

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
G. Thomas Cooper, Circuit Court Judge

DEC 27 2017

S.C. SUPREME COURT

Appellate Case No.: 2017-002205
Opinion No. 2017-UP-339 (S.C. Ct. App. Filed August 9, 2017)

The StateRespondent

v.

John Henry Dial Jr.....Petitioner

REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

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The Respondent has failed to refute that the Court of Appeals erred by holding that the circuit court, acting as an appellate court in a case heard by the magistrate, cannot consider questions that have not been presented to the magistrate when the pro se Appellant was not warned of the dangers of proceeding without an attorney.....3

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QUESTION PRESENTED

DID THE RESPONDENT FAIL TO REFUTE THAT THE COURT OF APPEALS ERRED BY HOLDING THAT THE CIRCUIT COURT ACTING AS AN APPELLATE COURT IN A CASE HEARD BY THE MAGISTRATE, CANNOT CONSIDER QUESTIONS THAT HAVE NOT BEEN PRESENTED TO THE MAGISTRATE, WHEN THE PRO SE APPELLANT WAS NOT WARNED BY THE MAGISTRATE COURT OF THE DANGERS OF PROCEEDING WITHOUT AN ATTORNEY?

ARGUMENT IN REPLY

RESPONDENT HAS FAILED TO REFUTE THAT THE COURT OF APPEALS ERRED BY HOLDING THAT THE CIRCUIT COURT ACTING AS AN APPELLATE COURT IN A CASE HEARD BY THE MAGISTRATE, CANNOT CONSIDER QUESTIONS THAT HAVE NOT BEEN PRESENTED TO THE MAGISTRATE, WHEN THE PRO SE APPELLANT WAS NOT WARNED BY THE MAGISTRATE COURT OF THE DANGERS OF PROCEEDING WITHOUT AN ATTORNEY

Respondent failed to address that since Appellant was not an attorney and was not warned of the dangers of self representation it would be highly improbable that he would have objected to the failure of the magistrate court to warn of the dangers of self representation. As stated in the Petition for Writ of Certiorari, one of the dangers of self representation of which Appellant was not warned is the danger of not objecting to objectionable evidence or proceedings. Preservation of the record cannot be accomplished on the issue of the failure to be warned of the dangers of self representation by someone not warned of the dangers of self representation. “Faretta allows an accused to waive his right to counsel if he is (1) advised of his right to counsel, and (2) adequately warned of the dangers of self representation.” Prince v. State, 301 S.C. 422, 424, 392 S.E.2d 462, 463 (1990) as quoted in In re Christopher H. 359 S.C. 161, 596 S.E.2d 500 (S.C. App. 2004). See Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975).

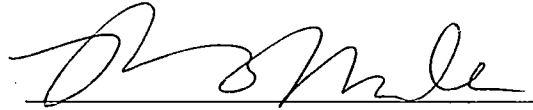
Respondent did address that “(i)t is the trial court’s responsibility to determine whether there was a knowing and intelligent waiver by the accused.” State v. Bryant, 383 S.C. 410, 414, 680 S.E.2d 11, 13 (Ct. App. 2009). Petitioner reiterates the argument that a knowing and intelligent waiver of Appellant’s Sixth Amendment right to counsel is a proactive duty of the trial court and not a responsibility of the Appellant to raise. Furthermore, as Respondent argued in their brief citing

State v. Cash, 304 S.C. 223, 225, 403 S.E.2d 632, 634 (1991), “except in extraordinary cases where it is clear that a hearing on remand would serve no useful purpose, the remedy when the record fails to show a knowing and intelligent waiver of the right to counsel will be a remand for a Dixon hearing.” See State v. Dixon, 269 S.C. 107, 236 S.E. 2d 419 (1977). While Respondent cites the ten factors listed in Cash, there is no argument refuting Petitioner’s argument that the Court of Appeals erred by holding that the circuit court, acting as an appellate court in a case heard by the magistrate, cannot consider questions that have not been presented to the magistrate when the pro se Appellant was not warned of the dangers of proceeding without an attorney.

CONCLUSION

By reason of the foregoing argument and the argument of the Petition for Writ of Certiorari, a writ of certiorari should be granted to allow full briefing on this issue.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'R. W. Mills', written over a horizontal line.

Robert W. Mills
Attorney for the Petitioner

December 27, 2017

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PROOF OF SERVICE

I certify that I have served the REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS on the State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on December 27, 2017 addressed to:

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