2015 IL App (2d) 131158-U
No. 2-13-1158
Order filed December 11, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. PAUL MATHIS, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Winnebago County. No. 12-CF-396 Honorable Fernando L. Engelsma, Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Jorgensen and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The State proved defendant guilty beyond a reasonable doubt of failing to report a temporary absence under the Sex Offender Registration Act: in light of his judicial admission that he was "still living" at his registered address, his failure to establish a new address, and the possessions that he left behind, the jury could infer that his absence was temporary rather than permanent; (2) the trial court did not substantially comply with Rule 401(a): when defendant waived counsel, the court did not advise him of the nature of the charges and the sentencing ranges, and these omissions were not ameliorated by the admonishments at his arraignment roughly nine months earlier or by his alleged legal sophistication; thus, we vacate his conviction and remand for a new trial.

¶ 2 After a jury trial, defendant, Paul Mathis, proceeding *pro se*, was convicted of failure to report a temporary absence from his residence, in violation of section 3(a) of the Sex Offender

Registration Act (Act) (730 ILCS 150/3(a) (West 2012)). On appeal, he argues that (1) he was not proved guilty beyond a reasonable doubt; (2) the trial court erred in allowing him to waive his right to counsel; and (3) the trial court erred in allowing the State to inform the jury of the specific conviction on which his status as a sex offender was based. We agree with defendant's second argument, and we vacate and remand.

¶ 3 I. BACKGROUND

¶ 4 On August 22, 2012, the State filed a two-count indictment alleging that, in February 2012, defendant, a convicted sex offender, (1) changed his residence and failed to report the change within three days as required by section 6 of the Act (730 ILCS 150/6 (West 2012)); and (2) was temporarily absent from his residence and failed to report the absence within three days as required by section 3(a) of the Act (730 ILCS 150/3(a) (West 2012)). The indictment recited that, because defendant had been convicted in 2006 of failing to register as a sex offender, each count, a Class 2 felony, was punishable as a Class X felony, with no probation available, a sentence of 6 to 30 years' imprisonment, 3 years of mandatory supervised release, and fines of up to $25,000.

¶ 5 On August 27, 2012, at a hearing with defendant and his appointed attorneys Chrissie Lee and Nick Zimmerman present, the trial judge told defendant that, for sentencing purposes, either offense could be treated as a Class X felony with the sentencing range stated in the indictment.

¶ 6 On May 28, 2013, defendant and his new appointed attorney, Patrick Braun, appeared at a hearing on the scheduled trial date and announced that defendant now wished to proceed *pro se*. Defendant presented his written motion to the judge and said that he wanted to go to trial immediately but that Braun had delayed the trial. Also, defendant and Braun explained, they had disagreed over trial strategy. Defendant accused Braun of filing false information with the court. The following colloquy ensued:

"THE COURT: Well, Mr. Mathis, I don't believe any false information has been filed with the Court. But let me go through a couple of things with you. And how old are you?

THE DEFENDANT: I'm 52, sir.

THE COURT: And how far have you gone in school?

THE DEFENDANT: Two years of college. High school and two years of college.

THE COURT: High school and two years of college. And the two years of college, was that while in the Department of Corrections?

THE DEFENDANT: Uh, no. Some, some.

THE COURT: Some of it. Did you get a degree?

THE DEFENDANT: No. Just a diploma, and I've got some college.

THE COURT: Have you ever appeared pro se and gone to trial pro se before?

THE DEFENDANT: No, I haven't.

THE COURT: Other than being in the Department of Corrections, does your undergrad—or your studies include the study of law? I mean, you have a high school diploma, right?

THE DEFENDANT: Uh-huh.

THE COURT: And two years of some college credits?

THE DEFENDANT: Uh-huh."

