

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Appeal from Saluda County
The Honorable Frank R. Addy, Circuit Court Judge

SC Court of Appeals

Appellate Case No. 2019-001481

THE STATE,

Respondent,

v.

JEFFREY JAMES WILLIAMS,

Appellant.

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUE ON APPEAL.....	1
STATEMENT OF THE CASE.....	2
STATEMENT OF FACTS	3
STANDARD OF REVIEW	4
ARGUMENT	5
The trial judge properly allowed Appellant to represent himself because the trial judge advised Appellant of the dangers of self-representation and Appellant made a knowing, intelligent, and voluntary decision to represent himself. Furthermore, Appellant’s assertion of his right to self-representation was clear, unequivocal, and timely.	
CONCLUSION	10

TABLE OF AUTHORITIES

Cases:

<u>Faretta v. California</u> , 422 U.S. 806 (1975)	5
<u>Godinez v. Moran</u> , 509 U.S. 389 (1993).....	5
<u>State v. Barnes</u> , 407 S.C. 27, 753 S.E.2d 545 (2014)	6
<u>State v. Brewer</u> , 328 S.C. 117, 492 S.E.2d 97 (1997).....	6
<u>State v. Samuel</u> , 422 S.C. 596, 813 S.E.2d 487 (2018)	4, 5, 6
<u>United States v. Bush</u> , 404 F.3d 263 (4th Cir. 2005).....	5
<u>United States v. Frazier-El</u> , 204 F.3d 553 (4th Cir. 2000).....	5

STATEMENT OF ISSUE ON APPEAL

Did the trial judge properly allow Appellant to represent himself when the trial judge advised Appellant of the dangers of self-representation and Appellant made a knowing, intelligent, and voluntary decision to represent himself, and his assertion of his right to self-representation was clear, unequivocal, and timely?

STATEMENT OF THE CASE

In November 2018, a Saluda County Grand Jury indicted Appellant for one count of threatening a public official. On August 26-28, 2019, Appellant proceeded to a trial before a jury in the Saluda County Court of General Sessions with the Honorable Frank R. Addy, presiding. Appellant represented himself but had Bennett Casto, Esq. appointed as stand by counsel. The State was represented by Assistant Solicitor Douglas Fender of the Eleventh Circuit Solicitor's Office. At the conclusion of trial, the jury convicted Appellant. Following the verdict, the trial judge sentenced Appellant to five years' imprisonment. Appellant timely filed a notice of appeal and an initial brief.

STATEMENT OF FACTS

On August 10, 2018, Denise Yon, an employee of the Saluda County Magistrate's Office, received a phone call from the number 803-317-4381. (R. 166). The unknown caller asked to speak with Magistrate Judge Joyce Schults. (R. 166). Judge Schults was unavailable, so the unknown caller left a message with Yon for Judge Schults. Among other things, the caller asked Yon to tell Schults he wanted to 'bury her, dig her back up, dress her, paint her toenails, and have sex with her.' (R. 166, lines 11-13). After the caller hung up, Yon contacted Magistrate Judge Bruce Horn who subsequently called law enforcement. (R. 167).

Agent Brett Auckland of SLED ran the number, 803-317-4381, through a database to determine the owner of the number. Auckland's search revealed Appellant as the owner of the number. (R. 185). Auckland contacted Joshua Price of the Saluda County Sheriff's Office to convey the results of his search. Price and Lieutenant Steven Byrd went to Appellant's mother's residence in Saluda County approximately four hours after the phone call was made. (R. 191-93). Price and Byrd spoke to Appellant at his mother's residence. Appellant admitted calling the Magistrate's Office and using profane language because he was angry about a bond setting and a drug paraphernalia ticket. (R. 193). However, Appellant denied threatening Judge Schults. (R. 193). While at Appellant's mother's residence, Byrd called the number 803-317-4381. A cell phone in Appellant's pocket began to ring. (R. 193-94, 238). Price later obtained phone records for Appellant's number and verified that two calls were made from Appellant's phone to the Magistrate's Office. (R. 195-96). Additionally, Price verified that a phone call was made by Byrd's number to Appellant's phone. (R. 195-96). Appellant was placed under arrest for threatening a public official.

