**NOTICE OF APPEAL FROM A PCR DENIAL BY THE COURT OF COMMON PLEAS**

THE STATE OF SOUTH CAROLINA
In Supreme Court of SC

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas

George McFaddin, Jr., Circuit Court Judge

Case # 2012-CP-43-0363



The State, Respondent,

v.

Levern McCrea Appellant.

NOTICE OF APPEAL

Levern McCrea, appeals the decision of the Court, on September 25, 2020, filed on October 2, 2020, and written filed order received by his attorney on October 16, 2020, where Mr. McCrea was denied his request for PCR after a Motion to Reconsider, Alter, or Amend Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure (SCRCP) filed by Respondent State of South Carolina, represented by Assistant Attorney General Janell H. Gregory.

Mr. McCrea was originally granted his request for PCR on one element of his application and denied on all other elements and pleas for Relief by order dated October 29, 2019, and filed November 14, 2019. Mr. McCrea was represented at the original hearing by Lance Boozer, Attorney at Law. The case was then assigned by the Commission on Indigent Defense to Attorney Timothy L. Griffith who represented Mr. McCrea at the subsequent hearing, and who files this notice on behalf of the Appellant.

The order herein attached and a copy of which is also forwarded to the ~~SCCID~~ Appellate Division.

Dated 10/22/2020

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STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

Levern McCrea, #348291,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

2012-CP-45-0363

**ORDER GRANTING RESPONDENT'S MOTION TO RECONSIDER, ALTER, OR AMEND PURSUANT TO RULE 59(e) SCRCP, AND DENYING POST-CONVICTION RELIEF**

This matter comes before this Court by way of an application for post-conviction relief filed on July 9, 2012, by Levern McCrea (Applicant), and amended on October 20, 2014, by Applicant's PCR counsel. An evidentiary hearing was convened on June 1, 2018, before this Court. Applicant was present and represented by Lance Boozer, Esquire. Assistant Attorney General Julie Coleman of the South Carolina Attorney General's Office appeared on behalf of the State. Following the hearing, this Court took the matter under advisement and requested post-hearing memorandums from both parties. Both parties submitted memorandums as requested. Thereafter, by Order dated October 29, 2019, and filed November 14, 2019, this Court granted Applicant post-conviction relief.

On November 25, 2019, Respondent filed a timely Motion to Reconsider, Alter, or Amend Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure (SCRCP). A hearing on the motion was convened on December 30, 2019, at the Sumter County Courthouse. Applicant was

represented by Timothy L. Griffith, Jr., Esquire[1]. The State was represented by Assistant Attorney General Janell H. Gregory of the South Carolina Attorney General's Office.

After thoroughly reviewing the record once again, along with motions, returns, and memorandums submitted, and the testimony and evidence presented at the evidentiary hearing, and the arguments made at the motion to reconsider, alter, or amend hearing, this Court grants Respondent's motion to reconsider its prior order granting post-conviction relief. Specifically, this Court alters and amends its judgment to reflect that Applicant did receive the proper *Faretta*[2] warnings, and therefore, he waived his right to counsel by his conduct. As a result, this Court finds Applicant has failed to establish any constitutional deprivations entitling him to relief on any of the grounds raised, and accordingly, denies the application in full.

## PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. In September 2008, the Williamsburg County Grand Jury indicted Applicant for Murder, Possession of a Weapon During a Violent Crime, and Misprision of a Felony (2010-GS-45-135). On October 17-21, 2011, Applicant proceeded pro se at his jury trial and was found guilty as indicted for Murder and Possession of a Weapon During a Violent Crime. On October 20, 2011, the Honorable W. Jeffrey Young, sentenced Applicant to life in prison for Murder, and five years of imprisonment for Possession of a Weapon During a Violent Crime to run consecutively.

Applicant subsequently filed a notice of appeal. Applicant failed to timely serve the Notice of Appeal on opposing counsel, as required by Rule 203 of the South Carolina Appellate Court

[1]After Applicant's evidentiary hearing, Lance Boozer, Esquire, was relieved as Applicant's counsel. Thereafter, Timothy L. Griffith, Esquire, was appointed to represent Applicant.
[2] *Faretta v. California*, 422 U.S. 806 (1975).

