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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Richland County
Honorable Clifton B. Newman, Circuit Court Judge
Honorable DeAndrea G. Benjamin, Circuit Court Judge

THE STATE,

PETITIONER,

V.

MICAH CHRISTIAN SYLVE BROWN,

RESPONDENT

Opinion No. 2026-UP-174 (S.C. Ct. App. filed April 15, 2026)

APPELLATE CASE NO. 2026-002000

RETURN TO PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

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PETITIONER'S STATEMENT OF ISSUE ON CERTIORARI

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?

RESPONDENT'S COUNTERSTATEMENT OF THE ISSUE

Whether the Court of Appeals correctly reversed, as the provision of *Faretta v. California*, 422 U.S. 806 (1975), warnings did not occur until the day of trial and Respondent committed no misconduct thereafter, where morning-of-trial appointment of a lawyer in this murder and attempted murder case would not have accorded him the right to counsel in any substantial sense, and where at no time did Respondent commit egregious misconduct that would forfeit the right, since Respondent was deprived of his Sixth Amendment right to counsel?

STATEMENT OF THE CASE

These charges arose from events that occurred on November 7, 2018. Nineteen-year-old Micah Brown, Respondent, was arrested within two days. App. 91, ll. 2-17; App. 7, ll. 13-15. During the April term of 2019, a Richland County Grand Jury indicted Respondent for two counts of murder and one count of attempted murder. App. 308 – 313. Approximately ten months after his arrest, on September 19, 2019, Respondent Brown appeared before the Honorable Casey Manning for an *ex parte* motion to relieve his counsel, Tracy Pinnock.¹ The court granted the motion to relieve counsel, and Judah VanSyckel was appointed to represent Respondent. App. 305 – 307; App. 4, l. 25 – 5, l. 9. Respondent would later explain he was unhappy with Ms. Pinnock’s representation because he had not received discovery thirty days after a motion to compel was granted. App. 11, ll. 14-23; App. 5, l. 16 – 6, l. 2.

Several years later, on July 11, 2022, Respondent appeared before the Honorable Clifton Newman for an *ex parte* motion to relieve Mr. VanSyckel (counsel). App. 1; App. 3, l. 1 – 5, l. 9. At that point, trial was scheduled for October 31, 2022—over three and a half months away. App. 4, ll. 3-6. Respondent stated he attempted to have this motion heard “a year ago.” App. 22, ll. 19-20. Respondent had complaints about counsel’s representation. Among other things, Respondent was disquieted by counsel’s seeming insistence that he take a fifty-year plea offer: “you’re telling me to take a plea of 50 years.” App. 6, ll. 15-17. Respondent explained he did not ask for a plea offer and stated his position was that he was not guilty. App. 14, ll. 23-25; App. 28, ll. 19-24. Respondent also expressed that counsel was dilatory, noting counsel’s

¹ There is no transcript of the hearing. The court reporter “experienced a catastrophic failure of an external hard drive” and could not produce a transcript of the September 19, 2019, hearing. Upon information and belief, undersigned counsel believes it was a very short hearing wherein Judge Manning granted the motion. The court’s order relieving Ms. Pinnock is located at page 305 of the Appendix. The court reporter’s email regarding the equipment failure is located at pages 306 – 307.

remarks to him that counsel believed it was in Respondent's interest if counsel delayed for a while, instead of trying to move the case forward. "[H]e even told me . . . I know I've been sitting on my, quote, A-S-S but sitting on my A-S-S is helping you. So you ain't doing nothing for me at all." "[M]y case is not a case where you're supposed to sit on your behind." App. 10, ll. 10-15; App. 15, ll. 13-14.

Counsel stated both he and his investigator had met with Respondent and encouraged him to plead guilty. App. 17, l. 18 – 18, l. 12. Counsel told the court: "this is a tough case." Counsel stated Respondent's rejection of a fifty-year plea offer had made his representation "extraordinarily difficult." Counsel claimed Respondent stated he would take an offer of twenty or thirty years for voluntary manslaughter, thus counsel did not want to do anything that "spurs the court to go and put the case on a docket." However, there had never been an offer of voluntary manslaughter and the case was four years old. Counsel did not identify a reason to expect such a favorable plea offer would be made. App. 7, l. 24 – 8, l. 22.

Counsel stated there had been a "breakdown in [the] relationship." App. 9, l. 1. Counsel told the court that the two men were not having productive discussions and that Respondent had called counsel a derogatory term. App. 26, ll. 4-10. Respondent admitted that he and counsel had gotten into a "verbal altercation." App. 10, ll. 22-23.

