

IN THE SUPREME COURT OF FLORIDA

SYLVESTER HOOKS,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No. SC18-1106

ON DISCRETIONARY REVIEW FROM THE  
DISTRICT COURT OF APPEAL, FIRST DISTRICT

RESPONDENT'S ANSWER BRIEF

PAMELA JO BONDI  
ATTORNEY GENERAL

TRISHA MEGGS PATE  
TALLAHASSEE BUREAU CHIEF,  
CRIMINAL APPEALS  
FLORIDA BAR NO. 0045489

VIRGINIA CHESTER HARRIS  
ASSISTANT ATTORNEY GENERAL  
FLORIDA BAR NO. 0706221

OFFICE OF THE ATTORNEY GENERAL  
PL-01, THE CAPITOL  
TALLAHASSEE, FL 32399-1050  
(850) 414-3300  
(850) 922-6674 (FAX)

COUNSEL FOR RESPONDENT

RECEIVED, 12/19/2018 03:13:26 PM, Clerk, Supreme Court

TABLE OF CONTENTS

	PAGE#
TABLE OF CONTENTS .....	ii
TABLE OF CITATIONS .....	iii
PRELIMINARY STATEMENT .....	1
STATEMENT OF THE CASE AND FACTS .....	1
SUMMARY OF ARGUMENT .....	4
ARGUMENT .....	7
ISSUE I: WHETHER A <u>FARETTA</u> INQUIRY IS INVALID IF THE TRIAL COURT DOES NOT EXPLICITLY INQUIRE AS TO THE DEFENDANT'S AGE, EXPERIENCE, AND UNDERSTANDING OF THE RULES OF CRIMINAL PROCEDURE (RESTATED) .....	7
CONCLUSION .....	23
CERTIFICATE OF SERVICE .....	24
CERTIFICATE OF COMPLIANCE .....	24

TABLE OF CITATIONS

CASES	PAGE#
<u>Aguirre-Jarquin</u> , 9 So. 3d 593 (Fla. 2009) .....	12
<u>Edenfield v. State</u> , 45 So. 3d 26 (Fla. 1st DCA 2010) .....	11-12
<u>Faretta v. California</u> , 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975) .....	4, 8-9
<u>Godinez v. Moran</u> , 509 U.S. 389, 113 S.Ct 2680, 125 L.Ed.2d 321 (1993) .....	8-10, 20
<u>Hooks v. State</u> , 236 So. 3d 1122 (Fla. 1st DCA 2017) .....	7, 10-15, 23
<u>Indiana v. Edwards</u> , 554 U.S. 164, 128 S. Ct. 2379, 171 L.Ed.2d 345 (2008) .....	20-21
<u>McCray v. State</u> , 71 So. 3d 848 (Fla. 2011) .....	12
<u>McGirth v. State</u> , 209 So. 3d 1146 (Fla. 2007) .....	12
<u>McKenzie v. State</u> , 29 So. 3d 272 (Fla. 2010) .....	12
<u>Potts v. State</u> , 718 So. 2d 757 (Fla. 1998) .....	11
<u>Porter v. State</u> , 788 So. 2d 917 (Fla. 2001) .....	12
<u>State v. Bowen</u> , 698 So. 2d 248 (Fla. 1997) .....	10-11
 OTHER AUTHORITIES	
Fla. R. Crim. P. 3.111(d) (3) (1973) .....	10
Fla. R. Crim. P. 3.111(d) (3) (1998) .....	10-11

### PRELIMINARY STATEMENT

Respondent, the State of Florida, the Appellee in the District Court of Appeal (DCA) and the prosecuting authority in the trial court, will be referenced in this brief as Respondent, the prosecution, or the State. Petitioner, Sylvester Hook, the Appellant in the DCA and the defendant in the trial court, will be referenced in this brief as Petitioner or by proper name.

The record on appeal consists of 3 volumes. The record will be referenced as "R" and the supplemental records as "RS." "IB" will designate Petitioner's Initial Brief. Each symbol will be followed by the appropriate page number in parentheses.

All emphasis through bold lettering is supplied unless the contrary is indicated.

### STATEMENT OF THE CASE AND FACTS

The State accepts Defendant's statement of the case and facts as generally supported by the record, subject to the following supplementation and corrections:

The State is referring to the record in 1D16-0368, except for the self-representation document, which only appears in 1D16-0369. The Information and arrest/probable cause affidavit indicate that Petitioner was born on 03/27/1958. (R-1-2).

