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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Deadra L. Jefferson, Circuit Court Judge

Opinion No. 2026-UP-227 (Heard April 7, 2026 - Filed May 13, 2026)

THE STATE,

RESPONDENT,

V.

NORMAN PHILIP BROWNE,

PETITIONER

APPELLATE CASE NO. 2024-000872

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, undersigned counsel for Norman Browne requests that this Honorable Court grant rehearing. In support of the petition, Petitioner submits the following:

1. This Court erred in holding that Petitioner “had sufficient background to understand the risks of self-representation when he decided to represent himself at trial.” *See State v. Cash*, 309 S.C. 40, 43, 419 S.E.2d 811, 813 (Ct. App. 1992).

2. While this Court correctly determined that the trial court’s *Faretta* warnings were insufficient, Petitioner respectfully asserts that this Court erred in determining he had sufficient background to fully appreciate the waiver of the right to counsel.

3. The burden is on the state to demonstrate that Petitioner's waiver was valid. *State v. Dial*, 429 S.C. 128, 133, 838 S.E.2d 501, 504 (2020) (citing *Brewer v. Williams*, 430 U.S. 387, 404 (1977)). This Court must "indulge in every reasonable presumption against waiver." *Brewer*, 430 U.S. at 404. As noted by this Court, this burden is intensified when a defendant elects to proceed *pro se* at trial, as the state then possesses the added burden of showing that the trial court "rigorously convey[ed] specific warnings of the pitfalls of going to trial without a lawyer." *Hines v. State*, 443 S.C. 32, 40, 902 S.E.2d 377, 381 (2024). Therefore, any gaps in the record must be construed against waiver. *See Dial*, 429 S.C. at 134, 838 S.E.2d at 504 ("The State argues it was Dial's burden to provide the Court with an adequate record to review the issue on appeal.... We are not persuaded Dial failed to preserve his issue by not putting events in the record that Dial contends did not occur.").

4. As to the first factor, this Court recognized that, at the time of trial, Petitioner "was fifty years old, had completed high school, earned several automotive repair certifications for multiple automotive brands, and worked for a friend selling automotive tools." Further, there was no evidence that Petitioner was physically or mentally impaired. Petitioner's high school education and prior experience in the automotive industry establishes very little about his ability to comprehend the breadth of the right to counsel at a complicated criminal trial. Petitioner does not, for example, have any experience working in any field that may have exposed him to the criminal justice system, such as a police officer, court clerk, legal assistant, or social worker.¹ He

¹ The record also does not establish that Petitioner ever served in the military, which several courts have found to be apparently relevant in establishing knowledge under the first prong. *See, e.g., Mixon v. United States*, 608 F.2d 588, 590 (5th Cir. 1979) (defendant was "a high school graduate and a Navy veteran"); *Fitzpatrick*, 800 F.2d at 1066 (defendant "was a lieutenant in the Marine Corps in the Korean War"); *State v. Samuel*, 422 S.C. 596, 599, 813 S.E.2d 487, 489 (2018) (defendant "had graduated from high school with a 4.0 GPA in all honors classes with hopes of enlisting in the Navy....").

also does not possess collegiate level education which would be useful in comprehending the extremely dense Rules of Evidence and Procedure. *Contra Fitzpatrick*, 800 F.2d at 1066 (“Fitzpatrick’s own testimony established that he attended high school, took college courses and taught Latin, English, and humanities in high school.”). While the first factor does not require a defendant to have a juris doctorate to effectively understand the right, it also does not mean that every person with a high school diploma can understand the right to counsel in a criminal proceeding. This factor should at least be neutral.

5. As to the second factor, this Court recognized that Petitioner’s only prior experiences with the criminal justice system were convictions for forgery and theft in California, which occurred in “his twenties.” This Court further recognized that the record contains no information regarding whether he pleaded guilty to those offenses, went to trial for those offenses, or was represented by counsel. This factor must weigh against waiver. At the time of trial, these convictions would have been nearly thirty years old and in an entirely different state for much less serious offenses. *See Wroten v. State*, 301 S.C. 293, 295, 391 S.E.2d 575, 577 (1990) (holding that a previous guilty plea from 1979—eleven years before the opinion was issued—was not sufficient to establish waiver); *see also Dial*, 429 S.C. at 134, 838 S.E.2d at 505 (fact that defendant “was on probation from a prior conviction,” among other facts, was insufficient to establish waiver). These prior convictions do not establish Petitioner’s understanding of the right to counsel.