As the hearing went on, Respondent understood the court to be encouraging him to accept the plea offer or else get life. "THE COURT: he said he worked out a plea for you, so he didn't have to do all the stuff you're saying that he needed to do to be ready for a trial." App. 28, ll. 9-11. The court stated that if the prosecution proved its case,

you're lucky not to get life . . . you have like a 75 percent chance of getting life. So he's working, trying to get you something less than that, you should be thanking him for trying to save you. You can't—

THE DEFENDANT: Fifty years?

THE COURT: Pardon?

THE DEFENDANT: Are you trying to convince me to do 50 years?

THE COURT: I'm just having a conversation because it's solely up to you. Chances are I'll be your judge on October 31st. And we'll be sitting and witness after witness and the jury will say whether guilty or not guilty. And if you're guilty, you get a sentence.

App. 20, l. 15 – 21, l. 1. 8. At another point in the hearing, the following exchange occurred.

THE DEFENDANT: I ain't taking 50 years either. I'm not signing something in blood.

THE COURT: You don't have to take 50 years. You have the right to a jury trial?

THE DEFENDANT: Yeah.

THE COURT: And then if you're found guilty, it won't be what you take, it will be what the judge gives you. If the judge says life, that's it.

App. 18, ll. 13-20. However, the court conceded Respondent could have a jury trial, and if the jury found him not guilty, he would be free to go. App. 15, ll. 1-4.

The court expressed an unwillingness to appoint another lawyer: "I don't appoint lawyer after lawyer after lawyer . . . he can't pick and choose saying I like this lawyer, I don't like that one, I want this one, I don't want that one." App. 9, ll. 4-10. "I don't go past two lawyers." App. 20, ll. 3-4. "I don't just name lawyer after lawyer after lawyer because I'm convinced that no one can satisfy you. That's why you're in the situation you're in because you're difficult to deal with and you're under a lot of pressure. You're under a lot of stress." App. 26, ll. 13-17.

The court also stated that if it relieved counsel, Respondent would likely have to represent himself. THE COURT: "If I let him go, if I let you relieve him, then you won't have a lawyer because I'm not going to appoint another one because if you can't get along with Pinnock and you can't get along with VanSyckel, then you won't be able to get along with another one

either.” THE DEFENDANT: “I probably would, you never know until you try it.” App. 21, l. 23 – 22, l. 4. The court asked Respondent whom he wanted appointed. App. 23, l. 5. Respondent named a public defender but the court noted that attorney was retiring. Respondent named another public defender but an intern in the courtroom said that public defender was planning to move home to Seattle. The court asked, “Who else you want?” and Respondent replied, “Whoever you put me with.” App. 24, l. 12 – 25, l. 19.

The court again stated that if it relieved counsel, then Respondent “might have to handle this one yourself.” App. 30, l. 7. THE COURT: “You have a Constitutional right to represent yourself.” THE DEFENDANT: “I can’t handle it myself. I can’t . . . I ain’t want no plea.” App. 30, ll. 9-13. The court stated it would reconvene the hearing at a later date. App. 31, ll. 12-13.

The hearing reconvened on August 15, 2022. App. 34. Respondent again asked counsel to be relieved. The court stated, “You can represent yourself. You don’t have a right to pick and choose. You’ve been given how many lawyers now?” “You have not convinced me of any legitimate reason why he should be removed other than that’s what you want.” App. 37, l. 14 – 38, l. 1. Respondent again repeated his complaints, in conjunction with which, he stated for the first and only time during the proceedings, that he would rather represent himself than take the plea offer: “he pulled up on me telling me to take 50 years . . . I’m not going for that . . . I ain’t bowing down—you said I can represent myself. I’m going to represent myself . . . I ain’t having nobody fighting for my life—who ain’t fighting for my life.” App. 38, l. 4 – 39, l. 22. The court again stated that if it relieved counsel, Respondent would have to represent himself. App. 40, ll. 18-20. Counsel stated that when he went to meet with Respondent after the last hearing, Respondent did not want to meet with him. App. 42, l. 13 – 43, l. 18. Respondent again asked to have counsel relieved. App. 45, ll. 7-8. The court ruled that counsel was relieved, that

Respondent would represent himself, and that standby counsel would be appointed. Respondent repeated that he did not want to represent himself. App. 45, 11-18.

On October 14, 2022, Respondent reappeared before Judge Newman for a status conference. Respondent was not represented by counsel. Dale Scott represented the State. App. 47. The stated purpose was to “make sure that everybody is on the same page that you will proceed November 7th with Mr. Brown representing himself on these charges.” Respondent stated, “It wasn’t my decision to go pro se . . . *When I come in here doing pro se, I’m not saying not a word. I’m not capable of representing myself*, so y’all have to do what y’all have to do.” App. 49, l. 4 – 50, l. 4 (emphasis added).

