

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2015-000941

CITY OF COLUMBIA,

RESPONDENT,

V.

MARIE-THERESE ASSA'AD-FALTAS,

APPELLANT.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

THE CIRCUIT COURT DID NOT ERR IN UPHOLDING THE DENIAL OF APPELLANT'S PRO SE REQUEST BASED ON HER OUT OF COURT CONDUCT RELATING DIRECTLY TO THIS ASSAULT CASE. THEREFORE, SHE IS NOT ENTITLED TO A NEW TRIAL, AND HER CONVICTION MUST STAND.

STATEMENT OF CASE

On September 11, 2009, Appellant was charged with simple assault in Columbia, South Carolina. On April 25, 2013, she proceeded with a bench trial in Columbia Municipal Court before the Honorable Carl L. Solomon. Theodore Lupton represented her. David Fernandez represented the City of Columbia (herein after "City"). Appellant was found guilty and sentenced to twenty days imprisonment. R. 158, 6 - 159, 14.

She appealed. On December 13, 2013, a hearing was held before the Honorable Allison Lee. Appellant appeared *pro se* after appellate counsel Tristan Schaffer successfully motioned to be relieved. R. 167, 4 – 169, 6. David Fernandez again represented the City. On April 17, 2015, Judge Lee filed a written order affirming Appellant's conviction. R. 241.

This appeal follows.

FACTUAL BACKGROUND

This case arises out of an incident between Appellant and her landlord, Dinah Steele. R. 47, 23 – 49, 22. They had several disagreements regarding Appellant’s ownership of an adjoining lot and other conflicts relating to eviction proceedings. *Id.* As a result of these disputes, Steele had given Appellant notice that she was going to inspect her apartment. *Id.*

On September 11, 2009, Steele was doing maintenance work on the apartment building when Appellant attempted to hand deliver written notice of her objection to inspection. R. 48, 4 – 49, 22. While handing Steele the documents, Appellant pushed them into Steele’s chest. *Id.* Steele called the police, and Appellant was arrested for assault on warrant number L-066971.

I. Pre-Trial Court Orders Limiting Appellant’s Right to Self-Representation

Prior to this assault trial, Appellant repeatedly engaged in conduct highly disruptive to the courts. Through a series of orders, this court noted Appellant’s: (1) failure to follow standard judicial procedures, (2) treatment of the courts and court personnel with “rudeness, incivility, and constant harassment,” (3) “constant nuisance to the orderly oversight of activity in a very busy courthouse.”¹ Those orders were issued in direct response to her disruptive conduct relating to this underlying assault case, and other criminal cases pending at the time.²

A. December 23, 2009 Supreme Court Order

This order directed the Clerk of the South Carolina Supreme Court to refuse to accept any filings from Appellant in this assault case seeking “extraordinary writ” or invoking the original jurisdiction of this court, unless the filings were signed by an attorney. R. 209. This was in response to Appellant’s repeated filings which this court deemed “frivolous... abus[ive] of the judicial process and... a waste of judicial resources.” R. 210.

¹ *See*: Supreme Court Order, December 23, 2009; Supreme Court Order, January 6, 2010; Fifth Circuit Order, March 31, 2010; Supreme Court Order, April 8, 2011; Supreme Court Order, October 24, 2012.

² *Id.*

B. January 6, 2010 Supreme Court Order

This order denied Appellant's petition for rehearing on the December 23, 2009 order. R. 211. This order also cites (1) her "history of engaging in vexatious litigation," (2) a document she filed in this court entitled "Emergency Motion..." and (3) an incident where she personally served a letter on a member of this court "essentially seek[ing] review" of the December 23, 2009 order. R. 211 - 212. Again, she failed to follow judicial procedure and this court had to "construe the motion and letter as petitions for rehearing." *Id.*

C. March 31, 2010 Fifth Circuit Court Order

In this order, the Chief Administrative Judges for the Fifth Circuit the Honorable G. Thomas Cooper, Jr. (General Sessions) and the Honorable James R. Barber (Common Pleas) restricted Appellant's access to the Richland County courthouse, subject to certain caveats, and restrained her from *ex parte* communication with courthouse personnel. R. 213. While this order acknowledges the right of civilian access, it also explains that her disruptive conduct prevented the court from functioning in an orderly manner. *Id.*

D. April 8, 2011 Supreme Court Order

This order added more conditions to the December 23, 2009 Supreme Court order; directing the clerks of court in South Carolina to refuse to accept **any** filings from Appellant, unless they were: prepared by an attorney, submitted by the attorney to this court first for approval, and filed by the attorney. R. 220. These additional restrictions were put in place due to the "frivolous, repetitive and abusive nature of Appellant's filings" on this assault case. R. 221. This court further cautioned that violation of this order would be grounds for contempt. R. 222.

