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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ON PETITION FOR A WRIT OF CERTIORARI TO UNION COUNTY
Court of Common Pleas

The Honorable J. Mark Hayes, II, Post-Conviction Relief Judge
The Honorable John C. Hayes, III, Circuit Court Judge

Appellate Case No. 2020-000333

JAMES GILES,Petitioner,

v.

STATE OF SOUTH CAROLINA,Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED ON CERTIORARI

Petitioner's Statement of Issue Presented

Whether the PCR court erred in granting Appellant's mid-trial motion to relieve trial counsel when the trial judge failed to adequately warn Appellant of the dangers of self-representation; failed to make a thorough record, and failed to conduct a proper *Faretta* hearing.

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The post-conviction relief court correctly found Petitioner failed to prove the trial court erred by granting Petitioner's mid-trial motion to relieve counsel, where the trial judge conducted a proper Faretta hearing, and thoroughly warned petitioner of the risk of self-representation.

STATEMENT OF THE CASE

During its September 2007 term, the Union County Grand Jury indicted Petitioner James Giles (Petitioner) for first-degree burglary (2006-GS-44-1207), kidnapping (2006-GS-44-1208), and strong-arm robbery (2006-GS-44-1209). App. 339. Petitioner was represented by Vanessa Cason, Esquire (Cason). Assistant Solicitor John Anthony, of the Sixteenth Circuit Solicitors Office prosecuted the case.

On September 12, 2007, Petitioner proceeded to a jury trial before the Honorable John C. Hayes, III. App. 1. Halfway through the trial, Cason moved to be relieved as counsel at Petitioner's request, and Petitioner proceeded *pro se* with Cason remaining as standby counsel. App. 152. The jury convicted Petitioner of the charges as indicted, and Judge Hayes sentenced him to concurrent terms of thirty years' imprisonment for first-degree burglary, thirty years for kidnapping, and fifteen years for strong-arm robbery. App. 239. The following day, Judge Hayes reduced Petitioner's sentences for burglary and kidnapping to twenty years each. App. 335.

A notice of appeal was timely filed on Petitioner's behalf, and an appeal was perfected by Appellate Defender LaNelle Cantey DuRant raising the following issues: (1) whether the trial court erred in quashing the jury without following the procedure for a *Batson*¹ motion by not requiring the State to prove purposeful racial discrimination in the defense exercise of preemptory challenge to potential jurors, and (2) whether the trial court erred in not granting Petitioner's request for a continuance after the trial court granted Petitioner's motion to relieve counsel and proceed *pro se* where Applicant had only been supplied his discovery information the day before trial. The South Carolina Court of Appeals affirmed Petitioner's conviction and sentence in an unpublished opinion. State v. Giles, 2010-UP-154 (Ct. App. filed February 23, 2010). On May 24, 2010,

¹ Batson v. Kentucky, 476 U.S. 79 (1986).

Petitioner filed a petition for writ of certiorari seeking review of the Court of Appeals' decision as to whether the trial court erred in quashing the jury without following the procedure for a *Batson* motion challenging Petitioner's peremptory strikes of potential jurors by not requiring the State to prove purposeful racial discrimination. On January 7, 2011, the Supreme Court of South Carolina granted certiorari. On January 15, 2014, the Supreme Court affirmed the decision of the Court of Appeals and upheld Petitioner's conviction. State v. Giles, Op. No 27353 (filed January 15, 2014). Petitioner filed a petition for rehearing, which the Supreme Court denied on February 21, 2014. The remittitur issued on February 21, 2014.

On July 22, 2014, Petitioner filed a post-conviction relief (PCR) application. App. 243-265. Respondent filed its return on December 10, 2014, requesting an evidentiary hearing. App. 272-279. On January 24, 2018, Petitioner's PCR counsel, Beth Ramsey Faulkner, Esquire, filed an amended application. App. 266-270. On January 30, 2018 an evidentiary hearing convened at the York County Courthouse before the Honorable J. Mark Hayes, II.

On April 20, 2018, Judge Hayes issued an Order of Dismissal denying relief and dismissing Petitioner's PCR application. App. 387-414. On May 11, 2018, Petitioner timely filed a notice of appeal, and on May 22, 2018, Petitioner filed a Motion to Reconsider, Alter, Amend, or Set Aside Order, pursuant to SCRCP 59(e). App. 417-419. On May 30, 2019, the Supreme Court of South Carolina dismissed Petitioner's appeal without prejudice, pending the resolution of Petitioner's Rule 59(e) motion. The remittitur issued June 17, 2019. A hearing on Petitioner's Rule 59(e) motion convened December 18, 2019. On February 10, 2020, Judge Hayes issued an order denying Petitioner's Rule 59(e). On September 25, 2020, Petitioner filed his petition for writ of certiorari.