¶ 7 The judge advised defendant that he would have to adhere to "technical rules of evidence," which an attorney would be better equipped to know and follow. Defendant responded that he understood. The judge then told defendant that the State would be represented by an experienced attorney, which would put defendant at a substantial disadvantage. Defendant said that he

understood. Next, the judge admonished defendant that, as a *pro se* litigant, he would receive no "special consideration from the Court" and no assistance in presenting his case. Defendant said that he understood. Finally, the judge warned defendant that, should he decide to proceed *pro se*, he would not have the opportunity later to change his mind. Defendant said that he understood.

¶ 8 After clarifying the character of defendant's motion, the judge stated that, "although a defendant certainly has a constitutional right to proceed pro se," nonetheless, "[i]n the history of this case including the examination that was previously ordered of Mr. Mathis [finding him fit to stand trial] and Mr. Mathis' arguments to the Court during pretrial hearings and statuses tell me that he is not capable of representing himself in this matter. So I'm going to deny the motion to proceed pro se." Defendant protested that Braun had refused to go along with his suggested strategy of attacking the credibility of one of the State's expected witnesses. The judge told defendant that that was a matter of trial strategy and did not alter the judge's conclusion that, although defendant was fit to stand trial, he was not "competent to represent [himself] in this case." Therefore, his motion was denied.

¶ 9 At this point, the following colloquy took place:

> "MS. MASON [assistant State's Attorney]: Judge, I would ask the Court to reconsider that. I don't know that the Court can deny him his right to represent himself.
>
> THE COURT: What, what do you—what—go ahead and cite something on that.
>
> MS. MASON: I do have certain admonitions that do need to be done. I'm not sure if the Court did all of these. I was listening as I'm printing out the case law. And may I tender this to the Court?
>
> THE COURT: Sure.
>
> MS. MASON: But I am not sure that you can deny him the right to go pro se.

THE COURT: Okay.

MS. MASON: If the Court wants us to get case law on that, I'd be more than happy to do that.

THE COURT: All right. Mr. Braun, do you have any—anything to add?

MR. BRAUN: I don't, Judge; but it is my understanding that it is a defendant's absolute right as long as he is fit to proceed to trial. You know, he's indicated he has a high school diploma. There's nothing about my conversations with him that ever led me to believe that he wasn't fit."

¶ 10 The judge stated that Mason's argument "appear[ed] to be well taken" and admonished defendant that he had a constitutional right to counsel and a right to self-representation and that the latter choice would put him at a "disadvantage." Defendant said that he understood. The judge granted defendant's motion and continued the trial.

¶ 11 The case proceeded to a jury trial. In her opening statement, Mason summarized the elements of the two charged offenses. As to the need to prove that defendant was a sex offender, she stated, "We're going to show you a certified conviction that was done on June 12th, 1989, where the defendant in Cook County was convicted of aggravated criminal sexual assault." Defendant did not object to this reference. In his opening statement, defendant asserted that he did not report any change of address "because [he] was basically, legally still living there."

¶ 12 For the State, Angela Neidermann testified on direct examination as follows. On February 6, 2012, she resided at 1823 North Winnebago Street in Rockford; defendant, her brother, had been living there since June 2011. On February 6, 2012, he left. Asked whether she "ever [saw] him again in terms of living at [her] residence," Neidermann answered "No." Asked whether she "ever let him back in the house at any time," she answered, "No."

¶ 13 On cross-examination, defendant elicited the following from Neidermann. Between February 6, 2012, and February 10, 2012, neither she nor anyone at her address reported that defendant's "unemployment debit card" had been lost. When defendant left the house on February 10, 2012, the card was with him. Defendant's clothes were no longer at her house. She had asked several people (not including him) to pick them up, but nobody had. After more than a year, she threw out his clothes because she was moving and they were "just cluttering [her] home." Asked whether she destroyed defendant's "documents" and "plaques," she testified, "Everything that belonged to you is gone." After February 6, 2012, when mail addressed to defendant was delivered to her home, she "put it back in the mailbox, return to sender."

