

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Pickens County

Honorable Daniel D. Hall, Circuit Court Judge

RECEIVED

Nov 25 2024

S.C. SUPREME COURT

VINCENT MISSOURI,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000249

JOHNSON PETITION FOR WRIT OF CERTIORARI

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INDEX

INDEX i

ISSUE PRESENTED1

STATEMENT OF THE CASE.....2

ARGUMENT

Counsel was ineffective for failing to ensure that the court reviewed Petitioner’s right to proceed *pro se* during the motion to relieve counsel that was heard five months before trial.7

CONCLUSION10

PETITION TO BE RELIEVED AS COUNSEL11

ISSUE PRESENTED

Was counsel ineffective for failing to ensure that the court reviewed Petitioner's right to proceed *pro se* during the motion to relieve counsel that was heard five months before trial?

STATEMENT OF THE CASE

On June 18, 2012, Rachel White was working at the Bank of America in Pickens, South Carolina, as the head bank teller. Around 4:30-4:45pm, as the bank was getting ready to close, a customer walked in through the side door entrance of the bank. According to White, the customer was a black man wearing dark sunglasses and a black shirt with white writing on it. She also noted that he was bald. The man walked up to her teller's station and handed her note that said, "Place all the money in the bag. Keep left hand on top of counter. Empty drawer with right hand. No dye pack. I know who you are." App. 79, l. 14-App. 81, l. 23; App. 84, l. 11-App. 85, l. 6.

White stated the man kept telling her to hurry up and put the money in the bag to which she replied she did not have a bag. The man fumbled for a brown grocery bag for White to place the money in which afforded White the opportunity to push the silent alarm. As soon as White had placed the money in the grocery bag, the man grabbed the bag, exited the bank through the side door, and ran down the street. The man took approximately \$1800. App. 83, ll. 3-13; App. 84, ll. 20-21; App. 87, ll. 8-21; App. 103, ll. 10-11.

Police responded to the scene and began to canvass the area for the robber. Then Assistant Sheriff for Pickens County Sheriff's Office (PCSO), Tim Morgan, spoke to a female witness in a nearby parking lot who stated she had seen a black male running down the sidewalk, turn into the parking lot, and get into a red truck. That information, along with the suspect description, was put out on the radio. App. 129, l. 15-App. 131, l. 12.

Officer Keith Galloway with PCSO was finishing his shift when he heard the description on the radio. Galloway was in the area and began to look for a red pickup truck occupied by a black male. Galloway came upon a red F150 occupied by two black males and turned around to

get behind the truck. Dispatch informed Galloway that the truck was stolen out of Greenville. Before Galloway could turn on his lights and sirens, the red truck made a hard right turn through a red light and a brief pursuit ensued. The truck eventually came to a stop in the front yard of a home at which point the driver of the truck exited the vehicle and ran into the woods. Officer Scott Ticknor with PCSO pursued the man into the woods, tackling the individual and placing him under arrest. The man was identified as Petitioner, Vincent Missouri. The passenger stayed in the truck and was detained without incident. App. 133, l. 21-App. 142, l. 3; App. 148, l. 10-App. 149, l. 24. When questioned by police, Petitioner confessed to the robbery and gave a written statement detailing the incident. App. 164, l. 12-App. 175, l. 1.

During the November 2013 term of the Pickens County grand jury Petitioner was indicted for entering a bank with intent to steal, armed robbery,¹ and failure to stop for a blue light. R. 237-242. On December 19, 2013, the parties appeared before the Honorable Letitia H. Verdin for a hearing on Petitioner's motion to relieve counsel. The State was represented by Doug Richardson. Petitioner was represented by Aaron Angell. App. 1-4. At the hearing Petitioner stated that due to Counsel Angell's caseload he was requesting a new attorney or to be able to represent himself *pro se*. App. 5, ll. 12-17. The State opposed the motion, arguing that Petitioner had already relieved one attorney and that they were planning to try the case in the spring. App. 6, l. 17-App. 7, l. 5. The court inquired into what charges Petitioner was facing. When informed of the charges the court stated "*pro se* is not in the realm of possibility right now" to which Counsel Angell replied, "probably not, your Honor." App. 7, ll. 6-24.

