

RECEIVED

May 18 2026

SC Court of Appeals

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Richland County

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

---

Opinion No. 2026-UP-174

---

THE STATE,

RESPONDENT,

V.

MICAH CHRISTIAN SYLVE BROWN,

APPELLANT

APPELLATE CASE NO. 2022-001605

---

RETURN TO PETITION FOR REHEARING

---

Pursuant to Rule 221(a), SCACR, Appellant Micah Brown requests that this Court deny rehearing. This Court correctly held Appellant Brown was deprived of his Sixth Amendment right to counsel.

The court erred where it denied Mr. Brown counsel in his trial for murder and attempted murder, where Mr. Brown did not waive his right to counsel by affirmative request or by misconduct, since an accused has the fundamental right to counsel.

The right to counsel is a fundamental right. *Gideon v. Wainwright*, 372 U.S. 335, 345 (1963). The courts indulge every reasonable presumption against waiver of fundamental constitutional rights and do not presume acquiescence in the loss of fundamental rights. *Illinois v. Allen*, 397 U.S. 337, 343 (1970) (quoting *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)). Courts have recognized three ways a defendant may relinquish his right to counsel: 1) an express waiver, 2) a waiver by conduct, or 3) forfeiture. *State v. Boykin*, 324 S.C. 552, 556-57, 478 S.E.2d 689, 690-91 (Ct. App. 1996).

This Court correctly found there no express waiver of the right to counsel, as an “express waiver must be knowing and intelligent.” *Osbey v. State*, 425 S.C. 615, 618-19, 825 S.E.2d 48, 50 (2019). For a knowing and intelligent waiver to occur, the defendant must be advised of right to counsel and adequately warned of dangers of self-representation. *Prince v. State*, 301 S.C. 422, 423-24, 392 S.E.2d 462, 463 (1990). When Appellant appeared on the morning of his trial without counsel, he had not been provided with warnings pursuant to *Faretta v. California*, 422 U.S. 806 (1975), regarding the dangers and disadvantages of self-representation.

This Court also correctly found there was no waiver by conduct. “Once a defendant has been warned that his misconduct will thereafter be treated as a waiver of his right to counsel, any subsequent misconduct is treated as a ‘waiver by conduct.’” *Boykin*, 324 S.C. at 556, 478 S.E.2d at 691. *Faretta* warnings are required for a waiver by conduct. *Osbey*, 425 S.C. at 620, 825 S.E.2d at 51. Appellant did not receive adequate *Faretta* warnings until the morning of his trial. Therefore, this Court correctly concluded he could not have waived his right to counsel by his conduct before trial, and he committed no misconduct at trial.

Additionally, were the doctrine of forfeiture to be recognized in this state, Appellant did not forfeit his right to counsel. “Forfeiture is an extreme sanction in response to extreme conduct

that imperils the integrity or safety of court proceedings.” *Commonwealth v. Means*, 907 N.E.2d 646, 658 (Mass. 2009). *See, e.g., United States v. McLeod*, 53 F.3d 322, 325-26 (11th Cir. 1995) (in trial for retaliating against a witness, defendant’s conduct forfeited his right to counsel where he was threatened to kill counsel, threatened to sue counsel, and asked counsel to engage in unethical conduct). Forfeiture results in the loss of the right regardless of the defendant’s knowledge of either the consequences of his actions or the dangers of self-representation. *Boykin*, 324 S.C. at 556, 478 S.E.2d at 691.<sup>1</sup> This Court correctly recognized that there was no extreme conduct here. Appellant did not threaten or attack anyone. Moreover, the trial court did not identify any misconduct by Appellant that would support forfeiture. It merely found he was “difficult to get along with.” R. 23, ll. 7-8.

The State argues Appellant forfeited his right to counsel as he “did obstruct the courts” when they tried to arrange counsel for him and “refus[ed] to accept any attorney the State provided to him[.]” Petition for Rehearing at 4; 5. Appellant did not fail to appear for court and he was indigent. He did not seek to raise frivolous defenses or abuse the court process. The hearing on the motion to relieve counsel took place several months before the scheduled trial date. Appellant had expressed his desire to relieve counsel a year before. R. 22, ll. 19-24. This was not a morning-of-trial attempt to delay. Had substitute counsel been appointed at the hearing, he or she would have had months to prepare for trial. Appellant expressed legitimate complaints that counsel seemingly insisted he plead guilty to murder when he did not want to take the plea offer, and that counsel was dilatory. R. 10, ll. 10-15; R. 14, l. 23 – 15, l. 14; R. 17, l. 16 – 29, l. 19. *See United States v. Cronin*, 466 U.S. 648, 656 n. 19 (1984) (even when no theory of defense is available, once the decision to stand trial has been made, counsel must hold

---

<sup>1</sup> “[W]e need not decide whether South Carolina should embrace the doctrine of forfeiture . . .” *Id.*, 324 S.C. at 558, 478 S.E.2d at 692.

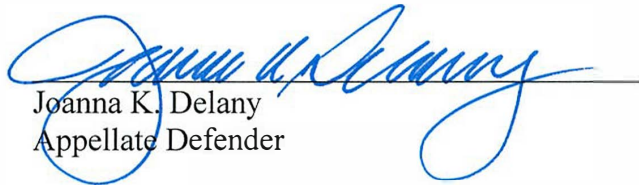
the prosecution to its heavy burden of proof beyond a reasonable doubt). Counsel did not identify any reason to think a favorable plea offer would be made. Moreover, Appellant did not refuse to accept the help of any attorney. Appellant asked the court to substitute counsel well in advance of his trial, and when pressed by the court to state what lawyer he would like appointed, he named two public defenders but stated he would accept “[w]hoever you put me with.” R. 24, l. 14 – 25, l. 19.

