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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Orangeburg County

Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LAMONT ANTONIO SAMUEL,

APPELLANT

APPELLATE CASE NO. 2013-001342

FINAL BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred and violated Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525 (1975), by not allowing appellant to voluntarily and intelligently represent himself?

STATEMENT OF THE CASE

Appellant was convicted of murder after a jury trial held before the Honorable Diane S. Goodstein, on June 10, 2013, in Orangeburg County. A sentence of fifty (50) years was imposed. Margaret Hinds, Esquire, and Doug Mellard, Esquire, represented appellant. Don Sorenson, Esquire, was the solicitor.

This appeal follows.

ARGUMENT

The trial court erred and violated *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525 (1975), by not allowing appellant to voluntarily and intelligently represent himself.

Trial in this case initially started on May 13, 2013. It was continued to June 10, 2013. The May 13 transcript was made a part of the record and it is that transcript that deals with the Faretta issue. Unless otherwise noted, the transcript page numbers will be from the May transcript.

Defense counsel informed the trial court that appellant wished to represent himself. The courtroom was cleared. (R. p. 4, lines 11 – 23). Appellant explained that he had been in jail for fourteen months, he was innocent, and he did not think his attorneys were working for his best interests. He told the court he graduated high school with a 4.0 in honors. (R. p. 9, line 4 – p. 11, line 18; R. p. 13, line 4 – p. 15, line 10; R. p. 16, lines 23 – 25).

Appellant said he was aware of the charges against him and the possible penalties. He was twenty-one years old and graduated high school in 2010. (R. p. 31, lines 9 – 25). He had never been treated for alcohol, drug, or substance abuse. He did not have any mental health challenges or emotional health challenges. He had no drugs, alcohol, or medicine in the last 72 hours. He had been studying law with a book called Criminal Law Handbook. Carl Grant, Esquire, told appellant's mother about the book and she got it for him. Appellant had been reading up on trial procedures and self-representation. He knew the elements of murder. He knew if he represented himself, he would have to try his own case and the judge could not advise him on any of the rules of evidence. He was familiar with the South Carolina Rules of Evidence. He was familiar with the rule against hearsay and various motions that could be made before and during trial. He knew he had the right to testify or not to testify. (R. p. 33, line 18 – p. 40, line 5). He was aware that the

State had the burden to prove him guilty beyond a reasonable doubt. If he were to choose not to testify, he was aware the jury could not discuss that and could not hold it against him. (R. p. 40, line 25 – p. 41, line 24).

The trial judge then told appellant that an attorney could help him with the rules of evidence, the rules of criminal procedure and presenting defenses. She said he would be better defended by a trained lawyer than he could be by himself. She said she thought it was unwise for him to represent himself. Appellant said he still wanted to represent himself. She then told him that she was concerned that he was not sufficiently familiar with the law, the court procedure, and the rules of evidence to represent himself. She strongly urged him not to represent himself. She said she would genuinely worry about him if he represented himself. (R. p. 42, line 15 – p. 44, line 4).

Appellant said it was still his desire to represent himself and waive his right to counsel. This decision was entirely voluntary on his part. (R. p. 44, lines 6 – 20). Later, appellant was asked if he understood the theory of the hand of one is the hand of all. Appellant explained the theory. (R. p. 48, line 22 – p. 49, line 5). The trial court told appellant that he was bright enough and that the constitution says he's entitled to represent himself. But then said, "I don't want you to represent yourself, but I can't violate the law." (R. p. 50, lines 6 – 9). She admitted, "You don't have a problem that I'm aware of that I can use, in all candor, to keep you from representing yourself." (R. p. 53, lines 15 – 17).

Appellant had mentioned Carl Grant, Esquire, earlier in that he told appellant's mother about a criminal law book to get. He also mentioned that his mother had paid Mr. Grant to come in and educate him. The trial judge said she was going to get Carl Grant over to the courthouse to question him. (R. p. 54, line 21 - p. 55, line 21). When Carl Grant was contacted by phone, he said

he did not represent appellant. He talked to the mother, but he had not been paid and did not represent appellant. (R. p. 59, lines 9 – 13).

