

COPY

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

GROVER VANDURAN HAIRSTON

APPELLANT

FILED

V.

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NO. 2007-KA-1964-COA

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SUPREME COURT
COURT OF APPEALS**

STATE OF MISSISSIPPI

APPELLEE

BRIEF OF THE APPELLANT

ORAL ARGUMENT NOT REQUESTED

MISSISSIPPI OFFICE OF INDIGENT APPEALS

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APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of this court may evaluate possible disqualifications or recusal.


1. State of Mississippi
2. Grover Vanduran Hairston, Appellant
3. Honorable E.J. (Bilbo) Mitchell, District Attorney
4. Honorable Lester F. Williamson, Jr., Circuit Court Judge

This the 14th day of March, 2008.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY:


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APPELLEE

BRIEF OF THE APPELLANT

STATEMENT OF ISSUES

**ISSUE: WHETHER THE TRIAL COURT ERRED IN ALLOWING THE APPELLANT
TO PROCEED *PRO SE*.**

STATEMENT OF INCARCERATION

Grover Vanduran Hairston, the Appellant in this case, is presently incarcerated in the Mississippi Department of Corrections.

STATEMENT OF JURISDICTION

This honorable Court has jurisdiction of this case pursuant to *Article 6, Section 146 of the Mississippi Constitution* and *Miss. Code Ann. 99-35-101 (Supp. 2004)*.

STATEMENT OF THE CASE

This appeal proceeds from the Circuit Court of Lauderdale County, Mississippi, and a judgment of conviction for aggravated assault and being a felon in possession of a firearm against Grover Vanduran Hairston following a jury trial on October 1-2, 2007, honorable Lester F. Williamson Jr., Circuit Judge, presiding. Mr. Hairston was subsequently sentenced to twenty-three (23) years in the custody of the Mississippi Department of Corrections under **Miss. Code Ann. §**

FACTS

According to the testimony at trial, Grover Hairston (hereinafter “Mr. Hairston”) went to the home of Joyce Myuse (hereinafter “Ms. Myuse”), his ex-girlfriend, to pick up his property. (T. 161). Mr. Hairston then would not leave the house and tried to enter the home of Ms. Myuse. (T. 163). There was then a verbal encounter between Ms. Myuse and Mr. Hairston (T. 178). According to Ms. Myuse’s testimony, her nephew, Alonzo Myuse (hereinafter “Mr. Myuse”), went to investigate the encounter, and was shot by Mr. Hairston (T. 164).

When police arrived at the scene, they saw Mr. Hairston with a handgun in his possession on the front porch. (T. 121). The police demanded he put the weapon down, and Mr. Hairston immediately put his hands in the air, throwing the weapon on the ground. (T. 121). Mr. Hairston was then taken into custody. (T. 127). Mr. Hairston was subsequently indicted for aggravated assault and being a felon in possession of a firearm.

After being represented by trial counsel in several pre-trial motion hearings, Mr. Hairston, the day of trial, informed the trial court that he wished to proceed *pro se*. (T. 46). After informing Mr. Hairston of a few of the concerns with proceeding on his own, and over the strong disapproval by the State, the trial court allowed Mr. Hairston to proceed *pro se*. (T. 50). After a short recess, the trial against Mr. Hairston proceeded. After all the evidence was presented, the jury deliberated for approximately thirteen (13) minutes before returning a guilty verdict on both counts. (T. 238-240). Mr. Hairston was subsequently sentenced under Mississippi’s Habitual Sentencing Statute to twenty-three (23) years in the custody of the Mississippi Department of Corrections. (T. 264).

On October 24, 2007, the defendant filed a Motion for New Trial and J.N.O.V., claiming that the verdict was contrary to law and contrary to the overwhelming weight of the

evidence. (C.P. 62-63, R.E.13-14). Feeling aggrieved by the verdict of the jury and the sentence of the trial court, the Appellant timely filed a notice of appeal. (C.P. 16, R.E. 16).

SUMMARY OF THE ARGUMENT

The trial court erred when it allowed Mr. Hairston to proceed *pro se*. First, the trial court should have *sua sponte* ordered a competency hearing. Secondly, the trial court erred in improperly informing Mr. Hairston pursuant to **Uniform Rule of Circuit and County Practice 8.05**. The failure to properly notify Mr. Hairston of the consequences of proceeding *pro se* resulted in a deprivation of Mr. Hairston's fundamental right to a fair trial, warranting reversal and remand for a new trial.

ARGUMENT

ISSUE ONE: WHETHER THE TRIAL COURT ERRED IN ALLOWING THE APPELLANT TO PROCEED *PRO SE*.

i. Standard of Review

Trial courts must make a "case-by-case determination of a defendant's assertion of the right to proceed *pro se*." *Howard v. State*, 701 So. 2d 274, 281 (Miss. 1997) (citing *Metcalf v. State*, 629 So. 2d 558 (Miss. 1993)). An appellate court is to review the decision of a trial court allowing a defendant to act as his own attorney for abuse of discretion. *Metcalf*, 629 So. 2d at 566.

ii. The trial court should have sua sponte ordered a competency hearing for Mr. Hairston.

