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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Certiorari to the Court of Appeals
Appeal from Richland County
Honorable DeAndrea G. Benjamin Circuit Court Judge

Appellate Case No. 2026-002000

THE STATE, PETITIONER,

v.

MICAH CHRISTIAN SYLVE BROWN, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General
S.C. Bar No. 14244

Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-6305

BYRON E. GIPSON
Solicitor, Fifth Judicial Circuit

Post Office Box 192
Columbia, South Carolina 29202
(803) 576-1800

ATTORNEYS FOR PETITIONER

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on August 12, 2026.

QUESTION PRESENTED

Did the Court of Appeals err in finding no support for a waiver of the right to counsel by too narrowly interpreting the record on conduct preceding Brown's final decision when the record shows that Brown did not make his ultimate decision to reject counsel (again) until he was undeniably given clear *Faretta* warnings?

STANDARD OF REVIEW

Certiorari Review

“A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons.” Rule 242(b), SCACR.

Waiver of Right to Counsel

“Whether a defendant has knowingly, intelligently, and voluntarily waived his right to counsel is a mixed question of fact and law which appellate courts review *de novo*.” *State v. Samuel*, 422 S.C. 596, 602, 813 S.E.2d 487, 490 (2018). While the review of the legal conclusion is *de novo*, the factual determinations found by the lower court, however, are only reviewed for “clear error[.]” *Id.* Moreover, “this Court must consider the defendant’s testimony, history, and the circumstances of his decision, as presented to the circuit judge” in conducting the review. *Id.*

STATEMENT OF THE CASE

During the April term of 2019, a Richland County Grand Jury indicted Respondent, Micah Christian Sylve Brown, on two counts of murder and one count of attempted murder. (2019-GS-40-01952, -01953, and -01951). After dismissing two appointed attorneys; having been warned that rejection of appointed counsel would result in him having to represent himself; and having declined other counsel offered on the day of his trial after clear warnings on the dangers of self-representation; Brown represented himself at his trial on the charges from November 7-10, 2022. The jury found him guilty as charged. (R. 295). The Honorable DeAndrea G. Benjamin sentenced Brown to two concurrent terms of life imprisonment without the possibility of parole for the two murders and a concurrent 30 years for the attempted murder. (R. 302). Brown timely appealed.

Appellate counsel raised the following issue in the South Carolina Court of Appeals:

Whether 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?

(App. 326).

Respondent submitted the following counterstatement of the issue presented:

Whether trial judges in this state have discretion to cut off the supply of free-of-charge attorneys at some point, or whether trial judges must provide defendants as many appointed attorneys as they wish because of the Sixth and Fourteenth Amendment right to counsel?

(App. 361).

After full briefing, but without oral argument, the Court of Appeals issued an unpublished opinion on April 15, 2026, finding that Brown could not have waived his right to counsel by his conduct when he was not given warnings on the danger of self-representation prior to the conduct occurring. (App. 377-383). The State's petition for rehearing was denied on August 12, 2026. (App. 401). This petition follows.

STATEMENT OF FACTS

The Crime

On the night of Wednesday, November 7, 2018, around 8:00 pm, twenty-one-year-old Choatte Neal (co-defendant tried separately) called Taurus Williams (the attempted murder victim) to take him to Respondent Brown's house to buy weed and pick up some money. Taurus complied and they, along with Jasmine Richardson (murder victim) and Brennan Montgomery (the other murder victim) drove to where Brown lived with his father. (App. 235-237, 132-133). Once at his home, Brown told the group, "We got to go down the street to my people's house and get [the weed and money]" which was an "unexpected" request. (R. 238-239). Brown directed Taurus to a nearby Richland County dirt road. (R. 110, 127-128, 241). Brown had climbed into the middle back seat, so Choatte—sitting to the left of him—got out of the car for Brown to exit. Brown then got out and immediately turned and opened fire on Jasmine (front passenger), Brennan (sitting behind her), and Taurus (the driver). Jasmine got out and started running. Brown chased her down and started beating her with his pistol, and, when the pistol broke, he beat her with his hands. (App. 242-244, 246).

Brennan sustained gunshot wounds inside the car but fell out fully to the ground after Choatte opened the car door to check on him. Taurus attempted to drive the now-empty Kia Forte away, but he wrecked in a few yards. Brown dragged Jasmine across the road to a tree line where he left her. (App. 244-246). Brown and Choatte walked the short distance back to Brown's home. In the home, Brown's father, Sylvester Brown, gave Choattee orange juice as it appeared he was having a panic attack. (App. 134). Brown asked to borrow his father's phone to locate his own phone with the Find My Phone app. (App. 135, 246). Brown's father offered to give them a ride

but Brown declined. The two young then men walked the more than half mile back to the crime scene in the rain to retrieve Brown's phone. (App. 132-135, 228, 246-248).