On January 11, 2016, the trial court addressed Petitioner's case at 9:10 a.m. (RS-145). Defense counsel indicated that Petitioner wanted to represent himself. The trial court asked defense counsel to help it give Petitioner the self-representation document to look over and defense counsel agreed. (RS-148-

149). The self-representation document is located in case number **1D16-0369**. (R-22-24). The trial court indicated that if Petitioner still wanted to represent himself by the time his case was called, they would go over the issue. (RS-149). The trial court informed Petitioner that it knew he was contemplating representing himself, but that it wanted him to have time to consult with his attorney about the issue. (RS-149-150).

On the same day, the trial court conducted a Faretta inquiry at 12:03 p.m. (RS-134). The trial court asked Petitioner and his trial counsel to approach the court reporter so that they could discuss his decision to represent himself. The trial court stated as follows:

Early in the morning, Mr. Hooks, your attorney said you had decided to represent yourself. And I handed to you what I call a little form for self-representation which goes over all the things that say I want you to make sure you know about so I don't have to repeat a lot of it. Did you get a chance to read over that real carefully?

Petitioner stated, "[y]es, sir." (RS-136).

The trial court stated as follows:

Okay. And, I'll say, again, it's your absolute right to represent yourself if you want to. I almost never advise it, because a lawyer--it says on that form--has got a lot of knowledge and experience, knowledge about procedures, knowledge about rules of evidence, things you might not know about. You don't have to be a lawyer to represent yourself. You just have to know the disadvantages and to make a voluntary and knowing decision to do it. Have you thought about it and decided whether you, whether you still wanted to represent yourself? (RS-136).

Petitioner stated, "[y]es, I have. And I do want to represent myself." (RS-136-137).

The following dialogue then occurred between the parties:

Trial court:           And you want to represent yourself. Okay. Well, let me

have you initial those things and then sign that form for me. And I'll have that in the file. And I'll sign it and we'll-

Defense counsel: Judge, he's already initialed-

Trial court: Yes.

Defense counsel: Each spot. I can approach with that.

Trial court: Okay. Did he sign it, too?

Defense counsel: He did sign it, Judge.

Trial court: Okay.

Defense counsel: I think the only thing we're missing is the case number.

Trial court: I'll put it in.

The clerk: 15-CF-913

Defense counsel: Thank you.

The trial court stated as follows:

And the, and the good news is you've sat through two juries--jury selections. You have a pretty good idea about other--how other people do it. So that may be helpful to you in that. And I'll ask Ms. Helms, just in case you change your mind, because I'm going to ask you when we actually start the trial again if you want to change your mind and give you that option. Once we start the trial, I won't be able to say in the middle of it, oh, I decide want to, I want to have a lawyer. But I'll let her sit in on this. And when we get to the trial--I guess Friday we're going on this one? If you still want to represent yourself, that's your business. And if you don't, Ms. Helms could step in and take care of it. Okay?

Petitioner stated, "[t]hank you. (RS-137-138).

SUMMARY OF ARGUMENT

This Court should answer the certified question posed by the First District in the negative. This Court should also reject Petitioner's request to broaden the certified question to include some of the circumstances of this case. The First District indicated that it perceived a conflict in this Court's prior case law and/or with this Court's case law and that of the United States Supreme Court regarding whether a trial court must ask certain questions for a Faretta<sup>1</sup> inquiry to be valid. As a matter of policy, this Court should clarify the issue. The reformulated question posed by Petitioner is too narrow.

The First District explained that Florida courts used to require that certain questions be asked based on a rule of criminal procedure, which existed prior to the Faretta case being decided by the United States Supreme Court. The First District further indicated that the rule has since been amended. The First District noted that some of this Court's case law, as well as the case law from other district courts in Florida, recognized that specific questions no longer had to be asked for a Faretta inquiry to be valid. However, the First District also noted that some of the cases from this Court do indicate that certain questions must be asked for a Faretta inquiry to be valid.

The State urges this Court to determine that a defendant's general

---

<sup>1</sup> Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975).

understanding of his/her rights is all that is necessary for a trial court to determine that a defendant has waived counsel. A requirement that a trial court ask specific questions to make this determination places form over substance. It could also result in a defendant being erroneously denied his right to engage in self-representation because there is no requirement that a defendant be a certain age, have a certain education, and/or have a certain knowledge of the criminal justice system to represent himself.

