STATE OF SOUTH CAROLINA COUNTY OF DARLINGTON	IN THE COURT OF COMMON PLEAS FOR THE FOURTH JUDICIAL CIRCUIT
John E. Wilson, Jr., SCDC No. 295493 Applicant, v. The State of South Carolina Respondent.	Case No. 2019-CP-16-1007 **FINAL ORDER OF DISMISSAL**

This matter comes before the Court by way of Applicant John E. Wilson's September 23, 2019 application for post-conviction relief. Respondent made its return and moved to dismiss on February 18, 2021, arguing that Applicant had failed to establish a *prima facie* case of newly discovered evidence.

Pursuant to this request, and after reviewing the pleadings and records in this matter, this Court issued an order signed February 18, 2021, and filed March 4, 2021, conditionally dismissing the application. Applicant was provided twenty days from the date of service of the order to show why the dismissal should not become final. Applicant's counsel was served with the order on February 24, 2021.

Applicant filed his response to the motion to dismiss on March 8, 2021, prior to forma service of the signed conditional order. This court has reviewed Applicant's response to the conditional order of dismissal in its entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the conditional order of dismissal should not become final.

In his response, Applicant asserts that he was not provided an adequate warning about the dangers of proceeding *pro se* under *Faretta v. California,* 422 U.S. 802 (1975). Applicant argues

that the warnings given to him were insufficient because they did not inquire into his educational background or mental health history. Furthermore, he asserts that this claim was not raised in a previous PCR hearing because the pre-trial transcript was not in his possession at the time of the original post-conviction relief hearing. He claims that the PCR court did not permit the issues to be addressed although the transcripts had been requested "numerous times" prior to the hearing.

Criminal defendants have a fundamental right to self-representation under the Sixth Amendment. *Faretta*, 422 U.S. at 819-21. In order to invoke this right, the defendant must clearly and unequivocally assert his desire to proceed *pro se* and such request must be made knowingly, intelligently, and voluntarily. *United States v. Frazier-El*, 204 F.3d 553, 558 (4th Cir. 2000). For a knowing and intelligent waiver to occur, the defendant must be "(1) advised of his right to counsel; and (2) adequately warned of the dangers of self-representation." *Prince v. State*, 301 S.C. 422, 423-24, 392 S.E.2d 462, 463 (1990) (citing *Faretta*, 422 U.S. at 835). The trial judge must determine whether there is a knowing and intelligent waiver by the defendant. *Gardner v. State*, 351 S.C. 407, 411, 570 S.E.2d 184, 186 (2002). If the trial judge fails to address the disadvantage of appearing *pro se*, as required by the second prong of *Faretta*, the appellate courts will look to the record to determine whether petitioner had sufficient background or was apprised of his right by some other source. *Id.*

There is no scripted *Faretta* hearing a judge must undertake and "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." *Gardner*, 351 S.C. at 411-412, S.E.2d at 186 (internal citations omitted). Where a defendant invokes his right to self-representation before trial, the only inquiry the circuit judge may undertake is that required by *Faretta*. *State v. Barnes*, 407 S.C. 27, 35, 753 S.E.2d 545, 550 (2014). Whether a defendant has

intelligently waived his right to counsel depends upon the particular facts and circumstances surrounding each case, including the background, experience, and conduct of the accused. *United States v. Singleton,* 107 F.3d 1091 (4th Cir. 1997). The competence required is not the competence to effectively represent oneself, but the competence to *waive the right* to counsel. *Godinez v. Moran*, 509 U.S. 389, 399 (1993) (emphasis in original); *Barnes*, 407 S.C. 27, 753 S.E.2d 545.

Here, Applicant asserts that the Court should have gone beyond the inquiry required by *Faretta* and conducted an examination into Applicant's educational background and mental health history. The Court here finds the pre-trial transcript shows that the pre-trial Court informed Applicant that there were dangers in self-representation specifically because he had not received a formal legal education. Further inquiry into his education would have provided little guidance as to whether he was competent to waive his right to counsel and proceed with self-representation. The same holds true for an inquiry into Applicant's mental health history. The record clearly demonstrates that Applicant was competent to stand trial, advised of his right to proceed with the assistance of counsel, warned of the dangers of proceeding without counsel, and nevertheless chose to continue *pro se*. Since the pre-trial judge did undertake the specific inquiry into the hazards of proceeding *pro se,* he is not required to examine Applicant's background. The pre-trial judge is not required to go over every specific detail of representing yourself as long as he goes over the dangers of proceeding *pro se*.

This Court finds that Judge Milling followed the law and Applicant received his desire to proceed *pro se*. Furthermore, the record shows no indication that Applicant did not understand his rights or the dangers of self-representation. Because Applicant made an informed decision to proceed *pro se*, the pre-trial judge's ruling that Applicant shall represent himself was proper. Since the pre-trial judge conducted a proper *Faretta* hearing, this allegation must be dismissed.

Furthermore, Applicant was present at the pre-trial hearing and knew what warnings were given to him. One's failure to obtain transcripts of a proceeding they attended does not suffice to establish newly discovered evidence. In any event, the transcript in question was included in the record on appeal from the denial of his PCR application. The court reporter's certification is dated March 26, 2008 and the hearing was held on September 15, 2009. Therefore, Applicant's claims that he was not permitted to raise his claims at his prior PCR hearing because he had not yet received the transcript from the pre-trial hearing do not justify another evidentiary hearing.

IT IS THEREFORE ORDERED that for the reasons set forth in the Court's conditional order of dismissal, as supplemented by the findings above, the Application for post-conviction relief is hereby **DENIED AND DISMISSED WITH PREJUDICE.**

This Court hereby advises the Applicant that he must file and serve a notice of appeal within 30 days of the service of this order to secure appellate review. *See* Rule 203, SCAR. Applicant's attention is directed to Rule 243, SCAR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 25th **day of** September, **2021.**

Paul M. Burch
Chief Administrative Judge
Fourth Judicial Circuit

Christopher, South Carolina

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SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.