STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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S.C. SUPREME COURT

Appeal from Pickens County

Honorable James R. Barber, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

VINCENT MISSOURI,

APPELLANT

APPELLATE CASE NO. 2014-001176

REPLY BRIEF OF APPELLANT

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<u>ARGUMENT IN REPLY</u>

1.

<u>The Trial Court Categorically Refused to Consider Appellant's Request to Represent Himself.</u>

The State attempts to paint appellant's assertion of his right to represent himself as equivocal in an effort to deflect attention from the trial court's unyielding refusal to consider his request. Appellant sent numerous documents to the Pickens County Clerk of Court asserting his right to represent himself. Supp. R. 1 – 40. The court held a hearing held **five months** before trial was to decide whether to relieve appellant's attorney. R. 4, ll. 4 – 16. From the beginning of the hearing, it is clear that appellant had multiple motions he intended to make, but the trial judge stated she would only consider the motion to relieve counsel. R. 4, ll. 11 – 16. Appellant then told the court he was ready to represent himself rather than proceed with his attorney. R. 5, ll. 12 – 17.

The trial judge did not conduct an inquiry pursuant to <u>Faretta v. California</u>, 422 U.S. 806 (1975), and refused to consider his request. R. 5, l. 18 – 7, l. 23. The trial judge's decision was not based on the relevant considerations under <u>Faretta</u>, but solely on the seriousness of the charges against appellant. R. 7, ll. 18 – 23. The trial judge asked appellant's attorney what charges appellant faced and after the lawyer's reply, the trial judge ruled, **"Pro se is not in the realm of possibility right now."** R. 7, ll. 22 – 23 (emphasis added). The trial judge further told appellant that he did not need to "change horses in midstream" even though the trial was five months away. R. 9, l. 22 – 10, l. 15. Judge Verdin ordered appellant to "make everything go through your lawyer." R. 11, l. 6 – 12, l. 2. Appellant responded, "So in other words, I have to

keep him." R. 12, ll. 3 – 4. The court responded, "Bottom line, you got to keep him. You're going to be happy with him." R. 12, ll. 5 – 6.

The trial judge never seriously considered appellant's request to represent himself at this hearing and this violates the Sixth Amendment. Raulerson v. Wainwright, 469 U.S. 966 (1984) (Marshall, J., dissenting from denial of certiorari). Justice Marshall's dissent in Raulerson indicated that a trial judge should immediately conduct a Faretta colloquy upon a defendant's request to represent himself. In Raulerson, the defendant sent the trial judge a letter unequivocally demanding to represent himself. Id. at 967. The trial judge "provided a copy of the letter to counsel and did nothing more." Id. Justice Marshall wrote that "once a defendant affirmatively states his desire to proceed *pro se*, **a court should cease other business and make the required inquiry.**" Id. at 970 (emphasis added). Justice Marshall continued:

> [I]f a trial court judge holds a *Faretta* hearing when the accused clearly asserts his desire to proceed *pro se*, the result will not do harm to the right to counsel. At the same time, the *failure* to hold a *Faretta* inquiry at this time *will* do injury to the right recognized in *Faretta*. Delay in holding a hearing after the right is unequivocally asserted undermines that right by forcing the accused to proceed with counsel in whom he has no confidence and whom he may distrust.

Id. at 970 (emphasis in original). The benchbook for federal district judges advises that representation issues, including a Faretta colloquy if necessary, should be decided at the defendant's first appearance. Jona Goldschmidt, Has He "Made His Bed, and Now Must Lie in It?" Toward Recognition of the Pro Se Defendant's Sixth Amendment Right to Post-Trial Readmonishment of the Right to Counsel, 8 DePaul J. for Soc. Just. 287, 312-13 (2015).

Justice Marshall's dissent in Raulerson demonstrates that the trial judge erred in not even conducting a Faretta hearing and taking seriously appellant's assertion of his Sixth Amendment right. The evil recognized by Justice Marshall—forcing appellant to proceed with an attorney he

did not trust—is succinctly summed up by appellant's response to Judge Verdin's comment that he would be happy with the attorney he could not fire: "Oh, boy." R. 12, l. 7.

Appellant began asserting his right to represent himself shortly after his arrest and continued to do so until his trial. Appellant was arrested the day of the robbery—June 18, 2012. R. 145, ll. 9 – 11. R. 150, ll. 3 – 11. On June 26, 2012, appellant filed a *pro se* "Motion for Change of Venue." Supp. R. 1. The filing begins, "Comes now, the defendant Vincent Missouri, appearing in Pro-Se capacity. . . ." Supp. R. 1. On the same day, appellant filed another *pro se* motion in which he stated he was unrepresented by counsel at the time of the filing. Supp. R. 3. He also wrote a letter to the Pickens County Clerk of Court informing them that the Pickens County Public Defender's Office would not be representing him. Supp. R. 6. Appellant then wrote, "I, however, will be representing myself." Supp. R. 6. He asks for assistance in obtaining access to legal research materials and for documents and copies. Supp. R. 6. The Clerk responded that they had received his motions, were returning him clocked copies, and forwarding his motions to the solicitor. Supp. R. 7.

