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### Christian Stephon Miles v. The State of Nevada, 137 Nev. Adv. Op. 78 (Dec. 23, 2021)

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TRIAL COURT WARNINGS: ESTABLISHING GUIDELINES FOR *FARETTA*  
CANVASSING WHEN DEFENDANTS WISH TO WAIVE THEIR RIGHT TO COUNSEL

**SUMMARY**

The Nevada Supreme Court considered whether a criminal defendant’s decision to waive his right to counsel was valid considering the trial court’s *Faretta* canvass. All defendants retain the ability to waive their constitutional right to counsel, but they must make this decision knowingly and voluntarily. To ensure that the waiver is valid, trial courts must question the defendant’s understanding of the risks associated with self-representation and make specific findings that the defendant waived their right with full knowledge of the attendant disadvantages.

In this matter, the Court found the defendant’s waiver invalid and reversed and remanded the lower courts’ judgments of conviction. The waiver was invalid because the trial court did not adequately address the defendant’s significant misunderstanding of both the elements of the underlying charges and the potential sentence he could face if convicted. The Court also cautioned trial courts in general to conduct their *Faretta* canvasses in an objective and respectful manner.

**FACTS AND PROCEDURAL HISTORY**

When Appellant Christian Stephon Miles (“Miles”) was eighteen years old, he was charged with sex trafficking a child under eighteen, first-degree kidnapping, living from the earnings of a prostitute, and child abuse, neglect, or endangerment. Prior to trial, Miles moved for permission to represent himself, thereby waiving his constitutional right to counsel. The trial court discouraged Miles from taking this course of action, cautioning that such a move was “the stupidest thing in the world,” “a bonehead move,” and “a nail in your coffin.” The court eventually relented, however, and began the necessary *Faretta* canvass—a line of questioning meant to establish that Miles understood his decision’s potential ramifications.

During the canvass, the court explained the merits of an experienced attorney’s representation and probed Miles’s familiarity with the legal system, as well as Miles’s understanding of his Fifth Amendment right not to testify and the consequences of waiving that right. The court also cautioned that the State may be able to impeach Miles as a witness by introducing evidence of a prior conviction. Miles stated that while he had no legal training and was largely unfamiliar with the legal system, he appreciated the risks of his decision. The court also asked Miles to differentiate between peremptory and for-cause challenges, questions which elicited Miles’s understanding of trial procedure.

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<sup>1</sup> By Molly Marias.

In addition to the more general canvass questions, the court also asked Miles to state the elements of sex trafficking as well as the potential punishment he would face if convicted on all counts. Miles' responses to both inquiries, "...it's a whole bunch, Your Honor..." and "...five to life, life..." demonstrated Miles's general lack of knowledge on the substantive law specifically applicable to his case. The trial court then ended the discussion and asked no follow-up questions, but ultimately granted Miles's motion for permission to represent himself. In doing so, the court reasoned "[y]ou've already explained why you want to represent yourself and why you think you can do a better job...I tried to talk you out of it..."

Miles represented himself at trial, and a jury found him guilty on all charges. Because each charge has an associated minimum sentence, and the court ordered these minimums to run consecutively, Miles faced a total of 163 months—roughly twelve years—to life in prison. Miles appealed, and the court of appeals affirmed the trial court's judgment of conviction. The Nevada Supreme Court granted Miles' subsequent petition for review.

