

Casenote

Shots, Shoes, and Self-Representation: *Indiana v. Edwards* and the New Limitation on the Sixth Amendment Right of Self-Representation

I. INTRODUCTION

In *Indiana v. Edwards*,¹ the United States Supreme Court held that a state² can refuse to allow a criminal defendant to represent himself and require that the defendant be represented by counsel at trial when the trial judge, after making a “realistic account of the particular defendant’s mental capacities,” determines that a defendant, although competent to stand trial, lacks the mental capabilities to conduct his own defense.³ In so holding, the Court’s 7-2 decision⁴ has established a potentially troublesome limitation on the right to self-representation first recognized in *Faretta v. California*.⁵ The majority announced a vague standard, and trial courts confronted by mentally ill (but competent)

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1. 128 S. Ct. 2379 (2008).
 2. Presumably, the holding applies to the federal system as well.
 3. *Edwards*, 128 S. Ct. at 2387-88.
 4. *See id.* at 2381.
 5. 422 U.S. 806 (1975).

defendants who wish to act as their own counsel will have to guess as to the contours of that standard, with no guarantee that their standard will be upheld under the Sixth⁶ and Fourteenth⁷ Amendments of the United States Constitution.

II. FACTUAL BACKGROUND: OF SHOTS AND SHOES

On July 12, 1999, Ahmad Edwards had an altercation with a loss prevention officer after stealing a pair of shoes from the Parisian's shoe department in Indianapolis. Edwards fired three shots, one of which grazed the officer's back and embedded itself in a bystander's lower right leg. A Federal Bureau of Investigations special agent who happened upon the scene pursued and captured Edwards.⁸

Edwards was charged with attempted murder, battery with a deadly weapon, criminal recklessness, and theft. Edwards's court-appointed attorney requested that his client undergo a psychiatric evaluation to determine his competency to stand trial. After reviewing evidence from a psychiatrist and a neuropsychologist, the trial court found Edwards incompetent to stand trial and committed him to Logansport State Hospital for treatment.⁹

Eventually, the Logansport staff psychologist concluded Edwards was competent.¹⁰ A second competency hearing was held in March 2002, and despite his continued problems with mental illness, Edwards was found competent. Edwards's counsel pressed for another evaluation. In April 2003 the trial court held a third competency hearing in which Edwards was found incompetent because his schizophrenia limited his ability to work with his attorney in developing his defense. As a result, Edwards was sent back to Logansport. In July 2004 Edwards was found competent to stand trial.¹¹

Edwards moved to represent himself at trial and requested a continuance to prepare his defense. The trial court denied the motion, and court-appointed counsel represented Edwards in the June 2005 trial, which resulted in guilty verdicts on the criminal recklessness and theft charges.¹² The jury did not come to a verdict on the charges of attempted murder and battery, so the State decided to retry the charges in December 2005. Edwards again moved to represent himself at the

6. U.S. CONST. amend. VI.

7. U.S. CONST. amend. XIV.

8. *Edwards v. State*, 854 N.E.2d 42, 45-46 (Ind. App. 2006).

9. *Indiana v. Edwards*, 128 S. Ct. 2379, 2382 (2008).

10. *Edwards v. State*, 866 N.E.2d 252, 254 (Ind. 2007).

11. *Edwards*, 128 S. Ct. at 2382; *Edwards*, 854 N.E.2d at 46.

12. *Edwards*, 128 S. Ct. at 2382.

second trial, and his court-appointed counsel moved to withdraw representation. The motions initially were granted, but the court ultimately reappointed counsel for Edwards.¹³

Before the second trial, Edwards again renewed his motion to proceed pro se. The judge denied the request, finding that although Edwards may have been competent to stand trial, he lacked the mental capacity to defend himself.¹⁴ While represented by counsel,¹⁵ the jury convicted Edwards of the counts of attempted murder and battery with a deadly weapon. He was sentenced to thirty years imprisonment.¹⁶

Edwards appealed his convictions at the second trial to the Indiana Court of Appeals. In relevant part, Edwards alleged that the trial court erred in denying his request to proceed pro se at his second trial and violated his Sixth Amendment¹⁷ right to self-representation. The court of appeals agreed, vacating the judgment of the trial court and ordering that a new trial be held on the two charges. The Indiana Supreme Court accepted the State's petition to review the case and affirmed the court of appeals holding that precedent required that Edwards be allowed to represent himself.¹⁸

In response, the State petitioned the United States Supreme Court for certiorari, and certiorari was granted in part to review the matter of Edwards's competency.¹⁹ The Supreme Court held that a defendant may be denied his right to self-representation when the trial judge finds that he lacks the mental capacity to conduct his defense.²⁰

13. *Edwards*, 854 N.E.2d at 46. At this trial, the court looked at various written pleadings submitted by Edwards. *Edwards*, 866 N.E.2d at 258. One such writing was attached to the pre-sentence investigation report, entitled "Defendant's Version of the Instant Offense," and was incoherent and included misspelled words and irrelevant language about "establish[ing] a youth program to and for the coordination of aspects of law enforcement" and "a diplomatic act as under the Safe Streets Act of 1967." *Id.* n.4.

