STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenwood County
The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

THE STATE,

Petitioner,

vs.

TERRENCE O'NEIL FRAZIER,

Respondent.

Opinion No. 2025-UP-427 (S.C. Ct. App. filed Dec. 23, 2025, re-filed Feb. 4, 2026)

PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF ISSUE ON CERTIORARI

Frazier represented himself at trial. At a previous term of court, a circuit court judge conducted a Faretta hearing warning Frazier of the dangers of self-representation, but there is no transcript of that hearing. The solicitor repeatedly warned Frazier of the dangers of self-representation during pretrial meetings, and the trial court conducted an additional, incomplete Faretta colloquy at the start of trial. Finally, the record otherwise demonstrates Frazier understood his right to counsel but chose to represent himself anyway. Did the circuit court err by granting Frazier a new trial?

STATEMENT OF THE CASE

Respondent Terrence Frazier was indicted for carjacking, leaving the scene of an accident, breaking into a motor vehicle, grand larceny of a motor vehicle valued in excess of $10,000, and trafficking methamphetamine, all based on events occurring on July 9, 2015. Frazier proceeded to jury trial pro se before the Honorable Eugene C. Griffith, Jr. on November 16-19, 2015. Following some pretrial motions, Judge Griffith provided Frazier with standby counsel, who was available to assist him throughout jury proceedings. Frazier was convicted as charged, except the jury found him guilty of using a vehicle without permission as a lesser included offense of carjacking. Frazier was sentenced to twenty years' imprisonment for trafficking methamphetamine and concurrent sentences for the remaining convictions.

Frazier appealed his convictions, and on November 27, 2019, the court of appeals remanded the case for an evidentiary hearing to determine whether Frazier knowingly and voluntarily waived his right to counsel. App. 734. On March 3, 2023, a hearing was convened at the Greenwood County courthouse, again before Judge Griffith. The court had before it the appellate court opinion and the transcript of the November 16–19, 2015 trial contained in the record on appeal from Frazier's direct appeal. The Court heard testimony from Frazier and from Brian Moroney, the assistant solicitor who prosecuted the case.

Moroney testified that Circuit Court Judge Edward Miller conducted a Faretta hearing warning Frazier of the dangers of self-representation at a separate court term shortly before Frazier's trial date. There is no transcript of that hearing. Further, Moroney personally warned Frazier many times of the dangers of proceeding pro se. Frazier admitted Judge Miller conducted a Faretta hearing. He testified: "I remember Judge Miller saying something of the sort like... you don't have

to represent yourself, but if you decide to represent yourself, then I can't force a lawyer on you or something." App. 48.

The court took the matter under advisement. Despite having presided over Fraizer's trial, the court issued an order on August 25, 2023, finding Frazier did not knowingly and intelligently waive his right to counsel. App. 11. The court's written order contained the following finding:

> Based upon the weighing all of the above factors that the weight of the sufficiency of the factors for the court to consider as whether the Defendant understood his understanding of his rights, This Court finds the lack of a knowing and intelligent waiver weighs in favor of the defendant.

App. 11. The State appealed, and the court of appeals affirmed the circuit court in an unpublished opinion. App. 731. The court denied the State's petition for rehearing. This petition for writ of certiorari follows.

RELEVANT FACTS

The underlying facts of the case can be found in the State's brief to the court of appeals. App. 670–73. The facts relevant to the waiver issue are as follows.

Preliminary hearing

Frazier's preliminary hearing was held on September 1, 2015, before the Honorable Municipal Judge Lee Miller. Judge Miller noted for the record that Frazier was present without an attorney. Judge Miller explained for the record that he cautioned Frazier he should not go forward with the preliminary hearing without an attorney, noting it was a critical stage of the proceedings. Frazier confirmed this. Judge Miller then confirmed Frazier was waiving his right to counsel, and Frazier replied he was representing himself and waiving his right to counsel. (Preliminary hearing recording).

Bond hearing

At the October 15, 2015 bond hearing, the trial court asked Frazier why he did not have an attorney and Frazier responded:

> Because my family can't afford a lawyer and I am trying, I look at the cases very frivolous and I understand, I am not saying I am the smartest but I feel like I am smart enough to get through this myself **and I know a little about the law to make it through**.

