

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

 ORIGINAL

Appeal from York County

John C. Hayes, III, Circuit Court Judge

RECEIVED

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JERMAINE T. FULLER,

APPELLANT

INITIAL BRIEF OF APPELLANT

ELIZABETH A. FRANKLIN-BEST
Appellate Defender

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Division of Appellate Defense
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(803) 734-1343

ATTORNEY FOR APPELLANT.

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TABLE OF AUTHORITIES

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STATEMENT OF ISSUES ON APPEAL

Whether the trial court judge erred by allowing appellant to proceed without an attorney when appellant clearly did not appreciate the dangers of representing himself on such serious charges because the judge did not inform him of the maximum penalty he could face?

STATEMENT OF THE CASE

Jermaine Tyrone Fuller was indicted by the York County grand jury for entering a bank with intent to steal, armed robbery, possession of a firearm during the commission of a violent crime, and criminal conspiracy. On October 23, 2009, appellant appeared before the Hon. Lee S. Alford for purposes of asserting his right to represent himself. The state then called appellant's case to trial on November 16, 2009 before the Hon. John C. Hayes, III. After pretrial matters, appellant pleaded guilty to these offenses. Appellant was sentenced to 25 years for armed robbery, 25 years for entering the bank, 5 years for conspiracy, and 5 years for possession of a firearm during the commission of a violent crime. The sentences were ordered to run concurrently.

This appeal timely follows.

ARGUMENT

The trial court judge erred by allowing appellant to proceed without an attorney when appellant clearly did not appreciate the dangers of representing himself on such serious charges because the judge did not inform him of the maximum penalty he could face.

Appellant elected to represent himself on charges of armed robbery, entering a bank with intent to steal, conspiracy, possession of a firearm during the commission of a violent crime, and kidnapping. On October 23, 2009, the Hon. Lee S. Alford inquired as to appellant's desire to represent himself at trial. The judge informed appellant he had the constitutional right to an attorney, and that an attorney is trained in the rules of court, rules of evidence, courtroom procedure, and the common law and statutory criminal laws of South Carolina. The judge explained to appellant that an attorney would be able to explain to him the charges and the punishment he faced. The judge also explained that an attorney could help him mount a legal defense, secure his witnesses, and enter into plea bargaining with the state. The judge also inquired of appellant about his education and his occupations. He elicited from appellant information regarding his prior contacts with the criminal justice system. At the end of this questioning, the trial court judge found that appellant was proceeding without an attorney freely, voluntarily, and intelligently. Tr. 8.

Appellant's case was called to trial on November 16, 2009 before the Hon. John C. Hayes, III. Judge Hayes appointed counsel as standby. Tr. 5. After engaging in pretrial matters, appellant then pleaded guilty to these offenses. The State recommended the court run appellant's sentences concurrently. Tr. 71.

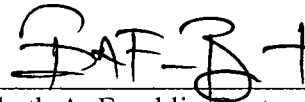
The trial court judge abused his discretion by allowing appellant to represent himself at trial. The trial court judge's colloquy regarding petitioner's right to represent himself was constitutionally infirm because the judge did not ensure that appellant understood the possible punishments he could face. Appellant was facing at least 100 years incarceration upon conviction—a fact not conveyed to him during the judge's colloquy. Without ensuring appellant understood the gravity of the situation, petitioner did not freely, voluntarily, and intelligently decide to represent himself *pro se*.

An accused may waive the right to counsel and proceed *pro se*. Faretta v. California, 422 U.S. 806 (1975). In order to waive the right to counsel, the accused must be (1) advised of his right to counsel, and (2) adequately warned of the dangers of self representation. State v. Starnes, 388 S.C. 590, 698 S.E.2d 604 (2010); Prince v. State, 301 S.C. 422, 424, 392 S.E.2d 462, 463 (1990); “The information a defendant must possess in order to make an intelligent election depends on a range of case- specific factors, including his education or sophistication, the complex or easily grasped nature of the charge, and the stage of the proceeding.” Iowa v. Tovar, 541 U.S. 77, 78 (2004). Warnings of the pitfalls of proceeding to trial uncounseled must be “rigorously conveyed.” Patterson v. Illinois, 487 U.S. 285, 298 (1988). Because the trial court judge did not inform appellant that he could receive over 100 years incarceration upon conviction, the trial court judge abused his discretion by allowing appellant to represent himself at trial. Respectfully, appellant asks this Court to reverse his convictions and remand his case for trial.

CONCLUSION

For the preceding reason, appellant respectfully asks this Court to reverse his convictions and remand his case for trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'EAF-BT', written over a horizontal line.

Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR APPELLANT.

This 27th day of January, 2011.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JERMAINE T. FULLER,

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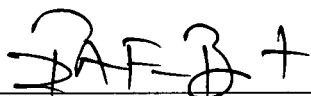
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) October 23, 2009 hearing;
- (3) November 16th and 17th, 2009 hearings.

I certify that this designation contains no matter which is irrelevant to this appeal.

January 27th, 2011



Elizabeth A. Franklin-Best
Appellate Defender

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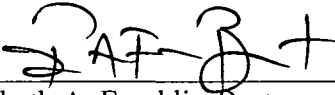
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CERTIFICATE OF SERVICE

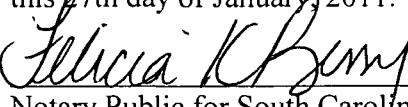
The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 27th day of January, 2011.



Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 27th day of January, 2011.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: June 21, 2020