The court stated that it would appoint standby counsel. The court further stated, “*Mr. 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. 50, l. 5 – 51, l. 3 (emphasis added). However, at no point had Respondent been advised of the dangers of self-representation.

Respondent was tried before the Honorable DeAndrea Benjamin and a jury, from November 7 – 10, 2022. Respondent appeared *pro se* with Tivis Sutherland as standby counsel. App. 53. After the case was called but prior to a jury being selected, the trial judge stated it was her understanding Respondent wished to represent himself and asked if that was correct. Respondent stated: “Well, Your Honor, no offense, but I was forced to represent myself. But I don’t know his name, so I’m not trippin’, but I’m just going to exercise my right to remain silent. I’m just not going to say anything from this point forward.” App. 61, ll. 4-10. The court and Respondent then engaged in a colloquy about his right to counsel.

The court confirmed that Mr. Sutherland had been appointed as standby counsel, and Mr. Sutherland explained that he had met with Respondent Brown on the Thursday prior to trial and

had gotten the discovery the following day, Friday. Mr. Sutherland stated that he offered to represent Respondent but Respondent declined. The judge told Respondent that he had the right to an attorney and that she was willing to appoint Mr. Sutherland to represent him. App. 61, l. 24 – 62, l. 15.

THE COURT: . . . we haven't started the trial . . . if you wish to have Mr. Sutherland represent you, I can appoint him to represent you. But my understanding is, is that you do not wish for him to represent you; is that correct?

THE DEFENDANT: I mean, I don't know the man, Your Honor. Like I say, no offense, I just—I really ain't got nothing to say to him if I ain't allowed.

THE COURT: All right. So you wish to represent yourself?

THE DEFENDANT: No. I was forced to represent myself. It's just what's going on.

THE COURT: All right. Well, but you have—Judge Newman—you had two previous attorneys, and Mr. Sutherland has agreed to represent you, but you do not wish for him to represent you; is that correct?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right. And, sir. You understand self-representation can be dangerous, and you have the right to have the assistance of a lawyer at all stages of the proceeding? You understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: Sir, you understand that criminal defense is a highly specialized and technical area of law. You understand that?

THE DEFENDANT: Yes, ma'am. *I just feel like, since I don't know him—he ain't been on my case too long or nothing like that, so I just don't—there's no way that can happen like that.*

App. 62, l. 22 – 64, l. 1 (emphasis added).

The court continued its colloquy with Respondent, and explained that Mr. Sutherland was an experienced, trained criminal defense attorney while Respondent was not. Respondent and Mr. Sutherland were permitted to briefly confer off the record. When proceedings resumed,

Respondent stated, “Like I say, Your Honor, I just really don’t have nothing to say, Your Honor. I ain’t going to lie. I just don’t want to talk.” App. 64, l. 2 – 65, l. 9.

THE COURT: So you’re going to represent yourself.

THE DEFENDANT: I’m going to exercise my right to remain silent.

THE COURT: All right. Well, I guess, do you want me to appoint Mr. Sutherland as your attorney?

THE DEFENDANT: I’m going to exercise my right to remain silent, Your Honor. Nobody speaking or nothing like that.

App. 65, ll. 10-16.

The colloquy continued, with the court advising Respondent regarding the dangers and disadvantages of self-representation and the consequences of convictions. Respondent reiterated that he did not wish to represent himself but desired to remain silent. The court again offered to appoint Mr. Sutherland. App. 65, l. 17 – 67, l. 16.

THE COURT: . . . If you don’t wish to represent yourself, I’ll appoint Mr. Sutherland to represent you, and you’re going to still remain silent because he’ll do all the talking. If—but you keep telling me you don’t want Mr. Sutherland to represent you.

THE DEFENDANT: I just don’t—I ain’t really—can’t really say too much, I just want to save my right to remain silent. I’m going to remain silent. I ain’t trying to disrespect you or nothing like that. I just ain’t really got nothing to say.

THE COURT: So, do you want me to appoint Mr. Sutherland or not?

THE DEFENDANT: I ain’t got nothing to say.

App. 66, l. 18 – 67, l. 5.

The court stated, “Mr. Sutherland is there as standby counsel to assist you with procedural. He cannot give you any advice but he can assist you procedurally as to how things work.” App. 68, ll. 8-11. The court ruled, “it appears that the defendant is going to represent himself. I’ve offered to appoint Mr. Sutherland, and it’s my understanding he does not want Mr.

