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████████ Gordon B. Flint is hereby disbarred and ordered to reimburse the Committee for costs of investigating and prosecuting this matter. At the end of two years, he may petition this court for readmission to the bar of this State, subject to all requirements applicable to applications for admission to the bar, including passing the bar examination. See SUP. CT. R. 37(2)(d); RS. AND PROCEDURES OF PROF. COND. COMM. § 2.13.

So ordered.

All concurred.

████████████████████
Strafford
No. 89-238

THE STATE OF NEW HAMPSHIRE

v.

AARON LEWIS, III

November 15, 1990

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John P. Arnold, attorney general (*Jeffrey W. Spencer*, attorney, on the brief), by brief for the State.

James E. Duggan, chief appellate defender, of Concord, by brief for the defendant.

PER CURIAM. The defendant, Aaron Lewis, III, appeared *pro se* and was convicted in the Superior Court (*Dickson, J.*) of first degree assault, RSA 631:1, II. He claims on appeal that by denying him

personal access to a law library, the Superior Court (*Temple, J.*) effectively violated his right to proceed *pro se* as well as his fundamental right of access to the courts, both guaranteed by the National Constitution. We affirm.

The defendant was charged under two indictments for first degree assault in November 1988, and was subsequently incarcerated. He refused, however, to discuss his case with a court-appointed lawyer and filed a motion requesting black counsel. Having been informed at his January 12, 1989 motion hearing that no black counsel was available, the defendant moved to proceed *pro se*, requesting that he be allowed to retain his court-appointed counsel to assist him with legal terminology and research. The Superior Court (*Temple, J.*) granted the defendant's motion on condition that his attorney act as standby counsel.

The defendant subsequently filed a motion *pro se* requesting personal access to a law library, and informed the superior court at his February 8 motion hearing that no library existed at the county jail at which he was being held. The Superior Court (*Temple, J.*) rejected his motion, instructing the defendant "to avail himself of counsel assistance." The defendant continued to appear *pro se*, with the assistance of standby counsel, at a subsequent discovery and suppression hearing, and at his trial.

On appeal, the defendant claims that his right to proceed *pro se* guaranteed by the sixth amendment of the National Constitution, *Faretta v. California*, 422 U.S. 806, 818 (1975), comprehends a correlative right of access to legal materials necessary to prepare his defense, and that the superior court violated this right by denying him personal access to a law library. In addition, the defendant claims that the superior court's ruling deprived him of his fundamental right of access to the courts, guaranteed by the National Constitution. *Bounds v. Smith*, 430 U.S. 817 (1977).

As a preliminary matter, we must note that although in his appellate brief the defendant cites both the New Hampshire and National Constitutions, he failed to cite the former in his notice of appeal, and the record does not indicate whether or not he cited it in his *pro se* motion before the superior court. Accordingly, we treat his claim as predicated on federal law. See *State v. Dellorfono*, 128 N.H. 628, 632, 517 A.2d 1163, 1166 (1986).

Certain federal courts have held that a criminal defendant's sixth amendment right to proceed *pro se* comprehends a correlative right of access to legal materials necessary to prepare his defense. See,

