



In IN THE SUPREME COURT OF THE STATE OF DELAWARE

VINCENT STALLINGS, :
 :
 :
 Defendant-Below, : **No. 449, 2018**
 Appellant, :
 :
 Court Below: Superior Court of the
 v. : **State of Delaware in and for New**
 : **Castle County**
 :
 STATE OF DELAWARE, :
 Plaintiff-Below, : **Case Below No. 1209008698A**
 Appellee. :
 :

APPELLANT’S REPLY BRIEF

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ARGUMENT I. THE STATE’S ANSWERING BRIEF IS FACTUALLY AND LEGALLY INACCURATE IN RELATION TO MR. STALLINGS’ POSTCONVICTION CLAIM OF TRIAL COURT ERROR.

A. The applicable standard of review is *de novo*.

In response to Mr. Stallings’ first claim, the State asserts that the applicable standard of review is abuse of discretion.¹ However, as noted in Mr. Stallings’ Opening Brief,² this Court reviews questions of law³ and claims of a constitutional violation⁴ *de novo*. As Mr. Stallings alleges a violation of his right to due process pursuant to the Fourteenth Amendment of the United States Constitution and Article I, § 7 of the Delaware Constitution,⁵ *de novo* is the appropriate standard of review.

B. Mr. Stallings’ claim of trial court error is not procedurally barred.

The State argues the Superior Court correctly found Mr. Stallings’ claim of trial court error to be procedurally barred but relies on inaccurate factual assertions that are refuted by the record.

¹ State’s December 26, 2018 Answering Brief at 3,7 (hereinafter cited “Answer at _”).

² Mr. Stallings’ November 26, 2018 Opening Brief at 10 (hereinafter cited “Opening at _”).

³ *Dawson v. State*, 673 A.2d 1186, 1190 (Del. 1996).

⁴ *Hall v. State*, 788 A.2d 118, 123 (Del. 2001).

⁵ Opening at 16-18 (citing *Boykin v. Alabama*, 395 U.S. 238, 242 (1969); *Brady v. United States*, 397 U.S. 742, 748 n.6 (1970); *Henderson v. Morgan*, 426 U.S. 637, 650 (1976); *Moore v. Hall*, 62 A.3d 1203, 1208 (Del. 2013)); U.S. Const. amend. XIV; Del. Const. art. I, § 7.

The State asserts the court did not abuse its discretion in finding Mr. Stallings' claim of procedural defects with the plea process to be barred under Rule 61(i)(3),⁶ as Mr. Stallings failed to raise it on direct appeal. (Answer at 3, 8). As such, the State asserts that Mr. Stallings must show that an "external impediment" prevented him from raising the claim earlier and that Mr. Stallings "has failed to do so." (Answer at 8). The State's argument is based on two mistaken conclusions: 1) that defense counsels' ineffectiveness "was the only argument Stallings advanced in support of his contention that was cause for relief from his procedural defaults"; and 2) that the Superior Court correctly found defense counsel were not ineffective. (Answer at 9, 10).

The State alleges that Mr. Stallings only now raises "newly minted causes for his procedural default" so as to argue that the court erroneously concluded he had advanced only ineffective assistance of counsel as his cause for relief. (Answer at 10). This is plainly refuted by the record. As explained in the Opening Brief, Mr. Stallings was impeded in his ability to raise issues on direct appeal by defense counsels' continued representation of him, which directly stemmed from the trial court's error in failing to hold the requisite *Faretta*⁷ hearing on his request to self-represent.

⁶ Del. Super. Ct. Crim. R. 61(i)(3).

⁷ *Faretta v. California*, 422 U. S. 806 (1975).

(Opening at 11). Mr. Stallings' Opening Brief clearly cited to the pages of the Amended Motion in which this claim was first asserted. (Opening at 11 (citing A277-278)). Furthermore, this issue was also raised in Mr. Stallings' Reply Brief. (A357).

Additionally, Mr. Stallings explained in the Opening Brief that he was further impeded in his ability to raise issues with the plea agreement and colloquy on appeal, because it was defense counsel, not he, who was in the best position to identify any errors that occurred in the plea process. (Opening at 11-13). Likewise, it was defense counsel, not he, who had access to the entire file and who was obligated to diligently review the record for any arguably appealable issues. Mr. Stallings could do no more than rely on the information provided to him by defense counsel.

