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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of General Sessions

R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2026-000044

The State,

Respondent,

vs.

Michael Scott Rigney,

Appellant.

APPELLANT'S INITIAL BRIEF

July 27, 2026

/s/ Daniel D. D'Agostino

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STATEMENT OF ISSUES ON APPEAL

1. The Appellant did not make a knowing waiver of his Sixth Amendment United States Constitutional Right as well as his South Carolina Constitutional Right pursuant to Article I, Section 14 right to counsel.

STATEMENT OF THE CASE

The Appellant was arrested and charged with “Children/Unlawfully place a child at risk of or cause harm or willfully abandon the child” pursuant to South Carolina Code section 63 – 5 –70, Unlawful Conduct Toward a Child on March 1, 2023. (Warrant) Appellant hired counsel who served discovery on the solicitor’s office for York County on March 7, 2023. (Discovery, Rule 5, Rule 6, Brady). Counsel served the state with a motion for a Speedy trial on August 23, 2023. (Motion). Appellant entered Pre-Trial Intervention but did not complete it due to not completing parenting classes relating to his collision with a semi. (R. Transcript, Vol. 1, pp 6-9). (Tr. June, pp 6-7; and Vol I, pp 8-9). Appellant’s defense counsel below was relieved pursuant to a consent order filed on May 14, 2024. (Order) The case was called before the court on June 17, 2025 pursuant to Appellant’s communications with the Attorney General’s Office. (Tr. June 17, 2025, pp 2-3). The Attorney General’s office had a form called Ferretta Warnings at the hearing. (Faretta Warnings). The court received the Farretta Warning form at the hearing but did not go over the form with the Appellant (June 17, Tr. p. 3).

The trial was placed on the docket for November 17, 2025. At the beginning of the court week, the Attorney General advised that he had a new copy of the Faretta Warning for Appellant but no new Loretta warning was signed. After talking with the Attorney General, Appellant waived his right to a jury trial, opted for a bench trial and declined the offer. (T. Vol 1, pp. 5-7). The Court took the State’s motion relating to stand by counsel to question the minor children under advisement but never ruled on it and the Defendant was not assigned stand by counsel to examine the children. A recess was taken at 10:19 a.m. on Monday morning and Court reconvened at 2:02 pm.

The appellant was not present when Court reconvened and the court questioned the Attorney General's Office which advised the court that it had texted with Appellant telling him to be at the courthouse at 1:30 and also called him, he answered and told him to be here at 1:30 and he told them it might be closer to 145. At 2:02, Mr. Rigney was not present after his name was called three times.

The court questioned the Attorney General if Mr. Rigney had been advised he would be tried in his absence if he did not appear. Attorney General stated he did not know this time, that when he had his Harr warnings in June that was part of the Fred warnings but at that time it wasn't about a specific Trial term. (Tr. Vol 1, pp 9-10). The Court was advised that it was not stated this morning, but the Attorney General advised that it was stated when he accepted self-representation. (Tr. p 10.). The prior Faretta Warnings advisement did not include any such verbal advisement nor is it in the form. The trial started without Mr. Rigney's presence, but he did appear after the opening statement, and the first witness had begun to testify. (Tr. Vol 1, pp. 9 - 16). The Trial proceeded with Mr. Rigney, attempting to represent himself.

The trial judge found the Appellant guilty and sentenced him to 10 years suspended upon service of seven years, \$10,000 fine plus Court costs for a total of \$20,875. Appellant filed a motion to reconsider sentence pursuant to Rule 29, SCRCF. The Trial Judge conducted the hearing on the motion on December 18, 2025. The court denied the motion on December 31, 2025 and Appellant served his timely notice of Appeal on January 8, 2026.

STANDARD OF REVIEW

The sufficiency of a Foretta waiver on appeal is a question of law reviewed de novo. State v. Samuel, 422 S.C. 596, 813 S.E.2d 487 (2018). If the record fails to demonstrate that a defendant made an informed choice to proceed pro se with eyes wide open, the case is demanded for a new trial. Gardner v. State, 351 S.C. 407, 570 S.E.2d 184 (2002).

FACTS

The relevant facts as it relates to this appeal is the issue of the Faretta Warnings and the record as it relates to the Appellant's understanding of the process. The Appellant was never advised of his right to counsel, the various protections an attorney could provide, the pitfalls of self-representation and the importance of having counsel. The Appellant was never questioned as to his ability to read, write or understand the English language, the ability to understand the pitfalls of self-representation, and the protections an attorney could provide.

