

ORIGINAL

STATE OF SOUTH CAROLINA
In The Supreme Court

On Writ of Certiorari to the Court of Appeals

Appeal from Pickens County
Court of General Sessions

The Honorable James R. Barber, III, Circuit Court Judge

Opinion No. 2017-UP-383 (S.C. Ct. App. filed 10/18/17)
Appellate Case No. 2018-000057

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S.C. SUPREME COURT
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THE STATE,

RESPONDENT,

v.

VINCENT MISSOURI,

PETITIONER.

BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

V. HENRY GUNTER, JR.
Assistant Attorney General
SC Bar No. 102259

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

WILLIAM W. WILKINS, III.
Solicitor, Thirteenth Judicial Circuit

305 East North Street, Suite 325
Greenville, SC 29601
(864) 467-8282

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Petitioner was not denied his right to proceed *pro se* where he never clearly and unequivocally asserted his right to represent himself. Further, the Court of Appeals correctly found Petitioner's conduct at trial amounted to a waiver of his right to self-representation.

STATEMENT OF THE CASE

Petitioner was indicted at the May 2013 term of the grand jury for Pickens County for entering a bank with intent to steal (2012-GS-39-2203), armed robbery (2012-GS-39-2242), and failure to stop for a blue light (2012-GS-39-2204). Petitioner proceeded to a jury trial before the Honorable James R. Barber, III, from December 19-20, 2013, in Pickens, South Carolina. At the conclusion of trial, Petitioner was found guilty of entering a bank with intent to steal, strong-arm robbery, and failure to stop for a blue light. He was sentenced by Judge Barber to imprisonment for a term of twenty years for entering a bank with intent to steal, fifteen years for strong arm robbery, and three years for failure to stop for a blue light, with all sentences running concurrently. Petitioner timely filed a notice of appeal.

Subsequently, Petitioner's appellate counsel filed an Anders brief and a petition to be relieved as counsel. Thereafter, on June 13, 2016, the Court of Appeals denied the petition to be relieved as counsel and directed the parties to brief the following issue from trial along with any other issues counsel believed were present and of arguable merit: "Was Missouri denied the Sixth Amendment right to proceed *pro se*?"

On October 18, 2017, the South Carolina Court of Appeals unanimously affirmed Petitioner's conviction and sentence. State v. Missouri, Op No. 2017-UP-383 (Ct. App. filed October 18, 2017). Petitioner subsequently submitted a petition for rehearing, which was denied on December 14, 2017. Petitioner then submitted a Petition for Writ of Certiorari, which was granted on April 19, 2018. Petitioner timely submitted his Brief of Petitioner on May 21, 2018. This Brief of Respondent follows.

STATEMENT OF FACTS

On June 18, 2012, Rachel White was working at the Bank of America in Pickens, South Carolina. R. p. 79. White was employed as the head teller, meaning she supervised the other tellers as well as assisting customers. R. p. 80. At around 4:45 P.M., shortly before the bank closed, a customer walked into the bank and handed White a note. R. p. 81. The note the robber handed White stated, "Place all the money in the bag. Keep left hand on top of camera. Empty drawer with right hand. No [dye] pack. I know who you are." R. p. 84. White subsequently placed about eighteen hundred dollars in the bag. R. p. 84. Once the robber was handed the bag with the money, he turned around and exited through the side door. R. p. 87. After the robber exited, White alerted her manager that the bank had been robbed. R. p. 87. White testified she described the robber to police as a baldheaded man of average height and weight wearing dark sunglasses and a black shirt with white on it. R. pp. 85, 94. A DVD of the bank's video surveillance was played for the jury at trial. R. p. 89. Following the playing of the video, White testified that Petitioner was the man in the video who robbed the bank. R. p. 93.