Sutherland appointed, and so, therefore, I do find that he has a constitutional right to proceed without an attorney, and so we will proceed without an attorney.” App. 69, ll. 15-20.

Respondent was convicted as indicted, and he was sentenced to serve concurrent terms of imprisonment of life without the possibility of parole for each count of murder, and thirty years for attempted murder. App. 295, ll. 4-13; App. 302, ll. 16-21; App. 314 – 319. On November 18, 2022, Respondent served his notice of intent to appeal.

On April 15, 2026, the Court of Appeals issued an unpublished opinion in which it reversed Respondent’s convictions and remanded for a new trial. *State v. Brown*, Op. No. 2026-UP-174 (S.C. Ct. App. filed April 15, 2026); App. 376 – 384. The State served a petition for rehearing. App. 385 – 392. Respondent served his return. App. 393 – 400. The Court of Appeals denied the petition for rehearing. App. 401 – 402. The State has served its petition for certiorari to the Court of Appeals.

This return follows.

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, 813 S.E.2d 487, 490 (2018). Appellate courts “review a circuit judge’s findings of historical fact for clear error;” however, they review “the denial of the right of self-representation based upon those findings of fact de novo.” *Id.* In doing so, the appellate court “must consider the defendant’s testimony, history, and the circumstances of his decision, as presented to the circuit judge at the time the defendant made his request.” *Id.*

REASONS WHY CERTIORARI SHOULD BE DENIED

There are no “special and important reasons” to grant the petition for writ of certiorari. Rule 242, SCACR. The Court of Appeals’ unpublished opinion was unanimous. The case presents no novel questions of law. There is no constitutional deprivation which requires correction by this Court since the Court of Appeals correctly concluded Respondent was deprived of his Sixth Amendment right to counsel and remanded for a new trial. The State apparently seeks review of the decision pursuant to Rule 242(b)(3), SCACR (“the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court”), arguing the precedent applied by the Court of Appeals should not have been applied as it was “plainly distinguishable.” Petition for Writ of Certiorari at 12. The Court of Appeals properly applied on-point law from this Court and the United States Supreme Court. This Court should deny the petition for writ of certiorari. Rule 242, SCACR.

ARGUMENT

The Court of Appeals correctly reversed, as the provision of *Faretta v. California*, 422 U.S. 806 (1975), warnings did not occur until the day of trial and Respondent committed no misconduct thereafter, where morning-of-trial appointment of a lawyer in this murder and attempted murder case would not have accorded him the right to counsel in any substantial sense, and where at no time did Respondent commit egregious misconduct that would forfeit the right, since Respondent was deprived of his Sixth Amendment right to counsel.

A. The assistance of counsel is a fundamental right. Courts have recognized three ways in which it may be relinquished.

The Sixth Amendment right to counsel is fundamental and essential to a fair trial. *Gideon v. Wainwright*, 372 U.S. 335, 345 (1963). Courts indulge every reasonable presumption against waiver of fundamental constitutional rights and do not presume acquiescence in the loss of fundamental rights. *Illinois v. Allen*, 397 U.S. 337, 343 (1970). A “waiver of the right to counsel must be knowing, voluntary, and intelligent.” *State v. Boykin*, 324 S.C. 552, 556, 478 S.E.2d 689, 690 (Ct. App. 1996) (citing *Johnson v. Zerbst*, 304 U.S. 458, 465 (1938)). “The defendant must be informed on the record of the dangers and disadvantages of self-representation, or the record must indicate the defendant had sufficient background to understand the disadvantages of self-representation before he waives his right to counsel.” *Id.* (citing *Faretta v. California*, 422 U.S. at 835). See *Prince v. State*, 301 S.C. 422, 423–24, 392 S.E.2d 462, 463 (1990) (same). Waiver is the “intentional relinquishment of a known right.” *State v. Garvin*, 447 S.C. 540, 545, 929 S.E.2d 391, 393 (2026).