In starting to return, they noticed that Taurus had dragged himself down the dirt road up onto the porch of a house. Brown told Choatte, "Bro, you got to help me kill him." Choatte resisted but eventually complied. The two found a metal rod in the yard and began to beat Taurus, only leaving after he thought Taurus was dead. Brown and Choatte then walked back up to Brown's house where Brown eventually told two people who had come over, "Yo, I just killed two people." (App. 247-251, 252-253).

Dorasha Swain, the owner of the house that Taurus reached, saw Brown and Choatte beating Taurus on her front porch security camera at approximately 10:30 P.M. She was not at home at the time, but based on what she saw on the camera, she called the police. She also saw Brennan Montgomery lying in the middle of the road on his back on the video. He was barely conscious by the time law enforcement arrived and later died from three gunshot wounds to the head and chest. Jasmine Richardson died at the scene from multiple blunt force skull fractures and blunt force injuries to her head and upper body. She was found lifeless, face down in the mud. Taurus was shot in the chest, shoulder, and head, and was severely beaten but somehow survived. (App. 111-121, 190-192, 209-226, 249).

As a result of the investigation, Choatte Neal was arrested on November 9th and was charged with two counts of murder and one count of attempted murder. (App. 199-200, 253). Brown was arrested a day later and after *Miranda* warnings were given, admitted to being on the porch and identified both Neal and himself in the porch security video. He also admitted to being in the car with the three victims. (App. 202-205). Choatte testified Brown saw him in prison later and tried to get him to "come up with a story" that they had "shot [the victims] in self-defense

because they tried to rob us.” (App. 254-255). It turns out that Brown had committed the murders and the attempted murder because the victims “got dubbed out,” or kicked out of the Nine Trey gang of which both Brown and Choate were members. (App. 250-251). Consistent with the explanation, Choate also testified that Brown had called someone right after the murders and said, “It’s done.” (R. 251).

The Rejection of Two Appointed Attorneys and the Offer of a Third

Public Defender Tracy Pinnock was initially appointed to represent Brown. On September 19, 2019, Brown appeared before the Honorable Casey Manning on his request to relieve Ms. Pinnock. The court granted the motion and directed that Brown be appointed an attorney from the Rule 608, SCACR, list. (App. 305). That order resulted in the appointment of Judah VanSyckel, Esq. (*See* App. 5).

On July 11, 2022, Brown appeared before the Honorable Clifton Newman on Brown’s request to relieve Mr. VanSyckel. (App. 4-5). At that point, a trial had been set for October 31, 2022. (App. 10). Brown insisted the Mr. VanSyckel was not doing enough for him and lied to him about bond; specifically, he was quite unhappy with counsel because Mr. VanSyckel had encouraged him to take the State’s 50-year plea offer. (App. 6).

Brown asserted that the “system is corrupt,” and only a “paid lawyer” would “work for you.” (App. 21). Brown asserted his mother was looking into retaining private counsel, and Brown indicated both that he “can’t do it on [his] case” and “I’m going to get me another lawyer.” (App. 21-22). Judge Newman engaged Brown in a pointed conversation about his reasons for seeking to remove Ms. Pinnock and Mr. VanSyckel, reminding him that Brown must work with his attorneys as they work for him. (*See* App. 20-22). Judge Newman advised that court appointments would not continue noting that if Brown could not get along with two, he likely would not be able

to get along with a third. Brown responded, “I probably would, you never know until you try it.” (App. 21-22; and 26). Judge Newman advised that if the court grants the motion to relieve Mr. VanSyckel, Brown would not have counsel for trial as the court would not “appoint another[.]” (App. 21). Mr. VanSyckel also asserted that he wanted no further disrespectful conversation with abusive language from Brown. (App. 26). Brown apparently admitted the behavior but offered that it was limited to one time. (App. 27). Brown railed against the system and the inability to have a competent lawyer through the appointment system truly invested in his case. (App. 30-31). The judge again advised that if Brown fired counsel, Brown would have to represent himself; however, he would give Brown time to reconsider and took the matter under advisement. (App. 30-31).

