IN THE DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

SCOTT HUMINSKI,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Case No. 2D19-1914

ON APPEAL FROM THE CIRCUIT COURT
IN AND FOR LEE COUNTY
STATE OF FLORIDA

ANSWER BRIEF OF APPELLEE

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STATEMENT OF THE CASE AND FACTS

Appellant's statement of the case and statement of the facts are acceptable for purposes of this particular appeal given the issues raised, with the following additions, corrections, and highlights.

In February of 2017 Appellant filed a complaint for declaratory and other injunctive relief in Lee County, naming Lee County Sherriff's office, Sherriff Mike Scott, and Scribd, Inc.—among others— as defendants. (Case. No. 17-CA-421).

Sherriff Scott moved to dismiss the claim and for a protective order against Appellant. Judge Elizabeth Krier granted the motion for protective order to prohibit Appellant "from Directly Contacting, Communicating With, or Otherwise Serving Materials Directly upon Sheriff Scott, his Agents Servants and Employees," and instructed Appellant to direct all correspondences to Sherriff Scott's legal counsel. (R. 287).

In this order, Judge Krier also found that Appellant "is a vexatious litigant under Fla. Stat. § 68.093 based upon the numerous frivolous lawsuits Plaintiff has filed in Florida and elsewhere and the Court therefore orders that any further pleading Plaintiff files in this case shall be signed by a licensed attorney representing the Plaintiff." (R. 288). Judge Krier noted, that in ruling Appellant was a vexatious litigant, she took judicial notice of the "numerous court cases cited in the parties' papers, which include: *Huminski v. State of Vermont*, Md. Fla. Case No. 2:13-cv

692; *Huminski v. State of Vermont*, S.D. Fla. Case No. 1 :13-cv-23099; and *Huminski v. Connecticut*, D. Conn. Case No. 3:14-cv-1390." (R. 288).

The court also granted Scribd, Inc.'s motion to dismiss, and specifically noted that Appellant "may not file any additional documents or materials of any nature with this Court in this matter unless the filing ins signed by an attorney who is a member in good standing of the Florida Bar. In the event that Plaintiff violates this provision, the Court may enter an Order to Show Cause why Plaintiff should not be held in contempt upon written notice from Scribd." (R. 423-424).

As evinced in the order to show cause issued April 26, 2017, Appellant ignored the prescribed prohibitions by continuously filed various documents with the court and repeatedly contacting Sherriff Scott and his agents in violation of the orders. (R. 52-53, 420-421). Attached to the order to show cause was examples of the documents and communications referenced therein. (R. 429-538). As such, he was charged with two counts of indirect criminal contempt. (R. 420-421).

At arraignment on the contempt proceedings in July of 2017, public defender Kevin Sarlo was provisionally appointed to represent Appellant in the case. (R. 2230, 2232, 2236). Despite being represented by counsel, Appellant argued with Judge Krier regarding whether the contempt case has been (or could be) removed to bankruptcy court. (R. 2235-2237, 2246-2248, 2252). After the arraignment Judge Krier, on her own motion, entered an order on August 1, 2017, disqualifying herself

from any cases involving Appellant. (R. 104).

On August 15, 2017, Appellant appeared, pro-se, at a case management conference in front of Judge Adams, at which time Judge Adams asked whether Appellant intended to have counsel and Appellant insisted the case had been removed to bankruptcy court and that the public defender did not understand the law. (R. 2257-2258). Appellant informed the court that he had visited a few private lawyers who he "would have hired," but they did not understand "the removal of matters to bankruptcy court." (R. 2259). Judge Adams then discussed the steps to get the public defender's office appointed, including filling out an application in pre-trial services. (R. 2261-2262).

Judge Adams then entered an order, dated August 18, 2017, appointing the public defender's office to represent Appellant (R. 129). The public defender's office moved to strike the order because Appellant did not apply for public defender services, and in fact declined to fill out an application, stating he wished to represent himself. (R. 146-147).

At a hearing on September 1, 2017, Judge Adams inquired with Appellant regarding his status with counsel, and Appellant confirmed he declined to apply for the public defender and "was thinking that a hybrid type of representation where we both could participate" was what he wanted. (R. 2274).

Ultimately, it appears Appellant accepted the public defender to represent

him. However, by September 4, 2017, Appellant had already filed a notice with the court alleging the public defender's office was negligent and refused to research the issues regarding removal of federal bankruptcy cases, bankruptcy law, and federal abstention, as he had demanded. (R. 181).

In an email, dated September 13, 2017 and filed with the clerk, Appellant informs public defender Kevin Sarlo that his "complete lack of understanding of federal abstention requires recusal by the public defender's office," requests the public defender forward the case to conflict counsel, and demands that counsel "WITHDRAW [HIS] MOTION AND RECUSE." (R. 185). Three days later Appellant again emailed counsel and, citing to a Wikipedia article on abstention doctrines, accused counsel Sarlo of lying, informed counsel that his representation was the "epitome of insufficient/negligent assistance of counsel" and that "A defendant having to refer his expert counsel to Wikipedia to get the law right" was "bad," and demanded that counsel Sarlo, as well as the elected public defender Kathleen Smith, recuse themselves because staying on the case is "unethical," as they do not have the requisite knowledge to proceed. (R. 193).

On September 18, 2017, Appellant emailed the public defender with a list of demands, directing counsel to issue various subpoenas for documents in Arizona and schedule depositions of the State Attorney, and reminded counsel that "negligent assistance of counsel will not be tolerated." (R. 208).

Counsel Sarlo filed an official notice of appearance in the case on September 20, 2017. (R. 211). Appellant then filed his own notice of appearance on September 22, 2017, indicating that the would be appearing as "pro se co-counsel" in the matter. (R. 232). He then filed a motion to "disqualify Kevin Sarlo" on September 26, 2017, alleging counsel advised him to violate protective orders, and such advice amounted to negligence and ineffective assistance of counsel. (R. 251).

The Public Defender's Office filed a "Certification of Conflict" on September 27, 2017, stating that "After a careful investigation and weighing of the facts of this case, the Public Defender has conclusively determined that the interests of Scott Alan Huminski are so adverse and hostile to those of another client and/or an attorney within the Office of the Public Defender that a conflict of interest exists. As a result of this conflict of interest, the Public Defender cannot adequately or ethically continue to represent the Defendant." (R. 253). Judge Adams entered an order allowing the Public Defender's withdrawal and the appointment of conflict counsel on September 29, 2017. (R. 257).

