

NOTICE
Decision filed 03/06/19. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2019 IL App (5th) 150376-U

NO. 5-15-0376

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Jackson County.
)	
v.)	No. 14-CF-407
)	
CHRISTIAN McLENDON,)	Honorable
)	William G. Schwartz,
Defendant-Appellant.)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Presiding Justice Overstreet* and Justice Moore concurred in the judgment.

ORDER

- ¶ 1 *Held:* The circuit court's denial of the defendant's request to represent himself was an abuse of discretion where it applied the incorrect legal standard.
- ¶ 2 The defendant was convicted of attempted robbery and sentenced to 42 months' imprisonment followed by 1 year of mandatory supervised release. During the pretrial hearings on this case, the defendant made numerous requests to proceed *pro se*. The trial court, after questioning him as to his legal knowledge and educational background,

*Justice Goldenhersh was originally assigned to participate in this case. Presiding Justice Overstreet was substituted on the panel subsequent to Justice Goldenhersh's retirement, and has read the briefs and listened to the recording in the oral argument.

denied his request. For the following reasons, we vacate his conviction and remand for new proceedings.

¶ 3

BACKGROUND

¶ 4 It is important first to note that this order is being issued in conjunction with the order in *People v. McLendon*, 2019 IL App (5th) 150375-U. Many of the facts relevant to this appeal are reiterated in that case as both appeals raise the same issue by the same defendant.

¶ 5 The underlying conviction in this appeal arose from charges filed on September 22, 2014, when the defendant was charged with one count of robbery and one count of criminal damage to property. On October 16, 2014, a preliminary hearing was held on this case. At the hearing, the defendant was present and represented by attorney Margaret Degen from the Jackson County Public Defender's office. The defendant entered a plea of not guilty and entered a motion to reduce bond, which was denied; however, the defendant was later released on bond.

¶ 6 While on bond, the defendant was arrested and charged with two counts of home invasion and one count of criminal damage to property. See *People v. McLendon*, No. 2015-CF-38 (Cir. Ct. Jackson County, July 8, 2015).

¶ 7 On February 20, 2015, a hearing was held on defense counsel Degen's motion to suppress in the criminal case at issue in this appeal, and at the start of the hearing, she reminded the trial court that on the previous day during the preliminary hearing on the defendant's new charges, the defendant had attempted to fire her, had to be removed from

the courtroom due to his behavior, and the preliminary hearing on the new charges was held without him being present in the courtroom. She then went on to inform the court that after the hearing, she went to the Jackson County jail in order to prepare for the present hearing on the motion to suppress, but the defendant refused to see her. She informed the court that she would not be able to proceed on the motion without the cooperation of her client and orally withdrew the motion to suppress. The court then addressed the defendant directly:

"THE COURT: Okay. Let me address Mr. McLendon. Mr. McLendon, yesterday you tried to file a motion declaring yourself to be a sovereign nation; is that right sir? ***

* * *

Now, I am willing to work with you if you have a problem with your attorney in the case, but these cases are going to move forward, and I would certainly like for you to be properly represented. I would like to have you participate in your defense and I would like to have you have all of your Constitutional rights applied to you, but that's only going to work if you want to assist in your own defense of these cases. If you don't, the cases will go forward and what happens happens. So it really all falls within your decision as to what you want to do, Mr. McLendon?

[THE DEFENDANT]: Thank you, Your Honor, for that and I would [like] to say for the record I would like you to file that motion on my behalf today.

THE COURT: We'll file that motion on your behalf today.

[THE DEFENDANT]: Thank you, Your Honor.

THE COURT: You can just sit there. I'll have the Clerk get it from you.

[THE DEFENDANT]: Yes, sir.

THE COURT: So now let me ask you, sir. What you want to do with regard to your defense in the case? You want an attorney to assist you? Do you want an attorney other than the public defender to represent you? Are you going to represent yourself? Or what's going to go on? I just need to know.

[THE DEFENDANT]: I would like to represent myself.

THE COURT: All right. Now, when you say you are going to represent yourself, do you have any schooling in the law?

[THE DEFENDANT]: No, I do not.

THE COURT: All right. Do you understand the serious nature of these particular offenses?

[THE DEFENDANT]: Yes, I do.

THE COURT: All right. I guess—I am not being smart here, I am just trying to protect your interest. How are you going to represent yourself if you don't have any schooling in the law?

