

representing herself if she desires. U.S.Const. Amend. VI; Okl.Const. art. 2, § 20; *Gideon v. Wainwright*, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963); *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975). If the defendant appears *pro se*, the record must show that she understands the gravity of that decision and the dangers of self-representation. We have held that without such a record, we will not presume a defendant's appearance without counsel at a critical stage of the proceedings was voluntary. See *Nave v. State*, 1991 OK CR 42, ¶¶ 15-16, 808 P.2d 991, 994; *Lineberry v. State*, 1983 OK CR 115, ¶ 6, 668 P.2d 1144, 1145.

The State concedes that there is no record of such warnings from the trial court, and that lack of such a record warrants reversal. We recognize, of course, that Appellant's appearance at trial without counsel is directly related to the trial court's dismissal of court-appointed counsel. Appellant claims that she was entitled to the services of court-appointed counsel, that she did not wish to represent herself at trial, and there is evidence in the record to support that claim. However, we need not address whether Appellant was entitled to court-appointed counsel at the time of her trial, because financial status is always subject to change and re-evaluation by the trial court. See *Johnson v. Brock*, 1992 OK CR 83, ¶ 6, 843 P.2d 852, 853; *Bruner v. State ex rel. District Court of Oklahoma County*, 1978 OK CR 65, ¶ 11, 581 P.2d 1314, 1316.¹

Because the record fails to show that Appellant's appearance at trial *pro se* was voluntary, the case is **REVERSED AND REMANDED FOR A NEW TRIAL**. *Stevenson v. State*, 1985 OK CR 74, ¶ 10, 702 P.2d 371, 375. We

¹ Any question about a defendant's eligibility for court-appointed counsel should be resolved in favor of appointment, as Oklahoma law requires the trial court to tax the costs of such representation to the defendant upon conviction. 22 O.S.Supp.2004, § 1355.14. We also note that the trial court found Appellant indigent for purposes of this appeal.

express no opinion on the remaining propositions of error.²

DECISION

The Judgment and Sentence of the district court is **REVERSED**, and the case is **REMANDED** for a new trial. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2005), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF SEQUOYAH COUNTY
THE HONORABLE JOHN C. GARRETT, DISTRICT JUDGE

APPEARANCES AT TRIAL

REBECCA R. PETTIT
#495660
MABEL BASSETT
CORRECTIONAL CENTER
29501 KICKAPOO RD.
McLOUD, OK 74851

JEFF SHERIDAN
ASSISTANT DISTRICT ATTORNEY
SEQUOYAH COUNTY COURTHOUSE
120 E. CHICKASAW ST.
SALLISAW, OK 74955
ATTORNEY FOR THE STATE

APPEARANCES ON APPEAL

KATRINA CONRAD-LEGLER
INDIGENT DEFENSE SYSTEM
P. O. BOX 926
NORMAN, OK 73070
ATTORNEY FOR APPELLANT

W. A. DREW EDMONDSON
ATTORNEY GENERAL OF OKLAHOMA
JAY SCHNIEDERJAN
ASSISTANT ATTORNEY GENERAL
112 STATE CAPITOL
OKLAHOMA CITY, OK 73105
ATTORNEYS FOR THE STATE

OPINION BY C. JOHNSON, J.

CHAPEL, P.J.: CONCURS
LUMPKIN, V.P.J.: CONCURS
A. JOHNSON, J.: CONCURS
LEWIS, J.: CONCURS

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² On April 19, 2006, after briefing had been completed in this case, Appellant filed an "Application to File Supplemental Brief to Consider an Issue of First Impression with Brief in Support of the Application." The Application deals with an issue related to sentencing, and due to our resolution of this appeal, we find that the Application should be **DISMISSED AS MOOT**.