14. *Edwards*, 128 S. Ct. at 2382-83.

15. Edwards and his attorney allegedly disagreed over the trial strategy. *Edwards*, 128 S. Ct. at 2390 (Scalia, J., dissenting). Edwards wanted to proceed under self-defense, but his attorney wanted to use lack of intent to kill. *Id.*

16. *Edwards*, 854 N.E.2d at 46.

17. U.S. CONST. amend. VI.

18. *Edwards*, 128 S. Ct. at 2383.

19. *Id.* Six organizations filed amicus curiae briefs with the Supreme Court prior to arguments, including a joint brief by the American Psychiatric Association and American Academy of Psychiatry and Law. Michael W. Hoskins, *Attorneys Prep for High Court Case*, IND. LAWYER, June 25, 2008, at 2.

20. *Edwards*, 128 S. Ct. at 2387-88.

III. LEGAL BACKGROUND: OF SELF-REPRESENTATION

Two lines of cases govern the right of self-representation and the mental competence standard. Both lines merged in the limited holding in *Godinez v. Moran*.²¹

A. *The Right to Self-Representation*

The first line of cases governs the right to self-representation. Traditionally, self-representation has been protected as a defendant's personal right grounded in early English and American common law and the Sixth Amendment of the United States Constitution.²² According to English jurisprudence, the Star Chamber was the only court to require representation by counsel in a criminal case.²³ Apart from this tribunal, the English common law reflected a right to self-representation as the general practice.²⁴

This right to self-representation was brought to America and jealously guarded by early colonists because of the distrust of lawyers in England formed during times of political and religious discontent.²⁵ This distrust persisted during the American Revolution and through the inception of the United States Constitution.²⁶ The value of knowledgeable counsel was later resurrected in practice, but early American defendants were never forced to accept counsel.²⁷ Regardless, the Judiciary Act of 1789²⁸ acknowledged the right to self-representation.²⁹ The statutory right to self-representation is currently recognized under Title 28 of the United States Code.³⁰

A criminal defendant's right to counsel in proceedings against him became rooted in the text of the Sixth Amendment, which states that

21. 509 U.S. 389 (1993).

22. U.S. CONST. amend. VI.

23. The Star Chamber was a politically charged tribunal used as a supplement to English common law to enforce Tudor monarchy policies. *Faretta v. California*, 422 U.S. 806, 821 & n.17 (1975) (discussing L. FRIEDMAN, *A HISTORY OF AMERICAN LAW* 23 (1973)). When appearing before this tribunal, a defendant's individual rights were nonexistent. *See id.* at 821.

24. *See generally id.* at 823-26.

25. *Id.* at 826.

26. *Id.* at 826-27. Interestingly, Georgia's constitution included a provision that allowed the accused to "defend 'by himself or counsel, or both.'" *Id.* at 829 n.38 (quoting GA. CONST. art. III, § 8 (1798)).

27. *Id.* at 827-28.

28. Judiciary Act of 1789, ch.20, 1 Stat. 73 (1789).

29. *See* 1 Stat. at 92.

30. *See* 28 U.S.C. § 1654 (2006).

“[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence.”³¹ At first, this right applied only to federal cases, but the United States Supreme Court in *Gideon v. Wainwright*³² incorporated through the Fourteenth Amendment³³ the right to counsel to the states as “fundamental and essential to fair [criminal] trials.”³⁴

The right to self-representation, however, was not protected under the Constitution until *Faretta v. California*³⁵ in 1975. In *Faretta* the Court held that the right to self-representation at a criminal trial could not be denied when the defendant “knowingly and intelligently” elects to proceed without the benefit of counsel.³⁶ Initially, Faretta was given permission to represent himself. However, after questioning him about state procedural law, the trial judge determined Faretta could not have knowingly and intelligently waived his right to counsel and further stated that self-representation was not constitutionally protected. Represented by counsel, Faretta was convicted.³⁷

Quoting *Adams v. United States*,³⁸ the Supreme Court in *Faretta* stated “protections for the accused should not be turned into fetters. . . . [T]o deny [the defendant] in the exercise of his free choice the right to dispense with some of these safeguards . . . is to imprison a man in his privileges and call it the Constitution.”³⁹ The Court reasoned that although counsel helps most criminal defendants, the defendant—not the lawyer—suffers the consequences of conviction.⁴⁰ Because Faretta had shown that he was “literate, competent, and understanding,” the court determined that he voluntarily waived his right to counsel.⁴¹ However, the Court limited its holding, stating that Faretta’s actual, technical legal knowledge was irrelevant to his decision to waive counsel.⁴² The dissent expressed displeasure with the majority’s holding, finding that “[t]he system of criminal justice should not be available as an instru-

31. U.S. CONST. amend. VI.

32. 372 U.S. 335 (1963).