On the morning of June 18, 2012, Petitioner visited the home of Bobby Wright and invited him to ride with him to go pick up supplies. R. pp. 107-108. Wright lives in Greenville, South Carolina, and grew up with Petitioner. R. p. 107. Wright testified that he did not know what supplies Petitioner needed to pick up, just that Petitioner told him he needed to go to Pickens to "pick up some supplies for a job." R. p. 108. Once they arrived in Pickens, Petitioner stopped at a Bank of America and told Wright he needed to have a check cashed. R. p. 109. While Petitioner entered the bank, Wright stayed in the car and smoked a cigarette. R. p. 109. Once Petitioner emerged from the bank, the men drove to a Family Dollar where Petitioner purchased some clothing. R. p. 110. When driving away from the Family Dollar, Petitioner

looked into his rearview mirror and stated, "okay, they on us." R. p. 111. Wright asked Petitioner what he meant by that and Petitioner replied, "the police." R. p. 111. Wright asked Petitioner why the police were "on them" and Petitioner replied that he had robbed the bank. R. p. 111. Petitioner then "took off" and a chase with police ensued. R. p. 111. During the chase, Wright observed Petitioner pull a bag of money out of his pants. R. p. 112.

Eventually, Petitioner's vehicle came to a stop. R. p. 147. Petitioner then exited the driver's side of the vehicle and ran through the woods. R. p. 140. Petitioner carried a brown bag as he ran. R. p. 140. Officers eventually were able to tackle and arrest Petitioner. R. p. 149. Officers recovered \$1,750 in cash from the brown bag Petitioner was carrying and the console of the truck Petitioner was driving. R. pp. 158-59.

Following Petitioner's apprehension, Detective Samuel Byers spoke with him at the Pickens County Detention Center. R. p. 164. Upon his arrival, Detective Byers advised Petitioner of his Miranda rights. R. pp. 165-72. Petitioner then provided investigators with a written statement. R. p. 172. Detective Byers read Petitioner's written statement into the record:

After a month-long crack cocaine binge, I found myself - - I apologize, I'm having a hard time making out that word. . . Yeah. - - plotting to obtain a vehicle to try and rob a bank. I first stopped at Fulbright Motors with the intent to steal a vehicle to rob SunTrust Bank on Anderson Road. But while looking, there was a red truck with the driver's side door open and empty of a driver. I took the truck and went by a friend's home - - excuse me - - house, and asked if he wanted to ride with me to cash some checks. Bobby didn't have a clue that I was going to rob the bank. I went in and presented the teller with a robbery note. She said she didn't have a bag and I supplied her with a bag. She proceeded to fill the bag with money. And when she was through I fled the scene. I went to Easley and got into a chase with police. The chase ended in a residential area where I got - - where I gave up without incident.

R. p. 174.

Petitioner's Trial Testimony

Petitioner testified at trial. R. pp. 189-202. Petitioner testified he was released from federal prison on November 18, 2012, and immediately relapsed into an addiction to crack cocaine and was "just basically running around getting high, getting money from anywhere I could to get high." R. pp. 189-90. Petitioner explained:

And on the date that - - what was the date of the incident? June 18th? June 18th, the date that this robbery occurred, you know, it was not my defense to come into court and try to convince twelve people that I didn't do it. In fact, I did do it. So that, you know, that eliminates y'all having to consider that. Mr. Richardson¹, he did an excellent job. I mean, the evidence is there. There's no refuting the evidence. I mean, that's what happened on June 18th.

R. p. 190. Petitioner continued, "I didn't come here to tell you I didn't take the money from the bank, because I did. It's called irresistible impulses. When you have long-term addiction, experts consider that a disease. It's not something we can handle ourselves." R. p. 192. Petitioner then launched into a lengthy monologue describing his addiction to crack cocaine and his history of imprisonment. R. pp. 190-200. Petitioner later noted, "Well, I mean, I mean, like I said, the evidence is overwhelming. Hats off to Mr. Richardson. You did an excellent job. I don't know no prosecutor that could have did better, you know. Everything was there. Except my defense. I didn't have a defense in this case." R. p. 200. Petitioner later instructed the jury:

You don't have to find me guilty based on his evidence. The jury did such a thing that's called jury nullification for any reason in the world that you might want to say not guilty, y'all have that right. And you cannot be intimidated by the judge, nor Mr. Richardson. Y'all have that right. Y'all have to know your powers in order to be able to exercise them. That is the power of the jury. You're not under state government. You're not under the courts. You're not under the judicial branch. The jury is created separately from the establishment of our jury trial rights. That's why we elect to have a jury to find us guilty as opposed to any other entity. This is your power. For whatever reason I may have given you, you can say I'm guilty.

