No. S22A0964

In the

Supreme Court of Georgia

Garry Deyon Johnson,
Appellant,

v.

State of Georgia,
Appellee.

On Appeal from the Superior Court of Burke County
Superior Court Case No. 1998R0058

BRIEF OF THE ATTORNEY GENERAL OF GEORGIA AS *AMICUS CURIAE* IN SUPPORT OF NEITHER PARTY

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INTRODUCTION

This appeal arises out of a case where a criminal defendant, Appellant Garry Deyon Johnson, filed a *pro se* motion for new trial after his conviction for murder. At that time, one of Johnson's two attorneys had been granted leave to withdraw, but the other appears to have remained Johnson's counsel. The court took no action on Johnson's *pro se* motion for a new trial for nearly sixteen years. It then appointed new counsel, who filed a revised motion for new trial. The court ultimately denied the motion, and this appeal followed.

This Court, acting *sua sponte,* dismissed Johnson's appeal on the ground that his original, *pro se* motion for a new trial was a legal nullity under the longstanding principle that "pro se filings by represented parties are … unauthorized and without effect." *White v. State*, 302 Ga. 315, 319 (2017) (citation omitted). Johnson moved for reconsideration, arguing that he actually *had* been unrepresented when he filed the motion. In his view, both of his attorneys had withdrawn by operation of a superior court rule providing that the withdrawal of lead counsel functions as a withdrawal of all other counsel from the same "firm or professional corporation." This Court granted the motion and reinstated the appeal, asking various potential *amici* for their views on whether "a pro se filing made by a defendant who is actually or presumptively represented by counsel is always a nullity."

Because there are no constitutional or statutory requirements that courts must accept *pro se* submissions under these circumstances, the question is essentially one of docket management—an area in which the Court has broad discretion to implement the appropriate rule. Even starting from a clean slate, the Court's existing rule barring *pro se* submissions would be the best available approach. It is clear, administrable, and keeps defense counsel's ethical and constitutional obligations unambiguous—if something is to be filed, it is their responsibility to do so. And if counsel fails to file a key document, such as a notice of appeal, the defendant will have recourse through an ineffective-assistance-of-counsel claim. This is the unambiguous rule the Georgia judiciary has applied for decades, and the Court should not change course now.

Any other approaches suffer from serious shortcomings. For instance, a categorical rule allowing represented defendants to file certain types of pleadings *pro se*, such as notices of appeal, is necessarily arbitrary. Why should one type of pleading make the cut instead of others? It would also cause confusion and muddy counsel's ethical and constitutional obligations. A defendant's *pro se* notice of appeal could preclude *counsel* from filing a motion for new trial. And is counsel's failure to file a motion still prejudicial, for purposes of an ineffective-assistance analysis, if the defendant could have done so himself? Plus, what if there is a dispute about whether the *pro se* filing

is in fact within the category of filings that represented clients can file themselves?

Or, if courts had discretion to accept *pro se* pleadings on a case-by-case basis, courts would be burdened with screening every *pro se* filing under a necessarily ambiguous standard (abandonment, interests of justice, etc.). Appellate courts are particularly ill-suited to perform this task based solely on a limited trial-court record. A case-by-case analysis of whether to accept a represented party's *pro se* filing would pour sludge in the works of the judicial process, and it could also harm the defendants themselves, who might unwittingly file motions they should not or concede legal or factual points they should not.

Finally, allowing *pro se* filings across the board is a self-evidently bad idea that would flood the courts with frivolous filings and ultimately work against defendants. Comparing the advantages and drawbacks of these approaches shows that a bright-line rule barring *pro se* filings by criminal defendants is by far the best option.

All that said, even under the current (and correct) bright-line rule, this particular case has an unanswered factual question: was Johnson in fact represented by counsel when he filed his *pro se* motion? Johnson argues that under Uniform Superior Court Rule 4.5, the withdrawal of his lead counsel also functioned to withdraw the remaining lawyer because they both worked for the same "professional corporation"—i.e., the public defender organization. If he is correct, he was unrepresented when he filed his motion for new trial. If, on the

other hand, he reads the rule incorrectly—and his counsel were not part of the same firm—then he remained represented by counsel and his motion was a nullity. To the extent his counsel *should* have withdrawn, that might be the basis for a habeas claim. But it is not the basis for allowing a *pro se* filing by a represented party.