The Mississippi Supreme Court has addressed the trial court's obligation regarding competency, noting, "[e]ven where the issue of competency to stand trial has not been raised by defense counsel, the trial judge has an ongoing responsibility to prevent the trial of an accused unable to assist in his own defense." *Conner v. State*, 632 So. 2d 1239, 1248 (Miss. 1993), *overruled on other grounds by Weatherspoon v. State*, 732 So. 2d 158 (Miss. 1999). "The test for competency to stand trial is certainly a standard which must be met before a defendant can be said to be capable

of intelligently and knowingly waiving the right to counsel.” *Howard v. State*, 701 So. 2d 274, 280 (Miss. 1997)(citing *Conner*, 632 So. 2d at 1248); *See also Pate v. Robinson*, 383 U.S. 375, 384 (1966).

The test for competency to stand trial requires that a defendant be one:

“(1) who is able to perceive and understand the nature of the proceedings; (2) who is able to rationally communicate with his attorney about the case; (3) who is able to recall relevant facts; (4) who is able to testify in his own defense if appropriate; and (5) whose ability to satisfy the foregoing criteria is commensurate with the severity and complexity of the case.” *Conner*, 632 So. 2d at 1248.

Rule 9.06 of the Uniform Rules of Circuit and County Court Practice provides in relevant part,

“If before or during trial the court, of its own motion or upon motion of an attorney, has reasonable ground to believe that the defendant is incompetent to stand trial, the court shall order the defendant to submit to a mental examination by some competent psychiatrist selected by the court in accordance with § 99-13-11 of Mississippi Code Annotated of 1972.” **URCCC 9.06**

The Mississippi Supreme Court has held **Rule 4.08(1) of the Uniform Criminal Rules of Circuit Court Practice**, which was supplanted by Rule 9.06 of the **Uniform Rules of Circuit and County Court Practice**, “makes it clear the trial court’s obligation to order a competency hearing under certain circumstances.” *Howard*, 701 So. 2d at 280.¹

When reviewing a decision foregoing a competency hearing, Mississippi courts apply the following test: “Did the trial judge receive information which, objectively considered, should reasonably have raised a doubt about defendant’s competence and alerted him to the possibility that the defendant, could neither understand the proceedings, appreciate their significance, nor rationally aid his attorney in defense?” *Conner*, 623 So.2d at 1248 (citing *Lokos v. Capps*, 625 F.2d 1258,

¹ These two rules are identical in content and structure.

1261 (5th Cir. 1980)).

It is clear that Mr. Hairston did not understand the full nature of the proceedings against him. This is indicated by his inability to conceptualize the habitual sentencing enhancement which he was facing. During the bond reduction hearing, the following discourse took place...

BY THE DEFENDANT, MR. HAIRSTON: Yes, sir. Thank you. Well, Your Honor, all I want to say, Your Honor, is that on the indictment they indicted me as a habitual offender. And the statute says that habitual criminals have to serve two terms in the state – in the penal institution, two terms, not two consecutive sentences.

I went to prison on a consecutive sentence, sir. And I went there one term in the Mississippi State penal institution. I never went back again after I came out. Two terms mean I went before and came back again. This would be two-term situation if I was convicted – (T. 13, R.E. 17).

Then, after an explanation by the trial court that Mr. Hairston could be sentenced as a habitual offender, he proceeded to maintain that he could not be, which resulted in the State asking the court,

BY MS. HOWELL: It doesn't matter. He was sentenced on each case to a different sentence. I think that probably needs to be explained by the Court to him because he needs to realize he is facing this as an habitual offender. (T. 14, R.E. 18).

After having this explained to him, Mr. Hairston was still unable to comprehend that he could be sentenced as a habitual offender. After the motion to proceed *pro se*, Mr. Hairston said the following:

BY THE DEFENDANT, MR. HAIRSTON: I ain't been to prison twice, so there is a Part A and a Part B to that; I got the convictions but not the terms in prison. (T. 54, R.E. 19).

After being told repeatedly, Mr. Hairston still could not understand the nature of the habitual sentencing enhancement he was indicted under. This is clear evidence that Mr. Hairston was incapable of understanding fully the nature of the proceedings against him or the gravity of the

sentence that would be imposed upon him should he be found guilty.

Mr. Hairston's further lack of understanding of the nature of the proceedings against him is indicated in the first thing he said to the jury during his voir dire, "Well, I'm Grover Hairston. I have the task to prove myself innocent beyond a reasonable shadow of doubt." (T. 84, R.E. 23). Mr. Hairston's statement, while clearly erroneous, indicates more than a factual or surface-level procedural misunderstanding. Mr. Hairston clearly thought that he had to prove himself innocent. This misapprehension of the burden of proof indicates a lack of understanding of even the simplest of axioms in our criminal legal system - that all men are innocent until proven guilty"

There is further indication that Mr. Hairston could not appreciate the situation he was faced with at trial. Mr. Hairston's defense was that of self-defense. He presented to the jury that he was in fear of the harm that could have been caused to him, and that was his motivation. (T. 101). However, when it came to jury instructions, Mr. Hairston withdrew the self-defense jury instruction (C.P 49, R.E. 21-22) If jurors are to follow the instructions of the trial court, and Mr. Hairston admitted shooting the victim, but, at the same time, withdrew the instruction that would allow the jury to agree with him, the jury had no choice but to find Mr. Hairston guilty of the crime. It essentially served as a directed verdict for the State. Such inability to appreciate the legal process indicates a clear inability to perceive and appreciate the nature of the proceedings.