As such, Mr. Stallings could not have argued on direct appeal that the plea was unknowingly and unintelligently entered when he was not privy to the information known only to defense counsel, and later postconviction counsel, that rendered the plea unknowing and unintelligent.⁸ Mr. Stallings' Opening Brief clearly cited to the pages of the Reply Brief in which this issue was discussed. (Opening at 11-12 (citing A355-357)). Moreover, this argument was first presented in the Amended Motion. (A275-276).

In light of the aforementioned, the State's Answering Brief is inaccurate and

⁸ See *infra* Claim I at 4-8 and Claim II at 11-16, 18.

unpersuasive in response to Mr. Stallings' argument that the Superior Court erroneously found his claim procedurally barred.

C. The State's Answering Brief relies on inaccurate factual and legal conclusions to deny the merits of Mr. Stallings' claim.

The State also alleges that regardless of the procedural bar, the court correctly determined Mr. Stallings' plea was entered knowingly and intelligently. (Answer at 3). However, the State's argument begins with a mistaken characterization of Mr. Stallings' claim and is followed by several erroneous facts pertaining to key issues.

The Answering Brief describes Mr. Stallings' claim as alleging his plea was not entered knowingly and intelligently, because defense counsel ineffectively failed to identify and correct the "serious procedural defect" with the plea. (Answer at 7, 11). As explained in the Opening Brief, the Superior Court, in denying Mr. Stallings' claim, confused Claims I and II of Mr. Stallings' Amended Motion, and the State follows suit in response to Mr. Stallings' Opening Brief. (Opening at 14).

As his first postconviction claim, Mr. Stallings alleged that the Superior Court erroneously accepted a plea that was procedurally deficient, rendering the plea unknowing and unintelligent.⁹ As his second postconviction claim, Mr. Stallings

⁹ Opening at 14-18; A280-287; *see Boykin*, 395 U.S. at 242 (finding it erroneous to accept a defendant's guilty plea in the absence of an "affirmative showing that it was intelligent and voluntary").

alleged that defense counsel rendered ineffective assistance of counsel throughout the proceedings leading up to and including the taking of the plea, raising several instances of deficient performance only one of which involved the plea. (Opening at 19-35; A288-320). As a result of the cumulative ineffectiveness, Mr. Stallings was deprived of critical information necessary for him to knowingly and intelligently enter into a plea, and but for defense counsels' ineffectiveness, Mr. Stallings would have proceeded to trial. (*Id.*). Because the State confuses these two distinct claims, the Answering Brief is unresponsive to Mr. Stallings' claim that the Superior Court erroneously denied his claim of trial court error.

Additionally, the State asserts that Mr. Stallings entered the plea knowingly and intelligently because the procedural defect was no more than a "clerical error" that would not have impacted his ability to understand the charges to which he was pleading guilty. (Answer at 11, 15). However, the State's own analysis demonstrates that the error was much more significant.

The Answering Brief lists the charges reflected on Mr. Stallings' plea agreement form, as well as those discussed during the colloquy. (Answer at 11-13). The State's recitation of these charges shows that according to the plea agreement, Mr. Stallings was pleading guilty to Count VII, Possession of a Firearm During the Commission of a Felony ("PFDCF") that occurred on September 12, 2012 (i.e. the 7-11 robbery and

homicide which necessarily involved the victim Mohammed Ullah), but during the plea colloquy, Mr. Stallings engaged in a colloquy with the court on Count XII, PFDCF that occurred on April 1, 2012 involving victim Tamika Wilson. (Answer at 13-14). The State further notes that despite the colloquy reflecting “the court’s reading of Count XII, which charged Stallings with PFDCF during the robbery of Tamika Wilson,” the court sentenced Mr. Stallings for Count VII, PFDCF that occurred on September 12, 2012. (Answer at 14).