App. 78, lines 1–5. The trial court warned Frazier, "You can represent yourself, I can't force a lawyer on you. These young lawyers are smart." App. 78, lines 6–7. Frazier responded he wanted to get out on bond and then work on trying to get an attorney. App. 78, lines 8–10. Frazier also advised the trial court that he filed a speedy trial motion. App. 80, lines 7–10.

Frazier's performance at trial

Upon the case being called, the trial court confirmed that Frazier was "prepared to represent [himself]" and had the opportunity to speak with counsel in case he "wanted help and assistance in defending [himself.] in this matter." App. 89. Frazier confirmed he was ready to represent himself. The court verified with Frazier that he refused the State's plea offer. Frazier then moved for a change of venue. App. 90. Frazier appropriately represented himself during jury selection, exercising most of his jury strikes. App. 103–08. When Frazier complained that he did not have access to law books at the county jail, the court responded that Frazier, as a pro se defendant, was "tasked with knowing the rules as they are written." App. 118. Frazier moved in limine to exclude from evidence the tickets for breaking into a motor vehicle and leaving the scene of an accident. The motion was granted. App. 122. The trial court advised Frazier that he could not give him advice once trial started. App. 130.

Notably, Frazier asked for copies of the transcripts of his bond hearing and **"representation" hearing.** App. 141. The prosecutor then asked the trial court to administer Faretta warnings, noting **Frazier had previously been administered warnings** by "Judge Miller" which took about five minutes. App. 144. The trial court inquired of Frazier about his education and work history and advised Frazier that he was entitled to appointed counsel or, in the alternative, standby counsel. App. 145. In response to the trial court's inquiry, Frazier advised the trial court he was twenty-five years old, went to ninth grade in school, and cut grass and helped remodel houses. App. 144, lines 16–24. Frazier understood he could have a public defender appointed, but did not want one because it would take longer before the case would be tried. App. 145. The trial court noted Frazier was well organized and did "fairly well" with the pretrial motions. App. 145. The court asked Frazier

whether he was "comfortable" proceeding pro se, and Frazier responded he was "comfortable with the facts of the evidence," but requested standby counsel. App. 146. Frazier indicated a public defender previously represented him on another charge. App. 146–47. The court appointed a public defender as standby counsel.

During opening argument, Frazier implored the jury to observe the witnesses' demeanor, to look at the facts, and told the jury the charges were false. App. 165–69. He concluded: "They are going to try [to] paint a picture in your head that oh, he is just a bad person. He's just a menace to society and dah, dah, dah, dah, dah. No, it's not like that. I want you to look at the facts that they paint, the pictures. Look at it. Look, listen, observe, study it, analyze it, and then make your decision." App. 169.

For the State's first witness, the trial court sustained Frazier's hearsay objection. App. 171. Later, the trial court sustained Frazier's objection to leading. App. 174. Frazier was allowed to consult with stand-by counsel during an in-camera argument regarding some surveillance video footage. App. 184–85. During cross-examination, Frazier used the statement to refresh the witness's recollection. App. 199.

With a later witness, the trial court required the prosecutor to rephrase a question following Frazier's objection that arguably suggested a legal conclusion. App. 227. Frazier objected to a magazine being admitted into evidence based on chain of custody and lack of foundation, which resulted in the trial court requiring the prosecutor to make a proffer. App. 231–32. Later, the trial court provisionally declined to allow the magazine into evidence through that witness in response to Frazier's argument. App. 236–37. Frazier made successful hearsay objections again during the testimony of Officer Penn, Officer Emery, Officer Moore, and Officer Caughman. App. 258; 295;

320; 358.

Frazier made a successful Rule 5, SCRCrimP, objection to prevent a recovered $20 bill from being admitted into evidence. App. 279–85. Frazier knew to move to suppress the methamphetamine (but was unsuccessful since it was a third-party search) and challenge the chain of custody (also unsuccessful). App. 433–44. Frazier made a clever argument against admission of the chemist's report that momentarily seemed to catch the prosecution in a procedural trap. App. 501–05. He later presented the trial court with citation to a case to argue his point. App. 507. He also made a reasonable argument against the authority cited by the prosecution. App. 510.