After a brief discussion between the court and Petitioner, the court denied the motion to relieve counsel. The court did not address Petitioner's right to proceed *pro se*, nor did Counsel

¹ At trial, the State decided to move forward on the lesser included offense of common law or strong-armed robbery. App. 25, l. 9-App. 26, l. 77.

Angell request the court review that right with Petitioner. At the conclusion of the hearing the court stated “Bottom line, you got to keep him. You’re going to be happy with him. App. 8, l. 13-App. 12, l. 8.

On May 19-24, 2014, the State called the case to trial before the Honorable James R. Barber, III, and a jury. The State was represented by Doug Richardson. Petitioner was represented by Counsel Angell. App. 14. During pre-trial motions Petitioner informed the court that he had filed to have Counsel Angell relieved and proceed *pro se*, which Judge Verdin had denied. Judge Barber informed Petitioner that he could not overrule the findings of another circuit court judge. App. 24, l. 5-App. 25, l. 8. After a recess Judge Barber informed Petitioner that Petitioner could move to proceed *pro se* and he would consider it after asking Petitioner questions to determine his competency. After a short back and forth with the court, Petitioner requested the court to rehear pre-trial motions which it denied. Ultimately, Petitioner did not move to represent himself *pro se*. App. 45, l. 4-App. 50, l. 8.

Petitioner was found guilty on all charges. App. 224, ll. 8-25. Judge Barber sentenced Petitioner to twenty years incarceration for the bank robbery, five years incarceration for the strong-armed robbery, and three years incarceration for the failure to stop for blue lights, all sentences to run concurrently. App. 234, ll. 7-20. On direct appeal, Petitioner argued that he was improperly denied his Sixth Amendment right to represent himself *pro se*. The Court of Appeals held that while Petitioner was initially denied the right to represent himself at the hearing five months prior to trial, he abandoned or waived that right via his subsequent conduct on the day his trial began. See State v. Missouri, Op. No. 2017-UP-383 (S.C. Ct. App. filed Oct. 18, 2017).

On June 6, 2019, Petitioner filed an application for post-conviction relief alleging, *inter alia*, that Counsel Angell was ineffective for failing to object to Judge Verdin's denial of his right to self-representation. App. 243-259. The State filed a return dated December 9, 2019. App. 260-280. An evidentiary hearing was convened on March 7, 2023, before the Honorable Daniel D. Hall. The State was represented by Taylor Smith. Petitioner was represented by Thurmond Brooker. App. 281.

Petitioner testified that he asserted his right to self-representation shortly after his arrest by filing a motion with the clerk of court in Pickens County. He was under the impression he had asserted his right to self-representation when he received a letter from the Public Defender's office informing him of his appointed counsel. App. 289, l. 9-App. 295, l. 23. Petitioner stated that he wrote to the Supreme Court in July 2013, requesting that he be able to proceed *pro se*. App. 300, l. 1-App. 301, l. 8. Another motion was filed by Petitioner in September 2013, asking to relieve Counsel Angell. Then, in October 2013, Counsel Angell filed a motion to be relieved. That motion led to the hearing before Judge Verdin during which Counsel Angell failed to argue that Petitioner had a Sixth Amendment right to self-representation. App. App. 304, l. 1-App. 306, l. 22.

Counsel Angell testified that he filed a motion to be relieved at the request of Petitioner. He stated that during the hearing before Judge Verdin, Petitioner was asking for a new attorney or to be allowed to proceed *pro se*. App. 356, ll. 1-5; App. 360, ll. 13-23. He contended that his responsibility was to allow Petitioner to get in front of a judge and state why he wanted to relieve counsel. He testified Petitioner never clearly stated he wanted to represent himself, only that he might want to represent himself, so he did not interject on Petitioner's behalf at the hearing. App. 363, ll. 12-23.