On August 20, 2013, the Clerk filed a letter from appellant in which he complained about interference with his right to represent himself. Supp. R. 8. Appellant specifically cited the Sixth Amendment and the South Carolina Constitution. Supp. R. 8. Appellant attached a letter he wrote the Chief Justice which cited Faretta. Supp. R. 9. The Clerk responded that he had no right to hybrid representation. Supp. R. 14.

Less than a month after this letter, on September 11, 2013, appellant filed a pro se "Motion to Relieve Counsel for Defendant." Supp. R. 15. On October 8, 2013, appellant wrote the Clerk, "Please be advised that I am acting on my own behalf, as Mr. Angell and myself has ceased all communications. Whereas, he has personally delivered 'my entire casefile to me at

the Greenville, County Detention Center." Supp. R. 23. He asks the Clerk to file his motions. Supp. R. 23. The Clerk responded that "Mr. Angell will remain your attorney until the time a Circuit Court Judge signs an order relieving him as your attorney." Supp. R. 35. The Clerk returned his motions. Supp. R. 35. Trial counsel filed a Motion to Withdraw several days later. Supp. R. 36. Trial counsel's motion states that appellant wanted to "terminate the attorney/client relationship and have new counsel appointed **or in the alternative continue with the defense of his case, Pro Se.**" Supp. R. 36 (emphasis added).

After the hearing before Judge Verdin, appellant sent to the Clerk an "Intent to Appeal Pre-Trial Ruling." Supp. R. 38-39. Appellant stated he was "appearing in pro-se capacity" and, citing Faretta, argued that Judge Verdin's ruling at the hearing was erroneous. Supp. R. 39.

Despite appellant's numerous requests, at the December hearing, the trial court simply refused to even consider appellant's demand to represent himself and prepare his own defense when it stated, without conducting any of the colloquy mandated by Faretta, that the exercise of his Sixth Amendment right was **"not in the realm of possibility right now."** R. 7, ll. 22 – 23 (emphasis added).

Appellant's renewal of his request to represent himself when the case was called for trial further demonstrates that there was nothing equivocal about his initial request. R. 24, l. 5 – 25, l. 8. Appellant unwaveringly stated that he intended to represent himself when Judge Verdin initially considered the matter. R. 24, ll. 5 – 18. Had Judge Verdin not erred at this hearing, appellant could have been prepared to represent himself at trial. Instead, the State asks this Court to deem appellant's request to Judge Barber for time to prepare for trial as "equivocal." R. 48, ll. 8 – 20. Far from being equivocal, appellant's request was the direct result of Judge Verdin's earlier error. Just as in Faretta, appellant asked to represent himself "[w]ell before the date of

trial. Faretta, 422 U.S. at 807. Appellant cannot be charged with equivocation when his earlier assertion of his right to represent himself would have given him ample time to prepare. The trial court's rulings deprived appellant of his Sixth Amendment right and this Court should reverse.

2.

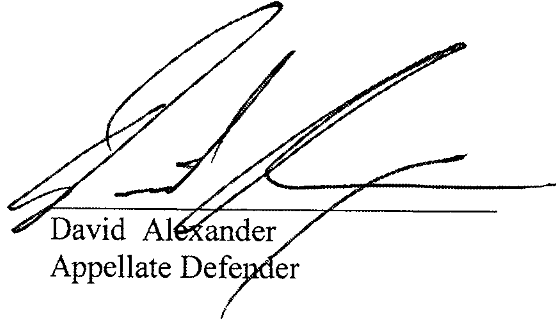
Denial of the Right to Self-Representation is a Structual Error and This Court Should Ignore the State's Harmless Error Argument.

The State makes a lengthy and superfluous harmless error argument. This argument should be ignored. The denial of the right to self-representation is a structural error and the Court need not conduct even a prejudice inquiry, much less a harmless error analysis. In State v. Barnes, 407 S.C. 27, 35, 753 S.E.2d 545, 549-50 (2014), our Supreme Court reversed a capital conviction because the trial court denied the defendant his right to represent himself. Citing McKaskle v. Wiggins, 465 U.S. 168 (1984), the Barnes Court held that it was "compelled to reverse" and in its parenthetical cite to Wiggins, stated that the "erroneous denial of Faretta request is a structural error requiring automatic reversal." Barnes at 35, 753 S.E.2d 549-50.

This Court need only analyze whether appellant was deprived of his right to represent himself. Upon concluding that the trial court erred in denying him his Sixth Amendment right, this Court's analysis ends because such an error is structural. The trial court erred, and, as in Barnes, reversal is compelled.

CONCLUSION

For the foregoing reasons, appellant's convictions should be reversed, and this case remanded for a new trial.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of October, 2016.

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Honorable James R. Barber, Circuit Court Judge

THE STATE,

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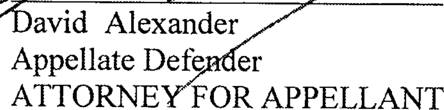
V.

VINCENT MISSOURI,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Reply Brief of Appellant in the above referenced case has been served upon V. Henry Gunter, Jr., Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Reply Brief of Appellant have been served on Vincent Missouri, #197996, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 28th day of October, 2016.



David Alexander
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 28th day of October, 2016.

______________________ (L.S)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.