

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).

NO. 4-09-0835

Filed 1/31/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
BRANDON D. KELLY,)	No. 09CF1087
Defendant-Appellant.)	
)	Honorable
)	Thomas J. Difanis,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court. Presiding Justice Knecht and Justice McCullough concurred in the judgment.

ORDER

Held: Where defendant's waiver of the right to counsel continued through the sentencing hearing, and the trial court properly admonished him as to his right to appeal, remand for new admonitions was not required.

In September 2009, a jury found defendant, Brandon D. Kelly, guilty of one count of unlawful possession with intent to deliver a controlled substance. In October 2009, the trial court sentenced him to 25 years in prison.

On appeal, defendant argues his sentence should be vacated and his cause remanded for new admonitions concerning his right to counsel and his right to appeal. We affirm.

I. BACKGROUND

In June 2009, the State charged defendant with one count of unlawful possession with intent to deliver a controlled

substance (720 ILCS 570/401(c)(2) (West 2008)), alleging he knowingly and unlawfully possessed with the intent to deliver 1 gram but less than 15 grams of a substance containing cocaine. Defendant pleaded not guilty.

In September 2009, defendant's jury trial commenced. Prior to the start of trial, defendant informed the trial court he wanted to represent himself. The court admonished him that if he represented himself, he would not be allowed to complain about his representation on appeal, the effectiveness of his defense might be diminished, and he would get no extra time or special consideration from the court. Defendant indicated he understood. The following exchange then occurred:

"THE COURT: And again you understand that an attorney can render some important assistance by determining the existence of possible defenses to the charges through consultations with the prosecutor regarding the possible reduced charges or lesser penalties, and that in the event of a conviction by presenting to the court matters that might lead to a lesser sentence. You understand that's what a lawyer can do?

DEFENDANT: Yes.

THE COURT: And in the event the court

accepts your decision to represent yourself, you'll not be given an opportunity to change your mind during trial. You understand that?

DEFENDANT: Yes.

* * *

THE COURT: All right. The charge says that on the 26th of June you knowingly and unlawfully possessed with the intent to deliver [1] gram or more but less than [15] grams of a substance containing cocaine. That's a Class 1 felony. The normal penalty range is not less than [4] nor more than [15] years, but if you have two or more Class 2 or greater convictions, then this becomes a Class X offense. Mandatory minimum sentence of [6] years, maximum sentence fixed out to [30] years, period of mandatory supervised release of [3] years. *** So you understand, Mr. Kelly, that if you get convicted of this offense, the mandatory minimum sentence is [6] years, the maximum could be out to [30] years, and you feel that you're better able to represent yourself as opposed to [defense counsel]?

DEFENDANT: Yes.

THE COURT: All right. [Defense counsel], you are excused."

After the State presented evidence in its case in chief, defendant testified on his own behalf. Following closing arguments, the jury found defendant guilty.

In October 2009, the trial court conducted a hearing on posttrial motions and sentencing. Defendant appeared *pro se*. The court denied the posttrial motion. Prior to sentencing, the court admonished defendant on his right to appeal. Thereafter, the court sentenced him to 25 years in prison. Defendant did not file a postsentencing motion. This appeal followed.

II. ANALYSIS

Defendant argues the trial court's method of admonishing him before sentencing on how to perfect an appeal or challenge his sentence--without readmonishing him of his right to counsel at that stage--worked a fundamental unfairness against him considering his 25-year sentence. Defendant asks this court to vacate his sentence and remand his cause for new admonitions concerning his right to counsel and his right to appeal.

"Ordinarily, when a defendant makes a valid waiver of counsel, this waiver remains in place throughout the remainder of the proceedings, including posttrial stages." *People v. Cleveland*, 393 Ill. App. 3d 700, 705, 913 N.E.2d 646, 651 (2009).

Known as the continuing waiver rule, two exceptions have been found when "'(1) the defendant later requests counsel or (2) other circumstances suggest that the waiver is limited to a particular stage of the proceedings.'" *Cleveland*, 393 Ill. App. 3d at 705, 913 N.E.2d at 651, quoting *People v. Palmer*, 382 Ill. App. 3d 1151, 1162, 889 N.E.2d 244, 253 (2008), citing *People v. Baker*, 92 Ill. 2d 85, 91-92, 440 N.E.2d 856, 859 (1982). "Circumstances requiring readmonishment before sentencing include lengthy delays between trial phases, newly discovered evidence which might require or justify advice of counsel, new charges brought, or a request from defendant." *People v. Simpson*, 172 Ill. 2d 117, 138, 665 N.E.2d 1228, 1239 (1996).

In the case *sub judice*, defendant does not argue the trial court improperly admonished him when he decided to represent himself at trial. Defendant acknowledges the continuing waiver rule and notes none of the exceptions apply that would justify readmonishment.

Defendant, however, takes issue with the trial court's reading of his appeal rights prior to imposing the 25-year sentence. Although conceding the court's admonitions were adequate, defendant posits that had he been admonished after sentencing, or readmonished on how to challenge his sentence, then he could have preserved his right to appeal his sentence. Instead, defendant argues the court's admonishments about per-

fecting an appeal were "quite confusing" and the court also directed a notice of appeal to be prepared following the sentencing hearing, thereby eliminating his right to challenge his sentence.

In this case, nothing indicates defendant was confused about how to perfect his appeal. The trial court's admonishments notified defendant that, prior to taking an appeal, he had to file a motion to reconsider sentence within 30 days. Defendant had also previously filed a *pro se* motion for appeal, and he offers nothing but speculation that the court's direction that a notice of appeal be filed precluded him from questioning the length of his sentence. Defendant has not shown remand is required.

III. CONCLUSION

For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

Affirmed.