RECEIVED
Jun 24 2024
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
Hon. G.D. Morgan, Jr., Circuit Court Judge

Lower Court Case No. 2018-CP-42-03680
Appellate Case No. 2023-001011

Stepheno Alston ……. Petitioner-Appellant,

v.

The State of South Carolina……..…. Respondent-Appellee.

MEMORANDUM OF LAW IN SUPPORT OF SUBSEQUENT APPLICATION FOR RELIEF OF ORDER DENYING MOTION TO RELIEVE COUNSEL AND MOTION TO PROCEED AS PRO-SE, PURSUANT TO RULE – 266, SCACR

Petitioner-Appellant, Stepheno Alston, proceeding as pro-se, makes this Memorandum of Law in Support of his Subsequent Application for Relief of Order denying Motion to Relieve Counsel and to Proceed as Pro-se, pursuant to Rule – 266, SCACR. The subsequent application for relief is made seeking Petitioner-Appellant's desire to relieve counsel and to proceed as pro-se in the above-entitled cause to submit to this Court an Amended Petition for Writ of Certiorari and Appendix for this Court to properly review.

STANDARD OF REVIEW

Rule – 266 of South Carolina Rules of Appellate Procedure provides relief for an Order that has been denied by a justice or judge of this Court is as followed:

> When any justice or judge of any of the Courts of this State has declined to grant any order or writ in any case, and thereafter application for the same order or writ, or an order or writ of a similar character, is made to an appellate court or any member thereafter, it shall be incumbent upon the party, or his attorney, to show in the application the former refusal and the judge or justice who refused the same, and if the refusal has been reduced to writing, a copy of the order shall be attached to the application.

See Rule – 266, SCACR.

ARGUMENT

I.

THIS COURT SHOULD GRANT PETITIONER-APPELLANT'S SUBSEQUENT APPLICATION FOR RELIEF OF AN ORDER DENYING HIS MOTION TO RELIEVE COUNSEL AND HIS MOTION TO PROCEED AS PRO-SE, PURSUANT TO RULE – 266, SCACR.

"A South Carolina criminal defendant has the constitutional right to represent himself under both the federal and State constitution," pursuant to U.S. Const. Amend. VI and S.C. Const. Art. I, § 14. See *State v. Barnes*, 407 S.C. 27, 35 753 S.E.2d 545, 550 (S.C. 2014). This Court by not "[r]economizing that it may be to the [Petitioner-Appellant's] detriment to be allowed to proceed pro-se, his knowing, intelligent and voluntary decision "must be honored out of that respect for the individual which is the lifeblood of the law." *Id*. (quoting *Faretta v. California*, 422 U.S. 806, 834, 95 S.Ct. 2525 (1975)). Under *Faretta*, [this Court] has [a] responsibility to make sure that [] [Petitioner-Appellant] is informed of the dangers and disadvantages of self-representation, and that he makes a knowing and intelligent waiver of his right to counsel. See *Barnes*, 407 S.C. at 36, 753 S.E.2d at 550.

The Sixth Amendment guarantees a criminal defendant the right to represent himself. A defendant must necessarily choose between these guarantees. Courts safeguard a defendant's

rights by ensuring the choice is knowingly and intelligently made. *Johnson v. Zerbst*, 304 U.S. 458, 468 – 69, 58 S.Ct. 1019 (1938), *overruled on other grounds by Edward v. Arizona*, 451 U.S 477, 101 S.Ct. 1880 (1981). Here, the conflict sharpens when Petitioner-Appellant has collaterally attacks his conviction and wants to relieve his court appointed appellant counsel, who has refused to raise and brief on the appeal of Petitioner-Appellant's PCR proceedings, two additional issues that violates his constitutional rights. This Court, must when deciding Petitioner-Appellant's request to waive counsel and to proceed as pro-se, was required to apply the traditional *Faretta* standard for waiver of the right to counsel.

The Sixth Amendment requires that before a criminal defendant may represent himself, the [] court must hold a hearing to determine the defendant has knowingly and intelligently waived his right to counsel. *Watts v. State*, 347 S.C. 399, 402 – 03, 556 S.E.2d 368, 370 (2001). To that end, the defendant must be (1) advised of the right to counsel and (2) adequately warned of the dangers of representing himself. *Prince v. State*, 301 S.C. 422, 424, 392 S.E.2d 462, 463 (1990). The landmark decision in this field simply tells us a defendant wishing to represent himself must be allowed to do so long as he is "made aware of the dangers and disadvantages of self-representation, so that the record will establish that 'he knows what he is doing and his choice is made with eyes open.'" *Faretta*, 422 U.S. at 835, 95 S.Ct. 2525 (quoting *Adams v. United States ex rel. McCann*, 317 U.S. 269, 279, 63 S.Ct. 236 (1942)). Therefore, the Sixth Amendment guarantees Petitioner-Appellant the "right to proceed without counsel when he voluntarily and intelligently elects to do." quoting *Faretta*, 422 U.S. at 807, 95 S.Ct. 2525.

Insomuch as, the Order attached as Exhibit – A, that was issued denying Petitioner-Appellant's Motion to Relieve Counsel and his Motion to Proceed as Pro-se was erroneously and

arbitrarily made in violation of Petitioner-Appellant's Six Amendment rights of the United States Constitution and also in violation of Article One section Fourteen of South Carolina Constitution.

CONCLUSION

WHEREFORE, based on the foregoing arguments and authorities, this Honorable Court is respectfully urged to grant the Petitioner-Appellant's Subsequent Application for Relief of the Order denying his Motion to Relieve Counsel and his Motion to Proceed as Pro-se.

DATED: June 24, 2024

Stepheno Alston, # 357159, Pro-se
Ridgeland Correctional Institution
P.O. Box # 2039
Ridgeland, S.C., 29936