33. U.S. CONST. amend. XIV.

34. *Gideon*, 372 U.S. at 343-44; *see also* *Argersinger v. Hamlin*, 407 U.S. 25 (1972); *Powell v. Alabama*, 287 U.S. 45 (1932).

35. 422 U.S. 806 (1975).

36. *Id.* at 835.

37. *Id.* at 807-11.

38. 317 U.S. 269 (1942).

39. *Faretta*, 422 U.S. at 815 (quoting *Adams*, 317 U.S. at 279-80) (second ellipsis in original).

40. *Id.* at 834.

41. *Id.* at 835.

42. *Id.* at 836.

ment of self-destruction” by allowing a prosecutor to obtain a simple conviction based on a defendant’s presentation of the evidence and lack of legal training.⁴³

The right to self-representation, however, has never been absolute, and federal courts have continued to limit the right in certain instances. First, the trial court can deny the right of self-representation to unruly defendants.⁴⁴ A defendant may be removed from the courtroom when he continues to “deliberately [engage] in . . . obstructionist misconduct,” although the right may be reinstated when the defendant decides to respect the dignity of the court.⁴⁵ Second, the trial court can require stand-by counsel.⁴⁶ However, if stand-by counsel “substantially interfere[s]” with the defendant’s major strategy decisions or does not allow the defendant to address the court when in the jury’s presence, the Sixth Amendment right to self-representation has been violated because the jury may perceive that the defendant is not in control of his case.⁴⁷ This allows the defendant to seek advice from an experienced attorney on trial tactics and procedure, but the defendant is not free to summon the attorney on a whim to act on his behalf whenever he deems appropriate.⁴⁸ Third, a defendant who represents himself may not challenge his convictions on appeal based on his ineffective representation because the right to self-representation is not the right to abuse court dignity, procedure, and law.⁴⁹ Finally, a criminal defendant does not have a right to self-representation on appeal.⁵⁰ In *Martinez v. Court of Appeal of California, Fourth Appellate District*,⁵¹ the Supreme Court held that there was neither support in the structure of the Sixth Amendment nor a historical basis for alleging a right to represent oneself on appeal.⁵² Because there is no presumption of innocence in a criminal appeal, the Court reasoned the state’s interest in maintaining the efficiency of its judicial system outweighs the possible risk of distrust

43. *Id.* at 839-40 (Burger, C.J., dissenting).

44. *Illinois v. Allen*, 397 U.S. 337, 343 (1970).

45. *Faretta*, 422 U.S. at 834 n.46 (citing *Allen*, 397 U.S. at 343).

46. *McKaskle v. Wiggins*, 465 U.S. 168, 178-79 (1984).

47. *Id.*

48. *Id.* at 183.

49. *Faretta*, 422 U.S. at 834 n.46 (stating that “a defendant who elects to represent himself cannot thereafter complain that the quality of his own defense amounted to a denial of ‘effective assistance of counsel’”).

50. *Martinez v. Ct. of App. of Cal., 4th App. Dist.*, 528 U.S. 152, 163 (2000).

51. 528 U.S. 152 (2000).

52. *Id.* at 159, 160-61.

or suspicion a defendant may have against his lawyer, which is a key concern at the trial court level.⁵³

B. *Mental Competency to Stand Trial*

The second line of cases addresses a criminal defendant's mental competency to stand trial. Like modern American courts, English common law courts were faced with the issue of mentally ill defendants.⁵⁴ William Blackstone, a famous legal commentator, wrote that someone who was "mad" after committing a crime should not be indicted or arraigned "because he is not able to plead to it with that advice and caution that he ought."⁵⁵ In the same vein, Blackstone stated that even if a defendant became "mad" after entering a plea, a court should not try the case because he could not make a proper defense.⁵⁶

In American caselaw, *Massey v. Moore*⁵⁷ is a foundational case in which the Supreme Court held that an insane person may not be held accountable for failing to plead insanity at trial when represented without counsel.⁵⁸ Importantly, the Court reasoned that "[o]ne might not be insane in the sense of being incapable of standing trial and yet lack the capacity to stand trial without the benefit of counsel."⁵⁹

The modern standard for the mental competency required to stand trial was established in the per curiam decision of *Dusky v. United States*.⁶⁰ To be competent to stand trial, the Court held, a defendant must have "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and "a rational as well as factual understanding of the proceedings against him."⁶¹ It is not enough that a defendant be aware of his surroundings and have a general understanding of the incident.⁶²

This standard was affirmed in *Drope v. Missouri*.⁶³ In *Drope* the defendant and two others were charged with the rape of the defendant's wife.⁶⁴ On the second day of trial, the defendant failed to appear

53. *Id.* at 161-63.

54. See 2 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND *24-25 (1769).

55. *Id.* at *24.

56. *Id.* at *24-25.

57. 348 U.S. 105 (1954).

58. *Id.* at 108-09.

59. *Id.*

60. 362 U.S. 402 (1960).

61. *Id.* at 402.

62. *Id.*

63. 420 U.S. 162 (1975).