In the case at bar, the First District correctly determined that the trial court adequately advised Petitioner of the dangers/disadvantages of self-representation and that he intelligently and knowingly waived his right to counsel. The trial court provided Petitioner with a form that described the dangers and disadvantages of self-representation in great detail. The trial court noted that it wanted Petitioner to go over the issue with his attorney before his case was recalled. Petitioner had about three hours to go over the form and/or consult with his attorney.

When the trial court recalled Petitioner's case, it stated that it needed to know if Petitioner had gone over the form "real carefully," so that it did not need to repeat itself regarding much of the information. Petitioner indicated that he had read the form "real carefully." The trial court explained to Petitioner that he had an absolute right to represent himself, but that it did not recommend it because a lawyer would have a lot of knowledge and experience, knowledge about procedures, knowledge about rules of evidence, and knowledge about other things Petitioner might not know about. The trial court informed Petitioner that he did not need to be a lawyer to

represent himself, but that he had to be aware of the disadvantages of self-representation and to make a voluntary and knowing decision to waive counsel. The trial court asked Petitioner if he had thought about the issue and decided whether he wanted to represent himself. Petitioner indicated that he had thought about it and that he did want to represent himself. Defense counsel then explained to the trial court that Petitioner had already initialed each spot on the form and that he had signed it. The form indicated that Petitioner swore that he read and understood the form.

Furthermore, there is no requirement that a defendant be a certain age or have a certain educational level to be able to represent himself. However, Petitioner's file reflected his age and indicated that he had extensive experience with the criminal justice system. Also, a competency determination does not need to be made in every case in which a defendant seeks to waive counsel. Such a determination should only be made when the trial court has reason to doubt the defendant's competence. Petitioner had a lawyer and had been supervised by a probation officer. Neither party indicated in court or in writing that Petitioner's competence was an issue. For all these reasons, the State respectfully submits that the decision of the First District Court of Appeal should be approved, the certified question should be answered in the negative, and the judgment and sentence entered in the trial court should be affirmed.

## ARGUMENT

ISSUE I: WHETHER A FARETTA INQUIRY IS INVALID IF THE TRIAL COURT DOES NOT EXPLICITLY INQUIRE AS TO THE DEFENDANT'S AGE, EXPERIENCE, AND UNDERSTANDING OF THE RULES OF CRIMINAL PROCEDURE? (RESTATED)

### ***Standard of Review***

The standard of review is de novo.

### ***Preservation***

This issue was not preserved for appellate review.

### ***Merits***

Petitioner argues that this Court should answer the certified question posed by the First District in the affirmative and argues that this Court should broaden the question posed by the First District. The State respectfully disagrees. As a matter of policy, this Court should address the suggested conflict in its prior cases as to whether a trial court must ask specific questions for a Faretta inquiry to be valid. The reformulated question by Petitioner, which includes some of the circumstances in this case, is too narrow. In any event, the Faretta inquiry in the case at bar was valid.

In Hooks v. State, 236 So. 3d 1122 (Fla. 1st DCA 2017), the First District certified the following question of great public importance:

Is a Faretta inquiry invalid if the court does not explicitly inquire as to the defendant's age, experience, and understanding of the rules of criminal procedure?

Id. at 1132.

In Faretta v. California, 422 U.S. 806, 835, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975), the United States Supreme Court stated as follows:

When an accused manages his own defense, he relinquishes, as a purely factual matter, many of the traditional benefits associated with the right to counsel. For this reason, in order to represent himself, the accused must 'knowingly and intelligently' forgo those relinquished benefits. Johnson v. Zerbst, 304 U.S., at 464-465, 58 S.Ct., at 1023. Cf. Von Moltke v. Gillies, 332 U.S. 708, 723-724, 68 S.Ct. 316, 323, 92 L.Ed. 309 (plurality opinion of Black, J.). Although a defendant need not himself have the skill and experience of a lawyer in order competently and intelligently to choose self-representation, he should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that 'he knows what he is doing and his choice is made with eyes open.' Adams v. United States ex rel. McCann, 317 U.S., at 279, 63 S.Ct., at 242.