Counselor Zachary Miller, from the office of Criminal Conflict and Civil Regional Counsel, entered a notice of appearance, waiver of arraignment, written plea of not guilty, and demand for discovery, on October 3, 2017. (R. 260). Several hours later Appellant filed a "withdrawal of waiver of arraignment and plea," alleging he was "never consulted by counsel concerning the waiver of arraignment

and plea and he opposes this strategy as not in his best interests and hereby withdraws the aforementioned (sic)." (R. 261). He then emailed counsel Miller instructing him to "not waive arraignment" because is it "Void Ab Initio." (R. 262). Appellant emailed counsel multiple times over the next 2 days, demanding counsel "schedule a motions hearing as specified in my emails ASAP," and alleging that the defense's position on the case is that the case was never properly transferred to county court. (R. 268-269).

On the 6th of October, Appellant moved to dismiss his case because defense counsel Miller "refuses to communicate" with his in violation of his right to counsel. (R. 272). He then filed a notice of his appearance as pro-se co-counsel on October 9, 2017. (R. 276).

In an October 23 email to the public defender's office, regional counsel, and the state attorney's office, Appellant insisted "We need to depose sheriff scott and judge krier concerning the protective order at the heart of this case. I need to participate as pro se co-counsel because I will ask the questions that clearly place the sheriff and judge as criminals." (R. 313).

Appellant then filed another notice of appearance of pro-se co-counsel on October 28, 2017, claiming "Huminski has not had the benefit of effective counsel since the inception of this matter and he is the only consistent element of the defense. Furthermore, the crimes of Sheriff Mike Scott perpetrated in this matter and in

federal matters, obstruction of justice, witness tampering, witness intimidation, have created too much controversy for all counsel assigned to Huminski to date. As filed in this matter, investigations exist against Sheriff Scott for his conduct against Huminski which tend to scare off counsel with the official corruption related to this matter. Huminski still needs the assistance of counsel." (R. 315).

On October 27, 2017, counsel Miller filed a motion to withdraw from the case, indicating that Appellant "has given ORC cause to anticipate adverse future litigation against ORC. Pursuant to Section 27.5303(1)(e), Florida Statutes, the undersigned certifies that there is no viable alternative to withdrawal from representation." (R. 318). Two days later, Appellant filed a memorandum in support of counsel's conflict, which states that Appellant "agrees with conflict counsel that the exact same conflict of interest that prohibited defense of Huminski by the Public Defender's office exists with conflict counsel." (R. 317).

Counsel Miller then filed an amended motion to withdraw and a second amended motion to withdraw, informing the court that that counsel consulted the Florida Bar ethics hotline and was advised to withdraw because there was a substantial risk that representation would be limited by counsel's personal interests. (R. 614, 636). At a hearing on the motion to withdraw, counsel Miller informed the court that he contacted the Florida Bar Attorney ethics hotline and asked them for their opinion on what he should do, and he was told to move to withdraw from the

case. (R. 2317). He further explained:

> One of the reasons for this conflict that is not protected by confidentiality has to can be demonstrated by one of the things that he filed with this Court on 12/29/2017. I included it in the packet, it's his motion to disqualify defense counsel and notice of civil claims of legal malpractice and federal civil rights violations regarding Regional Counsel. So, if you look on the second page of that motion Mr. Huminski writes and files with the Court that notice is given that Huminski is bringing federal civil rights claims and legal malpractice claims in the U.S. District Court against the director of Regional Counsel and myself.
>
> Furthermore, Your Honor, Mr. Huminski has presented to me from Attorney General Pam Bondi acknowledging that she has received an ethics complaint against Regional Counsel and myself. So, Your Honor, for these reasons we are moving this Court to grant our motion to withdraw.

(R. 2318-2319). Appellant then stated that he "concur[red] in joint." (R. 2319).

After the court granted the motion to withdraw, the State argued that the law "does not require the Court to continue to appoint attorneys for Mr. Huminski if Mr. Huminski is the basis of the or is causing the conflicts. And it seems to me, based on the information that is before us, that Mr. Huminski is causing these conflicts." (R. 2320). Counsel Miller then reminded the court that there was further information that contributed to the basis for the conflict, but that information was protected by attorney client privilege. (R. 2320-2321).

The court then inquired with Appellant whether he was in a position to represent himself and proceed to trial, at which time Appellant stated he would like

an attorney appointed, and then launched into an unrelated narrative regarding how he has information of corruption in the state attorney's office and that he is a party to another case in which the state attorney is suing NBC2, which "draws into question the property of the State's attorney." (R. 2321-2322).

After informing Appellant that the court would not be appointing any further lawyers to represent him, Judge Adams asked whether Appellant intended to hire a lawyer or represent himself. (R. 2323). Appellant again stated he would like an appointment, and the court explained, "you can't continue to put yourself in a situation of causing conflicts that makes it not legally permissible for the lawyer that's appointed for you at public . . . expense. To constantly cause them to withdraw from further representation of you in the case. (R. 2324).

The court's findings for forfeiture of counsel were memorialized by written order January 17, 2018, wherein Judge Adams reiterates that, among other things, Appellant's behavior of "hound[ing] his attorneys with useless law and demands for motions or depositions, even when such requests were unviable, unethical, or frivolous" and then alleging ineffective assistance of counsel is behavior that "can be construed as forfeiture of Defendant's right to appointed counsel." (R. 793-794).

SUMMARY OF THE ARGUMENT

Issue 1: Appellant was not entitled to new court-appointed counsel after regional counsel withdrew from his case because, as the trial court found, Appellant—as a result of his own behavior and conduct—forfeited his right to counsel.

Issue 2: The trial court was not required to hold a *Faretta* hearing because Appellant forfeited his right to counsel by his misconduct and the procedural safeguards typically associated with waiver of counsel do not apply.

Issue 3: Because there were no reasonable grounds for the trial court to question Appellant's competency to stand trial or to proceed pro-se, Appellant was not entitled to a competency hearing.

Issue 4: Appellee concedes that imposition of the cost of prosecution was improper because contempt is a common law crime and the statutes governing contempt do not explicitly allow for the cost of prosecution to be imposed.

Issue 5: While a charge of contempt can warrant a trial by jury, Appellant was not entitled to a jury trial because the state and trial court limited Appellant's sentence exposure to six months.

ARGUMENT

ISSUE ONE

WHETHER THE TRIAL COURT ERRED WHEN IT DETERMINED THAT APPELLANT FORFEITED HIS RIGHT TO COUNSEL. [RESTATED]

Appellant first argues that he was entitled to new court-appointed counsel after regional counsel withdrew from his case, and that the court's failure to provide said counsel violated the dictates of Fla. R. Crim. P. rule 3.840.

While Appellant had a right to court-appointed counsel during the proceedings, the trial court properly recognized that this right was not absolute and that Appellant, through is actions, forfeited his right to counsel.