STANDARD OF REVIEW

The standard of review for post-conviction relief matters depends on the specific issues before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). On appellate review, courts give great deference to a post-conviction relief court's findings of fact and will uphold them if there is any evidence in the record to support them. Id. at 179, 810 S.E.2d at 839-40 (citing Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013); Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000)). However, pure questions of law will be reviewed *de novo* without deference to the lower court. Id. Appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

The post-conviction relief court correctly found Petitioner failed to prove the trial court erred by granting Petitioner’s mid-trial motion to relieve counsel, where the trial judge conducted a proper Faretta hearing and thoroughly warned Petitioner of the risk of self-representation.

Petitioner contends the PCR court erred in finding Petitioner knowingly and intelligently waived his right to counsel during trial. Specifically, Petitioner contends the trial court did not conduct a proper Faretta² hearing, and he was not sufficiently warned about the risks of self-representation. However, the post-conviction relief court properly denied relief because the record reflects Petitioner had an understanding of the risks of self-representation when he requested to relieve his counsel at trial. The trial court thoroughly warned Petitioner of the risks of self-representation and gave Petitioner multiple opportunities to reconsider his decision prior to allowing Petitioner to represent himself. Accordingly, Petitioner cannot demonstrate any error by the trial court in conducting a Faretta hearing and granting Petitioner’s motion to relieve counsel. This Court should deny certiorari.

A defendant in a criminal case has the right to the assistance of counsel. Osbey v. State, 425 S.C. 615, 618, 825 S.E.2d 48, 50 (2019). The defendant may waive his right to counsel, but he must do so knowingly and intelligently. Id. at 618–19, 825 S.E.2d at 50 (citing Faretta v. California, 422 U.S. 806, 835 (1975)).

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. 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, this Court will look to the record to determine whether petitioner had sufficient background or was apprised of his rights by some other source.

² Faretta v. California, 422 U.S. 806 (1975).

Prince v. State, 301 S.C. 422, 423–24, 392 S.E.2d 462, 463 (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.” Wroten v. State, 301 S.C. 293, 294, 391 S.E.2d 575, 576 (1990).

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. Id. 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. In the absence of an inquiry by the judge, courts look to the record to determine if the accused had sufficient background to understand the disadvantages of self-representation. State v. Cash, 309 S.C. 40, 42, 419 S.E.2d 811, 813 (Ct. App. 1992).

In this case, Faretta was satisfied by either measure. The trial judge advised Petitioner of his right to counsel and made a clear inquiry addressing the disadvantages of *pro se* representation with Petitioner, which would satisfy the Faretta requirements. Additionally, the record demonstrates Petitioner had a sufficient background to understand the danger of self-representation and voluntarily waive his right to counsel pursuant to the factors set forth in Cash.³

³ See State v. Cash, 309 S.C. at 43, 419 S.E.2d at 813 (enumerating the factors the courts have considered in determining if an accused had sufficient background to understand the disadvantages of self-representation: (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.

Here, the trial court complied with the traditional Faretta test when it made an inquiry into why Petitioner wanted to relieve his counsel and warned Petitioner of the risks of self-representation. During the second day of Petitioner's trial, Cason made a motion to be relieved as counsel for Petitioner. App. 146. While hearing this motion, the trial court asked Petitioner why he wanted to have Cason relieved, and Petitioner responded "I just don't have the representation that I should be having in this case." App. 147. The trial court informed Petitioner of his right to counsel and explained that Petitioner's concern with Cason's performance could be addressed through other means after trial, stating, "Our system does have a safety net so that if you believe if you are found guilty and sentenced and believe you have not been properly represented there is a way to bring that before the court and have that fully tried. That is a different issue." App. 152.

The trial court then went on to explain in detail the benefits of having counsel and the dangers of self-representation. App. 151-154. The trial court informed Petitioner, though he has read some laws concerning the trial, he does not have the same experience as someone who has been to laws school and has been practicing law and knows the practical aspects. App. 149 l. 6-11. The trial court explicitly told Petitioner "you can't by not being a lawyer know how everything dove tails, how everything works together and what is important and what is trivial and what is of some importance to the jury and to the court and what's not." App. 149 l. 19-22. The trial court expressly asked Petitioner about his lack of legal education, noting Petitioner would not know the practical or legal aspects of trying a case. App. 151. The trial court repeatedly told Petitioner it would be beneficial to be represented by an attorney and warned Petitioner it would be dangerous to proceed without an attorney. App. 151. After explaining the risks of self-representation, the trial court also gave Petitioner a recess to speak with his family and Cason to decide whether he wanted to proceed *pro se* or if he wanted to continue with Cason's representation. App. 152-153.

