

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING  
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

CALVIN FLOURNOY, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 STATE OF FLORIDA, )  
 )  
 Appellee. )  
\_\_\_\_\_ )

Case No. 2D09-4177

Opinion filed November 24, 2010.

Appeal from the Circuit Court for Pinellas  
County; Richard A. Luce, Judge.

James Marian Moorman, Public Defender,  
and Allyn M. Giambalvo, Assistant Public  
Defender, Bartow, for Appellant.

Bill McCollum, Attorney General,  
Tallahassee, and Sara Macks, Assistant  
Attorney General, Tampa, for Appellee.

CRENSHAW, Judge.

Calvin Flournoy appeals his judgment and sentences and argues that the trial court erred by denying his unequivocal request to represent himself without conducting an inquiry pursuant to Faretta v. California, 422 U.S. 806 (1975). The State contends that any Faretta inquiry would be futile because Flournoy failed to

demonstrate during the pendency of his trial that he had the ability to exercise the necessary restraint to represent himself. See, e.g., Indiana v. Edwards, 554 U.S. 164, 171 (2008) (recognizing Faretta and later cases "have made clear that the right of self-representation is not absolute"); see also Tennis v. State, 997 So. 2d 375, 378 (Fla. 2008) (acknowledging that in "certain instances a defendant may be precluded from exercising his or her right to proceed pro se after the trial court conducts a Faretta inquiry"). However, the seeming futility of a trial court's Faretta inquiry "does not eliminate the requirement that a hearing be held to enable the trial court to make the appropriate determination of whether a defendant can represent himself." Tennis, 997 So. 2d at 378-79. Flournoy's request for self-representation was unequivocal; consequently, the trial court's failure to hold a Faretta hearing resulted in per se reversible error, and our review is not amenable to a harmless error analysis. See Tennis, 997 So. 2d at 379; State v. Young, 626 So. 2d 655, 656-57 (Fla. 1993); Goldsmith v. State, 937 So. 2d 1253, 1257 (Fla. 2d DCA 2006). Accordingly, because the trial court failed to conduct any Faretta inquiry and because we are constrained by the language in Tennis, Young, and Goldsmith, we reverse Flournoy's judgment and sentences and remand for further proceedings.

Reversed and remanded.

CASANUEVA, C.J., and LaROSE, J., Concur.