Rules. Applicant's pending appeal was dismissed by Order dated April 20, 2012. The Remittitur was issued on August 3, 2012.

**Current Application**

On July 21, 2012, Applicant filed his PCR application, alleging he is being held in custody unlawfully for the following reasons:

1. Denied the right to appeal
    a. Applicant did not voluntarily and intelligently waive his right to appeal.
2. Defendant's waiver of right to counsel was not knowing and voluntary
    a. Defendant was not warned of dangers of self-representation
3. "Was Applicant 3 trial counsels ineffective prior to Applicants trial, which forced Applicant to proceed to trial with no trial counsel, or standby counsel and applicant never waived his rights to counsel in a violation of Applicants Const. rights of the U.S. under the 6th Amendment , and a violation of Applicants due process and equal protection under the 14th Amendment?"
    a. "Did the investigators commit investigative misconduct in a violation of Applicants U.S. Constitutional right under the 14th Amendment under De Process and Equal Protection of law?"

On October 20, 2014, Applicant, through counsel, amended his post-conviction relief application to include the following allegations:

1. "Preliminary hearing taken, in State v. McClure, 277 S.C. 432, 289 S.E.2d 158; State v. Funderburke, 259 S.C. 256, 191 S.E.2d 520. S.C. Code Law 17-23-160."
2. "That July 12, 2009, to July 8, 2010, indictment flawed. It has been rubber stamped. State v. Rector, 158 S.C. 212, 155 S.E. 385."
3. "Direct Appeal taken, State v. White, 208 S.E.2d 35, 29."
4. "Sixth Amendment right to counsel was violated and Fourteenth Amendment Right to due process of law was violated. Gardner v. State, 570 S.E.2d 184; U.S. v. Midgett, 342 F. 3d. 321."
5. "State made Applicant wear shackles during trial and the jurors saw them when he sat down and stood up. Deck v. State of Missouri, 125 S.Ct. 200 (2005). That prejudiced Applicant."

On December 3, 2014, Applicant, through counsel, issued a motion for summary judgement alleging there were no genuine issues of material fact to be decided in Applicant's matter as Applicant was not properly advised of the dangers of proceeding pro se prior to trial

pursuant to *Faretta v. California*, 422 U.S. 806 (1975). Applicant's motion stated the record failed to demonstrate Applicant made an informed choice when proceeding pro se at his jury trial.

On February 20, 2015, Applicant's post-conviction relief counsel, Charles T. Brooks, III, issued a motion to be relieved as Applicant's counsel on three grounds:

1. Applicant requested Brooks be relieved;
2. Applicant threatened, harassed, and displayed vulgarity in several written communications;
3. Applicant filed two grievances with the Office of Disciplinary Counsel, which damaged their relationship.

On February 25, 2015, Judge Cothran signed Brooks' motion to be relieved as counsel and asked the clerk's office to appoint another attorney for Applicant. In October of 2016, Lance S. Boozer, Esquire (Boozer) was appointed by the clerk's office to represent Applicant in his post-conviction relief matter.

On July 12, 2015, Respondent issued a response to Applicant's motion for summary dismissal stating Applicant forfeited his Sixth Amendment right to counsel due to his continued irreprehensible behavior towards three separate defense counsels. On February 8, 2016, the Honorable Tanya A. Gee filed an order denying Applicant's motion for summary judgment finding issues of material fact exist with regard to whether the Applicant forfeited his right to counsel based on his behavior. Judge Gee also ordered the State to provide Applicant with a copy of his prior transcripts.

In May 2018, Respondent received a pro se amendment to Applicant's original post-conviction relief application. In Applicant's amendment, he accuses Assistant Attorney General Coleman and the "State's attorney's / witnesses" of conspiring for the purpose of impeding, hindering, and obstructing the "due court of justice."

After submission of pre-hearing briefs by both parties, Applicant's post-conviction relief hearing commenced before the Honorable George M. McFaddin on June 1, 2018. Applicant was represented by Boozer and Assistant Attorney General Coleman of the South Carolina Attorney General's Office represented the State. Applicant proceeded only on the following issues:

1. Applicant's rights were violated when he was shackled throughout the duration of his trial.
2. *Brady* violations were committed by the State resulting in prosecutorial misconduct.
3. Applicant was denied his right to counsel.

