

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Orangeburg County

Diane Schafer Goodstein, Circuit Court Judge

Opinion No. 5346 (S.C. Ct. App. filed 8/26/2015)

12-GS-38-00911-00912

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S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

LAMONT ANTONIO SAMUEL,

PETITIONER

APPELLATE CASE NO. 2013-001342

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR PETITIONER.

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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on October 23, 2015.

QUESTION PRESENTED

Whether the Court of Appeals was correct in ruling that the trial court did not err in refusing to allow petitioner to represent himself?

STATEMENT OF THE CASE

Petitioner was convicted of murder after a jury trial held before the Hon. Diane Schafer Goodstein on June 10, 2013, in Orangeburg County. A sentence of fifty (50) years was imposed.

Petitioner appealed his conviction and submitted a final brief on September 18, 2014. Respondent submitted its final brief on October 6, 2014. Oral argument was heard in the Court of Appeals on February 12, 2015. On August 26, 2015, the court issued an opinion affirming petitioner's conviction. *State v. Samuel*, __ S.C. __, 777 S.E 2d 398 (Ct. App. 2015). A petition for rehearing was filed on September 10, 2015, and was denied on October 23, 2015.

This petition follows.

ARGUMENT

The Court of Appeals incorrectly held that the trial court did not err in refusing to allow petitioner to represent himself.

The record is clear in this case that petitioner wanted to represent himself, was capable of representing himself, and knew the dangers and disadvantages of self-representation. The trial judge knew this as she told petitioner that he was bright enough and that the Constitution says that he's entitled to represent himself. But she then said, "I don't want you to represent yourself, but I can't violate the law." (R. p. 50, lines 6-9). She admitted "You don't have a problem that I can use, in all candor, to keep you from representing yourself." (R. p. 53, lines 15-17)

Petitioner had mentioned Carl Grant, Esquire, earlier in that Grant told petitioner's mother about a criminal law book to get. He also mentioned that his mother had paid Mr. Grant to come in and educate him. The trial judge said she was going to get Carl Grant over to the courthouse to question him. (R. p. 54, line 21 - p. 55, line 21). When Carl Grant was contacted by phone, he said he did not represent petitioner. He talked to the mother, but he had not been paid and did not represent petitioner. (R. p. 59, lines 9 – 13).

When Mr. Grant got to the courthouse, he was put under oath. He again said he did not represent petitioner. He said he talked to petitioner's mother about representing petitioner, but never got a retainer. (R. p. 65, line 20 – p. 68, line 9).

After Mr. Grant was excused, petitioner said concerning self-representation, "I know I'm – I know what kind of mistake I could make. I still would like to – if you can, I still would like to go with that right." (R. p. 70, lines 22 – 25).

The trial judge took a break to do some research. She came back and started to rule. She characterized petitioner's testimony and Mr. Grant's testimony. Petitioner asked to say something

and she would not let him. (R. p. 71, line 3 – p. 73, line 20). She cited Gardner v. State, 351 S.C. 407, 570 S.E.2d 184 (2002) and said petitioner was trying to “manipulate” the proceedings and that he was not allowed to “disrupt” the proceedings. She said petitioner was not showing candor toward the tribunal. Then, she said she wanted and sought the information regarding Mr. Grant because she wanted to be assured that there was not a representation there.¹ She went on to rule that the “reason that I am disallowing your self-representation is because it is impossible for me to try a case if I do not have candor from those who are making representations to the court.” (R. p. 71, line 3 – p. 75, line 14).

The trial judge in this case did everything she could think of to keep petitioner 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), petitioner was dissatisfied with his attorney and he was not trying to delay the trial or hinder the administration of justice. Petitioner was not deliberately engaging in “serious and obstructionist misconduct” as The Court of Appeals opinion suggests by quoting Faretta, 422 U.S. at 834 n. 46. Unlike United States v. West, 877 F.2d 281, 287 (4th Cir. 1989), which the Court of Appeals cites, petitioner did not attack the trial court’s “integrity and dignity.”

¹ The trial judge already knew that Mr. Grant said over the phone that he was not representing petitioner. (R. p. 59, lines 9 – 13). She also acknowledged that petitioner did not say Mr. Grant represented him when she spoke to Mr. Grant in the courtroom. (R. p. 63, lines 11 – 13).

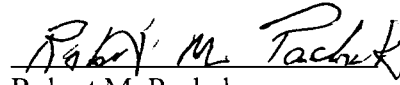
which the Court of Appeals cites, petitioner did not attack the trial court's "integrity and dignity." The Court of Appeals suggests that a criminal defendant is bound by the same ethical standards as an attorney, but in the second State v. Barnes, 413 S.C. 1, 774 S.E.2d 454 (2015) the South Carolina 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 (4th 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 petitioner the right to represent himself. It took the extraordinary step of having another lawyer come to court to try to contradict petitioner. But the court did not ask petitioner's mother's side of what she conveyed to her son about this attorney, so the court's findings as to petitioner's representation are in question. The trial court was obligated to apply the Faretta standard for the waiver of petitioner's right to counsel. It did not.

CONCLUSION

Petitioner's writ should be granted and he should be given a new trial.

Respectfully submitted,

A handwritten signature in black ink that reads "Robert M. Pachak". The signature is written in a cursive style with a horizontal line drawn underneath it.

Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER.

This 14th day of December, 2015

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IN THE SUPREME COURT

Certiorari to Orangeburg County

Diane Schafer Goodstein, Circuit Court Judge

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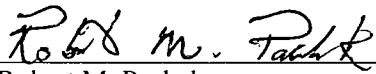
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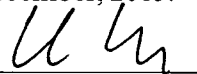
CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix, in this case has been served on William Edgar Salter, III, Esquire, and the S.C. Court of Appeals this 14th day of December, 2015.


Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 14th day
of December, 2015.


_____(L.S.)
Notary Public for South Carolina
My Commission Expires: May 12, 2025