STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Charleston County
Honorable Michael G. Nettles, Circuit Court Judge
Appellate Case No. 2018-000439

GERALD EDWARDS,

Petitioner,

vs.

THE STATE,

Respondent.

BRIEF OF RESPONDENT PURSUANT TO WHITE v. STATE

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STATEMENT OF ISSUE ON APPEAL

The trial judge properly permitted Edwards to waive his right to counsel and represent himself during trial after he personally requested to do so because the record of the trial proceedings demonstrated Edwards's waiver was voluntarily and knowingly made with a full understanding of both his right to counsel and the risks associated with self-representation in light of his background, education, intelligence, and substantial prior experience with the criminal justice system, including from his involvement in an earlier trial in the exact same case while represented by defense counsel.

STATEMENT OF THE CASE

In January of 2014, Petitioner Gerald Edwards was arrested following an investigation into an armed robbery that occurred at a Home Depot store located in Charleston, South Carolina. In April of 2014, the Charleston County Grand Jury indicted Edwards for one count of armed robbery and one count of possession of a knife during the commission of a violent crime. Initially, Edwards was brought to trial on those charges on July 9, 2014, in the Charleston County Court of General Sessions with the Honorable Deadra L. Jefferson, circuit court judge, presiding. However, at the conclusion of the two-day trial, the jury could not reach a verdict, and the trial ended in a mistrial.

Thereafter, on February 6, 2015, a pre-trial hearing was conducted in the Charleston County Court of General Sessions before the Honorable Kristi Lea Harrington, circuit court judge. During the hearing, Edwards moved to relieve his defense counsel and proceed to trial pro se, and Judge Harrington granted Edwards's request following a colloquy on the matter.

Subsequently, on February 9, 2015, a second jury trial was commenced in the Charleston County Court of General Sessions with the Honorable R. Markley Dennis, Jr., circuit court judge, presiding. At the conclusion of the two-day trial, the jury convicted Edwards as indicted, and the trial judge sentenced him to concurrent terms of imprisonment of twenty years for armed robbery and five years for possession of a knife during the commission of a violent. Edwards then submitted a pro se notice of appeal without proof of service that was received by the Court of Appeals on February 24, 2015.[1]

[1] The records associated with Edwards's attempted pro se appeal are available on the South Carolina Appellate Court Public Index. Appellate Records for State v. Gerald Demetrice Edwards, South Carolina Appellate Court Public Index, https://ctrack.sccourts.org/public/caseView.do?csIID=58837.

Following the filing of the pro se notice of appeal, the Court of Appeals sent a letter to multiple parties, including Edwards and Edwards's former defense counsel, noting several deficiencies with the notice of appeal, including the absence of proof of service establishing it was timely served. Thereafter, on March 11, 2015, the Court of Appeals issued an order dismissing the appeal based on the untimely nature of the notice of appeal. A few days later, Edwards submitted a new pro se notice of appeal with proof of service dated for March 9, 2015. Additionally, Edwards submitted several letters, including one indicating he tried to file his notice of appeal on February 24, 2015. In response, the Court of Appeals sent a letter stating it was construing his filings as a motion for reinstate, the State filed a return in opposition, and Edwards filed a reply to the State's return in which he asserted he submitted his pro se notice of appeal for mailing on February 19, 2015. Ultimately, the Court of Appeals declined to reinstate Edwards's appeal, and remittitur was issued on October 22, 2015.

Subsequently, on May 13, 2016, Edwards filed an application for post-conviction relief, and the State later filed a return and motion to dismiss in response. On December 5, 2017, an evidentiary hearing was conducted on Edwards's application in the Charleston County Court of Common Pleas with the Honorable Michael G. Nettles, circuit court judge, presiding. During the hearing, the State consented to a grant of belated appellate review pursuant to White v. State, 263 S.C 110, 208 S.E.2d 35 (1974), and Edwards sought a grant of post-conviction relief in connection to his self-representation during trial. At the conclusion of the hearing, the circuit court judge denied Edwards's post-conviction relief claims but granted Edwards belated appellate review, and a written order memorializing the circuit court judge's ruling was issued on February 1, 2018. Edwards then timely filed a notice of appeal.

STATEMENT OF FACTS

On the afternoon of January 3, 2014, Michael Smith, a multi-store asset protection specialist working for Home Depot, was walking through the parking lot of a Home Depot store located in the West Ashley area of Charleston, South Carolina, when he noticed a white vehicle parked near the entrance of the store's garden section with the engine running and a woman in a toboggan seated in the driver's seat. (App'x pp. 129-132). Aware the store had experienced a number of thefts in which the thieves stole merchandise and left through the garden section entrance, Smith became suspicious, and he quickly responded to an area inside the store where floor sealant—a "high-dollar" item that was frequently stolen—was stored. (App'x pp. 132-135; p. 192; pp. 194-195). When he arrived at that location, he saw a man in a black jacket, and that man picked up a bottle of floor sealant and headed towards the garden section. (App'x pp. 135-137; p. 198). With his suspicions still raised, Smith followed behind the man, and, as he did, he observed the man conceal the floor sealant underneath his jacket. (App'x p. 137; p. 198; pp. 232-233). Smith then continued to follow the man, and the man walked past the cash register and exited the store without paying for the merchandise. (App'x pp. 139-140). At that point, Smith followed the man out of the store and attempted to confront him. (App'x pp. 140-141). However, when he did, the man pulled out a knife, raised it above his head, and threatened to stab him if he did not leave him alone. (App'x p. 122; pp. 124-128; p. 141). Smith then quickly backed away from the man, and the man fled from the store, got into the white car, and rapidly sped away from the area. (App'x pp. 141-143).