On June 17, 2025, the Attorney General's office which was prosecuting this case, advised the court of the status of the case. The Appellant advised the court that he was working with another law firm out of Columbia, but due to time constraint and getting everything to him, just wanted to keep this case going, but he would have other council, but he did not want to hold up the case anymore. (June 17, Tr. p. 3). The court advised the Appellant it was going to ask him to sign a form and told him that self-representation can be dangerous. The court advised Appellant that there are certain factual and legal defenses that may be available, and some other notices on the form. The court stated it would not read them to the Appellant and advised him to read them himself and sign the form. There is no record as to how long the Appellant had the form in his possession. (June 17, Tr., pp. 3-6). The court did not discuss the Appellant's right to an attorney, the dangers of representing himself, the right against self-incrimination or any of the other rights which an attorney could protect. The court did not inquire as to the Appellant's education or his understanding of the process. The court had him sign the Faretta Warning without any colloquy regarding his rights. (Tr. PP. 4-6). Appellant signed the form after being directed where to circle. (Tr. pp. 5-6). The Appellant also advised the court on the record that "the only reason why PTI wasn't done, I done everything except for the parenting class, but in April, I was hit by a semi-truck, so for eight months I was in the hospital and the county or the state or whoever wouldn't allow me to do the online parenting class." (Tr. pp 6-7). No inquiry

was made about the severity of Appellant injuries or how it affected him.

The trial was placed on the docket for November 17, 2025. On Monday morning, Respondent's Counsel advised that he had a new copy of the Faretta Warning for Appellant in the case. No new form was signed and the court did not go over any of the Faretta Warnings or advise the Defendant of his right to counsel. The State raised two issues on the Monday of court: the Appellant declining the offer of pleading no contest to cruelty to children, a lesser included offense which carried 0 to 30 days and also their motion regarding standby counsel for cross examination of the minor children and the victim. (Tr. Vol 1, pp. 5-7; Motion). After talking with the Attorney General, Appellant waived his right to a jury trial and declined the offer. Appellant chose a bench trial (T. Vol 1, pp. 5-7). The Court took the State's motion under advisement but never ruled on it and the Appellant was not assigned stand by counsel to examine the children. The issue of PTI and Appellant being hit by a semi-truck was again brought to the court's attention. (Tr. Vol 1, p. 8). A recess was taken at 10:19 a.m. on Monday morning and Court reconvened at 2:02 pm.

The appellant was not present when Court reconvened and the court questioned the Attorney General's Office as to the Appellant's location and knowledge of court starting at 2 pm. The Attorney General's advised the court that it had texted with Appellant telling him to be at the courthouse at 1:30 and also called him and told him to be here at 1:30 and he told them it might be closer to 145. The Attorney General told him to be here by 2 pm. At 2:02, Mr. Rigney was not present after his name was called three times. The court questioned the Attorney General if Mr. Rigney had been advised he would be tried in his absence if he did not appear. Attorney General's office stated he did not know this time, but asserted that when Appellant had his Faretta hearing in June, that the warning was part of the Faretta Warning but at that time it wasn't about a specific Trial term. (Tr. Vol 1, pp 9-10). Co-counsel for the State advised the Court that it was not stated this morning, but advised that it was stated when he accepted self-representation. (Vol 1, Tr. p 10.). The prior Faretta Warnings

advisement did not include any such verbal advisement and the written form had no such notice. . Contrary to the assertions, the written warnings did not include any reference to being tried in his absence. (Faretta Warnings). The trial started without Appellant's presence, but he did appear after the opening statement, and the first witness had begun to testify. (Tr. Vol 1, pp. 9 - 16). The Trial proceeded with Appellant attempting to represent himself. Appellant failed to object to incompetent evidence, leading questions, hearsay, state pitting witness, and failed to object to opinion testimony from a witness not qualified as an expert just to set forth a few items to demonstrate the Appellant's inability for self representation and for the fact that Appellant had no idea of the pit falls of self representation . (Tr. p, 16; 35 video with hearsay; 65; 69; 78-79; 113; 123; 128; 141-142) Appellant also called witnesses who never should have testified or been called to testify and were clearly prejudicial to any fact finder. Appellant presented a former assistant Solicitor, who was originally prosecuting the case and elicited testimony which should never have been admitted in a trial whether it is a bench trial or a jury trial because she was an assistant solicitor stating the opinion she believed Appellant was guilty. (Tr. pp. 136- 142). Appellant introduced evidence which was full of hearsay and clearly incompetent evidence that no reasonable attorney would ever present to the court. (Def. Exhibit 2; pp 141-142). The state did not object. The Appellant also called a witness to testify about a different case and different allegations for which he was never charged and which were inflammatory, evidence which should have never been part of any record. (Tr. pp. 143-146). IN addition, the Appellant did not know ow to introduce evidence and thought videos were exhibits and they were not admitted. (Tr. pp. 157 - 159)

ARGUMENTS

THE APPELLANT DID NOT MAKE A KNOWING, INTELLIGENT, AND VOLUNTARY WAIVER OF COUNSEL

The right to self-representation is grounded in the Sixth Amendment of the United States Constitution, which the United States Supreme Court held in Faretta v. California, 422 U.S. 806, 835

