

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,  
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK, AND THE HONORABLE TINA  
TALIM, DISTRICT JUDGE,

Respondents,

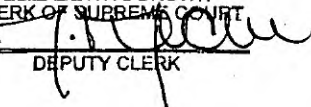
and

LEE BRYAN KIRK, JR.,  
Real Party in Interest.

No. 91385

FILED

OCT 03 2025

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER GRANTING PETITION

This is an emergency original petition for a writ of mandamus challenging a district court order granting real party in interest Lee Kirk Jr.'s counsel's motion to withdraw and permitting Kirk to represent himself notwithstanding his refusal to cooperate in a canvass under *Faretta v. California*, 422 U.S. 806 (1975). The State seeks a writ of mandamus vacating the district court's order and directing the court to reappoint counsel to Kirk prior to trial, which is scheduled to commence on October 6, 2025.

This court has original jurisdiction to issue writs of mandamus, and the decision to entertain a petition for such relief is solely within this court's discretion. See Nev. Const. art. 6, § 4; *D.R. Horton, Inc. v. Eighth Jud. Dist. Ct.*, 123 Nev. 468, 474-75, 168 P.3d 731, 736-37 (2007). Mandamus is available to control a manifest abuse of discretion or an arbitrary or capricious exercise of discretion. *D.R. Horton*, 123 Nev. at 475, 168 P.3d at 737. The petitioner bears the burden to show that extraordinary

relief is warranted, and such relief is proper only when there is no plain, speedy, and adequate remedy at law. *See Pan v. Eighth Jud. Dist. Ct.*, 120 Nev. 222, 224, 228, 88 P.3d 840, 841, 844 (2004).

We exercise our discretion to entertain this petition in the interest of judicial economy because it raises important legal issues in need of clarification, the district court's order is not independently appealable, and absent our intervention, a wasteful trial, appeal, and retrial would otherwise result. *See A.J. v. Eighth Jud. Dist. Ct.*, 133 Nev. 202, 204, 394 P.3d 1209, 1212 (2017) ("We routinely exercise our discretion to consider petitions for extraordinary relief in the interest of judicial economy when we are faced with important legal questions that need clarification.").

The State argues that the district court manifestly abused its discretion by permitting Kirk to represent himself at trial when he did not make a knowing and voluntary waiver of the right to counsel. The State contends that the right to self-representation is not absolute and while Kirk has filed numerous pleadings before the district court expressing his desire to represent himself, at most this establishes a voluntary waiver, not a knowing waiver, of his right to counsel. We agree.

The United States and Nevada constitutions provide that a person brought to trial must be afforded the right to the assistance of counsel before he or she can be validly convicted and punished by imprisonment. U.S. Const. amend. VI; Nev. Const. art. 1, § 8(1). A criminal defendant also has a constitutional right to self-representation. U.S. Const. amend VI; Nev. Const. art. 1, § 8(1). An accused who chooses self-representation, however, "must satisfy the court that his waiver of the right to counsel is knowing and voluntary." *Vanisi v. State*, 117 Nev. 330, 337-38, 22 P.3d 1164, 1169-70 (2001) (emphasis added). To that end, we have

directed the district court to undertake “a specific, penetrating and comprehensive inquiry of the defendant to determine whether the defendant understands the consequences of his or her decision to proceed without counsel,” SCR 253(1)—an inquiry known as a *Faretta* canvass, see *Vanisi*, 117 Nev. at 339, 22 P.3d at 1171.

Although this court does not require “mechanical performance” of a scripted *Faretta* canvass, “we have nevertheless repeatedly ‘urge[d] the district courts to conduct a thorough inquiry of a defendant who wishes to represent himself and to make findings as to whether the defendant’s waiver of the right to counsel is knowing, intelligent, and voluntary.” *Miles v. State*, 137 Nev. 747, 750, 500 P.3d 1263, 1268 (2021) (quoting *Hooks v. State*, 124 Nev. 48, 55-56, 176 P.3d 1081, 1085 (2008)). Further, the record must show that “the accused was ‘made aware of the dangers and disadvantages of self-representation.” *Vanisi*, 117 Nev. at 338, 22 P.3d at 1170 (quoting *Faretta*, 422 U.S. at 835). “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.” *Miles v. State*, 137 Nev. 747, 750, 500 P.3d 1263, 1268 (2021).

While this court has recognized that a request for self-representation may be denied “if the request is untimely, equivocal, or made solely for purposes of delay or if the defendant is disruptive,” *Vanisi*, 117 Nev. at 338, 22 P.3d at 1170, we have not addressed whether such a request should be rejected due to a defendant’s refusal of a *Faretta* canvass. Several courts in other jurisdictions, however, have concluded that a defendant’s refusal to engage in the requisite canvass results in a waiver of the right to self-representation. See, e.g., *United States v. Pryor*, 842 F.3d 441, 451 (6th

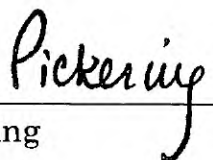
Cir. 2016) (concluding that a defendant's "rejection of further inquiry into his waiver of counsel" justified a magistrate judge's termination of the colloquy and resulted in waiver of the defendant's right to self-representation); *Raulerson v. Wainwright*, 732 F.2d 803, 809 (11th Cir. 1984) (determining that a defendant waived his right to self-representation when he "abruptly walked out of the courtroom" as the trial court attempted to conduct a *Faretta* canvass); *People v. Lavadie*, 489 P.3d 1208, 1216 (Colo. 2021) (concluding that the trial court properly denied a defendant's request to represent himself where "the court inquired into his understanding of the charges against him and the range of allowable punishments, [but the defendant] repeatedly gave unresponsive answers...or refused to participate in the proceeding"). Thus, if a defendant wishes to represent himself, then he must unequivocally waive the right to counsel and submit to a thorough *Faretta* canvass to ensure the waiver is knowing, intelligent, and voluntary. But a defendant cannot assert the right to self-representation and simultaneously sow error into the proceeding by refusing the requisite canvass. See *Pryor*, 842 F.3d at 451 ("Where the defendant through his own actions does not permit the court to ascertain whether a waiver is knowing or voluntary, or even if he means to waive at all, he cannot use the court's failure to acknowledge the waiver later to take a mulligan and try his case again if he loses."). Stated simply, a defendant cannot have it both ways.

Here, Kirk repeatedly expressed a desire to represent himself but adamantly refused to cooperate when the district court attempted to conduct a *Faretta* canvass, thwarting the court's ability to determine whether his waiver of the right to counsel was knowing, intelligent, and voluntary. As a result, Kirk waived the right to self-representation. See

*Pryor*, 842 F.3d at 451; *Raulerson*, 732 F.2d at 809; *Lavadie*, 489 P.3d at 1216. Despite this, the district court granted Kirk's counsel's motion to withdraw and ordered that Kirk would be permitted to represent himself. As the district court manifestly abused its discretion in so ruling, we

ORDER the petition GRANTED and direct the clerk of this court to issue a writ of mandamus instructing the district court to vacate its September 29, 2025, order and reappoint counsel to Kirk.

  
\_\_\_\_\_, C.J.  
Herndon

  
\_\_\_\_\_, J.  
Pickering

  
\_\_\_\_\_, J.  
Lee

cc: Hon. Tina Talim, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
Lee Bryan Kirk, Jr.  
Eighth District Court Clerk