Immediately after that, Smith alerted the authorities of the robbery, provided a description of the thief, and identified the license plate number of the getaway vehicle. (App'x pp. 142-143; p. 146). A few minutes later, officers from the Charleston Police Department

responded to the scene, and Smith recounted what had occurred to the officers. (App'x pp. 67-69; p. 147; pp. 203-204; pp. 266-268). Furthermore, based on his past experiences with store thefts, Smith advised the officers the thief would likely attempt to return the stolen merchandise at some other Home Depot store in the area. (App'x pp. 146-147; pp. 295-296).

A short time later, a woman in a toboggan attempted to return a bottle of floor sealant just like the one stolen in the robbery to a Home Depot store located in the North Charleston area, and officers were quickly dispatched to the scene.[2] (App'x pp. 81-82; p. 148; p. 184; pp. 187-188; pp. 200-201; pp. 217-220; pp. 247-249). Upon arriving there, Officer James Roberts of the North Charleston Police Department observed a white vehicle in the store's parking lot that matched the description of the getaway vehicle. (App'x pp. 180-181; pp. 248-251; p. 269; pp. 282-283; p. 297). In response, he approached the car and found Petitioner Gerald Edwards seated in the passenger's seat. (App'x pp. 250-251; p. 254). Officer Roberts then advised Edwards of the investigation into the robbery and asked him to step out of the vehicle, and Edwards complied with the officer's request. (App'x pp. 250-253). When he did, the officer observed a knife drop down to the vehicle's floorboard. (App'x pp. 252-253). Officer Roberts then secured the knife and detained Edwards until officers from the Charleston Police Department could respond to the scene. (App'x pp. 254-256).

Around thirty minutes after that, Detective Richard Burckhardt of the Charleston Police Department brought Smith to Edwards's location, and, upon seeing Edwards, Smith quickly identified him as the robber without any hesitation. (App'x p. 71; pp. 73-74; pp. 178-181; p. 184; p. 208; pp. 256-258; p. 293; p. 296; pp. 299-300). However, Smith did note Edwards was

[2] Although the return attempt was captured on surveillance footage, the woman depicted in the footage was never conclusively identified or arrested. (App'x pp. 82-83; pp. 184-187; pp. 200-201; pp. 216-217; p. 276; pp. 302-303).

no longer wearing the clothing he had been wearing at the time of the incident. (App'x p. 72; p. 180; p. 300). At that point, Edwards was arrested, and a search of the vehicle he was found in led to the discovery of clothing consistent with the clothing worn during the robbery, including the black jacket.[3] [4] (App'x pp. 72-73; p. 182; p. 270; pp. 283-284; pp. 300-301; p. 311).

Subsequently, Edwards was indicted for armed robbery and possession of a knife during the commission of a violent crime, and he elected to proceed to trial while represented by appointed defense counsel. (App'x pp. 2-3; p. 27; p. 56; p. 330; pp. 440-441; pp. 451-452; pp. 454-455). However, his original trial ultimately ended in a mistrial after the jury could not reach a verdict. (App'x pp. 2-3; p. 56; p. 330; pp. 440-441).

Following the grant of the mistrial, Edwards's case was scheduled for retrial. (App'x p. 2). However, prior to the retrial, Edwards informed defense counsel he wished to represent himself during trial, defense counsel relayed that information to the circuit court, and a pre-trial hearing was convened on the matter. (App'x pp. 2-3). At the outset of the hearing, the pre-trial hearing judge asked Edwards if he wished to represent himself, and Edwards directly and unequivocally responded: "Yes, ma'am." (App'x p. 3). The pre-trial hearing judge then proceeded to question Edwards about his background. (App'x p. 3). During the ensuing discussion, Edwards revealed he was forty-six years old, graduated from high school, worked as a barber, had been studying law since he had been incarcerated despite the fact he had no formal legal education, and understood he was facing up to thirty years in prison if convicted. (App'x pp. 3-4). Furthermore, through the discussion, Edwards made clear he understood defense

[3] Notably, at the time of his arrest, Edwards was also wearing pants on top of some jeans that were consistent with the jeans worn by the robber. (App'x pp. 270-271; pp. 277-279).

