



withdraw his guilty plea.

¶ 3 On July 22, 2009, the court sentenced the defendant to concurrent terms of 24 years' imprisonment in the Illinois Department of Corrections. On March 31, 2010, the defendant filed a motion to dismiss his court-appointed attorney. On May 6, 2010, the defendant filed a *pro se* amended motion to withdraw his guilty plea. Also on May 6, 2010, the court granted the defendant's motion to discharge his attorney and reset the hearing on the defendant's motion to withdraw his guilty plea. On July 14, 2010, after an evidentiary hearing at which the defendant appeared *pro se*, the trial court denied the defendant's motion to withdraw his guilty plea. On July 16, 2010, the defendant filed a notice of appeal.

¶ 4 **BACKGROUND**

¶ 5 After the defendant was arrested, he hired a private attorney to represent him. That attorney filed a motion to suppress the defendant's statements. On February 19, 2009, the defendant filed a document entitled "Termination of Attorney," in which he stated that he had discharged his attorney. At the hearing on that date, the court questioned the defendant about whether he understood the consequences of discharging his attorney. The defendant stated that he wanted to discharge his private attorney and that he did not want to hire another attorney or have an attorney appointed to represent him. The defendant told the court that he had attended 1½ years of college, that he was not under the influence of any medications, and that he did not have any physical or mental problems that would affect his understanding. The defendant acknowledged that he wanted to represent himself at the upcoming hearing on his motion to suppress. The court asked the defendant if he understood that the charges against him included three Class X felonies and one Class 1 felony, and that he could be sentenced to 6 to 24 years' imprisonment. The defendant responded that

he "understood that 7 months ago." The court advised the defendant in detail about the pitfalls of representing himself, and the defendant responded that he felt that he could do better for himself than an attorney. The court accepted the defendant's request to discharge his attorney. The State informed the court and the defendant that it had filed a motion seeking an extended-term sentence on all four counts against the defendant and that the defendant faced the possibility of a range of 14 to 75 years' imprisonment with the requirement that he serve at least 85% of his sentence.

¶ 6 On February 23, 2009, the court conducted an evidentiary hearing on the defendant's motion to suppress, during which the defendant appeared *pro se*. The court denied the motion, finding that the defendant had been advised of his rights and that he had made his statement voluntarily and knowingly.

¶ 7 On February 27, 2009, the defendant filed a letter addressed to the trial court asking for a court-appointed attorney. On the same date, the public defender's office was appointed to represent the defendant. On March 26, 2009, the public defender assigned to the defendant's case filed a motion to withdraw, alleging that the defendant had again requested to represent himself. On April 2, 2009, the court granted the attorney's motion to withdraw and the defendant's request to proceed *pro se*.

¶ 8 On April 22, 2009, the State filed a notice of intention to seek consecutive sentences. On April 28, 2009, the defendant filed a *pro se* motion to dismiss the two aggravated kidnapping charges and the criminal sexual assault charge. Also on April 28, 2009, the court conducted a pretrial hearing in which the defendant appeared *pro se*, and the court heard both parties' arguments on the pending motions. During that hearing, the defendant stated that the basis of his motion to dismiss was that the victim would testify on his behalf that he did not do what the State alleged. The trial

court explained that the defendant would have the opportunity to present his defense and call his witnesses at the trial. The court denied the defendant's motion to dismiss the charges, inquired about the parties' witness lists, and explained the procedure for the upcoming jury trial.

¶ 9 Two days later, on April 30, 2009, the court conducted an unplanned hearing on the defendant's oral request to once again have an attorney appointed to represent him. There is no written pleading in the record in support of this request. The court asked the defendant what kind of game he was playing by requesting an attorney three days before his jury trial. The defendant said that he was not playing games but was looking for someone to represent him who had "the same state of mind" as him. The court again appointed the public defender's office to represent him. The defendant's court-appointed attorney, Assistant Public Defender Scott Turner, filed a motion to continue the trial, which the court granted on May 4, 2009.

