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NO. 60127-0-1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

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STATE OF WASHINGTON,

Respondent,

v.

JESUS GONZALEZ QUEZADA,

Appellant.

---

ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR KING COUNTY

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APPELLANT'S REPLY BRIEF

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A. ARGUMENT

THE TRIAL COURT VIOLATED MR. GONZALEZ'S  
CONSTITUTIONAL RIGHT TO REPRESENT HIMSELF  
WHEN IT DENIED HIS TIMELY, UNEQUIVOCAL  
REQUEST TO PROCEED PRO SE.

In his opening brief, Jesus Gonzalez Quezada argued that his conviction must be reversed and his case remanded for a new trial because his constitutional right to self-representation was violated. Mr. Gonzalez moved to proceed pro se four times, and even the last request was over a month before trial. Thus, it was timely.

The request was also unequivocal. After his third request, he agreed to try new counsel instead, but cautioned, "we can try, and if it doesn't work then I will represent myself." CP 113. After one week, Mr. Gonzalez informed the court that he tried new counsel it did not work. He said, "I have rights so I want my right to [proceed] pro se." The court denied the motion on the improper basis that Mr. Gonzalez would likely "put on an ineffective defense." CP 126.

In response, the State first argues that the error is "moot" because on the day of trial (August 30, 2006), Mr. Gonzalez did not make a fifth motion to proceed pro se and instead agreed to

proceed with counsel. Resp. Br. at 8. This argument is foreclosed by the Supreme Court's decision in State v. Madsen, 168 Wn.2d 496, 507, 229 P.3d 714 (2010).

In Madsen, the defendant moved to proceed pro se three times, and the motions were denied. The day after the third denial, the court gave Mr. Madsen another opportunity, and "again asked if Madsen wished to represent himself." Id. at 502. Mr. Madsen refused to answer, and was very disruptive in the courtroom. Id. The State sought to justify the denial of Mr. Madsen's earlier motion to proceed pro se on the basis of these subsequent events. The Supreme Court rejected the argument:

There is no requirement that a request to proceed pro se be made at every opportunity. Further, a trial court's finding of equivocation may not be justified by referencing future events then unknown to the trial court. Such prophetic vision is impossible for the trial court.

Id. at 507. The Court explained that to adopt such an argument is to "succumb[] to the historian's fallacy by relying on then-future events to justify the trial court's denial of [the defendant's] request." Id. at 507 n.3.

In sum, the State may not rely on the then-future event of Mr. Gonzalez accepting counsel the day of trial to justify the denial

of the motion to proceed pro se a month earlier. See id. The propriety of the trial court's denial of the July 28, 2006 motion to proceed pro se must be viewed from the perspective of the facts before the court on July 28. From this perspective it is clear that the denial of the motion was improper.

The State argues, however, that Mr. Gonzalez's request was equivocal because it was "inextricably conflated with his expression of frustration with his counsel and the delay of trial." Resp. Br. at 14. Again, the State's argument was rejected in Madsen. There, in addition to raising the argument discussed above, the State argued that the motion to proceed pro se was equivocal because coupled with an alternative remedy to fire counsel. Madsen, 168 Wn.2d at 507. The Supreme Court ruled, "The argument that Madsen's request was equivocal because it was coupled with an alternative request is fallacious and ignores this court's precedent." Id. "[A]n unequivocal request to proceed pro se is valid even if combined with an alternative request for new counsel." Id.

Earlier cases are in accord. See, e.g., State v. Barker, 75 Wn. App. 236, 238, 881 P.2d 1051 (1994) (conviction reversed for improper denial of request to proceed pro se, even though defendant's first choice was appointment of new counsel); State v.

DeWeese, 117 Wn.2d 369, 372, 816 P.2d 1 (1991) (grant of request to proceed pro se affirmed even though defendant's first choice was appointment of new counsel). Even a defendant's "remarks that he had no choice but to represent himself rather than remain with appointed counsel, and his claims on the record that he was forced to represent himself at trial, do not amount to equivocation or taint the validity of his Faretta waiver." DeWeese, 117 Wn.2d at 378.

This Court's recent decision in Paumier also forecloses the State's argument. State v. Paumier, \_\_\_ Wn. App. \_\_\_ 230 P.3d 212 (2010). There, the defendant moved to proceed pro se and expressed frustration with his counsel:

I just don't feel like a – I feel like there's things about the trial getting this far that it shouldn't have. And I feel that my attorney should have spoke up for me instead of getting pissed off at me in court. And I just don't feel like he's doing his job like he should. I don't feel it should have gotten this far, and I'd just rather present my, you know, case myself.

Paumier, 230 P.3d at 214. This Court ruled that the above request to proceed pro se was unequivocal. Id. at 220. This Court also ruled that the request was timely, even though it was made the day of trial. Id. The Court therefore reversed for improper denial of the right to proceed pro se. Id.

If the request to proceed pro se in Paumier was timely and unequivocal, Mr. Gonzalez's request certainly was. Because Mr. Gonzalez's July 28, 2006 request to proceed pro se was timely and unequivocal, it should have been granted as a matter of law. Barker, 75 Wn. App. at 241. This Court should reverse Mr. Gonzalez's conviction and remand for a new trial.

B. CONCLUSION

For the reasons set forth above and in his opening brief, this Court should reverse Mr. Gonzalez's conviction and remand for a new trial.

DATED this 21st day of July, 2010.

Respectfully submitted,



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Attorneys for Appellant

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 21<sup>ST</sup> DAY OF JULY, 2010, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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**SIGNED** IN SEATTLE, WASHINGTON THIS 21<sup>ST</sup> DAY OF JULY, 2010.

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