

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

MAR 29 2018

S.C. SUPREME COURT

Opinion No. 27768

THE STATE,

RESPONDENT,

V.

LAMONT ANTONIO SAMUEL,

PETITIONER.

Appellate Case No. 2015-002401

RETURN TO PETITION FOR REHEARING

The trial judge did everything she could think of to deny petitioner the right to represent himself. She told petitioner that he was bright enough and that the constitution said he was entitled to represent himself. But then she said, “I don’t want you to represent yourself, but I can’t violate the law.” R. 50, ll. 6-9. She admitted, “You don’t have a problem that I’m aware of that I can use, in all candor, to keep you from representing yourself.” R. 53, ll. 15-17. After taking a break to do some research she cited Gardner v. State, 351 S.C. 407, 570 S.E.2d 184 (2002) and said petitioner was trying to “manipulate” the proceedings and that he was not allowed to “disrupt” the proceedings. R. 71, l. 3 – 75, l. 14.

This Court correctly found that under Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525

(1995) petitioner met the standards to represent himself:

In *Faretta*, the United States Supreme Court held that criminal defendants have a fundamental right to self-representation under the Sixth Amendment. 422 U.S. at 819-21, 95 S.Ct. 2525. In order to effectively invoke this right of self-representation, the defendant must clearly and unequivocally assert his desire to proceed *pro se* and such request must be made knowingly, intelligently, and voluntarily. *United States v. Frazier-El*, 204 F.3d. 553, 558 (4th Cir. 2000). Where a defendant invokes his right of self-representation before trial, the only inquiry the circuit judge may undertake is that required by *Faretta*. *State v. Barnes*, 407 S.C. 27, 35, 753 S.E.2d 545, 550 (2014). Thus, the only basis upon which a circuit judge may deny a defendant's pre-trial motion to proceed *pro-se* is if the court determines the defendant has not knowingly, intelligently, and voluntarily waived his right to counsel. *State v. Reed*, 332 S.C. 35, 41, 503 S.E.2d 747, 750 (1998). A circuit judge's denial of a defendant's knowing and voluntary request to proceed *pro se* is a structural error requiring automatic reversal and a new trial. *State v. Rivera*, 402 S.C. 225, 247, 741 S.E.2d 694, 705 (2013).

State v. Samuel, ____ S.C.2d ____ (2018).

This Court also found that there was no attempt by petitioner to disrupt or manipulate the process.

In *City of Columbia v. Assa'ad-Faltas*, 420 S.C. 28, 800 S.E.2d 782 (2017) this Court gave examples of disruptive and manipulative conduct that would not allow self-representation:

Additionally, even had the issue been unequivocally and timely raised to the municipal court, we find the municipal court would have been justified in insisting that Appellant proceed with the assistance of **792 counsel. Indeed, Appellant's long history of abusing the judicial process, coupled with her conduct in this case in abusing and harassing courts and court officers; disrupting, delaying, and prolonging proceedings; and persistently disregarding and circumventing the orders of this Court aimed at curbing her improper conduct all underscore the Court's interest in preventing Appellant's further manipulation of the system and "in ensuring the integrity and efficiency of the trial." *Frazier-El*, 204 F.3d at 588; see *State v. Hester*, 324 S.W.3d 1, 33 (Tenn. 2010)

(“Disingenuous invocations of the right of self-representation that are designed to manipulate the judicial process constitute an improper tactic by a defendant and are not entitled to succeed.”) (citing *United States v. Welty*, 674 F.2d 185, 187 (3d Cir.1982)); *id.* (“A court may deny a manipulative request for self-representation, distinguishing between a genuine desire to invoke a right of self-representation and a manipulative effort to frustrate the judicial process.” (citations omitted)); *Tanksley v. State*, 113 Nev. 997, 946 P.2d 148, 150 (1997) (observing “[a] defendant’s right to self-representation does not allow him to engage in uncontrollable and disruptive behavior in the courtroom,” and finding “the defendant’s pretrial activity is relevant if it affords a strong indication that the defendant [] will *48 disrupt the proceedings in the courtroom” (internal quotation marks and citations omitted)).

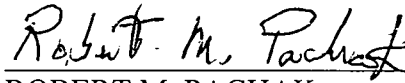
420 S.C. at 47-48, 800 S.E.2d 791-792.

Petitioner did not conduct himself in that manner.

CONCLUSION

The petition for rehearing should be denied.

Respectfully Submitted,

Handwritten signature of Robert M. Pachak in cursive script.

ROBERT M. PACHAK
Appellate Defender

This 29th day of March, 2018.

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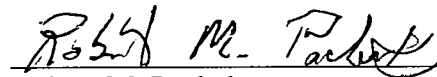
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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Return to Petition for Rehearing 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.