

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CALHOUN COUNTY
Court of General Sessions

Maité Murphy, *Circuit Judge*

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SC Court of Appeals

Appeal No. 2015-000559

(Opinion No. 2017-UP-406)

THE STATE,

Respondent,

vs.

JERRY MCKNIGHT, SR.,

Appellant.

Appellant Jerry McKnight, Sr.'s Petition for Rehearing

Howard W. Anderson III
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-and-

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Comes now Appellant Jerry McKnight, Sr., and moves the Court for panel rehearing pursuant to Rule 221(a), SCACR. In support, he would respectfully show the Court as follows:

1. As the Court is aware, the sole issue presented on appeal is whether the circuit court violated Mr. McKnight's constitutional right to self-representation when the trial judge refused to let him fire his lawyer the morning of trial because she thought that it "would not be a good thing for [him] to proceed without an attorney," [R. 16].

2. The Court affirmed the conviction below, finding that Mr. McKnight had not properly invoked his right to self-representation.


3. With all due respect to the Court, the Court erred. The trial judge was aware that he was invoking his right to self-representation, which is why the trial judge engaged in the *Faretta* colloquy with Mr. McKnight. [R. 15-16]. Particularly given the trial judge's awareness as to what Mr. McKnight was requesting, nothing more should have been required to trigger his constitutional right to fire his lawyer and proceed to the trial *pro se*. See, e.g., *United States v. Singleton*, 107 F.3d 1091, 1094 (4th Cir. 1997) (holding defendant's mid-trial statement "I would like to fire my attorney, your Honor" was sufficient to constitute waiver of the right to counsel); *Dorman v. Wainwright*, 798 F.2d 1358, 1366 (11th Cir. 1986) ("To invoke his Sixth Amendment right under *Faretta* a defendant does not need to recite some talismanic formula hoping to open the eyes and ears of the court to his request."); *United States v. Lorick*, 753 F.2d 1295, 1298 (4th Cir. 1985) (finding sufficient invocation in part because of the "recognition by the [trial] court at that point that the right [to dispense with counsel] had been asserted").

CONCLUSION

The Court should, therefore, vacate its opinion and reverse the judgment below with instructions for a retrial. In the alternative, to the extent that any doubt exists as to whether Mr. McKnight had invoked his right, the Court should vacate the opinion and remand for the trial court to conduct an evidentiary hearing to whether Mr. McKnight invoked his right to self-representation.

Respectfully submitted this 1st day of November, 2017.

JERRY MCKNIGHT, SR.

By: 
One of His Attorneys

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing paper by first-class mail, proper postage prepaid,
this 1st day of November, 2017, on the following parties:

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