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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

On Petition for Writ of Certiorari to the Court of Appeals

Deadra L. Jefferson, Circuit Court Judge

Appellate Case No. 2026-001372

THE STATE,

Respondent,

v.

NORMAN PHILIP BROWNE,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF ISSUE ON CERTIORARI

Petitioner's Issue Statement

"Whether the Court of Appeals erred in holding that Petitioner 'had sufficient background to understand the risks of self-representation when he decided to represent himself at trial' despite its determination that the trial court's *Faretta*¹ warnings were constitutionally insufficient?" (Pet. 2).

¹ *Faretta v. California*, 422 U.S. 806 (1975).

STATEMENT OF THE CASE

In May 2023, a Charleston County grand jury indicted Petitioner for murder and grand larceny. (R. 208-209, 212-213). On February 7, 2024, Petitioner proceeded to a pretrial hearing via WebEx before the Honorable Deadra L. Jefferson regarding a motion to relieve his counsel, Laree Hensley. (R. 1, 35-37).

At the pretrial hearing, the State informed the trial court that Petitioner had been arrested in February 2019. (R. 5). The State indicated that Hensley filed a motion to proceed pro se on Petitioner's behalf along with a consent order to relieve counsel for Petitioner. (R. 5). Petitioner confirmed that he asked the trial court to relieve Hensley as his counsel. (R. 5). Petitioner stated his reasoning as follows:

It took six months for us to have an in-person meeting and, upon that meeting, she informed me that she works for the State, not for me. And then she has made it very clear that I am not allowed to have witnesses, according to her and the Court. And she will represent the Court and its best interests, not mine. And we have had several correspondence through email on this issue where she said she was going to relieve herself, and I said that was fine.

Then she filed this motion, which is why we're here today. She also refused to file four motions that I had helped, you know, pre-prepare her for. All she had to do was verify them all and said that—

(R. 6).

Petitioner informed the trial court that he understood the trial was scheduled to take place on April 15, 2024, which was a little over two months after the motions hearing. (R. 7). Hensley clarified that she previously explained to Petitioner that she had a contract with Indigent Defense but did not work for the State. (R. 10). Even so, Petitioner expressed to her that he was dissatisfied with her services and did not want her to represent him, which is why she prepared the motion and consent order. (R. 11).

The trial court asked Petitioner if he wished to represent himself, and he stated that he was attempting to put together enough money to retain other counsel. (R. 11). The trial court stated:

Sir, I need to advise you that you have the right to counsel. If you cannot afford counsel, that we will appoint counsel to represent you in those circumstances.

I would also advise you that it is not prudent to represent yourself, and that it would be clearly against your interest. Knowing that, do you still wish to discharge Ms. Hensley?

(R. 12). Petitioner indicated that he still wanted Hensley relieved and did not want the trial court to appoint new counsel. (R. 12).

Petitioner then informed the trial court that he was 49 years old, completed high school, obtained "automotive educationals," had been employed with J&J Tools, previously owned a distributor business, and ran a Matco tools truck for a friend. (R. 12-13). Petitioner stated that he did not have any legal training. (R. 13). He indicated he understood his constitutional rights, including the right to remain silent, to have an attorney, to have an appointed attorney, and to have a jury trial. (R. 14). The trial court informed Petitioner that his murder charge carried a sentencing range of thirty years' imprisonment to life imprisonment if convicted and that he would not be eligible for parole. (R. 14). Petitioner indicated that he understood the sentencing range and the ineligibility for parole. (R. 15).

The trial court asked Petitioner if he understood the South Carolina Rules of Evidence. (R. 15). He confirmed that he understood the rules, further stating:

Rules of Evidence have to be supplied to the Court and to the other party, the plaintiff, the State in this case, and all the evidence that I have acquired or developed needs to be presented to both. All evidence that the State has acquired I am supposed to have access to and a full, free copy of. And then the questions are asked based upon the evidence in court.

(R. 15). The trial court clarified that it was asking about the Rules of Evidence that govern how a trial operates and that are utilized during trial for entering evidence, asking witnesses questions, making objections, and for pretrial procedures. (R. 15). The trial court asked if Petitioner understood those rules and if he had studied them, indicating that the rules were "about five inches thick." (R. 15). Petitioner stated that he had been reading and reviewing the Rules of Evidence and the Rules of Criminal Procedure. (R. 16-17).

