

Third District Court of Appeal

State of Florida, July Term, A.D. 2009

Opinion filed July 22, 2009.

No. 3D06-3205
Consolidated: 3D06-3204
Lower Tribunal Nos. 03-7778, 04-10361

James C. Marshall,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, William Thomas, Judge.

Roderick D. Vereen, for appellant.

Bill McCollum, Attorney General, and Timothy R.M. Thomas, Assistant Attorney General, for appellee.

Before COPE, SHEPHERD, and SUAREZ, JJ.

On Motion for Rehearing

SUAREZ, J.

We grant James C. Marshall's motion for rehearing, withdraw our previously rendered per curiam opinion dated March 25, 2009, and substitute the following in its place:

James C. Marshall appeals from his conviction for one count of second degree murder. We affirm.

We address only the claim that the trial court committed reversible error by not conducting a proper Faretta¹ hearing. Based upon our review of the record, Marshall's alleged requests for self-representation were at best equivocal; he was not entitled to an inquiry on the subject of self-representation under Faretta. See Rios v. State, 696 So. 2d 469 (Fla. 2d DCA 1997) (holding that if court-appointed counsel is found, after a proper Nelson inquiry,² to be rendering effective assistance and the defendant insists that he still wants to discharge him or her, then a Faretta hearing is in order); accord Davila v. State, 829 So. 2d 995 (Fla. 3d DCA 2002) (finding that because there was no unequivocal request for self-representation, the defendant was not entitled to an inquiry on the subject of self-representation under Faretta). Further, we cannot conclude from the record before us that the trial court abused its discretion in refusing to permit Marshall to

¹ Faretta v. California, 422 U.S. 806, 835-36 (1975).

² Nelson v. State, 274 So. 2d 256 (Fla. 4th DCA 1973).

discharge his counsel after holding a proper Nelson hearing. See Rios, 696 So. 2d at 471.

We affirm all remaining issues on appeal.

Affirmed.