STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Richland County

The Honorable Clifton B. Newman, Circuit Court Judge
The Honorable DeAndrea G. Benjamin, Circuit Court Judge

Appellate Case No. 2022-001605

THE STATE,

RESPONDENT,

v.

MICAH CHRISTIAN SYLVE BROWN,

APPELLANT.

PETITION FOR REHEARING

On April 15, 2026, without the benefit of oral argument, this Court reversed the convictions of Micah Christian Sylve Brown in an unpublished opinion. *See State v. Brown*, Op. No. 2026-UP-174 (S.C. Ct. App. filed Apr. 15, 2026). The Court found that Brown had not knowingly and intelligently waived his right to counsel, and as a result Brown had been denied his right to counsel at trial.

Pursuant to Rule 221(a), the State respectfully petitions for rehearing because it appears that this Court overlooked the indications that Brown either forfeited his right to counsel or waived it by conduct. The State asks this Court to grant rehearing, even if for the limited purpose of considering oral argument.

The State respectfully contends that this Court conflated two separate inquiries into one. The first inquiry is whether Brown could dismiss the attorneys he received through the public defender's office; the second inquiry is whether he had waived or forfeited his right to counsel. Often, these inquiries are rightly combined. *See, e.g., State v. Boykin*, 324 S.C. 552, 559, 478

S.E.2d 689, 692 (Ct. App. 1996) (holding that "[w]hile the trial judge was certainly justified in granting" one attorney's "motion to be relieved as counsel, substitute counsel should have been appointed for" the defendant). But under the unique facts of this case, the two should be considered separately.

As this Court is aware, Brown had one public defender relieved in September 2019. (R. p. 5, ll. 2–9; p. 305). At a hearing on July 11, 2022—more than three months before Brown's trial—he moved to relieve the second attorney who had been appointed to represent him. (R. p. 6, ll. 1–24). The circuit court warned Brown that "I don't appoint lawyer after lawyer after lawyer." (R. p. 9, ll. 4–5). Brown shared his opinion with the court that "[t]he only person who really on your side is a paid lawyer, not no state paid lawyer, but one you pay with your own money, that's the one who going to work for you." (R. p. 21, ll. 12–14). The court advised Brown to reconsider whether he wanted to relieve his defense attorney. (R. p. 29, l. 20–p. 32, l. 18). The court warned Brown that he "might have to handle this one yourself." (R. p. 30, l. 25–p. 31, l. 1).

At a hearing on August 15, 2002, Brown repeated his request to relieve his counsel. (R. p. 37, l. 3–13). As Brown was presenting his request to the court, the court said: "Well, you let him -- if he's fired, are you going to represent yourself? I think I went through that with you before." (R. p. 37, ll. 6–8). Brown appeared to agree with the circuit court—saying, "You did"—then returned to discussing why he wanted to relieve counsel. (R. p. 37, ll. 9–10). The court again told Brown that the court wouldn't appoint a third lawyer for him. (R. p. 40, ll. 18 – 23). At the end of the hearing, the circuit court ruled that counsel could be relieved and "Mr. Brown will represent himself" with standby counsel on hand. (R. p. 45, ll. 11–15). Brown asserted that he wouldn't represent himself. (R. p. 45, ll. 16–18).

The circuit court held another hearing—essentially a "status conference"—on October 14,

2022. (R. p. 48; R. p. 49, ll. 4–15). The circuit court appointed Tivis Sutherland as standby counsel. (R. p. 50, l. 12–p. 51, l. 3). The court said Brown would have to represent himself because he had relieved other counsel, "[u]nless he hired someone else in the meantime." (R. p. 51, ll. 2–7).

Brown's trial began November 7, 2022. (R. p. 53).[1] The trial court noted that standby counsel offered to represent Brown the preceding Friday, and Brown agreed that he had declined. (R. p. 62, ll. 2–10). The trial court warned Brown about the dangers of self-representation, about the technical nature of criminal law, and about the potential penalties Brown faced if convicted. (R. p. 63, l. 15–p. 68, l. 16). During the discussion, standby counsel again talked to Brown. (R. p. 65, ll. 3–6). Asked again if he wanted to represent himself, and then if he wanted standby counsel to do so, Brown invoked his "right to remain silent." (R. p. 65, ll. 10–16). Brown was convicted of two counts of murder and one count of attempted murder. (R. p. 295, ll. 4–14). The trial court later sentenced Brown to life without parole for the two counts of murder and 30 years on attempted murder, to run concurrently. (R. p. 302, ll. 16–22).