Additionally, prior to the recess, the trial court twice told Petitioner it would not grant Petitioner's request for a continuance, and, even if it relieved Cason, Petitioner would have to proceed with trial with her as standby counsel. App. 151, 153.

This exchange between the trial court and Petitioner clearly complies with the two-part test of Faretta. The trial court ensured Petitioner knew of his right to counsel and thoroughly explained the dangers of proceeding without counsel. The court explained that Petitioner was not a lawyer nor was he aware of what evidence would be important to the court and to the jury. App. 151. The court informed Petitioner about the issues that would arise from self-representation and the advantages of having counsel who is well versed in the practice of law. App. 151. Despite the trial court's ample warnings, Petitioner still chose to proceed *pro se*.

Moreover, as discussed above, the second prong of Faretta is also satisfied by an analysis of the Cash factors because Petitioner had a sufficient background to understand the disadvantages of self-representation. See Footnote 3, supra. Petitioner was forty-three at the time of his trial, and though there was no direct inquiry into his education level or his mental state, there is no evidence he was physically or mentally impaired at the time of his trial. App. 157 l. 15-16. Petitioner engaged in an articulate and responsive colloquy with the court about the issues with his representation, and, once he proceeded *pro se*, he made objections and cross-examined witnesses in a manner which reflects he understood the facts of his case and the issues he wanted to argue. App. 145 l. 2- App. 154 l. 19; App. 158 l. 7- App. 161 l. 12; App. 180 l. 18- App. 183 l. 4; App. 183 l. 16- App. 186 l. 7; App. 193 l. 14- App. 209 l. 16. Petitioner properly objected to the introduction of his driving record, successfully arguing the driving record was irrelevant. App. 155. Petitioner was also able to competently cross examine the State's witness in regards to the blood testing that was performed in this case. App. 182-189.

Additionally, Petitioner had a lengthy criminal history and had previously been involved in criminal proceedings. His experience with the criminal justice system included multiple prior pleas, though he testified he not been seen jury trial prior this trial. App. 346. Petitioner also knew the charges against him and the possible penalties associated with these charges. The trial court read the list of charges for which Petitioner was standing trial, and the trial court directly stated to Petitioner that he “was facing a lot of time if he was found guilty.” App. 52. In addition, at the evidentiary hearing, Petitioner admitted his counsel explained he could receive life in prison if convicted of these charges. App. 375-376.

Petitioner was represented by counsel prior to trial and through the first day of trial. Cason represented Petitioner through jury selection opening statements, cross-examination of three witnesses, and the introduction of multiple pieces of physical evidence including blood samples collected from five different surfaces. Although Cason testified at the evidentiary hearing she did not recall having a conversation with Petitioner regarding his desire to represent himself during his trial, the record reflects the trial court gave Petitioner and Cason a recess to discuss his motion, and afterwards, Cason informed the trial court Petitioner wished to continue with the trial *pro se*. App. 152-154, 316-317.

Petitioner’s request to represent himself does not conclusively demonstrate an attempt to delay or manipulate the proceedings. Though Petitioner stated he wanted a fair and speedy trial, Petitioner also requested a continuance multiple times stating if his motion to relieve counsel was granted he would need more time to represent himself. In the presence of conflicting requests for a speedy trial, and additional requests for a continuance, the record does not conclusively show Petitioner’s desire to proceed *pro se* was an attempt to delay or manipulate the proceedings. App. 148, 150, 152.

Additionally, Petitioner was appointed standby counsel in this matter. The trial court informed Petitioner Cason would be required to act as standby counsel and informed Petitioner of the limitations of standby counsel. App. 152-153. The trial court informed Petitioner he would be able to ask Cason for advice throughout the proceedings, and throughout the proceedings, the trial court directed Cason assist Petitioner for various reasons. App. 153, 191, 193, 238, 240. However, the trial court made clear standby counsel would not be able to question witnesses, or argue to the jury, or to make objections on Petitioner's behalf. App. 153.

