2018 IL App (3d) 150596-U

Order filed February 15, 2018

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2018

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
	)	Peoria County, Illinois.
Plaintiff-Appellee,	)	
	)	Appeal No. 3-15-0596
v.	)	Circuit No. 14-CF-862
	)	
LYONE WILLIAMS,	)	The Honorable
	)	Kevin W. Lyons and Jodi Melinda Hoos
Defendant-Appellant.	)	Judges, presiding.

PRESIDING JUSTICE CARTER delivered the judgment of the court.
Justices Lytton and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court abused its discretion in denying defendant's request to represent himself and proceed *pro se*.

¶ 2 Following a bench trial, defendant was found guilty of residential burglary (720 ILCS 5/19-3(a) (West 2014)), and was sentenced to 24 years of imprisonment. On appeal, defendant argues that the trial court erred by refusing to allow him to represent himself at trial. We reverse the judgment of the circuit court and remand for a new trial.

¶ 3 FACTS

¶ 4 In November of 2014, defendant was charged and then subsequently indicted for residential burglary. Defendant requested and was appointed counsel. Defendant entered a plea of not guilty and requested a trial by jury and a speedy trial. A scheduling conference was set for January 22, 2015, and a jury trial was set for February 2, 2015.

¶ 5 On January 22, 2015, defendant was ill with the flu and was transported back to the jail. The scheduling conference was continued until January 29, 2015, and the trial date remained February 2, 2015. On January 28, 2015, defendant's counsel filed a motion requesting to continue the trial date because defendant was recovering from his illness and because defendant had requested counsel to obtain his mental health records. On January 29, 2015, the trial court granted the continuance, and the case was continued for a status hearing on March 12, 2015, and for trial on March 23, 2015.

¶ 6 On February 25, 2015, a bond reduction hearing took place, and the trial court denied defendant's request for a bond reduction. On March 12, 2015, defendant, through counsel, requested a conference in accordance with Illinois Supreme Court Rule 402 (eff. July 1, 2012). The defendant rejected the State's plea offer following the 402 conference. Defendant's counsel asked that the trial date be continued due to a conflict counsel had with another case. Defendant indicated he would like to file a motion to quash his statement. The trial court told defendant that his counsel would have to file the motion. The trial was continued to April 27, 2015.

¶ 7 At a status hearing on April 16, 2015, defendant's counsel indicated to the trial judge, Kevin Lyons, that he would be ready for the scheduled trial on Monday, April 27, 2015, but defendant "may wish to go *pro se*." Defendant confirmed that he wanted "to go *pro se*." The defendant stated that it was his understanding that the trial court did not respect his attorney, so

he "might as well deal with [his] life with [his] own hands." Judge Lyons stated, "[w]e'll do this on a different day" and continued defendant's motion to proceed *pro se* until four days later.

¶ 8 On April 20, 2015, defendant confirmed that he wanted to proceed *pro se,* and stated, "I would like to address the issues of my defense that my lawyers handling [*sic*] inadequately first." Defendant indicated that he understood that in proceeding *pro se* he would be solely accountable for his own defense but he would be able to present issues that he felt would defend him. Defendant stated that he had informed his attorney of those issues, and he felt that he was disrespected. Defendant also indicated that his attorney had told him that if he proceeded *pro se* he would be sentenced to 15 years (with the applicable sentencing range being 6-30 years of imprisonment). Defendant's attorney indicated, "[t]hat is not correct. That is not correct." The prosecutor explained that defendant may be referring to the State's position during the 402 conference that if defendant did not take the State's pending plea offer, then the State's offer would go up to 15 years of imprisonment. The trial court stated to defendant:

> "At the 402 conference [the prosecutor] sort of laid out the case or said what the case is about. So I said to [defendant's attorney], tell me things that are helpful or that would be beneficial to [defendant]. ***
>
> * * *
>
> We discussed that so I could sort of fashion what I thought would be something everyone could live with. When we do that the State doesn't have to take it, and you [defendant] don't have to take it.
>
> But at that [402 conference] I must have said something to [defense counsel], he must have conveyed that back to you like he's supposed to, and apparently that was not suitable; right?"

