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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Colleton County
Brian M. Gibbons, Circuit Court Judge

SC Court of Appeals

THE STATE,

Respondent,

vs.

RODERICK GREENE,

Appellant.

Appellate Case No. 2014-002067

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial court did not err in allowing Greene to represent himself since that is what he wanted, and the issue is not preserved for review. Further, Greene was allowed hybrid representation, so he had the benefit of counsel, and the record supports a finding that he knowingly and voluntarily waived his right to counsel and appreciated the dangers of self-representation.

STATEMENT OF THE CASE

Appellant Greene was convicted by a jury of possession of a firearm by someone convicted of a violent crime before the Honorable Brian Gibbons on September 17-18, 2014, in Colleton County. Greene was actively represented by Dave Matthews, Esquire, and Greene was also allowed to act as co-counsel. In other words, Greene was allowed hybrid representation.

Greene was sentenced to five years imprisonment, suspended to two years imprisonment and two years of probation.

STATEMENT OF FACTS

Greene was the passenger in an automobile that was searched on the side of the road at a safety checkpoint after law enforcement observed an open container in the vehicle. ROA. pp. 101-102. Greene resisted commands to exit the vehicle and resisted to the point that law enforcement needed to deploy a taser, but Greene continued to flee. Greene's gun fell out of his pants. Greene was still combative, even after the taser was deployed. ROA. pp. 105-106.

ARGUMENT

I.

The trial court did not err in allowing Greene to represent himself since that is what he wanted, and the issue is not preserved for review. Further, Greene was allowed hybrid representation, so he had the benefit of counsel, and the record supports a finding that he knowingly and voluntarily waived his right to counsel and appreciated the dangers of self-representation.

Greene complains on appeal that the trial court's colloquy with him about his right to counsel was inadequate. However, the issue is not preserved for review as Greene unequivocally asked to represent himself and neither Greene nor his counsel sought further colloquy from the trial court. Greene never subsequently asked to relinquish his pro se status, although both Greene and his counsel actively participated in his trial.

First, the issue was not raised to the trial court. Greene asked to represent himself and the trial court complied. State v. Sinclair, 275 S.C. 608, 610, 274 S.E.2d 411, 412 (1981) (holding where one party obtains from the trial court the only relief sought, this Court has no issue to review on appeal); State v. Powers, 331 S.C. 37, 501 S.E.2d 116 (1998) (holding the failure to raise constitutional issue at trial precluded its consideration on appeal); State v. Williams, 303 S.C. 410, 401 S.E.2d 168 (1991) (finding defendant who was tried in his absence without counsel failed to preserve issue of whether he knowingly and voluntarily waived his right to counsel since neither the defendant or counsel representing him at sentencing raised an objection to the trial judge); State v. Hyatt, 513 S.E.2d 90, 94 (N.C. App. 1999) (“[T]o obtain relief from a waiver of his right to counsel, a criminal defendant must move the court for withdrawal of the waiver.”).

“The Sixth and Fourteenth Amendments of our Constitution guarantee that a person brought to trial in any state or federal court must be afforded the right to assistance of counsel before he can be validly convicted and punished by imprisonment.” Faretta v. California, 422 U.S. 806, 807 (1975). To establish a valid waiver of counsel, Faretta requires the accused be: (1) advised of his right to counsel; and (2) adequately warned of the dangers of self-representation. Prince v. State, 301 S.C. 422, 424, 392 S.E.2d 462, 463 (1990) (citing Faretta). “While a specific inquiry by the trial judge expressly addressing the disadvantages of a pro se defense is preferred, the ultimate test is not the trial judge’s advice but rather the defendant’s understanding.” Wroten v. State, 301 S.C. 293, 294, 391 S.E.2d 575, 576 (1990). If the trial court fails to explicitly address the disadvantages of proceeding pro se, as required by the second prong of Faretta, a reviewing court may look to the record to determine whether a defendant had sufficient background to understand the dangers of self-representation or was apprised of his rights by some other source. See Watts v. State, 347 S.C. 399, 402, 556 S.E.2d 368, 370 (2001).

Factors used to determine if the accused had sufficient background to understand the disadvantages of self-representation include:

- (1) the accused’s age, educational background, and physical and mental health;
- (2) whether the accused was previously involved in criminal trials;
- (3) whether he knew of the nature of the charge and of the possible penalties;
- (4) whether he was represented by counsel before trial and whether an attorney indicated to him the difficulty of self-representation in his particular case;
- (5) whether he was attempting to delay or manipulate the proceedings;

- (6) whether the court appointed stand-by counsel;
- (7) whether the accused knew he would be required to comply with the rules of procedure at trial;
- (8) whether he knew of legal challenges he could raise in defense to the charges against him;
- (9) whether the exchange between the accused and the court consisted merely of pro forma answers to pro forma questions; and
- (10) whether the accused's waiver resulted from either coercion or mistreatment.

State v. Cash, 309 S.C. 40, 43, 419 S.E.2d 811, 813 (Ct. App. 1992).