E. October 24, 2012 Supreme Court Order

This order acknowledges that up to this point Appellant had not been represented by an attorney on this assault case. R. 223. It further states that going forward she “must be represented by counsel in any case pending before a court of this State in which she is a party”, specifically this assault case. *Id.* This order goes on to detail how Appellant still failed to follow procedural and substantive law, continued engaging in extremely disruptive conduct, and still consistently prevented the orderly functioning of the courts. R. 223 – 224.

F. March 7, 2013 Circuit Order

This order was issued after the Honorable James R. Barber conducted a hearing in General Sessions Court on February 21, 2013 on Theodore Lupton’s motion to be relieved of counsel in this assault case. R. 225 - 226. Appellant also motioned to represent herself. R. 11, 2-11. The court took the motion under advisement after leading Appellant through an extensive iteration of the *Faretta*³ colloquy regarding the dangers of self-representation. R. 11, 2 – 19, 14. In his order, Judge Barber denied Mr. Lupton’s motion and also denied Appellant’s *pro se* request. R. 213-215. Up to this point, Mr. Lupton was at least the third attorney appointed to handle this case. *Id.* Judge Barber took note of the Supreme Court orders **and** Appellant’s well documented conduct that led to them. *Id.*

G. March 12, 2013 Municipal Court Scheduling Conference

This hearing was held in the City of Columbia Municipal Court by the Honorable Judge Carl L. Solomon. R. 25 – 27. Theodore Lupton continued representing Appellant. *Id.* At this hearing, Appellant never unequivocally stated that she wanted to represent herself in this case:

“I do not recognize Mr. Lupton as my lawyer. I do not want him, I do not trust him. He is forced on me and the last time I was before Judge Barber I reminded him that the U.S. Supreme Court in *Faretta v. California* said that the only

³ *Faretta v. California*, 422 U.S. 806 (1975).

tribunal in Anglo American Jurisprudence that forced a lawyer on a Defendant was the [Star] Chamber. The [Star] Chamber, your Honor.” R. 25, 10-17.

The words *pro se* do not appear anywhere in the transcript; and throughout the hearing Appellant refers to Mr. Lupton as her attorney, Mr. Lupton makes arguments for her, and he refers to her as his client. R. 25 - 27.

II. April 25 Municipal Court Trial

On April 25, 2013, Appellant proceeded with a bench trial in front of Judge Solomon on the 2009 assault charge, was found guilty and sentenced to twenty (20) days imprisonment. R. 42 - 145. Appellant never renewed her *pro se* request. *Id.* Additionally, she referred to Mr. Lupton as her attorney several times, and never objected when Mr. Lupton referred to her as his client. *Id.*

III. Circuit Court Appeal

Appellant appealed the conviction based on the denial of her *pro se* request. R. 183, 3 – 14. The Honorable Judge Allison Lee heard the appeal in circuit court, and found the denial was not abuse of discretion. R. 243. Additionally, Judge Lee found the denial was not the result of an error of law. *Id.*

ARGUMENT

I. THE CIRCUIT COURT DID NOT ERR IN UPHOLDING THE DENIAL OF APPELLANT'S RIGHT TO SELF REPRESENTATION BASED ON HER OUT OF COURT CONDUCT RELATING DIRECTLY TO THIS ASSAULT CASE.

A defendant has a constitutional right to self-representation under the Sixth and Fourteenth Amendments. *Faretta v. California*, 422 U.S. 806, 807, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975). A defendant's assertion of his right to self-representation must be: "(1) clear and unequivocal; (2) knowing, intelligent and voluntary; and (3) timely." *United States v. Frazier-El*, 204 F.3d 553, 558 (4th Cir. 2000) (citations omitted). However, the right of self-representation is not absolute. *Id.* at 559. The Supreme Court in *Faretta* noted "The right of self-representation is not a license to abuse the dignity of the courtroom. Neither is it a license not to comply with relevant rules of procedural and substantive law." *Faretta*, 422 U.S. at 834 n. 46, 95 S.Ct. 2525. A trial judge may refuse to permit a criminal defendant to represent himself when he is "not able and willing to abide by rules of procedure and courtroom protocol." *United States v. Lopez-Osuna*, 242 F.3d 1191, 1200 (9th Cir.2001) (quoting *Savage v. Estelle*, 924 F.2d 1459, 1463 (9th Cir.1991)). "A trial court must be permitted to distinguish between a manipulative effort to present particular arguments and a sincere desire to dispense with the benefits of counsel." *Frazier-El*, 204 F.3d at 560. Other case law has held that "Even at the trial level ... the government's interest in ensuring the integrity and efficiency of the trial at times outweighs the defendant's interest in acting as his own lawyer." *Martinez v. Court of Appeal of Cal., Fourth Appellate Dist.*, 528 U.S. 152, 162, 120 S.Ct. 684, 145 L.Ed.2d 597 (2000). In *United States v. West*, 877 F.2d 281, 287 (4th Cir.1989), the Fourth Circuit held a trial court was not required to make a finding the defendant disrupted a trial to support its removal of him as pro se counsel.