Petitioner informed the trial court that he was not married and had an adult son who lived and worked in Louisiana. (R. 17). Petitioner, after making a "few small mistakes," went through the judicial system in California in his twenties. (R. 17). He recalled being represented by counsel when going through the judicial system in California. (R. 17). Petitioner stated he received discovery from Hensley. (R. 23). The trial court, talking to Petitioner, stated:

I'm very concerned. I do not think you meet the obligate—meet the requirements to represent yourself.

People think the law is what they see on television. It is not. It is very complex. Every decision has a very significant consequence, and it just is not advisable for you to represent yourself.

I am inclined, how—you're fairly adamant, however, in your desire to represent yourself. And if I grant that relief, I would still have Ms. Hensley act as standby or shadow counsel for you until such time that you obtain alternate legal counsel and in the event that you don't.

(R. 25-26).

The State informed the trial court that DNA evidence, ballistics testing, and videos from out of state would be relevant at trial. (R. 30). The State wanted the trial court to be aware that multiple scientific areas would be involved at trial. (R. 30). The trial court responded:

I've advised him that I don't think it's advisable that he represent himself. I can't force him to have a lawyer if that's what he wants to do.

I will tell you, sir, however, that I've had a law degree for over 30 years, and I would not represent myself. If I have challenges, I hire somebody, I write them a check, and I sign a retainer agreement. I can't be my own lawyer. I don't have the objective ability to look at my situation. I need somebody to give me, like, cold facts when I need to hear them.

So, however, I've already advised him . . . that it's not advisable to have a--be your own lawyer, that you place yourself at significant, significant jeopardy. He's acknowledged that. He tells me he thinks he's capable.

He also tells me that he plans to hire someone, and we know that that is a very expensive venture. I'm surprised it's only 30,000. Most charge a whole lot more than that, not to diminish that that's a lot of money. That's a lot of money.

So, you know, I understand the economic challenge that that could pose for him and, in light of that, that's why I've left Ms. Hensley as standby counsel. In the event he has some significant challenge, he needs someone to help him navigate the procedures or otherwise to be available to him.

But if he is adamant and representing himself, you know, there are consequences that flow from that, and I've advised him regarding it.

. . .

You know, he doesn't appear to me to be suffering from any mental disabilities, under the influence of any drugs or alcohol or any other disabilities that would require any type of mental evaluation.

(R. 30-32).

In the trial court's order relieving counsel, the trial court found that Petitioner was 49 years old, graduated high school, held multiple gold level certifications in automotive repair from industry and technical schools, held several jobs in the automotive industry, and operated a Matco tools truck distributorship. (R. 40). The trial court determined that Petitioner was not married and had an adult child, who lived and worked in Louisiana. (R. 40). The trial court noted that it questioned Petitioner regarding his understanding of the charges against him, his knowledge of the elements of those offenses, his constitutional rights, the sentencing range of the charges, and his

understanding of the Rules of Evidence and the Rules of Criminal Procedure. (R. 40). The trial court found Petitioner had a limited knowledge of the nature and consequences of the charges against him and did not have an adequate knowledge of criminal procedure, evidence, or the trial process but noted Petitioner was making attempts to familiarize himself with them. (R. 40). The trial court specifically found that Petitioner "does not meet the *Faretta* requirements to represent himself." (R. 40).

In its order, the trial court stated that during the pretrial hearing, it repeatedly cautioned Petitioner of the dangers inherent in self-representation and the advantages of counsel. (R. 40). The trial court advised Petitioner of the right to appointed counsel if he could not afford counsel and found that Petitioner "has proven an impediment to this caution and is adamant in his assertion that he represent himself." (R. 41). The trial court determined it was "left in the unenviable position of allowing [Petitioner] to represent himself." (R. 41). The trial court noted that Petitioner was placing himself in "considerable" jeopardy. (R. 41).

The trial court noted that Petitioner had a constitutional right to self-representation, and while the trial court articulated its concerns and the grave position Petitioner would place himself in by proceeding pro se, Petitioner was adamant in his desire to represent himself. (R. 41). The trial court ordered Hensley to be relieved as counsel while staying on as standby counsel unless and until Petitioner retained new counsel. (R. 41).

In April 2024, Petitioner proceeded pro se to a jury trial also before the Honorable Deadra L. Jefferson. (R. 43). During the trial, Petitioner made numerous objections to the State's attempts to enter evidence, many of which the trial court sustained in his favor. (R. 81, 82, 83, 84, 85-86, 87, 88, 89-90, 91, 92, 95, 97). Petitioner meaningfully participated in bench conferences and discussions with the trial court and the State during the trial. (R. 60-80, 93-94, 96). Petitioner

gave a closing argument despite the State objecting numerous times when Petitioner mentioned facts not in the record. (R. 160-183).