STANDARD OF REVIEW

“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.” State v. Samuel, 422 S.C. 596, 602, 813 S.E.2d 487, 490 (2018). Appellate courts review a circuit judge’s findings of fact for clear error, but the appellate court reviews “the denial of self-representation based upon those findings of fact de novo.” Id.

ARGUMENT

The trial judge properly allowed Appellant to represent himself because the trial judge advised Appellant of the dangers of self-representation and Appellant made a knowing, intelligent, and voluntary decision to represent himself. Furthermore, Appellant's assertion of his right to self-representation was clear, unequivocal, and timely.

Appellant contends the trial judge violated his Sixth Amendment right to counsel by allowing Appellant to represent himself. Specifically, Appellant alleges the trial judge's Faretta colloquy did not contain a sufficient warning about the danger of self-representation. Accordingly, Appellant argues his waiver of counsel was not knowing, intelligent, and voluntary. On the contrary, the trial judge sufficiently warned Appellant of the danger of self-representation and Appellant's waiver of his right to counsel was knowing, intelligent, and voluntary. Furthermore, Appellant's assertion of his right was clear, unequivocal, and timely.

A criminal defendant has a fundamental right to self-representation under the Sixth Amendment of the United States Constitution. Faretta v. California, 422 U.S. 806, 819-21 (1975). To properly assert the right of self-representation, an assertion must be "(1) clear and unequivocal, (2) knowing, intelligent, and voluntary, and (3) timely." United States v. Frazier-El, 204 F.3d 553, 558 (4th Cir. 2000) (internal citations omitted).

The right to counsel is mutually exclusive of the right to self-representation. United States v. Bush, 404 F.3d 263, 270 (4th Cir. 2005). "The competence that is required of a defendant seeking to waive his right to counsel is the competence to *waive the right*, not the competence to represent himself." Godinez v. Moran, 509 U.S. 389, 399 (1993) (emphasis in original). "Whether a defendant has intelligently waived his right to counsel depends on the particular facts and circumstances surrounding each case, including the background, experience, and conduct of the accused." Samuel, 422 S.C. at 603, 813 S.E.2d at 491. "The ultimate test of whether a defendant has made a knowing and intelligent waiver of the right to counsel is not the

trial judge's advice, but the defendant's understanding." State v. Brewer, 328 S.C. 117, 119, 492 S.E.2d 97, 98 (1997). "Although a defendant's decision to proceed *pro se* may ultimately be to his detriment, such requests 'must be honored out of that respect for the individual which is the lifeblood of the law.'" Samuel, 422 S.C. at 603-604, 813 S.E.2d at 491 (quoting State v. Barnes, 407 S.C. 27, 35-36, 753 S.E.2d 545, 550 (2014)).

Here the relevant exchange between Appellant and the trial judge occurred at a pre-trial hearing when Appellant was still represented by Assistant Public Defender Dietrich Lake. At the pre-trial hearing, Lake asked to be removed as Appellant's lawyer. (R. 25). The following exchange between Appellant and the trial judge took place:

The Court: [Appellant], you hear that Mr. Lake is wanting to get off the case for reasons he's expressed. How do you feel about that?

Appellant: Sir, if it pleases the Court?

The Court: Sure.

Appellant: I have a motion to relieve counsel that I would like to go on record with the Court. Also, I would like to ask that these proceedings – I need a copy of this transcript forwarded to the office of lawyer conduct and the fee board and –

The Court: Let me ask you this

Appellant: Yes.

The Court: We may be able to cut to the chase here a little bit. You have a motion to relieve Mr. Lake. Mr. Lake also wants to be relieved. So I assume that you're okay with Mr. Lake being relieved. Correct?

Appellant: Yes, sir. But I'd like to put my reasons on the record, because he and the solicitor has had they (sic) chance to talk, but ain't nobody heard from me.

(R. 29, lines 7-25- R. 30, lines 1-3). After reviewing Appellant's educational background, the following exchange occurred between Appellant and the trial judge:

The Court: Are you looking to have new counsel appointed for you because you are indigent?

Appellant: No, sir. Sir, this case, like the solicitor said, and I agree with him 100 percent, has drug on for a whole year. And the main reason is Mr. Lake...

....

The Court: Okay. [Appellant]—

Appellant: Yes, sir?