Which of these outcomes is correct depends on the application of Uniform Superior Court Rule 4.5, and the Attorney General takes no position on that issue. This brief, therefore, takes no position on the ultimate outcome of this appeal.

STATEMENT

A jury found Appellant Garry Deyon Johnson guilty of murder and robbery in 2000. R-1035–36. He was sentenced to life without the possibility of parole on November 17 of that year. R-1035–37. Johnson was represented by two attorneys, Jack Boone and Luther McDaniel, during the proceedings. R-1036; T5-1. Boone, listed as lead counsel, filed a motion to withdraw from representation on December 12, which the court granted the same day. R-1047, 1050. McDaniel, however, did not file a motion to withdraw.[1]

Johnson attempted to file several motions *pro se* on December 13, 2000, including a motion for new trial in which he asserted ineffective assistance of counsel, among other arguments. R-1051. He noted in a

[1] McDaniel was disbarred in 2003, partly for abandoning clients. *See In re McDaniel*, 276 Ga. 226, 227 (2003).

letter to the clerk's office that he had "no attorney" and "wish[ed] to proceed with [his] appeal pro se." R-1056. But neither he nor McDaniel moved the court for him to proceed *pro se*, much less received a ruling on any such request. *See Faretta v. California*, 422 U.S. 806, 834–36 (1975). The court did not rule on his motion for a new trial.

Johnson later learned from the court clerk that another attorney, Paul David, had been appointed to represent him on appeal. R-1062. Johnson wrote the clerk that David had not responded to any of his correspondence, R-1069, and David was later disbarred based in part on his abandonment of clients during this period, *In re David*, 282 Ga. 517, 517–18 (2007).

Nearly seventeen years later, in December 2017, Johnson wrote the court asking for a copy of his sentencing package; in later correspondence with the clerk, he explained that the court had never ruled on his pending motions. R-1099. The clerk then instructed the public defender's office to file a notice of appearance and set a hearing on the motion for new trial. R-1101, 1105. Now acting through counsel, Johnson sought and was granted permission to file a revised motion for new trial. R-1147, 1155. The trial court conducted a series of hearings and ultimately denied the motion for new trial in a detailed order. R-1272–73.

Johnson then appealed to this Court. On June 1, 2022, the Court issued an order dismissing Johnson's appeal and vacating the rulings below. June 1, 2022 Order at 3. The Court explained that *pro se* filings

by represented parties are a nullity; because Johnson was still represented by McDaniel when he filed his original motion for a new trial, that motion "was without force or effect." *Id.* at 1–2 (citing *White*, 302 Ga. at 318, and *Tolbert v. Toole*, 296 Ga. 357, 362 (2014)). Moreover, the Court explained that while it had "held that where a party obtains permission from the trial court to file an out-of-time motion for new trial, the trial court has effectively granted a motion for out-of-time appeal, … in *Cook v. State*, 313 Ga. 471 (2022), this Court eliminated the judicially created out-of-time-appeal procedure in trial courts," including for currently pending appeals like Johnson's. *Id.* at 2–3 (citation omitted).

Johnson filed a motion for reconsideration. As relevant here, he argued that under Uniform Superior Court Rule 4.5, the request for withdrawal by one attorney applied to all other attorneys from the same "firm or professional corporation." June 10, 2022 Mot. for Reconsideration at 5. He contended that because both Boone and McDaniel worked for and were paid through the Indigent Defense System for the area, they were members of the same "professional corporation," for purposes of the rule. *Id.* at 6. That would mean Boone's withdrawal covered McDaniel as well, which, according to Johnson, left him unrepresented when he filed his motion for new trial. *Id.* Johnson also argued that the Court relied on inapplicable or distinguishable precedent in its order dismissing the case. *Id.* at 10–13.

