



TOURO UNIVERSITY
JACOB D. FUCHSBERG LAW CENTER
Where Knowledge and Values Meet

Touro Law Review

Volume 12
Number 3 *New York State constitutional
Decisions: 1995 Compilation*

Article 50

1996

Right to Counsel

Follow this and additional works at: <https://digitalcommons.tourolaw.edu/lawreview>



Part of the [Constitutional Law Commons](#), [Courts Commons](#), and the [Legal Ethics and Professional Responsibility Commons](#)

Recommended Citation

(1996) "Right to Counsel," *Touro Law Review*. Vol. 12: No. 3, Article 50.

Available at: <https://digitalcommons.tourolaw.edu/lawreview/vol12/iss3/50>

This New York State Constitutional Decisions is brought to you for free and open access by Digital Commons @ Touro Law Center. It has been accepted for inclusion in Touro Law Review by an authorized editor of Digital Commons @ Touro Law Center. For more information, please contact lross@tourolaw.edu.

THIRD DEPARTMENT

People v. Reilly²⁸⁰
(decided September 14, 1995)

The constitutional issue presented in this case was whether the lower court abused its discretion in denying defense counsel's request for a competency exam during defendant's initial application to proceed pro se.²⁸¹ Although the court expressed concern regarding defendant's mental fitness, it nevertheless was satisfied that defendant's application was made voluntarily and with full understanding of the potential problems and dangers of self-representation.²⁸² The Third Department held that the county court did not abuse its discretion, as the right to proceed pro se is guaranteed by both the Sixth Amendment of the United States Constitution²⁸³ and article I, section 6 of the New York Constitution²⁸⁴ provided that the defendant's request to proceed pro se is made (1) voluntarily and (2) with a full understanding of the possible perils and disadvantages of self representation.²⁸⁵ In order to determine whether these two conditions were satisfied, the Third Department considered the extent of the warning the defendant received and whether all relevant factors were appropriately evaluated.²⁸⁶

The defendant, who had been charged with burglary and grand larceny, was diagnosed with manic depressive disorder following

280. 631 N.Y.S.2d 203 (App. Div. 3d Dep't 1995).

281. *Id.* at 204.

282. *Id.*

283. U.S. CONST. amend. VI. The Sixth Amendment provides in pertinent part: "In all criminal prosecutions, the accused shall enjoy the right . . . to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence." *Id.*

284. N.Y. CONST. art. I, § 6. This section provides in pertinent part: "In any trial in any court whatever the party accused shall be allowed to appear and defend in person and with counsel as in civil actions and shall be informed of the accusation and be confronted with the witnesses against him." *Id.*

285. *Reilly*, 631 N.Y.S.2d at 204.

286. *Id.*

his arraignment in 1992.²⁸⁷ Although the county court “expressed concerns about defendant’s mental status,” the defendant’s application to proceed pro se was subsequently granted in 1993 and stand-in counsel was appointed.²⁸⁸ The trial judge, after conducting an examination as to whether the defendant understood the nature of his application, was satisfied that the defendant’s request was made voluntarily and with full knowledge of the consequences.²⁸⁹ When the defendant, in conducting his own defense, sought to have one of his own witnesses “identify him as Jesus Christ,”²⁹⁰ the court ordered a psychiatric examination²⁹¹ and subsequently revoked the defendant’s right to proceed pro se for the remainder of the trial.²⁹² In his appeal, the defendant contended that the county court’s failure to order a psychiatric examination before it decided to allow him to proceed pro se was in error.²⁹³

The Third Department, citing *People v. Gronachan*,²⁹⁴ found that the county court did not abuse its discretion in not ordering a preliminary psychiatric examination.²⁹⁵ The *Reilly* court observed that the record clearly showed that Reilly had been adequately warned and the court took into consideration appropriate factors, including the defendant’s medical situation, in determining whether the request had been made voluntarily and intelligently.²⁹⁶ In *Gronachan*, a psychiatrist’s report indicating that the defendant possessed “intellectual deficits”²⁹⁷ was held insufficient to require a competency exam of a defendant, where the court had considered all relevant factors in determining his fitness to stand trial and the psychiatric exam

287. *Id.* at 203. The defendant had been hospitalized and Lithium was prescribed to treat the illness. *Id.*

288. *Id.*

289. *Id.* at 204.

290. *Id.* at 203.

291. See N.Y. CRIM. PROC. LAW § 730.30 (McKinney 1988).

292. *Reilly*, 631 N.Y.S.2d at 203.

293. *Id.* at 203-04.

294. 162 A.D.2d 852, 557 N.Y.S.2d 753 (3d Dep’t 1990).

295. *Reilly*, 631 N.Y.S.2d at 203-04.

296. *Id.* at 204.