Standard of Review

Whether a criminal defendant has forfeited his or her right to appointed counsel under the Sixth Amendment is a mixed question of law and fact. "[M]ixed questions of law and fact that ultimately determine constitutional rights should be reviewed by appellate courts using a two-step approach, deferring to the trial court on questions of historical fact but conducting a de novo review of the constitutional issue." *Davis v. State*, 142 So. 3d 867, 872 (Fla. 2014) (*quoting Henry v. State*, 134 So. 3d 938, 946 (Fla. 2014)). "A court's decision involving withdrawal or discharge of counsel is subject to review for abuse of discretion." *Weaver v. State*, 894 So. 2d 178, 187 (Fla. 2004).

Merits

Indisputably, because he was facing the charge of criminal contempt, Appellant was entitled to the same constitutional protections as other criminal defendants in more "typical" criminal proceedings. *See Bajcar v. Bajcar*, 247 So. 3d 613, 617 (Fla. 3d DCA 2018) ("before a court may impose indirect criminal contempt sanctions, "potential criminal contemnors are entitled to the same constitutional due process protections afforded criminal defendants in more typical criminal proceedings.") (*quoting Bowen v. Bowen*, 471 So. 2d 1274, 1277 (Fla. 1985)); *Ash v. Campion*, 247 So. 3d 581, 582 (Fla. 1st DCA 2018), reh'g denied, clarification granted, 248 So. 3d 1274 (Fla. 1st DCA 2018) ("those facing charges of criminal contempt—"a crime in the ordinary sense"—are entitled to the same protections as other criminal defendants.").

As the trial court recognized, these protections included the right to be represented by counsel during the indirect criminal contempt proceedings. In fact, there is no dispute that Appellant, in accordance with rule 3.840, was afforded the appointment of multiple counsels throughout the proceeding—all of whom ultimately conflicted off the case. However, by his own actions, Appellant eventually forfeited his right to appointed counsel, and the trial court did not err in denying his request for counsel after multiple attorneys conflicted off his case.

i. Pertinent factual history

In order to fully understand the circumstances under which Judge Adams was operating when he determined that Appellant forfeited his right to counsel, it is necessary to briefly review the circumstances under which the decision came about.

At the July 2017 arraignment for the contempt proceedings, public defender Kevin Sarlo was provisionally appointed to represent Appellant. (R. 2230, 2232, 2236). Subsequently, Appellant appeared, pro-se, at a case management conference in front of Judge Adams and, when asked whether he intended to have counsel, Appellant insisted the case had been removed to bankruptcy court and that the public defender did not understand the law. (R. 2257-2258). Apparently, he also visited a few private lawyers who he "would have hired," but they too did not understand "the removal of matters to bankruptcy court." (R. 2259). Judge Adams then explained the steps to get the public defender's office appointed, including filling out an application in pre-trial services. (R. 2261-2262).

While Judge Adams issued an order appointing the public defender's office, the public defender moved to strike the order, noting that Appellant did not apply for public defender services and declined to fill out an application because he wished to represent himself. (R. 146-147). At the next hearing, Judge Adams asked Appellant his status with counsel, and Appellant confirmed he declined to apply for the public defender and "was thinking that a hybrid type of representation where we

both could participate" was what he wanted. (R. 2274). Because hybrid representation was not allowed, Appellant ultimately agreed to be represented by the public defender. However, Appellant then began barraging the public defender's office with nonsensical demands for his case.

For example, by September 4, 2017, Appellant had already filed a notice with the court alleging the public defender's office was "negligent" and refused to research the issues regarding removal of federal bankruptcy cases, bankruptcy law, and federal abstention, as he had demanded. (R. 181).

In another email on September 13, 2017, Appellant informed counsel Sarlo that his "complete lack of understanding of federal abstention requires recusal by the public defender's office," requested the public defender forward the case to conflict counsel, and demanded that counsel "WITHDRAW [HIS] MOTION AND RECUSE." (R. 185). Three days later Appellant again emailed counsel and, citing to a *Wikipedia* article on abstention doctrines, accused counsel Sarlo of lying, informed counsel that his representation was the "epitome of insufficient/negligent assistance of counsel" and that "A defendant having to refer his expert counsel to Wikipedia to get the law right" was "bad," and demanded that counsel Sarlo, as well as the elected public defender Kathleen Smith, recuse themselves because staying on the case is "unethical," as they do not have the requisite knowledge to proceed. (R. 193). Several days after, Appellant again emailed the public defender, this time

with a list of demands directing counsel to issue various subpoenas for documents in Arizona and schedule depositions of the State Attorney, and reminded counsel that "negligent assistance of counsel will not be tolerated." (R. 208).

Counsel Sarlo filed an official notice of appearance in the case on September 20, 2017. (R. 211). Appellant then filed his own notice of appearance on September 22, 2017, indicating that the would be appearing as "pro se co-counsel" in the matter. (R. 232). He then filed a motion to "disqualify Kevin Sarlo" on September 26, 2017, alleging counsel advised him to violate protective orders, and such advice amounted to negligence and ineffective assistance of counsel. (R. 251).

Because of Appellant's conduct, the Public Defender's Office filed a "Certification of Conflict" on September 27, 2017, stating that "After a careful investigation and weighing of the facts of this case, the Public Defender has conclusively determined that the interests of Scott Alan Huminski are so adverse and hostile to those of another client and/or an attorney within the Office of the Public Defender that a conflict of interest exists. As a result of this conflict of interest, the Public Defender cannot adequately or ethically continue to represent the Defendant." (R. 253). Judge Adams entered an order allowing the Public Defender's withdrawal and the appointment of conflict counsel on September 29, 2017. (R. 257).

By October 3, 2017, Counselor Zachary Miller, from the office of Criminal Conflict and Civil Regional Counsel, entered a notice of appearance, waiver of

arraignment, written plea of not guilty, and demand for discovery. (R. 260). Several hours later Appellant filed a "withdrawal of waiver of arraignment and plea," alleging he was "never consulted by counsel concerning the waiver of arraignment and plea and he opposes this strategy as not in his best interests and hereby withdraws the aforementioned (sic)." (R. 261). He then emailed counsel Miller instructing him to "not waive arraignment" because is it "Void Ab Initio." (R. 262). Appellant emailed counsel multiple times over the next 2 days, demanding counsel "schedule a motions hearing as specified in my emails ASAP," and alleging that the defense's position on the case is that the case was never properly transferred to county court. (R. 268-269).

