

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Dorchester County

Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DON-SURVI CHISOLM,

APPELLANT

Appellate Case No. 2011-200186

**MOTION TO UNSEAL RECORD OF WAIVER OF RIGHT TO COUNSEL  
HEARING HELD PURSUANT TO FARETTA V. CALIFORNIA**

Appellant moves to unseal the record of the waiver of right to counsel hearing which was held pursuant to Faretta v. California, 422 U.S. 806 (1975) since it necessary for there to be an entire record transcript to be presented to this Court by appellate counsel. The State, as seen below, consents to this motion being granted. In support of this motion, counsel shows this Court that

(1) Appellant was indicted by the Dorchester County Grand Jury for the offense of murder. His case was called to trial on September 13, 2011 before the Honorable Diane S. Goodstein, and a jury. Appellant Don-Survi Chisolm represented himself. John Loy was appointed stand-by counsel. Russell Hilton and Matt Austin were the assistant solicitors.

On September 19, 2011, the jury found appellant guilty. Judge Goodstein sentenced appellant to life imprisonment.

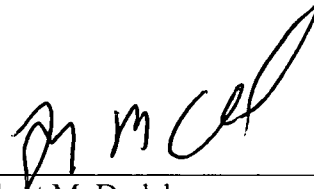
(2) While working on the initial brief of appellant in this case, the waiver of right to counsel record appeared incomplete. When I investigated the waiver issue, I learned that a consent order existed wherein it was agreed that Mr. Chisholm could represent himself. Standby counsel Loy informed me that a hearing was held on Mr. Chisholm's right to represent himself on February 11, 2011 before Judge Goodstein. I was informed the courtroom was closed for the hearing, and only appellant, defense counsel, security, and the court reporter remained. I requested this transcript on March 28, 2013, and asked the court reporter to expedite the transcription of this transcript.

(3) The court reporter contacted our office today, April 5, 2013, and informed us the record of this transcript is sealed. (See attached e-mail correspondence) In her e-mail the court reporter states: "In reviewing the transcript you've requested, Judge Goodstein states that the hearing was ex-parte, attorney-client privileged, and sealed. I am not allowed to produce it without an order from her or maybe another circuit court judge indicating for me to produce it."

(4) The appeal is now before this Court which has jurisdiction to issue an order unsealing the record of the waiver hearing for appellate purposes with any restriction or restrictions it deems advisable or necessary. I have discussed this with opposing counsel, Donald Zelenka, and he consents to this motion.

WHEREFORE, counsel for Appellant respectfully requests the Court to unseal the record of waiver of right to counsel hearing which was held pursuant to Farretta v.

California, so the Court Reporter can forward the transcript to undersigned appellate counsel.

A handwritten signature in black ink, appearing to read 'R M Dudek', written over a horizontal line.

Robert M. Dudek  
Chief Appellate Defender  
ATTORNEY FOR APPELLANT

April 8, 2013

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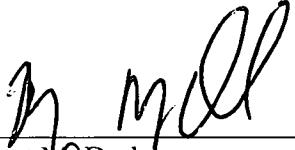
DON-SURVI CHISOLM,

APPELLANT

Appellate Case No. 2011-200186  
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CERTIFICATE OF SERVICE  
\_\_\_\_\_

The undersigned attorney hereby certifies that a true copy of the Motion to Unseal the Record of Waiver of Right to Counsel hearing pursuant to Faretta v. California in the above-captioned case has been served upon Donald J. Zelenka., Esquire, this 8<sup>th</sup> day of April, 2013.

  
\_\_\_\_\_  
Robert M. Dudek  
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 8<sup>th</sup> day of April, 2013.

  
\_\_\_\_\_(L.S.)  
Notary Public for South Carolina  
My Commission Expires: October 2, 2013.