



TOPICAL INDEX TO BRIEF

PAGE NO.

PRELIMINARY STATEMENT

1

POINT I. ARGUMENT IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT THE TRIAL COURT'S APPOINTING COUNSEL TO PARTIALLY REPRESENT APPELLANT, WHILE ALLOWING APPELLANT TO PARTIALLY REPRESENT HIMSELF, DENIED APPELLANT HIS RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AND HIS RIGHT TO REPRESENT HIMSELF, WHEN APPELLANT REQUESTED TO REPRESENT HIMSELF WITHOUT THE ASSISTANCE OF COUNSEL.

1-3

POINT VIII. ARGUMENT IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT THE TRIAL COURT ERRED IN FINDING AND WEIGHING THE AGGRAVATING CIRCUMSTANCE OF A PRIOR CONVICTION FOR A CAPITAL FELONY, SINCE THE STATE PRODUCED ONLY HEARSAY EVIDENCE TO ITS PROOF AND COULD NOT PRODUCE A CERTIFIED COPY OF THE VIRGINIA JUDGMENT.

3-4

CERTIFICATE OF SERVICE

4

TABLE OF CITATIONS

CASES CITED:

PAGE NO.

Bailey v. State  
224 So.2d 296 (Fla.1969)

3

Elledge v. State  
346 So.2d 998 (Fla.1977)

3,4

Faretta v. California  
422 U.S. 806 (1975)

2

Provence v. State  
337 So.2d 783 (Fla.1976)

3

OTHER AUTHORITIES:

Art. I §16, Fla.Const.

2



The State's contention that the trial court properly complied with Faretta v. California, 422 U.S. 806 (1975) is without merit. It ignores the Supreme Court's mandate that the record establish Appellant's awareness of the dangers and disadvantages of appearing pro se. Id. at 835. (Appellant's Brief, page 21) Nowhere in the record does the trial court explain the disadvantages to Appellant.

Appellant is also aware of the Florida Constitution's guarantee to criminal defendants to "be heard in person, by counsel or both." Art. I §16, Fla.Const. However, this Court is not presented with a case where the defendant asked to represent himself and to be represented by counsel. Just as the State concedes on page 8 of its brief, Appellant "made a timely, emphatic request to represent himself" (Emphasis added); at no time did Appellant also request assistance of counsel. This is evident from the portions of the record cited in Appellant's Brief at pages 22-23.

The State also seeks solace in the fact that Appellant did not continuously and formerly object throughout the proceedings to the hybrid form of representation. Appellant did object when the court made its decision. (Appellant's Brief, page 23,26).

THE COURT: Then you need a lawyer to explain these things to you.

THE DEFENDANT: But the point is, I do not want to have a lawyer, to have that take place, as far as representing me at the trial,... (R956-957)

There was certainly no burden on Appellant to continuously object and argue with the court over the form of representation after the court's decision. To do so would have been a useless act. See, Bailey v. State, 224 So.2d 296 (Fla.1969).

Appellant did not have the "best of two worlds" as the State suggests. He was denied his constitutional right to represent himself and his right to effective counsel. The record is replete with instances where the hybrid form of representation worked to Appellant's detriment. (See Appellant's Brief, pages 24-26)

#### POINT VIII.

ARGUMENT IN REPLY TO THE STATE AND  
IN SUPPORT OF THE CONTENTION THAT  
THE TRIAL COURT ERRED IN FINDING  
AND WEIGHING THE AGGRAVATING CIR-  
CUMSTANCE OF A PRIOR CONVICTION FOR  
A CAPITAL FELONY, SINCE THE STATE  
PRODUCED ONLY HEARSAY EVIDENCE TO  
ITS PROOF AND COULD NOT PRODUCE A  
CERTIFIED COPY OF THE VIRGINIA  
JUDGMENT.

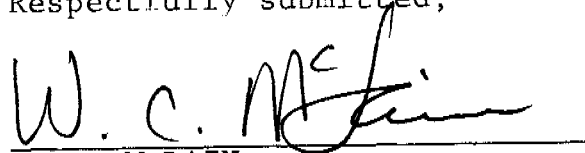
Appellant disagrees that Elledge v. State, 346 So.2d 998 (Fla.1977) supports the trial court's failure to require a certified copy of the prior conviction. This Court emphasized in Elledge and in Provence v. State, 337 So.2d 783 (Fla.1976) that a prior conviction not a prior crime is an aggravating cir-

cumstance. Appellant agrees that Officer Yeager's testimony would have been admissible, if sufficient proof of the conviction preceded it.

In Elledge, the testimony surrounding the prior conviction was admitted, but only after trial counsel stipulated to the conviction. It is the proof of the prior conviction that is in issue in this case, not whether the surrounding circumstances of that crime are admissible after the conviction is proven. The State is one step ahead of the crucial issue.

Respectfully submitted,

By:



W. C. McLAIN  
Assistant Public Defender

Hall of Justice Annex  
495 North Carpenter Street  
Bartow, Florida 33830

Counsel for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to the Attorney General's Office, 412 East Madison Street, Suite 800, Tampa, Florida by mail this 8<sup>th</sup> day of November, 1977.

  
W. C. McLAIN