[4] At some point after his arrest, Edwards made a phone call from the detention center, discussed the incident during the call, made a number of highly incriminating statements, and admitted to pulling out a knife. (App'x pp. 315-316; pp. 320-321; pp. 368-370).

counsel was much more knowledgeable than him in regard to practicing law. (App'x pp. 4-5). Nonetheless, defense counsel indicated he did not believe it would be better for defense counsel to represent him at that time. (App'x p. 5). The pre-trial hearing judge then continued to question Edwards, and Edwards explained he had been "bickering" with defense counsel from the beginning of her representation and had made three prior unsuccessful attempts to relieve her as counsel. (App'x pp. 5-6). Edwards further accused defense counsel of cursing at him when he tried to apologize to her for something, and defense counsel immediately interjected and denied Edwards's claim. (App'x p. 6). After that, the following exchange occurred:

> **[Pre-Trial Hearing Judge]**: All right. Mr. Edwards, are you telling me you don't want [defense counsel] to represent you or are you telling me --
>
> **[Edwards]**: I'm scared to death to have her represent me.
>
> **[Pre-Trial Hearing Judge]**: All right. And this is a real good example. I'm so glad you interrupted me because this is a really good example of why I do not advise defendants to represent themselves.
>
> **[Edwards]**: I've been trying to obtain new counsel because, I mean --
>
> **[Pre-Trial Hearing Judge]**: Well, Mr. Edwards, I thought without yelling at you I've made it fairly clear that you should not interrupt me.
>
> **[Edwards]**: Oh, I apologize.
>
> **[Pre-Trial Hearing Judge]**: Mr. Edwards, you have every right to hire whomever you wish to represent you. You have the right to proceed representing yourself. If that's what you wish to do, I will grant your motion, but you are up for trial on Monday. Do you understand that?
>
> **[Edwards]**: Yes, ma'am.
>
> **[Pre-Trial Hearing Judge]**: Do you want me to dismiss and grant your motion to proceed pro se?

[Edwards]: Yes, ma'am.

[Pre-Trial Hearing Judge]: And dismiss [defense counsel]?

[Edwards]: Yes, ma'am.

[Pre-Trial Hearing Judge]: You understand that you are first up Monday morning?

[Edwards]: Yes, ma'am.

[Pre-Trial Hearing Judge]: And you will be representing yourself[?]

[Edwards]: Yes, ma'am.

[Pre-Trial Hearing Judge]: All right. Your motion is granted. Good luck to you, Mr. Edwards.

(App'x pp. 6-8). At that point, the solicitor suggested defense counsel be permitted to act as stand-by counsel, but Edwards quickly responded to that suggestion by gesturing to the pre-trial hearing judge he did not want that to occur. (App'x p. 8). As a result, the pre-trial judge elected not to appoint defense counsel as stand-by counsel. (App'x p. 8).

A few days later, Edwards's retrial began as scheduled, and, at the outset of trial, the trial judge had a discussion with Edwards to confirm he waived his right to counsel at the pre-trial hearing that took place during the preceding week. (App'x p. 15). During the discussion, Edwards confirmed he had previously been represented by counsel, requested his defense counsel be dismissed, sought to represent himself going forward, and personally made the choice to do so. (App'x p. 15). The trial judge then asked Edwards if the pre-trial hearing judge discussed his constitutional rights with him along with the dangers and disadvantages of self-representation, and Edwards responded: "Yes, sir." (App'x pp. 15-16). Upon receiving that confirmation, the trial judge asked Edwards if his decision was still to represent himself, and

Edwards replied: "Your Honor, honestly, I feel that I need counsel. But the counsel that I had appointed to me is, uh -- we've been having problems for almost about a year." (App'x p. 16). Following those remarks, the trial judge sought to clarify whether Edwards waived his right to counsel during the earlier hearing, and Edwards again confirmed he made the decision to represent himself during trial at that time. (App'x pp. 17-18). The trial judge then asked Edwards if that was what he still wanted to do, and Edwards replied: "I have no choice." (App'x p. 18). At that point, the trial judge explained Edwards did, in fact, have a choice to proceed forward with his appointed defense counsel, and Edwards informed the trial judge he believed defense counsel was unprofessional due to her allegedly cursing at him and informing him "it" was personal for her. (App'x pp. 18-19). The trial judge then asked Edwards whether he had disclosed that information to the pre-trial hearing judge, Edwards insisted he had not been able to do so, and the solicitor quickly clarified Edwards had actually informed the pre-trial hearing judge of his alleged issues with defense counsel. (App'x p. 19). Following that discussion, the trial judge advised Edwards it was not wise to proceed forward without counsel and then asked him whether he made the decision to proceed pro se. (App'x p. 20). Edwards responded: "Yes, sir." (App'x p. 20). Thereafter, the trial judge found Edwards had indicated a desire for self-representation, had advised him he understood the perils associated with that decision, appeared to be very intelligent and articulate, and was prepared to go forward with trial. (App'x pp. 20-21). The trial judge then reiterated to Edwards he was going to hold him to the same standards as a lawyer, and Edwards responded: "Okay." (App'x pp. 21-22). After that, the trial proceeded forward with Edwards representing himself in a pro se capacity. (App'x p. 22).

