

IN THE  
**COURT OF APPEALS**  
STATE OF ARIZONA  
DIVISION ONE



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FILED: 11/10/2021  
AMY M. WOOD,  
CLERK  
BY: KLE

STATE OF ARIZONA, )  
 ) Court of Appeals  
 ) Division One  
 Appellee, ) No. 1 CA-CR 21-0319  
 )  
 v. ) Maricopa County  
 ) Superior Court  
 ARLENA MINERVA WILLES, ) No. CR2019-005397-001  
 )  
 Appellant. )  
 )  
 )  
 )

FILED  
11/10/2021 10:49 AM  
I. Fuentes, Deputy  
CLERK OF THE SUPERIOR COURT

**ORDER GRANTING MOTION FOR RECONSIDERATION AND STAYING APPEAL FOR COLEMAN HEARING**

The court has considered appellant's motion for reconsideration of the October 15, 2021 order denying appellant's motion for self-representation as untimely.

Appellant has provided additional information to support her original motion. Appellant explains that the day before the jury returned its verdict, appellant told her trial counsel she wished to represent herself on appeal if convicted. On the day of sentencing, appellant again told her trial counsel she wished to represent herself on appeal. Rather than assist appellant with pursuing an appeal in which appellant represented herself, trial counsel filed a notice of appeal that also sought the appointment of appellate counsel.

Appellant further explains she was unaware counsel had filed a notice of appeal or a request for the appointment of appellate counsel because trial counsel did not serve appellant with a copy of the notice of appeal

and did not otherwise inform appellant he had filed the notice. The court notes the certificate of service for the notice does not include appellant. Knowing there was a 20-day deadline to file a notice of appeal pursuant to Rule 31.2(a)(2), but unaware that trial counsel had already filed a notice of appeal, appellant filed her own pro se notice of appeal four days after counsel filed the first notice. Appellant explains she did so in the belief she was now representing herself on appeal, expressly identifying herself on the notice as appearing "pro se."

This court treated appellant's second notice of appeal as superfluous and appointed counsel to represent appellant as requested in the first notice of appeal. Appellant later filed a motion to waive counsel and represent herself on appeal, which this court denied as untimely. See *Coleman v. Johnsen*, 235 Ariz. 195, 198, ¶ 17 (2014); Ariz. R. Crim. P. 31.5(f) (both providing a waiver of appellate counsel must be filed no later than thirty days after filing a notice of appeal).

Appellant has shown good cause to grant the motion for reconsideration. Appellant twice informed counsel of her wish to represent herself on appeal. Counsel took no action to help appellant accomplish this and instead did the opposite and sought the appointment of appellate counsel. When it appeared to appellant that counsel had not filed a notice of appeal, and appellant had no reason to believe otherwise, appellant filed her own notice of appeal and did so in the belief she was representing herself. Had counsel not filed the earlier notice of appeal, appellant's pro se notice would have served as timely notice that appellant sought

to represent herself on appeal and the court would have remanded this matter pursuant to *Coleman*. Therefore,

IT IS ORDERED granting the motion for reconsideration.

IT IS FURTHER ORDERED directing appellant to file a written waiver of appellate counsel pursuant to Rule 31.5(f)(2).

Pursuant to *Coleman* and Arizona Rule of Criminal Procedure 31.5,

IT IS FURTHER ORDERED staying this appeal until December 9, 2021, and revesting jurisdiction in the Maricopa County Superior Court to conduct a "Faretta-like hearing" (informing appellant of the dangers and disadvantages of self-representation) and determine whether appellant's waiver of counsel on appeal is made knowingly, intelligently, and voluntarily. See *Faretta v. California*, 422 U.S. 806, 834-35 (1975) (identifying factors for valid waiver of counsel); *Coleman*, 235 Ariz. at 198-99, ¶ 19 (requiring a "Faretta-like hearing" before accepting waiver of appellate counsel).

IT IS FURTHER ORDERED directing the clerk of the superior court to transmit to this court a certified copy of the superior court's written determination regarding appellant's waiver within 5 days after entry, marked for filing in this appeal.

IT IS FURTHER ORDERED that the stay will be automatically lifted on December 10, 2021.

IT IS FURTHER ORDERED extending the time to file the opening brief to January 10, 2022.

IT IS FURTHER ORDERED that this order does not affect court reporter obligations to prepare and timely file all transcripts due in this matter.

IT IS FURTHER ORDERED that, after the superior court makes its determination, this court will enter appropriate orders directing advisory counsel to provide paper copies of the transcripts and record on appeal to appellant.

IT IS FURTHER ORDERED directing the clerk of this court to send this order to the Honorable Geoffrey Fish, Ken Crenshaw, court reporters Crystal Hereford, Michael Babicky and Wanda Bauer, and to appellant personally.

\_\_\_\_\_/s/\_\_\_\_\_  
Benjamin A. Armstrong, Judge Pro Tempore

A copy of the foregoing  
was sent to:

Linley Wilson  
Dawnese Hustad  
Hon Geoffrey H Fish  
Jeff Fine  
Ken Crenshaw  
Crystal Hereford  
Michael A Babicky (mailed)  
Wanda J Bauer  
Arlena Minerva Willes (mailed)