Furthermore, as shown in the voir dire examination by Mr. Hairston, the Appellant had suffered from a head injury. During his questioning of the jury, Mr. Hairston said the following, "I've had major brain surgery; I could not stand a hit to this side of head because my skull is soft on that side." (T. 84). This should have served as a red flag to the trial court regarding Mr. Hairston's competency and further indication that the trial court should have had strong concerns regarding whether or not Mr. Hairston was competent to stand trial.

iii. The trial court's Rule 8.05 examination was improper.

The United States Supreme Court has recognized that the Sixth Amendment of the United States Constitution grants each defendant a right to conduct his or her own defense, though that right is not absolute. *See, Farett v. California*, 422 U.S. 806 (1975). That right exists only when the waiver of counsel can be made in a knowing, intelligent, and voluntary manner. *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938).

These principles similarly exist in Mississippi state law. When a trial court is faced with a criminal defendant's waiver of counsel, when the defendant is charged with a felony, the court must make an on-the-record determination that the waiver is intelligently and competently made, and state the facts upon which that determination is made. *Conn v. State*, 170 So. 2d 20, 23 (1964). These jurisprudential requirements were embodied in **Uniform Rule of Circuit and County Practice Rule 8.05**.

Rule 8.05 Provides:

When the court learns that a defendant desires to act as his/her own attorney, the court shall on the record conduct an examination of the defendant to determine if the defendant knowingly and voluntarily desires to act as his/her own attorney. The court shall inform the defendant that:

1. The defendant has a right to an attorney, and if the defendant cannot afford an attorney, the state will appoint one free of charge to the defendant to defend or assist the defendant in his/her defense.
2. The defendant has the right to conduct the defense and that the defendant may elect to conduct the defense and allow whatever role (s)he desires to his/her attorney.
3. The court will not relax or disregard the rules of evidence, procedure or courtroom protocol for the defendant and that the defendant will be bound by and have to conduct himself/herself within the same rules as an attorney, that these rules are not simple and that without legal advice his/her ability to defend himself/herself

know what to do and how to properly defend yourself. I know you are an exceptionally smart individual, but it is, you know, a situation where being smart is not as valuable as being experienced many times. It may be that it is in this case the right thing for you to do. (T. 47)(emphasis added).

Rule 8.05 does not exist in an advisory capacity. The enumerated requirements are intended to provide the criminal defendant with the complete understanding of the consequences of proceeding *pro se*.

Failure of the trial court to adequately inform Mr. Hairston that proceeding *pro se* increases a substantial likelihood of an adverse outcome was highly prejudicial. Furthermore, there is no merit in any argument that the trial court's warnings or the prosecutor's opposing of Mr. Hairston's proceeding *pro se* constitute an adequate notification of an increase in the likelihood of an unfavorable outcome under Rule 8.05. A criminal defendant should not be asked to infer from the comments of the trial court and the State, the consequences of his or her decisions.

iv. Conclusion

The trial court erred when it did not order a competency hearing for Mr. Hairston. The trial court further erred when it improperly informed Mr. Hairston pursuant to Mississippi Rule of Circuit and County Practice 8.05. The result of these errors was to deprive Mr. Hairston of his fundamental right to a fair trial. For the above reasons, this honorable Court should reverse Mr. Hairston's conviction and remand for a new trial that is congruous with the requirements of the law.

CONCLUSION

The Appellant herein submits that based on the propositions cited and briefed hereinabove, together with any plain error noticed by the Court which has not been specifically raised, the judgment of the trial court and the Appellant's conviction and sentence should be reversed and vacated, respectively, and the matter remanded to the lower court for a new trial on the merits of the

indictment on charges of aggravated assault and being a felon in possession of a firearm, with instructions to the lower court. In the alternative, the Appellant herein would submit that the judgment of the trial court and the conviction and sentence as aforesaid should be vacated, this matter rendered, and the Appellant discharged from custody, as set out hereinabove. The Appellant further states to the Court that the error as cited hereinabove is fundamental in nature, and, therefore, cannot be harmless.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Justin T Cook, Counsel for Grover Vanduran Hairston, do hereby certify that I have this day caused to be mailed via United States Postal Service, First Class postage prepaid, a true and correct copy of the above and foregoing **BRIEF OF THE APPELLANT** to the following:

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Honorable E.J. (Bilbo) Mitchell
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This the 14th day of March, 2008.


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