The first way in which a defendant may relinquish his right to counsel is by affirmative, verbal request. The second way in which a defendant may relinquish his right to counsel is through conduct. *State v. Boykin*, 324 S.C. at 556, 478 S.E.2d at 690-91. “Once a defendant has

been warned that his misconduct will thereafter be treated as a waiver of his right to counsel, any subsequent misconduct is treated as a ‘waiver by conduct.’” *Id.*, 324 S.C. at 556, 478 S.E.2d at 691. “[T]he defendant’s knowledge and understanding of the dangers of self-representation is a necessary predicate to any waiver of counsel.” *Osbey v. State*, 425 S.C. 615, 621, 825 S.E.2d 48, 51 (2019). “The *Faretta* and *Prince* requirement applies to any waiver, whether the waiver is alleged to be by ‘affirmative, verbal request’ or ‘by conduct.’” *Id.*, 425 S.C. at 620, 825 S.E.2d at 51 (2019). *See United States v. Goldberg*, 67 F.3d 1092, 1101 (3d Cir. 1995) (waiver by conduct requires that a defendant be warned about the consequences of his conduct, including the risks of proceeding pro se).

In the absence of *Faretta* warnings by the trial court, “courts look to the record to determine if the accused had sufficient background to understand the disadvantages of self-representation.” *State v. Cash*, 309 S.C. 40, 42, 419 S.E.2d 811, 813 (Ct. App. 1992).²

Factors the courts have considered in determining if an accused had sufficient background to understand the disadvantages of self-representation 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., 309 S.C. at 43, 419 S.E.2d at 813.

² In *Cash*, 309 S.C. at 42 n. 1, 419 S.E.2d at 812 n. 1, the defendant affirmatively requested to represent himself.

Some courts have recognized there is a third way to relinquish the right to counsel—through forfeiture. “Forfeiture is an extreme sanction in response to extreme conduct that imperils the integrity or safety of court proceedings.” *Commonwealth v. Means*, 907 N.E.2d 646, 658 (Mass. 2009). Forfeiture occurs “irrespective of [the defendant’s] knowledge of either the consequences of his actions or the dangers of self-representation.” *State v. Thompson*, 355 S.C. 255, 267, 584 S.E.2d 131, 137 (Ct. App. 2003). See *State v. Boykin*, 324 S.C. at 558, 478 S.E.2d at 692 (“we need not decide whether South Carolina should embrace the doctrine of forfeiture”); *Osbey v. State*, 425 S.C. at 621, 825 S.E.2d at 51 (“Perhaps the result of *Roberson* can be justified on the basis of forfeiture.”); *United States v. Ductan*, 800 F.3d 642, 651 (4th Cir. 2015) (“even those circuits holding that a defendant may forfeit his right to counsel have done so only in truly egregious circumstances”).

B. The Court of Appeals correctly found Respondent did not relinquish the right to counsel.

i. Respondent did not affirmatively request to represent himself and he committed no misconduct after receiving *Faretta* warnings.

As the Court of Appeals noted, “Brown repeatedly told the court that he did not want to represent himself.” *State v. Brown*, Op. No. 2026-UP-174 at 3; App. 378. He did not affirmatively request to represent himself. The only time Respondent stated he would proceed *pro se* was when he stated he would rather represent himself than plead guilty. App. 38, ll. 4-18.

The Court of Appeals properly recognized that “Brown was not advised of the dangers of self-representation until the morning of trial and thus could not have waived his right to counsel by his conduct before trial.” *State v. Brown*, Op. No. 2026-UP-174 at 7; App. 382. Respondent did not waive his right to counsel through conduct, as that requires a defendant be aware of the dangers of self-representation, be warned that misconduct thereafter will be treated as a waiver

of the right to counsel, and subsequently commit misconduct. *See Osbey v. State*, 425 S.C. at 620-21, 825 S.E.2d at 51 (defendant's knowledge and understanding of the dangers of self-representation is a necessary predicate to a waiver of counsel by conduct); *State v. Boykin*, 324 S.C. at 556, 478 S.E.2d at 691 ("Once a defendant has been warned that his misconduct will thereafter be treated as a waiver of his right to counsel, any subsequent misconduct is treated as a 'waiver by conduct.'"); *United States v. Meeks*, 987 F.2d 575, 579 (9th Cir. 1993) (defendant did not waive his right to counsel by conduct where the court did not warn the defendant of the dangers of proceeding *pro se*). Respondent did not receive *Faretta* warnings until the morning of his trial, and he committed no misconduct at trial.

