

SUPERIOR COURT, STATE OF ARIZONA, IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA, Plaintiff, vs. WALTER HAROLD MITCHELL III, Defendant.	Case No. P1300CR202100015 NOTICE
HONORABLE KRISTA M. CARMAN DIVISION 4	BY: Jennifer Kuns, Judicial Assistant DATE: April 26, 2022

The *Pro Se* Defendant; Roles of the Parties

Definitions

Pro Se Defendant: "Pro se" is a Latin phrase that means "for oneself." It is the designation given to someone who chooses to forgo representation from an attorney and instead chooses to represent himself or herself in court.

Advisory Counsel: Where counsel only gives a *pro se* defendant technical assistance in the courtroom but the attorney does not participate in the actual conduct of the trial. *State v. Rickman*, 148 Ariz. 499, 504 715 P.2d 752 (1986). FN1

Hybrid Representation: The representation of a defendant by himself and by an attorney at the same time. There is no constitutional right to this form of representation, nor does Arizona recognize any right to this form of representation. *Id at 504*.

Role of the Defendant

The right of the defendant to self representation is a constitutional right afforded by the Sixth Amendment of the U.S. Constitution. *Faretta v. California*, 422 U.S. 806, 819, 95 S.Ct. 2525, 2533 (1975). Arizona also recognizes the right to self representation. Ariz. Const. art. 2, § 24. The decision of the defendant to move forward in a state criminal trial without counsel must be done voluntarily and intelligently. *Farretta* at 835.

What *Pro Se* Defendant CAN do:

- control the organization and content of his own defense. *See McKaskle v. Wiggins*, 465 U.S. 168, 174, 104 S.Ct. 944, 951(1984).
- make motions. *Id.*
- argue points of law. *Id.*
- participate in voir dire. *Id.*
- question witnesses. *Id.*

- address the court and the jury at appropriate points in the trial. *Id.*
- at any time waive the right to self representation. Rule 6.1(e) *Ariz. R. Crim. P.*

What *Pro Se* Defendant **CAN'T** do:

- disrupt the courtroom. *State v. Whalen*, 192 Ariz. 103, 107 (App. 1997).
- infringe on court's ability to ensure that the trial is conducted in a judicious, orderly fashion. *State v. Wassenaar*, 215 Ariz. 565, 573, ¶ 28 (2007).
- circumvent or refuse to follow the rules as dictated in the *Arizona Rules of Criminal Procedure* and the *Arizona Rules of Evidence*. *State v. Gomez*, 231 Ariz. 219, 222, ¶ 7, 293 P.3d 495, 498 (2012); *See also Faretta supra* at FN 46.
- engage in deliberate serious and obstructionist misconduct. *Id.*
- later assert ineffective assistance of counsel. *Id.*
- later challenge the advice or services provided by advisory counsel. *State v. Russell*, 175 Ariz. 529, 534, 858 P.2d 674, 679 (1993).
- use self-representation to manipulate the system. *United States v. Frazier-El*, 204 F.3d 553, 560-61 (4th Cir. 2000).

Role of Advisory Counsel

What Advisory Counsel **CAN** do:

- provide answers to legal questions asked by the *pro se* defendant. Rule 6.1(c) *Ariz. R. Crim. P.*
- meet with the defendant to clarify to what the extent the defendant wants advisory counsel to be involved. *McKaskle* at 176-177.
- be prepared to represent defendant in the event that self-representation is terminated. *Faretta*, 422 U.S. 806, FN46 (however, hearings and decisions cannot be revisited).
- Assist *pro se* defendant in understanding courtroom protocol. *McKaskle v. Wiggins*, 465 U.S. 168, 184.

What Advisory **CAN'T** do:

- interfere with the *pro se* defendant's tactical decisions, control the questioning of witnesses, or speak on behalf of the *pro se* defendant on matters of importance without the consent of the *pro se* defendant. *McKaskle* 465 U.S. at 178.
- appear (in front of the jury) to be defending the *pro se* defendant. The jury's perception that *pro se* defendant is representing himself must be maintained. *Id.*
- seize control of the case. This means that advisory counsel may not write motions, provide legal research, conduct investigations or provide legal staff to assist *pro se* defendant. *Id.* at 184.

cc: Casi M. Harris- Deputy County Attorney, Yavapai County Attorney's Office (e)
Walter Harold Mitchell, III- C/O YCSO (*Pro Se*)
Andrew R. Falick- Deputy County Public Defender, Yavapai County Public Defender's Office (e)
(Advisory Counsel)
Victim Services (e)
YCSO- Detention Records (e)