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

**ON APPEAL TO THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY**

**APPELLATE DIVISION**

CHARLES F. JOHNSON,

Appellant,

Appeal Case No.: CRC 07-00027APANO
UCN No.: 522007MM001492XXXXNO

v.

STATE OF FLORIDA,

Appellee.
_____/

Opinion filed: 12/2/09.

Appeal from the County Court
for Pinellas County
County Judge Donald E. Horrox

Lynda B. Barack
Attorney for the Appellant

Bernie McCabe, Esquire
State Attorney, Sixth Judicial Circuit of Florida
Attorney for Appellee

**ORDER AND OPINION**

PER CURIAM

Appellant pled no contest to one charge of unlicensed specialty contracting at his arraignment and was not represented by counsel. Appellant subsequently filed a notice of

isolvency and counsel was appointed for his appeal. On this court's order, the parties submitted supplemental briefs addressing whether the plea colloquy at Appellant's arraignment was sufficient to satisfy the requirements of *Faretta v. California*, 422 U.S. 806 (1975). We find that it was not, and reverse the Appellant's conviction.

"Florida is a "prospective-imprisonment" jurisdiction that provides indigent criminal defendants a right to counsel in all criminal prosecutions "punishable by imprisonment," except in misdemeanor or ordinance-violation cases where the trial judge affirmatively certifies in writing-before trial-that the defendant will not face a term of imprisonment for the charged offense." *State v. Kelly,* 999 So.2d 1029, 1055 (Fla. 2008). When a defendant who is entitled to counsel chooses to waive the right to counsel, he must do so "knowingly and intelligently." *Farretta,* U.S. at 853. Waiving one's right to counsel effectually waives certain benefits one is afforded by the assistance of counsel. Thus, the court must make the defendant aware of the dangers and disadvantages of self representations, "so that the record will establish that 'he knows what he is doing and his choice is made with eyes open.'" *Id* at 853. When a defendant waives the right to counsel, the trial court's failure to perform an adequate *Faretta* inquiry is per se reversible error. *State v. Young,* 626 So.2d 655,657 (Fla. 1993); *Case v. State*, 865 So.2d 557, 558-59 (Fla. 1st DCA 2003).

In the present case, the trial judge did not conduct the proper colloquy to ensure that Appellant had waived his right to counsel knowingly and intelligently. At the outset, the judge spoke to the entire group of defendants with regard to their rights, and the trial judge informed the group that each defendant had a right to counsel. However, during Appellant's arraignment, the judge never addressed whether Appellant needed or wanted counsel, and the record is not

clear as to whether Appellant knowingly and voluntarily waived his right to counsel. The colloquy was as follows:

THE COURT: Okay. Have you read the rights on the form?

THE DEFENDANT: Yes, I have.

THE COURT: Did you understand them?

THE DEFENDANT: Yes, I did

THE COURT: Do you understand that you would be giving them up if you pled no contest? You're giving up all of the rights on the form by pleading no contest: Right to a trial, confront and cross-examine the State's witnesses, all of them?

THE DEFENDANT: Yes.

The judge then accepted Appellant's plea of no contest. Nowhere in the colloquy did the judge inform the Appellant of the inherent dangers of self representation, and the record does not establish that Appellant decided to proceed without counsel knowingly and intelligently.

ACCORDINGLY, this court REVERSES the judgment and sentence and REMANDS for action in accordance with this order.

ORDERED at St. Petersburg, Florida this 2 day of September, 2009.

Original order entered on December 2, 2009 by Circuit Judges David A. Demers, Joseph A. Bulone, and Chris Helinger.

Copies: Bernie McCabe, Esquire
State Attorney

Lynda B. Barack
Attorney for Appellant