IN THE SUPREME COURT OF FLORIDA

ERIC EDENFIELD
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

Case No.: SC10-2146
L.T. Case No(s).: 1D09-6554
2009-AP-34

PETITIONER'S JURISDICTIONAL BRIEF

On Review from the District Court

of Appeal, First District

State of Florida

EPSTEIN & ROBBINS

BY _____
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INTRODUCTION

Petitioner, Eric Edenfield, seeks discretionary review of a decision of the First District Court of Appeal that misapplies the decisions of this Court and expressly conflicts with cases of other District Courts of Appeal. Reference to the attached appendix shall be made by A. followed by the page number.

STATEMENT OF THE CASE AND FACTS

Petitioner was arrested and charged with driving under the influence on January 12, 2009. On that same date, at the Petitioner's first appearance hearing, a conviction was entered against the Petitioner based on a plea of nolo contendere. The Petitioner, who was charged with an offense punishable by incarceration, was not represented at that time by counsel nor did the record establish compliance with Fla. R. Crim. P. 3.111 related to knowing and intelligent waivers of counsel. The trial court did not file a notice of no incarceration.

On February 17, 2009, the Petitioner filed a motion to withdraw his plea. The Petitioner alleged that he was entitled to withdraw his plea based on a violation of his right to counsel. At the hearing the Petitioner relied on the transcript of the plea proceedings. The trial court denied the Petitioner's motion to withdraw his plea. The circuit court affirmed the decision of the trial court. The Petitioner sought certiorari review in the First District Court of Appeal.

On August 10, 2010, the First District Court of Appeal entered a written opinion denying the Petitioner's petition for writ of certiorari. Motions for certification, rehearing, and rehearing *en banc* were timely filed on August 25, 2010. These motions were denied on September 29, 2010. The Petitioner's notice to invoke the discretionary jurisdiction of this court was timely filed on October 28, 2010.

SUMMARY OF ARGUMENT

The First District Court of Appeal held that as long as a defendant is advised of the right to counsel and advised of the dangers of proceeding without counsel, an expressed desire to waive counsel is sufficient to meet the requirements of Fla. R. Crim. P. 3.111(d) that a court engage in a thorough inquiry into a defendant's comprehension of the offer of counsel and capacity to make a knowing and intelligent waiver of counsel. This decision misapplies the prior decisions of this Court regarding the obligation of a trial court to adequately inquire into a defendant's waiver of the right to counsel and therefore expressly conflicts with these prior decisions of this Court. The decision below also expressly conflicts with decisions from other District Courts of Appeal which have held that before a court can permit a defendant to proceed without counsel, the trial court must engage in a thorough inquiry into such matters as age, education, mental condition, prior experience with criminal proceedings, or any other inquiries which would

assist a court in determining whether a waiver of the right to counsel is knowingly and intelligently entered and that this inquiry must appear in the record of the proceedings. This Court should exercise its jurisdiction to review this case to resolve this conflict.

JURISDICTIONAL STATEMENT

The Florida Supreme Court has discretionary jurisdiction to review a decision of a district court of appeal that misapplies or expressly and directly conflicts with a decision of the Florida Supreme Court or conflicts with another district court of appeal on the same point of law. Art. V Section 3(b)(3)Fla Const.(1980); Fla. R. App. P. 9.030(a)(2)(A)(iv); *Engle v. Liggett Group, Inc.* 945 So. 2d 1246, 1254 (Fla. 2006).

ARGUMENT

THE DECISION OF THE DISTRICT COURT OF APPEAL MISAPPLIES THE DECISIONS RENDERED BY THIS COURT IN *STATE V. BOWEN*, 698 SO. 2D 248 (Fla. 1997); *POTTS V. STATE*, 718 SO. 2D 757 (FLA. 1998); *HILL V. STATE*, 688 SO. 2D 901 (FLA. 1997); AND *ROGERS V. SINGLETARY*, 698 SO. 2D 1178 (FLA. 1997) AND EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISIONS OF OTHER DISTRICT COURTS OF APPEAL IN *CURTIS V. STATE*, 32 SO. 3D 759 (FLA. 2D DCA 2010); *NEELD V. STATE*, 729 SO. 2D 961 (FLA. 2D DCA 1999); *MONTGOMERY V. STATE*, 1 SO. 3D 1228 (FLA. 2D DCA 2009); *RODRIGUEZ V. STATE*, 982 SO. 2D 1272 (FLA. 3D DCA 2008); *BEATON V. STATE*, 709 SO. 2D 172 (FLA. 4TH DCA 1998); *DAVIS V. STATE*, 10 SO. 3D 176 (FLA. 5TH DCA 2009); *MCGEE V. STATE*, 983 SO. 2D 1212 (FLA. 5TH 2008); *WATKINS V. STATE*, 959 SO. 2D 386 (FLA. 5TH DCA 2007).