The State argues that since Respondent was warned that conduct could lead to self-representation by the motions judge, he should be found to have waived his right to counsel through conduct, citing *United States v. Fazzini*, 871 F.2d 635 (7th Cir. 1989) and *State v. Hall*, 590 P.3d 1008 (Or. Ct. App. 2026). Petition for Writ of Certiorari at 13 – 14. The defendant in *Fazzini* went through four attorneys in just seven months and "refused to cooperate with numerous appointed counsel." *United States v. Fazzini*, 871 F.2d at 641-42. *Faretta* warnings were apparently given in *Fazzini*, as no issue was raised regarding warnings and the appellate court cited *Faretta* in support of its decision. *Id.*, 871 F.2d at 642. In this case, Respondent relieved two attorneys over the course of four years, and he was not provided with *Faretta* warnings until the day of trial. In *State v. Hall*, 590 P.3d at 1013, the defendant apparently belonged to the sovereign citizen movement: "I'm a private natural person, I have natural unalienable rights;" "these rules don't apply to me." The trial court found Hall engaged in "repeated" "misconduct" with two attorneys. *Id.*, 590 P.3d at 1016-17. In addition to warnings the defendant would have to proceed without counsel if she continued to insist her attorney

withdraw, the trial court gave her incredibly thorough *Faretta* warnings. *Id.*, 590 P.3d at 1013-14. In finding the record supported the trial court's decision Hall waived her right to counsel by misconduct, the appellate court noted "what is not at issue on appeal. First, defendant . . . does not argue that the court was required to appoint her substitute counsel because she had a 'legitimate complaint' about [counsel]." *Id.*, 590 P.3d at 1015. "Second, defendant does not dispute that she had knowledge and understanding of the right to counsel and was aware of the risks of self-representation." *Id.* In this case, unlike *Hall*, Respondent did make legitimate complaints about counsel and he was not aware of the risks of self-representation.

The State argues the Court of Appeals incorrectly applied the *State v. Cash* 309 S.C. at 43, 419 S.E.2d at 813, factors. Petition for Writ of Certiorari at 14, n. 1. The Court of Appeals correctly determined those factors did not demonstrate Respondent had an independently sufficient background to understand the dangers of self-representation. *State v. Brown*, Op. No. 2026-UP-174 at 7; App. 382. As to age, education, and criminal trial history, Respondent was nineteen years old when arrested and twenty-three when tried. App. 66, l. 11-12; App. 7, ll. 13-15. He had no adult criminal record. App. 259, l. 19. Nothing indicated Respondent was educated or had a work history. By his speech, he appeared uneducated. As to the nature of the charge and possible penalties, the motions court advised Respondent that murder carried a potential life sentence. The record did not establish an attorney had indicated to Respondent the difficulty of self-representation in the particular case. This was not an attempt to delay. The hearing on the motion to relieve counsel (July 11, 2022) took place several months before the scheduled trial date (October 31, 2022). Had substitute counsel been appointed when counsel was relieved on August 15, 2022, he or she would have had two and a half months to prepare for trial. Respondent stated he wanted the motion heard a year before. App. 22, ll. 19-20.

Nor was this an attempt to manipulate the proceedings. Respondent complained that counsel seemingly insisted he plead guilty to murder when he did not wish to plead guilty to murder. App. 6, ll. 15-17; App. 14, ll. 23-25; App. 28, ll. 19-24. Counsel admitted both he and his investigator tried their best to convince Respondent to plead guilty. *See* App. 17, l. 18 – 18, l. 12. It was undisputed Respondent rejected the fifty-year plea offer that was extended. Respondent also complained that counsel was dilatory. App. 10, ll. 10-15; App. 15, ll. 13-14. The case was four years old. Counsel admitted he did not want to “spur[] the court to go and put the case on a docket” because he was hoping for a plea offer of voluntary manslaughter, but he identified no reason to expect such a favorable plea offer. App. 7, l. 24 – 8, l. 22. As to whether Respondent knew he would be required to comply with the rules of procedure at trial and knew of legal challenges he could raise, there was no indication Respondent had a background which would have independently informed him of the dangers of self-representation. Respondent’s repeated statements to the trial judge that he wanted to remain silent indicate that he wanted to protect his constitutional rights but did not know how to do so. App. 61, l. 4 – 67, l. 5.

The exchange with the motions court was not *pro forma*. As to whether the denial resulted from coercion or mistreatment, it was improper for the motions court to opine to Respondent that he should thank counsel for the fifty-year plea offer; state there was a seventy-five percent chance Respondent would get life at trial; and rule that Respondent would have to represent himself if he relieved counsel. App. 20, l. 15 – 21, l. 1. 8; App. 18, ll. 13-20. *E.g.*, *State v. Jenkins*, 436 S.C. 362, 375, 872 S.E.2d 620, 627 (2022) (“while discussing with a defendant a choice the defendant must make about a constitutional right, the trial court may not make an inaccurate statement of law nor inject its personal opinion into the defendant’s analysis”). Moreover, “I don’t go past two lawyers,” appears arbitrary. App. 20, ll. 3-4. The

Cash factors did not demonstrate Respondent had a sufficient background to understand the dangers of proceeding *pro se*. *State v. Cash*, 309 S.C. at 43, 419 S.E.2d at 813.