¶ 14 The State next called Christine Sorensen, who testified as follows. In February 2012, she was a civilian employee at the Rockford police station. Her duties included registering sex offenders. On December 27, 2011, she helped to register defendant for 90 days (see 730 ILCS 150/6 (West 2010)). Sorensen identified the form that defendant completed. Asked what the charge listed on the form was, Sorensen testified, "The charge is an aggravated criminal sexual assault." Asked whether that was a felony, she testified, "Yes, it was." Defendant did not object to the question or the answer. Sorensen testified that defendant read and signed the form, which stated that he understood his obligations, including the obligation to reregister on March 27, 2012. Registration forms for sex offenders were kept at the station, where detectives could obtain them.

¶ 15 Jeff Schelling testified as follows. On February 10, 2012, while working as a Rockford police detective, he was assigned to look into defendant's registration. He learned that, on February 6, 2012, defendant had left his last place of registration, 1823 North Winnebago. Schelling checked defendant's December 27, 2011, registration form and then checked Department of Corrections records, which disclosed nothing suggesting that defendant had been

incarcerated at any pertinent time. On February 10, 2012, Schelling did not know where defendant was residing. The LEADS database gave defendant's residence as 1823 North Winnebago and did not indicate that he had registered any changes to his address within three days (by February 9, 2012) as required. Schelling reported the information to the State's Attorney's office; that day, he arrested defendant.

¶ 16 The trial court admitted the State's exhibit, including the registration form and a certified copy of defendant's 1989 conviction of aggravated criminal sexual assault. The State rested.

¶ 17 Defendant called Neidermann. She testified that, on February 6, 2012, she called 911. Defendant asked her, "And when you called 9-1-1, your main intentions were the fact that I was not staying there any longer?" Neidermann responded, "I called 9-1-1 because you tried to rape my daughters." The trial court overruled a State objection to this testimony. The court sustained State objections to further questions on this matter. However, in answer to another question, Neidermann said that she called 911 "to report a criminal sexual assault against two minor 11[-]year[-]olds." There was no objection to this testimony.

¶ 18 Defendant testified, but, in response to State objections, the court struck all his testimony.

¶ 19 In her closing argument, Mason noted that each alternative charge required the State to prove, in part, that defendant was a convicted sex offender. She explained that the State had done this through the certified copy of his conviction of aggravated criminal sexual assault. Defendant did not object to this reference. She also noted the evidence that defendant left his sister's home on February 6, 2012, did not return, and, as of February 10, 2012, had not notified the authorities of the fact. In his closing argument, defendant stated, "I failed to register," but he contended that it was not his fault. The court sustained the State's objection to this argument.

¶ 20 In her rebuttal argument, Mason again noted that defendant had been convicted in Cook County of aggravated criminal sexual assault. The trial judge, *sua sponte*, stated, "[s]ustained to any objection" and defendant stated, "I object too." The judge then stated that the jury could "only consider the prior conviction on the issue as an element of the offense of a duty to register *** as a sex offender, for no other reason." Mason then told the jury, "Yes. And that is what I'm telling you. Is that [*sic*] as an element of the offense, we presented the certified conviction to the Court and it's been admitted into evidence and he was convicted of aggravated criminal sexual assault." She completed her argument.

¶ 21 The jury found defendant not guilty of the first count but guilty of the second count. The trial court denied defendant's posttrial motion and, after a hearing, sentenced him to 10 years' imprisonment. He timely appealed.

¶ 22 II. ANALYSIS

¶ 23 On appeal, defendant contends first that he was not proved guilty beyond a reasonable doubt of violating section 3(a) of the Act, which, as pertinent here, states, "A sex offender *** who is temporarily absent from his or her current address of registration for 3 or more days shall notify the law enforcement agency having jurisdiction of his or her current registration, including the itinerary for travel, in the manner provided in Section 6 of this Act." 730 ILCS 150/3(a) (West 2012). Defendant argues that, although he conceded that he was a sex offender and that he did not register within three days of departing from 1823 North Winnebago, the State failed to prove that, on February 10, 2012, he was *temporarily* absent from that address. Defendant reasons that the scant evidence of his whereabouts between February 6 and February 10, 2012, was inconsistent with proof beyond a reasonable doubt that his absence from Neidermann's house was merely temporary. Defendant notes Neidermann's testimony that (1) she ordered defendant out because

he "tried to rape" her daughters; (2) she never let him back in again; (3) she attempted to get rid of defendant's clothing and eventually threw it out; and (4) she threw out all of defendant's other possessions that had been in the house.