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indicating that Appellant "has given ORC cause to anticipate adverse future litigation against ORC. Pursuant to Section 27.5303(1)(e), Florida Statutes, the undersigned certifies that there is no viable alternative to withdrawal from representation." (R. 318). Two days later, Appellant filed a memorandum in support of counsel's conflict, which states that Appellant "agrees with conflict counsel that the exact same conflict of interest that prohibited defense of Huminski by the Public Defender's office exists with conflict counsel." (R. 317). The motion was not granted at that time.

Appellant then filed another notice of appearance of pro-se co-counsel on October 28, 2017, claiming "Huminski has not had the benefit of effective counsel since the inception of this matter and he is the only consistent element of the defense. Furthermore, the crimes of Sheriff Mike Scott perpetrated in this matter and in federal matters, obstruction of justice, witness tampering, witness intimidation, have created too much controversy for all counsel assigned to Huminski to date. As filed in this matter, investigations exist against Sheriff Scott for his conduct against Huminski which tend to scare off counsel with the official corruption related to this matter. Huminski still needs the assistance of counsel." (R. 315).

On December 29, 2017, Appellant filed yet another motion to disqualify counsel, which included a notice that Appellant was bringing "federal civil rights claims and legal malpractice claims" against counsel Miller and counsel Ita

Neymotin—the head of regional conflict counsel. (R. 599-604).

Counsel Miller then filed an amended motion to withdraw and a second amended motion to withdraw, informing the court that counsel consulted the Florida Bar ethics hotline and was advised to withdraw because there was a substantial risk that representation would be limited by counsel's personal interests. (R. 614, 636). Similarly, Appellant filed a notice of firing of defense counsel alleging the "vast incompetence and negligence" of conflict counsel and counsel's office. (R. 572).

At a hearing on the motion to withdraw, counsel Miller explained that he contacted the Florida Bar Attorney ethics hotline and asked them for their opinion on what he should do, and he was told to move to withdraw from the case. (R. 2317). He further explained:

> One of the reasons for this conflict that is not protected by confidentiality has to can be demonstrated by one of the things that he filed with this Court on 12/29/2017. I included it in the packet, it's his motion to disqualify defense counsel and notice of civil claims of legal malpractice and federal civil rights violations regarding Regional Counsel. So, if you look on the second page of that motion Mr. Huminski writes and files with the Court that notice is given that Huminski is bringing federal civil rights claims and legal malpractice claims in the U.S. District Court against the director of Regional Counsel and myself.
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> Furthermore, Your Honor, Mr. Huminski has presented to me from Attorney General Pam Bondi acknowledging that she has received an ethics complaint against Regional Counsel and myself. So, Your Honor, for these reasons we are moving this Court to grant our motion to withdraw.

(R. 2318-2319). Appellant then stated that he "concur[red] in joint." (R. 2319).

After the court granted the motion to withdraw, the State argued that the law "does not require the Court to continue to appoint attorneys for Mr. Huminski if Mr. Huminski is the basis of the or is causing the conflicts. And it seems to me, based on the information that is before us, that Mr. Huminski is causing these conflicts." (R. 2320). The court inquired with Appellant whether he was in a position to represent himself and proceed to trial, at which time Appellant stated he would like an attorney appointed, and then launched into an unrelated narrative regarding how he has information of corruption in the state attorney's office and that he is a party to another case in which the state attorney is suing NBC2, which "draws into question the propriety of the State's attorney." (R. 2321-2322).

After informing Appellant he would not be appointing any further lawyers to represent him, Judge Adams asked whether Appellant intended to hire a lawyer or represent himself. (R. 2323). Appellant again stated he would like an appointment, and the court explained, "you can't continue to put yourself in a situation of causing conflicts that makes it not legally permissible for the lawyer that's appointed for you at public . . . expense. To constantly cause them to withdraw from further representation of you in the case. (R. 2324). Appellant then began a nonsensical response regarding his prior counsels, alleging that the reason they had to withdraw

was because "there is an intrinsic corruption within the State's attorney's department" and in order to "fully and properly" defend him, counsels would have had to "expose the corruption" of the state and the courts, which would have been adverse to their other clients who just want to plead their case and be done. (R. 2324-2325).

The court's findings for forfeiture of counsel were memorialized by written order January 17, 2018, wherein Judge Adams reiterates that, among other things, Appellant's behavior of "hound[ing] his attorneys with useless law and demands for motions or depositions, even when such requests were unviable, unethical, or frivolous" and then alleging ineffective assistance of counsel is behavior that "can be construed as forfeiture of Defendant's right to appointed counsel." (R. 793-794).

When Appellant again insisted he was entitled to the appointment of counsel on March 6, 2018, Judge Adams explained:

> I'm not going to reappoint the Public Defender's Office to represent you. They were originally filed a motion to withdraw from your case because of the nature of the conflict between you and them.
>
> Subsequent to that, Regional Counsel was appointed to represent you, as a result of the Public Defender's conflict. There were situations which I perceive as being your antagonistic antagonism towards them that caused them to withdraw from your case. I am not going to continue to appoint lawyers at public expense to represent you.

(R. 2339).

ii. Argument

Arguing that his constitutional rights were violated, Appellant take issue with the trial court's refusal to again appoint new counsel after Appellant's conduct forced yet another attorney to withdraw from his case. However, the court's decision to deny Appellant counsel was not in error because Appellant, by his own conduct, forfeited the right to counsel.

While the Sixth Amendment generally requires the appointment of counsel for indigent defendants at every critical stage of a criminal proceeding, this right—"cherished and fundamental though it may be"—is not without limits. *United States v. Fowler*, 605 F.2d 181, 183 (5th Cir.1979). Under appropriate circumstances, a criminal defendant "may forfeit constitutional rights," such as the Sixth Amendment right to counsel, "by virtue of his or her actions." *United State v. McLeod*, 53 F.3d 322, 325 (11th Cir. 1995). That is precisely what occurred in this case; Appellant, through his actions, forfeited his right to counsel during his contempt proceedings.

Surveying existing authority on the issue, the Wisconsin Supreme Court recently identified "a variety of scenarios where a defendant's conduct results in the involuntary loss of counsel by operation of law," stating:

> Scenarios triggering forfeiture include: (1) a defendant's manipulative and disruptive behavior; (2) withdrawal of multiple attorneys based on a defendant's consistent refusal to cooperate with any of them and constant complaints about the attorneys' performance; (3) a defendant whose attitude is defiant and whose choices

> repeatedly result in delay, interfering with the process of justice, and (4) physical or verbal abuse directed at counsel or the court.

Suriano, 893 N.W.2d at 552 (citations omitted). It further explained that "[w]hen those situations arise, a defendant loses his right to counsel by 'operation of law' — — not by express verbal consent but because the defendant's voluntary and deliberate actions told the [trial] court he would make it 'impossible' for any attorney to be able to represent him." *Id*. (*quoting State v. Cummings*, 546 N.W.2d 406, 418-19 (Wis. 1996)).