¶ 9 Defendant confirmed that he had rejected the proposed plea offer that had been relayed to him during the 402 conference. The trial court indicated that the case was set for trial in one week, and asked how defendant representing himself would be more beneficial than defendant being represented by his attorney. Defendant responded, "[b]ecause this is my—this is my life that's on the line." Defendant explained that he felt his attorney had no interest in his case because he had not presented defendant's issues to the court. Defendant referred to his records regarding his physical and mental health issues. Defendant also indicated that his family had called and left messages with his attorney to discuss the case, but defendant's attorney did not return those calls. Defendant further indicated that he had requested that his attorney file a motion to quash his "statement," but his attorney never filed the motion. Defendant explained that he had asked his attorney "to bring up certain issues" but his attorney had not brought up those issues, which included defendant's lack of a violent criminal history.

¶ 10 Defendant stated:

> "Now, I want to *** go *pro se*. 15 years is sitting on the table for me. You know, which like I said my health is failing. I have a non[violent] background record, and I'm just trying to totally seek separation from this attorney and become my own so I can address it more better, you know."

¶ 11 Judge Lyons explained that if defendant were to proceed *pro se*, defendant would not have an opportunity to speak with the court prior to trial about his issues, so it was not apparent how proceeding *pro se* would assist defendant in that regard. Defendant stated that he understood that once he were to proceed *pro se*, he would "have to start over because [he] need[ed] the discovery." Judge Lyons indicated that defendant would get discovery. Judge Lyons also noted that defendant appeared to be dissatisfied with the plea negotiations and

defendant's attorney "has very little control over that." Defendant indicated he understood. Judge Lyons indicated that it would be a little "awkward" for defendant to continue plea negotiations with the prosecutor because defendant may say things that were not "helpful" to himself.

¶ 12 Judge Lyons asked, "[s]o you really want to do this by yourself?" Defendant indicated that he was going to have to proceed *pro se* "from what [he was] seeing right now," because he did not have a violent criminal history and the pending charges were not for a violent crime. Defendant stated that he had been offered a double digit sentence in the plea negotiations. Defendant acknowledged that he had just completed an 18-year sentence for a car theft (6 years of imprisonment) and possession of a stolen vehicle (12 years of imprisonment). Judge Lyons noted that defendant had received an 18-year sentence for his prior crimes that were not violent. Defendant responded that he received 18 years of imprisonment because he went to trial. Judge Lyons admonished defendant that if he were allowed to represent himself, "we're going to set it for trial." Defendant indicated, "Yeah, I understand that."

¶ 13 After taking a recess, Judge Lyons indicated that defendant "made it clear" that he wanted to proceed *pro se*, and asked defendant, "[i]s it still your intention and desire to represent yourself at trial?" Defendant indicated that he had thought about it, but "if it will please the Court, [he] would like for a change of attorney." Judge Lyons denied defendant's request for a new attorney.

¶ 14 Judge Lyons indicated, "here's what I would propose" and suggested that defendant's current attorney continue as defendant's attorney. Judge Lyons further suggested that as the case proceeded toward trial, defendant could represent himself, but in the meantime defendant would "get the benefit of both," with defense counsel available if defendant "bec[a]me perplexed" or, if

the case resulted in a trial and defendant wanted to represent himself, then defendant could do so. Judge Lyons noted that defendant would not be able to have possession of any discovery, but defendant's counsel could bring the discovery to defendant to review at the jail. Judge Lyons stated that the trial could be set in 60 days to allow defendant time to decide what he wanted. Judge Lyons asked, "[w]ould that be okay?" Defendant responded, "[o]kay." Judge Lyons indicated that proceeding in that manner would allow defendant time to further communicate with his defense counsel and the prosecutor if there were some plea negotiations. Defendant responded, "[o]kay. That would be fine." The case was scheduled for trial on June 29, 2015.