[THE DEFENDANT]: I have done a lot of reading as of late.

THE COURT: Okay. Let me ask you a couple of questions. Do you know what a peremptory challenge is?

[THE DEFENDANT]: No, I do not, Your Honor.

THE COURT: Okay. That's one of the things that's brought up during the course of the selection of the jury. Do you know how many peremptory—I guess the answer to that would be no because you don't know what a peremptory challenge is. Do you know what jury instructions are?

[THE DEFENDANT]: No, I do not, Your Honor.

THE COURT: How do you expect to prepare for those if you don't know what they are?

[THE DEFENDANT]: Because I don't have to prepare for them, Your Honor.

THE COURT: Why don't you?

[THE DEFENDANT]: Because once that motion is filed, I won't have to.

THE COURT: All right. Let me take a look at your motion. And this is exactly the motion that I referred to earlier where you say you are an executive international organization and executor of the estate of—this has—this is incorrect. It is pure and simple it is just incorrect, and as I said earlier, the case is going to go forward. The motion is on file now and you can participate or not participate. That choice is totally up to you, but let's get beyond what you filed here because it has no bearing on this case. You may think so, but it doesn't. Now, back to the question I started with, do you want somebody to assist you in this case?

[THE DEFENDANT]: No, I would not like anybody to assist me in this case, Your Honor.

THE COURT: All right. Then let me ask you this, are you going to participate in the proceedings with regard to the trial in this case?

[THE DEFENDANT]: No, I do not consent to the proceedings of this trial, Your Honor.

THE COURT: Well, I understand you are not consenting to them. My question is, whether you are going to participate or do I need to file or do I need to make sure there is an attorney appointed to represent your interest even though you are not going to cooperate with that attorney.

[THE DEFENDANT]: No, I do not consent to the proceedings of the trial, Your Honor.

THE COURT: All right. Then what I will do, Ms. Degen is not allow you to withdraw. You are going to represent the defendant and to the extent that he cooperates, he cooperates, but if he is not going to cooperate, I am sorry to tell you

that you are going to have to give him the best defense that you can and make sure that the system is working appropriately."

¶ 8 On March 31, 2015, the trial court held a pretrial hearing at which the court heard argument on defense counsel's motion to withdraw or, in the alternative, to be excused from filing a pretrial memorandum. During this hearing, the court again addressed the defendant directly and the following colloquy occurred:

"THE COURT: Mr. McLendon, we had a conversation with regard to this. We're going to go to trial with regard to this case, and if you don't want to cooperate with your attorney, there's not much she can do to represent you. I want you to understand that.

THE DEFENDANT: Your Honor, Title 28, Section 1654, 'In all courts of the United States, the parties may plead and conduct their cases by person or by counsel.' On February 19th, I fired her in open court and—

THE COURT: You don't fire her. I appointed her. I'm the one that makes a determination if she's going to be your attorney.

THE DEFENDANT: But I fired her before—

THE COURT: And, on that date, I told you that you were incapable to not have the prerequisite ability to represent yourself in this courtroom. I made that determination. That determination has been made. That bridge has been crossed.

THE DEFENDANT: I represent myself *pro se*.

THE COURT: No, you're not.

THE DEFENDANT: Yes, I am. I have been representing myself *pro se*. I have not agreed to meet her not one time. You sent her three or four times to come see me. You filed this motion on February 20th. Not yet to receive—

THE COURT: Mr. McLendon, let me put it very clearly to you: She's going to represent you.

THE DEFENDANT: No, she's not.

THE COURT: And if you're going to act up, you're going to sit in jail. We'll pick the jury. You can watch it from the camera—

THE DEFENDANT: I—

THE COURT: —if that's what you want—Take him out of here."

¶ 9 On April 28, 2015, the trial court held a pretrial hearing at which the defendant told the court that he "would like to represent [himself] *propria persona* ***." On May

5, 2015, another pretrial conference was held. During this hearing, the court and the defendant had the following exchange:

"THE DEFENDANT: All right. No problem. Last week, I invoke my right to represent myself *in propria persona*, and you even agreed on the record, you allowed me to file a motion in support to the motion to dismiss. So why is it that you are still, you know, referring to Margaret Degen as representing me in my case?

THE COURT: Mr. McLendon, I would like to take that up second to this one, if that would be okay with you.

