

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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**ORIGINAL**

Certiorari to York County

Honorable Alison Renee Lee, Circuit Court Judge

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ERIC ANTONIA SPRATT,

PETITIONER

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

**RECEIVED**  
MAY 28 2019  
SC Court of Appeals

APPELLATE CASE NO 2016-001346

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REPLY BRIEF OF PETITIONER

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## ARGUMENT IN REPLY

**The record does not demonstrate Petitioner was sufficiently aware of the dangers of self-representation to make an informed decision to proceed without counsel at his 1998 guilty plea, and the PCR court erred in finding a knowing and voluntary waiver of the right to counsel.**

The classification of possession of crack cocaine as a felony or misdemeanor is of little importance in this matter. In Wroten v. State, 301 S.C. 293, 391 S.E.2d 575 (1990), the South Carolina Supreme Court held that an appellate court will consider, in accordance with constitutional standards, the entire record including facts presented at the PCR hearing. The facts presented at the PCR hearing are inadequate such that this court should not affirm the PCR court's finding.

In Wroten, the defendant pleaded guilty to distributing crack cocaine and received a fifteen year sentence. 301 S.C. at 294, 391 S.E.2d at 576. Wroten filed a PCR application alleging that his plea was invalid because he had not knowingly and intelligently waived his right to counsel. Id. After his application was denied, he argued on appeal that the PCR judge erred in finding a valid waiver of counsel because the trial judge did not warn him of the dangers of self-representation as required by Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975). Id. See also State v. Bateman, 296 S.C. 367, 373 S.E.2d 470 (1988). As noted in the Wroten opinion:

Faretta requires that a defendant "be made aware" of the dangers and disadvantages of self-representation so that the record will establish he knows what he is doing and his choice is made with open eyes. While a specific inquiry by the trial judge expressly addressing the disadvantages of a *pro se* defense is preferred, the ultimate test is not the trial judge's advice but rather the defendant's understanding. If 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.

Id. at 294, 391 S.E.2d at 576. (internal citations omitted). The Court held that “[t]he extent of inquiries made by the trial judge at the time of the plea is not conclusive.” Wroten at 294, 391 S.E.2d at 576 (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

In Petitioner’s matter, no witnesses with firsthand knowledge of Petitioner’s 1998 uncounseled guilty plea testified that the plea judge made a specific inquiry regarding Petitioner’s choice to proceed *pro se*. Eli Springs, a solicitor in the sixteenth circuit in 2011, testified to the plea judge’s habits generally. App. 50 l. 8 – App. 53 l. 8. Notably, he was unsure whether he had prosecuted Petitioner’s 1998 charge. Id. He was likewise unaware whether he was even present for Petitioner’s guilty plea in 1998. Id. He admitted that he was unable to testify whether the plea judge gave Petitioner any Faretta warnings. Id. As such, his testimony is largely unreliable and speculative and cannot be relied upon. He offered facts regarding his limited experiences with a particular judge and unrepresented defendants. He was unable to testify about Petitioner’s case in 1998, and his remarks about other instances when he was before the judge fail to validate that Petitioner received adequate warnings, if any.

“A waiver is a voluntary and intentional abandonment or relinquishment of a known right.” Sanford v. S.C. State Ethics Comm’n, 385 S.C. 483, 496, 685 S.E.2d 600 (citing Eason v. Eason, 384 S.C. 473, 480, 682 S.E.2d 804, 407)), opinion clarified on other grounds, 386 S.C. 274, 688 S.E.2d 120 (2009). In Osbey v. State, 425 S.C. 615, 825 S.E.2d 48 (2019), the Court held that the defendant did not waive his right to counsel by his conduct. Similar to the matter *sub judice*, there was no proof that the plea court mentioned to Osbey the dangers of self-representation. Therefore, the Court looked to the record to determine if it showed any factual basis for the waiver. See Gardner v. State, 351 S.C. 407, 570 S.E.2d 184 (2002). Much like

Spratt's case, there was nothing in the record to demonstrate Osbey was aware of the dangers of representing himself. Therefore, the Court reversed the PCR court and reversed and remanded.

Petitioner's case is analogous to both Wroten and Osbey. As noted by the concurring opinion in Osbey, there is typically no clear way to verify whether Faretta warnings have ever been given to an unrepresented defendant. Because a record is unavailable from Petitioner's 1998 plea, there does not exist enough evidence to uphold the PCR court's decision.

**CONCLUSION**

Based on the foregoing, Petitioner respectfully requests this Court reverse the PCR court and remand for a sentencing hearing with instructions that the 1998 uncounseled guilty plea not be allowed to enhance his sentence.



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Taylor D Gilliam  
Appellate Defender

ATTORNEY FOR PETITIONER

This 28th day of May, 2019.

STATE OF SOUTH CAROLINA  
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Appeal from York County

Honorable Alison Renee Lee, Circuit Court Judge

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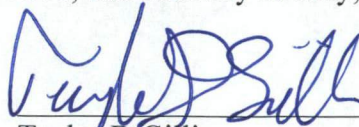
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Reply Brief of Petitioner in the above referenced case has been served upon Janell Gregory, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Reply Brief of Petitioner have been served on Eric Spratt, #257899, at Tyger River Correctional Institution, 200 Prison Road, Upper Yard, Enoree, SC 29335-9308, this 28th day of May, 2019.



Taylor D Gilliam  
Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 28th day of May, 2019.

Marey Allgood (L.S)  
Notary Public for South Carolina  
My Commission Expires: May 12, 2027.