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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County
Honorable Jocelyn Newman, Circuit court Judge

MARK BLAKE,

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JUL 06 2026

PETITIONER

v.

SC Court of Appeals

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. ~~2025~~-000420

PRO SE RESPONSE TO PETITION FOR WRIT OF CERTIORARI



Mark Blake, #368687
4848 Goldmine HWY
Kershaw, S.C. 29067

Petitioner

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THE POST-CONVICTION RELIEF JUDGE ERRED BY FINDING THAT PETITIONER KNOWINGLY, INTELLIGENTLY, FREELY, AND VOLUNTARILY WAIVED HIS RIGHT TO COUNSEL AND PROCEED PRO-SE WITHOUT A FARETTA HEARING-----	3
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ISSUES PRESENTED

1. DID THE POST-CONVICTION RELIEF JUDGE ERR BY FINDING THAT PETITIONER KNOWINGLY, INTELLIGENTLY, FREELY, AND VOLUNTARILY WAIVED HIS RIGHT TO COUNSEL AND PROCEED PRO-SE, WITHOUT A FARETTA HEARING?
2. DID THE POST-CONVICTION RELIEF JUDGE ERR BY FINDING APPELLATE COUNSEL WAS NOT INEFFECTIVE FOR FAILING TO RAISE THE ISSUE THAT THE TRIAL JUDGE DID NOT CONDUCT A FARETTA HEARING?

STATEMENT OF CASE

On November 13-15-2018, Petitioner proceeded Pro-Se to a trial by jury; with Jason King as stand-by counsel, before judge William Keesly. As to the outcome Petitioner was found guilty and sentenced to life without parole. (App. 11. 745). Petitioner thereafter filed a timely notice of appeal and appointed appellate counsel, Taylor Gilliam who omitted raising a faretti~~a~~ issue but instead raised the following issue: whether the trial court erred in failing to exclude any mention of appellate having lost his right to carry~~a~~ a firearm following prior convictions, where in a trial for attempted murder the fact that he could not legally carry a firearm was irrelevant and highly prejudicial. The South Carolina Court of Appeals affirmed the conviction, and the Remittitur was sent on June 28, 2021, following a timely filed PCR Application February 16, 2022. Petitioner raised ineffective assistance of appellate counsel claim for failing to raise appellate issue(s). An evidentiary hearing was held December 19, 2024, before judge Jocelyn Newman and Petitioner was represented by PCR counsel Denise Swope. At the evidentiary hearing Petitioner affirmed that appellate counsel failed to raise on appeal a faretti issue. Furthermore PCR judge Newman ultimately denied Petitioner's PCR application, (App. 11. 729, 20-25--730, 1-20). And an order of dismissal was filed on February 5, 2025, (App. 11. 733-742). Stating " this court finds the record supports a finding that Applicant knowingly, intelligently, freely, and voluntarily waived his right to counsel and proceed Pro-Se. The record reflects the trial court held two separate faretti hearings, both in which Applicant indicated his desire to represent himself at trial." This petition for Writ of Certiorari follows.

ARGUMENTS

1. THE POST-CONVICTION RELIEF JUDGE ERRED BY FINDING THAT PETITIONER KNOWINGLY, INTELLIGENTLY, FREELY, AND VOLUNTARILY WAIVED HIS RIGHT TO COUNSEL AND PROCEED PRO-SE WITHOUT A FARETTA HEARING.