64. *Id.* at 164.

because he had shot himself in the stomach in an attempt to kill himself.⁶⁵ He appealed his convictions through the Missouri courts and up to the United States Supreme Court.⁶⁶ The Court held that the trial court had not given enough weight to testimony that the defendant had attempted to kill his wife before trial, and in light of the suicide attempt, there was “sufficient doubt of his competence to stand trial to require further inquiry on the question.”⁶⁷ The Court advised that trial courts should “always be alert to circumstances suggesting a change that would render the accused unable to meet the standards of competence to stand trial.”⁶⁸

C. *Merging the Standards: Godinez v. Moran*

Until *Godinez v. Moran*,⁶⁹ self-representation and mental competency had never been specifically addressed as interconnecting aspects of a defendant’s case. In *Godinez* the Supreme Court held that the standard of competence necessary to enter a guilty plea was the same as the *Dusky* standard for competency to stand trial.⁷⁰

In *Godinez*, Moran pleaded not guilty to three counts of first degree murder. After an unsuccessful suicide attempt, the trial court ordered that Moran undergo a psychiatric examination. Moran was deemed competent to stand trial and asked to represent himself pro se. Finding that Moran had knowingly and intelligently waived his right to counsel, the trial court accepted Moran’s guilty plea on all three counts. This resulted in Moran being sentenced to death for all three counts.⁷¹ Ultimately, the Supreme Court granted certiorari to resolve a split among the circuits regarding whether the standard of competency for entering a plea and waiving counsel in a criminal trial was greater than the *Dusky* standard for competency to stand trial.⁷²

The Court rejected the argument that competency to plead guilty or waive counsel is different from the *Dusky* competency standard of having “sufficient present ability to consult with his lawyer” and “a rational as well as factual understanding of the proceedings against him.”⁷³

65. *Id.* at 166.

66. *See id.* at 167-71.

67. *Id.* at 180.

68. *Id.* at 181.

69. 509 U.S. 389 (1993).

70. *Id.* at 398. According to *Dusky*, a defendant must have “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding” and “a rational as well as factual understanding of the proceedings against him.” 362 U.S. at 402.

71. *Godinez*, 509 U.S. at 391-93.

72. *Id.* at 395-96.

73. *Id.* at 399; *Dusky*, 362 U.S. at 402.

Whether Moran stood trial or pleaded guilty, he would face the same crucial choices because pleading guilty is not more complex than “the sum total” of choices a defendant makes at trial.⁷⁴ Further, there was no basis shown that the choice to represent oneself pro se needs greater mental capabilities than those needed to waive other rights.⁷⁵ A defendant needs only the competence to waive the right, not the competence to represent himself pro se.⁷⁶ As support, the Court cited *Faretta* and its limited holding that the defendant’s technical legal knowledge is irrelevant to whether he is capable of waiving his right to counsel.⁷⁷

Justices Kennedy and Scalia concurred, stating that “[a] single standard of competency to be applied throughout criminal proceedings does not offend any ‘principle of justice so rooted in the traditions and conscience of [the American] people as to be ranked as fundamental.’”⁷⁸ In their view, the Due Process Clause does not require differing levels of competency at various times over the course of a criminal trial.⁷⁹ A single competency standard was generally reflected in American common law because applying different standards at different times during trial could lead to confusion.⁸⁰ The defendant need only be mentally competent to stand trial under *Dusky* and make a knowing and voluntary waiver of counsel per *Faretta*.⁸¹

In dissent, Justices Blackmun and Stevens applied a narrow interpretation of *Faretta*, explaining that “*Faretta* does not confer upon an *incompetent* defendant a constitutional right to conduct his own defense.”⁸² According to the dissent, *Dusky* applied only to the defendant’s ability to consult with his attorney and aid in his defense.⁸³ The relevant question was whether the defendant, upon waiving counsel, could “proceed alone and uncounseled” because “[c]ompetency for one purpose does not necessarily translate to competency for another purpose.”⁸⁴

74. *Godinez*, 509 U.S. at 398.

75. *Id.* at 399.

76. *Id.*

77. *Id.* at 399-400.

78. *Id.* at 408 (quoting *Medina v. California*, 505 U.S. 437, 446 (1992) (Kennedy, J., concurring)).

79. *Id.* at 404.

80. *Id.* at 405, 407.

81. *Id.* at 403.

82. *Id.* at 416-17 (Blackmun, J., dissenting).

83. *Id.* at 412-13.