When Mr. Grant got to the courthouse, he was put under oath. He again said he did not represent appellant. He said he talked to appellant's mother about representing appellant, but never got a retainer. (R. p. 65, line 20 – p. 68, line 9).

After Mr. Grant was excused, appellant said concerning self-representation, "I know I'm – I know what kind of mistake I could make. I still would like to – if you can, I still would like to go with that right." (R. p. 70, lines 22 – 25).

The trial judge took a break to do some research. She came back and started to rule. She characterized appellant's testimony and Mr. Grant's testimony. Appellant asked to say something and she would not let him. (R. p. 71, line 3 – p. 73, line 20). She cited Gardner v. State, 351 S.C. 407, 570 S.E.2d 184 (2002) and said appellant was trying to "manipulate" the proceedings and that he was not allowed to "disrupt" the proceedings. She said appellant was not showing candor toward the tribunal. Then, she said she wanted and sought the information regarding Mr. Grant because she wanted to be assured that there was not a representation there.[1] She went on to rule that the "reason that I am disallowing your self-representation is because it is impossible for me to try a case if I do not have candor from those who are making representations to the court." (R. p. 71, line 3 – p. 75, line 14).

[1] The trial judge already knew that Mr. Grant said over the phone that he was not representing appellant. (R. p. 59, lines 9 – 13). She also acknowledged that appellant did not say Mr. Grant represented him when she spoke to Mr. Grant in the courtroom. (R. p. 63, lines 11 – 13).

The trial judge erred in denying appellant his Sixth Amendment right to self-representation. But, she was right when she said he had an appellate issue. (R. p. 76, line 18). The trial judge used the wrong standard under Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525 (1975) to determine if appellant was validly waiving counsel so that he could represent himself. To allow a valid waiver of counsel, a trial judge has to determine if the waiver is done knowingly and intelligently and that the defendant was warned of the dangers and disadvantages of self-representation. Faretta v. California, 422 U.S. at 835, 95 S.Ct. at 2541. The "ultimate test is not the trial judge's advice, but rather the defendant's understanding." Wroten v. State, 301 S.C. 293, 391 S.E.2d 575 (1990) citing Fitzpatrick v. Wainwright, 800 F.2d 1057 (11th Cir. 1986). The court in Wroten went on to say the following:

> 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. (citations omitted)

Also, the fact that a defendant requests standby counsel does not render the waiver of counsel invalid. State v. Brewer, 328 S.C. 117, 492 S.E.2d 97 (1997). The Supreme Court of the United States noted the following in Faretta:

> The language and spirit of the Sixth Amendment contemplate that counsel, like the other defense tools guaranteed by the Amendment, shall be an aid to a willing defendant – not an organ of the State interposed between an unwilling defendant and his right to defend himself personally. To thrust counsel upon the accused, against his considered wish, thus violates the logic of the Amendment. In such a case, counsel is not an assistant, but a master, and the right to make a defense is stripped of the personal character upon which the Amendment insists.

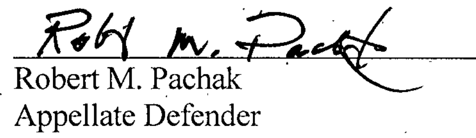
422 U.S. at 820, 95 S.Ct. at 2533 – 2534.

The trial judge in this case did everything she could think of to force counsel on appellant and deprive him of his right of self-representation. Appellant was not being manipulative or disruptive.

CONCLUSION

Appellant's conviction should be reversed.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

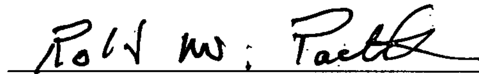
ATTORNEY FOR APPELLANT

This 18th day of September, 2014.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant 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."

September 18, 2014



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