¹ Assistant Solicitor Doug Richardson represented the State in Petitioner's prosecution.

R. p. 202.² The trial judge then interjected, “Mr. Missouri, I will instruct the jury on the law of the state of South Carolina as it applies to this case.” R. p. 202.

During sentencing, Petitioner stated:

Like I said, this was brought on by just drug addiction, sir, you know. You say it’s no defense and, you know, to some extent, you know, I’m remorseful for my actions. I mean, that’s the point. You know, I went in the bank and took the money. You know, I’m remorseful for that part. You know, I’m remorseful for a lot of things, you know, that we haven’t, as a society, addressed, you know, addictions in a better situation than we do. We’re imprisoning more people and that’s not, that’s not an act - - it’s not correcting the problem.

R. p. 232.

Petitioner’s Motion to Relieve Counsel

On December 19, 2013, prior to trial, Petitioner made a motion to relieve counsel before the Honorable Letitia H. Verdin. R. p. 4. Petitioner stated that he wanted Aaron Angell relieved as his counsel, “Just based on the time and the amount of cases Mr. Aaron has and the complexity of my defenses, I feel it’d be better that I have **either** someone that doesn’t have as much of a case load as he has **or either** I be prepared to represent myself.” R. p. 5. The solicitor argued:

Your Honor, we are opposed to Mr. Aaron coming down - - off as his defense attorney. He’s already had one defense attorney who was relieved in June earlier. It’s my understanding he also has made a motion in Greenville. He has Greenville charges, the same type of charges. This main charge here is a bank robbery where he’s asked to basically fire Mr. Culbertson who represents him in Greenville. Your Honor, we plan on trying this case in the spring. At this point in time, I’ve had negotiations and dealings with his attorney. I would ask that you deny the motion.

R. pp. 6-7. Mr. Angell noted:

² It is worth noting that Petitioner’s chosen strategy was to admit guilt before the jury in a manner tantamount to a guilty plea, and then to seek jury nullification. Despite being represented by counsel, and despite the fact that jury nullification is not proper in South Carolina, Petitioner was still able to pursue this strategy by having Mr. Angell call him as a witness and then making his arguments to the jury on his own behalf.

Judge, from my vantage point, it seems as if Mr. Missouri is unhappy with me. I told him - - And I'm not going to speak for you.- - but I told him there was probably one of three things that would happen is you let him go on *pro se*, you'd keep me on board or he fires me and you hire one more. I don't know what you want to do.

R. p. 7. Mr. Angell informed Judge Verdin that Petitioner was charged with entering a bank with intent to steal, armed robbery, and failure to stop. R. p. 7. Judge Verdin replied, "*Pro se* is not in the realm of possibility right now." R. p. 7. Mr. Angell replied, "Probably not, your Honor." R. p. 7.

Judge Verdin later ruled:

Here's what I'm going to do, Mr. Missouri. Here's what we're going to do. You've got an outstanding attorney. I'm going to leave you with him. This is your second attorney on this case. I can't relieve this second attorney but he's an outstanding attorney. If you have any hope of doing well in the spring at trial, we don't need to change horses in midstream. Please don't take offense to me calling you a horse. We don't need to change horses in midstream. We need to - - you need to - - from this point forward, you need to do everything you can to work with Mr. Angell and y'all get along. I have no doubt that you will do so. I wish you the best of luck with it.

R. pp. 9-10.

During a pre-trial hearing, Petitioner informed Judge Barber that he previously made a motion before Judge Verdin to terminate Mr. Angell and represent himself. R. p. 24. Petitioner then stated, "And there's been a subsequent one on appeal." R. p. 24. Judge Barber replied, "I don't know about an appeal. That motion has already been heard." Petitioner replied, "But it wasn't based on the factual findings as I understood it." R. pp. 24-25. Judge Barber responded:

Well, I can't go behind her on her - - I don't know anything about her ruling, but if she denied the motion, I don't have the ability to go back and say, hey, you were wrong, and I - - because I'm here now - - I just can't undo what some other judge has already done and ruled on. And if there's an error in that regard, then you will have to deal with that in the future.