The First District Court interpreted the requirement of a "thorough inquiry" into a defendant's knowing and intelligent waiver of the right to counsel under Fla. R. Crim. P. 3.111 to be satisfied by showing a video and providing documents advising of the right to counsel and the dangers of proceeding without counsel, a response by the Petitioner that he did not want counsel appointed and would represent himself, an affirmative response by the Petitioner to the question of whether he understood the rights on the "blue form," and another affirmative response from the Petitioner after the entry of his plea that the Petitioner understood the rights he was giving up by the entry of his plea. The decision holds that the requirements of Fla. R. Crim. P. 3.111 are satisfied by a sufficient advisement of the right to counsel alone without any inquiry.

The district court cited to this Court's decisions in *Bowen v. State*, 698 So. 2d 248 (Fla. 1997), *Potts v. State*, 718 So. 2d 757 (Fla. 1998), *Hill v. State*, 688 So. 2d 901(Fla. 1997), and *Rogers v. Singletary*, 698 So. 2d 1178 (Fla. 1997). In *Bowen*, however, the issue was whether or not a court may require a defendant who knowingly and intelligently waives counsel to be represented by counsel because of concern that the defendant might be deprived of a fair trial. This Court held that the dictates of *Faretta* were satisfied in that case by a discussion between the defendant and the court regarding the defendant's decision to waive the right to counsel which comprised nearly fifteen (15) pages of a transcript. Likewise, in

Potts, although this Court found that there were no "magic words" which must be used in advising a defendant regarding the waiver of counsel, this Court held that the requirements of *Faretta*[1] were met because "...the court discussed self-representation with the defendant in detail and at length…The court on one occasion held a full-fledged *Faretta* hearing-comprising nearly fifteen pages of record transcript-wherein the court inquired in detail into Potts' age, education, and legal experience." *Id.* at 760.

In *Hill,* this Court did find that the inquiry need only ensure the defendant is "alerted generally to the difficulties of navigating the legal system," as noted by the First District Court, however, this Court again recognized that the trial court had engaged in an "exhaustive inquiry" including inquiry into the defendant's age, education, experience, physical condition and mental condition. *Id.* at 904. In *Rogers,* this Court found that the inquiry was sufficient based upon the fact that the trial court had held a hearing on the defendant's waiver of his right to counsel during which the trial court determined that the defendant had represented himself on at least four occasions, three times successfully. The application of the above decisions to the stated facts in *Edenfield* is a misapplication of these decisions.

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[1] *Faretta v. Cal.*, 422 U.S. 806 (1975). Although the inquiry under Fla. R. Crim. P. 3.111(d) is also referred to as a *Faretta* inquiry, R. 3.111(d) is grounded in the Florida State Constitution and provides even greater protections than the U.S. Constitution. *Traylor v. State*, 596 So. 2d 957, 970 (Fla. 1992); *Iowa v. Tovar*, 541 U.S. 77, 94; 124 S.C.t 1379, 1390 (2004).

The decision rendered in *Edenfield* also expressly conflicts with the decisions of the other district courts of appeal. In *Curtis v. State*, 32 So. 3d 759 (Fla. 2d DCA 2010), the district court found that the trial court, in addition to advising of the dangers and disadvantages of proceeding without counsel, must inquire into such matters as a defendant's age, education, mental condition, and experience and knowledge of criminal proceedings. The district court further found that it was only **after** the court is satisfied that the accused has made a knowing and intelligent waiver of the right to counsel that the accused should be permitted to proceed *pro se*. *Id.* at 760, 761.

In *Neeld v. State*, 729 So. 2d 961 (Fla. 2d DCA 1999), although the issue was the denial of the defendant's desire to represent himself, the district court expressly set out the requirements for determining that a defendant is knowingly and intelligently waiving the right to counsel. The district court held that Fla. R. Crim. P. 3.111(d)(2) requires a trial court make a thorough inquiry into a defendant's capacity to waive the right to counsel. The district court further noted that the record showed that the trial court neither appropriately advised the defendant of the dangers and disadvantages of proceeding without counsel, nor engaged in a sufficient inquiry. The district court again recognized the necessity of an inquiry into such things as age, mental condition, education, and lack of knowledge and experience in criminal proceedings and the requirement that this

inquiry be established in the record in *Montgomery v. State*, 1 So.3d 1228 (Fla. 2d DCA 2009).

In *Rodriguez v.* State, 982 So. 2d 1272 (Fla. 3d DCA 2008), the district court held that under *Faretta* a trial court is required to inquire into things such as age, mental status, and lack of knowledge and experience in criminal proceedings. The district court further pointed to the model colloquy published in *In re Amendment to Fla. R. Crim. P. 3.111(d)(2)-(3)*, 719 So. 2d 873, 876-77 (Fla. 1998.) The district court specifically held that although a court need not follow the model colloquy to the letter, the court must both make sure that a defendant is advised of the dangers and disadvantages of self-representation, and that the court make a determination that the defendant is knowingly and intelligently waiving his or her constitutional right. *Id.* at 1274.