(1975) guarantees a criminal defendant the right to conduct his own defense when he voluntarily and intelligently elects to do so. South Carolina independently recognizes the right under South Carolina Constitution, Article I, Section 14. State v. Starnes, 388 S.C. 590, 698 S.E.2d 604 (2010). The right is not absolute. It must be clearly and unequivocally asserted by the defendant, and the waiver of counsel must be knowing, intelligent and voluntary. State v. Samuel, 422 S.C. 596, 813 S.E.2d 487 (2018). It is well settled that the trial judge bears the responsibility to ensure a defendant is informed of the dangers and disadvantages of self-representation. The waiver must be made knowingly and intelligently. Coleman v. Thompson, 501 U.S. 722, 111 S. Ct. 2546, 115 L. Ed. 2d 640 (1991); State v. McLauren, 349 S.C. 488, 563 S.E.2d 346 (Ct. App. 2002). The burden of demonstrating the validity of the waiver rests on the state. State v. Dial, 429 S.C. 128, 838 S.E.2d 501 (2020).

The South Carolina Supreme Court established the framework for evaluating the warnings in the case of Prince v. State, 301 S.C. 422, 392 S.E.2d 462 (1990). The accused must be advised of the right to counsel, and that he must be told he has a constitutional right to be represented by an attorney. Prince, Id at 423-424. In addition, the defendant must be adequately warned of the dangers of self-representation, be made aware of the specific dangers and disadvantages of proceeding without a lawyer so that the record establishes the choice is made clearly. Wroten v. State, 301 S.C. 293, 294, 391 S.E.2d 575, 576 (1990). The court has held that the warning is mandatory and cannot be substituted by the defendant's apparent competence, trial performance or general background alone. See State v. Dial, 429 S.C. 128, 838 S.E.2d 501 (2020). In Dial, the court rejected the state argument that a defendant's age, lack of mental impairment, prior probation and awareness of the charges were sufficient substitutes for an actual warning about the dangers of self-representation. The court also rejected the argument that a defendant's ability to conduct an opening statement, examine witnesses, and make objections at trial demonstrated a valid waiver.

In addition, another important consideration as to the sufficiency of the analysis is the stage

of the proceedings at which a defendant seeks to proceed pro se. In **Hines**, the court emphasized that when a defendant is venturing to represent himself at trial, the trial court must rigorously convey specific warnings of the pitfalls of going to trial without a lawyer. The court noted that a waiver of counsel at earlier stages of the proceeding, such as at a plea hearing, need not be as exact. The distinction reflects the principle that the risks and disadvantages of self-representation are more substantial and less obvious to a defendant at trial than at earlier stages. **Hines v. State**, 443 S.C. 32, 902 S.E.2d 377 (2024). At the same time, the court held that while a specific inquiry by the trial court expressly addressing the disadvantages of a pro se defense is preferred, the court recognized that 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. **Hines, Id.**

The court has made clear that no specific script or formula is required for a valid Fareta colloquy. **Hines v. State**, 443 S.C. 32, 902 S.E.2d 377 (2024). The information a defendant must possess to make an intelligent election depends on a range of case-specific factors, including the defendant's education or sophistication, the complex or easily grasped nature of the charge, and the stage of the proceeding. It is the defendant's understanding of the right— not the incantations of the trial judge or the words on a printed form— that controls the inquiry into whether the waiver is valid. See **Hines, Id.**

In making the determination, the courts apply a 10-factor analysis to determine if the Defendant had sufficient background to understand the dangers of self-representation. **Gardner v. State**, 351 S.C. 407, 570 S.E.2d 184 (2002) The court looks to the record to determine whether the defendant had sufficient background or was appraised of the dangers by some other source. The ten factors are as follows:

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.

Gardner v. State, 351 S.C. 407, 570 S.E.2d 184 (2002); State v. Cash, 309 S.C. 40, 43, 419 S.E.2d 811, 813 (Ct. App. 1992). No single factor is dispositive and the court weighs all the relevant circumstances. The court must make its determination as to whether the defendant was aware of the dangers of self-representation.

In the case, at hand, the Appellant did not make a voluntary, knowingly and intelligent waiver of his rights to counsel. The trial court did not advise Appellant of his right to have appointed counsel. The Trial Judge did not have a thorough discussion, have any real discussion, of the dangers of self-representation, warnings on the specific dangers of Appellant's decision rather than general warnings that danger typically comes with the decision. In fact, at the hearing in June, 2025, Appellant was advising the court he was seeking counsel. The court at some point had Appellant sign a form and there is no record that Appellant even read the form, understood the form or had the ability to understand the form. The clerk had to tell Appellant what to circle on the form. The trial court merely used a comparison in telling the Appellant that it was not a good idea to represent himself, just like it was not a good idea for the judge who was not a contractor to try to do contracting work. As

such, there is no record to indicate that Appellant received Fareta warnings as contemplated by both the United States and South Carolina Constitutions.

