

ORIGINAL

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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THE STATE,

S.C. Supreme Court

RESPONDENT,

V.

STEVEN BARNES,

APPELLANT

Appellate Case No. 2010-178247

Appeal from Edgefield County

R. Knox McMahon, Circuit Court Judge

Opinion No. 27322

RETURN TO PETITION FOR REHEARING

“The purpose of a petition for rehearing is not to present points of its lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have a case tried in the Appellate Court a second time. Kennedy v. South Carolina Retirement System, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001) (quoting Jean H. Toal, Appellate Practice in South Carolina, 309 (1999)).” It is apparent that the arguments of both the state and appellant were discussed at length in their respective briefs, fully discussed with this Court during oral argument, vetted by this Court, and decided in clarity and in depth in the opinion.

Appellant's argument, as indicated by his argument heading, was that:

The court erred by denying appellant's pre-trial request to represent himself pursuant to Faretta v. California, 422 U.S. 806 (1975), since this record shows appellant was capable of representing himself and he even exhibited an uncanny understanding of the rules of evidence prior to trial, and the court's refusal to allow appellant to represent himself, citing Indiana v. Edwards, 554 U.S. 164 (2008), was erroneous.

Brief of Appellant at 5.

The state fully argued Edwards in its brief of respondent at 30-34. In its brief at page 34 the state cited authority concerning this issue: "Edwards does not *mandate* the application of such a dual standard of competency for mentally ill defendants. In other words, Edwards did not alter the principle that the federal constitution is not violated when a trial court permits a mentally ill defendant to represent himself at trial, even if he lacks a mental capacity to conduct the trial proceeding himself, if he is competent to stand trial and his waiver of counsel is voluntary, knowing and intelligent."

The majority of this Court disagreed with the state's argument that Indiana v. Edwards compelled reversal of the trial judge's decision not to allow appellant to represent himself. Neither the majority nor the dissenting opinion in this Court overlooked the argument of the state.

The opinion here noted that "since the Court merely agreed that states **could set** a higher standard for waiver of counsel without offending the federal constitution, it declined to adopt a federal constitutional standard for determining whether a defendant is competent to waive his right to counsel. We decline to adopt a higher a competency standard for waiver of the right to counsel than that required for the waiver of other fundamental constitutional rights afforded a criminal defendant, such as the right against compulsory self-incrimination; the right to trial by

jury; and the right to confront one's accusers." See State v. Steven Barnes, Shearouse's Advance Sheet No. 44 at 23 (Filed October 16, 2013).

The opinion in unambiguous plain language states "The dispositive issue in this appeal is whether South Carolina will adopt the higher competency standard permitted by Edwards and thus alter the traditional Faretta threshold which permits any defendant competent to stand trial to waive his right to counsel. Since we choose not to adopt Edwards' higher standard for competency to waive counsel, and since the trial judge's denial of appellant's request was predicated on this competency standard, we are compelled to reverse. McKaskle v. Wiggins, 465 U.S. 168 (1984) (erroneous denial of Faretta request is a structural error requiring automatic reversal)." State v. Steven Barnes, Shearouse's Advance Sheet No. 44 at 22 (Filed October 16, 2013).

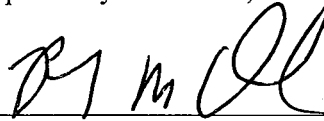
In its petition for rehearing the state concedes this Court's opinion is "within constitutional limits." Petition for rehearing at 5. On page 34 of its brief the state had cited State v. Connor, 973 A.2d 627, 650 (Conn. 2009), which articulates this proposition. The state again cites State v. Connor at pages 3 and 4 of the petition for rehearing. Clearly, this Court fully considered the state's brief on Edwards in its Opinion while disagreeing with its conclusions. See State v. Steven Barnes, Shearouse's Advance Sheet No. 44 at 22-23 (Filed October 16, 2013).

Even if Edwards was applied to this case, appellant argued at length in his brief why the trial judge's reliance on Edwards was misplaced. See Brief of Appellant 5-27. Appellant specifically noted "with all this strong evidence of appellant's ability to represent himself, one of the most striking items speaking volumes of his knowledge of the system was when defense counsel Tarr presented the case of Indiana v. Edwards for the first time on Monday morning, and

appellant was prepared to distinguish it.” Brief of Appellant at 25. Appellant showed throughout his lengthy argument that appellant had shown that he had studied and prepared to represent himself at trial. Regardless, as appellant argued at length and the record in this case amply supports the conclusion that appellant voluntarily and intelligently waived his right to counsel with a full understanding of the dangers and disadvantages of self-representation with his “eyes wide open.” This Court did not overlook or misapprehend any principle of law, and trying the case a second time in this Court does not serve the purpose of a petition for rehearing. See Herron v. Century BMW et al., 395 S.C. 461, 466, 719 S.E.2d 640, 643 (2011).

Rehearing, respectfully, should be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R M Dudek', written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

This 14th day of November, 2013.

STATE OF SOUTH CAROLINA
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Appeal from Edgefield County
R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

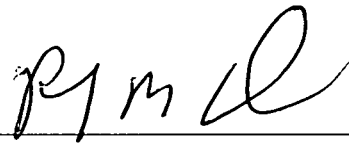
V.

STEVEN BARNES,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Return to Petition for Rehearing in the above-entitled case has been served upon Melody J. Brown, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 14th day of November, 2013.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 14th day
of November, 2013.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: August 21, 2023.