

STATE OF SOUTH CAROLINA

IN THE SOUTH CAROLINA

COUNTY OF BERKELEY

COURT OF APPEALS

MICHAEL E. HAMM

C/O No 2010-CP-08-4436 /

v.

APPELLATE CASE No. 2014-001913

THE STATE OF SOUTH CAROLINA

MEMORANDA

THIS MATTER COMES BEFORE THE COURT CONCERNING HIS APPEAL FILED IN THIS HONORABLE COURT.

THERE IS "AN ERROR" BEING APPLIED HERE IN THAT THE "ORDER RELIEVING COUNSEL" WAS NOT IN AN ANNUAL REVIEW HEARING. [SEE EXHIBIT ONE]

THE ORDER RELIEVING COUNSEL WAS A SEPARATE HEARING FILED IN THE COURT OF COMMON PLEAS AS AN "MOTION TO PROSE WITH SECOND SEAT COUNSEL" FILED FEBRUARY 4, 2014. THE HEARING WAS HELD ON MARCH 18, 2014 IN FRONT OF THE HONORABLE DEBRA L. JEFFERSON IN THE COURT OF COMMON PLEAS - IN BERKELEY COUNTY. [SEE EXHIBIT 2]

IT IS THAT THIS MEMORANDA SHOWS THAT THIS "WAS NOT" AN ANNUAL REVIEW HEARING - THE PROCEEDING APPEAL SHOULD CONTINUE AS "A CERTIFIED QUESTION OF LAW" IN AN "AS-APPLIED ANALYSIS."

RECEIVED

OCT 27 2014

SC Court of Appeals

IT IS SORTED

OCTOBER 23, 2014

COLUMBIA, SOUTH CAROLINA

RESPECTFULLY SUBMITTED



MICHAEL E. HADDITT

7901 FARROW ROAD

BLDG # 3 / 3RD FLOOR

COLUMBIA, SOUTH CAROLINA

29203-3220

EXHIBIT I

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BERKELEY )  
 )  
In the Matter of the Care and Treatment )  
of: )  
 )  
MICHAEL HAMM, )  
 )  
 )  
Respondent )

IN THE COURT OF COMMON PLEAS

CASE NO.: 2010-CP-08-4436 **RECEIVED**

OCT 27 2014

**SC Court of Appeals**  
ORDER RELIEVING COUNSEL

Presiding Judge:  
Attorney for the State:  
Respondent's Attorney:  
Date of Hearing:  
Court Reporter:

Hon. Deadra L. Jefferson  
James Bogle, Esq.  
Charles T. Brooks, Esq.  
March 18, 2014  
Karen V. Andersen

2014 MAY -9 PM 1:38  
MURRAY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, SC  
BW  
LEED

This matter came before the Court during the March 18, 2014 common pleas non-jury term for a hearing on Respondent's Motion to Proceed *Pro Se* with Second Seat Counsel, filed February 4, 2014. Department of Mental Health transported Respondent for the hearing on March 18, 2014. Respondent's Attorney and Attorney for the State participated in the hearing via telephone conference without objection.

The South Carolina Constitution provides no right to hybrid representation. State v. Stuckey, 333 S.C. 56, 57-58, 508 S.E.2d 564 (1998). See Faretta v. California, 422 U.S. 806, 95 S. Ct. 2525 (1975) (citing McKaskle v. Wiggins, 465 U.S. 168, 183, 104 S. Ct. 944, 953 (1984)); Jones v. State, 348 S.C. 13, 13, 558 S.E.2d 517, 517 (2002). "A trial judge is not required to permit hybrid representation, i.e. representation partially *pro se* and partially by counsel." State v. Reed, 332 S.C. 35, 43, 503 S.E.2d 747, 751 (1998). See Richardson v. State, 377 S.C. 103, 659 S.E.2d 493 (2008) (While an applicant seeking postconviction relief, related civil action, may have the right to reject or discharge court-appointed counsel and proceed *pro se* or retain his own counsel, he does not have the right, without a showing of satisfactory cause, to refuse or

10/3  
2/19

dismiss the counsel appointed and have other counsel appointed). Therefore, Respondent's Motion to Proceed Pro Se with Second Seat Counsel is hereby denied.