After the State rested its case, Frazier made an insightful, albeit unsuccessful, directed verdict argument on the carjacking charge, arguing the lack of evidence to support force or intimidation. App. 519–20. During an informal charge conference, Frazier requested an instruction for grand larceny as a lesser offense of carjacking. Ultimately, the trial court provided unauthorized use of a vehicle as a lesser included offense. App. 602; 623–24.

Frazier let the jury know why he decided to represent himself:

> [B]ut I decide[d] to represent myself **because I got a little knowledge about the law**, know wrong from right, especially common sense. If you got common sense, it's – you may need a little help in certain areas, you may be right, but if you got common sense, the law is common sense.

App. 573.

Frazier was acquitted of one of the two major charges—carjacking—and instead convicted of unauthorized use of a vehicle as a lesser included offense. This favorable result is likely due to his effective closing argument. Frazier pointed out that witness Whitaker testified he did not see force used on victim Chatos. App. 577. He then argued to the jury the surveillance video showed that

Chatos got out of the truck willingly and not by force. App. 578. He pointed out, "And in the victim's statement, which you will hear today, she admitted to getting out of her truck and that she was very angry, cussing at the suspect, and she attacked [the] suspect, so that, in fact, proves that she wasn't intimidated or scared." App. 578.

Frazier then pushed his legal argument vehemently, advising the jury of the elements of carjacking, including the requirement of the use of "force or violence or by intimidation while the person was operating the vehicle or while the person was in the vehicle." App. 581. Frazier argued, "She wasn't forced out of her truck. And if somebody threw something at your truck and you get out, you can't be intimidated." App. 585. Referencing the video, Frazier argued all it showed was the truck pulling off and Chatos walking away, without the appearance of being hurt. "She is not appeared to be injured. It's no proof of carjacking." App. 585. Frazier argued again there was no proof of intimidation. App. 582–83. Frazier turned to the point that "if any violence or force was used or established was or from by the victim [Chatos]. . . . She used physical force, not the suspect." Noting his own professed size of a 135 pounds, "soaking wet," Frazier argued the size disparity contradicted the element of intimidation. App. 587.

Remand hearing

On remand, the State presented testimony from Brian Moroney, the assistant solicitor who prosecuted Frazier. Moroney testified he met with Frazier several times to deliver discovery and communicate a plea offer. Moroney testified: "I would give him letters each time I would do that. And given the significant penalties he was facing, not only with the carjacking, but trafficking methamphetamine, began talking about the penalties associated with that." App. 17; 29. He testified these were "substantive meetings" that lasted "[a]t least 30 minutes, a couple of them." App. 28.

He testified Frazier insisted he wanted to represent himself and explained he had successfully represented himself at the magistrate court level. Moroney attempted to explain that circuit court was different than magistrate's court, and that Frazier would be responsible for applying complicated areas of law such as the rules of evidence. Moroney testified: "I was desperately trying to explain to him how different of a posture he was in now with what he was facing and the jury trial and the rules of evidence and how complicated that can be and that he needed representation to look over this case." App. 18. He explained "the rules are a lot tighter" than in magistrate's court. He testified he discussed the potential for Fourth Amendment challenges with Frazier. App. 32. He explained his interactions with Frazier "were not cursory, check the box, Terrence, you should get an attorney .... We walked through this case step-by-step and the charges that he was facing." App. 65.

Frazier explained to Moroney that he wanted a private attorney, not a public defender. Frazier was polite and confident in his ability to represent himself. Moroney told Fraizer he would not be "able to adequately represent himself like an attorney could do." App. 31. Moroney testified he "warn[ed] [Fraizer] of the dangers of proceeding pro se .... **numerous, numerous times.**" App. 19–20.

