

SUPREME COURT OF NEVADA

State v. Eighth Judicial District Court (Kirk, Jr.)

State v. Eighth Judicial District Court, 100 Nev. 90 (Nev. 1984) · No. 91385 · Decided November 26, 2025

SUMMARY

The Nevada Supreme Court grants the State’s emergency petition for a writ of mandamus challenging an order permitting Lee Bryan Kirk, Jr. to represent himself at trial after he refused to participate in a Faretta canvass. The court holds that a defendant who refuses the required inquiry waives the right to self-representation because the court cannot determine whether the waiver of counsel is knowing, intelligent, and voluntary. The court concludes that the district court manifestly abused its discretion by allowing Kirk to proceed without counsel.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Herndon, C.J.; Pickering, J.; Lee, J.
JURISDICTION	Supreme Court of Nevada
DECIDED	November 26, 2025
DOCKET	91385
DISPOSITION	writ_granted
PROCEDURAL POSTURE	The State sought emergency original mandamus relief from an order permitting criminal defendant Lee Bryan Kirk, Jr., to represent himself despite his refusal to participate in a Faretta canvass. The Nevada Supreme Court granted the petition and directed issuance of the writ.
STANDARD OF REVIEW	Mandamus is available to control a manifest abuse of discretion or an arbitrary or capricious exercise of discretion. Whether to entertain a mandamus petition lies within the Supreme Court’s discretion, and extraordinary relief is proper only when there is no plain, speedy, and adequate remedy at law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	State of Nevada v. Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, The Honorable Tina Talim, District Judge

TOPICS

right to counsel

criminal procedure

sixth amendment

appellate procedure

writ of certiorari

PRACTICE AREAS

criminal procedure

constitutional law

appellate procedure

mandamus

QUESTIONS PRESENTED

1. Whether the Nevada Supreme Court should exercise original mandamus jurisdiction over the district court's nonappealable order permitting Kirk to represent himself before trial.
2. Whether a criminal defendant who invokes the right to self-representation but refuses to participate in a required Faretta canvass waives the right to self-representation.
3. Whether the district court manifestly abused its discretion by permitting Kirk to proceed pro se without determining that his waiver of counsel was knowing, intelligent, and voluntary.

HOLDINGS

1. The Nevada Supreme Court may exercise its discretion to entertain the emergency mandamus petition because the order was not independently appealable, involved important legal issues requiring clarification, and intervention avoided a potentially wasteful trial, appeal, and retrial.
2. When a defendant asserts the right to self-representation but refuses to engage in a required Faretta canvass, the defendant waives the right to self-representation.
3. The district court manifestly abused its discretion by permitting Kirk to represent himself after he repeatedly refused to participate in a Faretta canvass.

KEY QUOTATIONS

“Thus, when a defendant asserts the right to self-representation but refuses to engage in a Faretta canvass, he waives the right to represent himself.” (141 Nev. Adv. Op. No. 60, at 12)

“Stated simply, a defendant cannot have it both ways.” (141 Nev. Adv. Op. No. 60, at 10)

“A conviction obtained after an invalid waiver of the right to counsel—that is, one that fails to demonstrate that the defendant knowingly, intelligently, and voluntarily waived the right—is per se invalid and is not subject to harmless-error analysis.” (141 Nev. Adv. Op. No. 60, at 6)

FACTUAL BACKGROUND

A grand jury indicted Kirk for carrying a concealed explosive substance, firearm, pneumatic gun, or other dangerous or deadly weapon, a category C felony. After pleading not guilty, Kirk repeatedly stated that he wanted to represent himself but refused to answer questions during multiple Faretta canvasses. Although the district court initially denied self-representation and appointed successive counsel, it later allowed counsel to withdraw and permitted Kirk to proceed pro se without a completed canvass, finding that he had forfeited his right to counsel through obstructive behavior.

PROCEDURAL HISTORY

Kirk was indicted for carrying a concealed dangerous or deadly weapon and repeatedly requested self-representation while refusing to answer questions during Faretta canvasses. The district court initially denied self-representation and appointed counsel, but shortly before trial it granted appointed counsel's withdrawal motion and permitted Kirk to proceed pro se based on its conclusion that Kirk had forfeited his right to counsel through obstructive conduct. The State filed an emergency mandamus petition; the Nevada Supreme Court granted it by emergency order and issued this opinion explaining that decision.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The district court was directed to vacate its order permitting Kirk to represent himself and to reappoint counsel before trial. The court should continue to deny self-representation unless Kirk participates in a full Faretta canvass permitting a proper evaluation of whether his waiver of counsel is knowing, intelligent, and voluntary.

CASES CITED

- Miles v. State, 137 Nev. 747, 500 P.3d 1263 (2021)
- United States v. Pryor, 842 F.3d 441 (6th Cir. 2016)
- United States v. Conder, 423 F.2d 904 (6th Cir. 1970)
- People v. Bush, 213 Cal. Rptr. 3d 593 (Ct. App. 2017)
- Faretta v. California, 422 U.S. 806 (1975)
- D.R. Horton, Inc. v. Eighth Judicial District Court, 123 Nev. 468, 168 P.3d 731 (2007)
- Pan v. Eighth Judicial District Court, 120 Nev. 222, 88 P.3d 840 (2004)
- A.J. v. Eighth Judicial District Court, 133 Nev. 202, 394 P.3d 1209 (2017)
- Vanisi v. State, 117 Nev. 330, 22 P.3d 1164 (2001)
- Hooks v. State, 124 Nev. 48, 176 P.3d 1081 (2008)
- People v. Lavadie, 489 P.3d 1208 (Colo. 2021)
- United States v. Hausa, 922 F.3d 129 (2d Cir. 2019)
- United States v. Krug, 822 F.3d 994 (8th Cir. 2016)
- Raulerson v. Wainwright, 732 F.2d 803 (11th Cir. 1984)
- People v. Gregory, 81 N.Y.S.3d 472 (App. Div. 2018)
- United States v. Washington, 2023 WL 128928 (3d Cir. Jan. 9, 2023)
- United States v. Brunson, 482 F. App'x 811 (4th Cir. 2012)
- United States v. Brock, 159 F.3d 1077 (7th Cir. 1998)
- Illinois v. Allen, 397 U.S. 337 (1970)