2018 IL App (2d) 160820-U
No. 2-16-0820
Order filed November 13, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. RALPHEAL L. BINNS, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Winnebago County. No. 14-CF-2230 Honorable Rosemary Collins, Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Zenoff and Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court substantially complied with Rule 401(a): although it did not admonish defendant when he waived counsel in this case, it had recently admonished him in other cases and the admonishments here would have been identical.

¶ 2 Defendant, Ralpheal L. Binns, appeals, contending that the circuit court of Winnebago County did not properly admonish him under Illinois Supreme Court Rule 401(a) (eff. July 1, 1984) before he waived his right to counsel and proceeded *pro se* on his motion for a new trial. Because the court substantially complied with Rule 401(a), we affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was indicted on one count of aggravated fleeing or attempting to elude (625 ILCS 5/11-204(a) (West 2014)). Defendant was represented by appointed counsel. Following a jury trial, he was found guilty.

¶ 5 On January 7, 2016, the day after the jury returned its guilty verdict, defendant appeared in court with his counsel. According to the trial court, defendant had indicated the previous day that he wanted to represent himself and had raised an issue regarding the ineffectiveness of his counsel. When the trial court asked defendant if he wanted to proceed *pro se*, defendant answered that, even though he believed that his attorney had been ineffective, he wanted to keep him in this case. However, defendant wished to proceed *pro se* in his other pending cases.[1]

¶ 6 Because of defendant's assertion of counsel's ineffectiveness, the trial court conducted a preliminary *Krankel* hearing. See *People v. Krankel*, 102 Ill. 2d 181 (1984). The court found that defendant's counsel was not ineffective. Defendant commented that he "[did not] want him on none of [defendant's] cases" and that he would "go pro se." When the court commented further, defendant interrupted, reiterating that he wanted to proceed *pro se*.

¶ 7 After the trial court finished its comments regarding counsel's effectiveness, it asked defendant if he wanted to proceed *pro se* in this case. Defendant answered that he wanted counsel to handle his "appeal stuff" but that he wanted to proceed *pro se* "on the other charges." The court then told counsel that he was to continue to represent defendant in this case.

¶ 8 Defendant then asked for transcripts and discovery in the other cases, in which he was proceeding *pro se*. The trial court told counsel that this case was being set for a motion for a new trial and for sentencing on February 11, 2016. The court advised counsel that he had leave

[1] Defendant had been charged in several other cases, four of which were also for aggravated fleeing or attempting to elude.

to file a motion for a new trial. The court added that it wanted the docket in this case to reflect that it found that counsel was not ineffective. The court then told counsel that it was finished with him for the afternoon. However, before counsel left, he discussed the presentence report with defendant.

¶ 9 The trial court then advised defendant regarding his waiver of counsel in the four other cases. See Ill. S. Ct. R. 401(a) (eff. July 1, 1984). In doing so, the court commented that it understood that defendant wanted to proceed *pro se* in "all the other cases." In each of those cases, the court admonished defendant that, because of his criminal history, he was subject to an extended-term sentence of three to six years in prison. The court also found that defendant was competent to waive counsel and advised defendant that had the right to do so.

¶ 10 When defendant asked for stand-by counsel in those cases, the trial court stated that it would appoint the same attorney who was representing defendant in this case. Defendant interrupted and said "[n]o, not him." The court responded that, because defendant wanted that attorney to represent him in this case, the court would appoint him as stand-by counsel in the other cases.

¶ 11 Defendant's counsel then returned to the courtroom and turned over to defendant the discovery that he had in the other cases. The trial court then set one of the other cases for status on January 21, 2016.

¶ 12 The docket entry for January 7, 2016, states, among other things, that defendant's motion for a *Krankel* hearing was heard and granted. Further, the entry states that the court found that defendant's counsel was "not ineffective" and that defendant "waiv[ed] right to counsel and can proceed [p]ro-[s]e."

¶ 13 On January 21, 2016, the trial court asked defendant if counsel still represented him in this case. Defendant answered, "No. I am pro se."Defendant added that he was going "pro se on everything" and that he was filing a *pro se* motion for a new trial. Counsel was not present.

¶ 14 The trial court then referred to the January 7, 2016, docket entry. According to the court, the docket entry said that defendant waived counsel and could proceed *pro se*. The court commented that it did not recall what it did on January 7. It added that it believed that defendant wanted counsel to represent him in this case. When the court asked defendant if he had waived counsel in this case, defendant answered, "No. That's why I went pro se." The court commented that, because of a lack of clarity regarding the January 7 docket entry, it was going to review the January 7 transcript.

¶ 15 On February 2, 2016, the trial court asked defendant if counsel still represented him in this case. Defendant answered no, that he was *pro se*. When the court asked defendant when he made the decision to proceed *pro se* in this case, defendant said on January 7, 2016. The court then referred to the January 7 docket entry, stating that defendant waived his right to counsel and would proceed *pro se*. The court added that it was a "[v]ery good docket entry."

¶ 16 Subsequently, the trial court conducted a hearing on defendant's motion for a new trial. Defendant represented himself, and the court denied the motion. Defendant then asked for counsel for all of his cases, including this case. Counsel was appointed in this case and represented defendant at sentencing. Defendant was sentenced to five years' imprisonment. Defendant then filed this timely appeal.

¶ 17 II. ANALYSIS

¶ 18 On appeal, defendant contends that he was not properly admonished under Rule 401(a) when he waived his right to counsel and proceeded *pro se* on his motion for a new trial. The

State responds that, because defendant was properly admonished when he waived his right to counsel in the other cases, there was substantial compliance with Rule 401(a).