R. p. 25.

Following a recess by the Court after a Jackson v. Denno hearing and other pre-trial motions related to venue and the indictments, Judge Barber asked Petitioner, “You’re terminating the services of your attorney. You indicated at some time in the past, I don’t know, at the beginning of the year you indicated that you wanted to relieve him of counsel and represent yourself?” R. p. 45. Petitioner replied, “**In the past**, yes, I did indicate that.” R. p. 45. Judge Barber asked Petitioner whether he was still interested in representing himself. Judge Barber stated, “I’m asking you, are you interested in doing that? Want to represent yourself? If you don’t, you don’t have to. You’ve got a lawyer and we’re going to go forward with it. If you do, we’re going to discuss this issue.” R. p. 45. Judge Barber indicated he changed his mind on the matter because he read a case at lunch that indicated Petitioner may be entitled to represent himself. R. p. 45. Judge Barber explained to Petitioner, “If you are interested in representing yourself, I will have certain questions I want to ask you. If I find you’re competent to do so, you will be able to represent yourself and we’ll go forward - - .” R. p. 46. Judge Barber told Petitioner, “If you’re prepared to make the motion, I’m prepared to consider it.” R. pp. 46-47. Judge Barber reiterated, “Mr. Angell - - I mean, Mr. Missouri, this is the first I’ve had this case. Do you want to represent yourself? If you’re not going to make a motion, then I’m going to assume you don’t want to represent yourself and this gentleman is going to represent you.” R. p. 48. Petitioner replied:

Okay. If I want to represent - - the only think (sic) I’m saying, Your Honor, and don’t take that the wrong way. If you grant me the right to represent myself, please grant me the right to go over my material as opposed to what Mr. Angell did a poor job of doing this morning. Please give me that right.

R. p. 48. Petitioner stated, “I need to represent myself completely or not at all.” Judge Barber responded, “We’re not going to revisit the issues. There’s nothing that you can tell me differently that was brought out - - you nor anyone else have nothing that will change my mind on the

Jackson v. Denno hearing.” R. p. 48. Judge Barber also indicated he had made up his mind with respect to the pre-trial motions involving venue and the indictments. R. p. 49. Eventually, after Petitioner would not make motion to represent himself, Judge Barber stated, “All right. It appears that Mr. Missouri is not prepared to make a motion in this matter, so we will go forward . . .” R. pp. 49-50.

After the jury returned a guilty verdict, Petitioner made a motion for a new trial. R. p. 226. Mr. Angell clarified, “The motion is based on involuntary intoxication. He wants to represent himself *pro se*.” R. p. 227. Judge Barber ruled:

Well, he had the opportunity to request that he be allowed to represent himself and he declined to do so. I informed him the court was willing to consider it and if he met the criteria that I would allow him to do so and he just needed to make a motion. **If he wasn't going to make a motion, I can't do it for him.** He declined to do that. But he can address this in any way he wants in the future. In terms of voluntary intoxication, he's addicted to drugs and therefore can't control himself and should we give him some special treatment is not a defense in South Carolina. If we did, everybody who's ever used drugs would be claiming they used drugs before I did whatever I did. So your motion is denied.

R. p. 227.

STANDARD OF REVIEW

This Court recently clarified the standard of review for considering whether a defendant properly waived his right to counsel:

Whether a defendant has knowingly, intelligently, and voluntarily waived his right to counsel is a mixed question of law and fact which appellate courts review de novo. Specifically, we review a circuit judge's findings of historical fact for clear error; however, we review the denial of the right of self-representation based upon those findings of fact de novo. In doing so, this Court must consider the defendant's testimony, history, and the circumstances of his decision, as presented to the circuit judge at the time the defendant made his request.

State v. Samuel, S.C., 813 S.E.2d 487 (2018) (citing United States v. Lopez-Osuna, 242 F.3d 1191, 1198 (9th Cir. 2000); United States v. Bush, 404 F.3d 263, 270 (4th Cir. 2005); United States v. Singleton, 107 F.3d 1091, 1097 (4th Cir. 1997)).

