

**IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA**

ANTONIO M. HALL,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

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)  
) NOT FOR PUBLICATION  
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) Case No. F-2013-845  
)  
)

FILED  
IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA  
JUL 24 2014

**SUMMARY OPINION**

MICHAEL S. RICHIE  
CLERK

**A. JOHNSON, JUDGE:**

Appellant Antonio M. Hall was tried by jury in the District Court of Mayes County, Case No. CF-2010-49, and convicted of Child Sexual Abuse, in violation of 21 O.S.Supp.2009, § 843.5(E). The jury set punishment at seven years and nine months imprisonment and a \$2,500.00 fine. The Honorable Terry H. McBride, District Judge, who presided at trial, sentenced Hall accordingly.<sup>1</sup> From this Judgment and Sentence Hall appeals claiming the trial court failed to conduct a proper inquiry under *Faretta v. California*,<sup>2</sup> prior to allowing him to proceed at trial *pro se*.

We find reversal is not required and affirm the Judgment and Sentence of the district court.

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<sup>1</sup> Under 21 O.S.Supp.2009, § 13.1, Hall must serve 85% of the sentence imposed before he is eligible for parole.

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

## DISCUSSION

Hall claims the trial court judge improperly granted his request to represent himself at trial. Specifically, Hall alleges the trial judge conducted an inadequate inquiry into whether his waiver of counsel was knowing and voluntary.

In *Faretta v. California*, 422 U.S. 806, 819-821, 95 S.Ct. 2525, 2533-2534, 45 LEd.2d 562 (1975), the United States Supreme Court held that under the Sixth Amendment to the United States Constitution, a defendant has the right to waive counsel and represent himself at trial. Before *Faretta*, this Court reviewed trial court decisions on self-representation requests for an abuse of discretion. See e.g., *Halbert v. State*, 1987 OK CR 57, ¶ 4, 735 P.2d 565, 566. After *Faretta*, however, we have held that a trial court has no discretion to deny a defendant's valid request to represent himself. See *Coleman v. State*, 1980 OK CR 75, ¶ 4, 617 P.2d 243, 245 (holding that trial court cannot force defendant to accept counsel if defendant elects to represent himself); *Parker v. State*, 1976 OK CR 293, ¶ 5, 556 P.2d 1298, 1300-1301 (overruling pre-*Faretta* cases holding that self-representation was discretionary). The scope of our review of a trial court's grant of a request for self-representation, therefore, is limited to a review of whether the defendant made a valid request to represent himself.

This Court has held that the validity of a request for self-representation is determined from "the total circumstances of each case." *Mathis v. State*,

2012 OK CR 1, ¶ 7, 271 P.3d 67, 72; *Fitzgerald v. State*, 1998 OK CR 68, ¶ 6, 972 P.2d 1157, 1162. The factors considered when making this determination are: (1) whether the defendant was competent to make the decision; (2) whether the request for self-representation was clear and unequivocal; and (3) whether the defendant “knowingly and intelligently” waived the benefits of counsel, after being informed of “the dangers and disadvantages of self-representation.” *Faretta*, 422 U.S. at 835, 95 S.Ct. at 2541; *Mathis*, 2012 OK CR 1, ¶ 7, 271 P.3d at 72; *Parker*, 1976 OK CR 293, ¶¶ 5–6, 556 P.2d at 1301; *Fitzgerald*, 1998 OK CR 68, ¶ 6, 972 P.2d at 1162.

Hall does not dispute his competence, nor does he dispute that the request was clear and unequivocal. Rather, he contends only that he did not knowingly and intelligently waive his right to counsel because the judge did not adequately inform him of the dangers and disadvantages of self-representation. We are not persuaded.

