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**MAY 23 2018**

**S.C. SUPREME COURT**

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Greenville County  
Court of Common Pleas  
The Honorable Letitia H. Verdin, Circuit Court Judge

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Appellate Case No. 2017-002580

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DARRYL JOSEPH WILLIAMS,

Respondent,

v.

STATE OF SOUTH CAROLINA,

Petitioner.

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**PETITION FOR WRIT OF CERTIORARI**

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ALAN WILSON  
Attorney General

DESHAWN H. MITCHELL  
Assistant Attorney General  
SC Bar No. 101813

Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3737

ATTORNEYS FOR PETITIONER

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## **STATEMENT OF ISSUE ON CERTIORARI**

Did the post-conviction relief court err as a matter of law by granting Williams a new trial, where it applied an incorrect standard as Williams was not entitled to counsel as his conviction did not result in actual imprisonment?

## STATEMENT OF THE CASE

On June 26, 2015, Williams was arrested for Criminal Domestic Violence-Simple Assault (Ticket No. 62645GM). On October 14, 2015, appearing *pro se*, Williams proceeded to a bench trial before the Honorable Jessica A. Salvini. Williams was found guilty. Judge Salvini fined Williams eight hundred and fifty dollars. Williams did not appeal his conviction or fine.

Williams filed a PCR application October 12, 2016 and amended his application on September 28, 2017. Petitioner made its return on July 10, 2017, requesting an evidentiary hearing. An evidentiary hearing was held on October 26, 2017 at the Greenville County Courthouse before the Honorable Letitia H. Verdin. Williams was present and represented by Jonathan M. Hiller, Esquire. DeShawn H. Mitchell, Esquire of the South Carolina Office of the Attorney General represented the State. Williams testified at the hearing. Following the evidentiary hearing, Judge Verdin granted Williams a new trial by written order filed October 30, 2017. Petitioner filed a motion to alter or amend judgment on November 15, 2017. Williams filed a return to Petitioner's motion to alter or amend on November 28, 2017. Judge Verdin denied Petitioner's motion to alter or amend in a form 4 filed December 7, 2017.

Petitioner filed a timely notice of appeal. This petition for writ of certiorari and appendix follows.

## STANDARD OF REVIEW

The standard of review in post-conviction relief (PCR) cases depends on the specific issue before the reviewing court. It will defer to a PCR court's findings of fact and will uphold them if there is evidence in the record to support them; but will review questions of law de novo, with no deference to trial courts. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). However, appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

## ARGUMENT

**The post-conviction relief court erred as a matter of law by granting Williams a new trial, where it applied an incorrect standard as Williams was not entitled to counsel as his conviction did not result in actual imprisonment.**

On June 26, 2015, Williams was arrested for Criminal Domestic Violence-Simple Assault. On October 14, 2015, appearing *pro se*, Williams proceeded to a bench trial before the Honorable Jessica A. Salvini. Williams was found guilty. Judge Salvini fined Williams eight hundred and fifty dollars.

At the PCR hearing Williams 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. Williams further testified he would have sought advice from a lawyer if he had been given written warnings about the dangers of self-representation. Williams also testified he attended school through the twelfth grade and has a high school diploma. He further testified that he attended some college classes at Greenville Technical College where he took general education and HVAC (heating ventilation and air conditioning) classes but never graduated.

In granting Williams' PCR application, the PCR judge found Williams did not make a knowing and voluntary waiver of his right to counsel. The PCR court concluded the trial judge did not verbally warn Williams of the dangers of self-representation and he did not have the type of background knowledge or experience sufficient to make a knowing and intelligent waiver of the right to counsel absent Faretta<sup>1</sup> warnings.

The PCR court erred in granting relief to Williams as he did not have a right to counsel. "The Sixth and Fourteenth Amendments of our Constitution guarantee that a person brought to trial in any state or federal court must be afforded the right to the assistance of counsel before he

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<sup>1</sup> Faretta v. California, 422 U.S. 806 (1975)

can be validly convicted and punished by imprisonment.” Faretta v. California, 422 U.S. 806, 807 (1975). South Carolina appellate courts have made clear one can waive one’s right to counsel based on Faretta v. California, 422 U.S. 806 (1975). State v. Bryant, 383 S.C. 410, 414, 680 S.E.2d 11, 13 (Ct. App. 2009). “The right to proceed *pro se* must be clearly asserted by the defendant prior to trial.” State v. Reed, 332 S.C. 35, 41, 503 S.E.2d 747, 750 (1998) (emphasis added). “It is the trial court’s responsibility to determine whether there was a knowing and intelligent waiver by the accused.” Bryant, 383 S.C. at 414, 680 S.E.2d at 13. “To effectuate a valid waiver, the accused must (1) be advised of the right to counsel and (2) be adequately warned of the dangers of self-representation.” Id. (citing State v. McLauren, 349 S.C. 488, 493 94, 563 S.E.2d 346, 348 49 (Ct. App. 2002)); see also Faretta, 422 U.S. at 835.

In a PCR action, 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. See Watts v. State, 347 S.C. 399, 556 S.E.2d 368 (2001).

In this case, Williams was not entitled to counsel as such there was no violation of his Faretta warnings. The constitutional right to counsel attaches when a defendant receives a misdemeanor sentence that may end up in the actual deprivation of a person’s liberty. Talley v. State, 371 S.C. 535, 640 S.E.2d 878 (2007) (citing Alabama v. Shelton, 535 U.S. 654, 658 (2002); see also Scott v. Illinois, 440 U.S. 367 (1979); Argersinger v. Hamlin, 407 U.S. 25 (1972). “[Only those proceedings ‘resulting in immediate actual imprisonment’ trigger the right to state-appointed counsel,” id. at 663, and not the threat of imprisonment. Scott v. Illinois, 440 U.S. at 367; see also State v. Wickenhauser, 309 S.C. 377, 423 S.E.2d 344 (1992).

In Argersinger v. Hamlin, the United States Supreme Court held “absent a knowing and

intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial.” Argersinger v. Hamlin, 407 U.S. 25, 37 (1972). The United States Supreme Court later clarified that actual imprisonment, not just the possibility of imprisonment, is the demarcation line and there is no abrogation of the right to counsel unless the defendant is sentenced to a term of imprisonment. Scott v. Illinois, 440 U.S. 367, 373-374 (1979). Here, Williams was arrested and charged with domestic violence in the third degree on June 26, 2015. As a result of this charge Williams was facing a potential sentence of imprisonment for ninety days if convicted. However, after a bench trial in which he was found guilty, Williams received a fine of eight hundred and fifty dollars as a result of his conviction. Because Williams’ sentence did not result in actual imprisonment, he was not entitled to counsel.

Based on the foregoing, the post-conviction relief court erred in granting Williams relief. Therefore, Petitioner asks this Court to grant certiorari and ultimately reverse the lower court’s grant of post-conviction relief.


**CONCLUSION**

For all the foregoing reasons, the State requests that this Court grant this petition for a writ of certiorari and reverse the post-conviction relief court's grant of a new trial.

Respectfully submitted,

ALAN WILSON  
Attorney General

DESHAWN H. MITCHELL  
Assistant Attorney General  
SC Bar No. 101813

By:   
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ATTORNEYS FOR PETITIONER

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Darryl Joseph Williams,.....Respondent,

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**CERTIFICATE OF SERVICE**

I, DeShawn H. Mitchell, certify that I have today served the within **Petition for Writ of Certiorari** upon Respondent by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

**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 23<sup>rd</sup> day of May, 2018.



DESHAWN H. MITCHELL  
S.C. Bar # 101813

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

ATTORNEY FOR PETITIONER