ARGUMENT

Petitioner was not denied his right to proceed *pro se* where he never clearly and unequivocally asserted his right to represent himself. Further, the Court of Appeals correctly found Petitioner's conduct at trial amounted to a waiver of his right to self-representation.

Petitioner contends he was denied his Sixth Amendment right to proceed *pro se*. Specifically, Petitioner makes two allegations of error. First, Petitioner asserts Judge Verdin erred in not conducting an inquiry pursuant to Faretta v. California, 422 U.S. 806 (1975) during the December 19, 2013, hearing. Second, Petitioner avers the Court of Appeals erred in finding he waived his Sixth Amendment right because offering him the right to proceed *pro se* on the day of trial did not remedy the earlier denial of his Sixth Amendment right.³ Both of these arguments lack merit.⁴ Initially, Judge Verdin was not required to warn Petitioner pursuant to Faretta because he never clearly, explicitly, and unequivocally sought to represent himself. Further, as the Court of Appeals correctly found, Petitioner waived his right to self-representation at trial when Judge Barber gave him the opportunity to represent himself and he declined to pursue that opportunity.

Initially, Petitioner's argument lacks merit because he never clearly, explicitly, and unequivocally sought to represent himself during the hearing before Judge Verdin.⁵ A defendant has a constitutional right to self-representation under the Sixth and Fourteenth Amendments.

³ In his Brief, Petitioner contends he was unprepared to proceed to trial when Judge Barber offered him the opportunity to proceed *pro se*. This contention is belied by the fact that Petitioner had *pro se* motions he was prepared to argue on his own behalf, asking, "please grant me the right to go over **my material** as opposed to what Mr. Angell did a poor job of doing this morning." R. p. 48.

⁴ Petitioner's argument in his brief to the Court of Appeals was limited to the December 19, 2013, hearing before Judge Verdin and made no mention of Petitioner's discussion of self-representation with Judge Barber directly before he was tried.

⁵ The Court of Appeals erred in finding Petitioner was denied his right to self-representation at the December 19, 2013 hearing. While the State did not cross-petition for a writ of certiorari on the issue, the State would simply cite Petitioner's lack of an unequivocal request to represent himself as an additional ground on which this Court should affirm the trial judge's ruling. See Rule 220(c), SCACR ("The appellate court may affirm any ruling, order, decision, or judgment on any ground(s) appearing in the Record on Appeal.").

Faretta v. California, 422 U.S. 806, 807 (1975). However, [a]t bottom, the Faretta right to self-representation is not absolute, and the government’s interest in ensuring the integrity and efficiency of the trial at times outweighs the defendant’s interest in acting as his own lawyer.” Bush, 404 F.3d at 271 (quoting United States v. Frazier-El, 204 F.3d 553, 560 (4th Cir. 2000). “A defendant’s assertion of his right to self-representation must be: ‘(1) clear and unequivocal; (2) knowing, intelligent and voluntary; and (3) timely.’” Frazier-El, 204 F.3d at 558. So important is the right to counsel that the Supreme Court has instructed courts to “indulge in every reasonable presumption against [its] waiver.” Brewer v. Williams, 430 U.S. 387, 404 (1977).

Significantly, a request to proceed *pro se* must be clearly articulated and unequivocal. See State v. Winkler, 388 S.C. 574, 586, 698 S.E.2d 596, 602 (2010) (stating “[t]he request to proceed pro se must be clearly asserted”); see also Raulerson v. Wainwright, 469 U.S. 966, 970–71 (1984) (Marshall, J., dissenting from denial of cert.) (“If a request [for self-representation] is ambiguous, the trial judge need not respond, because there has been no clear indication of a desire to waive a right to counsel.”). Because of the importance of the right to counsel, “[a]n assertion of the right of self-representation therefore must be (1) clear and unequivocal.” United States v. Frazier-El, 204 F.3d 553, 558 (4th Cir. 2000) (citing Faretta, 422 U.S. at 835, 95 S.Ct. 2525; United States v. Lorick, 753 F.2d 1295, 1298 (4th Cir.1985)). The Tenth Circuit Court of Appeals explained the reasoning for requiring a clear and unequivocal request from a defendant before allowing the defendant to waive his right to counsel:

A defendant’s waiver of his right to representation and his concomitant election to represent himself must be “clearly and unequivocally” asserted. United States v. Bennett, 539 F.2d 45, 50 (10th Cir.), *cert. denied*, 429 U.S. 925, 97 S.Ct. 327, 50 L.Ed.2d 293 (1976). The reason that a defendant must make an “unequivocal” demand for self-representation is that otherwise “convicted criminals would be given a ready tool with which to upset adverse verdicts after trials at which they had been represented by counsel.” Meeks v. Craven, 482 F.2d 465, 467 (9th Cir.1973), cited with approval by this court in United States v. Bennett, at 51.

