ORIGINAL

**THE STATE OF SOUTH CAROLINA**
**IN THE COURT OF APPEALS**

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APPEAL FROM CALHOUN COUNTY
Court of General Sessions

Maité Murphy, *Circuit Judge*



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Appeal No. 2015-000559

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THE STATE,

*Respondent,*

*vs.*

JERRY MCKNIGHT, SR.,

*Appellant.*

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**Final Brief of Appellant Jerry McKnight, Sr.**

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## STATEMENT OF THE ISSUES ON APPEAL

1. Did the trial court err in denying Mr. McKnight's request to discharge his trial counsel because the trial judge thought it "would not be a good thing for [him] to proceed without an attorney," [R. 16], when well-established precedent precludes consideration of the wisdom of a criminal defendant's choice?

## STATEMENT OF THE CASE

In January 2015, a grand jury in Calhoun County returned three indictments against Jerry McKnight, Sr., arising out of the death of Kymmarah Randolph: one for murder, one for possession of firearm by a person convicted of a violent crime, and one for kidnapping. [R. 4-8].

Before his jury trial commenced, Mr. McKnight asked to discharge his counsel, a motion which the trial court denied because the trial court determined that "it would not be a good thing for [him] to proceed without an attorney." [R. 16].

Mr. McKnight proceeded to a jury trial on those three indictments in a trial that began on March 2, 2015, and ended on March 6, 2015. The jury convicted him of all three charges.

On March 6, 2015, the trial court sentenced Mr. McKnight in accordance with the verdicts to life for the murder charge, with concurrent sentences of 30 years for kidnapping and 5 years for firearm possession. [R. 1-3].

Mr. McKnight served his notice of appeal on March 10, 2015, four days after judgment. [R. 86].

## STATEMENT OF FACTS

Approximately two hours before the venire arrived for qualification at his criminal trial, the court held an *ex parte* hearing with Mr. McKnight and his trial counsel to address Mr. McKnight's February 2015 letter requesting the discharge of his counsel. [R. 10-17; 84]. At the hearing, Mr. McKnight told the trial court: "I feel like I'm not being represented right by him and that I would like to have him dismissed." [R. 11]. Among his complaints was that his counsel was not communicating with him and that he did not believe his counsel was adequately prepared to represent him. [R. 11-12].

After the court indicated that it would not consider continuing the trial because it was confident in trial counsel's preparation, the court asked Mr. McKnight whether he "had any legal training or ... [knew] the rules of evidence." [R. 15]. When he replied that he had no such training, the trial court ruled that "it would not be a good thing for [him] to proceed without an attorney" at his trial and then denied his motion:

> THE COURT: Sure, and understandably [the other inmates in the jail with whom he has spoken about the legal process] may be somewhat familiar with the system, but they didn't go to law school. They didn't take the bar exam. They didn't have a successful law practice and become the head public defender like your attorney here has. Your attorney's very well versed in the law and is extremely competent, and frankly you're lucky that you got him to be appointed to your case because he's an excellent trial attorney. I can tell you that I don't see him telling the Court that he would be prepared for trial if he wasn't. I think he certainly would have your best interest at heart. I don't want you to go forward with this trial here today without being represented. You're telling me that you're not trained in the law. You know, you haven't gone to law school and those types of things, so you need somebody to stand in for you and represent you and someone that's capable and well trained and diligent in their efforts in doing that, and without an attorney, I'm certain that it would not be a good thing for you to proceed without an attorney. It's too late in the game for me to change and ask another attorney to represent you because your case is being called for trial today. Having been appointed in May,

> that's nine months since his appointment to your case; and, frankly, I think that's sufficient time for him to have to be adequately prepared. I'm certain that if he was not adequately prepared, he would tell the Court and ask for a continuance, and that's certainly not the case here, so I'm going to deny your request to remove him from your case.

[R. 15-16].

## ARGUMENT

### Issue 1: The Trial Court Wrongly Denied Mr. McKnight's Request to Discharge Trial Counsel.

"A South Carolina criminal defendant has the constitutional right to represent himself under both the federal and state constitutions." *State v. Barnes*, 407 S.C. 27, 35 (2014) (citation and footnote omitted).[1] The right to self-representation was a right of critical importance to our constitutional framers. *See, e.g.*, *Faretta v. California*, 422 U.S. 806, 821 (1975) ("In the long history of British criminal jurisprudence, there was only one tribunal that ever adopted a practice of forcing counsel upon an unwilling defendant in a criminal proceeding. The tribunal was the Star Chamber.").

Prior to letting a defendant discharge counsel, the trial judge must conduct a *Faretta* colloquy with the defendant, to advise the defendant of the dangers of proceeding *pro se* and the right to have trial counsel. *Prince v. State*, 301 S.C. 422, 423-24 (1990). But, ultimately, the decision to discharge counsel rests with the defendant alone, regardless as to the trial judge's views of the wisdom of the defendant's choice. *Faretta*, 422 U.S. at 834 ("[A]lthough he may conduct his

[1] No right to self-representation exists on appeal. *State v. Roberts*, 364 S.C. 583, 588 (2005) ("Appellant clearly does not have a federal constitutional right to proceed pro se in this appeal from his criminal conviction. We also find there is no state constitutional provision which confers such a right.").

own defense ultimately to his own detriment, his choice [to discharge counsel] must be honored out of that respect for the individual which is the lifeblood of the law." (quotation omitted)).

The failure to honor a request to discharge counsel is a structural error, for which no showing of prejudice is required. *McKaskle v. Wiggins*, 465 U.S. 168, 177 n.8 (1984) ("Since the right of self-representation is a right that when exercised usually increases the likelihood of a trial outcome unfavorable to the defendant, its denial is not amenable to 'harmless error' analysis. The right is either respected or denied; its deprivation cannot be harmless."). Whether the trial court has failed to comply with *Faretta* is a question of law, subject to *de novo* review. *E.g.*, *Brewer v. Williams*, 430 U.S. 387, 403 (1977).

Here, before trial, Mr. McKnight was clear that he wanted to discharge his counsel because he was dissatisfied with his counsel. [R. 11 ("I feel like I'm not being represented right by him and that I would like to have him dismissed.")]. In response to that request, the trial court began a *Faretta* colloquy, appropriately warning Mr. McKnight of the dangers of proceeding without a lawyer. *E.g.* [R. 15-16 ("You know, you haven't gone to law school and those types of things....")].

But however well intentioned, the trial court erred, when it decided "to deny [his] request to remove [counsel] from [his] case" out of a belief that "it would not be a good thing for [him] to proceed without an attorney" [R. 16]. *See also* [R. 15 ("I don't want you to go forward with this trial here today without being represented.")]. As indicated above, the decision to proceed with or without counsel is a decision personal to the defendant. *Faretta*, 422 U.S. at 834. The failure to honor that request compels a retrial. *McKaskle.*

## Conclusion

For the forgoing reasons, Mr. McKnight prays that this Court will vacate his convictions due to the trial court's erroneous denial of his request to discharge counsel and then remand for re-trial.

Respectfully submitted this 23rd day of June, 2016.

JERRY MCKNIGHT, SR.

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*One of His Attorneys*

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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."

June 23, 2016

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Maite Murphy, Circuit Court Judge

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THE STATE,

RESPONDENT,

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JERRY MCKNIGHT, SR.,

APPELLANT

APPELLATE CASE NO. 2015-000559

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CERTIFICATE OF SERVICE

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The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Melody J. Brown, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 23rd day of June, 2016.

Robert M. Duek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 23rd day of June, 2016.

(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.