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## Right to Counsel

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## THIRD DEPARTMENT

People v. Reilly<sup>280</sup>  
(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.<sup>281</sup> 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.<sup>282</sup> 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 Constitution<sup>283</sup> and article I, section 6 of the New York Constitution<sup>284</sup> 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.<sup>285</sup> 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.<sup>286</sup>

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

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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.<sup>287</sup> 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.<sup>288</sup> 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.<sup>289</sup> When the defendant, in conducting his own defense, sought to have one of his own witnesses “identify him as Jesus Christ,”<sup>290</sup> the court ordered a psychiatric examination<sup>291</sup> and subsequently revoked the defendant’s right to proceed pro se for the remainder of the trial.<sup>292</sup> 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.<sup>293</sup>

The Third Department, citing *People v. Gronachan*,<sup>294</sup> found that the county court did not abuse its discretion in not ordering a preliminary psychiatric examination.<sup>295</sup> 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.<sup>296</sup> In *Gronachan*, a psychiatrist’s report indicating that the defendant possessed “intellectual deficits”<sup>297</sup> 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

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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.<sup>298</sup> 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,"<sup>299</sup> 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*.<sup>300</sup> 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 warnings<sup>301</sup> 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.<sup>302</sup> 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."<sup>303</sup>

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*,<sup>304</sup> 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.<sup>305</sup> 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,<sup>306</sup> 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.<sup>307</sup>

Although the right of self-representation is not explicitly stated, the Amendment provides the right of the accused to “make a defense.”<sup>308</sup> 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.”<sup>309</sup> 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.<sup>310</sup> 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.”<sup>311</sup>

Similarly, the Second Circuit, in *United States v. Platter*,<sup>312</sup> 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.<sup>313</sup> 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.”<sup>314</sup> 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.<sup>315</sup> 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.<sup>316</sup> 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.

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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).