¶ 10 On May 5, 2009, the court conducted a change of plea hearing, during which the defendant was represented by attorney Turner. The court accepted the defendant's open guilty plea to counts I and III of the amended indictment (aggravated kidnapping and home invasion) in exchange for the State's dismissal of counts II and IV (aggravated kidnapping and criminal sexual assault), as well as the dismissal of a separately pending probation revocation. The State also agreed to request a sentence of no more than 30 years' imprisonment and to forego its request for consecutive sentences. The defendant stated that he had accepted this plea agreement, that nothing else had been promised to him, and that no other agreements had been made. He stated that he had been given enough time to speak with his attorney and that he was satisfied with his attorney's advice and representation. The court accepted the State's recitation of the factual basis for the plea and fully advised the defendant

before accepting his guilty plea.

¶ 11 On June 1, 2009, the defendant filed a *pro se* motion to withdraw his guilty plea, and on July 22, 2009, the court conducted the sentencing hearing during which attorney Turner represented the defendant. The court sentenced the defendant to concurrent terms of 24 years' imprisonment on the aggravated kidnapping and home invasion charges, allowed the defendant credit for time served, and advised the defendant that he would be required to serve 85% of his sentence.

¶ 12 On July 28, 2009, the defendant filed a *pro se* "First Amended Motion to Withdraw Guilty Plea" and a motion to reduce his sentence. On September 21, 2009, the defendant filed another *pro se* petition to withdraw his guilty plea and reduce his sentence, alleging, *inter alia*, ineffective assistance of counsel and no factual basis to support his guilty plea. On November 5, 2009, attorney Rand S. Hale, a special defender for Madison County, entered his appearance for the defendant on his motion to withdraw his guilty plea. The record does not indicate why attorney Turner was no longer able to represent the defendant.

¶ 13 On March 31, 2010, the defendant filed a motion to dismiss attorney Hale, arguing that he had missed four court dates because of Hale, that he had only talked to Hale once, and that Hale's requests for continuances violated his constitutional rights. On April 8, 2010, attorney Hale filed a certificate of compliance with Illinois Supreme Court Rule 604(d) (eff. July 1, 2006). On the same date, the defendant filed a *pro se* amended motion to withdraw his guilty plea, arguing that attorney Turner, who had represented him at the change of plea hearing, was ineffective because he had "failed to present to the court" that the defendant had acted in self-defense and that the alleged victim had voluntarily gone in the car with him and was not afraid of him. The defendant also argued that attorney Turner had a conflict of interest because

"he had been the state's attorney prior to 2001 and had trained the state's attorney for this case as his replacement."

¶ 14 On May 6, 2010, the court conducted a hearing on the defendant's motion to discharge attorney Hale. The defendant acknowledged that he wanted to represent himself on his motion to withdraw his guilty plea, and the court discharged attorney Hale. The court asked the defendant if he wanted to proceed with his latest motion to withdraw his guilty plea, and the defendant responded that he wanted to argue his motion. The defendant argued that attorney Turner had tricked him into pleading guilty by telling him that he would be sentenced to no more than six years' imprisonment and that he would receive day-for-day good-conduct credit. The defendant argued that attorney Turner could not possibly give his best to the defendant "when he's going against his former guy that he trained in Court as a state's attorney." The defendant argued that attorney Turner should have brought out the facts that the alleged victim, his wife at the time, had consented to have sex and to go in the car with him.

¶ 15 The court stated that it needed a transcript of the change of plea hearing before deciding the defendant's motion and asked the defendant if he intended to call any witnesses. The defendant stated that he wanted to call the victim and one of the arresting officers as witnesses. The court explained that the purpose of a motion to withdraw a guilty plea was not to reopen the case to show that there was insufficient proof but to determine whether the defendant had been adequately advised of his rights and whether he voluntarily pled guilty. The court advised the defendant that it would have to adjourn the hearing until a later date so that it could review the transcripts of the change of plea and sentencing hearings. The court told the defendant that, before the hearing on the motion to withdraw, he could decide who

he wanted to call as witnesses.