6. As to the fourth factor, this Court recognized that there is no evidence in the record that either of Petitioner’s prior attorneys ever informed him of the dangers of self-representation. However, this Court went on to find that Petitioner “appreciated the difficulty of the case” because he “prepared motions” for his public defender to file, and he “wanted to

contribute [in] handling his case.” However, whether Petitioner understood the complexities of this trial is a wholly different question than whether Petitioner understood the right to counsel. *See Samuel*, 422 S.C. at 603, 813 S.E.2d at 491 (“whether a defendant is capable of effectively representing himself has no bearing on his ability to elect self-representation”); *see also Dial*, 429 S.C. at 135, 838 S.E.2d at 505 (holding that the state’s argument that the defendant “knew of the significance of the trial and the ability to present a defense” was “not a valid argument”). Even if Petitioner’s understanding of the complexities of his trial were relevant, however, Petitioner’s testimony that trial counsel would not act in his best interest says nothing about his understanding of his trial’s complexities. Unlike in *Cash*, where the defendant was acutely aware of high public defender caseloads and believed he would do a better job by himself *because* of the complexities of his case, 309 S.C. at 44, 419 S.E.2d at 814, Petitioner was concerned that trial counsel was an agent of the state and did not act in his best interests. Those concerns would be true whether the case was complex or simple. Therefore, Petitioner’s testimony does not support his understanding of the right. The fourth factor weighs against waiver.

7. As to the sixth factor, Petitioner was appointed stand-by counsel. However, the importance of this factor is greatly diminished. Whether Petitioner was “advise[d] or coach[ed]” by a stand-by counsel relates only to Petitioner’s competence to represent himself, which “is entirely irrelevant to the issue of whether he effectively [waived] his right of self-representation.” *Samuel*, 422 S.C. at 604-05, 813 S.E.2d at 492.

8. As to the seventh factor, the record does indicate that Petitioner would be required to comply with the Rules of Evidence and Procedure. However, the record also indicates, and the trial court found, that Petitioner had a very limited understanding of those rules. His limited understanding of the various procedural rules is indicative that he may not have fully understood

“the risks of self-representation.” *Wroten*, 301 S.C. at 294, 391 S.E.2d at 576. Further, unlike in other cases, Petitioner did not represent himself at any proceeding prior to his trial, which may have “put him on notice that he would have to follow the court’s rules and that he would be at a disadvantage for not knowing the rules.” *Cash*, 309 S.C. at 45, 419 S.E.2d at 814 (defendant represented himself at a preliminary hearing); *Fitzpatrick*, 800 F.2d at 1066-67 (defendant represented himself at pre-trial hearing).

9. As to the eighth factor, this Court stated that “[Petitioner] stated he was not informed of the potential defenses to the charges against him, but [trial counsel] told the trial court that she discussed defenses with [Petitioner].” During the *Faretta* hearing, the trial court asked: “And I assume, Ms. Hensley, that you’ve explored any potential defenses with him and made him aware of that as well?” R. 43, ll. 22-24. Trial counsel responded, “Yes, Your Honor.” R. 43, l. 25. This single, vague question does not establish that Petitioner was aware of potential legal challenges.² In *Cash*, for example, this Court found that the defendant was aware of potential defenses; *specifically*, that “no sexual battery occurred in fact.” 309 S.C. at 45, 419 S.E.2d at 814. Considering this Court’s constitutional obligation to “indulge in every reasonable presumption against waiver,” *Brewer*, 430 U.S. at 404, this bare-bones record cannot establish that Petitioner was aware prior to trial of potential legal defenses he could raise. This factor weighs against waiver.

10. As a whole, the record does not support this Court’s conclusion under *Cash* that Petitioner understood the right he was waiving. Petitioner has no education or employment experience that would have taught him anything about the legal system. His only prior experience with the criminal justice system was decades prior, in an entirely different state, and

² In fact, the state conceded that “the record does not indicate whether [Petitioner] knew of legal challenges he could raise in his defense at trial.” FBOR at 16.

the record does not even establish whether he was represented by an attorney. Nothing in the record suggests that either of his attorneys warned him of the dangers of self-representation, or specifically, what legal defenses he might raise.

11. Therefore, on this record, the primary source of knowledge from which Petitioner could have fully understood the right he was waiving came from the trial court's *Faretta* warnings, which this Court held to be constitutionally insufficient.

12. Accordingly, Petitioner respectfully submits that this Court's analysis of the *Cash* factors was erroneous.

WHEREFORE, Petitioner moves this Honorable Court for rehearing based on the points raised herein.



W. Chandler Norville
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

This 20th day of May, 2026.

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CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-referenced case has been served upon Brian H Gibbs, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); this 20th day of May, 2026.



W. Chandler Norville
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

Warren, Kaylynn

From: Warren, Kaylynn
Sent: Wednesday, May 20, 2026 9:33 AM
To: Brian Gibbs
Cc: Norville, Chandler; Grace Sommer
Subject: 2024-000872 The State v. Norman Philip Browne
Attachments: 2024-000872 The State v. Norman Philip Browne Petition for Rehearing.pdf

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SC Court of Appeals

Good Morning,

Attached for service in the above-referenced case is the Petition for Rehearing which will be filed today, May 20, 2026, with the Court of Appeals via email filing.

Respectfully,

Kaylynn

Kaylynn Warren

Administrative Assistant

South Carolina Commission on Indigent Defense

Division of Appellate Defense

(803) 734-1330