297. *Gronachan*, 162 A.D.2d at 853, 557 N.Y.S.2d at 754.

contained inconsistencies.²⁹⁸ Unlike *Gronachan*, there was no psychiatric evaluation submitted by the defense in *Reilly*. In fact, when a competency exam was ultimately ordered after Reilly's attempt "to have [a] witness identify him as Jesus Christ,"²⁹⁹ the defendant was found competent to stand trial.

The question of what constitutes a sufficient inquiry into a defendant's understanding of the problems posed by proceeding pro se was discussed in *People v. Ward*.³⁰⁰ In *Ward*, the county court was held not to have abused its discretion when it allowed the defendant to proceed pro se. The court had given repeated warnings³⁰¹ as to the consequences of proceeding pro se coupled with a dialogue between the trial judge and the defendant in which the defendant apparently understood what was asked of him and articulated his reasons for wanting to represent himself.³⁰² Similarly, in *Reilly*, the court "undertook a thorough examination of [the defendant] to determine if the request was made voluntarily and with full knowledge of the possible perils and disadvantages of proceeding pro se."³⁰³

Under the United States Constitution, the basic right of a defendant to proceed pro se has been considered a federally guaranteed right. In *Faretta v. California*,³⁰⁴ the United States Supreme Court held that the Sixth Amendment guarantees a defendant in a state criminal trial the right to self-representation, provided that the choice to do so is made voluntarily and intelligently.³⁰⁵ In federal criminal proceedings, the right to proceed pro se has been protected by statute since the enactment

298. *Id.* Factors such as "defendant's history, his present demeanor and the available medical reports" were considered by the trial court. *Id.*

299. *Reilly*, 631 N.Y.S.2d at 203.

300. 205 A.D.2d 876, 613 N.Y.S.2d 490 (3d Dep't 1994).

301. *Id.* at 877, 613 N.Y.S.2d at 491. For example, "that defendant would not be permitted to 'testify' in the guise of examining witnesses, that he would be held to the same standards of conduct and procedure as an attorney, and that he would not be allowed to change his mind once the trial had begun." *Id.*

302. *Id.*

303. *Reilly*, 631 N.Y.S.2d at 204.

304. 422 U.S. 806 (1975).

305. *Id.* at 807.

of the Judiciary Act of 1789,³⁰⁶ as well as by the Sixth Amendment. The Sixth Amendment provides that

In all criminal prosecutions, the accused shall enjoy the right . . . to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.³⁰⁷

Although the right of self-representation is not explicitly stated, the Amendment provides the right of the accused to “make a defense.”³⁰⁸ As the *Faretta* court stated, it “does not provide merely that a defense shall be made for the accused; it grants to the accused personally the right to make his defense.”³⁰⁹ The *Faretta* court reasoned that such a right is personal in character and a defendant cannot be compelled to accept counsel for representation against his will.³¹⁰ If a defendant has not consented to representation, “the defense presented is not the defense guaranteed him by the Constitution, for, in a very real sense, it is not *his* defense.”³¹¹

Similarly, the Second Circuit, in *United States v. Platter*,³¹² stated that “the absolute and primary right to conduct one’s own defense *in propria persona*” should not be limited by the right to

306. *Id.* at 812. See 28 U.S.C. § 1654 (stating that “in all the courts of the United States, the parties may plead and manage their own causes personally or by the assistance of . . . counsel . . .”).

307. U.S. CONST. amend. VI. The Sixth Amendment provides that:

In all criminal prosecutions, the accused shall enjoy the right . . . to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Id.

308. *Faretta*, 422 U.S. at 819.

309. *Id.*

310. *Id.* at 819-20. The Court noted that it is the defendant himself who suffers the consequences of a failed defense. *Id.* at 820.

311. *Id.* at 821.

312. 330 F.2d 271 (2d Cir. 1964).

the assistance of counsel.³¹³ Furthermore, the *Faretta* court recognized that “forcing a lawyer upon an unwilling defendant is contrary to his basic right to defend himself if he truly wants to do so.”³¹⁴ In addition, the Court has concluded that a state is prohibited from denying a criminal defendant’s right to proceed pro se if he voluntarily and intelligently elects to do so.³¹⁵ Similar to the federal analysis, the Appellate Division, Third Department seems to have defined voluntary and intelligent election as requiring adequate warning and consideration of all factors relevant to defendant’s ability to make an intelligent choice.³¹⁶ Thus, this federally guaranteed right is further defined, in New York State, to encompass protections to ensure that the exercise of this option does not end up working against the defendant who seeks to invoke it.

313. *Id.* at 274. The existence of the right to counsel does not mean that a defendant may be compelled to accept counsel against his will. *Id.*

314. *Faretta*, 422 U.S. at 817.

315. *Id.* at 807.

316. *People v. Reilly*, 631 N.Y.S.2d 203, 204 (3d Dep’t 1995).