

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County

Honorable Daniel D. Hall, Circuit Court Judge

BOBBY JOE BARTON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000995

**RETURN TO PETITIONER'S MOTION TO RELIEVE COUNSEL AND
PERMISSION TO PROCEED PRO SE**

Counsel offers the following in response to the motion to proceed pro se:

1. Petitioner was indicted in February 2010 by the Greenville County Grand Jury for the charges of armed robbery (2009-GS-23-10018, count 1) and possession of a weapon during the commission of a violent crime (2009-GS-23-10018, count 2). At trial, Petitioner was represented by Susannah C. Ross, Esquire. L. Mark Moyer, Esquire represented the State. Petitioner was found guilty of armed robbery and sentenced by the Honorable Edward W. Miller.
2. A notice of appeal was filed with the South Carolina Court of Appeals. Petitioner was represented by LaNelle C. DuRant, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense. State v. Barton, Op. No. 2013-UP-058 (S.C. Ct. App.

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SC SUPREME COURT

Filed Jan. 30, 2013). This Court denied the Petitioner's subsequent petition for writ of certiorari on July 11, 2014. The remittitur was sent on July 25, 2014.

3. Petitioner filed an application for post-conviction relief (PCR) on September 12, 2014. Petitioner filed a pro se "Motion to Amend and Supplemental Pleadings" on or about December 14, 2014. The Respondent made its return on February 12, 2015. Counsel for Petitioner filed an "amended Petition for Post Conviction Relief" on February 16, 2016. An evidentiary hearing was held on February 18, 2016 at the Greenville County Courthouse. Petitioner was represented by Caroline Horlbeck, Esquire. Karen Ratigan, Esquire, represented the Respondent.

4. At the PCR Hearing, Mr. Barton withdrew his pro se "Motion to Relieve Counsel" which had been filed on December 23, 2015. The case proceeded to a hearing after the Court denied Petitioner's motion for a continuance. The Honorable Daniel D. Hall denied Petitioner's PCR application and issued an Order of Dismissal on March 14, 2016. Caroline Horlbeck, Esquire, was relieved as Petitioner's counsel on April 7, 2016. R. Mills Ariail, Jr., Esquire, was appointed the following day. He filed a Rule 59(e) Motion for Reconsideration on April 28, 2016. This Motion was denied on April 29, 2016. This appeal, submitted by R. Mills Ariail, Jr. on May 5, 2016, followed.

5. On or about August 15, 2015, Petitioner filed a "Motion to Relieve Counsel and Permission to Proceed Pro-Se" with this Court. Petitioner, according to his Motion, represented himself in a jury trial in Spartanburg County in 1992, obtained a GED in 1987, and has "actively drawn up issues in appeal and post conviction cases along with five (5) years [sic] experience

studying and preparation to defend his case.” Repeatedly citing Faretta v. California¹, Petitioner seeks to have the undersigned relieved as counsel in order to proceed with his appeal pro se.


6. Based on past experience, as a general rule this Office takes the position that the Court should not allow self-representation on direct appeal. Although the matter is certainly one within the Court’s discretion, there exists no right to proceed pro se on appeal.²

7. A pro se defendant who mishandles a trial harms only himself. A pro se defendant who mishandles a PCR, on the other hand, can damage the criminal justice system as a whole.

8. Counsel does not oppose the motion to proceed pro se on this PCR appeal, but leaves the matter to the sound discretion of this Court for the reasons above.

9. The undersigned also requests that this Court hold timelines in abeyance pending the disposition of the pro se Motion to Relieve Counsel and Permission to Proceed Pro Se.

Respectfully submitted,


Taylor D. Gilliam
Appellate Defender

Attorney for Petitioner

August 25, 2016

¹ 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975).

² State v. Roberts, 364 S.C. 583, 614 S.E.2d 626 (2005).

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

Honorable Daniel D. Hall, Circuit Court Judge

BOBBY JOE BARTON,

PETITIONER

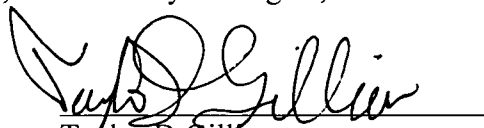
V.

STATE OF SOUTH CAROLINA,

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CERTIFICATE OF SERVICE

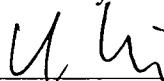
The undersigned hereby certifies that a true copy of the Return to Motion to Relieve Counsel and Permission to Proceed Pro Se in the above referenced case has been served upon Karen Ratigan, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Bobby Joe Barton, #163629, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 25th day of August, 2016.



Taylor D Gilliam

ATTORNEY FOR RESPONDENT

SUBSCRIBED AND SWORN TO before me
this 25th day of August, 2016.

 (L.S)
Notary Public for South Carolina
My Commission Expires: 05/12/2025.