The jury found Petitioner guilty as indicted. (R. 189). Before sentencing, the State informed the trial court that Petitioner had a 1994 conviction in Arizona for larceny and a 1996 conviction in California for grand theft of an automobile. (R. 198-199). The trial court sentenced Petitioner to life imprisonment for murder and a concurrent 5 years' imprisonment for grand larceny. (R. 207). Petitioner filed a timely notice of appeal.

On April 7, 2026, the Court of Appeals heard arguments, and on May 13, 2026, the Court of Appeals filed an unpublished opinion affirming Petitioner's convictions and sentences. (App. 45-51). The Court of Appeals held that Petitioner, "while not sufficiently advised of the dangers of self-representation, had sufficient background to understand the disadvantages of representing himself at trial." (App. 47). The Court of Appeals then discussed each of the ten non-exhaustive factors courts have considered when determining whether a defendant had sufficient background to understand the disadvantages of self-representation as set forth in *State v. Cash*.² (App. 48-51).

As to the first factor, the Court of Appeals held that Petitioner was fifty years old, completed high school, earned several automotive repair certifications, worked for a friend selling automotive parts, and was not physically or mentally impaired. (App. 49).

As to the second factor, the Court of Appeals referenced Petitioner's fine for larceny and California convictions for forgery and grand theft in his twenties. The Court of Appeals noted that the record did not contain evidence as to whether the convictions were the result of guilty pleas or whether Petitioner was represented. (App. 49).

² 309 S.C. 40, 43, 419 S.E.2d 811, 813 (Ct. App. 1992).

As to the third factor, the Court of Appeals held that the trial court informed Petitioner of the possible sentencing range for his murder charge and the conviction's ineligibility for parole. (App. 49). The Court noted the trial court did not discuss the range of penalties for Petitioner's grand larceny conviction but also noted the State informed the trial court that Petitioner was charged with that. (App. 49). The Court mentioned Petitioner did not contend that he did not understand the nature of his charges. (App. 49).

As to the fourth factor, the Court of Appeals held Petitioner was previously represented by two attorneys in turn. (App. 50). The Court noted that while the record did not indicate whether either attorney advised Petitioner of the difficulties of self-representation, the record showed that Petitioner appreciated the difficulty of the case. (App. 50). In support of this holding, the Court noted that Petitioner testified he prepared motions for his attorney to file and wanted her relieved because he believed she was working for the State and not in his best interests. (App. 50).

As to the fifth factor, the Court of Appeals held that Petitioner was not attempting to delay or otherwise manipulate his proceedings by requesting to represent himself. (App. 50).

As to the sixth factor, the Court of Appeals noted that the trial court appointed stand-by counsel, who could answer any procedural questions Petitioner might have had during trial. (App. 50).

As to the seventh factor, the Court of Appeals held that the record indicated Petitioner knew prior to trial that he would have to comply with procedural rules based on Petitioner's testimony that he was reading the rules of evidence and criminal procedure and that the rules governed how a trial operates. (App. 50).

As to the eighth factor, the Court of Appeals held that despite Petitioner's contention that he was not informed of potential defenses, his attorney turned stand-by counsel told the trial court that she had discussed defenses with Petitioner. (App. 51).

As to the ninth factor, the Court of Appeals held that the trial court's questioning of Petitioner was not merely *pro forma*. (App. 51).

As to the tenth factor, the Court of Appeals noted no indication of coercion or mistreatment toward Petitioner. (App. 51).

After discussing each factor in turn, the Court of Appeals reiterated its holding that the record demonstrated Petitioner had sufficient background to understand the risks of self-representation and held that the trial court did not err by granting relief of counsel and allowing Petitioner to proceed to trial pro se. (App. 51).

This appeal followed.

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) (citing *United States v. Lopez-Osuna*, 242 F.3d 1191, 1198 (9th Cir. 2000)). Specifically, appellate courts review a circuit court's findings of historical fact for clear error but review the sufficiency of a waiver of counsel based on those findings of fact de novo. *See Samuel*, 422 S.C. at 602, 813 S.E.2d at 490. (citing *United States v. Bush*, 404 F.3d 263, 270 (4th Cir. 2005)). "In doing so, [an appellate c]ourt must consider the defendant's testimony, history, and the circumstances of his decision, as presented to the circuit [court] at the time the defendant made his request." *Samuel*, 422 S.C. at 602, 813 S.E.2d at 490.

