



ALAN WILSON
ATTORNEY GENERAL

July 14, 2014

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SC Court of Appeals

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

Re: The State v. Don Survi-Chisolm
Appeal from Dorchester County
Appellate Case No. 2011-200186

Dear Ms. Kitchings:

Pursuant to the Court's Order of April 17, 2014, Appellate Defense has provided copies of the transcripts from July 14 and July 22, 2011. We have, also as provided by the Order, requested the mistrial transcript from August 22, 2011. The mistrial transcript has not yet been received. I write to inquire if the Court is holding the time limits in abeyance pending receipt of this third transcript. If not, we would respectfully request the time limits for the appeal continue to be held in abeyance pending receipt of the mistrial transcript as that transcript may well provide necessary evidence for the Court to consider in regard to the sufficiency of the waiver in the self-representation issue. See *Wroten v. State*, 301 S.C. 293, 294, 391 S.E.2d 575, 576 (1990) ("While a specific inquiry by the trial [court] expressly addressing the disadvantages of a pro se defense is preferred, the ultimate test is not the ... advice but rather the defendant's understanding."); *State v. Thompson*, 355 S.C. 255, 262, 584 S.E.2d 131, 135 (Ct. App. 2003) ("If the trial [court] fails to address the disadvantages of appearing pro se, as required by the second prong of *Faretta*, [the reviewing court] will look to the record to determine whether petitioner had sufficient background or was apprised of his rights by some other source." (internal quotation marks omitted)); *State v. Cash*, 309 S.C. 40, 43, 419 S.E.2d 811, 813 (Ct. App. 1992) ("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

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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.").

Thank you for your assistance in this matter.

Sincerely,



Melody J. Brown
Senior Assistant Attorney General

MJB/mv
Enclosures

cc: Robert M. Dudek, Chief Appellate Defender
Lara M. Caudy, Appellate Defender

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