Appellant claims there was no evidence before the trial court regarding what the actual conflict of interests encompassed, therefore the court's decision to deny Appellant's request for counsel was based only on assumptions by the court, unsupported by the record. To the contrary, the record establishes that both the public defender's office and regional conflict counsel were forced to withdraw based on Appellant's actions and behaviors, and the court's determination that he forfeited his right to counsel is fully supported by the record.

Appellant's first appointed counsel, Kevin Sarlo, was forced to withdraw after Appellant sent and filed copious emails and motions antagonizing counsel, alleging counsel was ineffective and negligent for refusing to follow his orders regarding how to handle the case, and demanding that counsel recuse himself.

Regional conflict counsel Zachary Miller was similarly required to withdraw

from the case because Appellant continuously hounded him with frivolous demands, and when counsel failed to comply, Appellant filed "federal civil rights claims and legal malpractice claims" against counsel Miller and his office.

Appellant also admitted to the court that his attempts to hire private counsel failed because, like his court appointed attorneys, the private counsels he consulted did not understand the law either.

In finding that Appellant forfeited his right to counsel, Judge Adams took into consideration Appellant's overall conduct in the case, including his repeated expressions of antagonism toward his attorneys, and concluded with certainty that Appellant would continue with the same behavior irrespective of who was representing him. Support for the court's determination that, through his behavior and actions, Appellant forfeited his right to counsel can be found in Florida caselaw.

Recognizing that the right to appointed counsel may be forfeited under the Sixth Amendment and Article I, section 16, of the Florida Constitution, Florida Courts have upheld the denial of court appointed counsel when such denial was warranted. For example, the Third District held in *Jackson v. State*, 2 So. 3d 1036 (Fla. 3d DCA 2009), that the trial court's decision requiring the defendant to represent himself at trial was not grounds for reversal, stating:

> Although the attempted *Faretta* inquiries may not have passed legal muster, the trial court did not err in requiring Jackson to proceed without counsel. This is because his recalcitrance, antagonism and even personal attacks upon

> each of a lengthy series of court-appointed attorneys, all of whom were required to withdraw, rendered it obvious that he simply would not permit himself to be represented by anyone and amounted to a binding forfeiture or waiver of that right.

Id. at 1037 (footnote and citations omitted).

And, in *Watson v. State*, 718 So. 2d 253, 253-54 (Fla. 2d DCA 1998), receded from on other grounds, *Waller v. State*, 911 So. 2d 226 (Fla. 2d DCA 2005), this Court similarly affirmed the defendant's convictions where, "[a]fter the withdrawal of six different court-appointed attorneys, the trial court determined that Watson had forfeited his right to counsel and then proceeded to trial with Watson representing himself." While not elaborating on the basis for counsels' withdrawals, this Court "conclude[d] that the trial court did not err by determining that Watson had forfeited his right to counsel." *Id*. at 254. The same conclusion should be reached here.

Although the U.S. Supreme Court has not addressed the issue to date, federal circuits, including our own, have agreed that disruptive, threatening, or abusive conduct by a defendant may result in forfeiture of the right to an appointed attorney. See, e.g., *United State v. McLeod*, 53 F.3d 322, 325 (11th Cir. 1995) (analogizing longstanding precedent to conclude "a defendant who is abusive toward his attorney may forfeit his right to counsel."); *Carruthers v. Mays*, 889 F.3d 273, 289-90 (6th Cir. 2018); *United States v. Thompson*, 335 F.3d 782, 785 (8th Cir. 2003); *Gilchrist v. O'Keefe*, 260 F.3d 87, 97-100 (2d Cir. 2001) (Sotomayor, J.). In addition,

numerous state supreme courts have reached the same conclusion. *See, e.g., State v. Suriano*, 893 N.W.2d 543, 552 (Wis. 2017); *State v. Nisbet*, 134 A.3d 840, 853-54 (Me. 2016); *Kosyshyn v. State*, 51 A.3d 416, 419-20 (Del. 2012); *see also State v. Carruthers*, 35 S.W.3d 516, 547-50 (Tenn. 2000) (collecting cases).

The record here shows that Appellant has continuously and relentlessly antagonized and refused to cooperate with any counsel representing him. His actions show that he wanted to dictate his own defense and refused to cooperate with counsels who would not acquiesce to his demands. Had Appellant genuinely wanted competent representation, he would have allowed previous counsels to represent him as they saw fit in their professional capacities. Instead, when they would not act as a mouthpiece for his chosen defense, he harassed and antagonized them, ordered them to recuse themselves, and even went to far as to threaten—and perhaps even file—lawsuits against them. Based on his emails and countless filings with the court, it is abundantly clear that Appellant is convinced that he has a superior understanding of the law and will not be satisfied with any attorney that does not comply with his demands.

Recognizing the law governing forfeiture of counsel, Judge Adams was well within his discretion when he determined Appellant forfeited his right to counsel and that appointment of further counsel would prove futile. Because this finding is supported by competent substantial evidence in the record, it should be affirmed.

ISSUE TWO

WHETHER THE TRIAL COURT ERRED WHEN IT DID NOT CONDUCT A FARETTA HEARING BEFORE APPELLANT PROCEEDED TO TRIAL PRO SE. [RESTATED]

Appellant next claims that his constitutional rights were violated because the trial court failed to follow the dictates of *Faretta v. California*, 422 U.S. 806 (1975), when it forced Appellant to proceed *pro-se* to trial.

In so arguing, Appellant conflates the rights pertaining to waiver of counsel with a court's determination regarding forfeiture of counsel. These concepts are distinguished by the Third Circuit in *United States v. Goldberg*, 67 F.3d 1092 (3d Cir.1995), which states,

> Unlike waiver, which requires a knowing and intentional relinquishment of a known right, forfeiture results in the loss of a right regardless of the defendant's knowledge thereof and irrespective of whether the defendant intended to relinquish the right.

Id. at 1100. *See also Bowden v. State*, 150 So. 3d 264, 266 (Fla. 1st DCA 2014) ("since the mid–1990s, state and federal courts have found that a defendant may forfeit his right to counsel such that the procedural safeguards typically associated with waiver of counsel do not apply.").

This distinction was properly recognized by the trial court below. When Appellant argued prior to trial that he was not afforded a *Faretta* hearing, which was "required to strip someone of counsel," the court explained:

> I didn't look at it necessarily as you saying I don't want a lawyer. I looked at your actions as being antagonistic toward all the lawyers that were appointed before you.
>
> . . .
>
> Based upon [your conduct], it did not appear as if you were going to allow [your attorneys] to represent you and do their job. It was it was my impression that you were going to continue to act in a manner that would antagonize the lawyers that were appointed to represent you and we were not going to continue down that road at public expense. Therefore, I have declined to continue to [appoint] counsel to you.

