

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).

2012 IL App (4th) 100673-U

Filed 2/17/12

NO. 4-10-0673

IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Livingston County
CORSHAUN L. RAY,	)	No. 09CF75
Defendant-Appellant.	)	
	)	Honorable
	)	Jennifer H. Bauknecht,
	)	Judge Presiding.

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JUSTICE McCULLOUGH delivered the judgment of the court.  
Presiding Justice Turner and Justice Cook concurred in the judgment.

**ORDER**

¶ 1 *Held:* Trial court abused its discretion by denying defendant's timely request to represent himself where the record did not indicate that defendant requested additional time to prepare before trial.

¶ 2 On April 14, 2010, a jury found defendant, Corshaun L. Ray, guilty of aggravated battery. On July 26, 2010, the trial court sentenced defendant to three years' imprisonment. Defendant appeals, arguing the court abused its discretion by denying defendant his right of self-representation at trial. We reverse.

¶ 3 On March 12, 2009, the State charged defendant by information with one count of aggravated battery (720 ILCS 5/12-4(b)(18) (West 2008)). The information alleged that on January 12, 2009, defendant, an inmate at the Pontiac Correctional Center, knowingly made physical contact of an insulting or provoking nature with Maya Dalton. Specifically, the information alleged defendant hugged and kissed Dalton, knowing Dalton was a correctional

institutional employee and employee of the State of Illinois engaged in the execution of her official duties.

¶ 4 On April 28, 2009, the trial court appointed the public defender to represent defendant. In letters to the court filed on August 3, 2009, and October 6, 2009, defendant raised questions regarding the performance of his appointed counsel.

¶ 5 On April 14, 2010, the trial court called the matter for jury trial. Defendant requested permission to address the court and stated that he wanted "to file a motion to withdraw counsel" and proceed *pro se*. Defendant advised the court that "[c]ounsel has been and still is ineffective with [d]efendant's case, and [c]ounsel is not acting in the best interests of the [d]efendant, has not done sufficient investigation, discovery, or filed a motion for the [d]efendant." The court asked that defendant state "[w]hat specifically did you want him to do or do you want him to do that was not done." Defendant detailed multiple concerns after which the following exchange occurred:

¶ 6 "THE COURT: Well, I'll take that up in just a second. Mr. Morgan, do you know anything about the request on these letters that he's referring to?"

¶ 7 MR. MORGAN [Defense Counsel]: Sure. [Defendant's] motion is to proceed *pro se*. Certainly he's entitled I would think to do that if he wants to do that. He wants to proceed *pro se*. As to these other matters, I can go into as much detail as the court wants concerning the situation. I believe, I guess [defendant] in talking about these things is waiving some sort of privilege, not some sort of privilege, attorney-client privilege concerning matters that he's talking about because I can address everything in some detail if he wishes. But if he's merely asking to proceed *pro se*, I think that's a different type of question though that we're

looking at.

¶ 8 THE COURT: Well, okay. So I need to clarify that. You want to proceed *pro se*.

Is that what you are telling me?

¶ 9 THE DEFENDANT: Yes, ma'am.

¶ 10 THE COURT: And you made that decision when?

¶ 11 THE DEFENDANT: Since my last court date.

¶ 12 THE COURT: Which was when?

¶ 13 THE DEFENDANT: March.

¶ 14 THE COURT: And you waited until this morning to bring that to the [c]ourt's attention?

¶ 15 THE DEFENDANT: I've been trying to, I was actually in transition between segregation and cell placements and stuff; and legal documents are being rerouted here and rerouted there and legal boxes over there and over there so a lot of internal stuff in the facility.

¶ 16 THE COURT: Well, I'm not convinced that this – this is a little late I guess in the game to be moving to proceed *pro se*. You've had numerous court appearances. This case goes back to, well, actually the charges are alleged to have occurred in January of '09. Charges were filed in March of '09. There have been several court appearances, and the cause has been called ready for trial since last July. So it's a little late today on the day of the jury trial for you to tell me you want to proceed *pro se*. I don't think your motion is timely made, and therefore your motion to proceed *pro se* is denied."

¶ 17 The trial court asked that prospective jurors be brought into the courtroom and the court conducted *voir dire*. Later that day, a jury found defendant guilty of aggravated battery.

¶ 18 Defense counsel filed a posttrial motion alleging defendant was entitled to a new trial because the trial court improperly denied defendant's motion to proceed to trial *pro se*. On May 24, 2010, the trial court denied the posttrial motion and this appeal followed.

