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Mar 15 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JERRY CECIL EDWARDS,

APPELLANT

APPELLATE CASE NO. 2022-000886

ANDERS BRIEF OF APPELLANT

JESSICA M. SAXON
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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(803) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court erred in allowing Appellant to proceed *pro se* where Appellant did not make a knowing and intelligent wavier of his right to counsel?

STATEMENT OF THE CASE

Appellant was indicted for one count of kidnapping and one count of carjacking during the February 2020 term of the Spartanburg Country grand jury. R. 276. On May 26, 2022, the State served Appellant and his lawyer with Life Without Parole (LWOP) notice. R. 275. On June 13, 2022, the State, represented by Solicitor Barry Barnette called the case to trial before the Honorable R. Lawton McIntosh and a jury. Appellant was initially represented by Chad Snyder. Prior to the start of jury selection Appellant moved to represent himself. R. 26, ll. 10-21. The court ultimately granted his request to proceed *pro se*. R. 48, ll. 3-17. After a two-day trial Appellant was found guilty as indicted. R. 260, l. 16-R. 261, l. 6. Pursuant to the LWOP notice, he was sentenced to two concurrent terms of life without parole. R. 272, ll. 13-20; R. 281.

STANDARD OF REVIEW

“Whether a defendant has knowingly, intelligently, and voluntarily waived his right to counsel is a mixed question of law and fact which appellate courts review de novo.” State v. Samuel, 422 S.C. 596, 602, 813 S.E.2d 487, 490 (2018). The appellate courts “review a circuit judge's findings of historical fact for clear error; however, we review the denial of the right of self-representation based upon those findings of fact de novo.” Id. “In doing so, this Court must consider the defendant's testimony, history, and the circumstances of his decision, as presented to the circuit judge at the time the defendant made his request.” Id.

ARGUMENT

The trial court erred in allowing Appellant to proceed *pro se* where Appellant did not make a knowing and intelligent waiver of his right to counsel.

Relevant Facts

Prior to the start of trial, Appellant moved to proceed *pro se*. R. 26, ll. 18-21. The circuit court conducted an on the record inquiry pursuant to Faretta, *infra*, to determine whether Appellant understood the dangers of self-representation. The court first made sure that Appellant understood that he had a constitutional right to a lawyer and that one would be appointed to him if he could not afford to hire a lawyer. R. 27, ll. 2- 21. During the Faretta colloquy, the circuit court established that Appellant was sixty-four-years-old with a GED. He had been employed as a forklift and machine operator in the past and had recently obtained his CDL in anticipation of attending truck driving school. R. 27, l. 22-R. 28, l. 23. Appellant informed the court that twelve years ago, he was informed that he was in the early stages of Parkinson's disease. He had not been evaluated recently to determine the progress of the disease but confirmed any symptoms would not impact his ability to represent himself. R. 29, l. 7-R. 30, l. 14. Appellant confirmed he had attended mental health counseling as a condition of release from the Department of Corrections but had not received a diagnosis. R. 30, l. 15-R. 32, l. 7.

Appellant confirmed that he had not previously proceeded *pro se* in a criminal matter and that he understood the charges against him in the case. The State informed the circuit court that Appellant had been served with LWOP notice. The circuit court then reviewed the sentencing penalty with Appellant who stated that if the jury found him guilty, he could receive a LWOP sentence. The circuit court clarified that if the jury found him guilty, he would receive a LWOP sentence and that the judge had no discretion to sentence him to anything other than LWOP. R.

32, l. 8-R. 33, l. 25. Appellant asked if the jury would be aware that he would receive a LWOP sentence and asked about the use of his past convictions during trial. The circuit court informed him the jury would not be aware of a potential sentence and then explained the process of determining the admission of prior convictions to Appellant. After the explanation, Appellant again inquired as to whether his prior record would be admissible, and the circuit court again explained the process and advised Appellant to speak with his then attorney, Mr. Snyder. R. 34, l. 1-R. 37, l. 17.

After a fifteen-minute break, Appellant proceeded with his motion to represent himself, and the required Faretta warnings were completed. Tr. 37, l. 24-Tr. 42, l. 25. The circuit court then inquired of Counsel Snyder whether Appellant was competent to waive the right to counsel. Counsel Snyder responded that he believed Appellant was competent to waive his right to counsel and that he had warned Appellant that proceeding *pro se* was “not a good idea.” The circuit court then reiterated to Appellant that proceeding *pro se* was “not a good idea” and was “a dangerous thing” to do. R. 43, ll. 1-25. Appellant confirmed he wanted to represent himself, signed a written Faretta warnings form, stated he understood the warnings he had been given, and that he did not have any questions. Counsel Snyder was appointed as standby counsel. Tr. 44, l. 1-Tr. 48, l. 18.