(R. 2365-2367).

Indisputably, Courts are required to conduct *Faretta* hearings to determine whether a defendant, who is unequivocally seeking to represent himself, is *waiving* his right to counsel knowingly and voluntarily. *Tennis v. State*, 997 So. 2d 375, 378 (Fla. 2008) (explaining that, where "an unequivocal request for self-representation is made, the trial court is obligated to hold a hearing, to determine whether the defendant is knowingly and intelligently waiving his right to court-appointed counsel.").

However, after forfeiting his right to counsel, Appellant sought not to represent himself but instead asked the court to appointment new counsel.

As the trial court determined, because Appellant never sought to represent himself, *Faretta* is inapposite in this case. *See Howell v. State*, 707 So. 2d 674 (Fla. 1998)("Because Howell never requested to represent himself, he was not entitled to

an inquiry on the subject of self-representation under *Faretta*[.]"); *Wilson v. State*, 753 So. 2d 683, 688 (Fla. 3d DCA 2000) (finding *Faretta* inquiry inapplicable where "at no time during the trial did the defendant indicate he wished to represent himself," but instead requested the appointment of another counsel); *Weems v. State*, 645 So. 2d 1098, 1099 (Fla. 4th DCA 1994) (same).

An argument similar to Appellant's was raised and rejected in *Bowden v. State*, 150 So. 3d 264 (Fla. 1st DCA 2014). Like in the instant case, the trial court determined that Bowden—by his own actions—had forfeited his right to counsel. On appeal, Bowden argued that the trial court's failure to hold a *Faretta* hearing, before effectively requiring him to act *pro se*, was reversible error. However, as the Fourth District explained, "[u]pon a declaration of forfeiture [of counsel], a trial court would not be obligated to conduct a *Faretta* hearing or to otherwise warn a defendant of the dangers of proceeding pro se." *Bowden*, at 268.

While ultimately reversing in *Bowden*, the Court explained it was constrained to reverse "because the only evidence in the record regarding the appellant's abusive behavior came in from the trial court's own statements." As the Court noted, the trial court stated it had reviewed the threatening letters that Bowden wrote to his counsel, but "the transcript of the pre-trial hearing shows that the appellant's attempts to deny or respond in any way to these allegations were cut off by the trial court. The abusive letters were not included in the record on appeal, and there is no record

indication that the trial court ever questioned [counsel] about the letters." *Id*. at 265.

The same cannot be said in this case. Here, the record is replete with evidence evincing Appellant's behaviors toward counsels, and the court's determination that Appellant forfeited his right to counsel was supported by the record. Accordingly, the trial court was not obligated to conduct a *Faretta* inquiry in this case, and reversal is not warranted. *See Jackson v. State*, 2 So. 3d 1036, 1037 (Fla. 3d DCA 2009) (finding that, "[a]lthough the attempted *Faretta* inquiries may not have passed legal muster, the trial court did not err in requiring Jackson to proceed without counsel" because his conduct "rendered it obvious that he simply would not permit himself to be represented by anyone and amounted to a binding forfeiture or waiver of that right.").

ISSUE THREE

WHETHER THE TRIAL COURT ERRED WHEN IT DID NOT CONDUCT A HEARING TO DETERMINE APPELLANT'S COMPETENCY TO PROCEED TO TRIAL AND TO REPRESENT HIMSELF. [RESTATED]

Appellant next challenges the court's finding of contempt by arguing that the trial court was required to conduct a competency examination prior to his trial.

After Judge Adams determined Appellant forfeited his right to counsel on the contempt charge, Appellant began filing a multitude of various motions with the court. Like many pro se pleadings, they were not model pleadings; among them were several motions whose titles suggest Appellant believed he was not competent

to conduct his own defense. The motions essentially alleged, in various ways, that while Appellant was competent to stand trial with the help of counsel, he was not competent to act as his own attorney. (R. 1406, 1476, 1696). Attached to several of these motions was an unsigned report, allegedly drafted by a Rebecca Potter, LMHC, that suggested Appellant would struggle with his own representation and he should be appointed counsel to represent him. (R. 1117, 1125, 1408, 1478, 1624).

The trial court denied these motions by written order on more than one occasion, finding, for example, that the "allegations in the report [from Rebecca Potter] do not demonstrate that Defendant is incompetent pursuant to Fla. Stat. §916.12" and that Appellant "has made no allegations, and the Court has made no observations, which would cause this Court to have a reasonable belief Defendant may be incompetent (R. 1440, 1702).

As Appellant's argument on appeal seemingly challenges his competency both to stand trial and to represent himself at trial, both challenges will be addressed in an abundance of caution.

i. Competency to proceed to trial

It is well-settled that the state may not move forward "at any material stage of a criminal proceeding against a defendant who is incompetent to proceed." *McCray v. State*, 71 So. 3d 848, 862 (Fla. 2011) (*quoting Caraballo v. State*, 39 So. 3d 1234, 1252 (Fla. 2010). A defendant has a procedural due process right to measures which

ensure he is not tried or convicted while incompetent to stand trial, and a trial court's failure to adhere to these procedural requirements deprives him of his due process right to a fair trial. *Dougherty v. State*, 149 So. 3d 672, 676 (Fla. 2014).

Procedures for determining a defendant's competency to proceed to trial are set forth in Florida Rules of Criminal Procedure rule 3.210. This rule requires the trial court to conduct a hearing to determine the defendant's mental condition *if the court has reasonable grounds to believe the defendant is not mentally competent to proceed*. Fla. R. Crim. P. rule 3.210(b).

The threshold determination of whether reasonable grounds exist to question a defendant's competency is within the trial court's discretion. *See Peede v. State*, 955 So. 2d 480, 488–89 (Fla. 2007); *Trueblood v. State*, 193 So. 3d 1060, 1061 (Fla. 1st DCA 2016). In turn, the question before this Court is whether the trial court, at the time of trial, had information that created reasonable grounds to believe Appellant might be incompetent. Review of the record shows that it did not.

The trial court must independently determine that there are reasonable grounds to question the defendant's competency before the obligation to hold a competency hearing arises. *Rodgers v. State*, 3 So. 3d 1127, 1132 (Fla. 2009). There are no "fixed or immutable signs" that always require a competency hearing; instead, in evaluating whether a competency hearing is necessary, the trial court should consider a totality of the relevant circumstances surrounding the case and the

allegation. *See Calloway v. State*, 651 So. 2d 752, 754 (Fla. 1st DCA 1995)(*quoting Scott v. State*, 420 So. 2d 595, 597 (Fla. 1982).