On August 15, 2022, Brown appeared again before Judge Newman. Brown still insisted on removal. The court firmly advised that Brown did not have the right to “pick and choose” his appointed counsel. (App. 36-37). Brown maintained his objection to counsel, summarily concluding that counsel was not doing enough for him and/or was not invested in the defense. (App. 38-39). Judge Newman reminded Brown that removal of counsel would mean that he would represent himself. Brown resisted, but then asserted, “I ain’t bowing down - - you said I can represent myself. I’m going to represent myself.” (App. 38). Brown continued to rail against the system and invoked racial imagery and incarceration. (App. 42). Mr. VanSyckel asserted he would continue to do his job, but that the relationship had been seriously impaired with Brown showing “pretty significant animosity towards” counsel. (App. 42-43). Judge Newman asked again if Brown wanted to relieve counsel knowing that would result in absence of counsel, and Brown said, “Yeah, go ahead and relieve him... I ain’t buying none of that.” (App. 45). This time, the judge granted the motion to relieve Mr. VanSyckel, noting that standby counsel would be appointed

by the public defender's office "in the event [Brown] wants to ask them any legal questions during the course of the trial." (App. 45). Brown continued to argue in saying, "I ain't representing myself, bruh." (App. 45).

On October 14, 2022, Brown appeared once again before Judge Newman for a status conference. The prosecution wanted to ensure that "everyone was on the same page that . . . Mr. Brown [would be] representing himself on these charges." (App. 49). The trial had been moved back to November 7, 2022. (App. 49). Brown indicated "it wasn't [his] decision" and he was being "made" to go to trial "pro se" because he fired his lawyer. (App. 49). Judge Newman appointed Tivis Sutherland as standby counsel. (App. 50). Judge Newman stated that "Brown has been advised of the dangers of self-representation. He did not want to have a lawyer that was provided to him, so he has to represent himself." (App. 51). Brown ended the hearing with these comments:

That's it? That's good? All right, shit. I'm straight now. You know what, I'm going back. Talking about some shit, talking about shit.

(App. 51).

The trial was called to begin on November 7, 2022, with the Honorable DeAndrea G. Benjamin presiding. Brown indicated that he was forced to go *pro se*, though he admitted to moving to have his two appointed attorneys relieved. (App. 61). Brown recognized that Mr. Sutherland was appointed standby counsel, and that Mr. Sutherland had offered to represent him, but Brown had rejected the offer. (App. 62-63). Judge Benjamin advised that "self-representation can be dangerous, and you have the right to have the assistance of a lawyer[.]" (App. 63). She also advised that "criminal defense is a highly specialized and technical area of the law." (App. 63). Brown indicated he did not know Mr. Sutherland and "he ain't been on my case too long or nothing like that, ... there's no way that that can happen like that" (i.e., representation at trial).

(App. 63-64). Judge Benjamin further advised that Mr. Sutherland is a trained and well-experienced attorney having practiced “primarily criminal defense” for some eighteen years. (App. 64). Brown conferred with Mr. Sutherland, but then “exercise[d his] right to remain silent[.]” (App. 65). Judge Benjamin continued to impress upon Brown that benefits of trained counsel knowing defenses and collateral consequences regarding the proceedings and charges, and the severity of the charges. (App. 65-68). Brown rejected the appointment of Mr. Sutherland, continuing to assert he had “nothing to say.” (App. 67). Brown continued his obstinacy to participate during trial, (*see* App. 256), or discuss anything regarding the matter of counsel during the trial, (App. 259).

ARGUMENT

The Court of Appeals err in finding no support for a waiver of the right to counsel by too narrowly interpreting the record on conduct preceding Brown’s final decision when the record shows that Brown did not make his ultimate decision to reject counsel (again) until he was undeniably given clear *Faretta* warnings?

The primary question, according to the Court of Appeals, was whether “the trial court erred in denying [Brown] appointed counsel and requiring him to proceed to trial *pro se*.” (App. 377). That rephrasing sorely failed to acknowledge the continuity of difficulty Brown presented to the circuit court judges. Nor does the issue contemplate the opportunity afforded Brown to reconsider his actions regarding counsel, or the underscoring of the dangers of self-representation undoubtedly given before trial, or the offer to appoint *third* counsel even after warning that abuse of the right would result in waiver.

In short, the Court of Appeals, contrary to this Court’s precedent, separated and parsed the facts of record so finely that the panel failed to consider the important context in which to review the question presented. Further, the Court of Appeals deemed as relevant precedent that which is so plainly distinguishable on the facts that the cited holdings fail to lend support for the disposition reached. As such, the opinion stands in stark contrast not only to this Court’s precedent governing the standard of review, but also to the accepted principle that does not allow a defendant to knowingly obstruct the court process. This dangerous departure from precedent and principle creates a situation ripe for this Court’s review and correction. The State’s petition should be granted.

