

## Pro Se Defendants and Ineffective Assistance of "Counsel"

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Can a defendant who chooses to represent himself subsequently argue that he received ineffective assistance of "counsel"? No, as illustrated by the recent case of [State v. Brunson](#), \_\_ N.C. App. \_\_ (2012). The defendant in *Brunson* elected to represent himself. He was convicted of sexually abusing his stepdaughter. He appealed, arguing in part that he received ineffective assistance of counsel. The court of appeals rejected this argument, citing *State v. Petrick*, 186 N.C. App. 597 (2007), for the proposition that "a defendant who elects to represent himself cannot thereafter complain that the quality of his own defense amounted to a denial of effective assistance of counsel." The rule expressed in *Brunson* and *Petrick* is universal. [Faretta v. California](#), 422 U.S. 806, 834 n.46 (1975) ("[A] defendant who elects to represent himself cannot thereafter complain that the quality of his own defense amounted to a denial of 'effective assistance of counsel.'") 40 Geo. L.J. Ann. Rev. Crim. Proc. 515 n. 1601 (2011) (collecting cases from multiple jurisdictions, all of which support the statement that "a *pro se* defendant may not claim his or her own ineffectiveness as a ground for appeal").

The basic rationale for this rule is twofold. First, courts reason that a defendant who has made his bed (by electing to represent himself and thereby retaining direct control over his defense) must lie in it (by accepting the consequences of his decision). Second, courts worry that allowing *pro se* defendants to claim ineffective assistance would give defendants an incentive to sabotage their own trials. As an aside, the first rationale might extend to a defendant who retained counsel of his choice, but the second doesn't, and the Supreme Court has ruled that ineffective assistance claims are cognizable against retained as well as appointed lawyers. [Cuyler v. Sullivan](#), 446 U.S. 335 (1980) (holding that there is "no basis for drawing a distinction between retained and appointed counsel" with respect to claims of ineffective assistance of counsel).