On July 1, 2022, the Court granted the motion for reconsideration and reinstated the appeal. The Court asked a variety of parties, including the Solicitor General Unit of the Office of the Attorney General of Georgia, to express their views on the following question:

> Is a pro se filing made by a defendant who is actually or presumptively represented by counsel always a nullity? *Compare White v. State*, 302 Ga. 315, 319 (2017) ("The trial court . . . correctly treated [White's] pro se filings as legal nullities, because he was [presumptively] represented by counsel when he made them."); *Cotton v. State*, 279 Ga. 358, 361 (2005) ("Since [Cotton] was represented by new appellate counsel at the time he filed this pro se motion, … it was unauthorized and without effect."); and *Brooks v. State*, 265 Ga. 548, 551 (1995) (dismissing Brooks's pro se notice of appeal when counsel also filed a notice of appeal of the same conviction), *with Hance v. Kemp*, 258 Ga. 649, 650 (1988) ("[A]lthough a defendant may not insist on acting as co-counsel, the trial court may, as here, allow him to do so.").

July 1, 2022 Order at 2. The Attorney General submits this brief in response.

ARGUMENT

I. The Court has discretion to implement the fairest and most efficient rule.

At bottom, whether attempted *pro se* filings by counseled parties are "nullities" is a question of docket management. Criminal defendants have the right to represent themselves or to have counsel represent them, but they have no right to *simultaneously* do both. Likewise, no legislative rule appears to cabin the judiciary's discretion on this point. Accordingly, whether and when to accept attempted

filings from counseled defendants is a rule of judicial management, not a question answered by constitutional or statutory law. Courts are "not required to accept random appearance and filings by both the client and his attorneys" and "must have some mechanism" for managing their docket. *Cherry v. Coast House, Ltd.*, 257 Ga. 403, 406 (1987).

"Both the federal and state constitutions guarantee a criminal defendant both the right to counsel and the right to self-representation." *Wiggins v. State*, 298 Ga. 366, 368 (2016) (citing *Faretta*, 422 U.S. at 819–20, and Ga. Const. art. I, § 1, paras. XII, XIV). But the right to self-representation may be exercised only after the defendant "clearly and unequivocally assert[s] his desire to represent himself" and the court ensures that the defendant "knowingly and intelligently waives" the right to counsel and understands the disadvantages of self-representation. *Oliver v. State*, 305 Ga. 678, 680 (2019) (citing *Faretta*, 422 U.S. at 835–36).

Defendants are not constitutionally entitled to exercise both rights at once—i.e., to act *pro se* while also represented by counsel. The Georgia Constitution formerly mandated this sort of hybrid representation where a defendant requested it, providing that "[n]o person shall be deprived of the right to prosecute or defend his own cause in any of the courts of this State, in person, by attorney, *or both*." Ga. Const. of 1976, art. I, § 1, para. IX (emphasis added). But the Constitution was later amended to eliminate the "or both" language; it now provides that "[n]o person shall be deprived of the right to

prosecute or defend, either in person or by an attorney, that person's own cause in any of the courts of this state." Ga. Const. art. I, § 1, para. XII; *see also Hance v. Kemp*, 258 Ga. 649, 650 (1988) ("[A] criminal defendant in Georgia no longer has the right to represent himself and also be represented by an attorney." (citation omitted)). Similarly, there is no *federal* constitutional right to hybrid representation. *See McKaskle v. Wiggins*, 465 U.S. 168, 183 (1984) ("*Faretta* does not require a trial judge to permit 'hybrid' representation…."); *Cross v. United States*, 893 F.2d 1287, 1291–92 (11th Cir. 1990) ("This court has held repeatedly that an individual does not have a right to hybrid representation.").

Of course, courts can *allow* hybrid representation, and courts also have the discretion to assign advisory or standby counsel to assist *pro se* defendants. *McKaskle*, 465 U.S. at 177–78; *Merritt v. State*, 222 Ga. App. 623, 624 (1996) (same); *see also* Joseph A. Colquitt, *Hybrid Representation: Standing the Two-Sided Coin on Its Edge*, 38 Wake Forest L. Rev. 55, 71 (2003) (explaining respective roles of advisory and standby counsel). But there is no such *requirement*.

Nor is there any statute addressing the question presented here. Code Section 15-19-10 addresses disputes among co-counsel and requires that the court give preference to "leading counsel." O.C.G.A. § 15-19-10(b). But it is limited to situations where "two or more attorneys" are "employed on the same side" and the "*client is not present*," and thus irrelevant in this context. *Id.* (emphasis added).