THE DEFENDANT: I'm sorry.

THE COURT: I said we have a number of issues. The first issue I want to talk about was your motion to dismiss claiming you're an independent nation. I want to discuss that first.

The second one I was going to discuss was you representing yourself. Now, if you want to reverse order on that, I certainly can do that.

THE DEFENDANT: Yes. That's what I would like to do.

THE COURT: You would like to do that?

THE DEFENDANT: Yes, I would.

* * *

THE DEFENDANT: I said last week during my pretrial in this case—

THE COURT: Mm-hmm.

THE DEFENDANT: —I invoke my right to represent myself *in propria persona*.

THE COURT: Okay. Now stop right there.

THE DEFENDANT: That's my problem.

THE COURT: What does *propria persona* mean?

THE DEFENDANT: That's my proper person.

THE COURT: Okay. And what does that mean?

THE DEFENDANT: What do you mean? You don't know what *in propria persona*?

THE COURT: Yeah. I've never heard that term used in the law.

THE DEFENDANT: You have never heard it?

THE COURT: That's correct, sir.

THE DEFENDANT: Oh, well.

THE COURT: Other than coming in your motion and another motion identical to your motion by another defendant.

THE DEFENDANT: Oh, okay.

THE COURT: That's the only time I've heard it.

THE DEFENDANT: That's the only time you've heard *in propria persona*?

THE COURT: *In propria persona*; correct, sir.

THE DEFENDANT: Wow.

THE COURT: So I'm asking you what it means. What does it mean to you?

THE DEFENDANT: It means representing myself in my proper person as a human being, not as a corporation.

THE COURT: Well, I understand that. You couldn't represent yourself as a corporation unless you had corporate status. So we're not even talking about that here.

Now, I have indicated to you, previously, that I didn't think you were capable of representing yourself because you didn't have the necessary schooling or understanding of the law to represent yourself. You continue to ask to represent yourself even though you don't have the schooling. Why do you think you can do that?

THE DEFENDANT: Because this is not for me to go to trial. When we spoke initially about you, you're [*sic*] argument with me was that I can not conduct a jury trial.

* * *

THE COURT: Now, aside from whether you're a[n] independent nation or not, what you want to address second, the fact of the matter is that you have to have certain abilities to be able to represent yourself. As I understand what you're saying to me, today, is 'Well, there won't be any trial; There shouldn't be any trial; Therefore, I'm representing myself.'

Do I get that wrong or do I get that right?

THE DEFENDANT: Yes, sir.

THE COURT: All right. Well, there is going to be a trial and if you represented yourself, you can either sit there and do nothing, which is not in your best interest, or you can represent yourself, and representing yourself participating in the process requires some knowledge of the law so you can do it in an effective manner.

What I've been telling you is you don't have the knowledge to do it in an effective manner, which is why somebody who is schooled in the law, licensed to practice law and does this on a daily basis, has been appointed to represent you with regard to this matter.

Working with her, if you're willing to work with her, accomplishes protecting your rights within the jurisdiction, but if you're not interested in the jurisdiction, then apparently that will not be of concern to you. But that's something I don't want to speak for you. I'm just trying to work through with [*sic*] what you're talking about here, today."

At the end of this conversation with the defendant, the court resumed the hearing and Ms.

Degen continued representing the defendant.

¶ 10 On May 7, 2015, a jury trial was held *in absentia*, and the jury found the defendant not guilty of robbery and guilty of attempted robbery. On July 8, 2015, the trial court held a sentencing hearing at which the defendant was sentenced to 42 months' imprisonment followed by 1 year of mandatory supervised release. The defendant appeals.

¶ 11

ANALYSIS

¶ 12 As a preliminary matter, the defendant requests this court take judicial notice of the record on appeal in *People v. McLendon*, 2019 IL App (5th) 150375-U. Courts may take judicial notice of matters which are commonly known or of facts which, while not generally known, are readily verifiable from sources of indisputable accuracy. *People v. Davis*, 65 Ill. 2d 157, 161 (1976). This includes public documents which are included in court records. *May Department Stores Co. v. Teamsters Union Local No. 743*, 64 Ill. 2d 153, 159 (1976). We therefore take notice of the record on appeal in case No. 5-15-0375 as it falls within the category of readily verifiable matters.