¶ 15 On June 22 and 29, 2015, defendant filed *pro se* motions to dismiss the case. On the morning of June 29, 2015, Judge Jodi M. Hoos indicated that she was filling in for Judge Lyons but Judge Lyons would be presiding over defendant's trial later that afternoon, if the case were to proceed to trial. Defendant's attorney indicated that he would be ready for trial, but defendant did not want his representation any longer. Defendant's attorney also indicated that defendant had filed his own *pro se* motions. Defendant's attorney further indicated, "[a]nd as of yesterday, we really weren't communicating much at all even about the size clothes he would need for his trial." The prosecutor confirmed that she was also ready for trial.

¶ 16 Judge Hoos asked defendant if he wanted to represent himself, as his attorney had indicated. Defendant denied wanting to represent himself and, instead, indicated that he had a conflict with his attorney. Judge Hoos asked defendant what his conflict of interest was with his attorney. Defendant responded that his attorney had "convicted" him, told him he was guilty, and told him that he was "going to the slammer." Judge Hoos indicated that defendant had not been convicted because the trial had not yet taken place and found that defendant's attorney had likely been advising defendant regarding his case. Judge Hoos indicated that if there was a

conviction, it would come from the person that heard the evidence. Defendant stated that his counsel had "no interest."

¶ 17 Judge Hoos again asked defendant if he wanted to represent himself, and defendant responded, "[n]o, no, I need a new lawyer." Judge Hoos asked whether defendant had hired an attorney, and defendant responded that he had not. Judge Hoos noted that defendant had been appointed a public defender and he did not get a choice in which public defender he was appointed. Defendant indicated that his attorney had not "put on a defense" for him and had not filed any motions. Defendant stated, "I don't want him as my attorney." In ruling on defendant's motion for new counsel, Judge Hoos noted that defendant been indicted in November of 2014, the case had been pending for nine months, and the case had been set for jury trial four times (February 2, March 23, April 27, and June 29). Judge Hoos indicated that she would not grant defendant new counsel "on the eve of trial," noting that there was only one or two hours left before jury selection and finding that defendant's request for new counsel was untimely. Judge Hoos noted the only justification defendant had argued for the appointment of another attorney was that defendant's attorney indicated defendant would be convicted and just because that was his attorney's opinion on what the evidence may show and defendant did not like that "message," it did not support the appointment of another attorney. Judge Hoos denied defendant's request for the appointment of a new public defender.

¶ 18 Defendant indicated that he had not sought to hire another attorney. Judge Hoos indicated that defendant could represent himself or have his current counsel represent him. Defendant stated that he would like to go *pro se* and represent himself. Judge Hoos asked defendant if he was ready for trial, and defendant responded, "[n]o, I'm not." Defendant indicated that he would like to review his discovery and would like a hearing on his recent *pro se*

motion to dismiss. Upon questioning by Judge Hoos, defendant indicated that he had trial experience from going to trial once before on a residential burglary case 15 or 20 years ago, but he had not represented himself at that trial. Defendant indicated that from sitting in his trial 15 years ago, he was familiar with the Rules of Evidence, knew how to admit items into evidence, knew how to lay a foundation to enter exhibits into evidence, and knew the law to get evidence and exhibits into evidence. Defendant confirmed that if the trial court proceeded on his motion to dismiss, he was otherwise ready to go to trial that day.

¶ 19 Judge Hoos allowed a recess so that defendant's attorney could provide defendant with any recommendations and advice he may have for defendant before defendant confirmed his decision to proceed *pro se*. After the recess, defendant and his attorney confirmed that defendant's attorney had relayed all plea offers to defendant, which defendant rejected, and defendant's attorney had previously met with defendant at the jail numerous times to discuss discovery, various legal theories, the evidence, and possible defenses. Defendant's attorney also indicated that he had not told defendant that defendant was going to be convicted, as defendant had indicated to the court.