During the course of trial, Edwards participated in the jury selection process and exercised all ten of his peremptory challenges on prospective jurors he did not wish to serve on the jury. (App'x pp. 38-43). Likewise, Edwards raised several pre-trial evidentiary challenges, and a hearing was conducted on his challenge to out-of-court identification evidence. (App'x pp. 57-86). Additionally, as the trial continued forward, Edwards personally presented an opening statement to the jury, cross-examined the State's witnesses, successfully raised a number of valid objections that were sustained by the trial judge, and introduced several exhibits in his own defense. (App'x pp. 115-118; pp. 127-128; p. 148; pp. 162-164; pp. 166-167; pp. 192-221; pp. 229-231; pp. 232-242; pp. 262-263; pp. 274-280; pp. 286-289; pp. 306-308; pp. 324-326; pp. 333-334). Furthermore, before the case was submitted to the jury, Edwards moved for a directed verdict motion, later renewed that motion, and presented a closing argument to the jury. (App'x p. 330; pp. 341-342; pp. pp. 344-358).

At the conclusion of trial, the jury convicted Edwards as indicted. (App'x p. 401). Following the verdict, the solicitor recounted Edwards's extensive prior criminal record, which included at least twenty-five convictions between 1986 and 2011, and noted Edwards had been sentenced to terms of imprisonment of varying lengths as a result of several of his earlier convictions. (App'x pp. 406-408). The trial judge then commended Edwards for his performance and demonstrated intelligence. (App'x pp. 410-411). However, in light of the nature of his offenses coupled with his extensive criminal history, the trial judge sentenced him to an aggregate term of imprisonment of twenty years. (App'x pp. 410-412).

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Mazique, 419 S.C. 282, 288, 797 S.E.2d 730, 733 (Ct. App. 2016). When confronted with an issue regarding whether a criminal defendant validly invoked the right to self-representation and waived the right to counsel, an appellate court reviews such an issue, which involves a mixed question of law and fact, de novo as the defendant ordinarily has a constitutional right to *insist* upon self-representation unless he waited until after the trial had already begun to seek to invoke that right. State v. Samuel, 422 S.C. 596, 602, 813 S.E.2d 487, 490 (2018); see McCoy v. Louisiana, __ U.S. __, 138 S. Ct. 1500, 1507 (2018) ("[A]n accused may insist upon representing herself—however counterproductive that course may be[.]"); see also United States v. Singleton, 107 F.3d 1091, 1099 (4th Cir. 1997) (reviewing a trial judge's ruling on a mid-trial assertion of the right to self-representation for an abuse of discretion); State v. Fuller, 337 S.C. 236, 241, 523 S.E.2d 168, 170 (1999) ("If the request to proceed pro se is made after trial has begun, the grant or denial of the right to proceed pro se rests within the sound discretion of the trial judge."). Significantly, "the only relevant inquiry is whether the accused made a knowing and intelligent wavier of the right to counsel." State v. Brewer, 328 S.C. 117, 119, 492 S.E.2d 97, 98 (1997). If the appellate court determines the trial judge improperly deprived the defendant of the right to counsel, the appellate court must reverse. State v. Boykin, 324 S.C. 552, 555, 478 S.E.2d 689, 690 (Ct. App. 1996). Meanwhile, if the appellate court finds "the record demonstrates the defendant's decision to represent himself was made with an understanding of the risks of self-representation," the appellate court will not reverse as the requirements for a valid and voluntary waiver of the right to counsel would be established. Wroten v. State, 301 S.C. 293, 294, 391 S.E.2d 575, 576 (1990).

ARGUMENT

The trial judge properly permitted Edwards to waive his right to counsel and represent himself during trial after he personally requested to do so because the record of the trial proceedings demonstrated Edwards's waiver was voluntarily and knowingly made with a full understanding of both his right to counsel and the risks associated with self-representation in light of his background, education, intelligence, and substantial prior experience with the criminal justice system, including from his involvement in an earlier trial in the exact same case while represented by defense counsel.

Edwards contends the trial judge committed reversible error by permitting him to waive his right to counsel and exercise his right to personally represent himself during trial.[5] In support of that contention, Edwards maintains the trial judge failed to sufficiently apprise him of the dangers and disadvantages of self-representation before allowing him to waive his right to counsel. Furthermore, Edwards maintains he never actually waived his right to counsel and, instead, was "forced" to represent himself against his will. To the contrary, Edwards repeatedly affirmed to both the pre-trial hearing judge and the trial judge he wished to relieve defense counsel and represent himself during trial, and, therefore, he did, in fact, invoke his right to self-representation. Likewise, the record of the pre-trial hearing and trial proceedings established Edwards had a sufficient background based on his education, intelligence, and substantial

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[5] Notably, during the post-conviction relief proceedings, Edwards raised a challenge to the validity of his waiver of his right to counsel and invocation of his right to self-representation based on the alleged insufficiency of the colloquy on that matter, and the post-conviction relief judge expressly ruled Edwards "knowingly and intelligently waived his right to counsel" in denying relief on that particular issue. (App'x pp. 437-438; pp. 440-442; pp. 448-450). Although Edwards has subsequently raised an appellate issue related to his self-representation through his belated direct appeal, Edwards did *not* challenge the post-conviction relief judge's ruling on the validity of his waiver on appeal. (Pet. for Cert. pp. 1-6). Under such circumstances, the post-conviction relief judge's unappealed and unchallenged ruling in regard to the validity of Edwards's waiver became the law of the case, and, therefore, it is highly questionable whether Edwards's appellate issue related to his self-representation can now properly be considered on belated appellate review. See State v. Sampson, 317 S.C. 423, 427, 454 S.E.2d 721, 723 (Ct. App. 1995) (explaining unchallenged and unappealed rulings are the law of the case); see also Arizona v. California, 460 U.S. 605, 618 (1983) (explaining the law-of-the-case doctrine is a doctrine based on the idea a court's decision upon a rule of law reached in a case "should continue to govern the same issues in subsequent stages in the same case").

