

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).

2015 IL App (4th) 130806-U

NO. 4-13-0806

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

May 21, 2015
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Sangamon County
ANTHONY THOMAS,)	No. 12CF0941
Defendant-Appellant.)	
)	Honorable
)	Rudolph M. Braud,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Holder White and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court found the trial court failed to admonish defendant as to the waiver of counsel, reversed defendant's conviction and sentence, and remanded for a new trial.

¶ 2 In June 2013, a jury found defendant, Anthony Thomas, guilty of aggravated discharge of a firearm and aggravated unlawful use of a weapon. In August 2013, the trial court sentenced defendant to 20 years in prison.

¶ 3 On appeal, defendant argues he is entitled to a new trial because the trial court failed to correctly admonish him as to the waiver of counsel. We reverse and remand for a new trial.

¶ 4 I. BACKGROUND

¶ 5 In November 2012, the State charged defendant with one count of aggravated discharge of a firearm (count I) (720 ILCS 5/24-1.2(a)(2) (West 2012)) and one count of

aggravated unlawful use of a weapon (count II) (720 ILCS 5/24-1.6(a)(1) (West 2012)). At defendant's first appearance, the trial court admonished defendant on both charges and their applicable penalties, stating count I was a Class 1 felony with a sentencing range of 4 to 15 years in prison and count II was a Class 2 felony with a sentencing range of 3 to 7 years in prison. See 730 ILCS 5/5-4.5-30(a), 5-4.5-35(a) (West 2012). The court also appointed the public defender to represent defendant.

¶ 6 On April 11, 2013, after several continuances, the trial court conducted a status hearing. At that time, defendant indicated his desire to represent himself. The court admonished defendant that he had a right to represent himself, that he would not be allowed additional library or research time, that he would be held to the same standard as opposing counsel, and that he may be at a disadvantage against "a seasoned trial attorney." Defendant indicated he understood. Finding defendant knowingly and voluntarily relinquished his right to counsel, the court allowed defendant to represent himself.

¶ 7 On June 17, 2013, the day the case was set for trial, the State informed the trial court that defendant's criminal history subjected him to sentencing as a Class X felon, if convicted. The court asked defendant if he understood, and defendant indicated he did. Later at the hearing, defendant asked for a continuance, stating he might be able to hire an attorney and he was incapable of representing himself. The court continued the case until the following day. When defendant appeared having been unable to retain counsel, the court proceeded to the jury trial. Following the State's case, defendant elected not to testify or present any evidence. After closing arguments, the jury found defendant guilty on both counts.

¶ 8 Following the trial, defendant filed a *pro se* motion for legal representation. In July 2013, the trial court appointed the public defender's office to assist defendant with

sentencing. Thereafter, defendant filed a *pro se* motion for a new trial. At the sentencing hearing in August 2013, defendant appeared with counsel. However, the court sought to clarify its intention that the appointment of counsel "was for stand-by counsel" and it wanted defendant "to carry through with your statements that you wanted to go through with this *pro se* the entire way." Following arguments, the court denied defendant's posttrial motion. Thereafter, the court sentenced defendant to 20 years in prison on count I as a Class X offender. This appeal followed.

¶ 9

II. ANALYSIS

¶ 10 Defendant argues his waiver of counsel for trial was invalid, claiming the trial court failed to admonish him pursuant to Illinois Supreme Court Rule 401(a) (eff. July 1, 1984). We agree.

¶ 11 The United States and Illinois Constitutions guarantee a criminal defendant the right to counsel at every critical stage of the proceedings against him. U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, § 8. A defendant may waive this right and proceed without counsel only if he voluntarily and intelligently elects to do so. *People v. Campbell*, 224 Ill. 2d 80, 84, 862 N.E.2d 933, 936 (2006).

¶ 12 Illinois Supreme Court Rule 401(a) (eff. July 1, 1984) states as follows:

"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, including, when applicable, the penalty to which the defendant may be subjected because of prior convictions or consecutive sentences; and

(3) that he has a right to counsel and, if he is indigent, to have counsel appointed for him by the court."

Our supreme court has held "substantial compliance with Rule 401(a) is required for an effective waiver of counsel." *Campbell*, 224 Ill. 2d at 84, 862 N.E.2d at 936. "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." *People v. Jiles*, 364 Ill. App. 3d 320, 329, 845 N.E.2d 944, 952 (2006).

¶ 13 In the case *sub judice*, defendant initially appeared with the public defender in November 2012, and the trial court admonished him on the nature of the charges and the possible penalties of the Class 1 and 2 felonies. The court did not admonish him as to the Class X sentence that he was actually facing given his criminal history. Five months later, in April 2013, defendant indicated he wished to represent himself. The court admonished defendant that he had a right to represent himself, that he would not be allowed additional library or research time, that he would be held to the same standard as opposing counsel, and that he may be at a disadvantage against "a seasoned trial attorney." The court also said that once defendant elected to proceed *pro se*, the court would not "appoint an attorney for [him] ever again." Defendant indicated he understood, and the court accepted his waiver of counsel.

¶ 14 Here, at the time defendant indicated his desire to waive counsel and proceed *pro se*, the trial court did not admonish defendant as to the nature of the charges, the possibility of Class X sentencing due to his criminal history, or that he had the right to court-appointed counsel. Thus, as the State concedes, the court failed to comply with Rule 401(a) and defendant's waiver of counsel was ineffective. Accordingly, we reverse defendant's convictions and remand for a new trial, "before which defendant should be given the requisite admonishments and the opportunity to be represented by an attorney or to make a voluntary, knowing, and intelligent waiver of that right." *Jiles*, 364 Ill. App. 3d at 330, 845 N.E.2d at 953.

¶ 15 In light of our decision, we need not address defendant's alternative argument concerning the trial court's failure to appoint counsel for posttrial motions and sentencing. See *People v. Palmer*, 382 Ill. App. 3d 1151, 1162-63, 889 N.E.2d 244, 254 (2008). Also, because we are remanding for a new trial and we find the record contains sufficient evidence for the jury to have found defendant guilty of the crimes charged beyond a reasonable doubt, no double jeopardy violation will occur upon retrial. See *People v. Ward*, 2011 IL 108690, ¶ 50, 952 N.E.2d 601. This conclusion does not imply a determination of defendant's guilt or innocence that would be binding on retrial. *In re R.A.B.*, 197 Ill. 2d 358, 369, 757 N.E.2d 887, 894 (2001).

¶ 16 III. CONCLUSION

¶ 17 For the reasons stated, we reverse the trial court's judgment and remand for a new trial.

¶ 18 Reversed and remanded.