At the hearing, Applicant testified on his own behalf. Charles Barr, Esquire (Charles); Cezar McKnight, Esquire, (McKnight); Henry M. Anderson, Jr., Esquire (Anderson); and Assistant Solicitor Kimberly Barr (Barr) of the Third Circuit Solicitor's Office also testified. Following the evidentiary hearing, this Court requested post-hearing briefs from Applicant and Respondent.

After initially reviewing the record and all evidence presented, this Court granted Applicant relief as to Applicant's allegation that he was not properly advised of the dangers of pro se representation under *Faretta*. More specifically, this Court initially found Applicant was denied his Sixth Amendment right to counsel by proceeding pro se when he did not receive proper *Faretta* warnings. This Court denied and dismissed with prejudice Applicant's allegations that his rights were violate by being shackled during trial and that he the prosecution committed *Brady* violations. More specifically, this Court found Applicant had not met his burden regarding the shackles because the evidence showed they were not restricting and were not visible to the jury. This Court also found Applicant failed to show the prosecution committed a *Brady* violation, as the credible testimony from Barr and Anderson showed Applicant did receive full discovery from the prosecution. Respondent filed a timely Motion to Alter or Amend Pursuant to Rule 59(e), SCRCP, arguing that Applicant was not denied his right to counsel because: (1) Applicant forfeited his right

to counsel by his egregious conduct toward multiple defense attorneys such that *Faretta* warnings were not necessary, or alternatively, (2) Applicant was given *Faretta* warnings over the course of various hearings throughout his case, had the necessary background to provide a waiver of his right to counsel, and based on his conduct, waived his right to counsel. A hearing on the matter was convened on December 30, 2019.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

After a thorough review of the record once again and consideration of the arguments presented by both parties, this Court grants Respondent's motion to reconsider its prior order granting post-conviction relief pursuant to Rule 59(e), SCRCP. Additionally, this Court finds Applicant has failed to establish any constitutional deprivations entitling him to relief of any of the grounds raised, and accordingly, denies and dismisses the application in full.

Respondent moved this Court to reverse its earlier decision and deny post-conviction relief, contending Applicant failed to establish that he was denied his Sixth Amendment right to counsel because either: (1) Applicant forfeited his right to Counsel, or alternatively, (2) Applicant was given the proper *Faretta* warnings, and waived his right to counsel by his conduct. This Court reverses its finding that Applicant's Sixth Amendment rights were violated because Applicant did not receive adequate *Faretta* warnings. This Court finds Applicant did receive the proper *Faretta* warnings by way of various statements and warnings made during the myriad of hearings throughout Applicant's case, and that these *Faretta* warnings, along with Applicant's consistent and extreme behavior, support a finding of waiver by conduct. This Court declines to hold that Applicant forfeited his right to counsel.

A defendant may waive his right to counsel through his conduct. *United States v. Goldberg*, 67 F.3d 1092, 1100 (3d. Cir. 1995). Once a defendant has been warned that his misconduct will thereafter be treated as a waiver of his right to counsel, any subsequent

misconduct is treated as a "waiver by conduct." *Id.* Most courts have held there can be no "waiver by conduct" unless the defendant is first warned of the consequences of his actions. *State v. Boykin*, 324 S.C. 552, 556, 478 S.E.2d 689, 690 (Ct. App. 1996). "[T]o the extent that the defendant's actions are examined under the doctrine of 'waiver,' there can be no valid waiver of the Sixth Amendment right to counsel unless the defendant also receives *Faretta* warnings." *Goldberg*, 67 F.3d at 1100.