Moroney testified he brought Frazier in front of Circuit Court Judge Edward Miller so that Judge Miller could provide Frazier with formal Faretta warnings. App. 19–20. Judge Miller had a conversation with Frazier in the "small courtroom." Moroney described the hearing as follows:

> It was not a verbatim recitation of the Faretta warning. It was not a recitation from the form, but Judge Miller essentially had a conversational, you know, back and forth with him, getting to the crux of the issue that, do you understand that these attorneys go to law school, have legal training for several years, and you don't have the benefit of that, you know. And these are serious charges you're facing, you know, and somebody can aid you in the defenses. And I know that you're competent, you know,

you say you can handle yourself, but you could benefit by having somebody assist you on this case, those kind of things.

App. 21. Moroney stated Judge Miller told Frazier he would appoint counsel free of charge, but Frazier was "adamant" that he wanted to represent himself. App. 22. Moroney believed Frazier's appearance before Judge Miller took place a term or two before his trial. App. 21–24.

Frazier testified he did not understand how sentencing enhancement works, and did not understand he would be facing a trafficking second offense charge. App. 41–42. He testified he was motivated to go to trial so he could get out of jail, and that his mother had died while he was in county jail. App. 45–46. Frazier testified he had been to court on prior charges, but had not had a General Sessions trial. Frazier did not recall whether the magistrate's court proceeding at which he represented himself was a jury trial. App. 39. He testified he pled not guilty and the charge was "thrown out."

When asked whether he understood what the prosecutor meant when he advised him it wasn't a good idea to represent himself, he responded: "To be honest with you, I think he might have said something of the nature during trial or at trial. But before then, to be honest with you, I never . . . remember him mentioning anything about not representing myself or representing myself. . . . There would be dangers or nothing that . . . I remember him . . . bringing the paper to me about a plea negotiation, but that's about it." App. 47. On cross-examination, the solicitor asked whether Frazier remembered the assistant solicitor advising him: "It's dangerous to represent yourself and you need a lawyer and we can make sure the Court can appoint you one." Frazier admitted, "in the last stages **he might have**." App. 53. He recalled the hearing in front of Judge Miller and recalled Judge Miller telling him "you don't have to represent yourself, but if you decide to represent

yourself, then I can't force a lawyer on you or something." App. 49. Regarding standby counsel, Frazier testified "he did assist me . . . with giving me standby counsel to the best of his ability." App. 47.

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).

WHY THE PETITION SHOULD BE GRANTED

Rule 242, SCACR, provides that a writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons. The following, while neither controlling nor fully measuring this Court's discretion or power to grant review in general, indicate the character of reasons which will be considered:

(1) Where there are novel questions of law.

(2) Where there is a dissent in the decision of the Court of Appeals.

(3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.

(4) Where substantial constitutional issues are directly involved.

(5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

This case involves a substantial question of constitutional law: whether a criminal defendant's decision to proceed pro se should be upheld where the record demonstrates the decision was made knowingly and voluntarily after adequate warnings, even though a transcript of a Faretta hearing does not exist. This Court should grant certiorari.

ARGUMENT

The circuit court erred by finding Frazier did not knowingly and intelligently waive his right to counsel where a circuit court judge conducted a Faretta hearing, the solicitor repeatedly warned Frazier of the dangers of self-representation, and the record otherwise shows Frazier's decision to represent himself was knowing and voluntary.

The circuit court—the same court who presided over Frazier's trial—erred by granting Frazier a new trial based on his claim that he did not knowingly and voluntarily waive his right to counsel. The record shows Frazier was apprised of the dangers of self-representation but voluntarily chose to proceed pro se. The lower court erroneously discarded evidence that another circuit court judge conducted a Faretta colloquy at a separate term of court prior to Frazier's trial and failed to recognize the abundant evidence that Fraizer was aware of the dangers of self-representation but voluntarily chose to proceed pro se. This Court should grant the State's petition, find Frazier's waiver was knowing and voluntary, reverse the lower court, and affirm his convictions.