Discussion:

A defendant may waive counsel by request, conduct, or forfeiture. *Osbey v. State*, 425 S.C. 615, 619, 825 S.E.2d 48, 50 (2019); *State v. Thompson*, 355 S.C. 255, 267, 584 S.E.2d 131, 137 (Ct. App. 2003). For waiver by request or conduct, this Court has held that the defendant should

be warned of the dangers of self-representation. *Osbey*, 425 S.C. at 620, 825 S.E.2d at 50-51. “Situations where a defendant’s own conduct forfeits his right to counsel are unusual, typically involving a manipulative or disruptive defendant.” *Thompson*, 355 S.C. at 267, 584 S.E.2d at 137. Forfeiture does not require a showing of the defendant’s “knowledge of either the consequences of his actions or the dangers of self-representation.” *Id.*

The Court of Appeals relied on *Osbey*, and *Gardner v. State*, 351 S.C. 407, 570 S.E.2d 184 (2002), in finding that warnings must precede waiver by conduct. (App. 380). Yet, there are distinct differences in the facts here that make application of those cases less than a perfect fit.

In *Osbey*, the defendant had been told to apply for a public defender but had not done so (or not done so timely). *Osbey*, 425 S.C. at 618, 825 S.E.2d at 49. *Osbey* was apparently not informed at any time about the dangers of self-representation. Notably, this Court found “the plea court did not mention to *Osbey* the dangers of self-representation.” *Id.*, at 620, 825 S.E.2d at 51. Likewise, in *Gardner*, this Court emphasized there that the defendant had not been warned about representing himself *at the plea hearing*. Indeed, this Court noted that “[t]he plea judge *never even acknowledged that Petitioner did not have counsel with him at the plea hearing.*” *Id.*, at 412, 570 S.E.2d at 186 (emphasis added). The facts here are strikingly different. It could not be clearer that Brown did receive the warnings at the operative time; the formal proceeding.

Further, as to the warning that conduct could lead to waiver, there is no doubt that Judge Newman cautioned Brown as to this point. Further, it is not an unfamiliar pattern. As the State noted in its brief to the Court of Appeals, waiver has been upheld in similar fact patterns. *See App. 369*, citing *United States v. Fazzini*, 871 F.2d 635 (7th Cir. 1989) (holding that failure to cooperate with a fourth appointed attorney acted as a waiver of the right to counsel where the judge had warned him his conduct would result in him proceeding without counsel). *See also State v. Hall*,

590 P.3d 1008, 1018 (Or. App), *review denied*, 375 Or. 577 (2026) (finding waiver after warning that continued failure to do so would result in same).

Further still, Judge Benjamin gave detailed warnings about the dangers of self-representation. It was after that point that Brown gave his final answer by flatly refusing to answer the judge. (App. 65). Before that point, he had toyed with retaining his own counsel or representing himself. (App. 21-22). When it came to trial, Brown’s best course of action, so he apparently decided, was to stand on the assertion that his rights to appointed counsel and a fair trial were violated – even before the trial began and despite the offer of another experienced attorney.¹

At bottom, at least two (and likely three) judges had at least four (and likely five) conversations with Brown about his right to counsel and the limitation of that right.² He was repeatedly warned that his actions would be construed as a waiver of counsel. And on the first day

¹ Though the warnings given by Judge Benjamin should be sufficient, the State also notes the Court of Appeals erred in the alternative consideration under the *Cash* factors. (App. 381-382, citing *State v. Cash*, 309 S.C. 40, 419 S.E.2d 811, 813 (Ct.App. 1992)). For example, the record shows a keen appreciation of the severity of the charges, and the potential sentences, (*see* App. 14-16, 18-21), yet the Court of Appeals merely lightly considered that Judge Newman discussed the “charges and possible penalties,” without any appreciate for *Brown’s* understanding. Further, Brown was represented for a time by counsel, even receiving a bond on these serious offenses, and the record further shows that Mr. VanSyckel demonstrated the finesse he brought to the representation, outlining much of his work and preparation for trial. (App. 12-14, 16-19). Further still, there is considerable reason to believe that Brown was attempting to manipulate or delay the proceedings, especially since he flatly informed the court that he did not believe any appointed counsel would work in his best interest. (*See* App. 21, 30). Lastly, Brown had to have some concept of the requirement that he would have to comply with court rules and/or procedure; he was appointed standby counsel to aid him on “legal questions.” (App. 45). The weighing of the *Cash* factors in the unpublished opinion here are too skewed toward age and background alone to produce fair consideration.