Furthermore, in Godinez v. Moran, 509 U.S. 389, 113 S.Ct. 2680, 125 L.Ed.2d 321 (1993), the United States Supreme Court discussed Faretta inquiries in more detail. The court stated that the competency standard for pleading guilty or waiving the right to counsel was the same as the competency standard for standing trial, not a higher standard. Id. at 389-390, 113 S.Ct. 2680. The court noted that the competency, which is required of a defendant seeking to waive the right to counsel, is the competence to waive the right, not the competence to represent himself. Id. at 399, 113 S.Ct. 2680. The court stated, "[i]n Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975), we held that a defendant choosing self-representation must do so 'competently and intelligently,' id., at 835, 95 S.Ct., at 2541, but we made it clear that the defendant's 'technical legal knowledge' is 'not relevant' to the determination whether he is competent to waive his right to counsel, id., at 836, 95 S.Ct., at 2541, and we emphasized that although the defendant 'may conduct his own defense ultimately to his own detriment, his choice must be

honored,' id., at 834, 95 S.Ct., at 2541." Id. at 400, 113 S.Ct. 2680.

The court indicated that whether a defendant was permitted to represent himself included a two-part inquiry. Id. at 401, 113 S.Ct. 2680. First, the trial court had to establish that a defendant was competent. Second, the trial court had to determine whether his waiver of counsel was knowing and voluntary. Id. at 401-402, 113 S.Ct. 2680.

The court then explained in a footnote as follows:

**The focus of a competency inquiry is the defendant's mental capacity; the question is whether he has the ability to understand the proceedings. See Drope v. Missouri, *supra*, 420 U.S., at 171, 95 S.Ct., at 903 (defendant is incompetent if he "lacks the capacity to understand the nature and object of the proceedings against him") (emphasis added). The purpose of the "knowing and voluntary" inquiry, by contrast, is to determine whether the defendant actually does understand the significance and consequences of a particular decision and whether the decision is uncoerced. See Faretta v. California, *supra*, 422 U.S., at 835, 95 S.Ct., at 2541 (defendant waiving counsel must be "made aware of the dangers and disadvantages of self-representation, so that the record will establish that 'he knows what he is doing and his choice is made with eyes open' ") (quoting Adams v. United States ex rel. McCann, 317 U.S. 269, 279, 63 S.Ct. 236, 242, 87 L.Ed. 268 (1942)); Boykin v. Alabama, 395 U.S., at 244, 89 S.Ct., at 1712 (defendant pleading guilty must have "a full understanding of what the plea connotes and of its consequence").**

Id. at 401, 113 S.Ct. 2680 n. 12. (Bold emphasis added and italics in original).

The court further stated, "[w]e do not mean to suggest, of course, that a court is required to make a competency determination in every case in which a defendant seeks to plead guilty or to waive his right to counsel. **As in any criminal case, a competency determination is necessary only when a court has reason to doubt the defendant's competence.** See Drope v. Missouri, *supra*, 420 U.S., at 180-181, 95 S.Ct., at 908; Pate v. Robinson, 383 U.S. 375, 385, 86

S.Ct. 836, 842, 15 L.Ed.2d 815 (1966).” Id. at 401, 113 S.Ct. 2680 n. 13.  
(Bold emphasis added).

In Hooks v. State, the First District stated that Fla. R. Crim. P. 3.111(d) (3) (1973) indicated as follows:

No waiver shall be accepted where it appears that the defendant is unable to make an intelligent and understanding choice because of his mental condition, age, education, experience, the nature or complexity of the case, or other factors.

Id. at 1125. The First District stated that this rule existed before the United States Supreme Court decided Faretta and that the rule explained why Florida courts had ruled that a trial court must make a specific inquiry on the record “relating to the defendant's age, ability to read and write, education, and other factors, before a waiver of counsel was deemed sufficient. Id. at 1126.

The First District indicated that in State v. Bowen, 698 So. 2d 248 (Fla. 1997), this Court addressed the “tension” between the decision in Faretta and Rule 3.111(d). Id. at 1126. The First District noted that the Bowen court reversed a case in which the trial court refused to accept the defendant’s waiver of counsel due to his education being insufficient. Id. The First District indicated that this Court stated that a citizen could not be denied the right to represent himself because he only had a high school diploma. Id.

The First District stated that this Court then amended the rule to reflect as follows:

Regardless of the defendant's legal skills or the complexity of the case, the court shall not deny a defendant's unequivocal request to represent him or herself, if the court makes a determination of record

that the defendant has made a knowing and intelligent waiver of the right to counsel.

Fla. R. Crim. P. 3.111(d) (3) (1998). Id. at 1126. The First District then noted that this Court, in Potts v. State, 718 So. 2d 757, 760 (Fla. 1998), indicated that Faretta did not require that certain “magic words” be uttered to effectuate self-representation. The First District also noted that this Court amended the rule to subsection (2) of Rule 3.111(d) to require the trial court to “advise the defendant of the disadvantages and dangers of self-representation” before determining whether a waiver of counsel is knowing and intelligent.

