

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Horry County

Edward B. Cottingham, Circuit Court Judge  
\_\_\_\_\_

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ANTHONY JACKSON,

APPELLANT

APPELLATE CASE NO. 2012-213445  
\_\_\_\_\_

INITIAL REPLY BRIEF OF APPELLANT  
\_\_\_\_\_

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## ARGUMENT

The State argues that because the trial judge did not know the law, he was entitled to postpone the exercise of appellant's constitutional right to represent himself. Brief of Respondent at 14-15. The State admits that appellant made an unequivocal assertion of his right to self-representation and that the trial court delayed the exercise of this right until after the Biggers hearing, voir dire, and jury selection. Brief of Respondent at 13-15. The excuse for the delay proffered by the State is that the trial judge needed to give "the State time to locate the Faretta case so it could make appropriate findings on the record." Brief of Respondent at 14.

The trial court's lack of awareness of Faretta v. California, 422 U.S. 806, a seminal United States Supreme Court decision from 1975, cannot excuse the denial of appellant's right to self-representation. The State cites no authority for the proposition that a trial court may delay a defendant's exercise of that right, much less for the reason that the trial court did not know the law. Instead, the State relies on State v. Reed, 332 S.C. 35, 503 S.E.2d 747 (1998) for the proposition that a Faretta inquiry "takes time and diligence." Brief of Respondent at 14. Indeed it does. But nothing in Reed—a capital case where the court allowed the defendant to represent himself—indicates that a trial judge may postpone the exercise of a defendant's constitutional right to self-representation because of the "time and diligence" required of the court.

The State failed to seriously contend that a Denno hearing, a Biggers hearing, voir dire, and jury selection are critical stages of a trial. Brief of Respondent at 14-15. The State attempts to distinguish the cases cited by appellant showing these portions of a trial are critical by dismissing them as cases regarding the defendant's right to be present. Brief of Respondent at 15. While that is certainly true and was pointed out in appellant's brief, it does nothing to diminish the logical force that if a stage of a trial is sufficiently critical that the defendant has a right to be present, then it is

also sufficiently critical for the defendant's assertion of the right to self-representation to matter. Apart from distinguishing the cases cited by appellant on this irrelevant basis, the State failed to cite any authority for the proposition that these stages of a trial are not critical.

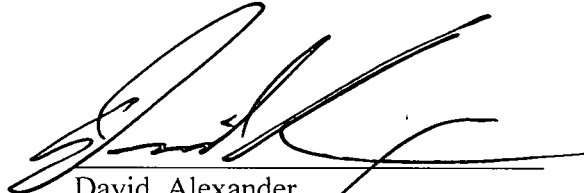
Finally, the State failed to refute that the denial of a right to self-representation is a structural error. State v. Barnes, Op. No. 27322, \_\_\_ S.C. \_\_\_, \_\_\_ S.E.2d \_\_\_, 2013 WL 5634248, Shearouse Advance Sheet No. 44, October 16, 2013. The State attempted to distinguish Barnes by emphasizing its holding that the trial court used an incorrect competency standard. Brief of Respondent at 16. Appellant agrees this point was the most difficult issue addressed by the Court in Barnes. What was not difficult for the Court was the determination that the case had to be reversed once an error was found. Again, the State cites no authority to support the proposition that a harmless error analysis for a Faretta error may be conducted and does not seriously argue this point in its brief. Brief of Respondent at 16. No harmless error analysis is allowed.

The trial judge denied appellant his right to self-representation during critical stages of this trial. The State failed to seriously contend that the trial court erred. Therefore, finding error, this Court must reverse and remand for a new trial.

CONCLUSION

For the reasons stated in this reply and those stated in the Brief of Appellant, appellant's conviction should be reversed and the case remanded for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

David Alexander  
Appellate Defender

ATTORNEY FOR APPELLANT

This 31st day of December, 2013.

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THE STATE,

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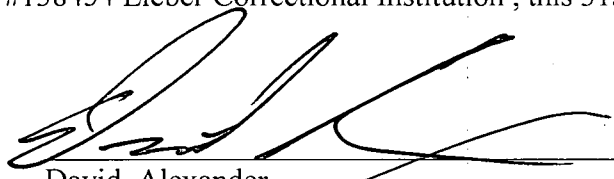
ANTHONY JACKSON,

APPELLANT

APPELLATE CASE NO. 2012-213445

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Initial Reply Brief of Appellant in the above referenced case has been served upon Jennifer Ellis Roberts, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Mr. Anthony Jackson, #138454 Lieber Correctional Institution, this 31st day of December, 2013.



David Alexander  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 31st day of December, 2013.

 (L.S.)

Notary Public for South Carolina  
My Commission Expires: July 24, 2022.