Pursuant to both the United States Constitution and the South Carolina Constitution, a criminal defendant brought to trial in South Carolina "must be afforded the right to the assistance of counsel before he can be validly convicted and punished by imprisonment." Faretta v. California, 422 U.S. 806, 807 (1975); U.S. Const. amend. VI; S.C. Const. art. I, § 14. However, "[t]he right to defend is personal." Faretta, 422 U.S. at 834. As a result, a defendant has a fundamental constitutional right to represent himself at trial. State v. Thompson, 355 S.C. 255, 262, 584 S.E.2d 131, 134 (Ct. App. 2003); 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 federal and state constitutions."). Thus, even though it ultimately may be detrimental for a defendant to personally conduct his own defense, that defendant's choice to do so "must be honored out of 'that

respect for the individual which is the lifeblood of the law.'" Thompson, 355 S.C. at 262, 584 S.E.2d at 134 (citation omitted). A circuit judge's denial of a defendant's knowing and voluntary request to proceed pro se is a structural error requiring automatic reversal and a new trial. State v. Samuel, 422 S.C. 596, 603, 813 S.E.2d 487, 491 (2018).

In order to effectuate a valid waiver of the right to counsel, a defendant must be advised of the right to counsel and warned of the dangers of self-representation. Ex parte Jackson, 381 S.C. 253, 259, 672 S.E.2d 585, 588 (Ct. App. 2009). Before allowing a defendant to proceed pro se, the trial judge should determine whether the defendant knowingly and voluntarily waived his right to counsel, and the **preferred** method for doing so is for the trial judge to conduct a specific inquiry addressing the dangers and disadvantages of pro se representation with the defendant. See Thompson, 355 S.C. at 262-263, 584 S.E.2d at 135; United States v. King, 582 F.2d 888, 890 (4th Cir. 1978) (instructing "no particular form of interrogation is required" in order for a trial judge to determine whether a defendant's waiver of his right to counsel is knowing and intelligent). However, "the ultimate test is not the trial judge's advice but the accused's understanding." State v. Cash, 309 S.C. 40, 42, 419 S.E.2d 811, 813 (Ct. App. 1992). "If the record demonstrates the defendant's decision to represent himself was made with an understanding of the risks of self-representation, the requirements of a voluntary waiver will be satisfied." Wroten v. State, 301 S.C. 293, 294, 391 S.E.2d 575, 576 (1990).

Factors used to determine if the accused had sufficient background to understand the disadvantages of self-representation include:

(1) the accused's age, educational background, and physical and mental health;

(2) whether the accused was previously involved in criminal trials;

(3) whether he knew of the nature of the charge and of the possible penalties;

(4) whether he was represented by counsel before trial and whether an attorney indicated to him the difficulty of self-representation in his particular case;

(5) whether he was attempting to delay or manipulate the proceedings;

(6) whether the court appointed stand-by counsel;

(7) whether the accused knew he would be required to comply with the rules of procedure at trial;

(8) whether he knew of legal challenges he could raise in defense to the charges against him;

(9) whether the exchange between the accused and the court consisted merely of pro forma answers to pro forma questions; and

(10) whether the accused's waiver resulted from either coercion or mistreatment.

Cash, 309 S.C. at 43, 419 S.E.2d at 813.

In State v. McLauren, 349 S.C. 488, 563 S.E.2d 346 (Ct. App. 2002), the court of appeals examined whether McLauren, an admitted jailhouse lawyer, freely and voluntarily waived the right to counsel absent any express colloquy regarding the dangers of self-representation. This Court found McLauren's waiver was voluntarily made after assessing the Cash factors, finding in relevant part: (1) "McLauren was a mature man with both formal and informal education. There was no evidence in the record of any physical or mental impairment." (2) McLauren was previously involved in criminal proceedings with a record going back to 1965. (3) McLauren knew the nature of the charge, "address[ing] questions by the court and [making] motions." (4) The court appointed standby counsel to provide McLauren legal advice and sit with McLauren during trial. (5) There was no indication McLauren was attempting to delay or manipulate the proceedings, noting McLauren

made a motion for a speedy trial. (6) This Court reiterated McLauren was appointed standby counsel. (7) McLauren knew to comply with the rules and was familiar with them, making motions, calling witnesses, and objecting at times to the prosecutor's questions. (8) McLauren knew of legal challenges he could raise in defense to the charges against him. (9) The exchange between McLauren and the court did not consist of only pro forma answers to pro forma questions. McLauren's actions indicated he understood the legal system. (10) There was no evidence McLauren's waiver was the result of coercion or mistreatment: "McLauren expressly stated that he wanted to represent himself and that he would waive his right to an attorney." Id. at 495–96, 563 S.E.2d at 349-50.