It follows that if a defendant in a criminal proceeding makes an equivocal demand on the question of self-representation, he has a potential ground for appellate reversal no matter how the district court rules. If the district court denies defendant's equivocal demand to represent himself, the defendant, on appeal, will argue that his constitutional right to self-representation has been denied. And if the district court grants defendant's demand for self-representation, the defendant, on appeal, will argue that his waiver of his right to counsel was not intelligent, knowing and unequivocal. All of which is a form of the "cat and mouse" game mentioned in United States v. Padilla, 819 F.2d 952, 959 (10th Cir.1987) and in United States v. Gipson, 693 F.2d 109, 112 (10th Cir.1982), *cert. denied*, 459 U.S. 1216, 103 S.Ct. 1218, 75 L.Ed.2d 455 (1983).

United States v. Treff, 924 F.2d 975, 978-79 (10th Cir. 1991). The Fourth Circuit Court of Appeals has also explained:

This requirement that a defendant invoke his self-representation right clearly and unequivocally also serves an additional purpose. A trial court evaluating a defendant's request to represent himself must "traverse ... a thin line" between improperly allowing the defendant to proceed *pro se*, thereby violating his right to counsel, and improperly having the defendant proceed with counsel, thereby violating his right to self-representation. A skillful defendant could manipulate this dilemma to create reversible error. The requirement that a defendant invoke his self-representation right clearly and unequivocally greatly aids the trial court in resolving this dilemma by allowing the court safely to presume that the defendant should proceed with counsel absent an unmistakable expression by the defendant that so to proceed is contrary to his wishes.

Fields v. Murray, 49 F.3d 1024, 1029 (4th Cir. 1995) (internal citation omitted); see also United States v. Ductan, 800 F.3d 642, 650 (4th Cir. 2015) ("Since our *en banc* decision in Fields, we have consistently held that as between counsel and self-representation, counsel is the "default position" unless and until a defendant explicitly asserts his desire to proceed *pro se*.").

In the present case, Petitioner never clearly, explicitly, or unequivocally asked to proceed *pro se*. At the hearing before Judge Verdin on December 19, 2013, Petitioner framed the issue as one where he was disappointed that he had a lawyer with a large case load and that he would, "feel it'd be better that I have **either** someone that doesn't have as much of a case load as he has **or either** I be prepared to represent myself." R. p. 5. After the request, the solicitor noted

Petitioner had already had one attorney relieved during June of the previous year. R. p. 6. Mr. Angell also noted that he had already obtained a positive result for Petitioner in the form of a bond reduction. R. p. 8. Petitioner's motion before Judge Verdin was not an unequivocal request to represent himself. Rather, it was a request to relieve his second attorney where that counsel had achieved a positive result for him prior to trial simply because he didn't like that he had a lawyer with a full case load. Petitioner's inclusion of the statement that if the court would not give him "**either** someone that doesn't have as much of a case load" or "**either** be prepared to represent himself" did not constitute a clear and unequivocal invocation of his right to represent himself. Indeed, when Petitioner's motion is considered in its entirety, it is a classic example of equivocation. Petitioner's request for a new lawyer and his parting threat that if the trial judge would not grant him a third lawyer, he would prepare to represent himself, did not constitute an unequivocal request within the meaning of Faretta. See United States. v. Kelley, 787 F.3d 915, 917-18 (8th Cir. 2015) (finding that where defendant requested: 1) "if the court allows, counsel will withdraw and the court will appoint new counsel and grant a continuance; 2) if the court denies substitution, I move for the court to allow me to represent myself with the understanding that I am forced to exercise a choice between incompetent or unprepared counsel and appearing pro se," such request was not unequivocal); People v. Hines, 938 P.2d 388, 410-11 (Cal. 1997) (finding where defendant stated "if" the court was going to deny his motion to discharge and replace appointed counsel, he would like to act as his own attorney "if possible" with the assistance of advisory counsel, that such a request was not an unequivocal assertion of his right to represent himself).