¶ 13 "A defendant has a constitutional right to represent himself." *People v. Baez*, 241 Ill. 2d 44, 115 (2011) (citing *Faretta v. California*, 422 U.S. 806, 835 (1975); *People v. Burton*, 184 Ill. 2d 1, 21 (1998)). Any waiver of the right to counsel by defendant must be clear and unequivocal. *Id.* at 116. In determining whether a defendant's statement to waive his right to counsel is clear and unequivocal, a court must determine whether the defendant "truly desires to represent himself and has definitively invoked his right of self-representation." *Burton*, 184 Ill. 2d at 22. In making this determination, "courts may

look at the defendant's conduct following the defendant's request to represent himself." *Id.* at 24.

¶ 14 If a defendant's request to represent himself is freely, knowingly, and intelligently made, it must be accepted. *People v. Lego*, 168 Ill. 2d 561, 564 (1995). The determination of whether a defendant has made an intelligent waiver is case specific and depends on the particular facts and circumstances, including the background, experience, and conduct of defendant. *Id.* A trial court's determination as to whether a defendant's waiver was knowingly and intelligently made will not be overturned absent an abuse of discretion; however, a court abuses its discretion when it applies the improper legal standard. *People v. Woodson*, 2011 IL App (4th) 100223, ¶ 21 (citing *Rockford Police Benevolent & Protective Ass'n v. Morrissey*, 398 Ill. App. 3d 145, 154 (2010)).

¶ 15 The defendant concedes that his claim challenging the trial court's denial of his request to represent himself was forfeited as it was not raised in a posttrial motion. However, under Illinois Supreme Court Rule 615(a) (eff. Jan. 1, 1967), "[p]lain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court." The plain error rule allows review of a forfeited claim of error if the error is clear or obvious and either (1) "the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error," or (2) "the error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. McDonald*, 2016 IL 118882, ¶ 48. An error in denying a defendant the right to represent himself is a structural error that may be

reviewed under the second prong of the plain error doctrine as it is "a systemic error that serves to erode the integrity of the judicial process and undermine the fairness of a trial." *People v. Washington*, 2012 IL 110283, ¶ 59.

¶ 16 The State argues that the defendant never made a clear and unequivocal request to represent himself because his intention was not to act as his own counsel but in fact to sit-out the trial and have no representation. We find this argument unpersuasive. It is clear from the record that the defendant made numerous clear and unequivocal requests to represent himself. As quoted above, over the course of multiple hearings, the defendant says in open court: "I would like to represent myself"; "I would not like anybody to assist me in this case"; "I represent myself *pro se*"; "I have been representing myself *pro se*"; and "I invoke my right to represent myself *in propria persona*." The court disagreed with the defendant's trial strategy of not participating in the proceedings and sitting in his jail cell; after explaining to the defendant that representing himself would not be in the defendant's best interest, the court denied the defendant's motion because he was "unschooled in the law." The record is clear that the defendant made an unequivocal request, the court considered the request and inquired about his legal background, and then denied the defendant's request because the defendant did not know what a peremptory challenge was, did not know how to prepare jury instructions, and was overall "unschooled in the law."

¶ 17 As previously explained, it is well-settled law that the appropriate standard for determining whether a defendant's motion for self-representation should be granted is whether the waiver of the right to counsel was made freely, knowingly, and intelligently.

Baez, 241 Ill. 2d at 115-16. This is not a case where the defendant lacked the mental capacity to intelligently and knowingly waive his right to counsel. The defendant was not trying to effectuate a delay on the court or the proceedings. Instead, the defendant wanted to represent himself. He wanted to file a motion to dismiss—which he did and was denied—and then sit in his jail cell. Though the defendant's defense strategy was obviously misguided and would have been disastrous, that fact is irrelevant to the inquiry into whether the defendant made an unequivocal and clear request to represent himself, and whether the trial court's denial of that request was based on the proper legal standard. The record establishes that the court denied the defendant's request because it determined that he did not have the requisite legal knowledge to represent himself. The court was obviously frustrated with the defendant's misguided attempts to have the case dismissed under his "sovereign citizen" status; however, the court abused its discretion when it then denied his request to proceed *pro se* because of his limited knowledge in the law.

¶ 18

CONCLUSION

¶ 19 Therefore, the defendant's conviction is vacated and the case is remanded for new proceedings.

¶ 20 Vacated and remanded.