84. *Id.* at 413. Ultimately, the dissent in *Godinez* foreshadowed the future issues to be faced by the Court in *Edwards* regarding the mental capacity and self-representation

IV. COURT'S RATIONALE: THE NEW LIMITATION

The United States Supreme Court in *Indiana v. Edwards*⁸⁵ vacated Edwards's convictions for attempted murder and battery with a deadly weapon and remanded the case for further proceedings.⁸⁶ The Court held that a defendant may be denied his right to self-representation when the trial judge finds that he lacks the mental capacity to conduct his defense.⁸⁷ In so holding, the Court declined to adopt the proposed Indiana competency standard and, once again, upheld *Faretta v. California*⁸⁸ and the right to self-representation.⁸⁹

A. *The Majority Opinion*

Justice Breyer wrote on behalf of the 7-2 majority with Chief Justice Roberts and Justices Stevens, Kennedy, Souter, Ginsburg, and Alito joining his opinion.⁹⁰ The majority began with a brief discussion of important precedents relating to mental competency and the right to self-representation, recognizing again that the right to self-representation has never been absolute.⁹¹ Importantly, the Court concluded that none of the precedents explicitly answered whether a mental competency standard applied to the right to self-representation in a criminal trial.⁹² Both *Dusky v. United States*⁹³ and *Drope v. Missouri*⁹⁴ stated that a defendant may not stand trial if he is found mentally incompetent.⁹⁵ Yet the Court noted that neither case addressed the relationship of self-representation to mental competency.⁹⁶ In addition, the majority explained that *Faretta* was limited to the right to waive counsel and did not address the defendant's "technical legal knowledge" in its holding.⁹⁷ Although the Court recognized that *Godinez v. Moran*⁹⁸ actually

of a criminal defendant.

85. 128 S. Ct. 2379 (2008).

86. *Id.* at 2388.

87. *Id.* at 2387-88.

88. 422 U.S. 806 (1975).

89. *Edwards*, 128 S. Ct. at 2388.

90. *See id.* at 2381.

91. *Id.* at 2383-84.

92. *Id.* at 2383.

93. 362 U.S. 402 (1960).

94. 420 U.S. 162 (1975).

95. *Edwards*, 128 S. Ct. at 2383 (citing *Drope*, 420 U.S. at 171; *Dusky*, 362 U.S. at 402).

96. *Id.*

97. *Id.* at 2384-85 (quoting *Faretta*, 422 U.S. at 400).

98. 509 U.S. 389 (1993).

addressed both mental competency and self-representation,⁹⁹ the Court also noted that *Godinez* addressed a higher standard regarding the ability to enter a guilty plea, and the “ability to conduct a defense at trial was expressly not at issue.”¹⁰⁰ Further, in *Godinez* a court permitted a “gray-area” defendant to represent himself, which substantially differed from Edwards’s situation, in which the trial court denied him the right to represent himself.¹⁰¹ Thus, the majority recognized that the issues presented by Edwards were open for the Court to decide.¹⁰²

The majority analyzed the three main issues open to the Court: (1) whether the right to self-representation should be limited with a mental competency standard; (2) if so, how a mental competency standard should be defined; and (3) whether *Faretta v. California*¹⁰³ should be upheld.¹⁰⁴ Assuming a defendant meets the *Dusky* competency requirements and still desires to represent himself at trial, the Court discussed the first issue of whether a trial court could insist that the defendant be represented by a lawyer when he lacks the “mental capacity” to conduct his own defense.¹⁰⁵ The Court concluded that the United States Constitution permits a trial court to limit the right to self-representation when a defendant lacks the mental capabilities to represent himself at trial.¹⁰⁶ The majority supported this first conclusion on four grounds.

First, the majority held that precedent stressed the importance of counsel, not the implications of self-representation.¹⁰⁷ Further, *Faretta* is grounded in caselaw that suggested a competency limitation on self-representation.¹⁰⁸

Second, the majority emphasized the variance among different types of mental illnesses, each of which could affect a defendant to different degrees at different times.¹⁰⁹ Considering this fact, the Court stated that a single competency standard would be unwise to apply when

99. *Edwards*, 128 S. Ct. at 2384.

100. *Id.* at 2385.

101. *Id.*

102. *Id.*

103. 422 U.S. 806 (1975).

104. *See Edwards*, 128 S. Ct. at 2385-86, 2388.

105. *See id.* at 2385-86.

106. *Id.* at 2387-88.

107. *Id.* at 2386.

108. *Id.* (citing *Faretta*, 422 U.S. at 813 n.9). Two state cases actually adopted such standards outright. *Id.* (citing *Cappetta v. State*, 204 So. 2d 913, 917-18 (Fla. App. 1967); *Allen v. Commonwealth*, 324 Mass. 558, 562-63 (1949)).

109. *Id.*

deciding whether a defendant represented by counsel is competent to stand trial and whether a defendant is competent enough to represent himself.¹¹⁰ The Court further theorized that a person could meet the *Dusky* competency test but still not be able to perform basic trial responsibilities such as “organization of defense, making motions, arguing points of law, participating in *voir dire*, questioning witnesses, and addressing the court and jury.”¹¹¹ The majority relied on an American Psychiatric Association (APA) amicus brief discussing common problems of mental illness, such as anxiety and an impaired ability to concentrate.¹¹² Such problems, according to the APA, could “impair the defendant’s ability to play the significantly expanded role required for self-representation even if he can play the lesser role of represented defendant” under the *Dusky* standard.¹¹³ Accordingly, the Court held that common sense would dictate different competency standards.¹¹⁴

Third, the majority asserted that allowing a defendant to represent himself at trial when he lacks the mental capacity does not “‘affirm the dignity’ of a defendant.”¹¹⁵ Rather, such a practice would thwart the basic constitutional principle that defendants are entitled to a fair trial by allowing the risk of improper conviction to result from the defendant’s possibly outrageous behavior at trial.¹¹⁶ Here, the majority becomes paternalistic, essentially noting that courts have a duty to protect the defendant from embarrassing himself at trial.