The Court of Appeals correctly recognized that Respondent's "Sixth Amendment right to counsel was violated when he was not warned of the dangers of self-representation until the morning of trial." *State v. Brown*, Op. No. 2026-UP-174 at 8; App. 383. "At that point, Brown was faced with the option of either representing himself or proceeding to trial with an unprepared attorney and losing the right to appeal the prior judge's denial of his request for counsel." *Id.*

- ii. **Respondent did not waive the right by declining a morning-of-trial appointment, particularly where he did so in an attempt to protect his rights, as the late appointment would not have afforded him the right in any substantial sense.**

The State argues Respondent waived his right to counsel by declining a morning-of-trial appointment. Petition for Writ of Certiorari at 15 – 16. The Court of Appeals correctly determined the morning-of-trial appointment of counsel was not a substantial offer of counsel. "The possibility that any lawyer could provide effective assistance for Brown at this late juncture was so low as to make the offer of counsel meaningless." *State v. Brown*, Op. No. 2026-UP-174 at 8; App. 383. In *Powell v. Alabama*, 287 U.S. 45, 58 (1932), the United States Supreme Court held the right to counsel "is not discharged by an assignment [of counsel] at such a time or under such circumstances as to preclude the giving of effective aid in the preparation and trial of the case." There, the judge appointed "all members of the bar" for arraignment and an out-of-state lawyer the day of trial. *Id.*, 287 U.S. at 55. The Supreme Court decried the "casual fashion the matter of counsel in a capital case was disposed of." It explained the defendants were improperly "put in peril of their lives within a few moments after counsel for the first time charged with any degree of responsibility began to represent them," and held the defendants were "were not accorded the right of counsel in any substantial sense." *Id.*, 287 U.S. at 56, 58.

See United States v. Cronin, 466 U.S. 648, 659-60 (1984) (The adversary process is presumptively unreliable when “although counsel is available to assist the accused during trial, the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that a presumption of prejudice is appropriate without inquiry into the actual conduct of the trial.”). *See also State v. Reed*, 332 S.C. 35, 44, 503 S.E.2d 747, 751 (1998) (court did not err by denying defendant’s request to have standby counsel represent him on eve of sentencing phase, as court was faced with allowing standby counsel to step in and cross-examine witnesses on less than twenty-four hours preparation).

In this case, the trial judge’s offer to appoint counsel on the morning of trial was not a substantial offer of assistance of counsel. Respondent’s rejection of this offer, in an attempt to protect his rights, did not waive his fundamental right to counsel. Waiver is a voluntary, knowing, and intelligent relinquishment of a right. *Johnson v. Zerbst*, 304 U.S. at 465. A fair reading of this record shows that Respondent was legitimately concerned standby counsel, who would be appointed that day, had not had enough time to prepare for a double murder and attempted murder trial. The chance that any attorney could provide effective representation under these circumstances was so remote that this was not a fair offer. Morning-of-trial appointment of counsel would have still left Respondent with an inherently unfair trial; he would not have been “accorded the right of counsel in any substantial sense.” *Powell v. Alabama*, 287 U.S. at 58; *United States v. Cronin*, 466 U.S. at 459.

- iii. Respondent committed no egregious misconduct; he did not forfeit the right to counsel.**

Were the doctrine of forfeiture to be applied, Respondent did not forfeit his right to counsel.³ The Court of Appeals correctly concluded “Brown’s conduct in this case fell short of the egregious conduct necessary to establish forfeiture of the right to counsel.” *State v. Brown*, Op. No. 2026-UP-174 at 6; App. 381. “Forfeiture is an extreme sanction in response to extreme conduct that imperils the integrity or safety of court proceedings.” *Commonwealth v. Means*, 907 N.E.2d at 658. *See United States v. McLeod*, 53 F.3d 322, 325-26 (11th Cir. 1995) (in trial for retaliating against a witness, defendant’s conduct forfeited his right to counsel where he was threatened to kill counsel, threatened to sue counsel, and asked counsel to engage in unethical conduct); *Gilchrist v. O’Keefe*, 260 F.3d 87, 89-90 (2d Cir. 2001) (concluding state court’s forfeiture finding was not contrary to, or an unreasonable application of, clearly established federal law where defendant severely attacked his attorney, punching him in the head and rupturing the attorney’s eardrum); *United States v. Leggett*, 162 F.3d 237, 251 (3d Cir. 1998) (affirming finding of forfeiture of right to counsel at sentencing where post-verdict defendant punched, choked, spit on, and scratched his attorney). *Compare State v. Boykin*, 324 S.C. at 554, 558, 478 S.E.2d at 690, 692 (finding defendant who was hostile, cursing, and “started coming after” his attorney did not permanently forfeit his right to counsel). Respondent did not threaten or attack his counsel in this case. There was no forfeiture. *State v. Boykin*, 324 S.C. at 554, 558, 478 S.E.2d at 690, 692.