In sum, no constitutional or statutory law appears to compel a court to either accept or reject *pro se* pleadings by counseled defendants. Thus, managing *pro se* filings under these circumstances falls under courts' inherent—and broad—power to manage their dockets. *See Pennington v. Pennington*, 291 Ga. 165, 166 (2012) (noting the "court's inherent power to efficiently administer the cases upon its docket"); O.C.G.A. § 15-1-3(4) (noting court's inherent power to "control … the conduct of its officers and all other persons connected with a judicial proceeding before it"). And this Court in particular has the "inherent power essential to … maintain a court system capable of providing for the administration of justice in an orderly and efficient manner." *Garcia v. Miller*, 261 Ga. 531, 532 (1991). Here, that discretion means it is free, as a matter of first principles, to implement whichever rule it deems appropriate for handling *pro se* filings by represented defendants.

II. The Court should reaffirm its bright-line rule that *pro se* pleadings by counseled parties are nullities, at least where there is no dual-representation or special arrangement.

This Court has consistently held that, where a party is represented, he or she cannot make filings. That rule is not only longstanding, it is the best rule, avoiding the arbitrariness, confusion, and blurred ethical lines that any other rule would entail. So while the Court has a freer hand than usual in this case, the right answer is the same answer the Court has repeatedly given in the past.

A. The advantages of a bright-line rule outweigh any downsides.

The well-established rule in Georgia is that if a criminal defendant is represented by counsel, he may not submit filings *pro se*. "A criminal defendant in Georgia does not have the right to represent himself and also be represented by an attorney, and pro se filings by represented parties are therefore 'unauthorized and without effect,'" *Tolbert*, 296 Ga. at 363, their "contents … without force to support any viable claim," *Williams v. Moody*, 287 Ga. 665, 669 (2010) (same); *see also White*, 302 Ga. at 319; *Cotton v. State*, 279 Ga. 358, 361 (2005); *Brooks v. State*, 265 Ga. 548, 551 (1995). That rule applies to filings made either before or after a conviction and sentence. *See White*, 302 Ga. at 318 (rejecting argument that "criminal defendants' representation by counsel terminates automatically on the entry of a judgment and sentence").

This bright-line rule is correct and has many benefits. To start, it is clear and administrable. It applies across the board, so courts need not, for instance, examine a filing's substance to determine whether it is properly filed. The only question is *who filed it*. And, in cases like this one, appellate courts do not have to comb through a limited trial-court record to determine whether or not circumstances justify some nebulous exception to the rule.

This rule also eliminates any ambiguity as to counsel's ethical obligations. This Court clarified in *White* that, absent an order allowing withdrawal or substitution of counsel, an attorney's

representation of a criminal defendant lasts *at least* "through the end of the term at which a trial court enters a judgment of conviction and sentence on a guilty plea." 302 Ga. at 319. That time period covers the "point in the proceeding when important decisions need to be made and actions potentially taken, often with short deadlines, regarding the filing of a post-trial motion (e.g., a motion for new trial), a post-plea motion (e.g., a motion to withdraw a guilty plea), or a notice of appeal." *Id.* at 318. Under a bright-line rule, defense counsel know that it is *always* his or her obligation—and not the defendant's—to file these sorts of documents.

In a world where represented parties can file *pro se*, the issues become hazy very quickly. Suppose that a defendant hopes to appeal, but with *different* appellate counsel, and he tells his trial counsel as much. Should the trial counsel assume that the defendant will file his own notice of appeal? Does he have to advise the client to do so? Does he still have to file the notice of appeal anyway? What if the client actually prefers to file a motion for a new trial? With the deadlines approaching, these sorts of scenarios barely scratch the surface of the difficult questions counsel and courts will have to answer. But if *pro se* filings by represented parties are nullities, it is absolutely clear: counsel is obligated to file all necessary papers until they withdraw.

As the Court noted in its briefing request, courts may allow some form of hybrid representation, from standby counsel supporting a *pro se* defendant to a full-fledged co-counsel arrangement. *See Hance*, 258 Ga.

at 650 ("[A]lthough a defendant may not insist on acting as co-counsel, the trial court may, as here, allow him to do so."); *Weldon v. State*, 247 Ga. App. 17, 22 (2000) (same). Defendants in such an arrangement will necessarily have been granted the right to proceed *pro se* and thus be functioning as their own counsel. *See McKaskle*, 465 U.S. at 178 ("[T]he right to appear *pro se* exists to affirm the accused's … autonomy."). As long as the court has, *ex ante*, determined that a party is representing himself, accepting his filings is as clear as any other circumstance.[2]