During the course of a lengthy colloquy with the trial judge, the judge warned Hall that his lack of legal expertise put his defense at risk and that by representing himself he could not claim ineffective assistance of counsel on appeal. Hall acknowledged understanding the risk in the following exchange with the judge:

THE COURT: All right. You also understand that if you screw this up and you end up getting a lot of time, you have no grounds for appeal for the performance of the attorney. In other words, you're going in knowing full well the consequences of your lack of legal knowledge and your lack of criminal procedure and

you waive that ground for appeal if you were to be convicted. Do you understand that?

THE DEFENDANT: I understand.

THE COURT: Okay. And that's what you want to do?

THE DEFENDANT: Yes, sir.

(Tr.Hrg. 04/13/11 at 4).

The trial judge further advised Hall that the rules of evidence and criminal procedure would apply and then asked Hall if he was familiar with the rules, to which Hall replied "not formally, but I think I can do it" (Tr.Hrg. 04/13/11 at 3). The judge then warned Hall that he could ask witnesses questions, but could not argue with them. Hall replied that he understood.

The trial judge also engaged Hall in a series of questions and answers about *voir dire* during which Hall explained his understanding of the process as one "to determine whether they're qualified to sit on the jury" (Tr.Hrg. 04/13/11 at 5). The judge then warned Hall about the limits of the defense he could raise by explaining:

I've been advised, although I have not seen, that there is an admission of guilt in this particular case. You understand that if this girl was under 18 and you were a member of the household and you had sexual relations with her, it doesn't matter if she agreed to it. Do you understand that?

(Tr.Hrg. 04/13/11 at 5). Even though Hall replied that he did not understand this limitation on his ability to raise the defense of consent because his attorney never satisfactorily explained it to him, his response after some

further discussion with the judge indicated that he understood the judge's explanation. The judge then warned, "[y]ou understand that, tomorrow when jury selection begins, that I will not be able to help you at all any more. You understand that?" (Tr.Hrg. 04/13/11 at 9). To which Hall stated he did.

The judge then engaged Hall in the following colloquy:

THE COURT: All right. Then I'm going to ask you, Mr. Hall, it's your intention, then, now, to waive your right to an attorney?

THE DEFENDANT: Yes.

THE COURT: Has anyone forced you or coerced you, mistreated you in any way to get you to waive your right to counsel?

THE DEFENDANT: No, sir.

THE COURT: Did anyone promise you anything to get you to waive it?

THE DEFENDANT: No, sir.

THE COURT: It's your own free and voluntary act?

THE DEFENDANT: Yes, sir.

THE COURT: I'm going to leave Mr. Berry on your case. He will operate as standby counsel should you have some questions you can ask of him. But he will not be allowed to participate in the trial. He's there only for your benefit for legal advice and that sort of thing.

THE DEFENDANT: That's fine.

THE COURT: You can't be co-counsel. You either represent yourself or you don't. So you'll be expected to conduct the whole trial, expected to go by the rules of the court. If there's an objection to one of your

questions, if I sustain it, you're to move on to the next question. And the same if I overrule it, go ahead and answer.

THE DEFENDANT: Right.

THE COURT: Just like you were schooled in the law. Okay?

THE DEFENDANT: Okay.

(Tr.Hrg. 04/13/11 at 9-10).

This record demonstrates that the trial judge conducted a thorough inquiry into Hall's knowledge of the dangers and disadvantages of self-representation sufficient to warn Hall that it was a risky endeavor and sufficient to demonstrate that Hall understood the risk. Hall's decision to waive counsel and proceed *pro se* was knowingly and intelligently made. The self-representation request was properly granted by the trial judge.

### **DECISION**

The Judgment and Sentence of the district court is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2014), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF MAYES COUNTY  
THE HONORABLE TERRY H. MCBRIDE, DISTRICT JUDGE

**APPEARANCES AT TRIAL**

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**OPINION BY: A. JOHNSON, J.**  
**LEWIS, P.J.: Concur**  
**SMITH, V.P.J.: Concur**  
**LUMPKIN, J.: Concur**  
**C. JOHNSON, J.: Concur**

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