To establish a valid waiver of counsel, *Faretta* requires the accused be: (1) advised of his right to counsel; and (2) adequately warned of the dangers of self-representation. *Bridwell v. State*, 306 S.C. 518, 413 S.E.2d 30 (1992); *Prince v. State*, 301 S.C. 422, 392 S.E.2d 462 (1990); *Wroten v. State*, 301 S.C. 293, 294, 391 S.E.2d 575, 576 (1990) ("*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 eyes open.'") (citation omitted). In the absence of a specific inquiry by the trial judge addressing the disadvantages of a pro se defense as required by the second *Faretta* prong, the appellate court will look to the record to determine whether petitioner had sufficient background or was apprised of his rights by some other source. *Bridwell*, 306 S.C. at 519, 413 S.E.2d at 31; *Prince v. State*, 301 S.C. at 424, 392 S.E.2d at 463. Once a defendant has been warned that his misconduct will thereafter be treated as a waiver of his right to counsel, any subsequent misconduct is treated as a "waiver by conduct." *Boykin*, 324 S.C.at 556.

This Court finds the record clearly establishes Applicant was aware of his right to counsel. Applicant asked for appointed attorneys several times throughout his case, and was appointed attorneys several times. Accordingly, Applicant clearly was aware of his right to counsel.

This Court finds the record reveals that Applicant had a sufficient background to make

a knowingly and intelligent waiver of counsel. In *State v. Cash* the court listed ten factors in determining whether a defendant had sufficient background to make a valid waiver of counsel. Specifically, the court listed: (1) the accused's age, educational background, and physical and mental health; (2) whether the accused was previously involved in criminal trials; (3) whether he knew of the nature of the charge and of the possible penalties; (4) whether he was represented by counsel before trial or whether an attorney indicated to him the difficulty of self-representation in his particular case; (5) whether he was attempting to delay or manipulate the proceedings; (6) whether the court appointed stand- by counsel; (7) whether the accused knew he would be required to comply with the rules of procedure at trial; (8) whether he knew of legal challenges he could raise in defense to the charges against him; (9) whether the exchange between the accused and the court consisted merely of pro forma answers to pro forma questions; and (10) whether the accused's waiver resulted from either coercion or mistreatment. *State v. Cash,* 309 S.C. 40, 43, 419 S.E.2d 811, 813 (Ct. App. 1992).

In applying the factors listed above, the Court of Appeals found that Cash had sufficient background to understand the disadvantages of self-representation. Specifically, the Court noted Cash was forty-six years old, had six years of college, and had been previously involved in criminal proceedings. *Id.* at 44. The Court noted that Cash understood the nature of the charges against him and the possible penalty. *Id.* The Court noted that there was no indication that Cash was represented by counsel before trial or that an attorney advised him of the difficulty of self- representation, the record showed that Cash appreciated the difficulty of his particular case. *Id.* The Court cited to Cash's statement that he could do a better job of preparing his defense than a public defender. *Id.* The Court cited that there was no indication Cash was attempting to delay or manipulate the proceeding in declining the assistance of counsel. *Id.* at 45. The trial judge appointed stand by counsel for Cash. *Id.* The Court noted

that Cash was aware that he would be required to comply with the procedural rules. *Id.* The Court noted that Cash was aware prior to trial of possible legal challenges he could raise in defense to the charge against him. *Id.* The Court noted during the pretrial hearing in which Cash declined the assistance of counsel, the exchange between the judge and Cash did not consist of merely pro forma questions.

In *State v. McLauren,* the South Carolina Court of Appeals applied the *Cash* factors to determine whether defendant had a sufficient background to make a valid waiver of the right to counsel. *State v. McLauren*, 349 S.C. 488, 563 S.E.2d 346 (Ct. App. 2002) (citing *Cash*, 309 S.C. at 43, 419 S.E.2d at 813). The Court noted McLauren was a mature man with both formal and informal education. There was no evidence in the record of any physical or mental impairment. *Id.* at 495. McLauren was involved in prior criminal proceedings and knew of the nature of the charges. *Id.* McLauren addressed questions by the court and made motions. *Id.* Although McLauren was not assigned an attorney before trial and appeared pro se at his arraignment, the court appointed him stand by counsel during trial. *Id.* There was no indication that McLauren was attempting to delay or manipulate the proceedings. *Id.* The Court noted that the record indicated that McLauren knew to comply with the procedural rules and had at least some familiarity with the rules. *Id.* Specifically, the Court cited the fact that McLauren made motions, called several witnesses, and objected at times to the prosecutor's questions. *Id.* McLauren knew of the legal challenges he could raise in defense to the charges against him. *Id.* The Court noted that the exchange between McLauren and the court did not consist merely of pro forma questions. *Id.* The Court noted McLauren language and actions at trial indicated he had an understanding of the legal system. *Id.* Finally, the Court noted that there was no evidence that McLauren's waiver resulted from coercion or mistreatment. *Id.*