¶ 16 On July 14, 2010, the court conducted an evidentiary hearing on the defendant's motion to withdraw his guilty plea. At the beginning of that hearing, the defendant told the court that he still wanted to represent himself. The court asked the defendant if he had any witnesses he wanted to call, and the defendant responded that he did not have any. In support of his motion, the defendant argued that he had an e-mail from the victim to his sister indicating that she never told the police that he had kidnapped her or forced her to have sex with him. He argued that attorney Turner should have presented that evidence to the court. When asked to summarize his argument, the defendant stated that his attorney gave him a "bogus deal" and sold him a "bogus dream" that the attorney could persuade the court to sentence him to only six years' imprisonment. The defendant argued: "I was appointed an attorney that I tried to get rid of [on] three separate occasions. He told me he couldn't win my case, and this is the best thing I could do." The court explained, "That's called advice." The court stated that it did not know if the attorney's advice was true or not but that attorneys are supposed to evaluate their clients' cases. The court reminded the defendant that, before the court accepted his guilty plea, the defendant had said he was satisfied with his attorney's representation and advice. The defendant did not offer any arguments in support of his motion to reduce sentence.

¶ 17 The court stated that, after reviewing the transcript of the guilty plea hearing and listening to the arguments and testimony at the motion hearing, it did not find a sufficient basis to allow the defendant to withdraw his guilty plea. The court stated that it remained convinced that the defendant knowingly and voluntarily pled guilty. The court stated that it had viewed the defendant's motion to withdraw his guilty plea in the light most favorable to him and had found that all of the circumstances about

which the defendant complained were known to him when he entered his guilty plea. "All of this information would have been in his calculation and knowledge in order to assist him in making his determination as to whether he wished to enter the plea or not." The court denied the defendant's motions to withdraw his guilty plea and to reduce his sentence. This appeal followed.

¶ 18

#### ANALYSIS

¶ 19

The defendant argues that the court improperly allowed him to proceed *pro se* on his motion to withdraw his guilty plea without obtaining a valid waiver of counsel under Illinois Supreme Court Rule 401(a) (eff. July 1, 1984). Rule 401(a) provides:

"(a) Waiver of Counsel. Any waiver of counsel shall be in open court. The court shall not permit a waiver of counsel by a person accused of an offense punishable by imprisonment without first, by addressing the defendant personally in open court, informing him of and determining that he understands the following:

(1) the nature of the charge;

(2) the minimum and maximum sentence prescribed by law \*\*\*; and

(3) that he has a right to counsel and, if he is indigent, to have counsel

appointed for him by the court." Ill. S. Ct. R. 401(a) (eff. July 1, 1984).

¶ 20

The defendant acknowledges that he knew he had a right to counsel and that strict compliance with Rule 401(a) is not necessary in every case, citing *People v. Meeks*, 249 Ill. App. 3d 152 (1993). In *Meeks*, the court stated:

"The purpose of Rule 401 is to eliminate any doubt that the defendant understands the charge against him and its consequences and to preclude a defendant from waiving the right to counsel without full knowledge and understanding. [Citation.] If it appears that a defendant has a high level of sophistication, strict compliance with the rule is not required. [Citation.] When deciding whether the

defendant knowingly and intelligently waived his right to counsel, the entire record should be considered. [Citation.] Substantial compliance with Rule 401(a) is sufficient to effectuate a valid waiver of counsel if the record indicates that the waiver was made knowingly and intelligently." *Meeks*, 249 Ill. App. 3d at 171-72.

¶ 21 The court may find substantial compliance with Rule 401(a) where the record indicates that the defendant knowingly, intelligently, and voluntarily waived his right to counsel, and the admonishments he received did not prejudice his rights. *People v. Phillips*, 392 Ill. App. 3d 243, 262 (2009). It is well established that courts review the issue of substantial compliance with Rule 401(a) for an abuse of discretion.<sup>1</sup> *Id.* at 260; see also *People v. Baez*, 241 Ill. 2d 44, 116 (2011) ("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," and the trial court's determination is reviewed for abuse of discretion.). In general, a court abuses its discretion when its decision is arbitrary, fanciful, or when no reasonable person would agree with it. *People v. Ortega*, 209 Ill. 2d 354, 359 (2004).

