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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CALHOUN COUNTY
Court of General Sessions

Maité Murphy, *Circuit Judge*

Appeal No. 2015-000559

THE STATE,

Respondent,

vs.

JERRY MCKNIGHT, SR.,

Appellant.

Initial Reply Brief of Appellant Jerry McKnight, Sr.

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ARGUMENT

As the parties agree, the legal issue here is a simple one: If he invoked his right to forgo counsel, Mr. McKnight is entitled to a new trial—full stop. *See* [Opp. at 9 (conceding absolute right to discharge counsel and not disputing violation is structural error)].

While the State says Mr. McKnight was supposedly not clear as to what he wanted to have happen, the trial judge obviously understood him—and her "reasonabl[e]" understanding is what counts. *See Dorman v. Wainwright*, 798 F.2d 1358, 1366 (11th Cir. 1986) ("To invoke his Sixth Amendment right under *Faretta* a defendant does not need to recite some talismanic formula hoping to open the eyes and ears of the court to his request."); *United States v. Lorick*, 753 F.2d 1295, 1298 (4th Cir. 1985) (finding sufficient invocation in part because of the "recognition by the [trial] court at that point that the right [to dispense with counsel] had been asserted"). Indeed, so apparent was the trial judge's actual understanding of exactly what he was proposing—firing his lawyer on the morning of trial with no request for substitution of counsel or a continuance—that she twice referenced a denial of his right to represent himself: "I don't want you to go forward with this trial here today without being represented...I'm certain that it would not be a good thing for you to proceed without an attorney." [R. 12-13]. *See also, e.g.*, *United States v. Singleton*, 107 F.3d 1091, 1094 (4th Cir. 1997) (holding defendant's mid-trial statement "I would like to fire my attorney, your Honor" was sufficient to constitute waiver of the right to counsel).

Once the trial judge pronounced that she was going to "deny" his request, Mr. McKnight was obligated to abide by the ruling without further comment or objection. *See*, SC R. Crim. Pro. R. 18(a) ("Counsel shall not attempt to argue any matter after he has been heard and the ruling of the

court has been pronounced."). And having been forced to stay with counsel, he cannot be faulted for thereafter consulting with counsel and using counsel for the remainder of the trial.

"[I]t is one thing to hold that every defendant, rich or poor, has the right to the assistance of counsel, and quite another to say that a State may compel a defendant to accept a lawyer he does not want. The value of state-appointed counsel was not unappreciated by the Founders, yet the notion of compulsory counsel was utterly foreign to them." *Faretta v. California*, 422 U.S. 806, 833-34 (1975). Mr. McKnight was clear he wanted to fire his lawyer. He prevented from doing so—unconstitutionally. U.S. Const. Amend. VI; SC Const. Art. I, § 14.

CONCLUSION

For the forgoing reasons, Mr. McKnight prays that this Court will vacate his convictions and remand for retrial.

Respectfully submitted this 16th day of June, 2016.

JERRY MCKNIGHT, SR.

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing paper by first-class mail, proper postage prepaid, this 16th day of June, 2016, on the following parties:

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