Lastly, the majority exceeded the requirement of an actual fair trial by demanding the appearance of a fair trial to all persons viewing it.¹¹⁷ The majority relied on an amicus brief filed on behalf of nineteen states.¹¹⁸ The brief recounted a psychiatrist’s observations at a trial conducted by a defendant who, although declared competent under *Dusky*, was clearly incapable of representing himself.¹¹⁹ As a result, the Court determined a separate standard should be applied to protect those defendants who are burdened with the additional tasks required

110. *Id.*

111. *Id.* at 2386-87 (citing *McKaskle v. Wiggins*, 465 U.S. 168, 174 (1984)).

112. *See id.* at 2387. The APA brief was expressly concerned with “[d]isorganized thinking, deficits in sustaining attention and concentration, impaired expressive abilities, anxiety, and other common symptoms of severe mental illnesses.” *Id.* (alteration in original).

113. *Id.*

114. *Id.*

115. *Id.* (quoting *McKaskle*, 465 U.S. at 176-77).

116. *Id.*

117. *Id.* (quoting *Wheat v. United States*, 486 U.S. 153, 160 (1988)).

118. *See id.*

119. *Id.*

by self-representation.¹²⁰ Moreover, the trial court judge is in the best position to specifically assess an individual criminal defendant's mental capacity.¹²¹ In sum, the majority held that the Constitution permits "judges to take realistic account of the particular defendant's mental capacities" to determine whether defendants seeking to exercise their right to self-representation are mentally competent.¹²² Ultimately, according to the majority, the Constitution allows a defendant to satisfy the *Dusky* standard but still be denied self-representation when he "suffer[s] from severe mental illness to the point where [he is] not competent to conduct a trial by [himself]."¹²³

The majority then turned to the second major issue placed before the Court: whether to adopt the proposed Indiana standard to guide trial courts in their assessment of criminal defendants' mental capacities.¹²⁴ This more specific standard would "deny a criminal defendant the right to represent himself at trial where the defendant cannot communicate coherently with the court or a jury."¹²⁵ Being "sufficiently uncertain" of how the standard could be practically applied, the majority declined to adopt it and stayed with the formulation requiring simply that a defendant be mentally capable to conduct his own defense.¹²⁶

Finally, the majority once again upheld *Faretta* despite Indiana's request to overrule the right to self-representation.¹²⁷ The justices acknowledged that while judges are concerned that pro se defendants do not receive a fair trial, one study found that only a small percentage of trials result in such unfairness.¹²⁸ Assuming the study was correct, the majority stated that the current holding should address these judicial concerns.¹²⁹ Based on the majority's decisions on each of the three major issues presented to the court, the majority vacated the judgments against Edwards and remanded the case back to the trial court.¹³⁰

120. *Id.* For a discussion on the dangers of self-representation, see generally 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, 510-17, 596-98 (1996).

121. *Edwards*, 128 S. Ct. at 2387.

122. *Id.* at 2387-88.

123. *Id.* at 2388.

124. See *id.*

125. *Id.*

126. *Id.* The Court did not give specific reasons why the proposed Indiana standard would be uncertain in practice.

127. *Id.*

128. *Id.* (citing Erica J. Hashimoto, *Defending the Right of Self-Representation: An Empirical Look at the Pro Se Felony Defendant*, 85 N.C. L. REV. 423, 427, 428, 447 (2007)).

129. *Id.*

130. *Id.* at 2388.

B. *The Dissent*

In a passionate dissent, Justice Scalia, joined by Justice Thomas, scrutinized the majority's decision to limit the right of self-representation.¹³¹ According to Justice Scalia, the Constitution requires nothing more from a criminal defendant than competency to stand trial and, if appropriate, a knowing and voluntary waiver of the right to counsel.¹³² The primary issue that concerned Justice Scalia was "whether a State's view of fairness (or of other values) permits it to strip the defendant" of the right to self-representation.¹³³ Further, the dissent adopted an opposing definition of "self-dignity"¹³⁴ and noted that the vagueness of the majority's holding means the Court will eventually have to reevaluate the standard.¹³⁵

Justice Scalia began by highlighting facts absent from the majority opinion. Edwards was afflicted by a breed of schizophrenia that manifested itself differently depending on the treatment and medication he received.¹³⁶ Additionally, Edwards filed both incoherent and coherent arguments before the court, correctly answered some questions on state procedural law, and disagreed with his attorney over which defense to present.¹³⁷ Based on these facts, Justice Scalia asserted that even if a limitation on the right to self-representation was warranted for many mentally ill defendants, Edwards did not fall into that group.¹³⁸ The dissenters stated that Edwards knowingly and voluntarily waived his right to counsel, and the Constitution and precedent imposed nothing more on him.¹³⁹

131. *See id.* at 2389 (Scalia, J., dissenting).