Judge Adams considered Appellant's motions alleging incompetency, as well as his observations throughout the case, and determined on more than one occasion that the court "has made no observations which would cause this Court to have a reasonable belief Defendant may be incompetent." (R. 1440, 1702). Notably, trial judges, particularly those who have continuously presided over all or most stages the case, "will often prove best able to make more fine-tuned mental capacity decisions, tailored to the particular defendant's individualized circumstances." *Indiana v. Edwards*, 554 U.S. 164 (2008).

Judge Adams's assessment of the existence of reasonable grounds to question Appellant's competency is reviewed by this Court for an abuse of discretion. *Rodgers*, 3 So. 3d at 1132. Here, Judge Adams had presided over this case immediately following Appellant's arraignment and had first-hand knowledge of Appellant's mental state and actions throughout the proceedings. Nothing in the record suggests Appellant was incompetent to proceed to trial, and absent an abuse of discretion, Judge Adams's decision not to hold a competency hearing should be upheld. *Rodgers*, at 1132 ("This Court will uphold the trial court's decision as to whether such a [competency] hearing is necessary absent an abuse of discretion."); *Pickles v. State*, 976 So. 2d 690, 693–94 (Fla. 4th DCA 2008) ("Although Pickles

engaged in disruptive behavior and refused to communicate with his attorneys, the court had dealt with this defendant longer than his own attorney and had observed his manipulative behavior.... From this record we conclude that the defendant was not denied due process by the trial court's refusal to conduct an evidentiary hearing.").

ii. Competency to represent himself at trial

Appellant's second claim, that he is entitled to a new trial because he was not competent to represent himself, is similarly meritless. Appellant claimed, through various motions, that he was not competent to represent himself because:

- He has no training in the law and is uneducated in the law (R. 1206, 1406);
- His "medical conditions will create a wrongful criminal conviction because he has no idea of how to present a criminal defense at trial." (R. 1206);
- He is incompetent to conduct a criminal trial (R. 1474); and
- He is "incompetent to conduct legal defense proceedings. Aside from his disabilities, Huminski has no clue as to how to present a defense at trial, issue objections, move for mistrial or any other skills requiring a law degree (R. 1476).

There appears to exist no rules or cases discussing the procedure for trial courts to follow when a defendant *forfeits* his right to counsel by actions, but claims he is incompetent *to conduct his own defense*. However, guidance can be found in rules and cases discussing a court's obligations to determine competency when a

defendant waives his right to counsel and elects to proceed to trial pro-se.

"It is undeniable that in most criminal prosecutions defendants could better defend with counsel's guidance than by their own unskilled efforts." *Faretta*, 422 U.S. at 834. However, under Fla. R. Crim. P. 3.111,

> *Regardless of the defendant's legal skills or the complexity of the case*, the court shall not deny a defendant's unequivocal request to represent himself or herself, if the court makes a determination of record that the defendant has made a knowing and intelligent waiver of the right to counsel, and *does not suffer from severe mental illness to the point where the defendant is not competent to conduct trial proceedings by himself or herself.*

Id. (emphasis added). In other words, rule 3.111 dictates that, where a defendant has made a knowing waiver of counsel, the court cannot deny an unequivocal request for self-representation absent a determination that the defendant "suffer[s] from severe mental illness to the point where the defendant is not competent to conduct trial proceedings by himself or herself."

The Court in *Faretta* made no provision for an additional layer of protection requiring courts to ascertain whether the defendant is intellectually capable of conducting an *effective* defense, and the Florida Supreme Court reaffirmed this view in *Hill v. State*, 688 So. 2d 901 (Fla. 1996), emphasizing that "a defendant does not need to possess the technical legal knowledge of an attorney before being permitted to proceed prose." *Id*. at 905; *see also Bowen v. State*, 698 So. 2d 248 (Fla. 1997)(explaining that, after determining a defendant is competent to waive his right

to counsel, the court may not inquire further into whether the defendant "could provide himself with a substantively qualitative defense.").

While Appellant did not make a "knowing waiver of counsel" in the traditional sense contemplated by rule 3.111, *Faretta*, and *Farreta*'s progenies, the same logical reasoning and analysis should be applied in cases like this, where a defendant's own repeated rejection of counsel's skilled representation led to his forfeiture of counsel.

As Judge Adams recognized, Appellant wanted his case argued his way, and whenever counsel declined to do so, Appellant reacted in ways that placed him in a direct adversarial relationship with each attorney. Therefore, while Appellant did not affirmatively state that he would not accept counsel and wanted to represent himself, it was apparent that he would not voluntarily accept the representations of any counsels who would not conform to his demands regarding how he wanted his defense presented. Because there is no reason to believe that his relationship with a newly-appointed lawyer would have been any better, based on his actions, Appellant's only viable option was to represent himself.

Applying the principles embodied in 3.111 and *Faretta*, it is logical that Judge Adams would only have needed to address Appellant's competency to represent himself where there were reasonable grounds to believe that he suffered from severe mental illness to the point where he was not competent to conduct trial proceedings

by himself. That Appellant, acting pro-se, lacked legal training and was not as effective as court appointed counsel would have been is not grounds for reversal.

Here, the trial court had no *reasonable* grounds to believe that Appellant suffered from such a severe mental illness that he could not conduct trial proceedings on his own. While the record contains a report from a "Rebecca Potter" suggesting Appellant would benefit from the appointment of counsel, the report stops short of alleging any mental illnesses that would prohibit Appellant from representing himself. More importantly, even assuming the report made such a statement, the authenticity of this report is questionable at best; it is written in the same grammatical and distinct way as Appellant's pro-se motions and, most notably, is unsigned. Interestingly, it appears that Judge Adams also questioned the veracity of the report and its true author. Stopping short of accusing Appellant of lying, the judge, when addressing said report in an order, referred to it as being "prepared by a "mental health counselor"." (R. 1440). The only "signed" document can be found on pages 1576-1578 of record, wherein Ms. Potter allegedly states that Appellant's disabilities "absolutely prohibit his competence to function as an equal adversary to Mr. Russell who has practicd (sic) law for over 30 years." A close look at the signature page of this document suggests that, while signed by Rebecca Potter, the signature was very likely copied from another document and transferred onto this

one: 

(R. 1578). Judge Adams was well within his discretion to disregard the seemingly forged documents.

