

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D22-1922

ANTHONY J. DAVIS,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Petition for Writ of Prohibition—Original Jurisdiction.

September 14, 2022

PER CURIAM.

Petitioner, an indigent defendant who is represented by counsel below, filed a petition for writ of prohibition with this Court. He requests three forms of relief: (1) a stay of the criminal prosecution below; (2) an order directing the lower court to preserve certain information as potentially exculpatory evidence; and, (3) an order compelling the lower tribunal to conduct a *Nelson* hearing. *See generally Nelson v. State*, 274 So. 2d 256 (Fla. 4th DCA 1973).

Petitioner argues that the general rule against hybrid representation does not apply in this case because he seeks a ruling on a pending motion to discharge court-appointed counsel. *See generally Sheppard v. State*, 17 So. 3d 275, 279 (Fla. 2009)

(describing “hybrid representation” as “simultaneously proceed[ing] pro se and with legal representation.”); *see also McCray v. State*, 71 So. 3d 848, 865 (Fla. 2011) (describing “hybrid representation” as “combin[ing] self-representation with representation by counsel”). We agree as to that specific form of relief. *See Logan*, 846 So. 2d at 476 (“Only when a pro se criminal defendant is affirmatively seeking to discharge his or her court-appointed attorney have the courts of this state not viewed the pro se pleading in which the request to discharge is made as unauthorized and a ‘nullity.’”).

Even though the petition filed with this Court is not the actual “pro se pleading in which the request to discharge [counsel] is made,” we interpret the “affirmatively seeking to discharge” language in *Logan* as authorizing a *pro se* petition for writ of mandamus when a defendant seeks to compel a ruling on a pending motion to discharge counsel. With such a petition, an indigent defendant can enforce his Constitutional right to effective representation by court-appointed counsel. *See Taylor v. State*, 87 So.3d 749, 758 (Fla. 2012) (citations omitted):

The Sixth Amendment of the United States Constitution guarantees the right to effective assistance of counsel at all critical stages of a criminal prosecution. In cases where a defendant is indigent, that defendant is entitled to court-appointed counsel....

The right of a criminal defendant to effective assistance of counsel includes the right to competent counsel.

Cf. Parkway Bank v. Fort Myers Armature Works, Inc., 658 So. 2d 646, 649 n.4 (Fla. 2d DCA 1995) (“[T]he denial of a clear constitutional right to trial by jury can be remedied by the issuance of an extraordinary writ.”).

Therefore, we redesignate the *pro se* petition for writ of prohibition as a petition for writ of mandamus. *See Fla. R. App. P. 9.040(c)*. However, we deny all other requested relief. *See Butts v. State*, 47 Fla. L. Weekly D1363 (Fla. 1st DCA June 22, 2022).

KELSEY, JAY, and M.K. THOMAS, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Anthony J. Davis, pro se, Petitioner.

Ashley Moody, Attorney General, Tallahassee, for Respondent.