

2018 IL App (1st) 153639-U  
No. 1-15-3639  
Order filed September 28, 2018

Fifth Division

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 15 CR 418
	)	
ANTOINE TYLER,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge, presiding.

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JUSTICE LAMPKIN delivered the judgment of the court.  
Presiding Justice Rochford and Justice Hoffman concurred in the judgment.

**ORDER**

¶ 1 *Held:* The circuit court did not deprive defendant of his right to proceed *pro se* because he did not make a clear and unequivocal request to represent himself.

The circuit court did not coerce defendant to acquiesce to representation by appointed counsel when the court admonished defendant about his right to counsel and mentioned appointed counsel's experience and qualifications.

¶ 2 Following a bench trial, defendant Antoine Tyler was convicted of burglary and possession of burglary tools. He was sentenced to concurrent terms of six years' and three years' imprisonment, respectively.

¶ 3 On appeal, he argues that his conviction should be reversed and the case remanded for a new trial because he clearly and unequivocally requested to proceed *pro se* but the trial court deprived him of that right. He acknowledges that he went to trial with appointed counsel but claims he only acquiesced to that representation after the trial court coerced him by improperly vouching for appointed counsel's expertise. Defendant argues that this court should review his forfeited claims because the trial court's serious errors denied him a fair trial and challenged the integrity of the judicial process.

¶ 4 For the reasons that follow, we affirm the judgment of the trial court.<sup>1</sup>

¶ 5 I. BACKGROUND

¶ 6 In December of 2014, defendant and codefendant Terrance Ambrose were arrested in connection with a burglary at an unoccupied residential building in Chicago. Defendant was charged with burglary and possession of burglary tools.

¶ 7 In April of 2015, codefendant Ambrose pled guilty to burglary. When defendant appeared before the trial court with his appointed counsel, defendant asked the court to appoint a different attorney because defendant did not feel that appointed counsel would represent defendant's best interests. The court explained that defendant could hire his own attorney but the public defender's office would not assign him a different attorney. The court added, "I'm not sure what the disconnect is. He [appointed counsel] is a very good lawyer. He works hard at what he does

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<sup>1</sup> In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

and he does this every day. He knows what's going on here. You can represent yourself too.”

Defendant responded that he would like to represent himself.

¶ 8 The court then described the nature of the charges and possible sentences based on defendant's criminal background. The court said, “You have a right to a lawyer, and I have appointed a lawyer to represent you. If you don't have a lawyer and you can't afford one on your own and you are going to end up representing yourself, and I'm not sure that's a good idea.” After asking about defendant's education and criminal history, the court said, “You are totally out of your league here. The [assistant state's attorneys know] what they are doing; [appointed counsel] knows what he is doing.” The court said that it was “very very difficult to represent yourself.” The court told defendant that he would be treated the same as a lawyer if he proceeded *pro se* but he might not know how to articulate either objections to prevent the admission of damaging evidence or questions to elicit facts helpful to his case.

¶ 9 When defendant responded that appointed counsel told him that his choice was “either trial or a cop out,” the court said, “Well, he is cutting to the chase.” When defendant said, “I've seen cases come to end by motion,” the court explained that there might not be a valid motion in his case. Defendant said that he would “take [his] chances with [himself],” and the court asked if he was “one hundred percent sure about that.” Then defendant equivocated, saying that he would wait until his family could hire an attorney for him.

¶ 10 The court told defendant that it was responsible for timely resolving the case and would not wait indefinitely. Defendant said that he also wanted to resolve the case and appointed counsel could represent him but defendant would not go to trial with appointed counsel. The court said that it did not understand defendant, and he explained, “I mean, I'm saying he can represent me—.” That day's proceeding ended with the court explaining the State's burden of

proof, defendant's right to a bench or jury trial, and defendant's right to choose what his defense would be at trial. The court said that it would continue this conversation with defendant at a later date and his appointed counsel would talk to him some more.

¶ 11 In June of 2015, defendant again appeared before the trial court with appointed counsel, who told the court that defendant would not tell him whether defendant wanted a bench or jury trial. The court asked, "What's going on?" and defendant replied, "I just don't feel he's going to represent me to the best of my interests." When the court explained again that defendant's options were to represent himself or keep his current attorney, the following exchange took place:

“DEFENDANT: I'll represent myself.

THE COURT: Are you sure you want to do that? What's the problem?

DEFENDANT: I—

THE COURT: What's the problem? What's the problem?

DEFENDANT: Your Honor, I just don't feel—I'm not finnin' to go—I'm not going to get this continued to keep copping out or taking no pleas.”

¶ 12 The court explained that both parties were preparing to go to trial, and defendant repeated that he did not feel appointed counsel would represent defendant's best interests. The court said, “Well, I respectfully disagree,” adding that appointed counsel was “a very experienced criminal defense lawyer,” a “tough lawyer” who “challenges the evidence,” was “not afraid to put up a fight against the state's attorney,” and was “a professional,” who was “going to go at it.”