¶ 19 Rule 401(a) governs the trial court's acceptance of a defendant's waiver of counsel. *People v. Haynes*, 174 Ill. 2d 204, 235-36 (1996). Pursuant to Rule 401(a), certain admonishments must be given before a defendant may be found to have knowingly and intelligently waived counsel. *Haynes*, 174 Ill. 2d at 335-36.

¶ 20 Rule 401(a) provides, in pertinent part, that a court shall not permit a waiver of counsel without first informing a defendant of, and determining that he understands, (1) the nature of the charge, (2) the minimum and maximum sentences, including, if applicable, the penalty to which he may be subjected because of prior convictions, and (3) he has the right to counsel, including if indigent, to have counsel appointed. Ill. S. Ct. R. 401(a) (eff. July 1, 1984).

¶ 21 The purpose of Rule 401(a) is to ensure that a waiver of counsel is knowingly and intelligently made. *People v. Johnson*, 119 Ill. 2d 119, 132 (1987). Strict compliance, however, is not always necessary. *People v. Kidd*, 178 Ill. 2d 92, 113 (1997). Indeed, substantial compliance is sufficient if the record shows that the waiver was knowing and intelligent and that the admonishments that the defendant received did not prejudice his rights. *Kidd*, 178 Ill. 2d at 113.

¶ 22 There are two categories of substantial compliance. *People v. Pike*, 2016 IL App (1st) 122626, ¶ 112. The first is where the defendant had already received the information omitted from the admonishment, and the second is where the defendant's level of legal sophistication shows that he would have been aware of the information. *People v. Gilkey*, 263 Ill. App. 3d 706, 711 (1994). In either situation, the ultimate question is whether, in light of the entire record, the waiver of counsel was knowingly and intelligently made. *Gilkey*, 236 Ill. App. 3d at 711.

¶ 23 We begin by clarifying when defendant waived counsel in this case. He did not do so on January 7, 2016. Although the docket entry for that date states that defendant waived his right to counsel, it does not specifically refer to this case. Although defendant told the court on February 2, 2016, that he waived counsel on January 7, the record belies that assertion. Indeed, the transcript from January 7 shows that defendant told the court unequivocally that he wanted to keep his appointed counsel to represent him during the posttrial phase of the case. Further, on that date, the trial court instructed counsel that he would be representing defendant going forward. Clearly, defendant did not waive his right to counsel in this case on January 7, 2016.

¶ 24 However, when defendant appeared in court without counsel on January 21, 2016, he unquestionably waived counsel. He did so by stating that he was *pro se* and that counsel no longer represented him, and by filing a *pro se* motion for a new trial.

¶ 25 Defendant, however, was not admonished on January 21 pursuant to Rule 401(a). Thus, there was no strict compliance with Rule 401(a). Nonetheless, we will determine whether there was substantial compliance with Rule 401(a), such that defendant's waiver on January 21 was knowing and intelligent. There was.

¶ 26 Although defendant was not admonished as to his waiver in this case, he was properly admonished on January 7, 2016, regarding his waiver in several other cases involving the same offense as charged here. More importantly, in each of those cases, the trial court admonished defendant as to the nature of the charge and the applicable sentencing range, including the extended term based on his criminal history. Defendant acknowledged that he understood the nature of the charge and the applicable sentencing range. Further, the trial court advised him that he had the right to counsel and that if he was indigent counsel would be appointed.

¶ 27 Those admonishments, although not in this case, advised defendant of the nature of the charge in this case, the applicable sentence range, and his right to counsel. Had the Rule 401(a) admonishments been given in this case, they would have been the same as those given in the other cases. Thus, there was substantial compliance with Rule 401(a) in this case.

¶ 28 Defendant maintains that the admonishments in the other cases did not constitute substantial compliance in this case, because "[d]ifferent cases can have different potential sentencing scenarios or any other number of differences." We disagree. Here, however, the record does not indicate any difference in the nature of the charge or the applicable sentencing range. Second, even if there were any differences in the "potential sentencing scenarios," as long as the minimum and maximum sentences were the same, the admonishment would likewise be the same.

¶ 29 We further note that, although defendant did not waive his right to counsel in this case until two weeks after he was admonished in the other cases, he does not contend that the time lag precluded a determination of substantial compliance. Even if he did, the two-week delay was not so significant as to render the admonishments meaningless. Although it is preferable that a trial court admonish a defendant when it accepts a defendant's waiver of counsel, a failure to do so does not always render a waiver invalid. *Haynes*, 174 Ill. 2d at 242. Rather, each case must be assessed on its own particular facts. *Haynes*, 174 Ill. 2d at 242. Although in some circumstances the lapse of time between the admonishments and the waiver will render the waiver invalid (see, *e.g.*, *Haynes*, 174 Ill. 2d at 242 (no substantial compliance as admonishments were given seven months before the waiver and when the defendant was not requesting to waive counsel); *People v. Jiles*, 364 Ill. App. 3d 320, 329-30 (2006) (defendant cannot be expected to rely on admonishments given more than three months before he waived counsel and when he was not

asking to do so)), here, the admonishments were given only two weeks before defendant waived counsel. Additionally, when they were given, defendant was seeking to waive counsel in his other cases. Therefore, the delay did not negate the effect of the admonishments.

¶ 30 III. CONCLUSION

¶ 31 For the reasons stated, we affirm the judgment of the circuit court of Winnebago County. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2016); *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 32 Affirmed.