Even if Petitioner's statements to Judge Verdin that he wanted a lawyer with a lower case load or "**either** I be prepared to represent myself," were somehow found to be an unequivocal

assertion of his right to represent himself, Petitioner waived that request when Judge Barber gave him an opportunity to formally assert his right to represent himself and Petitioner chose to do nothing. “Even if [a] defendant requests to represent himself, however, the right may be waived through [the] defendant’s subsequent conduct indicating he is vacillating on the issue or has abandoned his request altogether.” Brown v. Wainwright, 665 F.2d 607, 611 (5th Cir. 1982). Thus, “[a] defendant can waive his Faretta rights,” McKaskle v. Wiggins, 465 U.S. 168, 182 (1984), and those rights may be more easily waived than the right to counsel. See Dorman v. Wainwright, 798 F.2d 1358, 1365-66 (11th Cir. 1986) (“[U]nlike other constitutional rights, the right to be one’s own counsel can easily be overlooked or waived if a defendant does not properly invoke the right or inadvertently waives it through some procedural misstep.”); Raulerson v. Wainwright, 732 F.2d 803, 809 (11th Cir. 1984) (defendant waived his self-representation when he voluntarily walked out of his Faretta hearing).

At the outset of trial, Judge Barber advised Petitioner he was willing to hear his request to proceed *pro se* and would ask him a few questions in order to determine whether that was a viable option for him. Judge Barber informed Petitioner that as long as he was competent to do so, he would be able to represent himself. Instead of asserting his right to proceed without counsel at that time, Petitioner made no motion to represent himself. Instead, Petitioner initially questioned the court’s decision, and then requested to go back over Mr. Angell’s pre-trial motions “if” he elected to represent himself. After Judge Barber indicated nothing Petitioner could argue would change his rulings on the pre-trial motions, Petitioner elected to sit in silence. While Petitioner contends he was unprepared on the day of trial, the record lacks any evidence supporting the contention that the only thing preventing Petitioner from taking Judge Barber up on his offer to represent himself was a lack of preparation. On the contrary, Petitioner’s desire to

re-argue pre-trial motions he felt Mr. Angell did a poor job of arguing indicates Petitioner was prepared to represent himself if wanted to do so. Judge Barber noted, "it appears [Petitioner] is not prepared to make a motion in this matter so we will go forward." R. pp. 49-50. Petitioner did not re-assert his desire to represent himself or indicate in any form or fashion that he preferred to represent himself instead of proceeding with appointed counsel. This Court should therefore affirm the Court of Appeals finding that, "[Petitioner's] subsequent conduct indicated he was abandoning his request or amounted to a waiver of his right to self-representation." App. p. 4. Petitioner's convictions and sentences should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the decision of the Court of Appeals should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

V. HENRY GUNTER, JR.
Assistant Attorney General

WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit



V. HENRY GUNTER, JR.
S.C. Bar No. 102259

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

July 2, 2018

STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

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On Writ of Certiorari to the Court of Appeals

S.C. SUPREME COURT

Appeal from Pickens County
Court of General Sessions

The Honorable James R. Barber, III, Circuit Court Judge

Opinion No. 2017-UP-383 (S.C. Ct. App. filed 10/18/17)
Appellate Case No. 2018-000057

THE STATE,

RESPONDENT,

v.

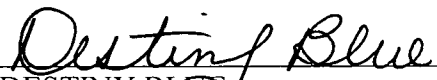
VINCENT MISSOURI,

PETITIONER.

PROOF OF SERVICE

I, Destiny Blue, certify that I have served the Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to: David Alexander, Esquire, South Carolina Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, South Carolina 29211.

I further certify that all parties required by Rule to be served have been served.
This 2nd day of July, 2018.


DESTINY BLUE
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727