ARGUMENT

I. The Court of Appeals properly held that the record demonstrated Petitioner had sufficient background to understand the risks of self-representation when he decided to represent himself at trial.

A. Adequately Addressing the Risks of Self-Representation

Criminal defendants in South Carolina have the constitutional right to represent themselves under both the federal and state constitutions. *State v. Barnes*, 407 S.C. 27, 35, 753 S.E.2d 545, 550 (2014). "It is well-established that an accused may waive their right to counsel and proceed *pro se*." *State v. Reed*, 332 S.C. 35, 41, 503 S.E.2d 747, 750 (1998). To effectively invoke the right of self-representation, a defendant must clearly and unequivocally request to proceed *pro se* and such a request must be made knowingly, intelligently, and voluntarily. *State v. Samuel*, 422 S.C. 596, 602, 813 S.E.2d 487, 491 (2018).

"Although a defendant need not himself have the skill and experience of a lawyer in order competently and intelligently to choose self-representation, he should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that 'he knows what he is doing and his choice is made with eyes open.'" *Faretta v. California*, 422 U.S. 806, 835 (1975) (quoting *Adams v. United States ex rel. McCann*, 317 U.S. 269, 279 (1942)).

To establish a valid waiver of the right to counsel, a 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, 392 S.E.2d 462 (1990) (citing *Faretta v. California*, 422 U.S. 806 (1975)). The trial court is responsible for determining whether there is a competent, intelligent waiver made by the defendant. *State v. Dixon*, 269 S.C. 107, 236 S.E.2d 419 (1977) (citing *Johnson v. Zerbst*, 304 U.S. 458 (1938)). Petitioner did not assert he was not advised of his right to counsel.

Here, the Court of Appeals determined that the trial court did not provide Petitioner with sufficient warnings of the dangers of self-representation. (App. 48). While the State disagrees

with the Court of Appeals holding regarding sufficient warnings, the Court of Appeals did correctly determine that the record demonstrates Petitioner had sufficient background to understand the risks of self-representation when he decided to represent himself at trial, which permitted the Court of Appeals to affirm Petitioner's convictions and sentences.

B. Sufficient Background to Understand Risks of Self-Representation

When a court holds that the trial court failed to adequately address the disadvantages of appearing pro se as required by the second prong of *Faretta*, then an appellate court "will look to the record to determine whether petitioner had sufficient background or was apprised of his rights by some other source." *Prince*, 301 S.C. at 424, 392 S.E.2d at 463 (citing *Wroten v. State*, 301 S.C. 293, 391 S.E.2d 575 (1990)).

While a specific inquiry by the trial judge expressly addressing the disadvantages of a *pro se* defense is preferred, the ultimate test is not the trial judge's advice but rather the defendant's understanding. 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, 301 S.C. at 294, 391 S.E.2d at 576 (citing *Fitzpatrick v. Wainwright*, 800 F.2d 1057, 1065 (11th Cir. 1986)).

State v. Cash provides a non-exclusive set of factors that courts have considered in determining if an accused had sufficient background to understand the disadvantages of self-representation. 309 S.C. 40, 43, 419 S.E.2d 811, 813 (Ct. App. 1992). These factors 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 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.

Id.

First, as determined by the trial court, Petitioner was 49 years old, had completed high school, achieved numerous automobile certifications, and did not appear to have any physical or mental health issues. (R. 12, 31-32, 40).

Second, Petitioner informed the trial court that he had previous experience with the criminal justice system in California when he was in his twenties. (R. 17). Petitioner indicated that he had been represented by counsel during his previous experience. (R. 17). While the exact nature of his prior experience was not brought to the trial court's attention until sentencing, Petitioner's prior experience provided another source of knowledge about the assistance of counsel, despite the amount of time between his prior experience and this case. *See generally Hines*, 443 S.C. at 42, 902 S.E.2d at 382 (holding that an appellate court "may consider the whole picture before [it], including [a defendant's] education and experience and whether he had another source of knowledge about the assistance of counsel").

Third, the trial court informed Petitioner of the nature of the charges against him as well as the possible penalties. (R. 14-15). Petitioner indicated that he understood he was facing a sentence of life imprisonment. (R. 15).

Fourth, the record indicates that Petitioner was represented by two attorneys prior to trial. (R. 38, 39-42). The record does not indicate whether either attorney discussed the difficulty of self-representation with Petitioner. However, as the Court of Appeals held, Petitioner's testimony that he believed his attorney was working for the State and would not represent his best interests

at trial demonstrates that he wanted to contribute to his case and that he believed he could do better representing himself than his attorney would. (App. 50).

