Defendants Who Represent Themselves

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Earlier this month, the Supreme Court of North Carolina decided State v. Lane, a capital case involving the abduction, rape, and murder of a five-year-old girl. The defendant in *Lane* initially sought to represent himself, exercising the right of self-representation established in *Faretta v. California*, 422 U.S. 806 (1975) (holding that part of the right to counsel is the "constitutional right to proceed *without* counsel"). *Lane* reminded me that I've been meaning to post a few tidbits about self-representation.

- *Terminology.* According to *Black's Law Dictionary* (9th ed. 2009), "pro se" means "on one's own behalf" or "[o]ne who represents oneself in a court proceeding without the assistance of a lawyer." The terms "pro per," "propia persona," and "in propia persona" all mean the same thing; "propria," with an r, is sometimes substituted for "propia."
- *Scope of Right to Self-Representation.* The right to self-representation applies regardless of the age or education of the defendant or the gravity of the charges. However, the United States Supreme Court has held that certain mentally ill defendants who are competent to stand trial may nonetheless be incapable of representing themselves; these defendants may not have a constitutional right to self-representation. *Indiana v. Edwards*, 554 U.S. 164 (2008).
- *Procedure.* By statute, before a defendant may represent himself, the trial judge must make a "thorough inquiry" and must be satisfied that the defendant understands (1) his right to counsel, (2) the consequences of representing himself, and (3) "the nature of the charges and proceedings and the range of possible punishments." G.S. 15A-1242. Likewise, our case law provides that "[b]efore a defendant is allowed to waive appointed counsel, the trial court must insure that . . . . the defendant . . . clearly and unequivocally waive[s] his right to counsel and instead elect[s] to proceed pro se. . . . [and] knowingly, intelligently, and voluntarily waive[s] his right to in-court representation." *State v. LeGrande*, 346 N.C. 718 (1997). A trial judge has the discretion to appoint standby counsel for self-represented defendants. For a more detailed discussion of procedures for handling requests to proceed pro se, see this paper by Jessie Smith.
- *Outcomes.* The United States Supreme Court has said that "[o]ur experience has taught us that a *pro se* defense is usually a bad defense, particularly when compared to a defense provided by an experienced criminal defense attorney." *Martinez v. Court of Appeal of California*, 528 U.S. 152 (2000) (internal quotation marks and citation omitted). I'm a lawyer, so I like to believe that the Court is correct and that lawyers are useful and valuable. However, at least one empirical assessment casts doubt on that claim. According to a professor at the University of Georgia, "[i]n state court, pro se defendants charged with felonies fared at least as well as, and arguably significantly better than, their represented counterparts." If anyone is aware of other relevant empirical studies, please let me know. The sample size in the paper linked above is small and the statistical analysis isn't very sophisticated, but as far as I know, it is the only study of its kind.