An order of dismissal was filed on November 30, 2023. App. 441-456. In the order, the PCR court found that Petitioner was not prejudiced by Counsel Angell's failure to object to Judge Verdin's denial of Petitioner's motion to relieve counsel because he was afforded an opportunity to proceed *pro se* by Judge Barber at the start of trial and failed to make the request, thereby waiving his right to proceed *pro se*. The order also found that Petitioner's request to Judge Verdin was not clear and unequivocal, and therefore Judge Verdin did not have a duty to go through the questioning required by Faretta v. California, 422 U.S. 806 (1975), which was contrary to what the Court of Appeals held during Petitioner's direct appeal.² App. 450-452.

² "Here, five months prior to trial, the circuit court heard Missouri's motion to relieve counsel. Missouri clearly requested new counsel or, in the alternative, to proceed *pro se*. Rather than engaging in the Faretta inquiry, the court merely stated, "Pro se is not in the realm of possibility right now." We find this was a denial of Missouri's right to self-representation." State v. Missouri, Op. No. 2017-UP-383 (S.C. Ct. App. filed Oct. 18, 2017).

ARGUMENT

Counsel was ineffective for failing to ensure that the court reviewed Petitioner’s right to proceed *pro se* during the motion to relieve counsel that was heard five months before trial.

It “is well-established that an accused may waive the right to counsel and proceed *pro se*.” State v. Brewer, 328 S.C. 117, 492 S.E.2d 97 (1997); see State v. Barnes, 407 S.C. 27, 35, 753 S.E.2d 545, 550 (2014) (“A South Carolina criminal defendant has the constitutional right to represent himself under both the federal and state constitutions.”). State v. Starnes, 388 S.C. 590, 698 S.E.2d 604 (2010)); S.C. Const. Art. I, § 14. The Sixth Amendment, which guarantees every criminal defendant the right to a complete defense with the assistance of counsel, also grants “to the accused personally the right to make his defense.” Faretta v. California, 422 U.S. 806, 819 (1975).

In Faretta, the United States Supreme Court explained:

It is the accused, not counsel, who must be ‘informed of the nature and cause of the accusation,’ who must be ‘confronted with the witnesses against him,’ and who must be accorded ‘compulsory process for obtaining witnesses in his favor.’ Although not stated in the Amendment in so many words, the right to self-representation—to make one’s own defense personally—is thus necessarily implied by the structure of the Amendment. The right to defend is given directly to the accused; for it is he who suffers the consequences if the defense fails.

Id.

The right to proceed without counsel “must be clearly asserted by the defendant prior to trial.” Brewer, 328 S.C. at 119, 492 S.E.2d at 98 (citing State v. Sims, 304 S.C. 409, 405 S.E.2d 377 (1991)). Once the defendant makes the request to proceed *pro se*, thereby waiving his right to counsel, the trial judge must determine whether the waiver is made knowingly and intelligently. State v. Thompson, 355 S.C. 255, 262, 584 S.E.2d 131, 135 (2003). Faretta requires that a defendant be (1) advised of his right to counsel and (2) warned of the dangers and

disadvantages of self-representation. Faretta, 422 U.S. at 834-835. A determination by the trial judge that a defendant lacks the “technical legal knowledge to proceed *pro se* does not justify a denial of the right to self-representation.” Brewer, 328 S.C. at 119, 492 S.E.2d at 98 (citing Faretta). Such a determination is “not relevant to an assessment of his knowing exercise of the right to defend himself.” Faretta, 422 U.S. at 836.

“The Sixth Amendment guarantees every criminal defendant the reasonably effective assistance of counsel.” Stone v. State, 419 S.C. 370, 379, 798 S.E.2d 561, 566 (2017) citing U.S. CONST. amend. VI; Strickland v. Washington, 466 U.S. 668, 683, (1984). “The benchmark for judging any claim of ineffectiveness must be whether counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” Strickland at 686 (1984). To prove ineffective assistance of counsel, “the defendant must show that counsel’s performance was deficient” and “that the deficient performance prejudiced the defense.” Id. “When a convicted defendant complains of the ineffectiveness of counsel’s assistance, the defendant must show that counsel’s representation fell below an objective standard of reasonableness.” Id. at 687-688. “[T]he performance inquiry must be whether counsel’s assistance was reasonable considering all the circumstances.” Id. at 688. Concerning prejudice, “a defendant need not show that counsel’s deficient conduct more likely than not altered the outcome in the case.” Rather, “[t]he defendant must show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id. at 694.

