, I'm agreeing with the Court, I think under the circumstance, justice is satisfied by him, by Your Honor's ruling. Thank you.

THE COURT: Okay.

MR. EDWARDS: Objection, Your Honor.

THE COURT: Objection is noted and from now on you have got to speak through your attorney, do you understand? We gave you a hearing on your intent, er, your desire to proceed by yourself and I've denied your request, so your attorney will speak for you from now on.

MR. EDWARDS: Well, Your Honor, I would like to address . . .

THE COURT: Yes or no, do you understand?

MR. EDWARDS: Under the First Amendment . . .

THE COURT: Do you understand?

MR. EDWARDS: Under the First Amendment I have a right to speak, Your Honor.

THE COURT: Do you understand what I said to you?

MR. EDWARDS: Your Honor . . .

THE COURT: Do you understand what I said to you?

MR. EDWARDS: Your Honor, I do understand but I would like to Constitutional right of the First Amendment . . .

THE COURT: We'll note your objection. Let's take a recess, then we'll get the jury questionnaires. In the meantime we'll take care of the rest of the morning calendar.

MR. MCSHANE: Judge, I have one more matter here.

THE COURT: Sure.

MR MCSHANE: Judge, I have one more matter here.

THE COURT: Sure.

MR. MCSHANE: I'm sorry, given what's transpired in the proceedings here, actually, I'll hold off on that.

THE COURT: Okay. If you feel the need to make a record, I'm willing to do that.

MR. MCSHANE: I don't need to right now.

THE COURT: Okay, then.

MR. MCSHANE: I, I would like to confer with Mr. Edwards here during the recess.

THE COURT: Good luck with that.

MR. MCSHANE: Yes, Judge.

[filestamp]
FILED
NOV 1, 2004
s/Doris Anne Sadler
MARION COUNTY
CLERK OF THE COURTS

MR. AHMAD)
EDWARDS,)
GROUPS;)
TURNING)
POINT, PUR)
POSE, BOARD)
OF DIRECTORS, CAP)
ITAI COMMITTEE)

IN THE MARION)
SUPERIOR)
COURT CIVIL)
DIVISION)
ROOM 5)
49D059907CF121975)
CAUSE NO.)

V.

THE STATE OF)
INDIANA)

5 Nov 04
DENIED
GWH

PETITION FOR HEARING

1. For hearing correspondence;
 2. Substantially, Article V; IV; II§3; and 1.§§22 of the U.S. Constitution;
- [Continued on Page, 2 of; 3]
[[cont-Petition for Hearing]]
3. The Groups stated above desires considerations of the court proper for legislation to intervene with the matters above limited by the U.S. Constitution.
 4. Mr. Ahmad Edwards would also as an Agent\Director urge the Court to consult, the best position to advise the groups of any recourse that may be available

established and to be action of law, certain of the rules admissions not to fail responsibilities of other officials, counterproductive resolved in the court system therein any action that might be construed as interference.

Continued on page; 3 of; 3

[[cont-Petition for Hearing]]

5. Therefor I sincerely regret if this petition cannot be of more direct assistance to the group upon this courts hesitation to set it's matters involving the Congress of the United States Approved Acts on June 19, 1962.

"I affirm, under penalties for perjury, that the foregoing representations are true.

s/Ahmad Edwards
Mr. Ahmad Edwards
Director

DEFENDANT'S VERSION OF THE INSTANT OFFENSE

If you wish to make a statement concerning your conviction please do so below (this statement will be attached to the presentence report for review by the Court.)

You may use additional paper, if necessary.

If you do not wish to make a statement, write "No Statement." Please sign and date this page.

"The appointed motion of permission intervention filed therein the court superior on, 6-26-01, caused a stay of action and upon its expiration or thereafter three years the plan to establish a youth program to and for the coordination of aspects of law enforcement to prevent and reduce crime among young people in Indiana became a diplomatic act, as under, The Safe Streets Act of 1962, "A omnibuc considerate agent: I membered clients within the public and others that at/production of the courts actions showcased causes. 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 a facilmie for this plan or project to become organization of administrative recommendations ~~earry~~ conditioned by governors.

The above information is correct to the best of my knowledge.

Please sign and date this page.

Signed Name s/Ahmad Edwards Date 12-27-05
Printed Name Ahmad Edwards

45a

KEY: 40 S. ALABAMA)
ST. INDIANAPOLIS, IN) IN THE MARION
46204) SUPERIOR COURT
) CRIMINAL DIVISION
AHMAD EDWARDS)
 V) CAUSE NO. 49G05
STATE OF INDIANA) 9907CF121975

AGENCY
FORM Ahmad Edwards

Defendant Ahmad Edwards Motion to Dismiss: TrueBill
Defendant Moves the Grounds of this Court to Dismiss this
cause.

If any information of grand avoids a bill immunity
proceeding at criminal information true-bill grounds

Defendant prays psalm, 15.5; for innocent of court property
to be dismissed
Wherefore, so shall it be done.

Defendant affirms under perjury

Judgment

The Court, having this day made it's entry,
It is now adjudged that this cause of action is dismissed
without prejudice.

Date: _____
Sandler, Clerk
Marion Circuit Court

Movant, signed, placed, in U.S. Mail, 12-19-05
Public Notary s/Brian Rodgers (Brian Rodgers)
Comm: 1-5-06 _____
Superior Court Judge