experience with the criminal justice system, including earlier trial experience in the *exact same case*, to be able to knowingly and intelligently waive his right to counsel. As a result, both the pre-trial hearing judge and the trial judge had no proper grounds upon which to prevent Edwards from exercising his constitutional right to represent himself during trial, and Edwards's waiver of his right to counsel was validly done in a knowing, intelligent, and voluntary manner. Accordingly, there is no proper basis upon which to reverse Edwards's convictions on appeal. Edwards's convictions should be affirmed.

Pursuant to both the United States Constitution and the South Carolina Constitution, a criminal defendant brought to trial in South Carolina "must be afforded the right to the assistance of counsel before he can be validly convicted and punished by imprisonment." Faretta v. California, 422 U.S. 806, 807 (1975); see U.S. Const. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence."); S.C. Const. art. I, § 14 ("Any person charged with an offense shall enjoy the right . . . to be fully heard in his defense by himself or by his counsel or by both."). However, "[t]he right to defend is personal." Faretta, 422 U.S. at 834. As a result, a defendant is generally entitled to waive his right to counsel and represent himself during a trial in a pro se capacity if the defendant wishes to do so. State v. Thompson, 355 S.C. 255, 262, 584 S.E.2d 131, 134 (Ct. App. 2003); see State v. Barnes, 407 S.C. 27, 35, 753 S.E.2d 545, 550 (2014) ("A South Carolina criminal defendant has the constitutional right to represent himself under both federal and state constitutions."). Thus, even though it ultimately may be detrimental for a defendant to personally conduct his own defense, that defendant's choice to do so "must be honored out of 'that respect for the individual which is the lifeblood of the law.' " Thompson, 355 S.C. at 262, 584 S.E.2d at 134 (citation omitted).

In order to effectuate a valid waiver of the right to counsel, a defendant must be advised of the right to counsel and adequately warned of the risks associated with self-representation. Ex parte Jackson, 381 S.C. 253, 259, 672 S.E.2d 585, 588 (Ct. App. 2009). Before allowing a defendant to proceed pro se, the trial judge has a duty to determine whether the defendant knowingly and voluntarily waived his right to counsel, and the *preferred* method for doing so is for the trial judge to conduct a specific inquiry addressing the dangers and disadvantages of pro se representation with the defendant. Thompson, 355 S.C. at 262-263, 584 S.E.2d at 135; see United States v. King, 582 F.2d 888, 890 (4th Cir. 1978) (instructing "no particular form of interrogation is required" in order for a trial judge to determine whether a defendant's waiver of his right to counsel is knowing and intelligent). However, "the ultimate test is not the trial judge's advice but the accused's understanding." State v. Cash, 309 S.C. 40, 42, 419 S.E.2d 811, 813 (Ct. App. 1992); see Samuel, 422 S.C. at 603, 813 S.E.2d at 491 ("[W]hether a defendant is capable of effectively representing himself has no bearing upon his ability to elect self-representation.").

In cases in which a trial judge fails to conduct a specific or thorough inquiry addressing the disadvantages of pro se representation before permitting a defendant to represent himself during trial, a reviewing court will look to the record to determine whether the defendant had a sufficient background or was apprised of his rights by some other source such that he could validly waive his right to counsel. State v. McLauren, 349 S.C. 488, 494, 563 S.E.2d 346, 349 (Ct. App. 2002). In making such a determination, the following factors should be considered: (1) the defendant's age, educational background, physical health, and mental health; (2) whether the defendant was previously involved in criminal trials; (3) whether the defendant knew the nature of the charges and the possible penalties; (4) whether the defendant was represented by counsel

before trial or whether an attorney indicated to him the difficulty of self-representation in his particular case; (5) whether the defendant was attempting to delay or manipulate the proceedings; (6) whether the trial judge appointed stand-by counsel; (7) whether the defendant knew he would be required to comply with the rules of procedure at trial; (8) whether the defendant knew the legal challenges he could raise in defense to the charges against him; (9) whether the exchange between the defendant and the trial judge consisted merely of pro forma answers to pro forma questions; and (10) whether the defendant's waiver resulted from either coercion or mistreatment. Gardner v. State, 351 S.C. 407, 412-413, 570 S.E.2d 184, 186-187 (2002). Critically, "[i]f the record demonstrates the defendant's decision to represent himself was made with an understanding of the risks of self-representation, the requirements of a voluntary waiver will be satisfied." Thompson, 355 S.C. at 263, 584 S.E.2d at 135.

