

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

LAMONT ANTONIO SAMUEL,

APPELLANT

APPELLATE CASE NO. 2013-001342

Appeal from Orangeburg County

Diane Schafer Goodstein, Circuit Court Judge

Opinion No. 5346  
Filed August 26, 2015

PETITION FOR REHEARING

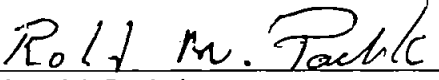
Pursuant to Rule 221, SCACR appellant petitions this Court for rehearing in the following points that may have been overlooked or misapprehended. The trial judge in this case did everything she could think of to keep appellant from representing himself which the Sixth Amendment to the United States Constitution allows him to do. In State v. Barnes, 407 S.C. 27, 753 S.E.2d 545 (2014) the Court held that the trial court was required to apply the Faretta standard for waiver of the right to counsel. "So long as the defendant makes his request prior to trial, the only proper inquiry is that mandated by Faretta... Under Faretta, the trial judge has the

responsibility to make sure that the defendant is informed of the dangers and disadvantages of self-representation, and that he makes a knowing and intelligent waiver of his right to counsel.” 407 S.C. at 35-36, 753 S.E.2d at 550. Like the defendant in State v. Fuller, 337 S.C. 236, 523 S.E.2d 168 (1999), appellant was dissatisfied with his attorney and he was not trying to delay the trial or hinder the administration of justice. Appellant was not deliberately engaging in “serious and obstructionist misconduct” as this Court’s opinion suggests by quoting Faretta, 422 U.S. at 834 n. 46. Unlike United States v. West, 877 F.2d 281, 287 (4<sup>th</sup> Cir. 1989), which this Court cites, appellant did not attack the trial court’s “integrity and dignity.” This court suggests that a criminal defendant is bound by the same ethical standards as an attorney, but in the second State v. Barnes, 413 S.C.1, 774 S.E.2d 454 (2015) the South Carolina Supreme Court suggested otherwise. 774 S.E.2d at 455 n. 1. Just recently the Fourth Circuit held in United States v. Phillip Ductan, No. 14-4220 (4<sup>th</sup> Cir. September 2, 2015) that it is error for a “magistrate to find that Ductan forfeited his right to counsel by his frivolous argument and answers to questions.” Likewise, counsel should not be foisted on a defendant for the same reason if he wishes to represent himself.

The trial court in this case was playing “gotcha” jurisprudence to deny appellant the right to represent himself. It took the extraordinary step of having another lawyer come to court to try to contradict appellant. But the court did not ask appellant’s mother’s side of what she conveyed to her son about this attorney. The trial court was obligated to apply the Faretta standard for the waiver of appellant’s right to counsel. It did not.

Rehearing should be granted.

Respectfully submitted,

  
Robert M. Pachak  
Appellate Defender

This 10th day of September, 2015.

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CERTIFICATE OF SERVICE


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The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon William Edgar Salter, III, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Mr. Lamont Antonio Samuel, #355793, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 10th day of September, 2015.

  
Robert M. Pachak  
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 10th day  
of September, 2015.

 (L.S.)  
Notary Public for South Carolina  
My Commission Expires: July 3, 2023.