By comparison, in the instant case: (1) Frazier was twenty-five years old with nothing in the record suggesting any physical or mental impairment. (2) Frazier accumulated a substantial criminal record which was probably the source of his legal knowledge he professed to the jury during closing argument. (3) Frazier clearly knew the nature of the charges, and made a sophisticated legal argument that resulted in Frazier being acquitted of carjacking. (4) Like McLauren, Frazier was not represented by counsel before trial, but was assigned stand-by counsel that was available to Frazier all through the jury proceedings to provide legal advice. (5) Nothing in the record indicated Frazier was attempting to delay or manipulate the proceedings. Like McLauren, Frazier requested a speedy trial. (6) Frazier received stand-by counsel. (7) The record indicates Frazier understood he needed to comply with procedural rules, and his objections and motions indicated some familiarity with the rules. (8) Frazier demonstrated he knew of several defenses to raise, including his successful defense to carjacking, one of the two major charges he was facing. (9) Frazier's actions, like McLauren's, were indicative of some understanding of the legal system. (10) Like McLauren, there

is no indication Frazier's decision was the result of coercion or mistreatment.

Frazier was "adamant" that he wished to represent himself. App. 22. On remand, the State presented evidence that Frazier was advised of his right to counsel but chose to waive that right. He was aware he could fill out paperwork to have a public defender appointed. App. 145. He told the court during the bond hearing that he had some legal knowledge. App. 78. He chose to represent himself at the preliminary hearing despite warnings from the municipal judge.

Frazier was warned repeatedly about the dangers of self-representation. The solicitor testified Judge Edward Miller conducted a Faretta hearing in one of the terms preceding Frazier's trial.[1] App. 19–20. While that transcript is not available, the solicitor testified this was a substantial hearing convened specifically so that Judge Miller could warn Frazier of the dangers of self-representation, including that Frazier was facing serious charges, that lawyers "go to law school, have legal training for several years," and Frazier didn't "have the benefit of that." App. 21.

The lower court accepted that this hearing occurred but essentially disregarded it, concluding solicitor Moroney "overstated the importance" of the hearing. App. 9. Even though there is no transcript of this hearing, Moroney credibly testified in detail that it occurred. Even Frazier admitted the hearing occurred, but disputed the extent of the warnings given. At trial, Frazier referred to a prior "representation hearing." App. 141. It is difficult to understand how a Faretta hearing

[1] At his preliminary hearing, Frazier appeared before Municipal Judge **Lee Miller** and proceeded pro se. App. 673. A recording of the preliminary hearing is on file with this Court, and is referenced in the court of appeals opinion remanding the case. In its opinion, the court of appeals noted that the municipal court cautioned Frazier about proceeding without an attorney, but the warnings did not adequately warn Frazier of the specific dangers of proceeding pro se. In the trial transcript, the solicitor mentions a hearing before "Judge Miller." App. 144, line 13. However, it was not apparent from the transcript that the solicitor was actually referring to Circuit Court Judge **Edward Miller**, as Moroney explained at the remand hearing.

conducted by a circuit court judge could be unimportant in this case, when Frazier's argument is premised on the absence of adequate warnings.

Further, Moroney testified he had "numerous" conversations with Frazier where he warned him of the dangers of proceeding pro se. Moroney discussed the charges and potential penalties with Frazier in detail. App. 17. He testified Frazier repeatedly expressed his wish to represent himself, explaining he had successfully represented himself at the magistrate court level. App. 18. Moroney attempted to explain that circuit court was different than magistrate's court and that Frazier would be responsible for applying complicated areas of law such as the rules of evidence. He explained "the rules are a lot tighter" than in magistrate's court. He testified he discussed the potential for Fourth Amendment challenges with Frazier. He explained his interactions with Frazier "were not cursory, check the box, Terrence, you should get an attorney . . . . We walked through this case step-by-step and the charges that he was facing." App. 65. Moroney reiterated: "To be frank today . . . I understand the position Mr. Frazier's in, in wanting to rewrite history, but . . . the truth is what I'm telling you today. He was advised numerous times of the perils proceeding unrepresented. And he knew that. And he elected to do that on his own accord." App. 64.

