



The Supreme Court of South Carolina

DONALD W. BEATTY
CHIEF JUSTICE

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MEMORANDUM

To: Magistrates and Municipal Judges
From: Chief Justice Donald W. Beatty
Subject: Sentencing Unrepresented Defendants to Imprisonment
Date: September 15, 2017

It has continually come to my attention that defendants, who are neither represented by counsel nor have waived counsel, are being sentenced to imprisonment. This is a clear violation of the Sixth Amendment right to counsel¹ and numerous opinions of the Supreme Court of the United States.² All defendants facing criminal charges in your courts that carry the possibility of imprisonment must be informed of their right to counsel and, if indigent, their right to court-appointed counsel prior to proceeding with trial. Absent a waiver of counsel,³ or the

¹ The right to counsel under the Sixth Amendment to the United States Constitution applies in state courts through the Due Process Clause of the Fourteenth Amendment. U.S. Const. amend. VI; U.S. Const. amend. XIV, § 1; S.C. Const. art. I, § 14.

² See *Argersinger v. Hamlin*, 407 U.S. 25 (1972) (holding that absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at trial); *Scott v. Illinois*, 440 U.S. 367 (1979) (concluding that the Sixth and Fourteenth Amendments to the United States Constitution require that no indigent criminal defendant be sentenced to a term of imprisonment unless the State has afforded him the right to assistance of appointed counsel in his defense); *Alabama v. Shelton*, 535 U.S. 654 (2002) (ruling that a defendant who receives a suspended or probated sentence to imprisonment has a constitutional right to counsel).

³ See *Faretta v. California*, 422 U.S. 806, 835 (1975) (providing a criminal defendant "should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that 'he knows what he is doing and his choice is made with eyes open'" (quoting *Adams v. United States ex rel. McCann*, 317 U.S. 269, 279 (1942))).

appointment of counsel for an indigent defendant, summary court judges **shall not** impose a sentence of jail time, and are limited to imposing a sentence of a fine only for those defendants, if convicted. When imposing a fine, consideration should be given to a defendant's ability to pay. If a fine is imposed, an unrepresented defendant should be advised of the amount of the fine and when the fine must be paid. This directive would also apply to those defendants who fail to appear at trial and are tried in their absence.

I am mindful of the constraints that you face in your courts, but these principles of due process to all defendants who come before you cannot be abridged.