

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR11-684

BOBBY EARL RICHARD

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered September 12, 2012

APPEAL FROM THE DESHA
COUNTY CIRCUIT COURT
[NO. CR-2010-66-1]

HONORABLE SAM POPE, JUDGE

REVERSED AND REMANDED

JOHN MAUZY PITTMAN, Judge

The appellant in this criminal case argues that the trial court deprived him of his right to counsel under the Sixth and Fourteenth Amendments to the United States Constitution by failing to assess appellant's ability to afford counsel or to sufficiently inform appellant of the risks of representing himself at a jury trial. We agree, and we reverse and remand.

A criminal defendant has a right to be represented by counsel pursuant to the Sixth Amendment, made applicable to the states by the Fourteenth Amendment. Counsel is intended to be "an aid to a willing defendant—not an organ of the State interposed between an unwilling defendant and his right to defend himself personally." *Faretta v. California*, 422 U.S. 806, 820 (1975). The right of a criminal defendant to represent himself and to make his own defense personally is therefore implicit in the Sixth Amendment right to counsel. *Id.* A defendant need not possess the knowledge or skills of an attorney in order to represent himself, but a defendant who chooses to do so cannot thereafter complain that the quality of



his own defense was such as to amount to a denial of effective assistance of counsel. *Id.* Therefore, before a defendant may make a knowing and intelligent waiver of his right to counsel, he must be made aware of the dangers and disadvantages of self-representation so that the record will establish that he knew what he was doing and that the decision to decline representation was made with his eyes open. *Id.* The Arkansas Supreme Court has said that what is required is that the defendant have full warning or adequate knowledge concerning his rights and a clear intent to relinquish them. *Barnes v. State*, 258 Ark. 565, 528 S.W.2d 370 (1975).

Determining whether an intelligent waiver of the right to counsel has been made depends on the particular facts and circumstances of each case, including the background, experience, and conduct of the accused. *Bledsoe v. State*, 337 Ark. 403, 989 S.W.2d 510 (1999). However, the Arkansas Supreme Court has held that every reasonable presumption will be indulged against the waiver of such fundamental constitutional rights and that the trial court bears a weighty responsibility in determining whether an accused has knowingly and intelligently waived his right to counsel. *Pierce v. State*, 362 Ark. 491, 209 S.W.3d 364 (2005). On appeal, the burden is on the State to show that an accused voluntarily and intelligently waived his fundamental right to the assistance of counsel, either by reference to a specific warning of the dangers and disadvantages of self-representation or by a record showing that the defendant possessed such required knowledge from other sources. *Id.*

Here, the State correctly concedes that it cannot meet this burden. There is nothing in the record to show either that the circuit court advised appellant concerning the dangers



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and disadvantages of self-representation or that appellant possessed such knowledge from other sources. Consequently, we reverse and remand for retrial.

Reversed and remanded.

GRUBER and HOOFFMAN, JJ., agree.

Taylor & Taylor Law Firm, P.A., by: *Tasha C. Taylor*, for appellant.

Dustin McDaniel, Att'y Gen., by: *Karen Virginia Wallace*, Ass't Att'y Gen., for appellee.