

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

MAY 08 2017

S.C. SUPREME COURT

Certiorari to Horry County

Honorable Edward B. Cottingham, Circuit Court Judge

Rickey Mazique,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT,

APPELLATE CASE NO: 2012-213631

PETITIONER FOR WRIT OF CERTIORARI

Rickey Mazique

INDEX

INDEX..... i
ISSUES PRESENTED..... 1
STATEMENT..... 2
ARGUMENT..... 4
CONCLUSION..... 9

ISSUES PRESENTED

1. The Appeals court Respectfully Applied the wrong standard of review when determining whether a trial court abused its discretion on a motion to substitute counsel.

2a. The appeals court Respectfully over looked Faretta V. California, misstated material facts and failed to answer Petitioners question of law presented.

2b. The Appeals court Respectfully failed to answer the question of law presented and over looked S.C. Code Ann §14-7-1030.

3. Whether Petitioner was Denied Due Process Law and the Right to Counsel on Appeal.

STATEMENT

The Petitioner, Rickey Mazique, was indicted for Armed Robbery by the Horry County Grand Jury. On November 8, 2012, petitioners motion to substitute counsel was heard and denied, thereafter on the same date a pre-trial Jackson V. Denno hearing was heard. A jury trial was held on November 15-16, 2012, the Honorable Edward B. Cottingham presiding. Petitioner was represented initially by Melinda A. Knowles at the pre-trial hearing and by Melinda A. Knowles and James C. Galmore at the start of the trial. On the day of the trial and prior to the selection of the jury. Petitioner was allowed to proceed self-represented. Galmore and Knowles were required to sit with Petitioner to assist if requested by the Petitioner. petitioner proceeded throughout the trial and sentencing self-represented. The state was represented by Joshua D. Holford and Bradley C. Richardson at trial. Brenda R. Badd was the court reporter for the pre-trial hearing and trial of the case. The jury returned a verdict of guilty on the charge of Armed Robbery. Petitioner was sentenced to twenty-five years incarceration. Petitioner timely filed Notice of Appeal. J. Falkner Wilds substituted as counsel prior to briefing of the case and filed the initial brief, by opinion filed Oct. 19, 2016. The Appeals Court Affirmed Petitioners conviction. J. Falkner Wilds submitted a letter to Petitioner, informing Petitioner that his services were completed and that if Petitioner wanted him to continue it would cost

additional funds. Petitioner filed a Notice with this court and the court of appeals, of his intent to file a rehearing along with a motion for substitution of counsel. Thereafter Petitioner filed the actual motion For Substitution of Counsel with the Appeals Court, Counsel of record then filed a petition for rehearing, without Petitioners consent and the Petition conflicts with Petitioners issues that should have been raised within the Petition for rehearing. Petitioner then submitted a Motion For Leave pursuant to Rule 29(b) and Submitted Communication between Petitioners trial counsels and both solicitors assigned to Petitioners case that establish that they knew about a conflict of interest that existed when Petitioners Motion For Substitution of Counsel was heard on Nov. 8th, 2012, and concealed it from the courts and the Petitioner. James C. Galmore was representing the states witness and Petitioner at the same time and the attorneys for Petitioner and the state knew. This after discovered evidence would have mandated substitution of trial counsel, if the attorney's had been truthful to the court and Petitioner. This is also a material fact that would have compelled the appeals court to reverse Petitioner conviction.

ARGUMENT

The Appeals Court Respectfully applied the wrong standard of review when determining whether a trial court abused its discretion on a motion to substitute counsel.

On Appeal Petitioners counsel presented this question of law.

1. In light of appellant's Timely Motion the court erred in refusing to conduct a proper hearing and appointment of substitute counsel.

This court stated in State V. Sims. 304 S.C. 409,414,405, S.E. 2d 377, as holding what factors a court may consider when reviewing whether a trial court abused its discretion on a motion to substitute counsel. Also see Kegrse V. Taylor 2016 WL 492290. The Sims court relied on the factors set out in U.S. V. Gallop 838 F.2d. 105,108 (4th cir.1988) which in turn relied upon Morris V. Slappy 461 U.S. 1, 103 S.ct. 1610(1983) thus the issue was decided on Federal Law. The courts of Appeals overlooked the question of law as it relates to conducting the proper hearing, and answered the question as if Petitioner question of law was, Did the court err in refusing to substitute counsel? Thus the appeals court failed to apply the three factors set out in State V. Sims. (1) timeliness of the motion (2) Adequacy of trial courts inquiry into defendants complaint, (3) and attorney-client conflict whether it so great that it resulted in total lack of communication preventing an adequate defense. The appeals court failed to address the conflict of interest.

2(a) The appeals court respectfully overlooked Faretta V. California misdated material facts and failed to answer Petitioners question of law presented.

On appeal Petitioner argued that the court denied him the right to self-representation, Petitioner argued this point from the Jackson V. Denno hearing.

The Majority found that although Mazique told the court he no longer wanted his attorney to represent him he was equivocal about whether he wanted to represent himself, because the request to proceed pro se must be clearly asserted by the defendant, we find no error in the courts initial denial to dismiss Mazique's counsel during the pre-trial hearing , see Fuller 337 S.C. at 241, 523 S.E. 2d at. 170.