The only supposed downside to a bright-line rule is that it can lead to harsh results in rare cases, where a defendant appears to have been abandoned by counsel. But that is just an ordinary aspect of our legal system: negative outcomes may result when counsel utterly fails to fulfil his or her duty. And even then, an attorney's failure to file key documents can typically be remedied through a habeas claim of ineffective assistance of counsel. This Court has held, for instance, that "prejudice must be presumed 'when counsel's constitutionally deficient

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[2] The analysis would remain the same even if there *were* a right to hybrid counsel (which there is not). Just as with any other type of self-representation, defendant can proceed *pro se* in a hybrid capacity only after the court conducts a *Faretta* hearing and formally grants leave to do so. *See Hance*, 258 Ga. at 650. Prior to such a ruling, *pro se* filings would be barred under the nullity rule because the defendant would be in the same shoes as any other represented defendant. After being granted leave to proceed with hybrid representation, however, the defendant would have effectively appeared as counsel and would be permitted to submit filings.

performance deprives a defendant of an appeal that he otherwise would have taken[.]'" *Collier v. State*, 307 Ga. 363, 368 (2019) (quoting *Roe v. Flores-Ortega*, 528 U. S. 470, 484 (2000)).

The benefits of the Court's longstanding, bright-line rule far outweigh any drawbacks. There is no reason to break from that practice here. The Court should reaffirm that *pro se* filings from counseled defendants are nullities, unless a court has, *ex ante*, provided that a party can also represent himself.

B. Other approaches would pose a host of unnecessary difficulties.

Any alternative rule would create significant practical problems. And none of them have any principled basis, either. Running through some of the difficulties with these alternative approaches reinforces the correct approach is the current approach.

a. One other option would be to simply exempt certain important filings. That is, a *pro se* filing is a nullity *unless* it happens to fall into some special category. Pennsylvania's intermediate appellate court, for instance, accepts *pro se* notices of appeal "[b]ecause a notice of appeal protects a constitutional right, [so] it is distinguishable from other filings that require counsel to provide legal knowledge and strategy in creating a motion, petition, or brief." *Commonwealth v. Williams*, 151 A.3d 621, 624 (Pa. Super. Ct. 2016).

There are immediately obvious problems with this approach. For one, it is wholly arbitrary. Virtually every filing in criminal

proceedings implicates constitutional rights at some level of generality, so what makes one type of filing more deserving of special treatment than others? There are few principled bases for line drawing in this context, and allowing for one exception will inevitably open the door to endless requests to create others.

No matter the categories chosen, it will virtually always be arbitrary to exempt certain filings but not others. Suppose courts exempted filings relating to decisions that must be ultimately made by the defendant. For instance, the right to appeal is waivable only by the defendant, *Slater v. State*, 251 Ga. App. 620, 621 (2001) (citation omitted), and it is ultimately his decision whether to pursue an appeal, *see Moody*, 287 Ga. at 668. So a notice of appeal could be exempted under that theory. But plenty of *other* decisions are waivable only by the defendant and are ultimately the defendant's decision. *Id.* (providing examples of decisions to plead guilty, waive a jury, testify). Why limit it to notices of appeal?

Moreover, why would one limit the rule to decisions that are waivable only by the defendant? One of the instances of a court allowing *pro se* filings by a counseled party is the Missouri Supreme Court's rule that represented defendants are permitted to assert their right to a speedy trial through *pro se* motions. *State ex rel. McKee v. Riley*, 240 S.W.3d 720, 728–29 (Mo. 2007). That court explained that "[u]nlike the right to an impartial jury or the right to confront and cross-examine witnesses, where defense counsel is often in a better

position to understand the contours of the right and appreciate situations in which it has not been properly respected, the right to a speedy trial depends, in part, on circumstances that are uniquely experienced by the defendant." *Id.* at 728. So the court reasoned that allowing *pro se* speedy-trial motions could account for "tension between the burdens on defense counsel" to litigate other cases and "the defendant's desire to resolve the charges quickly." *Id.* But these distinctions are wholly arbitrary: lots of filings *arguably* stand within the defendant's expertise (like a decision to withdraw a guilty plea, for instance). It is not clear where one would draw a reasonable line.