¶ 13 At this point, defendant said that he wanted a bench trial, and appointed counsel said, “I can do that.” The court informed defendant that he would be subject to mandatory sentencing as

a Class X offender due to his criminal background. Considering the severity of a Class X conviction, the court said, “I’m thinking you’re much better off with a lawyer than not having a lawyer.” The court discussed possible dates for a bench trial, and when defendant made an inaudible remark, appointed counsel told the court that defendant did not want to go to trial with him. The court stated:

“Listen, I’m setting the case for trial. You don’t want to represent yourself, do you? You don’t want to be up against the state’s attorney who knows all about the law and the Rules of Evidence and things like that. Your parents can’t afford to hire a lawyer or they would have done that already.

Are you sure you want a bench trial and not a jury trial? That’s the real question. The only reason that matters is because the lawyers need to know what clothes to wear and how to prepare their case.”

¶ 14 Defendant said that he wanted a bench trial but indicated that he was concerned about being represented by appointed counsel. The court said, “He’s going to be your lawyer unless you tell me that you want to represent yourself, and then we’ll have to have a whole different conversation, and I’m not hearing that from you.” Defendant replied, “I’d rather represent myself.”

¶ 15 In response to the court’s questions, defendant said that he was 37 years old and went as far as the 10th grade in school. The court again admonished defendant that it would have to treat him the same as an attorney if he proceeded *pro se*, and defendant might not know how to articulate either objections to prevent the admission of damaging evidence or questions to elicit facts helpful to his case. The court stated that appointed counsel was very experienced and knew

“the ins and outs of the Rules of Evidence and how to ask questions and how to approach the case.” The court explained its concern that defendant would be outmatched if he represented himself against the assistant state’s attorneys. Then the following discussion occurred.

“THE COURT: It’s up to you. I can’t force this on you. I assure you, it’s not personal. If you want to represent yourself, you can do that, you have a constitutional right to do that. I don’t know if it’s a good idea, but you can if you think you insist on it.

He wins some cases here. He fights for his clients. I know he’s not the most sweet-natured guy to the people that he works with all the time, but that doesn’t mean he’s not a professional and he doesn’t do his job the way it’s supposed to be done. I mean that sincerely.

DEFENSE ATTORNEY: My last trial was a not guilty jury verdict.

THE COURT: Okay. There you are.

DEFENDANT: All right.

THE COURT: Are you going to let him stay on the case and represent you?

DEFENDANT: I just would rather go to trial—

THE COURT: I can’t—it’s hard—

DEFENDANT: I just have to go to trial with him.

THE COURT: Okay. The trial will be on July 21st, by agreement, indicated bench.”

¶ 16 At the September 2015 trial, the State's evidence established that the building in question was unoccupied and being rehabbed at the time of the offense. The owner did not know defendant and did not give him permission to be in the building.

¶ 17 Five police officers responded to a break-in call at the building and three of those officers testified at the trial. When the officers arrived at the building, the front door was open. Three officers entered and saw two men at the top of the staircase carrying a water heater tank. Both men immediately dropped the water heater and ran through a third-floor apartment. Two of the officers caught up to and arrested codefendant Ambrose while the other officer chased defendant down the back staircase, out the fire escape, and through a field directly behind the building. One of the officers who had remained outside caught up to defendant in the field and arrested him. Defendant was wearing work gloves and carrying wire cutters. When defendant was interviewed at the police station, he told the police that he was trying to scrap water heaters for quick money.

¶ 18 The officers identified defendant in court as one of the offenders carrying the water heater at the top of the stairs and as the offender the officers had chased through the field. Although the officers briefly lost sight of defendant when he fled into the third-floor apartment, they never lost sight of him from when they caught up to him on the third-floor to when they arrested him outside.

¶ 19 Defendant testified that he was arrested while he was walking through a field that he used as a shortcut between his house and his uncle's house. Defendant claimed that he was wearing gloves because it was cold and he was carrying needle nose pliers because he was going to help his uncle put up Christmas decorations. Finally, defendant denied telling police at the station that he was trying to get money by scrapping water heaters.

¶ 20 After the bench trial, defendant was convicted of burglary and possession of burglary tools and was sentenced to concurrent prison terms of six years and three years, respectively. Defendant timely appealed.

¶ 21

## II. ANALYSIS

¶ 22 On appeal, defendant argues that he clearly and unequivocally requested to proceed *pro se* and, thus, was denied his right to represent himself. He also argues that the trial court coerced him to agree to representation by improperly joining with appointed counsel and vouching for his expertise and qualifications. Defendant acknowledges that he forfeited review of these claims but asks this court to review this matter under the plain error doctrine, arguing that the trial court's serious errors denied him a fair trial and challenged the integrity of the judicial process.

