

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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CERTIORARI TO THE COURT OF APPEALS  
Appeal from Richland County  
G. Thomas Cooper, Circuit Court Judge

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Appellate Case No.: 2017-002205

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JUN 04 2018

S.C. SUPREME COURT

The State .....Respondent

v.

John Henry Dial Jr.....Petitioner

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REPLY BRIEF OF PETITIONER

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## ARGUMENT

RESPONDENT HAS FAILED TO CONTRADICT THAT THE COURT OF APPEALS ERRED BY NOT REVERSING THE CASE AND REMANDING IT FOR A NEW TRIAL WHEN THE TRIAL COURT ERRED BY FAILING TO WARN THE PETITIONER OF THE DANGERS OF PROCEEDING TO TRIAL WITHOUT AN ATTORNEY PURSUANT TO FARETTA V. CALIFORNIA

Respondent concedes that the Court of Appeals incorrectly found that the issue could not be reviewed because it was not presented to the magistrate court. See Brief of Respondent p. 4 footnote 1. Respondent has failed to demonstrate that the Petitioner knew of the dangers of self-representation and Respondent has failed to demonstrate that he was aware of the requirements the trial court would require of him during the trial. While correctly citing the factors this court may consider to determine if the accused has sufficient background to understand the dangers of self-representation, Respondent ignores the portions of the record which indicate that Petitioner did not have sufficient background to properly represent himself. As stated in Petitioner's Brief, during the trial, objectionable information was introduced without objection by the Petitioner. The opening statement of the prosecuting officer included a statement that the Petitioner was on probation. (Appendix Divider G, R.p. 31, Trial Transcript p. 17 ll. 11-12). Since the Petitioner did not have counsel, there was no objection to this prejudicial statement. Also, no curative instruction was given to the jury by the trial court. Furthermore, objectionable hearsay evidence which was not a statement against interest of the accused was introduced during the testimony of David Hutchinson. (Appendix Divider G, R.p. 36, Trial Transcript p. 22 ll. 1-3). The witness also raises bad character evidence of the accused. (Appendix Divider G, R.p. 42, Trial Transcript p. 28 ll.

11-15). The Petitioner being on probation is again raised by witness Wendy Bass. (Appendix Divider G, R.p. 58, Trial Transcript p. 44 ll. 15-19). Also, the Petitioner attempted to produce good character evidence and was denied this opportunity by the trial court. (Appendix Divider G, R.p. 74, Trial Transcript p. 60 ll. 1-19, R.p. 76-77, Trial Transcript. p. 62 l. 20-p. 63 l.4, R.p. 79, Trial Transcript.p.65 ll. 6-13) Respondent has failed to contradict that Petitioner's conduct during the trial demonstrates that he did not have requisite understanding to be able to properly represent himself. Therefore, while the Petitioner did participate in the trial, his participation indicates his lack of knowledge of legal challenges he could raise in defense to the charges against him and his lack of knowledge of the rules of evidence and procedure at trial that resulted in detrimental, inadmissible evidence being presented against him.

“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). In the absence of a specific inquiry by the trial judge addressing the disadvantages of a *pro se* defense as required by the second Faretta prong, [the appellate court] will look to the record to determine whether petitioner had sufficient background or was apprised of his rights by some other source. To determine if an accused has sufficient background to comprehend the dangers of self-representation , courts consider a variety of factors including:

- (1) the accused's age, educational background, and physical and mental health;
- (2) whether the accused was previously involved in criminal trials;

(3) whether the accused knew the nature of the charge(s) and of the possible penalties;

(4) whether the accused was represented by counsel before trial and whether that attorney explained to him the dangers of self-representation;

(5) whether the accused was attempting to delay or manipulate the proceedings;

(6) whether the court appointed stand-by counsel;

(7) whether the accused knew he would be required to comply with the rules of procedure at trial;

(8) whether the accused knew of the legal challenges he could raise in defense to the charge(s) against him;

(9) whether the exchange between the accused and the court consisted of merely *pro forma* answers to *pro forma* questions; and

(10) whether the accused's waiver resulted from either coercion or mistreatment.

Gardner v. State, 351 S.C. 407, 412-13, 570 W.E.2d 184, 186-87 (2002).

Respondent has failed to contradict that legal issues arose during the trial where the *pro se* Petitioner was disadvantaged by being unrepresented by counsel. Furthermore, Respondent has failed to contradict that Petitioner was denied his Sixth Amendment right to counsel since he was not advised of the dangers of self-representation.

CONCLUSION

For all the foregoing reasons, as well as those addressed in the Petitioner's Initial Brief to this Court, the Petitioner now asks that the judgment against him be reversed and that his case be remanded for a new trial.

Respectfully submitted,



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This 4th day of June, 2018

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PROOF OF SERVICE

I certify that I have served the REPLY BRIEF OF PETITIONER on the State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on June 4, 2018 addressed to:

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