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2016 IL App (3d) 130733-U

Order filed September 13, 2016

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2016

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois.
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-13-0733
NEILMEYER ANDERSON,	)	Circuit No. 12-CF-492
Defendant-Appellant.	)	Honorable Kevin Lyons, Judge, presiding.

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JUSTICE CARTER delivered the judgment of the court.  
Presiding Justice O'Brien and Justice Wright concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* The trial court abused its discretion in denying defendant's *pro se* motion for reappointment of counsel.
- ¶ 2 Following a bench trial, defendant, Neilmeyer Anderson, was found guilty of financial institution robbery and sentenced to 14 years and 6 months of imprisonment. Defendant appeals, arguing the trial court erred in denying his request for the reappointment of counsel, which he made six weeks prior to trial. We reverse and remand for a new trial and, therefore, do not reach defendant's remaining issues on appeal—whether defendant was entitled to an additional day of

presentencing credit and whether this matter should be remanded for the modification or vacatur of several fines and fees assessed against defendant.

¶ 3

### FACTS

¶ 4

On May 11, 2012, defendant was charged with financial institution robbery (720 ILCS 5/17-10.6(f) (West 2012)) and aggravated robbery (720 ILCS 5/18-5(a) (West 2012)). The trial court found defendant to be indigent and appointed counsel to represent him. On November 8, 2012, defendant requested a change of court-appointed counsel, which the trial court denied. On December 10, 2012, the State requested the case be continued due to the unavailability of a police officer who was scheduled to testify at trial. The trial court continued the case for trial on December 31, 2012. Prior to that date, on December 21, 2012, defendant moved for a continuance. At the same hearing, defendant indicated he had written a letter to the court requesting new counsel because his counsel had not spoken with him. The trial court, by agreement of defendant, continued the case for a scheduling conference on February 11, 2013, so defendant would have an opportunity to speak with his counsel.

¶ 5

On March 1, 2013, through his appointed counsel, defendant filed a motion to suppress identification testimony, which defendant had previously filed and previously withdrew. On March 27, 2013, the day of the hearing for the motion to suppress, defendant asked to proceed *pro se*. The trial court admonished defendant about the caveats of proceeding *pro se* and strongly recommended that defendant keep his appointed counsel. The trial court informed defendant that the trial court would not allow defendant to change his mind and have counsel reappointed once defendant decided to proceed *pro se*. Defendant indicated he understood the admonitions, and the trial court granted defendant's motion to represent himself. The trial court

continued the motion to suppress identification testimony to April 17, 2013. On April 17, 2013, the trial court heard and denied defendant's *pro se* motion to suppress identification testimony.

¶ 6 On May 1, 2013, the trial court set the matter for trial on June 17, 2013. The trial court ordered the parties to file any pretrial motions by May 10, 2013.

¶ 7 On May 14, 2013, defendant filed a motion to quash the indictment and dismiss the case.

¶ 8 On June 5, 2013, defendant requested a bench trial and indicated his desire to waive his right to a jury trial. The trial court continued the matter until the next day to address defendant's jury trial waiver. On June 6, 2013, defendant waived his right to a jury trial.

¶ 9 On the same day—June 6, 2013—the trial court denied defendant's pending motion to quash the indictment and dismiss the case. Defendant indicated that he had interpreted the law incorrectly, he did not understand “everything,” and the prosecutor had years of experience over him so the trial would be “like a fixed fight.” Defendant requested counsel to be reappointed for him. The trial court denied defendant's request for reappointment of counsel and asked defendant which day he wanted to set the case for trial. Defendant responded that “it doesn't matter” and he “d[id]n't know nothing about the trial.” The trial court set the case for trial on July 24, 2013.

¶ 10 On July 3, 2013, defendant filed a motion to quash indictment and dismiss the case, which he subsequently withdrew. On July 16, 2013, defendant filed a motion for evidence deposition, which the trial court denied. Defendant requested time to view the video of the alleged crime, which the trial court allowed.

¶ 11 On July 24, 2013, at the outset of the trial, defendant requested a continuance to review case law. Defendant stated, “I don't want to rush it and make a mistake; so for the record, I took two continuances, I proceeded *pro se*, so I'd like to take at least one more.” The trial court

denied the motion, but allowed two breaks in the proceedings before opening statements. Prior to opening statements, the following exchange took place between defendant and the court:

“THE DEFENDANT: I just wanted to state, your Honor, I mean, I don’t understand what you expect me to do. I mean, I’m above my head. I don’t know what I’m doing. I cannot represent myself at a bench trial. I mean, it’s like you’re forcing me to go to trial. Are you aware that I was banned from Peoria County law library, and I could not access records to help with my case, so I have to have things sent in? That’s why I asked for a continuance, and you denied me a continuance and it’s like you’re forcing me to go to trial.

THE COURT: I am.

THE DEFENDANT: You denied me to have counsel, so, like, I have to represent myself. I have no choice.