The Court: -- you are wanting to represent yourself --

Appellant: Yes, sir.

The Court: -- is what I'm hearing. Okay. You understand, [Appellant], that if you choose to represent yourself, you're held to the same standard as a lawyer? And I'm hearing that you did not go to law school. Is that right?

Appellant: No, sir, I didn't...

(R. 32, lines 14-24). After reviewing Appellant's mental health history, the trial judge again verified that Appellant wanted to represent himself in the following exchange:

The Court: But do you currently have the resources to retain another attorney?

Appellant: No, sir.

The Court: Would you like to have Mr. Casto—Mr. Bennett Casto appointed to represent you on these charges?

Appellant: Well, sir, I know it kind of seems strange because -- I mean, I would just—sir, I don't know how to put this to the Court where you can understand. Like I said, this situation has been going on for over a year now.

The Court: Right.

Appellant: And the solicitor has his stance on the case and I have my stance. All right? And I don't—I don't see a guilty verdict coming, sir, to be honest, with the evidence. So I just want him relieved, sir. I don't—I don't need another attorney, sir.

The Court: you don't need another attorney?

Appellant: No, Sir.

The Court: You realize, again, I think it's a good idea that you have a lawyer because you're going to have to follow the same procedure as a lawyer would have to follow, if you represent yourself? That's why I'm suggesting maybe it's a really good idea that I let Bennett Casto represent you.

(R. 40, lines 7-25- R. 41, lines 1-8). Appellant ultimately declined the trial judge's offer to appoint Casto to be his attorney, but begrudgingly agreed to let Casto serve as standby counsel. (R. 42-43).

Clear and Unequivocal

Here, the trial judge properly allowed Appellant to represent himself, because Appellant's request was clear and unequivocal. The trial judge asked Appellant twice if he wanted to represent himself or have another attorney appointed. First, the trial judge asked Appellant if he wanted to represent himself in the following exchange:

The Court: Okay. [Appellant]—

Appellant: Yes, sir?

The Court: -- you are wanting to represent yourself --

Appellant: Yes, sir.

The Court: -- is what I'm hearing. Okay...

(R. 32, lines 14-20). Appellant's response was clear and unequivocal that he wanted to represent himself. After warning Appellant of the danger of self-representation, the trial judge inquired whether Appellant wanted another attorney appointed. (R. 40). Appellant's response was clear and unequivocal that he did not want another attorney appointed. (R. 41). Appellant begrudgingly agreed to have Casto appointed as stand by counsel, but Appellant never waived in his desire to represent himself. (R. 42-43). Therefore, the trial judge did not err in allowing Appellant to represent himself.

Knowing, Intelligent, and Voluntary

Appellant's waiver of his right to counsel was also knowing, intelligent, and voluntary. The trial judge warned Appellant that "if you choose to represent yourself, you're held to the same standard as a lawyer? And I'm hearing that you did not go to law school. Is that right?" (R. 32, lines 20-23). Appellant was undeterred by this warning and continued to insist that he wanted to represent himself. The trial judge warned Appellant of the danger of self-representation a second time when he asked the following question: "You realize, again, I think it's a good idea that you have a lawyer because you're going to have to follow the same procedure as a lawyer would have to follow, if you represent yourself?" (R. 41, lines 2-6). Appellant was undeterred again and only begrudgingly agreed to have standby counsel after the trial judge asked Appellant if he would "be comfortable with Mr. Casto simply sitting next to you; not representing you, but advising you in more of an informal capacity?" (R. 43, lines 1-4). Because Appellant decided to represent himself after two warnings by the trial judge, Appellant's decision was knowing, intelligent, and voluntary and the trial judge did not err by allowing Appellant to represent himself.

Timely

Finally, Appellant's request to represent himself was timely. Appellant moved to represent himself approximately three weeks before his trial began. Therefore, Appellant made his request before any critical stage of his trial had begun and he had ample time to prepare for trial. Because Appellant's request to represent himself was (1) clear and unequivocal, (2) knowing, intelligent, and voluntary, and (3) timely, the trial judge did not err in allowing Appellant to represent himself. Appellant's convictions and sentences should be affirmed.

CONCLUSION

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

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies the Final Brief of Respondent complies with Rule
211(b), SCACR.

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