STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Raymond E. Chestnut,

Applicant,

v.

State of South Carolina,

Respondent.

Case No. 2013-CP-26-1814

ORDER DENYING APPLICANT'S MOTION TO RELIEVE COUNSEL

This matter came before the Court on December 15, 2014, on Applicant's motion to relieve his appointed counsel, Tristan M. Shaffer, Esquire. Applicant appeared via his appointed guardian *ad litem*, Cooper C. Lynn, Esquire. See Rule 17(c), SCRCP. Applicant argues that under the Sixth Amendment and Faretta v. California, 422 U.S. 806 (1975), he has a right to proceed *pro se* in this post-conviction relief action. However, the right to self-representation inherent in the Sixth Amendment only applies in criminal prosecutions. See U.S. Const. amend. VI ("In all *criminal* prosecutions, the accused shall enjoy the right [...] to have the Assistance of Counsel for his defence." (emphasis added). The South Carolina Supreme Court has declined to extend the right of self-representation to a direct appeal of a criminal conviction. State v. Roberts, 364 S.C. 583, 588, 614 S.E.2d 626, 629 (2005). In so deciding, the Supreme Court noted the rationale underlying Faretta does not extend to an appeal of a conviction. Id. at 586, 614 S.E.2d at 627 (citing Martinez v. Ct. of App. of Cal., 528 U.S. 152 (2000)). Similarly, this Court finds the rationale in Faretta does not apply to a collateral attack on a conviction. In In re A.H.L., III, 214 S.W.3d 45 (Tex. App. 2006), the Texas Court of Appeals determined an indigent

parent did not have the right to self-representation in a termination of parental rights proceeding. The Texas court stated

> As the Supreme Court noted in Martinez, the historical evidence relied upon by Faretta as identifying a right of self-representation is not always useful because it pertained to times when lawyers were scarce, often mistrusted, and not readily available to the average person accused of crime. For one who could not obtain a lawyer, self-representation was the only feasible alternative to asserting no defense at all. Because an indigent parent in a termination proceeding has a statutory right to counsel and is not faced with the choice of self-representation or no defense at all, the historical evidence does not support finding a right of self-representation. Regarding the second factor, the Sixth Amendment does not apply in parental rights termination proceedings so its structure cannot provide a basis for finding a constitutional right of self-representation here. Finally, given the inapplicability of the Sixth Amendment, any right to self-representation based on principles of individual autonomy must be grounded in the Due Process Clause. In analyzing this issue in Martinez, the Supreme Court was not persuaded that the risk of either disloyalty or suspicion of disloyalty is a sufficient concern to conclude that a constitutional right of self-representation is a necessary component of a fair appellate proceeding. We likewise find that a right of self-representation is not a necessary component of a fair parental rights termination proceeding. And inasmuch as Section 107.013 effectively implements a due process right, a right to self-representation cannot be statutorily implied.

A.H.L., 214 S.W.3d at 52 (citations omitted). This same rationale applies in post-conviction relief cases in South Carolina. Post-conviction relief applicants are statutorily entitled to representation, Rule 71.1(d), SCACR, so they are not faced with the prospect of having no alternative method of presenting their case. Furthermore, an inherent right to self-representation is not necessary to ensure fair collateral proceedings. Finally, the Court finds it appropriate to exercise its "inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible[,]" Ex parte Dibble, 279 S.C. 592, 595, 310 S.E.2d 440, 442 (Ct. App. 1983) (citation omitted), and deny Applicant's motion to relieve Mr. Shaffer based on Applicant's continued refusal to abide by the Court's directives regarding *ex parte* communication and hybrid representation. See Bd. of Cnty. Comm'rs of Morgan Cnty. v.

Winslow, 862 P.2d 921, 924 (Colo. 1993) (noting that "a litigant's right of access to the courts must be balanced against and, in a proper case, must yield to the interests of other litigants and of the public in general in protecting judicial resources" (citations omitted)).

IT IS THEREFORE ORDERED that Applicant's motion to relieve Mr. Shaffer and proceed *pro se* is hereby **DENIED.**

AND IT IS SO ORDERED this 22 **day of** Dec **2014.**

THE HONORABLE LARRY B. HYMAN JR.
Chief Judge for Administrative Purposes
Fifteenth Judicial Circuit

Conway, South Carolina