Moreover, in Edenfield v. State, 45 So. 3d 26, 31 (Fla. 1st DCA 2010), which was cited to by Hooks, the First District stated as follows:

Procedurally, the validity of a waiver cannot be judged simply by the rote recitation of certain, predefined questions. As noted above, there is no “model inquiry” or series of questions which must be asked before a waiver can be accepted. **Edenfield claims each of his proposed questions is vital, and the failure to ask any particular one should result in an invalid waiver. He maintains this despite the fact that the answers are largely irrelevant. For instance, there is no rule precluding someone with only a high school diploma from representing themselves. Nor is there a rule stating those with college degrees are automatically qualified to represent themselves. Criminal defendants who are only 21 are not prohibited from representing themselves. Nor are those over 50 always permitted to represent themselves.** Moreover, by mandating specific questions, Edenfield would create a different standard to determine if a defendant had waived this constitutional right versus other constitutional rights he might wish to waive. Clearly, pursuit of the goal—a requirement that any waiver be knowing and intelligent—is far more important than a blind pursuit of the means—a requirement that predefined questions always be asked.

(Emphasis added). The Edenfield court then went on to hold that the trial court’s brief inquiry with the defendant was sufficient to show he waived his right to counsel and indicated in a footnote that the current version of Rule

3.111(d) did not require any mechanical questions about the defendant's age, education, mental condition, and experience with criminal proceedings. Id. at 31 n. 11, 32.

The First District then explained in Hooks that even though many of this Court's cases indicate that an adequate waiver of counsel turns on the defendant's general understanding of his/her rights, as opposed to "magic words," some of its cases suggest that the trial court must ask specific questions. Id. at 1131. For example, the First District indicated that in Aguirre-Jarquín, 9 So. 3d 593 (Fla. 2009), this Court cited to Porter v. State, 788 So. 2d 917, 927 (Fla. 2001) for the proposition that the trial court must ask certain questions to ensure a knowing and intelligent waiver of counsel. Id. The First District indicated that Porter did not support this contention and that other cases initially suggested that Aguirre-Jarquín was an anomaly. See McKenzie v. State, 29 So. 3d 272 (Fla. 2010) and McCray v. State, 71 So. 3d 848 (Fla. 2011). Id. However, the First District then stated that this Court recently repeated its assertion that specific questions must be asked in McGirth v. State, 209 So. 3d 1146, 1157 (Fla. 2007). Id.

The First District explained that it was rejecting the contention that this Court had created a categorical rule that a trial court must ask specific questions for two reasons. Id. at 1131-1132. First, the First District noted that in Aguirre-Jarquín, this Court neither disapproved the Faretta Inquiry, nor did it approve it because specific questions were asked. Id. Second, the Aguirre-Jarquín court found that the Faretta inquiry was sufficient without indicating whether the trial court asked specific questions. Id. Based on

these two reasons, the First district determined the language that a trial court must ask specific questions was dicta. Id.

The First District correctly determined that the Faretta inquiry in Hooks was sufficient. The First District noted that the self-representation form given to Hooks informed him of his right to counsel and explained, in detail, the dangers and disadvantages of self-representation. The First District indicated, "Hooks had to initial every numbered statement on the form and sign his name at the bottom of the form. The form is exhaustive and states as follows:

1. If I cannot afford a lawyer, the state will appoint me one and pay for it.
2. If I can afford a lawyer, I can hire a lawyer of my choice.
3. Before trial, a lawyer's legal training and experience may:
  - A. Help me get or change bail.
  - B. Get information about my case by enforcing the legal rules for discovery.
  - C. Uncover violations of my constitutional rights and enforce them.
  - D. Make sure I have a speedy trial if I want one.
  - E. Make sure the state has followed the statute of limitations.
  - F. Identify and preserve favorable evidence for my trial.
  - G. Help me get the best possible plea and sentence, if I don't want a trial.
  - H. Uncover legal grounds to dismiss my case or suppress evidence against me.
  - I. File the proper papers to preserve my right to present defenses at trial, including presenting an alibi.
4. At trial, a lawyer's legal training and experience may:
  - A. Help me pick the best jury, and explain to me challenges for cause, peremptory challenges, and the number of challenges allowed.
  - B. Make sure the state follows the proper rules for picking a jury.