Next, this Court correctly found that nothing in the record indicated Appellant had sufficient background to appreciate the dangers of self-representation. Absent adequate *Faretta* warnings, “courts look to the record to determine if the accused had sufficient background to understand the dangers of self-representation.” *State v. Cash*, 309 S.C. 40, 42, 419 S.E.2d 811, 813 (Ct. App. 1992). Courts consider the following factors in determining if an accused had sufficient background to understand the disadvantages of self-representation. (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 or 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. *State v. Cash*, 309 S.C. at 43, 419 S.E.2d at 813. The State argues the *Cash* factors favor its position, positing that Appellant was trying to

“manipulate or delay the proceedings.” Petition for Rehearing at 5. The *Cash* factors favor Appellant. As discussed above, Appellant had legitimate complaints about counsel and this was not a delay tactic. Appellant was young and had no adult criminal record. R. 66, ll. 11-12; R. 207, ll. 16-19. By his speech, he appeared uneducated. There was no indication he had a background which would have independently informed him of the dangers of self-representation. Appellant’s repeated statements that he wanted to remain silent indicate that he wanted to protect his constitutional rights, but he did not know how to do so. R. 61, l. 4 – 67, l. 5.

This Court correctly held the morning-of-trial *Faretta* warnings came too late. *See State v. Reed*, 332 S.C. 35, 44, 503 S.E.2d 747, 751 (1998) (court did not err by denying defendant’s request to have standby counsel represent him on eve of sentencing phase, as court was faced with allowing standby counsel to step in and cross-examine witnesses on less than twenty-four hours preparation); *United States v. Cronin*, 466 U.S. at 659-60 (Adversary process is presumptively unreliable when “although counsel is available to assist the accused during trial, the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that a presumption of prejudice is appropriate without inquiry into the actual conduct of the trial.”); *Powell v. Alabama*, 287 U.S. 45, 58 (1932) (right to counsel “is not discharged by an assignment [of counsel] at such a time or under such circumstances as to preclude the giving of effective aid in the preparation and trial of the case.”). A fair reading of this record shows Appellant was legitimately concerned standby counsel had not had enough time to prepare for trial. Absent an opportunity to prepare the case with Appellant, morning-of-trial appointment of counsel in this murder case would have still left Appellant with an inherently unfair trial, as he would not have been “accorded the right of counsel in any substantial sense.” *Id.*, 287 U.S. at 58.

This Court correctly reversed the case. The erroneous deprivation of the assistance of counsel cannot be treated as harmless; it is “*per se* reversible error.” *State v. Boykin*, 324 S.C. at 555, 478 S.E.2d at 690; *see United States v. Goldberg*, 67 F.3d 1092, 1103 (3d Cir. 1995) (same); *Chapman v. California*, 386 U.S. 18, 23 & n. 8 (1967) (“there are some constitutional rights so basic to a fair trial that their infraction can never be treated as harmless error”). This Court should deny rehearing.



Joanna K. Delany  
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 18th day of May, 2026.

RECEIVED

May 18 2026

SC Court of Appeals

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from Richland County

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

THE STATE,

RESPONDENT,

V.

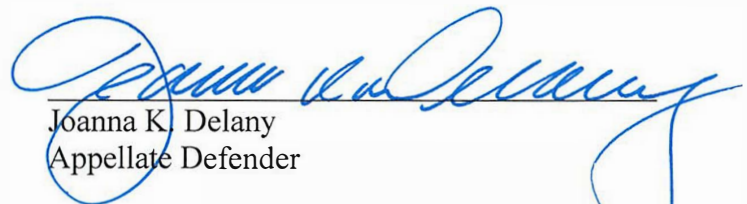
MICAH CHRISTIAN SYLVE BROWN,

APPELLANT

APPELLATE CASE NO. 2022-001605

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Return to Petition for Rehearing in the above-referenced case has been served upon R. Brandon Larrabee, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Micah Christian Sylve Brown, #389529, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 18th day of May, 2026.



Joanna K. Delany  
Appellate Defender

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

ATTORNEY FOR APPELLANT

RECEIVED

May 18 2026

SC Court of Appeals

**From:** [Mcinnis, Sara](#)  
**To:** [Brandon Larrabee](#)  
**Cc:** [SC - BROWN ANGELA](#); [Delany, Joanna](#)  
**Subject:** 2022-001605 The State v. Micah C. S. Brown Return to Petition for Rehearing  
**Date:** Monday, May 18, 2026 5:00:00 PM  
**Attachments:** 2022-001605 The State v. Micah C. S. Brown Return to Petition for Rehearing.pdf  
AG Cover Letter - Return to PFR.pdf

---

Good Afternoon Mr. Larrabee,

Attached for service in the above-referenced case is the Return to the Petition for Rehearing, which will be filed with the Court of Appeals today, May 18, 2026, via email filing.

Thank you,

Sara McInnis  
Administrative Assistant  
South Carolina Commission on Indigent Defense  
Appellate Division  
(803) 734-1330