Rule 1.2 of the Rules of Professional Conduct states in part,

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4,

shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation ... In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

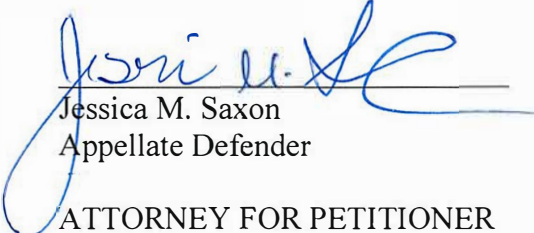
SCACR Rule 407, RPC 1.2

Counsel Angell had a professional duty to abide by Petitioner's decision to relieve him and proceed *pro se*. He was required to advocate to the court that Petitioner's Sixth Amendment right to self-representation be respected. As the Court of Appeals found during Petitioner's direct appeal, Judge Verdin erred in denying Petitioner the right to proceed *pro se* and in not performing the requisite inquiry pursuant to Faretta after Petitioner clearly invoked his right to self-representation. Counsel Angell, as Petitioner's appointed counsel at that time, was required to bring to the attention of the court that a Faretta colloquy was required as Petitioner wanted to proceed *pro se* – a desire he had made known since his arrest in July 2012 – and the failure of counsel to object to the denial of Petitioner's right to proceed *pro se* fell below an objective standard of professional reasonableness.

Petitioner was prejudiced by Counsel Angell's failure to object because he not only lost the right to self-representation, but he lost the time he would have needed to adequately prepare the case for trial. Admittedly, Judge Barber offered Petitioner the opportunity to invoke his right to self-representation. However, at that point in time Petitioner would not have been adequately prepared to represent himself throughout the trial. Had Counsel Angell protected Petitioner's Sixth Amendment right to self-representation at the hearing five months earlier, Petitioner could have represented himself *pro se* and there is a reasonable probability that the outcome of the hearing before Judge Verdin would have been different but for the errors of Counsel Angell.

CONCLUSION

Based on the foregoing argument, Petitioner respectfully requests that this Court grant the petition for writ of certiorari to allow full briefing of this issue.


Jessica M. Saxon
Appellate Defender
ATTORNEY FOR PETITIONER

This 25th day of November, 2024.

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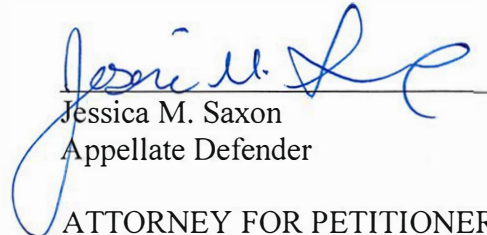
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Vincent Missouri states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. She has reviewed the record of petitioner's post-conviction relief hearing before Judge Daniel D. Hall, which was held on March 7, 2023, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed an arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Vincent Missouri.

Respectfully Submitted,



Jessica M. Saxon
Appellate Defender
ATTORNEY FOR PETITIONER

This 25th day of November, 2024.

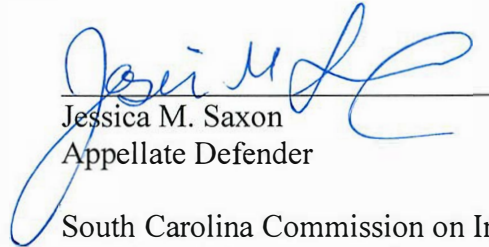
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CERTIFICATE OF COUNSEL

S.C. SUPREME COURT

The undersigned certifies that to the best of her ability this Johnson Petition for Writ of Certiorari 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."



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This 25th day of November, 2024.