¶ 20 Judge Hoos noted that defendant had previously mentioned in April that he wanted to represent himself, so it was something that he had thought about for while. Judge Hoos asked defendant to confirm that if his motion to dismiss was heard, then he would be ready for trial. Defendant then indicated that after the motion to dismiss was heard, he did not know if he would be ready for trial. He indicated that he would not be ready for trial that day if his motion to dismiss was denied because he had to "go over more strategies." He explained that if his motion was denied then his strategy must be missing something. Judge Hoos indicated that it appeared that defendant was requesting to proceed *pro se* for the purpose of delaying the trial, but

defendant denied wanting to proceed *pro se* to delay trial. The trial court asked defendant why he would not be ready for trial, indicating that the trial had been pending for nine months, had been set four times, and the 60-year-old witness (the alleged victim) was waiting to testify. Defendant stated that he had to review his strategy and he did not have his "paperwork." Defendant had not prepared for trial previously because he had placed his trust in his attorney but his attorney failed to sit down and set a strategy with him. The trial court denied defendant's request to proceed *pro se*, finding the request was made to the delay trial and defendant had not provided a sufficient justification for wanting to proceed *pro se*. Defendant requested a bench trial and waived his right to a jury trial.

¶ 21 The following day, on June 30, 2015, the case proceeded to a bench trial before Judge Lyons. Judge Lyons noted that defendant was represented by his appointed counsel. Judge Lyons asked if defendant and his counsel were "going to go ahead today" and asked defendant, "you don't want to represent yourself?" Defendant responded that his request to proceed *pro se* was denied the day prior by Judge Hoos. Judge Lyons stated, "I think her ruling was right." Judge Lyons confirmed that defendant had the opportunity to speak with his attorney since appearing in court the day prior. Defendant stated:

> "[T]here's things that I have wanted to prepare my strategy for this trial. You know, it hasn't been done through this nine months that she say I've been incarcerated. I haven't had no defense set up, no strategy, no angles, nothing. No motions put in. When I try to ask for that, he wouldn't do it, you know."

¶ 22 Judge Lyons indicated that he had just wanted to put on the record that defendant's attorney and the prosecutor were ready for trial. Defendant's attorney clarified that he would not be adopting defendant's *pro se* motion to dismiss.

¶ 23 At trial, the evidence showed that on October 5, 2014, the home of the 81-year-old victim was for sale, and the pending sale was to take place on October 31, 2014. The victim was spending her last night in her home, and then moving the following day. That evening, the victim went out for a few hours and returned at 9:30 p.m. to find that her home had been burglarized, with jewelry, watches, a television, and a computer missing. A pawnshop worker testified that on October 6, 7, and 30, 2014, defendant sold or pawned a television and various items of jewelry, which the victim identified as belonging to her—her mother's Masonic star pin, a Masonic men's ring that had been engraved with her deceased husband's initials, a diamond engagement ring, her deceased husband's ring, women's rings that had been gifts from her deceased husband, and her television set. A photo of defendant had also been taken as part of the sell or pawn process by an employee of the pawnshop. Defendant gave a statement to police, during which he confessed to the burglary. Defendant's fingerprints were found on the back window of the victim's home. The victim testified that she did not know defendant and had not given him permission to enter her home.

¶ 24 Following the bench trial, Judge Lyons found defendant guilty of residential burglary. Defendant filed a motion for new trial, arguing that he had been denied his right to proceed *pro se*, which Judge Lyons denied. Defendant was sentenced to 24 years of imprisonment. His motion to reconsider sentence was denied. Defendant appealed.