In the case sub judice, Edwards unequivocally sought during the pre-trial hearing to waive the right to counsel and be permitted to represent himself, and, after his request was granted, he subsequently confirmed he waived the right to counsel to the trial judge. Demonstrating that fact, when asked by the pre-trial hearing judge if he wished to represent himself, Edwards directly and unequivocally responded: "Yes, ma'am." Edwards then continued to affirm he wished to represent himself in place of his appointed counsel throughout the pre-trial hearing, and, based on his insistence and responses to the pre-trial judge's questions on the matter, the pre-trial hearing judge relieved defense counsel, permitted Edwards to represent himself, and made sure he understood he would be going forward to trial the following week in a pro se capacity unless he hired defense counsel of his own choosing. Thereafter, at the outset of trial, Edwards repeatedly made clear to the trial judge he had waived the right to counsel in the earlier hearing and had elected to proceed forward pro se, and Edwards never

asked the trial judge at any point to permit him to withdraw his earlier waiver and have his appointed counsel resume representing him. Under such circumstances, Edwards's request to dismiss counsel and begin representing himself constituted a clear and unequivocal assertion of his right to self-representation. See State v. Reed, 332 S.C. 35, 41, 503 S.E.2d 747, 750 (1998) ("The right to proceed pro se must be clearly asserted by the defendant prior to trial.").

Moreover, the unequivocal nature of Edwards's invocation of his right to self-representation was not altered by the fact Edwards disingenuously indicated to the trial judge he had "no choice" other than to represent himself. Cf. State v. DeWeese, 816 P.2d 1, 5-6 (Wash. 1991) ("Mr. DeWeese's remarks that he had no choice but to represent himself rather than remain with appointed counsel, and his claims on the record that he was forced to represent himself at trial, do not amount to equivocation or taint the validity of his Faretta waiver. These disingenuous complaints in Mr. DeWeese's case mischaracterize the fact that Mr. DeWeese did have a choice, and he chose to reject the assistance of an experienced defense attorney who had been appointed."). Demonstrating that fact, by the point in time Edwards made that particular remark, Edwards—who had no right whatsoever to *appointed* counsel of his choice—had successfully obtained the dismissal of his appointed counsel based solely on his alleged disagreements with her as opposed to on some ground that would have mandated her removal and replacement, and the pre-trial hearing judge had taken steps to ensure Edwards understood he would be required to represent himself or personally hire retained counsel if he did not want to continue being represented by appointed counsel. See Boykin, 324 S.C. at 555, 478 S.E.2d at 690 ("The right of an accused to effective assistance of counsel, however, does not extend to the appointment of counsel of choice, or to special rapport or even a meaningful relationship with appointed counsel."); see also United States v. Morsley, 64 F.3d 907, 918 (4th Cir. 1995)

(indicating a trial judge is "not compelled to substitute counsel when the defendant's own behavior creates a conflict" and finding no error on the part of trial judge in refusing to appoint new counsel for Morsley after he failed to demonstrate the existence of a total lack of communication with appointed counsel); State v. Worthy, 583 N.W.2d 270, 277 (Minn. 1998) ("A defendant's refusal, without good cause, to allow appointed counsel to continue representation may by itself be sufficient to find a valid waiver."); State v. Childers, 373 S.C. 367, 372, 645 S.E.2d 233, 235 (2007) ("The movant bears the burden to show satisfactory cause for removal."); State v. Sims, 304 S.C. 409, 414, 405 S.E.2d 377, 380 (1991) ("The question of whether court appointed counsel should be discharged is a matter addressed to the discretion of the trial judge. Only in a case of abuse of discretion will this Court interfere."); DeWeese, 816 P.2d at 4 ("When an indigent defendant fails to provide the court with legitimate reasons for the assignment of substitute counsel, the court may require the defendant to either continue with current appointed counsel or to represent himself. If the defendant chooses not to continue with appointed counsel, requiring such a defendant to proceed pro se does not violate the defendant's constitutional right to be represented by counsel, and may represent a valid waiver of that right." (citations omitted)); cf. State v. Graddick, 345 S.C. 383, 386, 548 S.E.2d 210, 211 (2001) ("Appellant bears the burden to show satisfactory cause for removal. Appellant made only the most conclusory arguments why counsel should have been relieved . . . . The trial court did not abuse its discretion in refusing to grant appellant's request for new counsel mere days before the start of appellant's trial for murder." (citations omitted)). Thereafter, Edwards simply acknowledged during trial he understood he would be better represented by counsel by affirming he believed he needed defense counsel while further continuing to make clear he did not wish to be represented by the counsel that had been appointed to him based on his perceived issues with

her. Cf. DeWeese, 816 P.2d at 6 ("[A]fter a valid denial of a defendant's request for appointment of substitute counsel, the trial court may require the defendant to choose between remaining with current counsel or proceeding pro se. After a defendant's valid Faretta waiver of counsel under these circumstances, the trial court is not obliged to appoint, or reappoint, counsel on the demand of the defendant."). Accordingly, Edwards's invocation of his right to self-representation was unequivocal, and the only matter properly before the pre-trial hearing judge and the trial judge was to determine whether Edwards's waiver of his right to counsel was a knowing and intelligent one. See Brewer, 328 S.C. at 119, 492 S.E.2d at 98 (instructing "the *only* relevant inquiry [after the right to self-representation is invoked] is whether the accused made a knowing and intelligent waiver of the right to counsel"); cf. Samuel, 422 S.C. at 605, 813 S.E.2d at 492 (finding the trial judge reversibly erred by going "beyond the scope of the question at hand" and refusing to permit Samuel to represent himself pro se).