It is unclear how the State concludes that these facts refute Mr. Stallings’ claim of a serious procedural defect, as the State acknowledges that Mr. Stallings pleaded guilty to Count XII in open court but was convicted of and sentenced for Count VII. These crimes occurred on separate dates and involved separate victims. The law is clear that before a guilty plea can be accepted, the court must engage in a discussion with the defendant in open court to inform him of and ascertain that he understands the nature of the charge to which he is pleading guilty.¹⁰ By the State’s own admission, this did not occur, and the court never determined that Mr. Stallings

¹⁰ Del. Super. Ct. Crim. R. 11(c) (directing that a guilty plea shall not be accepted by the court unless the defendant “understands the nature of the charge”); *Patterson v. State*, 684 A.2d 1234, 1237-38 (Del. 1996) (requiring that the court personally address the defendant in open court and “inform [him] of and determine that [he] understands . . . the nature of the charge to which the plea is offered” prior to accepting a guilty plea).

understood and pleaded guilty to the charge for which he was ultimately convicted and sentence.

Rather than addressing the legal authority cited in Mr. Stallings' Opening Brief,¹¹ the State simply contends that because the sentencing range was not altered, the error was not a serious procedural defect. (Answer at 13-14). Yet the State fails to acknowledge that if only a properly written plea agreement *or* an open court colloquy were required to convict and sentence an individual, the law would not demand otherwise.

Additionally, the State argues that "any claimed confusion over the PFDCF charge to which Stallings would be pleading guilty was eliminated by the Superior Court's colloquy and clear recitation of the PFDCF charge." (Answer at 15). Yet the State already acknowledged that the Superior Court's colloquy and recitation of the PFDCF charge was for an April 2012 offense, and Mr. Stallings was convicted, sentenced and signed a plea agreement for a September 2012 offense. (Answer at 13). The State's argument demonstrates continued confusion over the charges to which Mr.

¹¹ Opening at 15-18 (citing Del. Super. Ct. Crim. R. 11(c); *Patterson*, 684 A.2d at 1237-39; *Boykin*, 395 U.S. at 242; *Brady*, 397 U.S. at 748 n.6; *Henderson*, 426 U.S. at 650; *Jamison v. Klem*, 544 F.3d 266, 274 (3d Cir. 2008); *United States v. Schweitzer*, 454 F.3d 197, 202 (3d Cir. 2006); *Heiser v. Ryan*, 951 F.2d 559, 561 (3d Cir. 1991); *United States v. Ward*, 518 F.3d 75, 81, n.8 (1st Cir. 2008)).

Stallings actually pleaded guilty. Given the State's continued confusion of the charges at this late stage of the proceedings, the Answering Brief's contention that Mr. Stallings could not possibly have been confused at the time the plea was taken is unconvincing. (Answer at 14-15).

ARGUMENT II. THE STATE’S ANSWERING BRIEF IS FACTUALLY AND LEGALLY INACCURATE IN RELATION TO MR. STALLINGS’ POSTCONVICTION CLAIM OF INEFFECTIVE ASSISTANCE OF DEFENSE COUNSEL.

A. The applicable standard of review is *de novo*.

In response to Mr. Stallings’ second claim, the State asserts that the applicable standard of review is abuse of discretion. (Answer at 3, 16). However, as noted in Mr. Stallings’ Opening Brief,¹² this Court reviews questions of law¹³ and claims of a constitutional violation¹⁴ *de novo*. As Mr. Stallings alleges a violation of his right to the effective assistance of counsel pursuant to the Sixth Amendment of the United States Constitution and Article 1, § 7 of the Delaware Constitution,¹⁵ thereby rendering his guilty plea unknowing and unintelligent, *de novo* is the appropriate standard of review. (Opening at 34-35).

B. Defense counsel were ineffective in regard to Mr. Stallings’ plea.

The State maintains that the Superior Court correctly determined defense counsel were not ineffective in regard to Mr. Stallings’ guilty plea. (Answer at 17-18). However, the State’s Answering Brief provides nothing in rebuttal other than a re-argument of Claim I. The State reasserts that the error was not a serious procedural

¹² Opening at 19.

¹³ *Dawson*, 673 A.2d at 1190.

¹⁴ *Hall*, 788 A.2d at 123.