## **DISCUSSION**

### *Background of the Faretta right*

All criminal defendants possess a constitutional right to waive counsel and represent themselves—a right that stems from courts' deeply-held respect for individuals' dignity and autonomy.<sup>2</sup> In *Faretta*, Justice Blackmun cautioned that "one who is his own lawyer has a fool for a client..."<sup>3</sup> Yet, despite the fact that pro se litigants will rarely represent themselves as well as a trained attorney, the right to represent oneself remains a fundamental aspect of the constitutionally-protected ability to control one's own defense. Consequently, courts and legislatures implement safeguards designed to ensure that defendants who wish to represent themselves do so with "eyes wide open."<sup>4</sup> In other words, courts must ensure that defendants are well-informed of the dangers and disadvantages of self-representation and that they make the decision to waive counsel knowingly and voluntarily.<sup>5</sup> By extension, when courts allow defendants to waive their right to counsel without making the decision knowingly and voluntarily—in other words, without finding that the defendant fully appreciated the risks associated with the decision—the court does not show respect for the defendants' dignity and autonomy, and the waiver is invalid.<sup>6</sup> Crucially, any conviction obtained after an invalid waiver is also per se invalid, and invalid convictions are not subject to harmless-error analysis on review.<sup>7</sup>

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<sup>2</sup> See generally *Faretta v. California*, 422 U.S. 806 (1975); *Mckaskle v. Wiggins*, 465 U.S. 168, 178 (1984) (recognizing that the right to represent oneself "exists to affirm the accused's individual dignity and autonomy...").

<sup>3</sup> *Faretta*, 422 U.S. at 852 (Blackmun, J., dissenting).

<sup>4</sup> *Id.* at 835 (quoting *Adams v. United States*, 317 U.S. 269, 279 (1942)).

<sup>5</sup> *Vanisi v. State*, 117 Nev. 330, 337–38, 22 P.3d 1164, 1170 (2001).

<sup>6</sup> *Hooks v. State*, 124 Nev. 48, 57–58, 176 P.3d 1081, 1086–87 (2008).

<sup>7</sup> *Id.*

There is no specific set of criteria courts must use to evaluate a waiver's validity.<sup>8</sup> However, courts are instructed to conduct thorough inquiries of defendants who seek to represent themselves and to make specific findings that defendants waive the right to counsel knowingly, intelligently, and voluntarily.<sup>9</sup> To make these findings, a court's inquiry should probe the defendant's understanding of the charges and possibly penalties.<sup>10</sup> Typically, reviewing courts give deference to the trial court's decision to allow a defendant to waive their right to counsel, regardless of the specific questions the court asks in its *Faretta* canvass.<sup>11</sup>

*The canvass must show the defendant generally understood the risk of self-representation*

In waiving the right to counsel, defendants are giving up an enumerated constitutional right. Courts do not treat this waiver lightly, and defendants must overcome every reasonable presumption against waiver.<sup>12</sup> Courts have deemed waivers invalid in cases where the defendant did not understand the potential underlying charges.<sup>13</sup> For defendants to fully appreciate “the magnitude of the potential loss they face,” they must have a “clear comprehension of the attendant risks...”<sup>14</sup>

Here, Miles clearly understood neither the attendant elements of the underlying charges brought against him nor the potential sentences he faced. Miles believed he would be eligible for parole after five years because he did not understand that the minimum sentences for each charge could run consecutively. The trial court did not explain this possibility to Miles or bring it to his attention. The canvass demonstrated that Miles did not fully understand the potential consequences associated with his choice to forgo counsel. Consequently, Miles's waiver was unreasonable and invalid in light of the court's inadequate inquiry.

*The trial court should conduct the canvass carefully and address a defendant's lack of understanding, if such affirmatively appears*

To reiterate, trial courts are not mandated to partake in any specific line of questioning in their *Faretta* canvasses; yet, discussing the elements of the crimes charged is a suggested area of inquiry.<sup>15</sup> Here, the trial court affirmatively broached the subject by asking Miles to state the elements of sex trafficking. Miles' answer, “[r]ecruiting...conspiracy; it's a whole bunch...” demonstrated Miles' significant lack of understanding; yet, the court simply moved on with its questions and did not point out Miles' errors or otherwise follow-up.

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<sup>8</sup> Iowa v. Tovar, 541 U.S. 77, 88 (2004).

<sup>9</sup> Hooks, 124 Nev. at 55–56, 176 P.3d at 1085 (internal quotation marks omitted); see Wayne v. State, 100 Nev. 582, 585, 691 P.2d 414, 416 (1984).

