

County Criminal Court: CRIMINAL PROCEDURE – Pleas – Appellant’s written waiver alone did not sufficiently prove that Appellant knowingly and voluntarily waived her right to counsel. Reversed and remanded. *Kathrine D. Tolbert v. State*, No. CRC1208419CFAES (Fla. 6th Cir. App. Ct. August 19, 2013).

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR PASCO COUNTY
APPELLATE DIVISION**

**KATHRINE D. TOLBERT,
Appellant,**

v.

**UCN: 512012CF008419A000ES
Case No: CRC1208419CFAES
Lower No: 93-55627WCTES**

**STATE OF FLORIDA,
Appellee.**

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Appeal from Pasco County Court

County Judge Robert P. Cole

Thomas Matthew McLaughlin, Esq.
For Appellant

Hanna Tait, A.S.A.
For Appellee

ORDER AND OPINION

The only issue on appeal is whether Appellant’s written waiver, in and of itself, sufficiently proves that Appellant knowingly and voluntarily waived her right to counsel. The trial court found that the written waiver was sufficient and sentenced Appellant for violating her probation. Since it cannot be shown that Appellant freely and voluntarily waived her right to an attorney, we shall reverse this cause as set forth below.

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LAW AND ANALYSIS

The sole issue on appeal is whether Appellant's written waiver alone sufficiently proves that Appellant knowingly and voluntarily waived her right to counsel. A criminal defendant has the right to self-representation so long as the right to assistance of counsel is knowingly and intelligently waived. Faretta v. California, 422 U.S. 806, 835 (1975). The Faretta requirements can be found in Florida Rule of Criminal Procedure 3.111(d)(2), which provides that a defendant cannot waive the assistance of counsel until a "thorough inquiry" has been made into "the accused's capacity to make a knowing and intelligent waiver." Further, "the court shall advise the defendant of the disadvantages and dangers of self-representation" prior to ruling on the defendant's request to proceed *pro se*. Id. Pursuant to 3.111(d)(3), "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..."

Due process requires a court accepting a guilty plea to carefully inquire into the defendant's understanding of the plea, so that the record contains an affirmative showing that the plea was intelligent and voluntary. See Koenig v. State, 597 So. 2d 256, 258 (Fla. 1992). For the trial court's sentence to be upheld, it must be shown that Appellant freely and voluntarily waived her right to an attorney. As there is no transcript or other record of the original plea colloquy, the only evidence supporting Appellant's waiver is the written waiver. And a written form itself does not prove that a defendant's waiver of counsel was voluntary. Finney v. State, 9 So. 3d 741 (Fla. 2d DCA 2009). Moreover, the written waiver in this case did not comply with Florida Rule of Criminal Procedure 3.111(d)(4), as it was not signed by any witnesses. Absent a voluntary waiver of her right to counsel, the trial court was prohibited from sentencing Appellant to jail for violating her probation. See Tur v. State, 797 So. 2d 4 (Fla. 3d DCA 2001). Appellant's judgment and sentence must be reversed. Therefore, it is

ORDERED that this cause is hereby REVERSED and REMANDED in accordance with this opinion.

DONE AND ORDERED in Chambers, at New Port Richey, Pasco County, Florida this 19th day of August 2013.

Original order entered on August 19, 2013 by Circuit Judges Stanley R. Mills, W. Lowell Bray, Jr., and Daniel D. Diskey.

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