¶ 19 Defendant argues that the trial court abused its discretion when it denied him the right to self-representation. "On review, the trial court's decision on a defendant's election to represent himself will be reversed only if the court abused its discretion." *People v. Rohlfis*, 368 Ill. App. 3d 540, 545, 858 N.E.2d 616, 621 (2006).

¶ 20 Defendant claims that the trial court erred in denying his request to proceed *pro se* where the trial court did not admonish defendant in accordance with Supreme Court Rule 401(a) (134 Ill. 2d R. 401(a)), defendant did not request additional time to prepare, defendant was not disruptive, and the jury was not yet empaneled.

¶ 21 A defendant has a right to self-representation in criminal trials under both the United States and Illinois Constitutions. See U.S. Const., amend. VI; Ill. Const. 1970, art. I, §8; *Faretta v. California*, 422 U.S. 806, 832, 45 L. Ed. 2d 562, 579-80, 95 S. Ct. 2525, 2539-40, (1975); *People v. Burton*, 184 Ill. 2d 1, 21, 703 N.E.2d 49, 59 (1998). "The determination of whether there has been an intelligent waiver of the right to counsel must depend, in each case, upon the particular facts and circumstances of that case, including the background, experience, and conduct of the accused." *People v. Baez*, 241 Ill. 2d 44, 116, 946 N.E.2d 359, 401 (2011). Although a trial court may consider a defendant's decision to represent himself unwise, if his decision is freely, knowingly, and intelligently made, it must be accepted. *Baez*, 241 Ill. 2d at 116-117, 946 N.E.2d at 402.

¶ 22 "It has been found to be reversible error to refuse a criminal defendant's timely

request for self-representation." *People v. Bowman*, 40 Ill. 2d 116, 123, 239 N.E.2d 433, 438 (1968). A request made before trial commences is generally viewed as timely if it is not accompanied by a request for additional time to prepare. *People v. Woodson*, 2011 IL App (4th) 100, ¶ 4, \_\_\_ N.E.2d \_\_\_, \_\_\_, citing 2 W. LaFave & J. Israel, *Criminal Procedure* § 11.5(d), at 47–48 (1984); see also, e.g., *United States v. Johnson*, 223 F.3d 665, 668 (7th Cir. 2000) ("a motion for self-representation is timely if made before the jury is empaneled")

¶ 23 In this case, defendant orally sought to proceed *pro se* immediately prior to the commencement of trial. *Voir dire* had not begun. The State does not contest that defendant made a clear and unequivocal request to represent himself on April 14, 2010. Further, defendant's request was not accompanied by a motion for a continuance. Defendant did not request additional time to prepare. Although the trial court concluded that defendant's request was not timely, we disagree. On the facts of this case, the court abused its discretion by denying defendant's timely request to represent himself.

¶ 24 The State argues this case is analogous to *People v. Ashoor Rasho*, 398 Ill. App. 3d 1035, 925 N.E.2d 711 (2010). We conclude *Rasho* is distinguishable. In *Rasho*, this court found the defendant's request to proceed *pro se* was not unequivocal. *Rasho*, 398 Ill. App. 3d at 1042, 925 N.E.2d at 717. Here, the State does not contest that defendant made a clear and unequivocal request to represent himself on April 14, 2010. Further, this court in *Rasho* found that prior to the commencement of trial, the defendant "clearly wanted additional time to prepare." *Rasho*, 398 Ill. App. 3d at 1042, 925 N.E.2d at 717. The defendant "complained that he wanted to procure additional documents and call witnesses who were not present the day of trial." *Rasho*, 398 Ill. App. 3d at 1042, 925 N.E.2d at 717-18. The trial court concluded that the

defendant's attempt to proceed *pro se* was a delay tactic and this court agreed. *Rasho*, 398 Ill. App. 3d at 1042, 925 N.E.2d at 718.

¶ 25 In the instant case, the trial court denied defendant's motion to proceed to trial *pro se* solely on the basis of timeliness, stating "it's a little late today on the day of the jury trial for you to tell me you want to proceed *pro se*." As stated above, a request made before trial commences is generally viewed as timely if it is not accompanied by a request for additional time to prepare. *People v. Woodson*, 2011 IL App (4th) 100, ¶ 4, \_\_\_ N.E.2d \_\_\_, \_\_\_, citing 2 W. LaFave & J. Israel, *Criminal Procedure* § 11.5(d), at 47–48 (1984). There is nothing in this record to indicate that defendant requested additional time to prepare before trial.

¶ 26 For the reasons stated, we reverse the trial court's judgment.

¶ 27 Reversed for further proceedings.