<sup>10</sup> Hooks, 124 Nev. at 54, 176 P.3d at 1085; see Sup. Ct. Rules 253(3)(g) (directing that court may inquire into “[defendant's] understanding of the possible penalties or punishments, and the total possible sentence the defendant could receive...”).

<sup>11</sup> See, e.g., United States v. Ziegler, 1 F.4th 219, 226 (4th Cir. 2021); United States v. Garey, 540 F.3d 1253, 1265–66 (11th Cir. 2008).

<sup>12</sup> Johnson v. Zerbst, 304 U.S. 458, 464 (1938); see United States v. Erskine, 355 F.3d 1161, 1167 (9th Cir. 2004).

<sup>13</sup> See Arrendondo v. Neven, 763 F.3d 1122, 1131 (9th Cir. 2014).

<sup>14</sup> *Id.*

<sup>15</sup> See Sup. Ct. Rules 253(3)(f).

A *Faretta* canvass is not meant to test defendants' legal knowledge simply for accuracy's sake because the *right* to represent oneself is separate from one's *ability* to represent oneself. However, when a defendant's responses indicate a serious lack of understanding, the trial court should follow up by, at the very least, pointing out the defendant's errors. For instance, the court could point out that errors of substantive law are but one disadvantage of self-representation.

Here, Miles did not accurately state the elements of sex trafficking when the trial court asked him. Instead of pointing out Miles' errors and following up, the trial court moved on. Though the court was under no obligation to explain to Miles the elements of the charged crimes, the court nonetheless should have recognized that Miles may not have appreciated the full disadvantages associated with self-representation.<sup>16</sup> Miles' clear lack of knowledge regarding the underlying sentence and elements of sex trafficking render his waiver of the right to counsel invalid. Because invalid waivers are not subject to harmless-error analysis, the Nevada Supreme Court reversed and remanded.

#### *The trial court should refrain from disparaging the defendant's choice to waive counsel*

Trial courts must be mindful of their tone when addressing defendants who seek to proceed pro se. The trial court's warning to Miles that self-representation was "a bonehead move..." and "...so dumb and so stupid..." were inappropriate and violated the judge's affirmative duty to "maintain...that restraint which is essential to the dignity of the court and to the assurance of impartiality."<sup>17</sup> The Nevada Code of Judicial Conduct specifically requires judges to be "patient, dignified, and courteous to litigants," and the *Faretta* canvass in this case failed to heed this requirement.<sup>18</sup> It is paramount to the exercise of a valid waiver that trial courts impress on defendants the serious risks associated with self-representation, but in doing so the courts must remain objective and respectful.

## **CONCLUSION**

All criminal defendants maintain the ability to waive their constitutional right to counsel. However, the trial court must establish through a *Faretta* canvass that the defendant's decision is made knowingly and voluntarily. There are no constitutionally required questions a trial court must ask defendants who seek to waive their right to counsel, but when defendants affirmatively convey that they do not understand the elements of the crimes charged or the potential sentences associated with the charges, the trial court should address this lack of understanding in some capacity. Here, at a minimum, the trial court should have pointed out Miles' errors and informed Miles that errors of this nature would disadvantage him at trial. Because the court failed to do so,

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<sup>16</sup> Cf. *Arajakis v. State*, 108 Nev. 976, 980, 843 P.2d 800, 802 (1992) (noting that *Faretta* "does not require the trial court to explain the elements of the charged offense...").

<sup>17</sup> *United States v. Allen*, 431 F.2d 712, 713 (9th Cir. 1970); see also *Holderer v. Aetna Cas. & Sur. Co.*, 114 Nev. 845, 850, 963 P.2d 459, 463 (1998); *Parodi v. Washoe Med. Ctr., Inc.*, 111 Nev. 365, 367, 892 P.2d 588, 589 (1995).

<sup>18</sup> *In re Disciplinary Proceeding Against Eiler*, 236 P.3d 873, 878–79 (Wash. 2010).

the waiver is invalid. Therefore, the Nevada Supreme Court reversed the judgment of conviction and remanded for proceedings consistent with its opinion.