¶ 25 ANALYSIS

¶ 26 On appeal, defendant argues that he made several unequivocal requests to represent himself throughout pretrial proceedings, including a request to proceed *pro se* on the day the case was set for trial, and the trial court abused its discretion in denying his request to do so. The State acknowledges that a criminal defendant has a constitutional right to self-representation if

he makes an unequivocal request to do so, but argues that defendant's request was not unequivocal where he went back and forth between asking to proceed *pro se* and requesting new counsel. The State contends that defendant's initial request to proceed *pro se* resulted in defendant agreeing to proceed with counsel and his second request (relayed through counsel) resulted in defendant actually requesting new counsel and then shifting back to requesting to proceed *pro se*, with his request to proceed *pro se* denied. The State also contends that the trial court properly exercised its discretion in denying defendant's second request to proceed *pro se* where the request was untimely because it occurred on the day of trial and defendant was not prepared for trial.

¶ 27 The sixth amendment to the United States Constitution (U.S. Const., amend VI) guarantees an accused in a criminal proceeding the right to the assistance of counsel, as well as the right to proceed without counsel. *Faretta v. California*, 422 U.S. 806, 832-34 (1975). A defendant may waive his constitutional right to counsel as long as the waiver is voluntary, knowing, and intelligent. *People v. Haynes*, 174 Ill. 2d 204, 235 (1996) (citing *Faretta*, 422 U.S. at 835). Although a court may consider the decision unwise, a defendant's knowing and intelligent election to represent himself must be honored. *Haynes*, 174 Ill. 2d at 235 (citing *Faretta*, 422 U.S. at 835).

¶ 28 A waiver of counsel must be clear and unequivocal. *People v. Baez*, 241 Ill. 2d 44, 116 (2011). In determining whether a defendant's statement is clear and unequivocal, it must be determined if the defendant truly desires to represent himself and has definitively invoked his right of self-representation. *Id.* A defendant's apparent acquiescence to the court's denial of his request for self-representation does not forfeit the issue where the trial court clearly denied the request. *People v. Fisher*, 407 Ill. App. 3d 585, 590-91 (2011). By saying "okay" after the trial

court denies a defendant's request to proceed *pro se*, a defendant does not acquiesce in being represented by counsel. *Id.* at 591. A trial court's denial of a defendant's request to represent himself will be reversed only if the trial court abused its discretion. *Id.*

¶ 29 In this case, defendant's requests to proceed *pro se* were unequivocal. Initially, defendant indicated that he wanted to proceed *pro se* on April 16, 2016, and Judge Lyons continued the request for a hearing four days later. At the hearing on April 20, 2016, Judge Lyons indicated that defendant had previously "made it clear" that defendant wanted to proceed *pro se* and defendant again confirmed his desire to proceed *pro se*. While defendant's simultaneous or subsequent request for a new attorney was denied, defendant did not withdraw his request to proceed *pro se* and the request was not ruled upon. Instead, the request was essentially continued by Judge Lyons, with a status hearing set for June 18, 2016, and the trial date schedule for June 29, 2016. There is no indication in the record that a status hearing took place on June 18, 2016, and defendant's request to proceed *pro se* was reiterated by his attorney at the very next court date—the trial date of June 29, 2016. While defendant indicated that he was not ready to proceed to trial at that time, the record shows that defendant did not first make his request on the day of trial for the purpose of delaying trial but rather that the request was made because defendant was dissatisfied with his attorney. Thus, the trial court abused its discretion in failing to allow defendant to represent himself. See *Baez*, 241 Ill. 2d at 116 (if a defendant's wavier of his right to counsel is made voluntarily, knowingly, and intelligently, a court must accept the waiver, even if the decision is unwise or likely to be a detriment to the defendant).

¶ 30 Therefore, we reverse the trial court's judgment and remand for a new trial. We note that the evidence was sufficient to prove defendant guilty of residential burglary beyond a reasonable

doubt and a retrial will not violate defendant's right to be free from double jeopardy. See *People v. Olivera*, 164 Ill. 2d 382, 393 (1995) (double jeopardy does not preclude retrial of a defendant whose conviction is supported by sufficient evidence but set aside because of errors in the proceedings leading to the conviction).

¶ 31 CONCLUSION

¶ 32 The judgment of the circuit court of Peoria County is reversed, and we remand this cause for a new trial.

¶ 33 Reversed and remanded.