¹⁵ U.S. Const. amend. VI; Del. Const. art. I, § 7.

defect but simply a clerical error, contends that defense counsel were not objectively unreasonable in failing to address a “nonexistent procedural defect”, and reasserts that Mr. Stallings was aware of what he was pleading guilty to. (Answer at 17-19). However, for all of the reasons articulated in Claim I,¹⁶ the State’s responding answer is factually and legally inaccurate.

Moreover, the State alleges that Mr. Stallings cannot establish prejudice, because he cannot demonstrate that he would otherwise have proceeded to trial. (Answer at 19). Yet as Mr. Stallings already explained,¹⁷ it is the cumulative ineffectiveness of defense counsel that prejudiced him by inducing him to enter into a plea without full knowledge of the facts and circumstances of his case. As Mr. Stallings’ Opening Brief clearly explained, even if Mr. Stallings’ individual claims of ineffectiveness are not sufficiently prejudicial under *Strickland*,¹⁸ at the very least, the totality of defense counsels’ objectively unreasonable actions resulted in Mr. Stallings receiving uninformed advice from counsel on whether he should plead guilty. (Opening at 34-35). If Mr. Stallings had been aware of the information defense counsel failed to disclose to him and/or the information defense counsel should reasonably have uncovered, the record confirms that he would have elected to proceed

¹⁶ *See supra* Claim I at 5-8.

¹⁷ *See supra* Claim I at 4-5; Opening at 21, 34-35.

¹⁸ *Strickland v. Washington*, 466 U.S. 668 (1984)

to trial. (Opening at 35 (citing A318-320)).

The State's continued mischaracterization of Mr. Stallings' plainly articulated argument shows that both the Superior Court and State failed to properly consider Mr. Stallings' claim before erroneously deeming it to be without merit.

C. The State's Answering Brief is factually inaccurate in regard to defense counsels' failure to investigate pertinent cell phone records.

The State alleges that "Stallings' argument is without merit and largely disregards the overwhelming evidence of his guilt" and that defense counsels' actions were the result of a reasonable strategic decision. (Answer at 3, 19-20). Such assertions are unsupported by the record.

As an initial matter, the State contends that the "overwhelming" nature of the evidence against Mr. Stallings is a clear repudiation of his claim but overlooks that Mr. Stallings has raised a claim of ineffective assistance counsel, not actual innocence. As such, the State's personal assessment of the strength of its evidence against Mr. Stallings has little to no bearing on whether he would have elected to proceed to trial but for defense counsels' ineffectiveness. Mr. Stallings pleaded guilty on the basis of defense counsels' uninformed advice¹⁹ that he had no real defense strategy for trial.

¹⁹ *MacDonald v. State*, 778 A.2d 1064, 1075 (Del. 2001) (holding that a defendant has a Sixth Amendment right to "informed advice after 'appropriate investigation'").

(Opening at 26 (A181, 196, 208-12)). As such, defense counsels' unreasonable failure to pursue an avenue of investigation that would have overcome this alleged hurdle undoubtedly demonstrates prejudice.²⁰

Moreover, both the Superior Court and the State have consistently failed to address the cell phone evidence supplied by Mr. Stallings and which was provided to defense counsel far in advance of Mr. Stallings' guilty plea. The State simply describes the evidence as "pure conjecture" but has never once disputed the evidence itself. (Answer at 21). The State asserts throughout the entirety of the Answering Brief that Mr. Stallings has either failed to articulate concrete allegations of prejudice or failed to provide the necessary support for his allegations of prejudice. Yet in the Amended Motion alone Mr. Stallings dedicated ten pages to explaining in detail each piece of evidence found in the cell phone records that greatly undermines the State's claim that its evidence "convincingly demonstrated his guilt." (Answer at 21; Opening at 23-26; A294-303).

As the State has never disputed the cell phone evidence provided by Mr. Stallings, the State apparently concedes its accuracy. The State's contention that the

²⁰ See *Jacobs v. Horn*, 395 F.3d 92, 102 (3d Cir. 2005) (quoting *Wiggins v. Smith*, 539 U.S. 510, 522-23 (2003) ("In the context of ineffective assistance based on counsel's failure to investigate, the court must determine whether counsel exercised 'reasonable professional judgment.'").