Petitioner was aware of legal challenges he could make to the charges against him. For example, during his motion to relieve counsel, Petitioner alleged the State had withheld exculpatory evidence. App. 146-148. Additionally, immediately after Petitioner began representing himself, Petitioner successfully objected to the admission of his prior record. Petitioner, effectively cross-examined Judy Mathis, a lab technician, arguing that there was no way to confirm that the blood sample was Petitioner's because he did not have to sign the blood sample. App. 158 l. 7- App. 161 l. 12. Petitioner then cross-examined Rhonda Fields about the evidence submitted to SLED for testing, and whether it matched what the SLED report indicated. App. 181 l. 7- App. 183 l. 4. Finally, Petitioner cross-examined Donald Nix regarding the evidence collected at the crime scene, along with Petitioner's concerns about the lack of signature on the blood sample, and Petitioner questioned Mr. Nix about his decision to go back to the scene to collect more blood samples. App. 193 l. 24- App. 209 l. 16. Therefore, it can be shown Petitioner was aware of some of the legal challenges that he could make during trial.

In addition, the colloquy conducted by the trial court consisted of more than just pro forma questions and answers. The trial court expressed in great detail the dangers of Petitioner representing himself. The trial court confirmed Petitioner was not an attorney. App. 149. The trial

court explained Petitioner lacked knowledge of the practical aspects of the law, noting Petitioner may not know what is important and what is trivial, or what is of importance to the jury and to the court. App. 149. The trial court further explicitly stated self-representation is dangerous and “not the smartest thing to do.” App. 149, 151. The trial court went on to review the procedural safeguards in place to help Petitioner after trial if he felt his representation was ineffective or inadequate, as an alternative to relieving counsel in the midst of trial. App. 150. Additionally, the trial court directed Cason to remain as standby counsel and advise Petitioner if he chose to represent himself. App. 151. The trial court in its own words was “as open and honest as [it could be]” while advising Petitioner of the risks of self-representation. App. 149-150. Petitioner was allowed to express his feelings about his counsel’s performance during the first day of his trial. App. 145 l. 6- App. 146 l. 19. Petitioner, during his colloquy with the court, explained his concerns with the chain of custody from SLED being provided to him, along with his other concerns about possibly not receiving exculpatory evidence from the prosecution. App. 147 l. 5-17. Though it was denied, Petitioner requested a continuance at the same time he requested to relieve his counsel. App. 148 l. 20-22; App. 150 l. 5-7. Petitioner was given time to communicate with his family, and ask for their advice prior to making his decision to relieve counsel. App. 151 l. 11- App. 152 l. 4. Petitioner was given multiple opportunities to speak about his concerns regarding his representation with the trial court. Petitioner provided more than yes or no answers to the trial courts questions.

Finally, there is no evidence of coercion or mistreatment of Petitioner as motivating factor for desiring to proceed pro se. Petitioner testified during the evidentiary hearing as to what he believes were the deficiencies in Ms. Cason’s representation. App. 344-346, 348, 372, 377-379.

However, although Petitioner alleged his counsel was ineffective,⁴ nothing in the record supports a finding Petitioner was mistreated or coerced into representing himself by Cason or any other actor involved in the trial. Petitioner was found to have effective assistance of counsel while represented by Ms. Cason. Petitioner therefore made the decision to proceed *pro se* freely and without force or coercion.

In sum, the trial court gave Petitioner a proper Faretta warning prior to granting his motion to relieve his counsel. The trial court informed Petitioner of his right to counsel. App. 149. The trial court then explained in detail the benefits of counsel and the dangers of self-representation. App. 149-152. The trial court also explained to Petitioner the safeguards in place to help him if he believed his counsel was ineffective during trial. App. 150. Finally, the trial court allowed Petitioner to speak with his family and his attorney before he made a final decision about representing himself. App. 150-151. Additionally, as discussed above, Petitioner had the background necessary to understand the risk and danger associated with self-representation. Petitioner made his decision to represent himself with his “eyes open” and was fully aware of the consequences of his decision. Therefore, the PCR court correctly found Petitioner failed to show the trial court erred in granting Petitioner’s motion to relieve counsel, and this Court should deny certiorari.

⁴ Petitioner alleged ineffective assistance of counsel on his counsel at trial Ms. Vanessa Cason, which the post-conviction relief court denied. Petitioner has not challenged the ruling of the post-conviction relief court which found Ms. Cason provided effective assistance of counsel. Therefore, it has been determined Ms. Cason provided effective assistance for as long as she represented him. See Atlantic Coast Builders and Contractors, LLC v. Lewis, 398 S.C. 323, 329, 730 S.E.2d 282, 284 (2012) (...an unappealed ruling, right or wrong, is the law of the case.)

CONCLUSION

For the foregoing reasons, this Court should deny this certiorari and affirm the decision of the PCR court. Should this Court grant certiorari, Respondent seeks permission to more fully brief the issues herein.

Respectfully submitted,

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