Further, the record suggests that Appellant was competent to put forth the defense that he believed to be best. Undeniably, Appellant demonstrated some knowledge of the law – for example, he represented himself in multiple civil cases, filed countless motions in both his civil and criminal case containing legal citations and argument, contacted the state bar regarding his appointed counsel, contacted the ethics committee to report Sherriff Scott, indicated on multiple occasions that he was going to seek new counsel, filed lawsuits against various counsels and agencies, and was indisputably aware of his right to counsel and to discharge appointed counsel.

In fact, Judge Adams rejected Appellant's argument at trial that his case should be dismissed because of his incompetence to represent himself. The exchange that took place sheds light on Judge Adams's perspective of the totality of the circumstances surrounding the case:

> APPELLANT: As the Court noticed, I filed maybe 100 documents or motions in this case and according to the judge's ruling on those documents I'm basically a legal moron because I failed on every single motion and *someone who can't even file a motion to dismiss based on reading case law is certainly not competent to represent themselves in trial*. So, I think, basically, the long history of me filing motions that you consider absolutely outrageous and stupid or whatever, I'm not putting words

> in -- or moronic -- shows that I did not have the capability to engage in a way more complex task of representing myself at trial on those grounds. So, I'd dismiss on those grounds.
>
> STATE: Judge, I would just ask that you take your personal observations of Mr. Huminski, since your interactions with him in this particular case. The things that are reflected in the court file clearly show that Mr. Huminski has an understanding of the civil world and criminal arena, to the extent that he knows the participants, he knows the roles of the participants, he certainly has the ability to assist with his lawyer, so competency is not an issue in this particular incident.
>
> THE COURT: Mr. Huminski, your – your filings, even though you have characterized them as stupid, moronic or -- or whatever, I've not really considered them as such, simply considered you as a prose litigant, you know, filing many motions in the case, some of which are in contravention of the order that Judge Krier had previously put in place.

(R. 2397-2399).

Because the record does not provide reasonable grounds for Judge Adams to believe that Appellant suffered from such a severe mental illness that he could not conduct his own defense, the court did not err in failing to conduct a competency hearing before requiring Appellant to proceed pro-se.

ISSUE FOUR

WHETHER THE TRIAL COURT ERRED IN IMPOSING A $50 COST OF PROSECUTION FOR THE OFFENSE OF CRIMINAL CONTEMPT. [RESTATED].

Appellant's fourth claim, that the court impermissibly imposed a cost of

prosecution in this case, appears to have merit. Because contempt is a common law crime and the statutes governing contempt do not explicitly allow for the cost of prosecution to be imposed, Appellee concedes that this cost was seemingly imposed in error and the case should be remanded for the limited purpose of striking the cost from Appellant's judgment and sentence.

ISSUE FIVE

WHETHER THE TRIAL COURT ERRED BY DENYING APPELLANT'S REQUEST FOR A JURY TRIAL FOR HIS CONTEMPT PROCEEDINGS? [RESTATED]

Appellant's final argument alleges that he is entitled to reversal and retrial because he was denied his right to a trial by jury.

However, this Court and other Florida Courts have long held that, "[n]either the United States Constitution nor the Florida Constitution affords the right to a jury trial in criminal contempt proceedings when the potential punishment has been limited to no more than six months." *Floyd v. Bentley*, 496 So. 2d 862, 863 (Fla. 2d DCA 1986); *see also Aaron v. State*, 284 So. 2d 673 (Fla. 1973); *Jones v. Ryan*, 967 So. 2d 342, 344–45 (Fla. 3d DCA 2007); *Wells v. State*, 654 So. 2d 146, 147 (Fla. 3d DCA 1995). As explained in *Martinez v. State*, 339 So. 2d 1133 (Fla. 2d DCA 1976), approved, 346 So. 2d 68 (Fla. 1977):

> In a series of decisions, the United States Supreme Court has held that sentences in excess of six months may not be imposed for criminal contempt without guilt or innocence being determined by a jury. Bloom v. Illinois, 391 U.S.

> 194, 88 S.Ct. 1477, 20 L.Ed.2d 522 (1968); Baldwin v. New York, 399 U.S. 66, 90 S.Ct. 1886, 26 L.Ed.2d 437 (1970); Codispoti v. Pennsylvania, 418 U.S. 506, 94 S.Ct. 2687, 41 L.Ed.2d 912 (1974). Under the authority of these decisions, appellant's six month sentence could be properly imposed upon conviction without a trial by jury.

Martinez, at 1135.

Where—such as here—the state and the court agree that the punishment for contempt would be limited to no greater than six months in county jail (R. 2281) and Appellant in fact received a sentence within that range, Appellant's constitutional rights were not violated when he was denied a trial by jury. *Aaron v. State*, 284 So. 2d 673, 676–77 (Fla. 1973) ("petitioner's sentence of four months' imprisonment was properly imposed by the judge, as trier of both law and fact, in that the sentence falls within the constitutional limitations upon the operation of the rule we announce today."); *Gordon v. State*, 960 So. 2d 31, 36 (Fla. 4th DCA 2007) (rejecting claim that defendant was entitled to jury trial on contempt charge where sentence was limited to no greater than six months in jail); *Wells v. State*, 654 So.2d 146, 147 (Fla. 3d DCA 1995) ("The denial of a request for a jury trial in a contempt proceeding limits the maximum term of imprisonment to six months on a finding of guilt."). Accordingly, Appellant is not entitled to relief on this claim.

CONCLUSION

Appellant is not entitled to reversal for a new trial on the grounds argued. Appellant was not entitled to the appointment of new counsel; by consistently berating, antagonizing, and threatening various counsels from the public defender's office and the office of regional counsel, Appellant forfeited his right to counsel. Because his right to counsel was forfeited, not waived, the trial court was not required to conduct a *Faretta* inquiry to determine if his decision to represent himself was made knowingly and intelligently. In addition, because there existed no reasonable grounds for the trial court to question Appellant's competency, the court was not required to hold a competency hearing. Further, while contempt charges can entitle a defendant to a trial by jury, such entitlement only attaches when facing a sentence greater that six months imprisonment; as the state and court limited Appellant's sentencing exposure to six months, he was not impermissibly denied his right to a jury trial.

However, Appellant is entitled to relief as to the cost of prosecution imposed in this case.

Accordingly, Appellee respectfully requests this Honorable Court affirm Appellant's conviction for indirect criminal contempt, but remand to the trial court for the limited purpose of striking the costs associated with the cost of prosecution.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been eFiled with the Clerk ot Court and furnished to Anthony Candella, Esq., 10312 Bloomingdale Ave Ste 108-170, Riverview FL 33578 electronically via email to tony@candelalawfirm.com , on this 21st day of February, 2020.

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 14-point Times New Roman, in compliance with Fla. R. App. P. 9.210(a)(2).

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