At the hearing, Respondent argued he was denied an annual review as required under S.C. CODE ANN. § 44-48-110 (2013) and, therefore, alleged ineffective assistance of counsel. Respondent was voluntarily committed on September 8, 2011. While committed, he received his first hearing. Thereafter, Respondent's prior counsel filed a motion to compel the South Carolina Department of Mental Health to perform Respondent's annual review on July 13, 2013. Subsequently, Respondent's doctor evaluated Respondent on September 17, 2013. On January 16, 2014, Respondent advised his attorney that he wished to waive his annual review. Based on the South Carolina Department of Mental Health's pro rated scheduling system, Respondent's annual review is currently scheduled for July, 2014. After a hearing on the matter, Respondent informed the Court that he wished to proceed *pro se*.

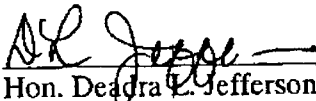
"It is well-established that a defendant may waive the right to counsel and proceed *pro se*." Dearybury v. State, 367 S.C. 34, 39, 625 S.E.2d 212, 215 (2006) (citing Faretta, 422 U.S. at 834, 95 S.Ct. at 2525). "Although a defendant's decision to proceed *pro se* may be to the defendant's own detriment, it "must be honored out of that respect for the individual which is the lifeblood of the law." Id. (citing Faretta, 422 U.S. at 834, 95 S.Ct. 2525). "The trial judge has the responsibility to ensure that the accused is informed of the dangers and disadvantages of self-representation, and makes a knowing and intelligent waiver of the right to counsel." Id.

The Court advised Respondent against self-representation, but Respondent insisted. The Court inquired further and the Respondent indicated that he knew how to represent himself and voluntarily waived his right to appointed counsel and all future appointed counsel. Thus, this Court finds that Respondent knowingly, intelligently, and voluntarily waived his right to counsel.

243  
2  
RLO

**THEREFORE, IT IS ORDERED:**

That Charles T. Brooks, III be relieved of any further services for the Respondent and that the Respondent will proceed with this matter *pro se*. Further, the Respondent understands that he will not be appointed another counselor and that if he wishes to obtain counsel, he must retain a private attorney. It is so ordered.

  
\_\_\_\_\_  
Hon. Deadra L. Jefferson  
Presiding Judge, Ninth Judicial Circuit

May 2, 2014  
Charleston, South Carolina  
At Chambers


343  
3  


EXHIBIT 2

STATE OF SOUTH CAROLINA ]  
COUNTY OF BERKELEY ]  
STATE OF SOUTH CAROLINA ]  
DEPARTMENT OF MENTAL HEALTH VIA ]  
S.V.P.T.P.; ]  
PLAINTIFF ]  
and PARTY PLAINTIFF'S ]  
V. ]  
MICHAEL E. HAMM ]  
RESPONDENT ]

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

MOTION TO PROCEED 'PRO-SE'  
WITH SECOND SEAT COUNSEL

C/A NO. 2010- CP- 08- 4436

The Respondent above-named, hereby Motions this Honorable Court to grant the above referenced case.

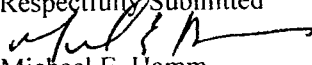
The respondent above-named is seeking to proceed Pro-Se with the appointment of Second Seat Counsel under *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed. 2d 562. Also seeking appoint of Second Seat Counsel under *McKaskle v. Wiggins*, 465 U.S. 168, 104 S.Ct. 944, 79 L.Ed. 2D 122 (1984); Such Precedent Controls and the Courts are bound to follow it. *Hynes v. Tomei*, 92 n.y, 2d 613, 629, 684 N.Y S. 2d 177, 706 N.E. 2d 1201 (1998) ( **State Courts are Bound under the Federal Constitution to follow Controlling Supreme Court Precedent** ), cert. denied, 527 U.S. 1015, 119 S.Ct. 2359, 14 l. L.Ed 2<sup>nd</sup> 254 (1999); *People v. Cortes*, 80 N.Y.S. 2d 201,211, 590 N.Y.S. 2d 9, 604 N.E. 2d 71 (1992) ( Trial court bound to follow Existing Precedent).