132. *Id.* at 2394.

133. *Id.* at 2391-92.

134. *See id.* at 2393.

135. *Id.* at 2394.

136. *Id.* at 2389. From 2000 to 2003, Edwards's treatment did not involve antipsychotic medications common to schizophrenia treatment. *Id.* Interestingly, Edwards was found incompetent during this time period even though his mental state was not consistently poor. *Id.* A psychiatric assessment in March 2001 revealed that Edwards was "free of psychosis, depression, mania, and confusion," "alert, oriented, [and] appropriate," "able to think clearly," and was "psychiatrically normal." *Id.* (alteration in original) (internal quotation marks omitted). However, once placed on medication for the first time in 2004, Edwards was found competent. *Id.* After this psychiatric assessment, Edwards "communicate[d] very well" and was "easy to understand." *Id.*

137. *Id.* at 2389-90. Edwards was, however, unable to answer questions pertaining to evidence law; these were only referred to by number, making it more difficult for Edwards. *Id.*

138. *Id.* at 2391.

139. *Id.*

Justice Scalia bolstered his opinion with the holdings in *Godinez* and *Faretta* and references to the Star Chamber as the only tribunal to impose counsel.¹⁴⁰ In *Godinez*—in which Justice Scalia concurred in part—the Court held that the Due Process Clause imposed no additional standards upon a mentally ill defendant seeking to plead guilty beyond *Dusky* and *Faretta*.¹⁴¹ Moreover, the opinion in *Faretta* expressly acknowledged that the Sixth Amendment allowed defendants to represent themselves even if such representation is to their detriment.¹⁴² Justice Scalia further stated that self-representation had traditionally been denied only in cases where the defendant would have kept the trial from proceeding in an organized way.¹⁴³ In this case, however, Edwards controlled himself throughout the trial, and the trial court still refused to allow him to represent himself initially to determine whether he would have been a distraction.¹⁴⁴

Apart from merely disagreeing with the holding itself, Justice Scalia flatly disagreed with the definition of “dignity” and other policy considerations underlying the majority’s reasoning.¹⁴⁵ Justice Scalia sought to protect as dignity the defendant’s personal autonomy, not the defendant’s embarrassment by presenting an “amateurish or even incoherent defense.”¹⁴⁶ Therefore, the majority was mistaken in holding that a trial court should intervene to protect the defendant from embarrassment.¹⁴⁷ Further, the Court had never denied a defendant a right simply because the right would make the defendant’s trial appear less fair, and thus Justice Scalia rejected such a requirement.¹⁴⁸

According to Justice Scalia, if counsel is forced upon a defendant, then any defense presented by counsel for the unwilling defendant is not truly the defendant’s defense.¹⁴⁹ By forcing counsel on an unwilling defendant, a state “imprison[s] a man in his privileges and call[s] it the Constitution.”¹⁵⁰ Justice Scalia subsequently took a feisty jab at the majority, asserting that its holding did not even have the justification of political correctness.¹⁵¹ According to Justice Scalia, while everyone

140. *Id.* at 2390-91.

141. *Id.* at 2391 (citing *Godinez*, 509 U.S. at 391, 400); *Godinez*, 509 U.S. at 402.

142. *Edwards*, 128 S. Ct. at 2391 (citing *Godinez*, 509 U.S. at 399-400).

143. *Id.* at 2392.

144. *Id.*

145. *See id.* at 2393.

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.* at 2394.

150. *Id.* (quoting *Adams v. United States*, 317 U.S. 269, 280 (1942)).

151. *Id.*

else is trying to incorporate the mentally challenged into society, the majority has taken a constitutional right away from the mentally challenged “for their own good.”¹⁵²

Finally, Justice Scalia attacked the vagueness of the majority’s holding. He declared that in rejecting the proposed Indiana standard, the majority neglected to give the instructions for the trial court to follow on remand and did not hold whether Edwards’s right was actually violated.¹⁵³ The majority’s holding said nothing more than a defendant may be deprived of his right to self-representation if he lacks mental competence.¹⁵⁴ This “bad holding,” as Justice Scalia characterized it, would have to be revisited, but until then trial judges would continue to appoint counsel to defendants to avoid the “painful necessity of deciphering occasional pleadings.”¹⁵⁵

V. IMPLICATIONS: AFFIRMATIONS AMIDST AMBIGUITY

The United States Supreme Court’s holding in *Indiana v. Edwards*,¹⁵⁶ could become a relief for judges and lawyers who have struggled with implementing the right of self-representation.¹⁵⁷ Although the holding is vague, some things remain certain: (1) *Faretta v. California*¹⁵⁸ remains the law of the land, (2) the Court will have to reevaluate the *Edwards* limitation, and (3) the Indiana proposed standard is insufficient.