Superior Court did not abuse its discretion in denying Mr. Stallings' claim when it has yet to examine the evidence or offer any concrete rebuttal to it is unpersuasive. Likewise, without fully examining and considering the cell phone evidence, any claim of which is absent from the court's opinion, the Superior Court erroneously denied Mr. Stallings' claim.

Regarding the purported strategy behind defense counsels' failure to investigate the cell phone data, which would have significantly buttressed an alibi defense, the State relies on the Superior Court's unsupported factual conclusion that defense counsel made a strategic decision to not pursue an alibi defense based on the alleged failure of Mr. Stallings' fiancé to cooperate. (Answer at 20). The State similarly refers to defense counsels' affidavit in support of this conclusion. (Answer at 20-21). However, as Mr. Stallings explained in the Opening Brief,²¹ and the Answering Brief fails to address, defense counsels' after-the-fact assertions made in the affidavit are belied by the record made at the time of Mr. Stallings' guilty plea and four days before trial was to begin. Defense counsel expressly stated on record that at trial, they were going to use Mr. Stallings' fiancé as an alibi defense, as well as present the mixed DNA found on the black mask alleged to have been worn by Mr. Stallings. (A168-169).

²¹ Opening at 21-22 (citing A168-169; *see also* A365 n. 46; A404)).

As Mr. Stallings explained in the Opening Brief, the factual findings made by the court are in direct conflict with the factual record. (Opening at 21-22). The court's opinion contains no indication that the court considered these significant, glaring contradictions in the record, and even in the event the court did consider them, the court's opinion offers no explanation of how the court determined which of defense counsels' conflicting statements were credible and worthy of reliance. Despite Mr. Stallings making this clear in the Opening Brief, the Answering Brief ignores this issue entirely. Because the State's defense of the Superior Court's decision is wholly premised on an erroneous factual conclusion, the State's argument is unpersuasive. (Opening at 21-22).

D. The State's Answering Brief is unresponsive to Mr. Stallings' claim of ineffectiveness regarding the 7-11 surveillance video.

The State alleges Mr. Stallings' claim is without merit, because any challenge to the authenticity of the video would have been unsuccessful. (Answer at 23-24). Thus, the State alleges defense counsels' actions in relation to the video do not constitute ineffectiveness. However, the Answering Brief simply reaffirms the decision of the Superior Court without addressing Mr. Stallings' analysis in the Opening Brief. (Opening at 28-31).

Although the State claims there was no basis for a "successful challenge to the authenticity of the surveillance tape under Rule 901", the requirements of D.R.E. 901

establishe otherwise. (Answer at 24). As Mr. Stallings' explained, under D.R.E. 901, the proponent, in this case the State, "carries the burden of 'authenticating the evidence by eliminating the possibility of misidentification or adulteration as a matter of reasonable probability.'"²² (Opening at 30-31). One way to meet this burden is "by having a witness with knowledge visually identify the evidence" or alternatively, "by establishing a chain of custody that traces the evidence's continuous whereabouts, thereby demonstrating the identify and integrity of the evidence."²³ The State was required to produce the original recording,²⁴ or a duplicate "unless a genuine question is raised about the original's authenticity. . . ."²⁵

The expert's determination that the video was not the original and had been tampered with, intentionally or unintentionally, undoubtedly raises a genuine question of the video's authenticity. Additionally, police reports and testimony from the proof positive hearing demonstrate law enforcement's confusion as to what exactly had been done to the video and by whom. (A66, 112, 115-118). As such, there was a genuine basis for successfully challenging the authenticity of the video, and defense counsels' failure to pursue the issue after obtaining only rudimentary knowledge of the matter

²² D.R.E. 901; *Randall v. State*, 2006 WL 2434912, at *4 (Del. 2006).

²³ *Id.*

²⁴ D.R.E. § 1002.

²⁵ D.R.E. § 1003.

was objectively unreasonable.

In light of the aforementioned, the State offers no evidence or case law that would demonstrate it was objectively reasonable for defense counsel to prematurely abandon a legitimate avenue for excluding a key piece of the State's evidence.²⁶ As such, the Answering Brief fails to support the Superior Court's finding that Mr. Stallings' claim of ineffectiveness is without merit.