The application of the *Cash* factors in Applicant's case is similar to *McLauren*. Both Applicant and McLauren showed no signs of mental or physical impairment. Applicant and McLauren had a similar background and knowledge of criminal proceedings as they both were involved in prior criminal proceedings. Like McLauren, Applicant was aware of the charges against him and his defenses, and participated in his own criminal proceedings in this case by making arguments and asking questions. Neither McLauren nor Applicant appeared to be attempting to delay their trials. Additionally, like the trial court in *McLauren*, the trial court in Applicant's case did not merely ask Applicant pro forma questions. Moreover, the waiver in both cases clearly was not the result of coercion or mistreatment. This Court finds Applicant had a sufficient background to make a valid waiver by conduct, and applies the *Cash* factors to Applicant's case in more detail below.

In the instant case, Applicant had sufficient background to make a valid waiver under the *Cash* factors. First, Applicant was born June 12, 1964 and was forty-seven years old at the time of trial. There was no evidence in the record of any physical or mental impairment.

Second, Applicant had been previously involved in criminal proceedings. The record indicates that he had a criminal record dating back to 1986. (Tr. p. 636, l. 18-p. 638, l. 16).

Third, Applicant was well aware of the nature of the charge. Notably, during the motion to relieve Counsel Anderson, the Assistant Solicitor recited the charges against Applicant and gave a brief factual context of the State's evidence against Applicant. (June 22, 2011 Mot. Tr. p. 2, l. 23-p. 4, l. 20). Furthermore, Applicant continuously referenced during a pre-trial conference that he was not facing a "shoplifting charge." (December 12, 2011 Mot. Tr. p. 17, l. 14-16; p. 18, l. 6-11). Based off of the record, it is apparent that Applicant was well aware of the serious nature of the charges he faced.

Fourth, Applicant was represented by three separate attorneys prior to trial.

Specifically, Applicant retained Charles Barr, Esquire. Subsequently, Applicant fired Charles Barr because he "deliberately and intuitionally ignored [his] letters and phone calls for 9 and an a half weeks." (June 22, 2011 Mot. Tr. p. 13, ll. 6-8). Applicant accused Charles Barr of "conspire[ing] with the State's attorney's office Ms. Kimberly Barr." (June 22, 2011 Mot. Tr. p. 14, ll. 5-6). Applicant was then appointed Cezar McKnight. Counsel McKnight filed a motion to be relieved as counsel on November 24, 2010. A hearing was held on December 6, 2010, in front of the Honorable George C. James, Jr. During the hearing, Counsel McKnight stated that there existed an acrimonious relationship between the two of them. (December 6, 2010 Mot. Tr. p. 3, ll. 15- 19). Counsel McKnight noted that Applicant told him to go to hell and accused him of conspiring with the State in attempt to "railroad him" (December 6, 2010 Mot. Tr. p. 4, l. 20- p. 5, l. 1). Applicant advised the court that he "requested Attorney McKnight to represent him." (December 6, 2010 Mot. Tr. p. 10, ll. 21-23). Applicant opined that Counsel McKnight is a "great attorney." (December 6, 2010 Mot. Tr. p. 10, ll. 21-23). After hearing all arguments, Judge James relieved Counsel McKnight and ordered Applicant be appointed another attorney.