The State cites *Commonwealth v. Kelly*, 5 A.3d 370 (Pa. Super. 2010) and *State v. Leyshon*, 710 S.E.2d 282 (N.C. App. 2011), in support of its position Respondent forfeited the right to counsel. Petition for Writ of Certiorari at 16 – 17. The appellate court in *Commonwealth v. Kelly*, 5 A.3d at 383, found the defendant’s guilty plea was knowingly,

³ *See State v. Boykin*, 324 S.C. at 558, 478 S.E.2d at 692 (“we need not decide whether South Carolina should embrace the doctrine of forfeiture”).

voluntarily, and intelligently tendered despite the withdrawal, pursuant to Kelly's request, of three appointed attorneys. Kelly had filed a number of *pro se* motions about the evidence and the proceedings and his trial had already been continued because he did not cooperate with his second attorney. Kelly did not try to cooperate with his third attorney. *Id.*, 5 A.3d at 381-82. Respondent's case was not a guilty plea, Respondent did not refuse to cooperate with three attorneys, and he did not file *pro se* motions. In *State v. Leyshon*, 710 S.E.2d at 285, the trial court held three hearings to try to determine if Leyshon waived or asserted his right to counsel. Leyshon apparently attempted sovereign citizen-type tactics with the trial court: during colloquies with the court about whether he wanted counsel, Leyshon responded by challenging the court's "jurisdiction" repeatedly and made declarations about being a "ward of the Court." *Id.*, 710 S.E.2d at 287-88. When the court stated it was appointing an attorney and named the attorney, Leyshon immediately stated, "I'll refuse counsel from him. I refuse counsel." *Id.*, 710 S.E.2d at 287. The appellate court concluded Leyshon forfeited the right to counsel as he "willfully obstructed and delayed the trial court proceedings by continually refusing to state whether he wanted an attorney or would represent himself when directly asked by the trial court at four different hearings." *Id.*, 710 S.E.2d at 289. In this case, Respondent did not delay the proceedings, refuse counsel he had never met, or respond to inquiries from the court about counsel with nonsensical challenges to the court's jurisdiction.

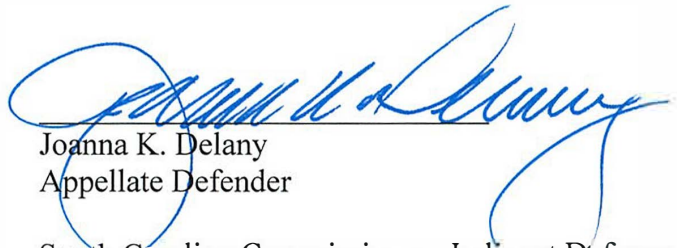
C. The wholesale deprivation of the fundamental right to counsel required reversal.

The Court of Appeals correctly recognized that denying Respondent the fundamental right to counsel in his trial for murder and attempted murder was per se reversible error. *State v. Brown*, Op. No. 2026-UP-174 at 7; App. 382. A constitutional deprivation defies analysis by harmless-error standards when it is a "structural defect affecting the framework within which the

trial proceeds, rather than simply an error in the trial process itself.” *Arizona v. Fulminante*, 499 U.S. 279, 309-10 (1991). The “total deprivation of the right to counsel at trial” is a structural defect. *Id.*, 499 U.S. at 309 (citing *Gideon v. Wainwright*, 372 U.S. at 345). See *State v. Boykin*, 324 S.C. at 555, 478 S.E.2d at 690 (erroneous deprivation of a defendant’s fundamental right to the assistance of counsel is *per se* reversible error) (citing *Chapman v. California*, 386 U.S. at 23 n. 8). This infraction of the right to counsel “can never be treated as harmless error.” *Chapman*, 386 U.S. at 23. The denial of counsel required reversal. *Gideon v. Wainwright*, 372 U.S. at 345; *Chapman v. California*, 386 U.S. at 23 n. 8; *State v. Boykin*, 324 S.C. at 555, 478 S.E.2d at 690.

CONCLUSION

Based on the foregoing argument, Respondent respectfully requests this Court deny the petition for writ of certiorari.



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This 26th day of October, 2026.