E. Defense counsel failed to properly respond to the untimely re-indictment.

The State argues that Mr. Stallings only challenges the Superior Court's reading of the record instead of providing legal support for the claim. (Answer at 25). However, as explained in the Opening Brief, the court's entire premise for denying Mr. Stallings' claim is the mistaken assumption that defense counsel decided to move for severance of the additional charges rather than dismissal under Rule 48.²⁷ (Opening at 32). The record plainly refutes this assumption. (Opening at 32-33 (citing A136-138, 144-145)). As such, the court erroneously denied Mr. Stallings' claim by making erroneous factual assumptions unsupported by the record, which in

²⁶ The State's additional argument that Mr. Stallings "is unable to demonstrate what exactly the expert would have opined . . ." is unpersuasive, as Mr. Stallings' inability to provide more specificity is due to the State's inability to produce a copy of the original unaltered video. (Answer at 24).

²⁷ Del. Super. Ct. Crim. R. 48(b).

turn prevented the court from properly considering Mr. Stallings' claim.

The Answering Brief also alleges facts disproved by the record. First, the State argues that the re-indictment was delayed because it was the result of the continuing investigation. (Answer at 26). This is incorrect. The April 2012 offenses prompting the re-indictment were known to law enforcement as early as September 12, 2012, the day before Mr. Stallings' arrest. (DE26, 36; A67-72, 114). Secondly, the State asserts that the re-indictment did not impair Mr. Stallings' defense. (Answer at 27). However, Mr. Stallings specifically directed the court and State to areas of the record demonstrating otherwise. (A313-315, 345).

The Answering Brief fails to show that the Superior Court's reading of the record was accurate and does not establish that Mr. Stallings' claim is without merit.

F. The Superior Court erroneously failed to consider Mr. Stallings' cumulative prejudice claim.

The State alleges that because the Superior Court correctly found each of Mr. Stallings' ineffective assistance of counsel claims to be without merit, Mr. Stallings' claim of cumulative prejudice fails. (Answer at 28). However, for the aforementioned reasons,²⁸ Mr. Stallings has demonstrated that each of his ineffectiveness claims are meritorious.

²⁸ *See supra* Claim II at 9-17.

Moreover, as Mr. Stallings explained in the Opening Brief, the Superior Court erroneously considered each of the ineffective assistance of counsel claims individually, for both deficient performance and prejudice. (Opening at 34-35). The Superior Court never considered whether the accumulation of defense counsels' objectively unreasonable actions and non-actions, leading up to and including the entry of the plea, provided Mr. Stallings with uninformed advice on whether to waive his constitutional right to trial, causing him to unknowingly and unintelligently enter a guilty plea.²⁹ Because Mr. Stallings' decision to plead guilty was wholly based on defense counsels' erroneous assessment of the evidence against him and defense strategies available, and this erroneous assessment was the result of defense counsels' objectively unreasonable actions, Mr. Stallings has shown that he would have proceeded to trial but for defense counsels' ineffectiveness.

²⁹ See *Patterson*, 684 A.2d at 1239 (holding that the cumulative impact of errors or deficiencies can render a plea unknowing or involuntary).

ARGUMENT III. THE STATE’S ANSWERING BRIEF IS FACTUALLY AND LEGALLY INACCURATE IN RELATION TO MR. STALLINGS’ POSTCONVICTION CLAIM THAT HIS SIXTH AMENDMENT RIGHT TO SELF-REPRESENT WAS VIOLATED.

A. The appropriate standard of review is *de novo*.

The State asserts that the applicable standard of review is abuse of discretion. (Answer at 3, 29). As noted in Mr. Stallings’ Opening Brief,³⁰ this Court reviews questions of law and claims of constitutional violation *de novo*³¹. Because Mr. Stallings alleges that his rights to self-represent and to the effective assistance counsel under the Sixth Amendment of the United States Constitution and Article 1, § 7 of the Delaware Constitution³² were violated, *de novo* is the appropriate standard of review. (Opening at 43).