Applicant was then appointed Counsel Anderson. Counsel Anderson filed a motion to be relieved. A hearing was held on June 22, 2011, in front of the Honorable Howard P. King. Judge King. In support of his motion to be relieved, Counsel Anderson noted that Applicant had filed complaints with the office of disciplinary counsel, Applicant questioned his motives and relationship with the State's attorney, and Applicant stated that he would no longer talk to him. (June 22, 2011, Mot. Tr. p. 8, l. 21-9 l. 23). Judge King noted that Applicant's letter dated February 9, 2011, was one of the most "vilest, worst letters" he had ever read from a client to an attorney. (June 22, 2011, Mot. Tr. p. 19, ll. 18-22). Applicant stated that he did "not trust attorney Anderson" and believed that he was not in his best interest. (June 22, 2011 Mot. Tr.

p. 3, ll. 17-20). At the conclusion of the hearing, Judge King advised Applicant that he was going to require Counsel Anderson to continue to represent him. However, Judge King advised Applicant that if he continued to disrespect Counsel Anderson then he would waive his right to counsel and be required to proceed pro-se or retain private counsel. (June 22, 2011 Mot. Tr. p. 40 l. 19-p. 41, l. 16). Following the hearing, Counsel Anderson submitted a second motion to be relieved citing various letters from Applicant. In the letters, Applicant stated "I no longer need your lying assistance. I will now represent myself in my case when the time comes. Now, you can put in the paper work to Judge King or Judge James, I don't give a damn!" (September 14, 2011, Order p. 6). Judge King issued an order dated September 14, 2011, relieving Counsel Anderson, advising Applicant to retain counsel within 15 days, and noting that the case is set for date certain on October 17, 2011.

Fifth, there is no indication that Applicant was attempting to delay or manipulate the proceedings. On the contrary, he continuously attempted to have his case dismissed based on a purported speedy trial violation. It is clear that Applicant wanted his case brought to trial as quickly as possible.

Sixth, the record is clear that Applicant knew to comply with procedural rules and had at least some familiarity with the rules. Applicant made several motions, legal arguments, cross examined several witnesses, and objected to the prosecutor's questions. During a pre-trial conference, Applicant claimed that the State had violated Rule 5 and *Brady*. The Court engaged in lengthy colloquy regarding whether the State had complied with *Brady* and Rule 5. Furthermore Applicant requested a list of the State's witnesses and the juror list prior to trial. (December 12, 2011, Mot. Tr. p. 52, l. 21-22). Applicant continually requested documents or arguments be noted for the record for an Appeal. (December 12, 2011, Mot. Tr. p. 4, l. 6-19; Tr. t. p. 48, ll. 6-14).

Seventh, the record reveals Applicant knew of the legal challenges he could raise in his defense to the charges against him. During a pre-trial conference he stated to the judge that he had a list of witnesses that he needed to contact. (December 12, 2011, Mot. Tr. p. 55, ll.1-4). Applicant provided their names and information to the court in an effort to subpoena them for trial. (December 12, 2011, Mot. Tr. p. 55, l. 5-p. 56, l. 22). The court specifically noted that it had "provided reasonable assistance for [Applicant] to get witnesses for his defense." (December 12, 2011, Mot. Tr. p. 56, ll. 23-24). Applicant provided the court with various documents that he intended to introduce at trial. Applicant further requested copies of Investigator's Brown, Investigator Wayne McFadden and Investigator Lambert's infractions or complaints. (Tr. p. 41, ll. 4-8).

Eighth, the exchange between Applicant and the court did not consist of merely pro forma questions. To the contrary, the Applicant was advised by several different courts about the right to counsel and the dangers of proceeding pro-se. Specifically, Judge James advised Applicant in December 6, 2010, that he cannot continue to "play this game of being dissatisfied with things going exactly as you want and provoking a change in lawyer. It's not going to happen again." (Dec. 6, 2010, Mot. Tr. p. 11, l. 25 – p. 12, l. 3). Applicant indicated he understood. Judge James further advised Applicant that "you're presumed innocent, you're entitled to a fair trial but you have to examine your own attitude and conduct and I'm beginning to see a pattern. You've had two excellent attorneys represent you ....your attitude is that if somebody doesn't do exactly what you think out to be done they're engaged in a conspiracy." (Dec. 6, 2010, Mot. Tr. p. 20, ll. 13-21). On June 22, 2011, Judge King advised Applicant that he did not get his choice of appointed counsel. (June 22, 2011, Mot. Tr. p. 10, ll. 14-17). Judge King advised Applicant that Counsel Anderson was a highly respected and well thought of criminal defense attorney and that Applicant was not an attorney. (June 22, 2011,