Applying the Cash factors to the present case, Greene earned his GED twenty years ago and was only five classes away from getting a college degree. ROA. p. 8; p. 173. Greene had a previous armed robbery conviction. ROA. p. 200. Greene was represented by counsel before **and during** trial. There is no indication Greene was attempting to delay trial or manipulate the proceedings. Greene proved capable of following the rules of evidence and procedure, and conducted direct examination with proper non-leading questions. His counsel raised legal challenges when necessary, so although Greene never displayed a lack of knowledge of legal challenges he could raise, his counsel provided the necessary safeguards. There was no evidence of coercion or mistreatment in the record. Additionally, Greene's intelligent answers to issues presented to him indicated he had sufficient knowledge to appreciate the dangers of self-representation. In particular, when making his motion to represent himself pro se, Greene asked for "the guiding hand of counsel." ROA. p. 9, lines 5-6. Greene explained his request, which indicates he was really requesting hybrid

representation: “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 –.” ROA. p. 9, lines 8-12.

Greene’s trial counsel advised the trial court, “I never think that it’s a good idea for a client to represent themselves, however Mr. Greene has been adamant about this for quite sometime.” ROA. p. 5, lines 11-14. Accordingly, the record supports a valid waiver of counsel. C.f. Faretta at 835 (“The record affirmatively shows that Faretta was literate, competent, and understanding, and that he was voluntarily exercising his informed free will.”).

However, the fair result is for this Court to decline review of the issue raised because Greene received the relief he requested and the issue is more properly dealt with in post-conviction relief, where Greene’s understanding **and the warnings and advice his trial counsel gave Greene** may be considered in tandem with the colloquy with the trial court about the waiver of counsel.

Of course, while referred to as stand-by counsel, Greene’s trial counsel participated significantly in the case, raising motions and objections, and moving for admission of an exhibit. See ROA. p. 79; pp. 82-83 (arguing motion to suppress); ROA. p. 108; p. 110; p. 148 (objection to chain of custody); ROA. p. 146 (counsel moves for admitting exhibit into evidence); ROA. p. 161 (renewing objections to exhibits after the State rested). Greene’s counsel also participated in cross-examination of several State’s witnesses and was given the opportunity to examine Greene himself after Greene testified in a narrative form. ROA. p. 116; p. 135; p. 158; p. 172. Counsel made the motion for directed verdict when the State

rested its case. ROA. p. 162. During sentencing, counsel spoke on his behalf and suggested time-served (six weeks) and probation. ROA. p. 201.

Prior to Greene presenting his defense, the trial court advised Greene:

Now, I will tell you, you know, since you are pro se that means that you have to follow the same rules that lawyers have to follow in court. Now, I have been very flexible in the trial of this case in allowing you to have assistance of Mr. Matthews. In fact, one would say y'all have been double teaming the State and I did that in fairness to you since you're not a lawyer, that means that I've been allowing you to question and then Mr. Matthews to mop anything you may have forgotten to do. I didn't have to do that, I'm simply doing that to be fair to you.

ROA. p. 165, lines 11-21.

The reality is Greene received the benefit of his right to counsel; Greene was allowed hybrid representation; he acted as co-counsel to his trial counsel, and they both actively participated in the case. See State v. Stanfield, 137 So.3d 788, 797 (La. Ct. App. 2014) (finding that although trial court failed to conduct a Faretta colloquy to advise appellant of the dangers of self-representation, the assignment of error was without merit where appellant elected a hybrid form of representation where counsel actively participated in appellant's defense).

Accordingly, the conviction and sentence should be affirmed.

CONCLUSION

For all of the foregoing reasons, the judgment and conviction of the lower court should be affirmed.

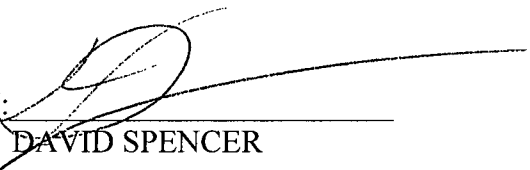
Respectfully submitted,

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July 28, 2015

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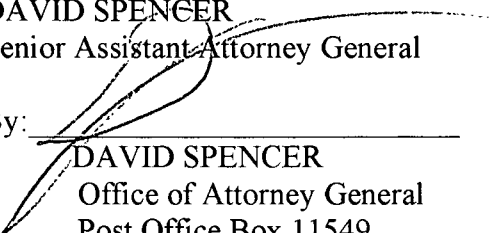
Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

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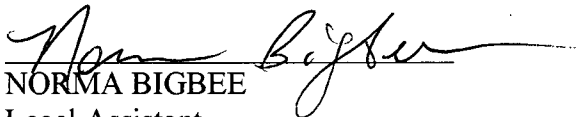
Appellant.

PROOF OF SERVICE

I, Norma Bigbee, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to: Robert M. Pachak, Esquire, SC Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, SC 29211.

I further certify that all parties required by Rule to be served have been served.

This 28TH day of July, 2015.


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