On December 19, 2024, an evidentiary hearing was held on the behalf of Petitioner's PCR application (App.11. 659-665). Before Judge Newman. Petitioner, through PCR counsel Denise Swope, raised an ineffective assistance of appellate counsel claim where Petitioner affirmed, when direct examined, that appellate counsel, Taylor Gilliam failed to raise a faretti issue on Petitioner's behalf of his direct appeal. (App.11. 702,21-25--703). When Petitioner was cross examined in regards to whether the trial record had reflected that pretrial Judge, Dennis had conducted two separate faretti hearings. (App.11.709,17-19). (App.11.711,8-13). In response(s) Petitioner testified: "I dont recall it being full faretti hearings. I just remeber and recall him asking if I still wanted to proceed pro-se." (App.11. 709,20-22)."I would say like I said I cant recall both faretti hearings. He just asked if I wanted to--you know, still wanted to proceed pro-se." (App.11.711,14-16). Based on Petitioner's said testimonies Petitioner didnt refute the fact that the trial record had reflected that trial Judge Keesly had inquired from the state whether a full faretti hearing was previously conducted on Petitioner's behalf.

(Q). Is asked Mr. Blake if he was representing himself.
My understanding is there's already been a full
faretti hearing.

(A). Yes Judge. Judge Dennis had two separate faretti hearings after he requested to represent himself for this trial. And both of those times, he found that Mr. Blake was going to proceed pro-se. (App. 11. 44,7-13).

But instead Petitioner's said testimonies simply rejected the idea that Judge Dennis had previously conducted a thorough faretti hearing on Petitioner's behalf, nor did the state articulate through said testimony for the record that Petitioner had been previously advised of his right to counsel, and warned of the dangers and disadvantages of self-representation, nor were these records any longer available to support state's said testimony in order to disprove Petitioner's said testimonies. (App.11. 689, 25--690, 1-6). Furthermore in pertinent part the crux of the matter is the trial record dosnt reflect that a faretti hearing was ever conducted, on Petitioner's behalf by trial Judge Keesly as mandated by faretti.

Under faretti the trial judge has the responsibility to make sure the defendant is informed of the dangers and disadvantages of self-representation and that he makes a knowing and intelligent waiver of his right to counsel. STATE V. BARNES, 407 s.c. 27, 753, S.E. 2d 545(2014). STATE V. REED, 332 s.c. 35,41, 503 S.E. 2d 747,750 (1998).

The trial record reflected that trial Judge Keesly merely questioned petitioner if he was representing himself .

(Q). "From what I understand, you are representing yourself is that correct."
(A). That's correct. (App.11. 33, 9-10).

Defendant may waive his right to counsel by an affirmative, verbal request, or defendant's actions may constitute a waiver by conduct. OSBEY V. STATE, 425 s.c. 615, 825, S.E. 2d 48 (2019).

To establish valid waiver of right to counsel, accused must be made aware of right to counsel and dangers and disadvantages of self representation. STATE V. CASH, 309 s.c. 40, 42, 419 S.E.2d 813 (1992).

Which is clearly not a valid knowing and intelligent waiver of counsel.

For a knowing and intelligent waiver to occur the defendant must be: (1) advised of his right to counsel; and (2) adequately warned of the dangers of self-representation. PRINCE V. STATE, 301 s.c. 422, 423-24, 392 S.E. 2d 462, 463 (1990).

Once again the Petitioner's PCR order of dismissal stated: "This court finds the record supports a finding that applicant knowingly, intelligently, freely, and voluntarily waived his right to counsel and proceed pro-se. The record reflects the trial court held two separate faretti hearings both in which applicant indicated his desire to represent himself at trial." However nowhere in the record(s) before this court nor at any of Petitioner's pre-trial hearing(s), which exist, "that one faretti hearing was ever properly conducted on Petitioner's behalf!" Per FARETTA V. CALIFORNIA, 422 U.S. 806 (1975).

(" In a PCR action if the record fails to demonstrate the Petitioner made an informed choice to proceed pro-se, with 'eyes open' then the Petitioner did not make a knowing and voluntary waiver of counsel, and the case should be remanded for a new trial.") Citing OSBEY,425,s.c. at 620, 825 S.E. 2d at 51.

Therefore the PCR Judge erred in finding that Petitioner knowingly, intelligently, freely and voluntarily waived his right to counsel and proceed pro-se when the record did not reflect that the trial court held two separate faretti hearings.

