

1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

Court of Appeals of New Mexico
Filed 6/1/2026 8:33 AM

2 **CITY OF FARMINGTON,**

3 Plaintiff-Appellee,



Mark Reynolds

4 v.

No. A-1-CA-42483

5 **JUSTIN CHEE,**

6 Defendant-Appellant.

7 **APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY**

8 **Curtis R. Gurley, District Court Judge**

9 City of Farmington
10 Jennifer Breakell, City Attorney
11 Farmington, NM

12 for Appellee

13 Bennett J. Baur, Chief Public Defender
14 Caitlin C.M. Smith, Assistant Appellate Attorney
15 Santa Fe, NM

16 for Appellant

17 **MEMORANDUM OPINION**

18 **DUFFY, Judge.**

19 {1} This matter was submitted to the Court on the brief in chief pursuant to the
20 Administrative Order for Appeals in Criminal Cases from the Second, Eleventh, and
21 Twelfth Judicial District Courts in *In re Pilot Project for Criminal Appeals*, No.
22 2022-002, effective November 1, 2022. Following consideration of the brief in chief,
23 the Court assigned this matter to Track 2 for additional briefing. Now having

1 considered the brief in chief, answer brief, and reply brief, we vacate the district
2 court's orders for the following reasons.

3 {2} Defendant appeals from the district court's order denying his motion to vacate
4 his plea agreement, as well as the related order granting the City's motion to dismiss
5 Defendant's appeal. [BIC 1] Underlying these orders were determinations by the
6 district court that Defendant had knowingly, intelligently, and voluntarily entered
7 into a plea agreement before the municipal court and that the validity of this plea
8 agreement precluded any appeal. [RP 106, 108] Before this Court, Defendant
9 challenges the district court's determinations regarding the validity of the plea
10 agreement on several grounds. [BIC 16-34] Because we conclude that Defendant's
11 Sixth Amendment right to counsel was violated and vacate the district court's orders
12 as a result, we decline to address Defendant's substantive challenges to the district
13 court's orders.

14 {3} Defendant argues that the district court violated his Sixth Amendment right to
15 counsel when it neither offered him appellate representation nor conducted a *Faretta*
16 hearing to establish that he had knowingly and voluntarily waived his right to
17 counsel. *See State v. Garcia*, 2011-NMSC-003, ¶ 24, 149 N.M. 185, 246 P.3d 1057
18 (“[T]he Sixth Amendment right to assistance of counsel includes the corollary right
19 to reject the imposition of counsel in state criminal proceedings.”); *see also Faretta*
20 *v. California*, 422 U.S. 806 (1975) (explaining the trial court procedure required to

1 ensure that a defendant has a thorough understanding of the issues involved with
2 self-representation before waiver is permitted). [BIC 35-37; RB 5-8] “[W]hether a
3 defendant made a valid knowing, intelligent, and voluntary waiver of his
4 constitutional rights is a question of law which we review de novo.” *State v. Reyes*,
5 2005-NMCA-080, ¶ 6, 137 N.M. 727, 114 P.3d 407.

6 {4} “Every criminal defendant has the fundamental right to assistance of counsel
7 at all critical stages of the case.” *State v. Stallings*, 2020-NMSC-019, ¶ 36, 476 P.3d
8 905. The right to counsel attaches when a criminal defendant faces the possibility of
9 incarceration resulting from the charged offense or offenses, regardless of whether
10 the defendant is actually incarcerated or the sentence is suspended in whole or in
11 part. *State v. Cruz*, 2021-NMSC-015, ¶ 35, 486 P.3d 1. New Mexico recognizes that
12 “both the Federal Constitution and Article II, Section 14 of the New Mexico
13 Constitution provide a right to the assistance of counsel both at trial and on appeal.”
14 *State v. Vigil*, 2014-NMCA-096, ¶ 11, 336 P.3d 380. “Deprivation of the right to
15 counsel is deprivation of a fundamental right.” *Cruz*, 2021-NMSC-015, ¶ 29. In
16 addition, every criminal defendant retains a concurrent right to refuse assistance of
17 counsel and represent themselves with the permission of the court. *See* N.M. Const.
18 art. II, § 14 (“In all criminal prosecutions, the accused shall have the right to appear
19 and defend [them]self in person, and by counsel.”); *see also Garcia*, 2011-NMSC-

1 003, ¶ 24 (explaining that the “right to assistance of counsel includes the corollary
2 right to reject the imposition of counsel”).

3 {5} “In light of the mutual exclusivity of the[se] two rights, courts must make a
4 clear record prior to allowing a defendant to proceed [as a self-represented litigant].”

5 *Stallings*, 2020-NMSC-019, ¶ 43. Under *Garcia*, there are three requirements that
6 must be satisfied to permit a defendant to represent themselves. 2011-NMSC-003, ¶ 25.