“The question of whether court appointed counsel should be discharged is a matter addressed to the discretion of the trial judge. Only in a case of abuse of discretion will this [court] interfere.” *State v. Sims*, 405 S.E.2d 377, 380 (1991); *see State v. Barnes*, 753 S.E.2d 545, 556 (2014). An abuse of discretion occurs when the decision of the trial judge is based upon an error of law or upon factual findings that are without evidentiary support. *State v. Pagan*, 631 S.E.2d 262, 265 (2006).

A. Invocation of Right to Self-Representation and Denial of the Right Based on Appellant’s Conduct.

The record on appeal shows Appellant invoked her right to self-representation on February 21, 2013 in front of the Honorable Judge James Barber in General Sessions Court. R. 11, 2 – 11. Once Appellant invoked her right to self-representation, Judge Barber performed the *Faretta* colloquy, found she understood the ramifications of proceeding *pro-se*, and acknowledged the general constitutional right to represent one’s self in a criminal matter. R. 11 – 19, 14. At this hearing, Judge Barber was well aware of Appellant’s long pattern of disruptive conduct during the almost three and a half years this assault charge had been pending. R. 1 – 24. Additionally, Judge Barber was aware of the numerous Supreme Court Orders that were issued in an attempt to get Appellant to respect proper judicial procedure and courtroom protocol. *Id.* Judge Barber took the matter under advisement, and in a March 7, 2013 order, properly denied Appellant the right to represent herself on the assault charge. R. 225 - 226.

After Judge Barber denied her request, Appellant never subsequently invoked her right to self-representation in the Municipal Court, thus the court was not required to conduct the *Faretta*

colloquy. R. 25 – 166. Notwithstanding, Appellant had already waived her *pro se* right in this assault case by her out of court disruptive conduct.⁴

After Appellant was convicted on this assault charge and sentenced to twenty days imprisonment, she appealed her conviction based on the denial of her right to self-representation. On appeal, The Honorable Judge Allison Lee correctly found that Judge Barber and the Municipal Court did not abuse discretion in denying Appellant the right to self-representation. R. 241 – 252. Additionally, the Supreme Court orders provide the evidentiary support that Appellant’s right was properly denied, based on her unwillingness to comply with procedural and substantive law, as well as abusing the dignity of the courtroom. R. 168, 3 – 19.

The circuit court neither committed any reversible error when Judge Barber denied Appellant the right to represent herself in this assault case, nor when Judge Allison Lee upheld that decision on appeal. Accordingly, Appellant is not entitled to a new trial.

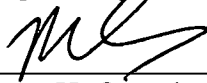
⁴ Although she waived her right to self-representation in this assault case, if she were to be granted a new trial, she would be able to re-assert that right and the trial court would be required to make a new determination.

CONCLUSION

The Circuit Court properly upheld Judge Barber's denial of Appellant's *pro se* request based on Appellant's refusal to comply with procedural and substantive law; in addition to her abusing courtroom dignity. The record on appeal shows that the denial was not an abuse of discretion.

Accordingly, Appellant is not entitled to a new trial, and her conviction must stand.

Respectfully submitted,



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October 17, 2016

STATE OF SOUTH CAROLINA
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APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

S.C. SUPREME COURT

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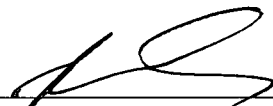
vs.

Marie-Therese Assa'ad-Faltas,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Final Brief of Respondent complies with Rule 211(b), SCACR.



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December 2, 2016

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Appellant.

PROOF OF SERVICE

The undersigned hereby certifies that she served a copy of the Final Brief of Respondent along with the Proof of Service and Certificate of Counsel upon the attorney for Appellant by placing it in the United States mail, first class postage prepaid to her attorney of record, John H. Strom, Esquire, South Carolina Commission on Indigent Defense, Division of Appellate Defense, PO Box 11589, Columbia, SC 29211-1589 on this 2nd day of December, 2016:


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