Critically, regarding that waiver, the record established Edwards's waiver of his right to counsel was knowingly and voluntarily made with a full understanding of the dangers and disadvantages of self-representation.[6] Looking to the relevant factors, Edwards was an intelligent and mature forty-six-year-old adult at the time of the trial, and, by that point in his life, he had graduated from high school, worked as a barber, and had begun studying law while incarcerated. Also, nothing presented during trial suggested Edwards had any physical or mental impairments that would have affected his ability to waive his rights or represent himself, and Edwards had obtained *substantial* prior experience with the criminal justice system by the time of his trial. Specifically, by that time, Edwards's criminal career spanned nearly thirty years, he

[6] As previously noted, Edwards's waiver of his right to counsel has already been found to be knowing and voluntary—without challenge—by the post-conviction relief judge. (App'x p. 442; pp. 448-450).

had previously been convicted of at least twenty-five separate offenses, and he had been incarcerated for various periods of time based on those convictions. Moreover, since Edwards's original trial for armed robbery and possession of a knife during the commission of a violent crime ended with a hung jury, Edwards had prior trial experience *in the exact same case* and had been able to view the trial in its entirely with the assistance of defense counsel, which helped ensure he was unquestionably aware of exactly what he would be facing in his retrial.[7] Beyond that substantial experience with the criminal justice system, Edwards clearly knew the nature of the charges against him based on his actions and performance during trial, and he directly affirmed he was aware of the sentence he faced in the event he was convicted as indicted. Similarly, notwithstanding the fact Edwards was represented by defense counsel during his original trial on the charges, Edwards was represented by defense counsel until just a few days before his retrial and, thus, was obviously aware of his right to counsel. Likewise, nothing was presented during trial suggesting Edwards was attempting to manipulate or delay the proceedings by requesting to represent himself, and, based on his actions, Edwards appeared to be at least somewhat familiar with the relevant procedural rules during trial. Demonstrating that fact, Edwards effectively cross-examined witnesses within the framework of the rules, made several valid objections that were sustained by the trial judge, presented opening and closing arguments to the jury, and successfully introduced various exhibits into evidence to support his defense.[8] Additionally, Edwards was aware of the legal challenges he could raise in his own defense,

[7] Notably, Edwards personally acknowledged his earlier experience with trial when questioned by the trial judge. (App'x p. 330).

[8] Supporting a conclusion Edwards's actions confirmed the informed nature of his waiver, the trial judge repeatedly commended Edwards for his performance during trial, indicated he believed Edwards had demonstrated a high level of intelligence and competence throughout the proceedings, and characterized Edwards's closing argument as "probably one of the best closing argument [he'd] ever heard a pro se litigant give[.]" (App'x p. 337; pp. 410-411).

which was demonstrated by the fact Edwards focused his defense on the various gaps in the State's evidence and then used those gaps to support his argument the State failed to prove his guilt beyond a reasonable doubt. Furthermore, although not exceedingly lengthy, Edwards's colloquy with the pre-trial hearing judge did not involve pro forma answers to pro forma questions and, instead, was specific to Edwards while being focused on Edwards's desire to represent himself, Edwards's intelligence and background, Edwards's awareness of the seriousness of the charges he was facing, and Edwards's understanding his defense counsel was more knowledgeable in the practice of law than him. Similarly, during Edwards's colloquy with the trial judge, Edwards verified he made the decision to represent himself during the trial based on his desire to no longer be represented by his appointed counsel, and the trial judge made sure Edwards understood he would be held to the applicable rules during trial. Finally, Edwards's actions during trial indicated he had an excellent understanding of the legal system, and there was no evidence of any kind suggesting Edwards's desire to represent himself was the product of any intentional efforts to coerce or manipulate him into relinquishing his right to counsel.[9]

In light of those factors, Edwards had a sufficient background and level of understanding to knowingly and intelligently waive his right to counsel, and, since he sought to do so in a timely manner before his retrial, he was constitutionally entitled to waive that right regardless of whether that decision—in hindsight—ultimately proved to be imprudent or unwise based on the outcome of the trial. See Reed, 332 S.C. at 41, 503 S.E.2d at 750 ("A decision [to waive the right to counsel] can be made intelligently, with an understanding of the consequences, *without the decision itself being a wise one*." (emphasis added)); cf. Faretta, 422 U.S. at 835-836 ("The

[9] Significantly, Edwards did claim defense counsel cursed at him when he was attempting to apologize to her for some unspecified earlier transgression, but defense counsel immediately denied that claim to the pre-trial hearing judge. (App'x p. 6).