B. Mr. Stallings’ claim is not procedurally barred.

The State contends that Mr. Stallings’ claim regarding self-representation is procedurally barred for failure to raise it on direct appeal and that because defense counsel were not ineffective, Mr. Stallings has failed to establish cause for his procedural default. (Answer at 3, 31). However, for the reasons outlined below,³³ defense counsel were ineffective in failing to protect Mr. Stallings’ constitutional right

³⁰ Opening at 36.

³¹ *Dawson*, 673 A.2d at 1190; *Hall*, 788 A.2d at 123.

³² U.S. Const. amend. VI; Del. Const. art. I, § 7.

³³ *See infra* at 22-23.

to self-representation. Moreover, as Mr. Stallings explained in the Opening Brief, the unconstitutional forcing of appellate counsel on Mr. Stallings for purposes of his direct appeal additionally establishes cause for the procedural default. (Opening at 36-37).

C. Mr. Stallings’ constitutional right to self-represent was violated.

The State erroneously asserts that regardless of the procedural bar, “[Mr.] Stallings’ actions demonstrated he no longer wished to pursue self-representation.” (Answer at 4).³⁴ The record establishes otherwise.

The State contends Mr. Stallings did not clearly assert his request to self-represent, because “accompanying [his] post-plea motion to proceed *pro se* was a motion for substitute counsel to be appointed.” (Answer at 34). Thus, the State concludes that “[a]t best, Stallings’ motions demonstrate that he was dissatisfied with trial counsel” and appears to have been requesting a form of hybrid representation. (*Id.*). However, the premise of the State’s argument is factually incorrect, as the record is clear that that Mr. Stallings *first* requested the appointment of substitute

³⁴ The State also asserts that the court did not impose a type of hybrid representation on Mr. Stallings when it compelled him to proceed *pro se* on the motion to withdraw guilty plea but proceed with defense counsel for all other matters, including sentencing and direct appeal. (Answer at 35). However, the State’s assertion is entirely conclusion as the Answering Brief offers no supporting factual or legal arguments.

counsel and only *after* that request was denied without review by the court did he request to proceed *pro se*. (Opening at 38-39; A183-192). Thus, at best, Mr. Stallings' *pro se* motions demonstrate that his preference was for substitute counsel, but once his request was denied, he pursued his remaining option of self-representation.

The State cites no legal authority to establish that because Mr. Stallings previously requested and was denied the appointment of substitute counsel, then his subsequent written request to self-represent, unmistakably titled "Motion to Proceed *Pro Se*", was not sufficiently clear or unequivocal. (A189). The State does, however, attempt to place an additional burden on Mr. Stallings by suggesting that he should have made a second request to proceed *pro se*. (Answer at 34). The State offers no legal authority to support this proposal.

Mr. Stallings made a clear request to proceed *pro se* by filing a motion with the court entitled "Motion to Proceed *Pro Se*"; he was required to do no more.³⁵ Once his request was made, the burden was on the court to take action in response to Mr.

³⁵ *United States v. Peppers*, 302 F.3d 120, 133 (3d Cir. 2002) ("To invoke his Sixth Amendment right under *Faretta* a defendant does not need to recite some talismanic formula hoping to open the eyes and ears of the court to his request. Insofar as the desire to proceed *pro se* is concerned, petitioner must do no more than state his request, either orally or in writing, unambiguously to the court so that no reasonable person can say that the request was not made").

Stallings' invocation of his Sixth Amendment right to waive counsel.³⁶ Mr. Stallings was under no legal obligation to make repeated requests, which in this case would undoubtedly have been futile, in the hopes that *eventually* the court would hear him. Mr. Stallings did all that was required of him to exercise his constitutional right to waive counsel, and when the court failed to take appropriate action on his request, the court violated his Sixth Amendment right to self-representation.

D. Defense counsel were ineffective for failing to protect Mr. Stallings' constitutional right to self-represent.

The State alleges that Mr. Stallings cannot show defense counsels' failure to protect his right to self-represent "fell outside of the 'wide range of reasonable professional assistance.'" (Answer at 36). However, the State offers no explanation as to how a defense attorney's ignorance of a defendant's constitutional right, and his repeated unsuccessful attempts to invoke it, can possibly be professionally reasonable. (Answer at 36).