¶ 24 The State responds that a reasonable jury could have found that, on February 10, 2012, defendant was only temporarily absent from Neidermann's house. The State reasons that, based on the evidence that he left his clothing behind, the jury could infer that he had not intended to leave finally but had merely absented himself for a time and intended to return soon.

¶ 25 In assessing the sufficiency of the evidence, we ask only whether, after viewing all of the evidence in the light most favorable to the State, any rational fact finder could have found the elements of the offense proved beyond a reasonable doubt. *People v. Ward*, 154 Ill. 2d 272, 326 (1992). The trier of fact is responsible for determining the witnesses' credibility, weighing their testimony, and deciding on the reasonable inferences to be drawn from the evidence. *People v. Hill*, 272 Ill. App. 3d 597, 603-04 (1995). It is not our function to retry the defendant. *People v. Lamon*, 346 Ill. App. 3d 1082, 1089 (2004).

¶ 26 We note that section 3(a) sets out several categories, not completely exclusive, for a sex offender's residential status for a given time (or during a given period). Initially, an offender must register and provide his "current address." 730 ILCS 150/3(a) (West 2012). From then on, he may "reside[]" or be "temporarily domiciled" in a given municipality. 730 ILCS 150/3(a)(1), (a)(2) (West 2012). A place of residence or temporary domicile is "any and all places where the sex offender resides for an aggregate period of time of 3 or more days during any calendar year." 730 ILCS 150/3(a) (West 2012). Also, at any given time, an offender either has a "fixed residence" or no "fixed residence" (*id.*); in the latter eventuality, he must notify the pertinent authority in the jurisdiction of his last known address within three days after ceasing to have a

fixed residence (*id.*) and, thereafter, must report weekly to the authority, which in turn must document each weekly registration to include all the locations where he has stayed during the previous seven days (*id.*).

¶ 27 Most central here, a sex offender who is "temporarily absent from his or her current address of registration for 3 or more days" must notify the pertinent law enforcement agency in the manner provided in section 6 of the Act (730 ILCS 150/6 (West 2012)). 730 ILCS 150/3(a) (West 2012).

¶ 28 The State contends that it proved that defendant departed from Neidermann's house on February 6, 2012, without removing his belongings and that Neidermann waited a year to throw them away. From this evidence, the State concludes that a reasonable jury could have found that defendant "intended his absence from [Neidermann's] house to be temporary." We agree. We hold that the evidence allowed the jury to find beyond a reasonable doubt that, when he was arrested, defendant's absence from Neidermann's house was temporary.

¶ 29 The evidence allowed the jury to conclude that, when he departed from Neidermann's house on February 6, 2012, defendant intended to return. Defendant left his clothing and many other possessions behind. Although there was no evidence of where he stayed between his departure and his arrest, that lack of evidence did not prevent the jury from finding that he had not abandoned Neidermann's residence; indeed, the paucity of evidence about his living arrangements during the lost days was not sufficient to create a reasonable doubt that the absence was more than temporary.

¶ 30 Moreover, defendant's assertion in his opening statement that he "did not register at that particular time because I was basically, legally still living there" was a judicial admission that he had not intended to change his residence permanently. See *Stamp v. Sylvan*, 391 Ill. App. 3d 117,

126 (2009) (judicial admission is a clear, unequivocal statement about a fact within his particular knowledge). Although defendant could not "admit" a conclusion of law (that he was still "legally living" at his sister's home), he could, and did, admit that, even after he left on February 6, 2012, he was "still living there"—*i.e.*, he still saw Neidermann's home as his residence, which he had had no intention of abandoning. This admission supported the jury's finding that, as of February 10, 2012, he had been only temporarily absent from his last registered address. Thus, we hold that defendant was proved guilty beyond a reasonable doubt.