- C. Call my witnesses and make sure they were served subpoenas for trial.
- D. Question the witnesses against me.
- E. Present documents and physical evidence to help me.
- F. Advise me on whether I should testify at trial, and the consequences of that decision.
- G. Object and argue to the judge if the state does not follow rules of evidence.
- H. Make effective closing arguments to the jury.
- I. Preserve objections for appeal if I lose the trial.
- J. Prevent improper arguments by the state to the jury.

5. Self-representation is almost always unwise because:

- A. I will not get any special treatment.
- B. I will not get a continuance just because I represent myself.
- C. If I am in jail, I have limited legal resources for trial research. It may be hard or impossible for me to subpoena my witnesses or my evidence for trial. It will be hard or impossible for me to talk with the state, other witnesses, or other persons on matters that may help my defense.
- D. I will have to follow the rules of criminal procedure and evidence, even though it takes years for a lawyer to learn these laws and rules.
- E. A defendant often gets too emotional during the trial and cannot concentrate, be objective, or be effective in defending the case.
- F. Questioning a witness about what you did or did not do can be awkward and ineffective in the eyes of the jury.
- G. A defendant cannot appeal and claim that lack of legal skills is a ground for a new trial.

6. The decision to represent myself may be final. The judge might not appoint me a lawyer later for trial just because I decide I made a poor decision to represent myself.

7. If I represent myself at trial, and if I am convicted, I will have the right to an appointed lawyer for sentencing. Sentencing is a separate proceeding.

I swear I have read and understood the above form."

Id. at 1127-1128. The self-representation document is located in case number

**1D16-0369.** (R-22-24) .

The State agrees with the reasoning of the First District and urges this Court answer the certified question in the negative. A trial court should make a common-sense inquiry as to whether a defendant is competent to knowingly and intelligently waive counsel, and it should not be required to ask specific questions. An adequate waiver of counsel should turn on a defendant's general understanding of his/her rights. To do otherwise would be to put form over substance. As noted above, a review of precedent from this Court and the United States Supreme Court, as well as the amendment to Rule 3.111(d) (3), indicates that such a common-sense inquiry is all that is necessary and that there is no requirement that a trial court ask specific, boilerplate questions. In fact, requiring specific questions and/or specific answers to questions before allowing someone to represent himself could result in erroneously denying someone the right to engage in self-representation.

In the case at bar, the Information and arrest/probable cause affidavit indicate that Petitioner was born on **03/27/1958**. (R-1-2). The State is referring to the record in **1D16-0368**, except for the self-representation document, which only appears in **1D16-0369**. On January 11, 2016, the trial court addressed Petitioner's case at **9:10 a.m.** (RS-145). Defense counsel indicated that Petitioner wanted to represent himself. The trial court asked defense counsel to help it give Petitioner the self-representation document to look over and defense counsel agreed. (RS-148-149). The self-representation document is located in case number **1D16-0369**. (R-22-24). The trial court indicated that if Petitioner still wanted to represent himself by the time his

case was called, they would go over the issue. (RS-149). The trial court informed Petitioner that it knew he was contemplating representing himself, but that he wanted him to have time to consult with his attorney about the issue. (RS-149-150).

On the same day, the trial court conducted a Faretta inquiry at **12:03 p.m.** (RS-134). The trial court asked Petitioner and his trial counsel to approach the court reporter so that they could discuss his decision to represent himself. The trial court stated as follows:

Early in the morning, Mr. Hooks, your attorney said you had decided to represent yourself. And I handed to you what I call a little form for self-representation which goes over all the things that say I want you to make sure you know about **so I don't have to repeat a lot of it. Did you get a chance to read over that real carefully?**

**Petitioner stated, "[y]es, sir."** (RS-136).

The trial court stated as follows:

Okay. And, I'll say, again, it's your absolute right to represent yourself if you want to. I almost never advise it, because a lawyer—it says on that form—has got a lot of knowledge and experience, knowledge about procedures, knowledge about rules of evidence, things you might not know about. You don't have to be a lawyer to represent yourself. You just have to know the disadvantages and to make a voluntary and knowing decision to do it. Have you thought about it and decided whether you, whether you still wanted to represent yourself? (RS-136).

Petitioner stated, "[y]es, I have. And I do want to represent myself." (RS-136-137).

The following dialogue then occurred between the parties:

Trial court:           And you want to represent yourself. Okay. Well, let me have you initial those things and then sign that form for me. And I'll have that in the file. And I'll sign it and

we'll-

Defense counsel: **Judge, he's already initialed-**

Trial court: Yes.