There are also a number of practical problems with exempting certain arbitrary categories of filings. For one, allowing client filings would muddy counsel's ethical and constitutional obligations. Attorneys' obligations are clear under the current rule—if something must be filed, it is up to them to do so. It is not clear whether an attorney would still be required to file a notice of appeal if his client can do so himself. And even if the lines *should* be clear, factually they will not always be. Suppose a client demands to file the notice of appeal himself, so the lawyer demurs. Then, the client fails to do so. When the client then asserts ineffective assistance in a habeas proceeding down the line, will the court need to hear evidence on whether the client *actually* told the attorney not to file? Was it the attorney's obligation to file *anyway*, if he or she did not see a notice of appeal on the docket by the deadline? Nor is there an easy answer to how an

attorney's failure to file under these circumstances would impact an ineffective-assistance-of-counsel analysis. Is a client really prejudiced if he had every right to file a notice of appeal himself and just chose not to? *See Naples v. State*, 308 Ga. 43, 53 (2020) (to make required showing of prejudice, defendant must demonstrate that "but for counsel's alleged unprofessional errors, the result of the proceeding would have been different").

There is also the likelihood of dueling filings: if the defendant and his counsel file motions or briefs taking different positions, which brief should control? At the very least, "the arguments raised in a pro se brief may contradict and undermine the issues advanced in counsel's brief." *State v. Debra A.E.*, 523 N.W.2d 727, 737 (Wis. 1994). And even where the briefs are not contradictory, submission of multiple briefs on "every argument that a defendant chooses to raise, in addition to those an attorney submits, could strain judicial resources." *Id.* These concerns apply even to filings as straightforward as a notice of appeal. If counsel and client both file notices of appeal, on different days, which controls for deadlines and jurisdictional purposes?

b. Another possibility is a case-by-case rule—that is, accepting a counseled defendant's *pro se* filings if it appears necessary to avoid unfairness, or "in the interests of justice," or some similar standard. As one example, the Georgia Public Defender Counsel suggests what amounts to an abandonment standard: courts should accept *pro se* pleadings "where the appointed attorney has effectively ceased to

represent an indigent defendant by failing to file a timely Motion for New Trial and/or a timely Notice of Appeal." GPDC Amicus Br. at 7. Johnson's brief similarly argues that courts should not be prohibited from considering his brief because he was "unrepresented for all intents and purposes." Johnson Br. at 27–28; *see also Thompson v. State*, 860 So. 2d 907, 910 (Ala. Crim. App. 2002) (allowing *pro se* notice of appeal where "counsel would not respond to [the defendant's] request to file a notice of appeal and the circuit clerk, knowing that [the defendant] was represented by counsel, refused to allow him to file a pro se notice of appeal").

Whatever its contours, any such discretionary rule would again be practically difficult, if not outright dangerous to defendants. The resulting *pro se* filings could disrupt counsel's ability to advance a coherent defense and could result in dual filings, with all of the associated issues. Allowing defendants to file documents that would typically fall under their attorney's ethical and constitutional obligations would greatly confuse the role of counsel in criminal proceedings, not to mention prejudice in habeas proceedings. And defendants could harm their own interests by making filings without their attorney's involvement.

It gets worse. A case-by-case rule would also be extraordinarily burdensome to courts. *Every time* a defendant files something *pro se*, the court would have to analyze whether it could even address the filing. And of course, once it becomes well-known to criminal

defendants that they have such an option, the practice will only spread. Rather than dismissing out of hand all *pro se* filings from counseled parties, courts would have an entirely new procedural issue to work through in every instance.

There are other problems, too. While a trial court may be well-situated to assess *pro se* filings under a discretionary rule up to and including a trial, any post-judgment filings (e.g., motion for new trial, notice of appeal, etc.) would pose unique problems. These filings fall in a liminal stage of the proceedings when the trial court is no longer directly engaged with the defendant and his counsel. Assuming the trial court would still be obligated to assess whether the defendant had been abandoned or otherwise satisfied the requirements for accepting his *pro se* pleading, it would be difficult to do so before the inflexible jurisdictional deadline for the notice of appeal. *See Cain v. State*, 275 Ga. 784, 784–85 (2002). And appellate courts are even less equipped to handle such questions. The appellate record will often not contain the sort of information necessary to determine whether a defendant has been abandoned by counsel or otherwise has a valid basis to file *pro se* under the applicable standard.