¶ 31 We turn to defendant's second claim of error: that the trial court erred in allowing him to proceed without the assistance of counsel. Defendant's argument is twofold: (1) the trial judge mistakenly believed that he lacked any discretion to deny defendant's request; and (2) the judge's admonishments did not substantially comply with Illinois Supreme Court Rule 401(a) (eff. July 1, 1984). As we shall explain, we disagree with the first contention but agree with the second.

¶ 32 A defendant has the constitutional right to self-representation. *Faretta v. California*, 422 U.S. 806, 834 (1975); *People v. Woodson*, 2011 IL App (4th) 100223, ¶ 20. A defendant may waive his right to counsel if he does so knowingly and intelligently. *Faretta*, 422 U.S. at 835; *Woodson*, 2011 IL App (4th) 100223, ¶ 20. We shall not disturb a trial court's ruling on a waiver of the right to counsel unless the court abused its discretion. *Woodson*, 2011 IL App (4th) 100223, ¶ 21. However, the court abuses its discretion when it applies an improper legal standard. *Id.*

¶ 33 Defendant contends in part that the trial court abused its discretion, as the judge granted defendant's motion under the mistaken belief that he had no discretion to deny it. Defendant argues that the colloquy among the judge, Mason, and Braun established that all of them assumed that a defendant who wishes to represent himself has the absolute right to do so. According to

defendant, the judge initially denied defendant's motion, but the attorneys for both parties then convinced the judge that he lacked the discretion to do so. We cannot agree.

¶ 34 We presume that the trial judge knew the applicable law unless the record affirmatively rebuts that presumption. See *People v. Smith*, 2013 IL App (2d) 120691, ¶ 10. The applicable and established law is that the trial court may deny a defendant's request to proceed *pro se* only if (1) the request comes so late that to grant it would disrupt the proceedings; (2) the defendant has proceeded *pro se* but has engaged in serious and obstructionist misconduct; or (3) the court finds that the defendant is unable to reach the level of appreciation needed to waive his right to counsel knowingly and intelligently. *Woodson*, 2011 IL App (4th) 100223, ¶ 24; *People v. Ward*, 208 Ill. App. 3d 1073, 1084 (1991). A defendant may not be denied his right to self-representation merely because the judge has found that his decision is unwise or that he is incapable of representing himself skillfully. *Woodson*, 2011 IL App (4th) 100223, ¶ 23.

¶ 35 We see no mistake of law in the trial judge's decision; if anything, his colloquy with the attorneys was conducive to following the legal principles that we have just set out. Initially, in denying defendant's request for self-representation, the judge stated that, although defendant had been found fit to stand trial, his fitness examination and his arguments during pretrial hearings convinced the judge that defendant was "not capable of representing himself in this matter." This statement is ambiguous, but it strongly suggests that the judge was deciding defendant's motion not on one of the three bases that *Woodson* allows (only the third of which was arguably applicable here), but on the improper basis that defendant was incapable of doing a satisfactory job of self-representation.

¶ 36 After his colloquy with the attorneys, during which Mason tendered some sort of legal authority, the judge agreed to allow defendant to waive his right to counsel, and he then

admonished defendant of the consequences (although, as we shall see, not all of them) of proceeding *pro se*. Defendant now interprets the judge's actions as demonstrating that he believed that he had no discretion to deny defendant's request, as defendant's right to self-representation was "absolute." We do not find that reading of the record compelling.

