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S.C. SUPREME COURT

ALAN WILSON
ATTORNEY GENERAL

December 21, 2017

The Honorable Daniel E. Shearouse
Clerk – South Carolina Supreme Court
Post Office Box 11330
Columbia, SC 29211

Re: Darryl Joseph Williams, Respondent v. State of South Carolina, Petitioner
Case No. 2016-CP-23-5814

Dear Mr. Shearouse:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

1. A copy of the order which is to be challenged on appeal.
2. Proof of service of notice of appeal on the Respondent.
3. A letter ordering the PCR transcript from the court reporter.

Sincerely,

DeShawn H. Mitchell
Assistant Attorney General
SC Bar #101813

DHM/jacc
Enclosures

cc: Jonathan M. Hiller, Esquire
South Carolina Department of Corrections
Greenville County Clerk of Court
Solicitor W. Walt Wilkins
Office of Appellate Defense
Trisha Allen, Director – Victim Advocacy Division

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

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DEC 21 2017

The Honorable Letitia H. Verdin, Circuit Court Judge S.C. SUPREME COURT

Case No. 2016-CP-23-5814

Darryl Joseph Williams,.....Respondent,

v.

State of South Carolina, Petitioner.

NOTICE OF APPEAL

The State of South Carolina appeals the Honorable Letitia H. Verdin's order dated October 26, 2017 and filed October 30, 2017, granting post-conviction relief to the Respondent. The State filed a motion to reconsider, which was denied on December 7, 2017, and received by the State on December 12, 2017. A copy of the order on appeal is attached to this notice.

[signature page to follow]

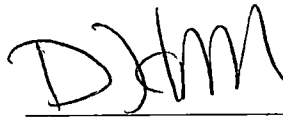
Respectfully submitted,

ALAN WILSON
Attorney General

DESHAWN H. MITCHELL
Assistant Attorney General
S.C. Bar #101813

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

By:



Attorneys for the Petitioner

Columbia, South Carolina

December 21, 2017

Other counsel of record:

Jonathan M. Hiller, Esquire
Hiller Law Firm, PC
604 16th Avenue, N
Myrtle Beach SC 29577

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Letitia H. Verdin, Circuit Court Judge

Case No. 2016-CP-23-5814

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S.C. SUPREME COURT

Darryl Joseph Williams,.....Respondent,

v.


State of South Carolina,Petitioner.

PROOF OF SERVICE

I, DeShawn H. Mitchell, Counsel for the Petitioner, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to his attorney of record:

Jonathan M. Hiller, Esquire
Hiller Law Firm, PC
604 16th Avenue, N
Myrtle Beach SC 29577

I further certify that all parties required by Rule to be served have been served this 21st day of December, 2017.



DESHAWN H. MITCHELL
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737
Attorney for the Petitioner

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Darryl Joseph Williams,

2016-CP-23-5814

Applicant,

vs.

ORDER GRANTING RELIEF

State of South Carolina,

Respondent.

FILED-CLERK
PAUL R. WATSON
2017 OCT 30 AM 9:52

This matter is before the Court on an application for post-conviction relief filed by Darryl Joseph Williams, hereafter the Applicant, on October 12, 2016 and amended on September 28, 2017. Present at the hearing was the Applicant and his attorney, Jonathan Hiller. Assistant Attorney General DeShawn Mitchell appeared on behalf of the State of South Carolina, the Respondent.

After hearing testimony from the Applicant and considering the matters brought before the Court by the amended application for post-conviction relief, the Court makes the following factual findings.

Findings of Fact

1. The Applicant was arrested and charged with domestic violence in the third degree on June 26, 2015.
2. The Applicant appeared in Mauldin Municipal Court on October 14, 2015.
3. At the beginning of the court proceedings, the municipal judge delivered a general address that contained information and instructions directed to all of the persons appearing in court as defendants.



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4. The general address was audio recorded and, in relevant part, transcribed by the Applicant. Respondent was provided with a copy of the audio recording and the transcript. Respondent made no objection to the transcript of the recording.
5. During the general address, the trial judge informed all the defendants, including the Applicant, of the right to counsel.
6. However, the general address did not include any verbal warnings to Applicant or the other defendants about the dangers and disadvantages of self-representation or the potential collateral consequences of a conviction after self-representation.
7. The trial judge did not provide any written information about the right to counsel or any warnings about the dangers of self-representation and the possible collateral consequences of a criminal conviction.
8. After the conclusion of the general address, the Applicant chose a bench trial and represented himself during the trial.
9. At the conclusion of the trial, the Applicant was convicted. He was ordered to pay a fine in the amount of Eight Hundred and Fifty Dollars (\$850).
10. During the post-conviction relief hearing, the Applicant testified that if he received a verbal warning about the dangers of self-representation, he would have requested a continuance so that he could seek advice from a lawyer.
11. The Applicant further testified that he would have sought advice from a lawyer if he had been given written warnings about the dangers of self-representation.
12. The Applicant's testimony is credible.
13. The Applicant testified that he attended school through the twelfth grade and has a high school diploma. He further testified that he attended some college classes at

A handwritten signature in black ink, consisting of a stylized, cursive script that is difficult to decipher but appears to be a personal name.

