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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Court of Appeals County

Honorable Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LAMONT ANTONIO SAMUEL,

PETITIONER

APPELLATE CASE NO. 2015-002401

BRIEF OF PETITIONER

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ISSUE PRESENTED

Whether the Court of Appeals was correct in ruling that the trial court did not err in refusing to allow petitioner to represent himself?

STATEMENT

Petitioner was convicted of murder after a jury trial held before the Honorable Diane Schafer Goodstein on June 10, 2013, in Orangeburg County. A sentence of fifty (50) years was imposed.

Petitioner appealed his conviction and submitted a final brief on September 18, 2014. Respondent submitted its final brief on October 6, 2014. Oral argument was heard in the Court of Appeals on February 12, 2015. On August 26, 2015, the Court issued an opinion confirming petitioner's conviction. State v. Samuel, ____ S.C. ___, 777 S.E.2d 398 (Ct. App. 2015). A petition for rehearing was filed on September 10, 2015, and was denied on October 23, 2015.

A petition for writ of certiorari was filed on December 14, 2015. Respondent filed a return dated January 12, 2016. On October 20, 2016, the Court issued an order granting the Petition.

This brief of petitioner follows.

ARGUMENT

The Court of Appeals incorrectly held that the trial court did not err in refusing to allow petitioner to represent himself.

The record is clear in this case that petitioner wanted to represent himself, was capable of representing himself, and knew the dangers and disadvantages of self-representation. The trial judge knew this as she told petitioner that he was bright enough and that the Constitution says that he's entitled to represent himself. But she then said, "I don't want you to represent yourself, but I can't violate the law." (R. p. 50, ll. 6-9). She admitted "You don't have a problem that I can use, in all candor, to keep you from representing yourself." (R. p. 53, ll. 15-17)

Petitioner had mentioned Carl Grant, Esquire, earlier in that Grant told petitioner's mother about a criminal law book to get. He also mentioned that his mother had paid Mr. Grant to come in and educate him. The trial judge said she was going to get Carl Grant over to the courthouse to question him. (R. p. 54, line 21 - p. 55, line 21). When Carl Grant was contacted by phone, he said he did not represent petitioner. He talked to the mother, but he had not been paid and did not represent petitioner. (R. p. 59, ll. 9 – 13).

When Mr. Grant got to the courthouse, he was put under oath. He again said he did not represent petitioner. He said he talked to petitioner's mother about representing petitioner, but never got a retainer. (R. p. 65, line 20 – p. 68, line 9).

After Mr. Grant was excused, petitioner said concerning self-representation, "I know I'm – I know what kind of mistake I could make. I still would like to – if you can, I still would like to go with that right." (R. p. 70, ll. 22 – 25).

The trial judge took a break to do some research. She came back and started to rule. She characterized petitioner's testimony and Mr. Grant's testimony. Petitioner asked to say something and she would not let him. (R. p. 71, line 3 – p. 73, line 20). She cited Gardner v. State, 351 S.C. 407, 570 S.E.2d 184 (2002) and said petitioner was trying to "manipulate" the proceedings and that he was not allowed to "disrupt" the proceedings. She said petitioner was not showing candor toward the tribunal. Then, she said she wanted and sought the information regarding Mr. Grant because she wanted to be assured that there was not a representation there. She went on to rule that the "reason that I am disallowing your self-representation is because it is impossible for me to try a case if I do not have candor from those who are making representations to the court." (R. p. 71, line 3 – p. 75, line 14).

In Faretta v. California, 422 U.S.806, 95, S.Ct. 2525 (1975), the Supreme Court of the United States made the following observations on a defendant representing himself:

> The Sixth Amendment does not provide merely that a defense shall be made for the accused; it grants to the accused personally the right to make his defense. It is the accused, not counsel, who must be 'informed of the nature and cause of the accusation,' who must be 'confronted with the witnesses against him,' and who must be accorded 'compulsory process for obtaining witnesses in his favor.' Although not stated in the Amendment in so many words, the right to self-representation—to make one's own defense personally—is thus necessarily implied by the structure of the Amendment. The right to defend is given directly to the accused; for it is he who suffers the consequences if the defense fails.
>
> The counsel provision supplements this design. It speaks of the 'assistance' of counsel, and an assistant, however expert, is still an assistant. The language and spirit of the Sixth Amendment contemplate that counsel, like other defense tools guaranteed by the Amendment, shall be an aid to a willing defendant—not an organ of the State interposed

> between an unwilling defendant and his right to defend himself personally. To thrust counsel upon the accused, against his considered wish, thus violates the logic of the Amendment. In such a case, counsel is not an assistant, but a master; and the right to make a defense is stripped of the personal character upon which the Amendment insists.

422 U.S. at 819-820, 95 S. Ct. at 2533-2534.

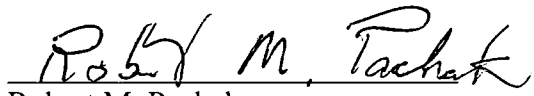
The trial judge in this case did everything she could think to keep petitioner from representing himself which the Sixth Amendment to the United States Constitution allows him to do. In State v. Barnes, 407 S.C. 27, 753 S.E.2d 545 (2014) the Court held that the trial court was required apply the Faretta standard for waiver of the right to counsel. "So long as the defendant makes his request prior to trial, the only proper inquiry is that mandated by Faretta... Under Faretta, the trial judge has the responsibility to make sure that the defendant is informed of the dangers and disadvantages of self-representation, and that he makes a knowing and intelligent waiver of his right to counsel." 407 S.C. at 35-36, 753 S.E.2d at 550. Like the defendant in State v. Fuller, 337 S.C. 236, 523 S.E.2d 168 (1999), petitioner was dissatisfied with his attorney and he was not trying to delay the trial or hinder the administration of justice. Petitioner was not deliberately engaging in "serious and obstructionist misconduct" as The Court of Appeals opinion suggests by quoting Faretta, 422 U.S. at 834 n. 46. Unlike United States v. West, 877 F2d 281, 287 (4th Cir. 1989), which the Court of Appeals cites, petitioner did not attack the trial court's "integrity and dignity." The Court of Appeals suggests that a criminal defendant is bound by the same ethical standards as an attorney, but in the second State v. Barnes, 413 S.C. 1, 774 S.E.2d 454 (2015) the South Carolina Supreme Court suggested otherwise. 774 S.E.2d at 455 n.1. Just recently the Fourth Circuit held in United States v. Phillip Ductan, No. 14-4220 (4th Cir. September 2, 2015) that it is error for a "magistrate to find that Ductan forfeited his right to counsel by his frivolous argument and answers to questions." Likewise, counsel should not be

foisted on a defendant for the same reason if he wishes to represent himself.

The trial court in this case was playing "gotcha" jurisprudence to deny petitioner the right to represent himself. It took the extraordinary step of having another lawyer come to court to try to contradict petitioner. But the court did not ask petitioner's mother's side of what she conveyed to her son about this attorney, so the court's findings as to petitioner's representation are in question. The trial court was obligated to apply the Faretta standard for the waiver of petitioner's right to counsel. It did not.

CONCLUSION

Petitioner should be given a new trial.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

This 17th day of November, 2016.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Orangeburg County

Honorable Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LAMONT ANTONIO SAMUEL,

PETITIONER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Brief of Petitioner in the above referenced case has been served upon William Edgar Salter, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Brief of Petitioner have been served on Lamont Antonio Samuel, #355793, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 17th day of November, 2016.

Robert M. Pachak

Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 17th day of November, 2016.

Christian Ford (L.S)
Notary Public for South Carolina
My Commission Expires: March 1, 2026