In addition, in analyzing the 10 factors to determine if the Appellant had sufficient background to understand the dangers of representing himself at trial, the same conclusion is reached, that the Appellant did not have the background to understand the dangers and disadvantage of self-representation.

First, in analyzing the factors, there is no record of the educational background, physical or mental health of the Appellant. In fact, the record contains a reference on two occasions before the trial that the Appellant had been involved in a serious automobile accident with a semi-truck and hospitalized.

There's no record of the Appellant having ever been involved in criminal trials as he had not. As the court found in the sentencing phase, the Defendant had, after this charge, 2 magistrate court charges and plead to those.

The state did advise the Appellant of the possible penalty of the charge when it required a waiver of the plea offer but the court did not discuss fines or any other factors of the penalty for the charge.

Appellant was represented by counsel before trial and counsel had filed the discovery motions and the speedy trial motions, not the Appellant. Counsel was relieved in May 2025 and Appellant had stated he was trying to get other counsel.

Appellant was not advised of the difficulty of self-representation in this particular case. Appellant's total inability to try the case as discussed below supports the fact that Appellant had no idea of the difficulty of self-representation. Some of the problems and errors the Appellant are referenced in the facts above dealing with the inability to introduce evidence, the presentation of

totally irrelevant evidence and prejudicial evidence, calling witnesses who are prejudicial and irrelevant and introducing Exhibit 2 which should not have been presented and had nothing to do with this trial.

There's no evidence that appellant was trying to delay or manipulate the proceedings as he advised the court his prior counsel had asked for a speedy trial.

The court did not appoint standby counsel.

The trial judge did tell the Appellant he would be required to comply with rules of procedure at trial.

The record is clear that the appellant had no knowledge of the legal challenges he could raise in the defense to the charges against him.

There's no evidence that the Appellant's waiver resulted from coercion or mistreatment.

The exchange between the Appellant and the court consisted merely of pro forma answers to pro forma questions at the Faretta hearing.

To further elaborate on a few of the items, the exchange in June between the court and the Appellant was entirely deficient in advising the Appellant of the dangers of self-representation. The entire record is devoid of any evidence to demonstrate the Appellant made a knowing, intelligent and voluntary waiver of his right. The court did not properly question Appellant in June and there was no colloquy about self-representation or why the Appellant had not hired counsel as he said he was planning in November prior to the beginning of the trial. The Appellant just did not want to delay the case any further. The Appellant was not told he could have counsel for the trial appointed either in June or at the commencement of the trial.

A review of the record as to substantive matters and what the Appellant did at trial further substantiates the fact that the Appellant had no idea of what he was doing or of the dangers of self-representation. The Appellant, calling the former Solicitor on his case, Hannah Woods, when she would have no knowledge of the guilt or innocence based upon firsthand information, was entirely

prejudicial to himself and the Assistant Solicitor could add nothing to his defense. Appellant clearly had no idea that her testimony was not only irrelevant and incompetent, but substantially prejudicial. The resulting comment/testimony by Ms. Woods that she believed the Appellant was guilty demonstrates that the Appellant had no knowledge of what was really being tried, the vendetta of his former girlfriends, or the real issue, as to whether there was maltreatment to his child for which he would be convicted of a felony. Everything the Appellant did during the trial demonstrates he had no knowledge or appreciation of the process or the dangers of representing himself.

In addition, the record contains various references to the fact that the Appellant was involved in a serious automobile collision with a tractor trailer. No inquiry was made of the Appellant as to how that affected his mental status. No inquiry was made as to his education and his ability to read and write and understand what he reads and writes. In fact, there is no evidence the Appellant ever read the Faretta Warning form. As stated above, he did not even know what to circle at the June hearing and was directed as to what to circle. Appellant was expecting to hire counsel and advised the court of the same. He was not told the court could appoint an attorney for him.

In addition, the trial judge started the trial without the Appellant present and Appellant had not been advised of this despite the State representing to the court the Appellant had been advised of the potential of a TIA. The state said Appellant was advised that he could be tried in his absence referencing the June Faretta hearing. Appellant never received such a warning. Although the Appellant appeared late for the trial on the first day and did participate, he missed the opening and the beginning examination of an officer. Most importantly, the state and the court were misinformed as to what warnings previously given to the Appellant. The Appellant was never advised he would be tried in his absence on the record or in the written Faretta form. Even though Appellant appeared, the trial began without his presence.

CONCLUSION

For the above reasons, , with this court applying a de novo review, this court should determine that the Appellant did not make a knowing, intelligent or voluntary waiver of his right to counsel, and as such, his conviction should be reversed.

Respectfully submitted.

July 27, 2026

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