¶ 22 In the case at bar, the defendant urges us to focus solely on the May 6, 2010, hearing on his *pro se* motion to withdraw his guilty plea. However, our determination of whether the defendant knowingly, intelligently, and voluntarily waived his right to

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<sup>1</sup>We acknowledge the case law stating that construing Illinois Supreme Court rules requires *de novo* review. See *People v. Campbell*, 224 Ill. 2d 80, 84 (2006) (where issue involved construing the scope and meaning of Supreme Court Rule 401(a), the review was *de novo*). However, in the case at bar, we are not construing the scope of a supreme court rule but assessing whether the trial court substantially complied with Rule 401(a) under the facts of this case, which is reviewed under the abuse of discretion standard.

counsel for purposes of that hearing is to be determined by reviewing the entire record in order to establish if his rights were prejudiced by proceeding without counsel. See *People v. Johnson*, 119 Ill. 2d 119, 132 (1987). In his brief to this court, he acknowledges that, at that hearing, he told the court he did not want attorney Hale as his attorney, that he did not want another attorney appointed, and that he was willing to proceed to a hearing on the motion that day. Additionally, the record shows that, during his guilty plea hearing, the defendant was fully admonished about the nature of the charges against him and the minimum and maximum sentencing possibilities. Therefore, the issue is whether the earlier admonishments were sufficient under these circumstances to show a valid waiver that did not otherwise prejudice the defendant's rights.

¶ 23 During the course of this case, the defendant was initially represented by private counsel, but the defendant filed a *pro se* motion to terminate him. Before granting the defendant's request, the court questioned him at length to ascertain if he understood the serious consequences of proceeding without counsel. During this initial discussion, the defendant informed the court that he had attended 1½ years of college, that he was not under the influence of any medications, and that he did not have any physical or mental problems that affected his understanding. The court advised the defendant about the nature of the charges against him and the range of penalties. The defendant later represented himself on the motion to suppress that his private attorney had filed on his behalf, and he does not argue that he was prejudiced in any way by doing so. However, after the court denied the motion to suppress, the defendant sent a letter to the court asking for court-appointed counsel. That request was promptly granted, but less than a month later, the defendant again requested to represent himself, and he was again allowed to proceed *pro se*. Only three days

before the beginning of his jury trial, the defendant once again asserted his right to counsel, and the court extensively questioned him about his motives. Nevertheless, the court appointed attorney Turner to represent the defendant.

¶ 24 Attorney Turner represented the defendant during his change of plea hearing. When the court asked the defendant whether he had been given enough time to talk to his attorney and if he was satisfied with his attorney's representation, he answered affirmatively. Before his sentencing hearing, the defendant filed a *pro se* motion to withdraw his guilty plea, but he allowed attorney Turner to represent him at the sentencing hearing. After attorney Hale substituted his appearance for attorney Turner, the defendant filed a *pro se* motion to dismiss attorney Hale. Prior to moving for the dismissal of attorney Hale, the defendant filed a *pro se* amended motion to withdraw his guilty plea, raising issues including ineffective assistance of counsel and citing case law in support of his argument.

¶ 25 On May 6, 2010, the court granted the defendant's motion to dismiss attorney Hale. At that hearing, the defendant unequivocally stated that he wanted to represent himself on his motion to withdraw his guilty plea. As grounds for the withdrawal of his guilty plea, the defendant argued that attorney Turner had coerced him into entering the guilty plea, and he told the court about the witnesses he intended to call to support his motion. The court recessed the case in order to review the transcripts of the guilty plea and sentencing hearings. More than two months later, on July 14, 2010, the defendant appeared for the evidentiary hearing on his motion to withdraw his guilty plea. The defendant did not at any time in that hearing express any reservations about representing himself. Rather, he made his arguments against attorney Turner, stating that he had been appointed an attorney who he tried to get rid of on "three separate occasions."

¶ 26 Under the facts and circumstances of this case, there is no doubt that the defendant knowingly, intelligently, and voluntarily waived his right to counsel for the hearing on his motion to withdraw his guilty plea. Based upon this record, the trial court substantially complied with the requirements of Rule 401(a), and no reasonable person could believe that the defendant was not aware of the nature of the charges of which he had been convicted and the range of penalties prescribed by law for those offenses. The only prejudice the defendant asserts is that the court did not make him aware, before granting his request to fire his fourth attorney, that he could be sentenced to the full range of those penalties if he prevailed on his *pro se* motion. However, at the change of plea hearing, the court advised the defendant for at least the second time about the full range of penalties he faced, and at the sentencing hearing, the court once again advised him about the range of penalties and his appeal rights. We find no prejudice to the defendant under these circumstances. The defendant persisted in his insistence to represent himself at the hearing on the motion to withdraw his guilty plea for over two months between the date attorney Hale was dismissed and the date of the motion hearing. The defendant demonstrated his legal sophistication by filing several *pro se* pleadings and arguing them himself.