The majority seems to have confused the two hearings that were held on the same date, the first hearing was Petitioners motion to substitute counsel which took place Nov.8th, transcripts pages 3-25 L.14. the statements used by the majority to say petitioner was equivocal are statements made by the Petitioner during this hearing, the court denied Petitioners motion to substitute counsel and proceeded with the Jackson V. Denno hearing which took place on Nov.8th, transcripts pages 25-55, the majority admits that during the Jackson V. Denno hearing Petitioner repeatedly stated he would represent himself. Overlooking Faretta V. California which clearly establishes that a defendant may assert his right to self-representation at anytime prior to trial, and once asserted the warnings are mandated. The majority also misstates material facts within their

fact's. The Facts are stated "A pre-trial hearing was held on November 8,2012. During the hearing, Mazique told the court he wanted a new attorney. After hearing Mazique's complaints about his attorney the court declined to rule on the request until the day of trial and ordered his attorney to represent him at trial unless Mazique chose to represent himself.

The correct facts are during Petitioners motion to substitute counsel Petitioner requested new counsel and after the court heard parts of Petitioner complaints about his attorney the court denied Petitioner request for substitution of counsel, and proceeded with the Jackson V. Denno hearing. Then declined to give the Faretta warnings until the day of trial. Had the appeals court separated the motion to substitute counsel from the Jackson V. Denno hearing and not used statements made during the motion to substitute counsel, to their admittance Petitioner made repeated unequivocal request to represent himself at the Jackson V. Denno hearing and the court failed to give the Faretta warnings..

2(b) The appeals court respectfully
failed to answer the question of
law presented and overlooked
S.C. Code Ann §14-7-1030

The question of law presented to the appeals court was whether Petitioner was denied his right to self-representation at a critical stage of the proceedings. Petitioner put forth evidence of the denial by establishing from the record that the trial court erred by allowing stand by counsel to waive Petitioners

Batson challenge, thus denying Petitioner right to self-representation. The Majority stated "If Mazique had an objection to the jury selection, he could have said so after Galmore responded to the courts question. Therefore, we find no error in the court's denial of his motion." Within the courts facts of the issue the majority admits that stand-by counsel responded to the courts question and the court allowed stand-by counsel denial to stand over Petitioners objection, clearly overlooking Faretta and McKaskle V. Wiggins 104 S.ct. 944, that establishes that a defendant has the right to conduct his defense in his own way and a trial judge, who in any event receives a defendants original Faretta request and supervises the protection of the right throughout the trial; must be considered capable of differentiating the claims presented by a pro se defendant from those presented by stand-by counsel, to avoid violations the court must decide any conflict in favor of the defendant. Even if this courts finds that the appeals court addressed the question of law presented, the appeals court erred by overlooking S.C. Code Ann §14-7-1030 which provides that objections to jurors can be made anytime before the jury is sworn. Also see State V. Short 511 S.E.2d. 358. Although it was after the lunch break Petitioners objection was before the jury was sworn. The appeals court cites no authority that supports its decision.

3. Weather Petitioner was denied due process of law and the right to counsel on appeal.

Petitioner has put forth evidence of an conflict of interest between Petitioner an appellate counsel by submitting Documents

and A Motion For Substitution of counsel, Petitioner has also Motion the Appeals Court for Leave pursuant to Rule 29(b) after discovering evidence of a conflict of Interest that existed when Petitioners Motion For Substitution of counsel was heard by the trial court. Petitioner submitted correspondence between trial counsel and both solicitors who were representing the states witness on other charges at the same time as Petitioner. All attorney's concealed this from the courts and the Petitioner. Petitioner discovered this in Jan. of 2017, this evidence mandated substitution of counsel, which is one of the issues raised on appeal. The appeals court has completely overlooked Petitioners Motion For Substitution of counsel and denied the Petition for rehearing submitted by Mr. Wilks. A review of Petitioners motion which included the issues Petitioner wanted raised within the Petition for rehearing and the issues raised by Mr. Wilks establish a conflict, due to a Lack of Communication created by Mr. Wilks letter and his repeated attempts to solicit funds for work already paid for. Petitioner has, by due diligence attempting to Substitute Counsel and have his issues raised and perfected by another attorney. Petitioner has several attorneys that he desires, ,R. ROBERT M. Dudek who was initially assigned to Petitioners case Mr. Michael Scott .

Petitioner contends that the Appeals Court has denied him due Process Of Law and the Constitutional Right to Counsel by failing to resolve the pending Motion For Substitution Of Counsel. Petitioner has the right to counsel on direct appeal. Conflict Free.

CONCLUSION

Based on the foregoing reasons, Petitioner Rickey Mazique's petition for Writ Of Certiorari should be granted to allow full briefing on the issues, or appoint counsel and remand for the appeals court to address Petitioners issues raised within this petition with counsel needed guidance.

Rickey Mazique

Pro Se

This 3 day of May, 2017

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Horry County

Honorable Edward B. Cottingham, Circuit Court Judge

Rickey Mazique

Petitioner,

V.

STATE OF SOUTH CAROLINA,

Respondent

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the petition for Writ of Certiorari in the above case has been served upon.

The Supreme Court of South Carolina
Daniel E. Shearouse Clerk of Court
P.O. Box 11330
Columbia, South Carolina, 29211

Subscribed and Sworn to on this 3 day of May, 2017



9/16/2016