Defense counsel: **Each spot. I can approach with that.**

Trial court: **Okay. Did he sign it, too?**

Defense counsel: **He did sign it, Judge.**

Trial court: Okay.

Defense counsel: I think the only thing we're missing is the case number.

Trial court: I'll put it in.

The clerk: 15-CF-913

Defense counsel: Thank you.

The trial court stated as follows:

And the, and the good news is you've sat through two juries-jury selections. You have a pretty good idea about other-how other people do it. So that may be helpful to you in that. And I'll ask Ms. Helms, just in case you change your mind, because I'm going to ask you when we actually start the trial again if you want to change your mind and give you that option. Once we start the trial, I won't be able to say in the middle of it, oh, I decide want to, I want to have a lawyer. But I'll let her sit in on this. And when we get to the trial-I guess Friday we're going on this one? If you still want to represent yourself, that's your business. And if you don't, Ms. Helms could step in and take care of it. Okay?

Petitioner stated, "[t]hank you. (RS-137-138). (Emphasis added).

The First District correctly determined that the trial court adequately advised Petitioner of the dangers/disadvantages of self-representation and that he intelligently and knowingly waived his right to counsel. At 9:10 a.m., the trial court provided Petitioner with a form that described the dangers and disadvantages of self-representation in great detail. The trial court noted

that it wanted Petitioner to go over the issue with his attorney before his case was recalled. Petitioner's case was not recalled until 12:03 p.m. that same day, so he had approximately three hours to review the form and to go over it with his attorney. The form included a lot more detail than most on-the-record colloquies would include, and Petitioner had much more time to review the form and ask his lawyer questions if he needed to do so.

When the trial court recalled Petitioner's case, it asked him if he had read the form "real carefully." The trial court stated that it needed to know if Petitioner had gone over the form "real carefully," so that it did not need to repeat itself regarding much of the information. Petitioner indicated that he had read the form "real carefully." The trial court explained to Petitioner that he had an absolute right to represent himself, but that it did not recommend it because a lawyer would have a lot of knowledge and experience, knowledge about procedures, knowledge about rules of evidence, and knowledge about other things Petitioner might not know about. The trial court informed Petitioner that he did not need to be a lawyer to represent himself, but that he had to be aware of the disadvantages of self-representation and to make a voluntary and knowing decision to waive counsel. The trial court asked Petitioner if he had thought about the issue and decided whether he wanted to represent himself. Petitioner indicated that he had thought about it and that he did want to represent himself. Defense counsel then explained to the trial court that Petitioner had already initialed each spot on the form and that he had signed it.

The trial court noted that Petitioner had already sat through two jury

selections, so he had some idea regarding how it was done. The trial court explained to Petitioner that he would ask him again, at the start of the trial, if he still wanted to represent himself. The trial court further explained that he would have defense counsel sit in the trial, so that Petitioner could have her take over if he changed his mind. Therefore, the trial court adequately determined that Petitioner was competent to waive counsel and that he understood the dangers and disadvantages to self-representation.

Petitioner argues that his Faretta inquiry was invalid because the trial court did not engage in an oral discourse with him regarding his age, education, experience, mental health status, physical limitations, and understanding of the dangers of self-representation. (IB-14). First, the trial court could have determined Petitioner's age simply from looking at its file, which indicates that he was born on 03/27/1958. (R-1-2). Also, Petitioner does not explain why his age would have resulted in him not being permitted to represent himself. The trial court could tell by looking at Petitioner that he was "old enough" to represent himself and, if he had been younger, Petitioner does not explain what age is too young to represent oneself.

Second, Petitioner complains that the trial court did not go over Petitioner's education and experience. However, as noted by case law, there is no requirement that a defendant reach a certain educational level or a certain level of experience to be able to represent himself. In fact, Petitioner was on probation, so it was known that he had been in the criminal justice system before, and the trial court noted that he had sat through two jury selections.

The file would have included the plea and acknowledgment of rights form, which was previously signed by Petitioner, as to the underlying charge for his violation of probation. (R-12-13). The file would have also included the affidavit for the violation of probation showing that Petitioner had been on probation numerous times stemming from 1979. (R-34).