Under prevailing professional norms, any reasonable defense attorney would be aware of a criminal defendant's Sixth Amendment right to waive counsel and the

³⁶ *United States v. Salemo*, 61 F.3d 214, 219 (3d Cir. 1995) (quoting *Von Moltke v. Gillies*, 332 U.S. 708, 722 (1948)) (holding a trial judge must "make a thorough inquiry and . . . take all steps necessary to insure the fullest protection of this constitutional right"); *Brown v. Wainwright*, 665 F.2d 607, 612 (5th Cir. 1982) ("[A] trial court may not unduly defer on a firm request by defendant to represent himself in the hopes the defendant may change his mind.").

necessity of a *Faretta* hearing. In this particular case, Mr. Stallings' defense counsel were advised of Mr. Stallings' desire to self-represent not just through his docketed "Motion to Proceed *Pro Se*" but also through his one oral and two written requests to defense counsel that they file with the court the necessary paperwork to withdraw from the case. (A189, 203, 206). The State's Answering Brief fails to acknowledge these requests made personally to defense counsel. Nor does the State suggest any reason that defense counsel would have strategically declined to take action on Mr. Stallings' requests, let alone one that would be deemed professionally reasonable.

As the State's Answering Brief lacks any factual or legal support for its rebuttal of Mr. Stallings' self-representation claims, the State's arguments in favor of denying Mr. Stallings' claims of court error and ineffective assistance of counsel are unpersuasive.

ARGUMENT IV. THE STATE’S ANSWERING BRIEF IS FACTUALLY AND LEGALLY INACCURATE IN RELATION TO MR. STALLINGS’ POSTCONVICTION CLAIM OF INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL.

A. The standard of review for constitutional claims is *de novo*.

The State asserts that the applicable standard of review is abuse of discretion. (Answer at 4, 40). As noted in Mr. Stallings’ Opening Brief,³⁷ this Court reviews questions of law and claims of constitutional violation *de novo*³⁸. As Mr. Stallings alleges a violation of his right to the effective assistance of counsel pursuant to the Sixth Amendment of the United States Constitution and Article 1, § 7 of the Delaware Constitution,³⁹ *de novo* is the appropriate standard of review. (Opening at 46).

B. Mr. Stallings’ claim prevails on the merits.

The State alleges the Superior Court correctly determined appellate counsel were not ineffective, because “[t]he issues Stallings contends appellate counsel should have raised on appeal were without merit.” (Answer at 4). The State asserts that a clerical error in plea paperwork “does not constitute a serious procedural defect that would provide a basis for an argument *on appeal*. . . .” (Answer at 39). However, for the reasons explained in Claims I and II,⁴⁰ the State’s characterization and analysis of

³⁷ Opening at 44-45.

³⁸ *Dawson*, 673 A.2d at 1190; *Hall*, 788 A.2d at 123.

³⁹ U.S. Const. amend. VI; Del. Const. art. I, § 7.

⁴⁰ *See supra* Claim I at 4-8 and Claim II at 9-11.

Mr. Stallings' claim is both factually and legally inaccurate.

The State further asserts that appellate counsel are not obligated to raise an issue on direct appeal that would have failed on its merits, and Mr. Stallings' right to self-represent was not violated. (Answer at 40). However, for reasons explained in Claim III,⁴¹ the State's assertion is factually and legally unsupported.

As appellate counsel filed a non-merits brief when there were two non-frivolous appellate issues to raise, appellate counsels' conduct was objectively unreasonable.⁴²

⁴¹ *See supra* Claim III at 20-22.

⁴² *See Neal v. State*, 80 A.3d 935, 946 (Del. 2013) (quoting *Smith v. Robbins*, 528 U.S. 259, 288 (2000) (noting "it is only necessary for [a defendant] to show that a reasonably competent attorney would have found one nonfrivolous issue warranting a merits brief").

CONCLUSION

WHEREFORE, based on the foregoing, Mr. Stallings respectfully requests that this Court grant the withdrawal of his guilty plea and remand for trial.

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