Fifth, the record does not indicate that Petitioner was attempting to delay the proceedings. He indicated to the trial court that he understood the trial was scheduled for a little over two months after the pretrial hearing. (R. 7). The trial proceeded as scheduled. (R. 43).

Sixth, the trial court did appoint Hensley as standby counsel and had her explain to Petitioner the role of standby counsel. (R. 25-26). Petitioner was thus informed that Hensley would be available to answer any questions he might have regarding procedural issues and to step in during trial if he determined he no longer wanted to represent himself. (R. 26).

Seventh, while Petitioner did not specifically state he understood he would have to comply with the rules of procedure during trial, the conversation between the trial court and Petitioner regarding his understanding of the Rules of Evidence and the Rules of Criminal Procedure indicated that Petitioner understood he would have to comply with them. Petitioner did confirm that he was working toward familiarizing himself with both sets of rules before trial. (R. 15-17). This indicated, as the Court of Appeals held, that Petitioner knew he would have to comply with procedural rules. (App. 50).

Eighth, as the Court of Appeals held, Petitioner's attorney informed the trial court that she discussed possible defenses with Petitioner despite Petitioner's contention otherwise. (R. 43; App. 51).

Ninth, the record does not consist of pro forma questions and answers.

Tenth, nothing in the record suggests that Petitioner's waiver resulted from coercion or mistreatment.

In his Petition, Petitioner appears to assert that only prior legal experience or adequate warnings can demonstrate the understanding necessary for a valid waiver, despite this Court having held otherwise. *See generally Hines*, 443 S.C. at 42, 902 S.E.2d at 382 (holding that an appellate court "may consider the whole picture before [it], including [a defendant's] education and experience and whether he had another source of knowledge about the assistance of counsel"). If adequate warnings were not provided by the trial court, then this Court is bound to consider the *entire* picture before it rather than merely one of the numerous, and non-exhaustive, factors laid out in *Cash*. When observed as a whole, the facts of this case weigh in favor of a finding that Petitioner had the requisite understanding to have entered a valid waiver of his right to counsel.

Petitioner's prior experience with the criminal justice system—regardless of how distant that experience may have been—provided him with a source of knowledge about the assistance of counsel.

His decision to decline further appointed counsel when the trial court specifically asked if he wanted a third appointed attorney and indicated that it would appoint one for him indicates his strong desire to represent himself in light of the dangers of self-representation. (R. 12). Much like in *Hines*, Petitioner understood the nuances of having legal representation, given he had already had two lawyers in this case. *Hines*, 443 S.C. at 42, 902 S.E.2d at 382. (R. 38).

Petitioner's statements that he was reading up on the Rules of Evidence and the Rules of Criminal Procedure, despite the trial court's warning that the rules were "five inches thick" and the implied suggestion that the rules were long, dense, and complex, indicate that Petitioner not only knew the rules were not simple and easily digestible but also that he would have to comply with them if he proceeded pro se. (R. 15-17).

Petitioner also takes issue with the Court of Appeals' opinion because it did not specifically identify which factors favored his arguments or how much weight the Court assigned to each factor. It never needed to do so. Petitioner appears to be operating under a mistaken theory that the Court of Appeals was required to assign weight to each factor or otherwise look at the factors individually instead of considering the entire picture before the Court. *See Hines*, 443 S.C. at 42, 902 S.E.2d at 382 (holding that even if a trial court did not sufficiently convey the risks of self-representation to a defendant, appellate courts "may consider the whole picture before [them]" to determine if the defendant "understood the nuances of having legal representation"); *Wroten*, 301 S.C. at 294, 391 S.E.2d at 576 ("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.").

Overall, as the trial court found and the Court of Appeals affirmed, the record demonstrates that Petitioner entered a valid, voluntary, knowing, and intelligent waiver of his right to counsel. Merely because Petitioner now wants a second bite at the apple due to his dissatisfaction with his own performance at trial does not diminish his understanding of what he was doing when he decided he no longer wanted or needed counsel. Therefore this Court should deny Petitioner's Petition for Writ of Certiorari.

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CONCLUSION

Based on the foregoing, the Court of Appeals properly affirmed Petitioner's convictions and sentences because Petitioner had sufficient background to understand the disadvantages of representing himself at trial. Therefore, this Court should deny Petitioner's Petition for Writ of Certiorari.

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