PRAYER

The Respondent prays that this court will decide, and declare, whether the respondent is to be granted the above referenced case.

Cc:// Clerk of Court, Berkeley County  
Post Office Box 219  
Moncks Corner, S.C. 29461-0219;  
File.

**FILED**  
2014 FEB 19 PM 12:55  
MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, S.C.

Respectfully Submitted  
  
Michael E. Hamm  
7901 Farrow Road,  
Bldg #3/ 3<sup>rd</sup> floor  
Columbia S.C. 29203

Hamm

Sent to:

**Name :** Holly Scaturo, Rn. Msn., **Position:** Director , S.V.P.T.P.

**Address:** 7901 Farrow Road, Bldg #3/ 3<sup>rd</sup> floor Columbia S.C. 29203

**Additional :** John MaGill **Position:** Director , Dept. Of Mental Health

**Address:** 2414 Bull Street, Columbia S.C.29203

**Additional :** James B. Bogel, Jr., **Position:** Assistant Attorney General

**Address:** Post Office Box 11549 , Columbia, S.C. 29211-1549

THE SOUTH CAROLINA COURT  
OF APPEALS

IN THE MATTER OF THE CARE AND TREATMENT OF  
MICHAEL E. HAMM,

RECEIVED

OCT 27 2014

vs.  
THE STATE OF SOUTH CAROLINA

SC Court of Appeals

CA No: 2014-001913

AFFIDAVIT OF SERVICE

I MICHAEL E. HAMM, DO SWEAR AND DECLARE THAT ON THIS DATE OF OCTOBER 23, 2014, I HAVE SERVED THE ENCLOSED ON EACH PARTY TO THE ABOVE PROCEEDING OR THAT PARTY'S COUNSEL AND ON EVERY OTHER PERSON REQUIRED TO BE SERVED, BY DEPOSITING AN ENVELOPE CONTAINING THE ABOVE DOCUMENT(S) IN THE UNITED STATES MAIL PROPERLY ADDRESSED TO EACH OF THEM AND WITH FIRST-CLASS POSTAGE PREPAID, OR BY DELIVERY TO A THIRD PARTY COMMERCIAL CARRIER FOR DELIVERY WITHIN THREE (3) CALENDAR DAYS.

THE NAMES OF THOSE SERVED ARE AS FOLLOWS:

CLERK OF COURT, JESSIE ABBOT WICKHINS, P.O. BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211

OFFICE OF THE ATTORNEY GENERAL 46 ALAN MCCRORY WILSON,  
JAMES B. ROGER, JR., P.O. BOX 11549 COLUMBIA, SC. 29211-1549

RESPECTFULLY



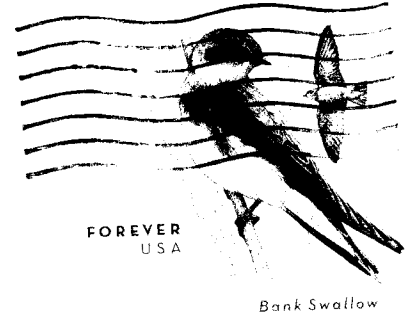
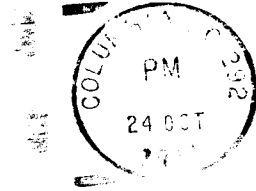
MICHAEL E. HAITTI  
7901 FARROW ROAD  
BLOOMSBURY 3RD FLOOR  
COLUMBIA SC 29203

**RECEIVED**

OCT 27 2014

**SC Court of Appeals**

SOUTH CAROLINA COURT OF APPEALS  
JENNY ABBOT KITCHINGS, CLERK OF COURT  
POST OFFICE BOX 11629  
COLUMBIA SOUTH CAROLINA  
29211



2921131629