Third, Petitioner indicates that the trial court should have done an inquiry into his mental health and/or physical limitations. However, a defendant can represent himself even if he suffers from or has suffered from mental illness. As noted by the United States Supreme Court, in Godinez v. Moran, a competency determination is not needed in every case in which a defendant desires to waive counsel, but is only necessary when a trial court has reason to doubt a defendant's competence. Id. at 401, 113 S.Ct. 2680 n. 13. The competency required to represent oneself is not a higher standard than the competency to stand trial. There were not reasonable grounds to suggest Petitioner was not competent. Petitioner was being represented by a lawyer and had been being supervised by a probation officer. Neither party provided any indication in court or in writing that Petitioner could be incompetent.

If Petitioner had a severe mental illness and/or a physical limitation, which prevented him from conducting trial proceedings by himself, the trial court could have reappointed counsel later on and/or ordered a competency hearing. See Indiana v. Edwards, 554 U.S. 164, 177-178, 128 S. Ct. 2379, 171 L.Ed.2d 345 (2008) ("We consequently conclude that the Constitution permits judges to take realistic account of the particular defendant's mental capacities by asking whether a defendant who seeks to conduct his own defense

at trial is mentally competent to do so. That is to say, the Constitution permits States to insist upon representation by counsel for those competent enough to stand trial under Dusky but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves.)

Finally, Petitioner complains that the trial court should have engaged in an oral discourse with him about his understanding of the dangers of self-representation. However, the trial court did go over this with Petitioner. After leaving Petitioner with a very detailed form for about three hours and giving Petitioner plenty of opportunity to think things over and/or consult with counsel, the trial court asked Petitioner if he had read the form "real carefully." The trial court stated that it needed to know if Petitioner had gone over the form "real carefully," so that it did not need to repeat itself regarding much of the information. Petitioner indicated that he had read the form "real carefully," which indicated to the trial court that it did not need to repeat most of the information from the form. Petitioner also signed the form, which indicated, "I swear I have *read and understood* the above form." (Italics added). This indicated to the trial court that Petitioner knew how to read and that he had the ability to understand what he was reading. The trial court then briefly went over that it was not a good idea for one to represent himself because lawyers had knowledge regarding rules, evidence, etc., that Petitioner may not have.

In summation, this Court should answer the certified question posed by the First District in the negative. This Court should not reformulate the

certified question to include *some* of the circumstances of this case, but should address the perceived conflict in its prior cases or with its cases and the cases from the United States Supreme Court. A trial court should determine that a defendant's general understanding of his/her rights to waive counsel and not require that specific questions be asked. In the case at bar, the trial court's Faretta inquiry was sufficient. The trial court provided a detailed account of the dangers and disadvantages of self-representation in a form, the petitioner had the form for about three hours, the petitioner was provided an opportunity to consult with his counsel, and the petitioner indicated, on the form, that he read and understood it. Petitioner initialed each part of the form and then signed the bottom. Petitioner then indicated that he had read the form "real carefully" and that, after thinking it over, he wanted to represent himself.

Furthermore, Petitioner's file indicated his age and indicated that he had a lot of experience with the criminal justice system. The trial court orally explained to Petitioner that he would be disadvantaged by not having a lawyer due to a lawyer's knowledge and experience. The trial court also explained that it needed to know if Petitioner read the form "real carefully," so that it did not need to repeat much of the information. Therefore, the First District correctly determined that the trial court adequately advised Petitioner of the dangers/disadvantages of self-representation and that he intelligently and knowingly waived his right to counsel.

CONCLUSION

Based on the foregoing, the State respectfully submits that the decision of the First District Court of Appeal in Hooks v. State, 236 So. 3d 1122 (Fla. 1st DCA 2017), should be approved, the certified question should be answered in the negative, and the judgment and sentence entered in the trial court should be affirmed.

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to the following by electronic mail to Danielle Jordan, Esquire, at DANIELLE.JORDEN@FLPD2.COM on this 19th day of December 2018.

CERTIFICATE OF COMPLIANCE

I certify that this brief was computer generated using Courier New 12-point font.

Respectfully submitted and certified,  
PAMELA JO BONDI  
ATTORNEY GENERAL

/s/Trisha Meggs Pate

---

TRISHA MEGGS PATE  
Tallahassee Bureau Chief,  
Criminal Appeals  
Florida Bar No. 0045489

/S/Virginia Chester Harris

---

By: VIRGINIA CHESTER HARRIS  
Assistant Attorney General  
Florida Bar No. 0706221  
Office of the Attorney General  
PL-01, The Capitol  
Tallahassee, Fl 32399-1050  
(850) 414-3300 (VOICE)  
(850) 922-6674 (FAX)  
AG# L18-1-08788

Attorney for the State of Florida