Mot. Tr. p. 11, ll. 7-9; p. 32, ll. 10-12). Judge King further advised Applicant that Counsel Anderson knows "what is appropriate to do... he has the judgement and the training to do those things that are appropriate to be done, not you Mr. McCrea. You have admitted to me that you are not an attorney." (June 22, 2011, Mot. Tr. p. 32, ll. 5-10). Judge King advised Applicant that if he relived Counsel Anderson, the court will not and is not going to appoint a new lawyer. (June 22, 2011, Mot. Tr. p. 35, ll.1-7). Judge King further advised Applicant that he could either retain counsel or appear pro se if he wanted to relieve Counsel Anderson. (June 22, 2011, Mot. Tr. p. 35, ll. 4-8). Applicant initially advised Judge King that he wanted to relieve Counsel Anderson and proceed pro se. (June 22, 2011, Mot. Tr. p. 35, ll.2-8). However, after asking several times, Applicant chose to proceed to trial with Counsel Anderson. (June 22, 2011, Mot. Tr. p. 40, ll. 13-15). Judge King advised Applicant that if he did not treat Counsel Anderson with respect, then he would sign an order relieving Counsel Anderson and requiring Applicant to proceed pro se. (June 22, 2011, Mot. Tr. p. 40, l. 19- p. 41, l. 16). Notably, during pre-trial, Applicant informed the trial judge that Judge King had already advised him the disadvantages of proceeding pro se. (Tr. p. 34, l. 25 -p. 35, l. 9).

Ninth, there was no evidence that Applicant's waiver resulted from coercion or mistreatment. While Applicant claimed that he "forced" to relieve all three attorneys due to their conspiring with the State, this Court notes that three separate circuit court judges rejected Applicant's claims. Instead, three experienced criminal defense attorneys were relieved due to Applicant's repeatedly abusive, threatening, and coercive behavior towards his various counsels.

Based upon the foregoing, this Court finds Applicant had a sufficient background to make a knowingly and intelligent waiver of counsel. An application of the *Cash* factors to

Applicant's case clearly supports a finding that Applicant had a sufficient background to waive his right to counsel.

This Court also finds Applicant was advised of the dangers of proceeding pro se through his various hearings on his counsel's motions to be relieved. Specifically, Judge James advised Applicant on December 6, 2010, he could not continue to "play this game of being dissatisfied with things going exactly as [he] want[s] and provoking a change in lawyer. It's not going to happen again." (December 6, 2010, Mot. Tr. P. 11, l. 25 – p. 12, l. 3). Applicant indicated he understood. Judge James further advised Applicant that "you're presumed innocent, you're entitled to a fair trial but you have to examine your own attitude and conduct and I'm beginning to see a pattern. You've had two excellent attorneys represent you....your attitude is that if somebody doesn't do exactly what you think ought to be done, they're engaged in a conspiracy." (Dec. 6, 2010, Mot. Tr. P. 20, ll. 13-21).

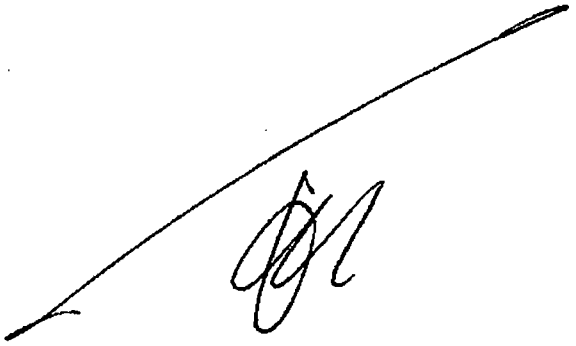
On June 22, 2011, Judge King advised Applicant that you do not get your choice of appointed counsel. (June 22, 2011, Mot. Tr. p. 10, ll. 14-17). Judge King advised Applicant that Counsel Anderson was a highly respected and well thought of criminal defense attorney and that Applicant was not an attorney. (June 22, 2011, Mot. Tr. p. 11, ll. 7-9; p. 32, ll. 10-12). Judge King further advised Applicant that Counsel Anderson knows "what is appropriate to do... he has the judgement and the training to do those things that are appropriate to be done, not you Mr. McCrea. You have admitted to me that you are not an attorney." (June 22, 2011, Mot. Tr. p. 3, ll. 5-10). Judge King advised Applicant that if he relieved Counsel Anderson, the court would not appoint a new lawyer. (June 22, 2011, Mot. Tr. p. 35, ll. 1-7). Judge King further advised Applicant that he could either retain counsel or appear pro se if he wanted to relieve Counsel Anderson. (June 22, 2011, Mot. Tr. p. 3, ll. 4-8).

