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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Saluda County
The Honorable Frank R. Addy, Circuit Court Judge

Appellate Case No. 2022-000274

THE STATE,

Respondent,

v.

JEFFREY JAMES WILLIAMS,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

STATEMENT OF ISSUES ON CERTIORARI.....1

STATEMENT OF THE CASE.....2

STANDARD OF REVIEW4

ARGUMENT5

 The Court of Appeals properly affirmed the trial judge’s decision to allow
 Petitioner to represent himself because the trial judge advised Petitioner of
 the dangers of self-representation and Petitioner made a knowing, intelligent,
 and voluntary decision to represent himself. Furthermore, Petitioner’s
 assertion of his right to self-representation was clear, unequivocal, and
 timely.

CONCLUSION.....11

STATEMENT OF ISSUE ON CERTIORARI

Whether the Court of Appeals properly affirmed the trial judge's decision to allow Petitioner to represent himself when the trial judge advised Petitioner of the dangers of self-representation and Petitioner 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

Procedural History

In November 2018, a Saluda County Grand Jury indicted Petitioner for one count of threatening a public official. On August 26-28, 2019, Petitioner proceeded to a trial before a jury in the Saluda County Court of General Sessions with the Honorable Frank R. Addy, presiding. Petitioner 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 Petitioner. Following the verdict, the trial judge sentenced Petitioner to five years' imprisonment. Petitioner filed a timely notice of appeal.

Petitioner appealed his conviction. The Court of Appeals affirmed Petitioner's conviction in an unpublished opinion. State v. Williams, Op. No. 2021-UP-429 (S.C. Ct. App. 2021). Petitioner filed a petition for rehearing on December 22, 2021. The Court of Appeals denied Petitioner's petition for rehearing on February 7, 2022. Petitioner filed a petition for a writ of certiorari with this Court on March 9, 2022.

Factual History

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 Petitioner 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 Petitioner's mother's residence in Saluda County approximately four hours after the phone call was made. (R. 191-93). Price and Byrd spoke to Petitioner at his mother's residence. Petitioner 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, Petitioner denied threatening Judge Schults. (R. 193). While at Petitioner's mother's residence, Byrd called the number 803-317-4381. A cell phone in Petitioner's pocket began to ring. (R. 193-94, 238). Price later obtained phone records for Petitioner's number and verified that two calls were made from Petitioner's phone to the Magistrate's Office. (R. 195-96). Additionally, Price verified that a phone call was made by Byrd's number to Petitioner's phone. (R. 195-96). Petitioner 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 Court of Appeals properly affirmed the trial judge's decision to allow Petitioner to represent himself because the trial judge advised Petitioner of the dangers of self-representation and Petitioner made a knowing, intelligent, and voluntary decision to represent himself. Furthermore, Petitioner's assertion of his right to self-representation was clear, unequivocal, and timely.

Petitioner contends the Court of Appeals erred in finding the record reflected that Petitioner had sufficient background to understand the disadvantages of self-representation and erred in finding Petitioner knowingly, intelligently, and voluntarily waived his right to counsel. Accordingly, Petitioner argues there was not a valid waiver of Petitioner's right to counsel because the trial judge did not adequately warn Petitioner of the disadvantages of self-representation. On the contrary, the trial judge sufficiently warned Petitioner of the danger of self-representation and the Court of Appeals properly found Petitioner's waiver of his right to counsel was knowing, intelligent, and voluntary. Furthermore, Petitioner'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 *wave 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 Petitioner and the trial judge occurred at a pre-trial hearing when Petitioner was still represented by Assistant Public Defender Dietrich Lake. At the pre-trial hearing, Lake asked to be removed as Petitioner’s lawyer. (R. 25). The following exchange between Petitioner and the trial judge took place:

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

Petitioner: Sir, if it pleases the Court?

The Court: Sure.

Petitioner: 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

Petitioner: 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?

Petitioner: 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 Petitioner's educational background, the following exchange occurred between Petitioner and the trial judge:

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

Petitioner: 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. [Petitioner]—

Petitioner: Yes, sir?

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

Petitioner: Yes, sir.

The Court: -- is what I'm hearing. Okay. You understand, [Petitioner], 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?

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

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

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

Petitioner: No, sir.

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

Petitioner: 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.

Petitioner: 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?

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

The Court: Okay. [Petitioner]—

Petitioner: Yes, sir?

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

Petitioner: Yes, sir.

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

(R. 32, lines 14-20). Petitioner's response was clear and unequivocal that he wanted to represent himself. After warning Petitioner of the danger of self-representation, the trial judge inquired whether Petitioner wanted another attorney appointed. (R. 40). Petitioner's response was clear and unequivocal that he did not want another attorney appointed. (R. 41). Petitioner

begrudgingly agreed to have Casto appointed as stand by counsel, but Petitioner never waived in his desire to represent himself. (R. 42-43). Therefore, the trial judge did not err in allowing Petitioner to represent himself.

Knowing, Intelligent, and Voluntary

Petitioner's waiver of his right to counsel was also knowing, intelligent, and voluntary. The trial judge warned Petitioner 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). Petitioner was undeterred by this warning and continued to insist that he wanted to represent himself. The trial judge warned Petitioner 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). Petitioner was undeterred again and only begrudgingly agreed to have standby counsel after the trial judge asked Petitioner 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 Petitioner decided to represent himself after two warnings by the trial judge, Petitioner's decision was knowing, intelligent, and voluntary and the trial judge did not err by allowing Petitioner to represent himself.

Timely

Finally, Petitioner's request to represent himself was timely. Petitioner moved to represent himself approximately three weeks before his trial began. Therefore, Petitioner made his request before any critical stage of his trial had begun and he had ample time to prepare for trial. Because Petitioner'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 Petitioner to represent himself. Accordingly, the Court of Appeals did not err in affirming the trial judge's decision to allow Petitioner to represent himself. This Court should deny Petitioner's petition for a writ of certiorari.

CONCLUSION


For all the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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