While this is not the preferred method of advisement, the solicitor spoke with Frazier at length about the pitfalls of self-representation in General Sessions court and testified they had in-depth conversations about the issues and charges against Frazier. He testified his discussions "were not cursory, check-the-box" conversations. App. 65. The lower court did not dispute any of these facts. Instead, it ignored most of Moroney's testimony and emphasized that Frazier did not understand certain aspects of his case, such as sentencing enhancement. App. 8. But Moroney testified he discussed the potential penalties with Frazier, including the sentencing enhancement.

App. 17, 61. And a negative result does not bear on Frazier's understanding of his right to counsel and his ability to waive the right. Whether a defendant is "capable of effectively representing himself has no bearing upon his ability to elect self-representation." State v. Samuel, 422 S.C. 596, 603, 813 S.E.2d 487, 491 (2018).

Additionally, Judge Griffith conducted his own Faretta colloquy just before trial. App. 144–47. He did this after the solicitor prudently requested the court to give one final warning before trial started. See Osbey v. State, 425 S.C. 615, 623, 825 S.E.2d 48, 52 (2019) (James, J., concurring) ("Perhaps the most efficient way for this problem [of swearing contests over past Faretta warnings] to be avoided is for the solicitor, when it becomes apparent a plea or trial is imminent, to bring the unrepresented defendant before the circuit court for the stated purpose of curing any Faretta ills."). While Judge Griffith did not explicitly warn Frazier of the dangers of self-representation during this colloquy, he inquired about Frazier's education and background and provided him with stand-by counsel. Judge Griffith had previously encouraged Frazier to accept counsel, emphasizing: "These young lawyers are smart." App. 78. Judge Griffith made clear that Frazier was responsible for complying with the rules of court, and that the court would not advise him once trial started. App. 130.

Finally, there is the final page of the circuit court's written order, which contains incoherent language which calls into question the court's analysis. App. 11. The record as a whole shows Frazier was warned of the dangers of self-representation and made a knowing and voluntary decision to proceed without counsel, as was his right. He should not receive a new trial merely because there is no transcript of Judge Miller's Faretta colloquy. This Court should grant the State's petition, reverse the court of appeals, and affirm Frazier's convictions and sentences.

CONCLUSION

For all of the foregoing reasons, the Court should grant the State's petition for writ of certiorari.

Respectfully submitted,

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ATTORNEYS FOR APPELLANT

February 18, 2026

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Feb 18 2026
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenwood County
The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

THE STATE,

Petitioner,

vs.

TERRENCE O'NEIL FRAZIER,

Respondent.

PROOF OF SERVICE

I, Susan Spencer, certify that I have served the within Petition for Writ of Certiorari and Appendix by emailing a copy to Respondent's counsel of record, Joanna Delany, Esquire, at the email address provided by the Attorney Information System (AIS).

I further certify that all parties required by Rule to be served have been served.
This 18th day of February, 2026.

By: Susan Spencer
Susan Spencer
Legal Assistant

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

February 18, 2026

Susan Spencer

From: Susan Spencer <susanspencer@scag.gov>
Sent: Wednesday, February 18, 2026 3:46 PM
To: jdelany@sccid.sc.gov
Cc: smcinnis@sccid.sc.gov; Josh Edwards
Subject: The State v. Terrence Frazier

Good afternoon,

Please find attached the Petition for Writ of Certiorari and Appendix in The State v. Terrence Frazier. Per your consent, I'm serving these documents via SC File Drop. Due to their large size, I was unable to serve them via Microsoft Outlook. These documents will be filed today with the Court of Appeals and Supreme Court via the AIS OneDrive system. If you will, please confirm receipt.

Thank you.

SUSAN SPENCER, Legal Assistant

South Carolina Attorney General's Office

Criminal Appeals | Office 803-734-3219 | susanspencer@scag.gov

P.O. Box 11549 | Columbia, SC 29211

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