¶ 37 Although Braun did state that defendant had an "absolute" right to proceed *pro se* as long as he was fit to stand trial, Mason's statement, which was the one that the judge cited as apparently "well taken," did not imply that defendant had an absolute right to represent himself, and she tendered legal authority and reminded the judge that there were "certain admonitions that [did] need to be done." The judge did not directly grant defendant's motion to proceed *pro se*, but instead admonished him that he had the constitutional right to counsel and would be placing himself at a disadvantage if he went *pro se*. Had the judge believed that he had no discretion to deny defendant's motion, he would not have admonished defendant any further in order to evaluate whether defendant's decision was knowing and voluntary. Thus, we hold that defendant has not overcome the presumption that the judge knew and correctly applied the law.

¶ 38 We turn to the second part of defendant's argument: that the trial court failed to comply substantially with Rule 401(a), thus invalidating defendant's waiver. For the following reasons, we agree.

¶ 39 A court may not allow a person charged with an offense punishable by imprisonment to waive his right to counsel without informing him of and determining that he understands (1) the nature of the charge; (2) the minimum and maximum sentences prescribed by law; and (3) that he has a right to counsel and, if he is indigent, to have the court appoint counsel for him. Ill. S. Ct. R. 401(a) (eff. July 1, 1984). Substantial compliance with Rule 401(a) is sufficient if the record indicates that the defendant's waiver was otherwise knowing, intelligent, and voluntary and the

admonishments he received did not prejudice his rights. *People v. Coleman*, 129 Ill. 2d 321, 333 (1989); *People v. Jiles,* 364 Ill. App. 3d 320, 329 (2006).

¶ 40 Here, we cannot say that there was substantial compliance with Rule 401(a). At the hearing on defendant's motion to waive his right to counsel, the judge did initially admonish him that he would have to adhere to technical rules of evidence; that he would be at a disadvantage against the experienced counsel for the State; that he would receive no assistance from the court; and that his decision would be irrevocable. After the colloquy with the parties' attorneys, the judge admonished defendant that he had the constitutional right to counsel. However, the judge did not specifically inform defendant of the nature of the charges or of either the minimum or the maximum sentence prescribed by law. Looking to the matters of which Rule 401(a) requires admonishment, we see that more was left out than was put in.

¶ 41 In *Jiles*, the defendant was charged with three offenses. The trial court never admonished him about the minimum and maximum penalties for one offense; it did admonish him about the minimum and maximum penalties for the other two offenses, but only at his arraignment, more than three months before the hearing at which he sought to waive his right to counsel. We held that the court had failed to comply substantially with Rule 401(a), especially as the admonishments that it gave at the arraignment were no substitute for timely admonishments when the defendant moved to be allowed to waive counsel. *Jiles*, 364 Ill. App. 3d at 329-30. Per *Jiles*, we cannot conclude that the court here substantially complied with Rule 401(a). The admonishments were equally defective.

¶ 42 The State raises two arguments for why we should hold that the court did substantially comply with the rule. The first is that the admonishments that defendant received at his arraignment were sufficient. As we have explained, this is not the law: "Rule 401(a)

admonishments must be provided at the time the court learns that a defendant chooses to waive counsel, so that the defendant can consider the ramifications of such a decision." *Id.* at 329; see *People v. Smith*, 249 Ill. App. 3d 460, 472 (1993). Here, the admonishments on which the State relies were given approximately nine months before the hearing at which defendant first requested the court to allow him to proceed without counsel.

¶ 43 The State's second argument is that the defects in the admonishments were not crucial, because defendant was "legally sophisticated." The State notes that, by the time that defendant moved to proceed *pro se*, he had filed numerous motions in the case. The State also points out that defendant had had prior contact with the criminal justice system, such as having been convicted in 2006 of failing to register under the Act.

¶ 44 There are two fatal flaws in the State's reliance on defendant's alleged "legal sophistication" to compensate for the defective admonishments. First, it is legally unsound. While the supreme court has held that "strict, technical compliance with Rule 401(a)" is not required where the defendant is "no stranger to legal proceedings" (*People v. Johnson*, 119 Ill. 2d 119, 131, 133 (1987)), and this court has held that "substantial compliance will be sufficient to effectuate a valid waiver" if the record indicates that the waiver was knowing, intelligent, and voluntary and the admonishments that the defendant received did not prejudice his rights (*Jiles*, 364 Ill. App. 3d at 329), there is no authority that the failure to comply even *substantially* with Rule 401(a) is not crucial if the record indicates that the defendant was "legally sophisticated."