Similarly, the district court in *Davis v. State,* 10 So. 3d 176 (Fla. 5th DCA 2009), found that a *Faretta* inquiry is not sufficient unless the court advises a defendant of the dangers and disadvantages of self-representation, advises of the advantages of representation by counsel, and inquires into a defendant's age, education, ability to read and write, or any mental or physical conditions. *Id.* at 178. An offer of counsel is not sufficient to meet the requirements of Fla. R. Crim. P. 3.111(d). The district court further held that if the trial court was relying on grounds other than a *Faretta* inquiry to find a knowing and intelligent waiver of

the right to counsel, the trial court had to set out specific findings on the record for reaching that conclusion. *Id.* at 179. In *McGee v. State*, 983 So. 2d 1212 (Fla. 5th DCA 2008), the district court, making reference to the model *Faretta* colloquy, again held that if a trial court does not engage in a full *Faretta* inquiry, the court must make a sufficient record indicating it basis for determining that a defendant is competent to waive counsel *Id.* at 1214, 1215. The same holding was set out in *Beaton v. State*, 709 So. 2d 172 (Fla. 4th DCA 1998), where the court recognized that even when a judge is familiar with a defendant and therefore may know about his competency to waive counsel from prior experience, the trial court must establish on the record how the defendant's background, including his age, mental status, and education, affects his capacity to waive his right to counsel. *Id.* at 174.

In *Watkins v. State*, 959 So. 2d 386 (Fla. 5th DCA 2007), the defendant fired his attorney and indicated his desire to proceed *pro se.* The trial court advised the defendant of the maximum penalty for the offense with which he was charged and permitted him to enter a plea. The trial court then conducted a plea colloquy. The district court found that the trial court was required to inquire about the defendant's age, education, mental condition, and experience and knowledge of criminal proceedings prior to permitting him to proceed without counsel.

The decision rendered in *Edenfield* expressly conflicts with the above decisions. The facts as set out by the First District in its opinion, show that the

only individual inquiry conducted by the trial court was asking the Petitioner whether he had a prior record, understood the minimum penalties, whether he wanted the court to appoint an attorney to represent him or would represent himself and whether he read and understood the rights in the written plea form. In direct conflict with the above cited opinions, the First District found that the above constituted a sufficient inquiry into the waiver of counsel to satisfy the requirements of Fla. R. Crim. P. 3.111(d) for a thorough inquiry. The First District also found that the suggestion that the trial court must make a more detailed inquiry was adding to the requirements of the rule. This finding is also in direct conflict with the above opinions wherein this Court and the other district courts recognized that the questions suggested by the Petitioner are those which are designed to obtain the information necessary to determine whether a defendant is competent to waive counsel and has a full comprehension of the offer of counsel. Contrary to each of the above opinions, the First District held that the Petitioner's affirmative answer to the question of whether he understood the rights he was waiving and his signature on several forms was sufficient to establish compliance with Fla. R. Crim. P. 3.111(d)(2).

The First District also found that although the inquiry was brief, since the county court accepted the Petitioner's plea, it must not have had any concerns about his competency to waive counsel. The district court further pointed out that

the county court had access to the Petitioner's probable cause affidavit and citation, which could have provided information to the county court. Again, this holding is contrary to all the decisions above wherein the courts have specifically held that if a court relies on information without conducting a thorough *Faretta* inquiry, the court must establish that it has considered the other factors and set out how these factors entered into the court's determination.

In a footnote, the First District Court found that the version of Fla. R. Crim. P. 3.111(d) as amended in 1998, does not require the type of inquiry suggested by the Petitioner. The district court based it's determination on the decision rendered in *Bowen.* This finding expressly conflicts with the district court of appeal decisions set out above. Each of these decisions was rendered after the rule amendment in 1998. Several of these decisions specifically mention the suggested colloquy that was published with the 1998 amendment to insure compliance with the requirement for a thorough inquiry into a defendant's comprehension of the right to counsel. Further, this finding by the First District Court of Appeal is a misapplication of the decision rendered by this Court in *Bowen*.

CONCLUSION

This Court has discretionary jurisdiction to review the decision below, and the court should exercise that jurisdiction to consider the merits of the Petitioner's argument.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to Office of the Attorney General, Criminal Appeals Division, 107 W. Gaines Street, Room 361C, Tallahassee, Florida 32399, counsel for the Respondent, by U.S. mail, this 5th day of November, 2010.

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CERTIFICATE OF FONT AND TYPE SIZE

Counsel certifies that this brief was typed in Times New Roman 14.

Respectfully submitted,
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