Greenville Technical College where he took general education and HVAC (heating ventilation and air conditioning) classes but never graduated.

14. In January 2014 South Carolina Court Administration approved Form 684, which is entitled "FARETTA WARNINGS." This form is available for download on the South Carolina Judicial Department website (<http://www.sccourts.org/forms>).

Legal Conclusions

The issue before this Court is whether the Applicant knowingly and voluntarily waived his right to counsel. Based on the above factual findings and in consideration of the following legal authority, the Court concludes the Applicant did not make a knowing and voluntary waiver of his right to counsel.

To waive the right to counsel a defendant must be "advised of his right to counsel and adequately warned of the dangers of self-representation." Watts v. State, 347 S.C. 399, 556 S.E.2d 368 (S.C. 2001) (citing Prince v. State, 301 S.C. 422, 392 S.E.2d 462 (S.C. 1990)). Settled principles of jurisprudence require that a defendant "be made aware of the dangers and disadvantages of self-representation so that the record will establish he knows what he is doing and his choice is made with eyes open." Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed. 562 (1975). The trial judge is responsible for ensuring the defendant is given the opportunity to make a "competent, intelligent waiver." State v. Dixon, 269 S.C. 107, 236 S.E.2d 419 (S.C. 1977). "While a specific inquiry by the trial judge expressly addressing the disadvantages of a pro se defense is preferred, the ultimate test is not the trial judge's advice but rather the defendant's understanding." Wroten v. State, 301 S.C. 293, 391 S.E.2d 575 (S.C. 1990) (citing Fitzpatrick v. Wainwright, 800 F.2d 1057 (11th Cir. 1986)).



If the trial judge does not address the dangers and disadvantages of engaging in self-representation, as required by the second prong of Faretta v. California, “this Court will look to the record to determine whether the petitioner had sufficient background or was appraised of his rights by some other source.” Watts v. State, 347 S.C. 399, 556 S.E.2d 368 (S.C. 2001). In an action for post-conviction relief, “if the record fails to demonstrate the petitioner made an informed choice to proceed pro se, with ‘eyes open,’ then the petitioner did not make a knowing and voluntary waiver of counsel and the case should be remanded for a new trial.” Id.

In the case currently before the Court, the trial judge told the Applicant, and the other defendants assembled in municipal court on October 14, 2015, of the right to representation provided by a lawyer. But the trial judge offered no verbal warnings about the dangers of self-representation, even though verbal warnings are preferred. Further, the trial judge offered no written warnings, though such warnings were approved for use by the South Carolina Court Administration and available at the time of Applicant’s trial.¹ The trial judge did not pose any questions to Applicant about his background. Finally, neither the record of Applicant’s trial in municipal court nor the testimony presented to this Court at Applicant’s post-conviction relief hearing demonstrates that the Applicant had sufficient background to make a knowing and voluntary waiver of his right to counsel or apprised of this right by another source. Applicant, who is employed as a

¹ Applicant attached South Carolina Court Administration Form 684 entitled “FARETTA WARNINGS” to his amended post-conviction relief application. This form was approved in January 2014 and informs pro se defendants with warnings regarding the dangers of self-representation, the technicalities of criminal defense as a practice area, preservation issues for appellate purposes, some collateral consequences of a criminal conviction, the applicability of the rules of evidence and procedure and the possibility of having a lawyer appointed via a screening process.




commercial truck driver, testified that he finished high school and took one and a half years of basic college classes.

In conclusion, the trial judge did not verbally warn the Applicant of the dangers of self-representation and the Applicant does not have the type of background knowledge or experience sufficient to make an knowing and intelligent waiver of the right to counsel absent Faretta warnings. Therefore, Applicant's conviction is reversed and this case is remanded for a new trial, and

IT IS SO ORDERED.

October 26, 2017



The Honorable Letitia Verdin
South Carolina Circuit Court Judge