² Brown advised the Court of Appeals that a transcript from Judge Manning’s hearing with Brown was not available due to the court reporter’s external hard drive failure. (*See* App. 329 n. 2).

of the trial—as he declined yet another opportunity to be represented by counsel—he was given clear and careful *Faretta* warnings. These facts cannot be cleanly equated to *Osbey* and *Gardner*.

To summarize, the record shows three critical points that converge to support a firm basis for rejecting error. The first is that Brown continued to reject counsel even after the appointment of two qualified attorneys and being offered a third; even though he was well and fully informed that he was not entitled to appointment of the third. The second is that Brown made his final decision regarding counsel *after* the trial judge gave careful advice on the dangers of self-representation generally while underscoring the seriousness of this case. The third is that Brown continued in obstructionist behavior, refusing to even answer Judge Benjamin regarding counsel. Respectfully, and regrettably, the Court of Appeals failed to consider the entire context that led to the waiver of the right to counsel.

Finally, the court’s conclusion that counsel, if appointed at trial, simply could not be effective is a decision based on speculation, not the record. The reliance on *Powell v. Alabama*, 287 U.S. 45 (1932), is misplaced. There, the Supreme Court observed that while the state court had vaguely appointed members of the Bar to assist the defendants, “until the very morning of the trial no lawyer had been named or definitely designated to represent the defendants.” *Id.*, at 56. That is not the case with Brown. He had been appointed two attorneys before trial and was offered a third before trial—albeit shortly before trial. Here, Brown at the very least waived his right to counsel by refusing to accept *any attorney* the State provided to him—and by making it clear that he did not believe a court-appointed lawyer would ever protect his interests. (*See App. 21, 30*). Additionally, Mr. Sutherland was not randomly appointed in court on the day trial started. Mr. Sutherland met with Brown the Thursday before the Monday trial was to start and *offered* to represent Brown. (*App. 62*). While possible that counsel could be found ineffective, that would

be a matter for a different proceeding, and that would not be the point here. The point here is that Brown was offered the appointment of a third attorney, who was willing to represent him, and he rejected it. Also, there is no doubt that Judge Benjamin made clear the offer from counsel and the willingness of the court to appoint counsel. (App. 62-68). Again, the context plainly shown in the record does not support the fractured-facts conclusion by the Court of Appeals.

Simply, the record supports that Brown made a knowing and intelligent waiver. To hold otherwise would be an offense not only to the standard of review set out by this Court, but also a reward for obstructionist behavior. Neither should be allowed.

In the alternative, while the State does not dispute that forfeiture should be found sparingly, it does not believe Brown's actions cannot be construed that way. *See generally United States v. McLeod*, 53 F.3d 322, 325 (11th Cir. 1995) ("The Sixth Amendment right to counsel, for example, may be forfeited by a defendant's failure to retain counsel within a reasonable time, even if this forfeiture causes the defendant to proceed *pro se*."). Brown repeatedly declined extended offers of counsel, even after being advised that it could be construed as a decision to represent himself, was often belligerent towards the courts as they tried to figure out what he wanted out of his representation, and ultimately relied on his right to remain silent at the critical juncture when the trial court was trying to determine if he would continue *pro se*. While Brown is not reported as having physically assaulted his lawyer (although he did abuse his lawyer verbally and failed to cooperate), he plainly obstructed the courts as they tried to arrange counsel for him. *See Com. v. Kelly*, 5 A.3d 370, 381 (Pa.Super. 2010) (finding forfeiture where defendant refused to cooperate with appointed counsel and failed to cooperate with last appointed counsel when warned that would result in going to trial without counsel); *State v. Leyshon*, 710 S.E.2d 282, 288–89 (N.C.

App. 2011) (finding forfeiture where defendant would not waive right to counsel but also refused assistance by appointed counsel).

Therefore, when properly viewed, the record supports affirmance.

CONCLUSION

For the foregoing reasons, Petitioner, the State of South Carolina, requests that this honorable Court grant certiorari, reverse the decision of the Court of Appeals, and affirm the lower court.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General
S.C. Bar No. 14244

BYRON E. GIPSON
Solicitor, Fifth Judicial Circuit

By: Melody J. Brown

Office of the Attorney General
P.O. Box 11549
Columbia, South Carolina 29211-1549
(803) 734-6305

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