On appeal, this Court found that a defendant may expressly waive his right to counsel; may waive that right by conduct; and in "rare instances," forfeit the right. The Court found that because Brown had not been given his warnings pursuant to *Faretta v. California*, 422 U.S. 806 (1975), prior to the beginning of his trial, Brown could not have waived his right to counsel before then. The Court further found that because Brown's standby counsel likely could not have adequately prepared for trial, the *Faretta* warnings administered the morning of the trial were not effective. The Court also found Brown had not forfeited his right to counsel.

Respectfully, the State disagrees. First, Brown was entitled to relieve his counsel before

[1] The earlier proceedings were held before the Honorable Clifton B. Newman; the Honorable DeAndrea G. Benjamin presided over the trial.

trial. He was also entitled to *Faretta* warnings before he represented himself. But it was not certain that he would represent himself until he declined to clarify his intent after the trial began.

Some of the cases cited by this Court can be distinguished. For example, in *Gardner*, our supreme court found that the defendant had not been warned about representing himself *at the plea hearing*.

> We find Petitioner was not adequately apprised of the dangers of self-representation. The plea judge *never even acknowledged that Petitioner did not have counsel with him at the plea hearing*. The judge did not inquire about why Petitioner had relieved his counsel, or if he wished to have counsel present. There is *absolutely no mention by the judge of anything relating to the right to an attorney, the dangers of self-representation, or the like in the guilty plea transcript*. Furthermore, Petitioner did not say anything about counsel. He never stated that he did not want an attorney, that he wished to waive this right, or that he wanted to represent himself.

Gardner v. State, 351 S.C. 407, 412, 570 S.E.2d 184, 186 (2002) (emphasis added). The facts here are strikingly different. At least two (and likely three) judges had at least four (and likely five) conversations with Brown about his right to counsel. He was reportedly warned that his actions would be construed as a waiver of counsel. And on the first day of the trial—as he declined a final opportunity to be represented by counsel—he was given *Faretta* warnings.

The State would also respectfully note that the circumstances here are a good distance from the situation in *Powell v. Alabama*, 287 U.S. 45 (1932). There, the United State Supreme Court observed that while the state court had vaguely appointed members of the Bar to assist the defendants, "until the very morning of the trial no lawyer had been named or definitely designated to represent the defendants." *Id.* at 56. That is not the case with Brown. He had been appointed two attorneys before trial and was offered a third before trial—albeit shortly before trial.

Here, Brown at the very least waived his right to counsel by refusing to accept any attorney the State provided to him—and by making it clear that he did not believe a court-appointed lawyer

would protect his interests. And to the extent that this Court examines the *Cash* factors, the State would respectfully ask it to reconsider whether they weigh as heavily in Brown's favor as it might appear. *State v. Cash*, 309 S.C. 40, 42, 419 S.E.2d 811, 813 (Ct. App. 1992). While some of the factors favor Brown, he was represented by counsel before the trial, there is considerable reason to believe that he was attempting to manipulate or delay the proceedings, and the trial court did appoint standby counsel.

Finally, while the State does not dispute that forfeiture should be found sparingly, it does not believe Brown's actions cannot be construed that way. *See United States v. McLeod*, 53 F.3d 322, 325 (11th Cir. 1995) ("The Sixth Amendment right to counsel, for example, may be forfeited by a defendant's failure to retain counsel within a reasonable time, even if this forfeiture causes the defendant to proceed *pro se.*"). He repeatedly declined extended offers of counsel, even after being advised that it could be construed as a decision to represent himself, was often belligerent towards the courts as they tried to figure out what he wanted out of his representation, and ultimately relied on his right to remain silent at the critical juncture when the trial court was trying to determine if he would continue *pro se*. He might not have physically threatened his lawyer, but he did obstruct the courts as they tried to arrange counsel for him.

For all these reasons and those stated in its brief, the State respectfully asks this Court to grant this petition for rehearing, allow oral argument on the case, and then affirm Brown's convictions.

Respectfully Submitted,

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