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Hooks v. State, 124 Nev. Adv. Op. No. 5 (2008)¹

CRIMINAL LAW – RIGHT TO COUNSEL

Summary

Appeal from a judgment of conviction for the sale (two counts) and giving away (one count) of a controlled substance issued by the district court.

Disposition/Outcome

Reversed and remanded. Because the district court failed to conduct a sufficient *Farreta* canvass,² and because the overall record did not evince a knowing, intelligent, and voluntary waiver of defendant's right to counsel, this case must be remanded to the district court for proceedings consistent with this opinion.

Factual and Procedural History

Appellant Hooks was charged with three counts of sale of a controlled substance on November 13, 2003. The State subsequently reduced one count of sale to one count of giving away a controlled substance. A public defender was appointed to Hooks at his justice court arraignment. However, at his preliminary hearing appellant requested to proceed without counsel. Hooks asked for, and received, a *Farreta* canvas by the justice court judge. At the conclusion, the appellant was allowed to proceed pro se. Still, the court appointed standby counsel.

Later, in district court, Hooks reiterated his desire to proceed pro se. The judge,³ warned appellant of the risks inherent in representing oneself and asked questions aimed at determining Hooks's education and awareness of the severity of the charges he faced. The judge then appointed appellant's standby counsel to continue in that capacity. Standby counsel later moved to withdraw, whereupon Hooks reiterated his desire to proceed pro se. In response, the judge scheduled a *Farreta* canvass for April 12, 2004.

On April 12, 2004, the court appointed new standby counsel. Rather than go forward with the *Farreta* canvass, the court granted appellant's newly appointed standby counsel a continuance. Consequently, the district court failed to ever conduct a *Farreta* canvass; not at any subsequent hearing or at trial. A jury convicted Hooks on all counts. Further, the district court deemed appellant a habitual criminal and sentenced him to three concurrent prison terms of life with the possibility of parole after ten years.

¹ By M. Charles Seaton

² *Farreta v. California*, 422 U.S. 806 (1975).

³ Stewart L. Bell, Eighth Judicial District Court Judge.

Discussion

In this appeal, the Nevada Supreme Court examined whether the appellants constitutional right to counsel under the Sixth Amendment was violated. The Court held that the district court's failure to conduct a *Farreta* canvass – combined with the record's failure to indicate a knowing, intelligent, and voluntary waiver of appellant's right to counsel – required reversal of his judgment of conviction.

The Court examined the scope of the *Farreta* canvass and the requirements for a valid waiver of the right to counsel, acknowledging that a defendant cannot “knowingly, intelligently, and voluntarily” waive the right to counsel unless he is fully apprised of the severe consequences he may face by proceeding in the absence of counsel.⁴ Further, the Court noted that whether a waiver is valid will depend upon the circumstances of the case.⁵ Also, the Court referenced its own pronouncement on the issue, codified at SCR 253 in 1997, which directs courts to “make a specific, penetrating and comprehensive inquiry” of the defendant to insure that he fully comprehends the risks of his decision to forego counsel.⁶

The Court noted that although prior precedent disavowed any absolute requirement for a “mechanical” *Farreta* canvass in every case, it also had counseled district courts to conduct a searching inquiry whenever a defendant sought to proceed pro se.⁷ The Court then took the opportunity in this case to reemphasize the importance of such an inquiry, in part by noting one favorable consequence; avoiding a new trial on the merits.

In this case, the Court concluded that the record – viewed as a whole – did not demonstrate a valid waiver of appellant's right to counsel. It found the justice court's canvass insufficient, on its own, to constitute a valid waiver of the right. Further, the Court noted that the district court repeatedly failed, contrary to its earlier stated intention, to ever conduct an adequate *Farreta* canvass.

The Court followed with an analysis of the district court proceeding, holding that Judge Bell's limited inquiries into appellant's awareness of the difficulties and dangers awaiting him if he continued pro se were insufficient to show a voluntary waiver of the right to counsel. The Court seemed particularly concerned about Hooks's apparent ignorance of his potential to face a finding of habitual criminal status, and the severe consequences this would (and did) have on his eventual sentence.

Finally, the Court noted the inapplicability of harmless-error analysis to waivers of the right to counsel, and reversed and remanded Hooks's judgment of conviction.

Conclusion

In reversing the appellant's judgment of conviction, The Supreme Court of Nevada reemphasized district courts' duty to conduct a *Farreta* canvass and conduct a thorough inquiry into whether a defendant knowingly, intelligently, and voluntarily waived his right to counsel. Here, the court found the record, as a whole, insufficient to demonstrate that Hooks waived his right to counsel. Moreover, the Court cautioned that a justice court *Farreta* canvass will rarely

⁴ 422 U.S. at 835.

⁵ *Wayne v. State*, 100 Nev. 584 (1984).

⁶ SCR 253(1-2).

⁷ *Supra* at note 5.

be sufficient, in isolation, to constitute a valid waiver of the right, especially given the substantial differences and dangers that await a defendant in district court.