

IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

JOHNNY ANTHONY GETTIS,

Appellant,

v.

CASE NO. 1D03-5350

STATE OF FLORIDA,

Appellee.

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Opinion filed February 14, 2005.

An appeal from the Circuit Court for Escambia County.  
Michael Jones, Judge.

Nancy A. Daniels, Public Defender; and M. Gene Stephens, Assistant Public  
Defender, Tallahassee, for Appellant.

Charlie Crist, Attorney General; and Thomas H. Duffy, Assistant Attorney  
General, Tallahassee, for Appellee.

BROWNING, J.

Appellant seeks review of his conviction and sentence for armed robbery with

a firearm, alleging that the trial court improperly conducted both a Nelson inquiry<sup>1</sup> and a Faretta<sup>2</sup> inquiry, and improperly restrained Appellant during final argument. We affirm as to the Nelson inquiry, and Appellant's restraint. See Kennedy v. State, 611 So. 2d 575 (Fla. 1<sup>st</sup> DCA 1992); Kearse v. State, 605 So. 2d 534, 536 (Fla. 1<sup>st</sup> DCA 1992). However, because the trial court discharged Appellant's attorney, relegating Appellant to pro se status without a proper waiver, we reverse and remand for a new trial.

At trial, Appellant repeatedly asked to discharge his counsel, stating that his family could hire counsel, and emphatically stating that he did not want to represent himself. The trial court would not allow a continuance for Appellant to secure counsel, but discharged his trial counsel without determining whether Appellant wished to proceed pro se or continue with his present counsel when faced with his inability to secure other counsel. This was error as, while a defendant has a right to pro se status, a proper waiver must be first secured from a defendant before a trial court can render to a defendant pro se status. See Fla. R. Crim. P. 3.111(d); Wilson v. State, 724 So. 2d 144 (Fla. 1<sup>st</sup> DCA 1998); Smith v. State, 444 So. 2d 542, 545

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<sup>1</sup> See Hardwick v. State, 521 So. 2d 1071 (Fla. 1988) (approving Nelson v. State, 274 So. 2d 256 (Fla. 4<sup>th</sup> DCA 1973)).

<sup>2</sup> Faretta v. California, 422 U.S. 806 (1975).

(Fla. 1<sup>st</sup> DCA 1984), overruled on other grounds by Hughes v. State, 701 So. 2d 378

(Fla. 1<sup>st</sup> DCA 1997). Here the trial court did not secure Appellant's waiver of his right to counsel and thereby erred, which necessitates Appellant's retrial.

Accordingly, we REVERSE and REMAND.

BARFIELD and WEBSTER, JJ., CONCUR.