2. The post-conviction relief Judge erred by finding appellate counsel was not ineffective for failing to raise the issue that the trial Judge did not conduct a faretti hearing.

During the course of Petitioner's evidentiary hearing appellate counsel testified, when direct examined regarding Petitioner's alleged two separate faretti hearings. The following testimonial exchange(s) took place:

(Q). okay. I want to ask you about the faretti warnings in this case. On page 20 of the trail transcript, the transcript reflects that there were two faretti hearings in this case. In reviewing this case for appeal, did you have any concerns about the faretti warnings in this case or the fact that there were faretti warnings in this case?

(A). Yes. The fact that those hearings had occurred definitely impacted my decision not to raise that issue on appeal.

(Q). Okay. And so you chose not to raise that issue because there were, in fact, two faretti hearings in this case?

(A). That's correct. (App. 11. 721, 1-13).

As to appellate counsel's said testimony appellate counsel clearly relied on the response testimony by the state, assuring the trial Judge that Judge Dennis had previously conducted two separate faretti hearings on Petitioner's behalf. (App.11. 44, 7-9). Wich clearly proved that appellate counsel had overlooked the fact that regardless of whether Petitioner had allegedly underwent two separate faretti hearings by a pretrial judge, which appellate counsel had elaborated through cross examination, that there were no pre-trial hearings according to Petitioner's then stand-by counsel (App.11. 724, 25--725, 1-10). It would not abandoned the fact(s) that the trial record had reflected that the trial judge himself did not conduct a faretti colloquy on Petitioner's behalf mandated by FARETTA V. CALIFORNIA, 422, U.S. 806 (1975).

Under faretti, the trial judge has the responsibility to make sure that the defendant is informed of the dangers and disadvantages of self representation and that he makes a knowing and intelligent waiver of his right to counsel. See. BARNES, 407 S.C. 27 at 550, 753 S.E. 2d at 36.

Nor reviewed the record of Petitioner's prior faretti hearing(s) but instead relied solely on the state's unsworn assertion that prior faretti warning(s) had occurred. Such reliance fail to satisfy the constitutional requirement that waiver of counsel be affirmatively shown on record.

"To establish a valid waiver of counsel, faretti requires the accused to be (1) advised of his right to counsel; and (2) adequately warned of the dangers of self-representation." Cited within STATE V. BROWN, WL 1021571 at 3 (2026).

The trial court violated Petitioner's 6th and 14th amendment rights by permitting self-representation without conducting any independent inquiry into the validity of the waiver of right to counsel. Therefore appellate counsel was ineffective for failing to raise the appellate issue that the trial judge had erred by not conducting a faretti hearing on Petitioner's behalf, and the post-conviction relief judge erred by finding appellate counsel was not ineffective for failing to raise the issue that the trial judge did not conduct a faretti hearing.

In considering claim of ineffective assistance of appellate counsel, court applies deferential Strickland two-part test, requiring defendant to show both (1) that counsel's deficient performance fell below objective standard of reasonableness and (2) prejudice, meaning that there is reasonable probability that, but for counsel's unprofessional errors, proceeding's result would have been different.

HERRINGTON V. DOTSON, 99 F. 4th 705, 720 (4th cir. 2024).

A reasonable probability is a probability sufficient to undermine confidence in the outcome. Strickland at 694 (1984).

CONCLUSION

Based on the foregoing arguments, Petitioner respectfully request that this court grant the Petition for Writ of Certiorari to allow full briefing on these issues.

On this 07 day of 5, 2026



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May-~~01~~-2026

S.C. Supreme Court
P.O. Box 11330
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RE: PRO-SE RESPONSE TO PETITION FOR WRIT OF CERTIORARI CA: 2025-000420

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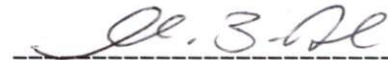
Enclosed please find Petitioner's ~~PRO~~-SE response to petition for writ of certiorari. Please timely file on Petitioner's behalf.

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Respectfully submitted,



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