¶ 45 The second fatal flaw in the State's argument is that its premise is untenable. The State's characterization of defendant as "legally sophisticated" is belied by the record of the proceedings, especially those following his waiver of counsel. In rejecting a similar State argument in *Jiles*, we noted that the defendant "did not demonstrate any legal savvy during his trial." *Id.* at 330. We

noted that the defendant put on no case-in-chief and cross-examined the State's witnesses ineffectively. *Id.*

¶ 46 Here, in characterizing him as legally sophisticated, the State is simply far too kind to defendant. Whatever his prior contacts with the criminal justice system, his performance during his trial revealed that he was unfamiliar with the purpose of an opening statement or a closing argument or the rules of evidence. He called himself as a witness, but the court struck all of his attempts at testimony, to the point where nothing he wanted to get on the record was admitted and he gave up. His questioning of Neidermann showed his inability to understand what evidence was actually relevant to the issues in the case. Also, his admission in his opening statement, on which we have relied to hold that he was proved guilty beyond a reasonable doubt, was not the mark of a sophisticated advocate. Finally, we note that, although the State points to defendant's allegedly extensive prior contacts with the criminal justice system (apparently consisting primarily of one prosecution under the Act), defendant told the trial judge that he had never appeared *pro se* or gone to trial *pro se*.

¶ 47 We acknowledge that a defendant who validly chooses to represent himself or herself is not entitled to the "effective" representation that an attorney must provide. On the contrary, the defendant must accept the representation that he or she requested, no matter how poor it is. Thus, we note that we have cited defendant's poor representation only to negate the State's argument that the trial court may be deemed to have substantially complied with Rule 401(a) because of defendant's "legal sophistication." Had the trial court substantially complied with the rule in fact, we would not be otherwise concerned with the quality of defendant's representation.

¶ 48 We hold that the trial court did not substantially comply with Rule 401(a). Defendant's conviction cannot stand. However, because the issue might arise on retrial, we shall address

defendant's final claim of trial court error. Defendant contends that the State acted improperly in introducing evidence of, and emphasizing in argument, the specific sexual offense of which he had been convicted. Although defendant does not contest that the State had to prove that he had a prior conviction of a sexual offense, he contends that the specific offense was irrelevant and that the State's repeatedly reminding the jury that it was aggravated criminal sexual assault, and the trial court's allowing this tactic, unfairly prejudiced him.

¶ 49 Because we are addressing the issue in the interest of aiding the trial court and the parties on retrial, we need not consider whether we should disregard defendant's forfeiture of the claim, based on his failure to object at trial or in a posttrial motion. We note only the following for guidance on remand. When the fact that the defendant is a felon is an element of a charged offense, and the defendant offers to stipulate to this element, the trial court abuses its discretion if it allows the State to introduce evidence not only of the fact of the felony conviction but of the specific name or nature of the offense. *Old Chief v. United States*, 519 U.S. 172, 191 (1997); *People v. Walker*, 211 Ill. 2d 317, 337-38 (2004). The reason is that, because proof of the element requires proof only that the defendant is a felon, the probative value of the evidence of the specific charge (if any) is outweighed by the risk of unfair prejudice. *Old Chief*, 519 U.S. at 191; *Walker*, 211 Ill. 2d at 338.

¶ 50 Although *Old Chief* and *Walker* involved proof of a prior felony, while this case involves proof of a prior felony sexual offense, we see no meaningful distinction. Should defendant wish to stipulate to his prior offense, the existence of which he has never disputed, the trial court must limit the State to proof of that element, without evidence of the specific offense.

¶ 51 III. CONCLUSION

¶ 52 For the foregoing reasons, the judgment of the circuit court of Winnebago County is vacated, and the cause is remanded.

¶ 53 Vacated and remanded.