# The South Carolina Court of Appeals

The State, Respondent,

v.

Ray Edward Chestnut, Appellant.

Appellate Case No. 2025-001447

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ORDER

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On July 18, 2025, Appellant filed a notice of appeal from a criminal conviction. Currently, Appellant is represented by Wesley Chandler Norville, Esquire, an attorney with the Office of Appellate Defense, a division of the South Carolina Commission on Indigent Defense. On December 16, 2025, Appellant filed a "motion for temporary relief of counsel, motion to proceed pro se for limited purpose, and motion to stay appeal pending resolution of jurisdictional issue."[1] In his motion, Appellant requests that his current appellate counsel "be temporarily relieved from representation in this appeal . . . solely to allow Appellant to personally address a jurisdictional defect that arose in the trial court." Appellant explains he "intends to request the appointment of new appellate counsel after the jurisdiction issue is resolved, if necessary," and "does not intend to proceed pro se for the remain[d]er of the appeal." Further, Appellant requests this court stay his appeal so that he may litigate the question of the trial court's jurisdiction in the circuit court. No return was filed.

After careful consideration, we deny Appellant's motion. *See generally Foster v. State*, 298 S.C. 306, 307, 379 S.E.2d 907, 907 (1989) (explaining there is no constitutional right to hybrid representation either at trial or on appeal); *id.* (holding the state constitution "does not establish a right to 'hybrid representation,' that is, representation which is partially pro se and partially by counsel"); *Jones v.*

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[1] According to Appellant, the "jurisdictional issue" is that "two different circuit judges presided over separate portions of Appellant's trial proceedings without a lawful substitution order or assignment order on file."

*State*, 348 S.C. 13, 14, 558 S.E.2d 517, 517 (2002) (stating "counsel cannot serve as a mere conduit for pro se documents in an effort to avoid the prohibition against hybrid representation and the displeasure of his client"); *United States v. Frazier-El*, 204 F.3d 553, 560 (4th Cir. 2000) (stating a "court must be permitted to distinguish between a manipulative effort to present particular arguments and a sincere desire to dispense with the benefits of counsel"); *Martinez v. Ct. of Appeal of California, Fourth App. Dist.*, 528 U.S. 152, 163 (2000) (concluding there is no federal "constitutional right to self-representation on direct appeal from a criminal conviction"); *State v. Roberts*, 364 S.C. 583, 588, 614 S.E.2d 626, 629 (2005) (finding "there is no state constitutional provision which confers" a right to proceed pro se on appeal from a criminal conviction).

We acknowledge that a criminal defendant who waives his right to counsel is not precluded from asking for counsel in a later proceeding. *See generally State v. Barnes*, 413 S.C. 1, 5-6, 774 S.E.2d 454, 457-58 (2015) (refusing to recall remittitur and reinstate a conviction based upon a defendant's request for counsel at his retrial after the supreme court reversed his conviction due to a failure of the trial court to honor his request for self-representation during the first trial); *Johnstone v. Kelly*, 812 F.2d 821, 821-22 (2d Cir. 1987) (holding that a defendant, whose first conviction was reversed based upon a denial of his right to self-representation, must be afforded all of his constitutional rights, including the right to have the assistance of counsel, at a retrial); *United States v. Kennard*, 799 F.2d 556, 557 (9th Cir. 1986) (rejecting the contention that "once a waiver of counsel has been given, a defendant is forever precluded from asking for an attorney in a later proceeding"); *but see State v. Reed*, 332 S.C. 35, 44, 503 S.E.2d 747, 751 (1998) (affirming a trial court's denial of a capital defendant's request to have standby counsel represent him on the eve of sentencing); *State v. Cabrera-Pena*, 350 S.C. 517, 534, 567 S.E.2d 472, 481 (Ct. App. 2002) (explaining that allowing the defendant "to recall his attorney during the trial, after he had specifically waived his right to counsel, would have impermissibly resulted in hybrid representation"); *Medley v. State*, 47 S.W.3d 17, 23 (Tex. Ct. App. 2000) (explaining that "[i]f the right to counsel is waived, the waiver can ordinarily be withdrawn, and the right to counsel reasserted . . . [b]ut, the defendant does not have the right to repeatedly alternate his position on the right to counsel and thereby delay trial or otherwise obstruct the orderly administration of justice").

Here, however, Appellant is asking this court to allow hybrid representation, which we refuse to do. *See McKaskle v. Wiggins*, 465 U.S. 168, 183 (1984) ("A defendant does not have a constitutional right to choreograph special appearances by counsel.").

To the extent Appellant wishes to assert the trial court lacked subject matter jurisdiction, Appellant may raise this issue at any time, including for the first time on appeal. *See State v. Guthrie*, 352 S.C. 103, 107, 572 S.E.2d 309, 311 (Ct. App. 2002) ("The lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised *sua sponte* by the court.").

Finally, Appellant's motion "to stay all appellate proceedings" and "hold any appellate briefing deadlines in abeyance until the court resolves the jurisdictional and void-judgment claims raised" is denied as moot.

C.J.
FOR THE COURT

Columbia, South Carolina

cc:
Alan McCrory Wilson, Esquire
Mark Reynolds Farthing, Esquire
Wesley Chandler Norville, Esquire
Ray E. Chestnut

FILED
Dec 30 2025