

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Colleton County

Brian M. Gibbons, Circuit Court Judge

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JUL 20 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

RODERICK GREENE,

APPELLANT

APPELLATE CASE NO. 2014-002067

FINAL BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

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Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in allowing appellant to proceed pro se when it did not advise him of the dangers and disadvantages of self-representation?

STATEMENT OF THE CASE

Appellant was convicted of possession of a firearm by someone convicted of a violent crime after a jury trial held before the Honorable Brian Gibbons on September 17 – 18, 2014, in Colleton County. He was sentenced to 5 years suspended upon service of 2 years with 2 years probation thereafter. Appellant appeared pro se with standby counsel, Dave Matthews, Esquire. Reed Evans, Esquire represented the State.

This appeal follows.

ARGUMENT

The trial court erred in allowing appellant to proceed pro se when it did not advise him of the dangers and disadvantages of self-representation.

Defense counsel advised the Court that appellant wished to represent himself. (R. p. 4, lines 10-24.) The trial court's discussion with appellant on this subject was as follows:

THE COURT: All right. Let me ask you – first thing, raise your right hand for me.

(The defendant was sworn.)

THE COURT: All right. Thank you. I've got a couple of questions for you. You can lower your hand. How old are you, Mr. Greene?

MR. GREEN: 36.

THE COURT: What do you do for living?

MR. GREEN: I go to school. I attend Georgetown Technical and I have about five classes before I graduate from business school.

THE COURT: Do you have a GED?

MR. GREENE: Yes, sir.

THE COURT: How long have you had a GED?

MR. GREENE: For probably nearly about 20 years.

THE COURT: All right. Do you have any history of any mental illness or anything like that?

MR. GREENE: No, sir.

THE COURT: All right. I find you're competent and capable of representing yourself and I'm going to allow you to represent yourself. Do you seek to represent yourself or do you want Mr. Matthews to represent you?

MR. GREENE: Well, I would like the guiding hand of counsel.

THE COURT: You would like what?

MR. GREENE: I would like the guiding hand of counsel. At the crucial stages where I don't know the law anytime he can come in and he can give the Court a clearer view, anytime he can straighten up anything that I would like to legally –

THE COURT: Okay. So do you want him to be what's called standby counsel.

MR. GREENE: Yes. I would like for him to help me.

THE COURT: Any objection to that, Mr. Matthews?

MR. MATTHEWS: No, Your Honor.

THE COURT: Any objection by the State?

MR. EVANS: No, sir.

The above waiver of counsel was constitutionally deficient. To allow a valid waiver of counsel, a trial judge has to determine if the waiver is done knowingly and intelligently and that the defendant was warned of the dangers and disadvantages of self-representation. Faretta v. California, 422 U.S. 806, 835, 95 S. Ct. 2525, 2541 (1975). The “ultimate test is not the trial judge’s advice, but rather the defendant’s understanding.” Wroten v. State, 301 S.C. 293, 391 S.E. 2d 575 (1990) citing Fitzpatrick v. Wainwright, 800 F. 2d 1057 (11th Cir. 1986). The court in Wroten went on to say the following:

If the record demonstrates the defendant’s decision to represent himself was made with an understanding of the risks of self-representation, the requirements of a voluntary waiver will be satisfied (citations omitted).

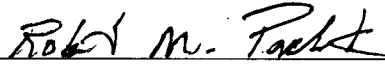
Also whether or not one has standby counsel is of no consequence. State v. Brewer, 328 S.C. 117, 492 S.E. 2d 97 (1997).

In Prince v. State, 301 S.C. 422, 392 S.E.2d 462 (1990), the court held that in the absence of a specific inquiry by the judge addressing the disadvantages of a pro se defense, the court, in determining whether there was a valid waiver of counsel, will look to the record to determine whether a defendant had sufficient background or was apprised of his rights by some other source. The record in this case fails to demonstrate that appellant had sufficient background or was apprised of his rights by some other source.

CONCLUSION

Appellant's conviction should be reversed.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 20th day of July, 2015.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

July 20, 2015

Robert M. Pachak

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Appellate Defender

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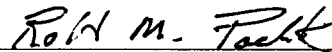
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CERTIFICATE OF SERVICE

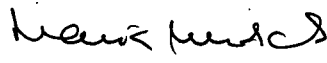
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon David Spencer, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 20th day of July, 2015.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 20th day of July, 2015.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: July 3, 2023.