record affirmatively shows that Faretta was literate, competent, and understanding, and that he was voluntarily exercising his informed free will. The trial judge had warned Faretta that he thought it was a mistake not to accept the assistance of counsel, and that Faretta would be required to follow all the 'ground rules' of trial procedure. We need make no assessment of how well or poorly Faretta had mastered the intricacies of the hearsay rule and the California code provisions that govern challenges of potential jurors on voir dire. For his technical legal knowledge, as such, was not relevant to an assessment of his knowing exercise of his right to defend himself."). Accordingly, even assuming the pre-trial hearing judge's and the trial judge's colloquies with Edwards were not as thorough or lengthy as they potentially could have been, Edwards nonetheless validly waived his right to counsel, and the trial judge committed no error by honoring Edwards's personal assertion of his right to represent himself during trial.[10] See Graves v. State, 309 S.C. 307, 309, 422 S.E.2d 125, 127 (1992) ("Petitioner contends that the trial judge should have questioned him to ascertain if he knew of the dangers of self-representation. The ultimate test, however, is not the trial judge's advice, but rather the petitioner's understanding."); cf. McLauren, 349 S.C. at 496, 563 S.E.2d at 350 ("We find McLauren's waiver was knowing and voluntary. He was advised of his right to counsel, and even though the trial judge did not make a specific inquiry addressing the disadvantages of self-representation, McLauren had a sufficient background to make a valid waiver under the Cash

[10] Notably, assuming arguendo the record was somehow insufficient to establish Edwards knowingly and intelligently waived his right to counsel, the appropriate remedy would be for the matter to be remanded for an evidentiary hearing to determine whether Edwards's waiver was valid. See In re Christopher H., 359 S.C. 161, 169, 596 S.E.2d 500, 505 (Ct. App. 2004) ("The typical remedy for failing to show a knowing and intelligent waiver of counsel is to remand to the trial court for an evidentiary hearing to determine whether the wavier was, in fact, knowingly and intelligently made."); see also State v. Dixon, 269 S.C. 107, 109, 236 S.E.2d 419, 420-421 (1977) ("The case is remanded to the lower court for a determination of whether the wavier was intelligently made.").

factors."); Cash, 309 S.C. at 43-46, 419 S.E.2d at 812-814 (finding Cash had a sufficient background to understand the dangers and disadvantages of self-representation where the record established Cash was an adult with some college experience, did not appear to be physically or mentally impaired, had been involved with the criminal justice system for the majority of his life, understood the nature of the charges against him, appreciated the difficulty of his own case, was not attempting to manipulate the proceedings, was appointed stand-by counsel, was aware he would have to comply with the rules, was aware of the defenses he could raise, engaged in a colloquy with the trial judge about his self-representation, and did not appear to be declining the assistance of counsel as the result of coercion or mistreatment). In fact, had the trial judge failed to honor Edwards's legitimate request to exercise his constitutional right to self-representation, the trial judge would have committed a plain error of law by doing so since Edwards had knowingly and intelligently waived his right to counsel. See Samuel, 422 S.C. at 603, 813 S.E.2d at 491 ("[T]he only basis upon which a circuit court 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. A circuit court 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." (citations omitted)); see also Faretta, 422 U.S. at 817 ("[F]orcing a lawyer upon an unwilling defendant is contrary to his basic right to defend himself if he truly wants to do so."). Accordingly, in light of Edwards's valid waiver of his right to counsel and invocation of his right to self-representation, there are no proper grounds upon which to disturb Edwards's convictions on appeal. Edwards's convictions should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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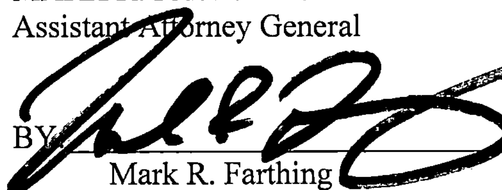

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February 14, 2019

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IN THE SUPREME COURT

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On Writ of Certiorari to the Court of Appeals
Appeal from Charleston County
Honorable Michael G. Nettles, Circuit Court Judge
Appellate Case No. 2018-000439

GERALD EDWARDS,

Petitioner,

vs.

THE STATE,

Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies this Brief of Respondent Pursuant to White v. State complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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PROOF OF SERVICE

I, Shana Montgomery, certify I have served the within Brief of Respondent Pursuant to White v. State on Petitioner by sending two copies of the same to:

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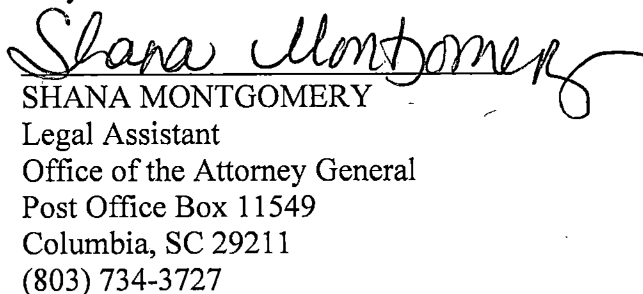
I further certify that all parties required by Rule to be served have been served.
This 14th day of February, 2019.



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