THE COURT: Do you want me to read it out loud? I will. ‘The Defendant: No, I just want a fair chance, you know. I don’t feel I have a fair chance. The Court: The only way that you believe that you’ll have a fair chance is if [the public defender] does it your way, right? The defendant: No, Your Honor. I understand he’s my lawyer. He’s supposed to give me advice and all of that, but this is my life that ended that day. The Court: But you don’t like the advice, and so you want him to do it your way? You want to pull the strings, \*\*\* call the shots, even if your attorney says that doesn’t apply? \*\*\* [The defendant]: Well, your Honor, if I cannot get a different counsel present [ sic ] appointed for me, then I would like to go *pro se*.’ And I – The Court, on Page 11: ‘All right. Let the record reflect that I strongly encourage the defendant to use counsel. He

has been appointed counsel, the public defender. He has complained about his counsel each time that he has appeared that I recall before the Court, but the complaint appears to be that his lawyer doesn't do what he wants him to do. \*\*\* I can't stress to you enough how I encourage you to have counsel; but if you refuse to have counsel, and you want to act as your own lawyer, oh Lord, I can't stop you, but I have to give you some admonitions.'

\*\*\*

THE DEFENDANT: I'm just telling you that I'm not prepared to go to trial, and I can't represent myself."

¶ 12 At the close of trial, the trial court found defendant guilty of both financial institution robbery and aggravated robbery. The trial court sentenced defendant to 14 years and 6 months of imprisonment for financial institution robbery and ordered him to pay costs of \$3292.50 and a \$250 DNA fee if his DNA was not already registered. The circuit clerk assessed a DNA fee, costs, and fines against defendant. Defendant appealed.

¶ 13 ANALYSIS

¶ 14 On appeal, defendant argues, *inter alia*, that the trial court erred by failing to appoint him counsel when he had requested counsel be reappointed six weeks prior to trial. The State argues that defendant forfeited this issue by failing to file a posttrial motion, and the State claims that any error made by the trial court in refusing to reappoint counsel was not plain error.

¶ 15 Defendant has forfeited this issue by failing to preserve the issue in a posttrial motion. However, we reach a review of the issue under the plain error doctrine, which allows a court of review to consider an unpreserved error when: (1) the evidence was closely balanced, regardless of the seriousness of the error; or (2) the error was so serious that it affects the integrity of the

judicial process. *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005). Prejudice to the defendant is presumed under the second prong of the plain error doctrine because of the importance of the right involved. *Id.* The deprivation of a defendant's right to counsel has an adverse effect on the fairness of the trial and is a proper subject for second-prong plain-error review. *People v. Vernon*, 396 Ill. App. 3d 145, 150 (2009).

¶ 16 The United States and Illinois Constitutions guarantee a criminal defendant the right counsel at every critical stage of the proceedings. U.S. Const. amends. VI, XIV; Ill. Const. 1970, art. I, § 8; *People v. Burton*, 184 Ill. 2d 1, 21 (1998) (a defendant has a constitutional right to represent himself). A defendant also has the right to self-representation where he makes a knowing, voluntary and intelligent waiver of his right to counsel. *Faretta v. California*, 422 U.S. 806, 819 (1975); *Burton*, 184 Ill. 2d at 21. The purpose of requiring that a defendant make an unequivocal request to waive counsel is to: (1) prevent defendant from appealing the denial of either his right to self-representation or his right to counsel; and (2) prevent defendant from manipulating or abusing the system by going back and forth between his request for counsel and his wish to represent himself. *People v. Mayo*, 198 Ill. 2d 530, 538 (2002). Even if a court considers a defendant's decision to proceed *pro se* unwise, defendant's decision must be accepted where the decision is voluntarily, knowingly, and intelligently made. *People v. Baez*, 241 Ill. 2d 44, 116-17 (2011). A valid waiver of counsel continues through later stages of the proceedings unless defendant subsequently requests counsel or there are other circumstances that suggest waiver is limited to a particular stage of the proceedings. *People v. Cleveland*, 393 Ill. App. 3d 700, 705 (2009).

¶ 17 Once a defendant is granted the right to proceed *pro se*, he does not have an unequivocal right to revoke his *pro se* status. *People v. Pratt*, 391 Ill. App. 3d 45, 56 (2009). The trial court

is not obligated to permit the defendant to revoke his *pro se* status if the trial court believes defendant is attempting to do so in order to delay the trial proceedings. *Id.* at 56-57. The issue of whether the trial court erred in failing to appoint counsel following a previous waiver of counsel is reviewed for an abuse of discretion. *People v. Jones*, 2015 IL App (2d) 120717, ¶ 36.

¶ 18 In this case, it appears defendant and his appointed counsel disagreed about the filing of certain pretrial motions, after which defendant waived his right to counsel and proceeded *pro se*. After defendant's *pro se* pretrial motions were denied, he requested that counsel be reappointed because he did not know how to adequately represent himself. We understand that defendant's request for the reappointment of counsel was made 11 days prior to the original trial date but, thereafter, the court rescheduled the trial for six weeks later in light of defendant's jury waiver. Requesting the reappointment of counsel six weeks before trial does not indicate that the request was made for the purpose of delay. Rather, the record suggests defendant had attempted to represent himself but came to the realization that he was not able to adequately do so. On this record, the trial court abused its discretion by denying defendant's request for the reappointment of counsel where the request was made six weeks before trial. Thus, we reverse and remand for a new trial.

¶ 19 Given our disposition, we do not reach the remaining issues on appeal.

¶ 20 CONCLUSION

¶ 21 The judgment of the circuit court of Peoria County is reversed.

¶ 22 Reversed.