First, the Court once again refused to overrule the landmark case of *Faretta*, thus upholding the right to self-representation under the Sixth¹⁵⁹ and Fourteenth¹⁶⁰ Amendments of the United States Constitution. The Supreme Court is not convinced that there is a major problem with the right of self-representation, and the right will not be overruled anytime soon despite the unhappiness of many judges, prosecutors, and defense lawyers. Future lawyers seeking the demise of self-representation will likely face an arduous, uphill battle, assuming the Court even decides to hear arguments.

Second, with Edwards’s case having been remanded with little or no guidance for the trial court judge, a reevaluation may occur soon. The

152. *Id.*

153. *Id.*

154. *Id.*

155. *Id.*

156. 128 S. Ct. 2379 (2008).

157. *See Decker, supra* note 120, at 596-98.

158. 422 U.S. 806 (1975).

159. U.S. CONST. amend. VI.

160. U.S. CONST. amend. XIV.

Court's vague holding left federal and state courts with various potential interpretations.¹⁶¹ The Court plainly neglected to define "mental competence" and "mental capabilities." A broad interpretation of this holding will result in a greater number of defendants forbidden to represent themselves pro se due to factors beyond a mental illness, such as the defendant's technical legal knowledge and his ability to convey this knowledge to a jury. A narrower interpretation of this holding would apply only to defendants suffering from particular mental illnesses. The most likely interpretation based on the Court's reasoning¹⁶² would limit the holding to the mentally ill whose competence to stand trial has been questioned. Although this is the most likely interpretation based on the Court's reasoning, the Supreme Court will need to hear another case to officially define the details of this skeletal holding. Until then, trial court judges must decide what standard to apply on a case-by-case basis.

Third, while judges await a more definitive ruling, they may learn from the Court's refusal to adopt the Indiana communication-based standard.¹⁶³ While the holding does not preclude communication from being a valid consideration, communication cannot be the sole criterion. While a communication-based standard would prevent a mentally-ill defendant from representing himself, the standard would also prevent self-representation by the immigrant who has difficulty speaking to a jury because English is not his primary language. The Court is likely to adopt a narrower constitutional standard to avoid violating the rights of too many defendants. Until the Court reaches this decision, however, judges may do as Justice Scalia hypothesized and simply appoint counsel to questionable defendants in order to avoid troublesome paperwork and having to define the standard. Equally plausible is an increase in pro se defendants in jurisdictions where judges are hesitant to interpret the *Edwards* holding because improper denials of this right warrant reversal on appeal.

Prosecutors and defense attorneys will also have difficulties. Prosecutors who subscribe to the view that defendants are worse off when they represent themselves may encourage judges to allow mentally ill defendants to represent themselves in order to protect the record and

161. See *Edwards*, 128 S. Ct. at 2387-88 (holding that "judges [may] take realistic account of the particular defendant's mental capabilities by asking whether a defendant who seeks to conduct his own defense at trial is mentally competent to do so").

162. See *id.* at 2388 (discussing Hashimoto, *supra* note 128).

163. The standard proposed by Indiana would "deny a criminal defendant the right to represent himself at trial where the defendant cannot communicate coherently with the court or a jury." *Id.* at 2388.

avoid reversal on appeal. On the other hand, defense lawyers will have difficulties when their clients ask to represent themselves. This final implication was suggested prior to oral arguments by Professor Dan Ortiz.¹⁶⁴ According to Ortiz, criminal defense attorneys may be impacted in the wake of this opinion because the defendant's ability to represent himself pro se "serves as a 'backstop and keeps an attorney on a short leash.'"¹⁶⁵ If the state removes the decision from the defendant's control, attorneys may take advantage of this authority by refusing their client's objections and putting forward a defense with which the client does not agree.¹⁶⁶ This theory is reflected in the dissent's discussion of the "legal fiction" created when counsel forces a defense on an unwilling defendant.¹⁶⁷ Regardless, the potential impact on the ethics of the attorney-client relationship should be monitored by courts and state bar associations.

Interestingly, the holding gives no indication of what should happen to Edwards on remand to the Indiana trial court. Because the case was remanded, Edwards may never find out whether his rights were actually violated until the Supreme Court specifies a standard. The trial court judge on remand may attempt to interpret the holding and appoint counsel to Edwards. Because this was the judge's initial problem, however, he is likely to let Edwards represent himself to avoid another reversal on appeal.

While *Faretta* has been upheld, the Court has given the lower courts very little guidance about how the standard it established should be applied in the future. Certainly, Edwards will be interested in the outcome of his case, as will other criminal law attorneys and judges nationwide.

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164. Hoskins, *supra* note 19, at 2. Ortiz, a University of Virginia law professor, and a group of his third year law students assisted Edwards's counsel, Mark Stancil, in researching for the Supreme Court arguments. *See id.*

165. *Id.*

166. *See id.* at 2-3.

167. *See Edwards*, 128 S. Ct. at 2394 (Scalia, J., dissenting).