7 First, “the defendant must clearly and unequivocally assert his [or her] intention to
8 represent [them]self.” *Id.* (internal quotation marks omitted). Second, “the defendant

9 must make this assertion in a timely fashion.” *Id.* Third, “the defendant must
10 knowingly and intelligently relinquish the benefits of representation by counsel.” *Id.*

11 (internal quotation marks omitted and citation omitted). “To be valid[,] waivers not
12 only must be voluntary but must be knowing intelligent acts done with sufficient

13 awareness of the relevant circumstances and likely consequences.” *State v. Padilla*,
14 2002-NMSC-016, ¶ 18, 132 N.M. 247, 46 P.3d 1247 (quotation marks and citation

15 omitted). This is often accomplished by a court conducting a *Faretta* colloquy, or “a
16 dialog with the defendant . . . that covers the full panoply of issues involved with

17 self-representation.” *Stallings*, 2020-NMSC-019, ¶ 52. These same inquiries are
18 necessary when a defendant seeks to waive the assistance of appellate counsel. *See*,

19 *e.g.*, *State v. Lewis*, 1986-NMCA-038, ¶ 14, 104 N.M. 218, 719 P.2d 445 (remanding
20 to a trial court to make “determination[s] on the record of . . . whether [the] defendant

1 has elected to waive the assistance of appellate counsel” and “if [the] defendant
2 makes such election, whether the waiver is a knowing, intelligent, and competent
3 waiver”).

4 {6} Initially, we determine that Defendant was entitled to representation during
5 his appeal to district court on his convictions for obstructing a law enforcement
6 officer and criminal trespass. His convictions carried not just the possibility of
7 incarceration, but the actual imposition of a carceral sentence. *See Cruz*, 2021-
8 NMSC-015, ¶ 35. [RP 3] Further, the hearings before the district court constituted
9 appellate proceedings pursuant to Rule 8-703 NMRA. *See Vigil*, 2014-NMCA-096,
10 ¶ 11. Defendant filed a timely notice of appeal “to the district court of the county
11 within which the municipal court is located.” *See* Rule 8-703(A). While the parties
12 disagreed about whether Defendant had the right to appeal his convictions in light
13 of the terms of the plea agreement, both the parties and the district court treated the
14 proceedings as an appeal. [RP 10-11, 108]

15 {6} Finding that Defendant was entitled to representation and observing that he
16 represented himself throughout the proceedings before district court, we turn to
17 whether Defendant made a knowing, intelligent, and voluntary waiver of his right to
18 counsel. Upon review of the briefing, record, and hearing transcripts, we note that
19 none of the *Garcia* requirements were satisfied to permit Defendant’s self-
20 representation before the district court.

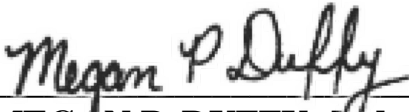
1 {7} First, the record does not indicate that Defendant made a “clear and
2 unequivocal statement that can reasonably be understood to invoke the right to self-
3 representation.” *See Stallings*, 2020-NMSC-019, ¶ 45. Defendant filed his notice of
4 appeal and other pleadings, as well as appeared at the two hearings before the district
5 court, all without counsel. [RP 1, 74-75, 76, 82, 97] However, “appearing without
6 counsel does not imply an exercise of the right to self-representation.” *Cruz*, 2021-
7 NMSC-015, ¶ 37. Nor can Defendant’s conduct establish a waiver of counsel as the
8 City contends, considering the district court’s subsequent failure to conduct a
9 *Faretta* hearing as discussed below. *See Stallings*, 2020-NMSC-019, ¶ 58 (“Waiver
10 by conduct cannot be found unless the district court has provided adequate
11 forewarning through a proper *Faretta* colloquy.”). [AB 7]

12 {8} Additionally, even if we were to consider Defendant’s presence and
13 participation without counsel as the requisite “clear and unequivocal statement,” the
14 record is clear that the district court made none of the necessary determinations upon
15 becoming aware that Defendant was appearing without counsel. *See id.* ¶ 45 (“Once
16 a defendant makes a clear and unequivocal statement that can reasonably be
17 understood to invoke the right to self-representation, the [district] court has a duty
18 to inquire further into the defendant’s waiver of the right to counsel.”). [10/22/24
19 CD 10:11:52; 11/14/24 CD 10:38:23] Rather, the district court simply acknowledged
20 Defendant’s self-representation status and then immediately moved on to the

1 substance of the hearings. [Id.] Without the necessary *Faretta* inquiry, we cannot
2 conclude that Defendant knowingly and voluntarily elected to waive his right to
3 counsel. *See id.* ¶ 53 (“If a district court fails to conduct a full *Faretta* colloquy
4 covering those topics, reviewing courts generally will find that a defendant’s waiver
5 of counsel was not knowing and voluntary.”).

6 {9} By permitting Defendant to represent himself during proceedings in which he
7 was entitled to representation without a knowing, intelligent, and voluntary waiver,
8 the district court violated Defendant’s Sixth Amendment right to counsel. *See Cruz,*
9 *2021-NMSC-015,* ¶ 29 (“Deprivation of the right to counsel is deprivation of a
10 fundamental right.”). For these reasons, we vacate the district court’s orders and
11 remand for proceedings consistent with this opinion.

12 {10} **IT IS SO ORDERED.**

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14 _____
MEGAN P. DUFFY, Judge

15 **WE CONCUR:**

16 
17 _____
JENNIFER L. ATTREP, Judge

18 
19 _____
SHAMMARA H. HENDERSON, Judge