Applicant initially advised Judge King that he wanted to relieve Counsel Anderson and proceed pro se. (June 22, 2011, Mot. Tr. p. 35, ll. 2-8). However, after asking several times, Applicant chose to proceed to trial with Counsel Anderson. (June 22, 2011, Mot. Tr. p.40, ll. 13-15). Judge King advised Applicant that if he did not treat Counsel Anderson with respect, then he would sign an order relieving Counsel Anderson and requiring Applicant to proceed pro se. (June 22, 2011, Mot. Tr. p. 40, l.19- p. 4, l. 16). Notably, during pre-trial, Applicant informed the trial judge that Judge King had already advised him the disadvantages of proceeding pro se. (Tr. p. 34, l. 25- p. 35, l.9).

Based upon the above, this Court finds the record clearly establishes Applicant received sufficient *Faretta* warnings by way of colloquies between the trial court and Applicant during various hearings throughout the duration of Applicant's case. Applicant clearly had a sufficient background to make a waiver of his right to counsel and understood his communications with the court. Despite being informed by the trial court of the consequences of continuing his violent and inappropriate behavior, Applicant proceeded to engage in such behavior. Therefore, this Court finds Applicant waived his right to counsel by his conduct, and therefore, was not denied his right to counsel. Accordingly, this Court grants Respondent's motion to reconsider, alter, or amend, and finds Applicant did receive proper *Faretta* warnings, and waived his right to counsel by his conduct. This Court upholds its previous findings that Applicant failed to meet his burden as it relates to his allegations that his rights were violated by the shackles worn at trial and that the prosecution committed a *Brady* violation. This Court finds Applicant has failed to establish any constitutional deprivations entitling him to relief of any of the grounds raised. Accordingly, this Court denies and dismisses Applicant's PCR application in full and denies Applicant PCR relief.

## CONCLUSION

Based upon the foregoing, this Court finds Applicant was sufficiently advised of the dangers of proceeding pro se such that any failure of the trial court to make a specific inquiry addressing the disadvantages of a pro se defendant is cured. The trial court advised Applicant several times he had representation from various attorneys with legal experience, and that Applicant did not have legal knowledge. The trial court further advised Applicant that he could not continue his behavior, and if he did, he would not be appointed a new attorney and would have to proceed pro se. Applicant acknowledged that the trial court advised him of the dangers of proceeding pro se. Despite being continually warned about the consequences of his violent and inappropriate behavior toward his attorneys, Applicant continued this behavior, thereby waiving his right to counsel. As discussed above, this Court also finds Applicant had the necessary background to make such a waiver of counsel by conduct. Accordingly, this Court finds Applicant waived his right to counsel by his consistent hostile behavior. This Court affirms its other findings that Applicant failed to meet his burden as it relates to his *Brady* allegation and allegation regarding the shackles worn at trial. Therefore, this Court finds Applicant has not established any constitutional deprivations that would require a grant of post-conviction relief. This Court denies and dismisses the entirety of Applicant's PCR application with prejudice.



**IT IS THEREFORE ORDERED THAT:**

1. Respondent's Motion to Reconsider, Alter, or Amend Pursuant to Rule 59(e), SCRCP is GRANTED;

2. The application for post-conviction relief is denied and dismissed with prejudice in full; and

3. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

**AND IT IS SO ORDERED** this 12 day of September, 2020.

GEORGE M. MCFADDIN, JR.
Presiding Judge
Third Judicial Circuit

Sumter, South Carolina