Discussion

The United States Supreme Court has held that criminal defendants have a fundamental right to self-representation under the Sixth Amendment. Faretta v. California, 422 U.S. 806, 819-21, (1975). To successfully invoke the right of self-representation, a criminal defendant must clearly and unequivocally assert his desire to proceed *pro se* **and** such request must be made **knowingly, intelligently, and voluntarily**. United States v. Frazier-El, 204 F.3d 553, 558

(4th Cir. 2000) (emphasis added). The only inquiry the circuit court may undertake when a defendant invokes their right of self-representation before trial is that required by Faretta. State v. Barnes, 407 S.C. 27, 35, 753 S.E.2d 545, 550 (2014). A circuit court may deny a defendant's motion to proceed *pro se* only if the court determines the defendant has not knowingly, intelligently, and voluntarily waived his right to counsel. State v. Reed, 332 S.C. 35, 41, 503 S.E.2d 747, 750 (1998)

“Whether a defendant has intelligently waived his right to counsel depends upon the particular facts and circumstances surrounding each case, including the background, experience, and conduct of the accused.” Samuel, at 603, 813 S.E.2d at 491 (2018) (internal citations omitted). The inquiry is not whether the defendant has the competency to represent himself but whether he has the competency to waive the right to counsel. Id. “[W]hether a defendant is capable of effectively representing himself has no bearing upon his ability to elect self-representation.” Id. Our Supreme Court has held that

[t]he ultimate test of whether a defendant has made a knowing and intelligent waiver of the right to counsel is not the trial judge's advice, but the defendant's understanding. A determination by the trial judge that the accused lacks the expertise or technical legal knowledge to proceed *pro se* does not justify a denial of the right to self-representation; the only relevant inquiry is whether the accused made a knowing and intelligent waiver of the right to counsel.

State v. Brewer, 328 S.C. 117, 119, 492 S.E.2d 97, 98 (1997) (internal citations omitted).

Appellant did not make a knowing and intelligent waiver of his right to counsel. During the Faretta colloquy, Appellant was hesitant and confused. He initially believed that his LWOP sentence was discretionary when it was mandatory and had to be corrected by the circuit court. He also failed to understand the court's explanation regarding the admission of prior convictions when it was initially given. Appellant had a limited educational background and no experience representing himself in other criminal matters. His confusion and hesitancy, his potential

medical problems of Parkinson's and unknown mental health conditions, and his limited educational background and life experiences all weighed against allowing Appellant to represent himself. Appellant did not have a full understanding of the implications and dangers of self-representation as evinced by his hesitancy and confusion. Therefore, the circuit court erred in allowing him to proceed *pro se* because although he voluntarily requested to proceed *pro se*, he did not make a knowing and intelligent waiver of his constitutional right to counsel.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests that this Court reverse his convictions and sentences and remand the matter to the Spartanburg County Court of General Sessions for a new trial.

s/ Jessica M. Saxon
Jessica M. Saxon
Appellate Defender

ATTORNEY FOR APPELLANT

This 15th day of March, 2023.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jerry Cecil Edwards states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge R. Lawton McIntosh, which was held on June 13 - 14, 2022, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

Wherefore, she asks the Court to relieve her as counsel for Jerry Cecil Edwards.

Respectfully Submitted,

s/ Jessica M. Saxon
Jessica M. Saxon
Appellate Defender

ATTORNEY FOR APPELLANT

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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s): 20-GS-42-1334, 20-GS-42-1335
- (2) Trial transcript dated June 13-14, 2022
- (3) Notice of Life Sentence filed May 26, 2022
- (4) Sentencing Sheets

I certify that this designation contains no matter which is irrelevant to this appeal.

s/ Jessica M. Saxon

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Appellate Defender

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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

s/ Jessica M. Saxon

Jessica M. Saxon

Appellate Defender

South Carolina Commission on Indigent Defense

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CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above-referenced case has been served upon William M. Blich, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Jerry Cecil Edwards, #112098, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 15th day of March, 2023.

s/ Jessica M. Saxon

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