¶ 27 There is no evidence to suggest that the defendant would have acted any differently had the court strictly complied with Rule 401(a) on the date it granted the defendant's request to dismiss attorney Hale. See *People v. Ware*, 407 Ill. App. 3d 315, 348 (2011) (the trial court substantially complied with Rule 401(a) where there was "absolutely no indication in the record that, had defendant been fully admonished" in a later proceeding, he would have acted any differently because he had been admonished a number of times previously "and those admonitions did not change [his] decision to repeatedly reject his appointed counsel"). Accordingly, we

find no abuse of the court's discretion.

¶ 28 The defendant next argues that he was denied a fair hearing on his motion to withdraw his guilty plea because the court applied an incorrect standard and erroneously stated that the testimony from the victim would not support his motion to withdraw his guilty plea. The defendant argues that, at the hearing on his motion to withdraw his guilty plea, he asked to have the alleged victim testify in an attempt to show that he had a defense worthy of consideration by a jury, but that the court "simply focused upon whether [the defendant] entered the plea knowingly or voluntarily" and "did not understand that a defense worthy of consideration by a jury was a reason for withdrawal of the plea."

¶ 29 The defendant correctly notes that he bore the burden of proof in presenting his motion to withdraw his guilty plea. See *People v. Rutledge*, 212 Ill. App. 3d 31, 33 (1991) (the defendant always bears the burden of proof in presenting a motion to withdraw a guilty plea). "Permission to withdraw a plea of guilty and enter a plea of not guilty is a matter within the discretion of the court \*\*\*." *People v. Morreale*, 412 Ill. 528, 531 (1952). In *Morreale*, the Illinois Supreme Court stated that, among the grounds for allowing a defendant to withdraw his guilty plea are misapprehension of the facts or the law, misrepresentations by someone in authority, "where there is doubt of the guilt of the accused, or where the accused has a defense worthy of consideration by a jury." *Id.* at 531-32. In *Morreale*, the court found that the defendant should have been allowed to withdraw his guilty plea due to "several circumstances, peculiar to the record," including "hurried consultations," a young, inexperienced, substitute attorney, and pressure exerted by the prosecutor. *Id.* at 532-33. The court found that "the haste and manner in which the arrangements were made" was the "dominating factor" in the defendant's decision to plead guilty "while

confused and in a state of misapprehension." *Id.* at 533. No similar factors exist in the instant case.

¶ 30 The record does not support the defendant's contention that the trial court denied him the right to call the victim as a witness. The court attempted to explain to the defendant that the hearing on the motion to withdraw his guilty plea would not be a new trial but would be an opportunity for him to show the court why it should not have accepted his guilty plea, *i.e.*, that it had not been entered knowingly, intelligently, or voluntarily. At the end of the May 6, 2010, hearing, the court specifically set the case over until a later date so that it could review the transcripts *and* so that the defendant and the State could call any witnesses they chose to call. The defendant told the court that he wanted to call the victim and one of the arresting officers as witnesses. The court told the defendant that he would have to explain how those witnesses would relate to the issues he raised in his motion to withdraw his guilty plea, but it advised the defendant that he and the State could both decide who to call as witnesses at the later hearing.

¶ 31 At the continued hearing on the motion to withdraw his guilty plea, held on July 14, 2010, the court asked the defendant if he still wanted to represent himself, and the defendant replied affirmatively. The court asked the defendant if he had any witnesses to call, and the defendant replied: "No, sir. No, sir. I don't have any." During the rest of the hearing, the defendant made no arguments that he had been prevented in any way from presenting any evidence in support of his motion. Therefore, the defendant's argument that he was prevented from calling witnesses in support of his motion fails. The trial court did not misapprehend the law and did not abuse its discretion. There was simply no evidence to show that the defendant's guilty plea was not knowingly, intelligently, and voluntarily entered.

¶ 32

## CONCLUSION

¶ 33

For all of the reasons stated, we affirm the order of the trial court denying the defendant's motion to withdraw his guilty plea.

¶ 34

Affirmed.