

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

On Writ of Certiorari to the Court of Appeals
Appeal from Orangeburg County
The Honorable Diane Schafer Goodstein, Circuit Court Judge
RECEIVED
MAY 29 2018

Opinion No. 27768

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

LAMONT ANTONIO SAMUEL,

PETITIONER.

Appellate Case No. 2015-002401

RETURN TO MOTION FOR LIMITED REMAND

Respondent makes the same Alice in Wonderland argument it made in State v. Barnes, 413 S.C. 1, 774 S.E.2d 454 (2015) – to have this case remanded to see if Samuel wants to be represented by counsel at a new trial which it argues would be a concession that his prior conviction was lawful and would not necessitate a retrial. This Court rejected that argument and even said in footnote 3 that the issue was not ripe. This issue is still not ripe.

This Court summarized at the end of its opinion as follows:

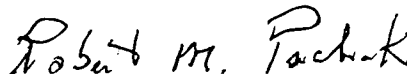
We also note with concern the implication of the State's argument. The State's position is that the erroneous denial of a defendant's sixth amendment right to self-representation at the first proceeding results in that defendant having a diminished sixth amendment right in a second trial. In other words, that State seeks to punish the

defendant whose constitutional rights have been violated, a concept that is contrary to both justice and common sense. Finally, it appears that the State's argument is an attempt to introduce a prejudice component into what is admittedly a structural error. See *United States v. Gonzalez-Lopez*, 548 U.S. 140, 150-51, 126 S.Ct. 2557, 165 L.Ed.2d 409 (2006) (prejudice is irrelevant when the constitutional right to self-representation is violated). As the Supreme Court explained "[s]ince the right of self-representation is a right that when exercised usually increases the likelihood of a trial outcome unfavorable to the defendant, its denial is not amenable to 'harmless error' analysis. The right is either respected or denied; its deprivation cannot be harmless." *McKaskle*, 466 U.S. at 177, fn. 8, 104 S.Ct. 944. To the extent the State's argument can be characterized as "no harm, no foul," it conflicts with the United States Supreme Court's pronouncements on the sanctity of an individual's sixth amendment right to counsel/right to self-representation.

CONCLUSION

Respondent's motion should be denied. This Court's decision in Barnes and Samuel should not be disturbed.

Respectfully Submitted,



ROBERT M. PACHAK
Appellate Defender

This 29th day of March, 2018.

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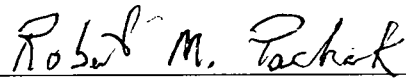
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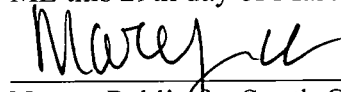
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Return to Motion for Limited Remand in the above-entitled case has been served upon William Edgar Salter, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Lamont Antonio Samuel, #355793, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 29th day of March, 2018.



Robert M. Pachak
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO BEFORE
ME this 29th day of March, 2018.

 (L.S)
Notary Public for South Carolina
My Commission Expires: May 12, 2027.