c. Finally, the Court could simply opt for a rule that permits all *pro se* filings by represented parties. That rule would be clear and would not require case-by-case screening. Apart from that, it would be a terrible idea. Any case could have a flood of *pro se* filings, and it would tax judicial resources and sow confusion about deadlines and

counsel's obligations to an even greater extent than the approaches discussed above. "Not only would the court and the [prosecution] have to read more briefs, but both the court and the prosecution would have to attempt to decipher the meaning and the legal significance of what are often illiterate, rambling documents, which at best are frustrating and at worst offer nothing at all of relevance to the case." *Commonwealth v. Ellis*, 626 A.2d 1137, 1140 (Pa. 1993).

More significantly, the rule would harm defendants. Under the current rule, a criminal defendant who is determined to submit an ill-advised filing must talk it through with his attorney, who can explain why the filing would not be in the defendant's best interests. An unlimited-filing rule would undercut this counseling and gatekeeping function and lead to *pro se* filings that actually damage the defendant's case, whether through inadvertent admissions or strategically unsound arguments.

Self-representation is the exception to the rule for a reason: a criminal defense is almost always more effective in the hands of trained legal counsel than in those of lay defendants. An unlimited-filings rule would ignore this maxim and pose a multitude of problems for the court, counsel, and defendants themselves. "Tails should not wag dogs. Merely because an appellant believes that the irrelevant is relevant is no reason to turn the system on its head and solemnly contemplate the wisdom of a person who does not have the sense to be guided by experts in an area where he himself possesses no expertise." *City of Columbia*

v. Assa'ad-Faltas, 800 S.E.2d 782, 788 n.13 (S.C. 2017) (citation omitted); *see also United States v. Turner*, 677 F.3d 570, 579 (3d Cir. 2012) ("If represented parties could file pro se briefs, their adversaries would have to respond on two distinct fronts. Apart from the procedural morass that would follow such 'hybrid' advocacy … our attention would be diverted from potentially meritorious arguments."). No court in the country appears to have adopted this approach, for obvious reasons.

* * *

In sum, a bright-line rule barring *pro se* filings from counseled parties continues to be the best and most administrable approach. The Court should reaffirm its existing rule treating these filings as legal nullities.

III. The Attorney General takes no position on whether Johnson was represented when he filed his motion for a new trial.

Though the rule explained above is clear, one critical fact in this case is *not* clear. Specifically, it is not clear if, by operation of a superior court rule, Johnson's counsel did in fact entirely withdraw and so he was in fact unrepresented.

As noted above, Johnson was represented by two attorneys during his trial—Jack Boone and Luther McDaniel—and only Boone clearly withdrew as counsel prior to Johnson filing his *pro se* motion for a new trial. R-1047. But Johnson argues that he was in fact unrepresented when he filed his initial motion for a new trial. That is so, he reasons,

because the trial court's grant of his lead counsel's motion for withdrawal also functioned to withdraw his other lawyer under Uniform Superior Court Rule 4.5 (effective date 1985). June 10, 2022 Mot. for Reconsideration at 5–7. That rule provides:

> The entry of an appearance or request for withdrawal by an attorney who is a member or an employee of a law firm or professional corporation shall relieve the other members or employees of the same law firm or professional corporation from the necessity of filing additional entries of appearance or requests for withdrawal in the same action.

Unif. Super. Ct. R. 4.5. Johnson contends that Boone and McDaniel were members of the same "professional corporation" because their representation of Johnson and other defendants was coordinated and paid for by the Indigent Defense Committee. June 10, 2022 Mot. For Reconsideration at 6.

If Johnson is correct that he was unrepresented through operation of this rule, his *pro se* motion would be valid. If he is wrong, then he *was* represented and his motion was a nullity. Either way, the Attorney General takes no position on the question of whether lawyers from different firms who represent clients under the auspices of indigent-defense organizations are members of the same "professional corporation" for purposes of Uniform Superior Court Rule 4.5.

CONCLUSION

For the reasons set out above, if this Court opts to reach the question presented in its request for briefing, it should affirm its prior

holdings that *pro se* filings by represented criminal defendants are legal nullities.

Respectfully submitted.

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CERTIFICATE OF SERVICE

I hereby certify that on September 12, 2022, I served this brief via email or first class mail, addressed as follows:

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