¶ 23 In general, a defendant preserves an issue for review by timely objecting to it and including it in a posttrial motion. *People v. Denson*, 2014 IL 116231, ¶ 11. However, forfeited claims of error are reviewable under the plain error rule, which is a narrow and limited exception to forfeiture. *People v. Hiller*, 237 Ill. 2d 539, 545 (2010). To obtain relief under this rule, defendant must show that a clear or obvious error occurred. *Id.* The defendant bears the burden of persuading the court that either (1) the evidence at the hearing was so closely balanced (regardless of the seriousness of the error) as to severely threaten to tip the scales of justice against the defendant, or (2) the error was so serious (regardless of the closeness of the evidence) as to deny the defendant a fair trial and challenge the integrity of the judicial process. *People v. Herron*, 215 Ill. 2d 167, 187 (2005). In order to determine whether the plain error doctrine should be applied, we must first determine whether any error occurred. *Id.*



¶ 24 Illinois Supreme Court Rule 401(a) (eff. July 1, 1984) provides:

“The court shall not permit a waiver of counsel \*\*\* 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.”

¶ 25 A defendant in a state criminal trial has a constitutional right to proceed *pro se* if he knowingly and intelligently relinquishes his right to counsel. *Faretta v. California*, 422 U.S. 806, 835 (1975); *People v. Baez*, 241 Ill. 2d 44, 115-16 (2011); *People v. Burton*, 184 Ill. 2d 1, 21 (1998). The defendant’s waiver of counsel must be “clear and unequivocal, not ambiguous”; a defendant’s right to self-representation is waived “unless he articulately and unmistakably demands to proceed *pro se*.” (Internal quotation marks omitted.) *Baez*, 241 Ill. 2d at 116. This requirement of an unequivocal request prevents the defendant from appealing the denial of his rights to self-representation or counsel and from manipulating or abusing the system by vacillating between his request for counsel and his wish to proceed *pro se. Id.*

¶ 26 To determine whether a defendant’s waiver of counsel is clear and unequivocal, courts must decide “whether the defendant truly desires to represent himself and has definitively invoked his right of self-representation.” *Burton*, 184 Ill. 2d at 22. In making this decision, courts have looked at the overall context of the proceedings. *Id.*; see also *United States v. Jones*, 938 F.2d 737, 742-43 (7th Cir. 1991) (defendant’s request to proceed *pro se* was not unequivocal

where she appeared to be seeking more time to retain other counsel and the request came on the second day of trial after the jury had been selected); *Jackson v. Ylst*, 921 F.2d 882, 888 (9th Cir. 1990) (defendant's request was not unequivocal but instead was "an impulsive response to the trial court's denial of his request for substitute counsel"); *People v. Garcia*, 2017 IL App (1st) 133398, ¶ 56 (defendant's request was not unequivocal when he kept changing his mind on representation to try to delay the trial).

¶ 27 Courts must "indulge in every reasonable presumption against waiver" of the right to counsel, *Burton*, 184 Ill. 2d at 23, and 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 the case, including the background, experience, and conduct of the accused," *Baez*, 241 Ill. 2d at 116. We review the trial court's determination for an abuse of discretion. *Id.*

¶ 28 "Even if a defendant gives some indication that he wants to proceed *pro se*, he may later acquiesce in representation by counsel." *Id.* at 117-18. Thus, courts may look at the defendant's subsequent conduct to determine whether he sought to relinquish counsel. *Burton*, 184 Ill. 2d at 24; see also *People v. Span*, 2011 IL App (1st) 083037, ¶¶ 64-68 (defendant abandoned his initial request to proceed *pro se* when he did not mention it after a lengthy delay occurred to conduct a fitness hearing and then referred to defense counsel as "my attorney" when he waived his right to a jury trial). The timing of a defendant's request to proceed *pro se* is also significant. *Burton*, 184 Ill. 2d at 24. A defendant's request may be untimely if it is made right before the start of the trial or after meaningful proceedings have begun. *Id.* However, a defendant's request to self-representation that is both before trial and not accompanied by a request for additional time to prepare should generally be viewed as timely. *People v. Hunt*, 2016 IL App (1st) 132979, ¶ 18.

¶ 29 Following a clear and unequivocal request to proceed *pro se*, the court must determine if the defendant is competent to stand trial and if his waiver of counsel was knowing and voluntary. *People v. Lego*, 168 Ill. 2d 561, 564 (1995). Accordingly, the defendant “should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that ‘he knows what he is doing and his choice is made with eyes open.’ ” *Id.* (quoting *Faretta*, 422 U.S. at 835). “This requirement of knowing and intelligent choice calls for nothing less than a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.” *Id.* If the defendant has made a clear and unequivocal request to represent himself and the request was made freely, knowingly, and intelligently, the trial court must accept a defendant’s waiver of counsel. *Baez*, 241 Ill. 2d at 116.

¶ 30 Our review of the record establishes that the trial court did not err in admonishing defendant about the waiver of his right to counsel. Defendant continually made ambiguous statements to the court, and the trial court did not abuse its discretion when it repeatedly attempted to clarify whether defendant truly wanted to represent himself.

¶ 31 At his April 2015 court appearance, defendant first asked the trial court for a different appointed attorney. After the trial court said that replacing appointed counsel was not an option and mentioned that defendant could represent himself, defendant impulsively responded that he would like to represent himself. Then, in accordance with Illinois Supreme Court Rule 401(a), the trial court described the nature of the charges and the possible sentences based on defendant’s prior convictions, and explained defendant’s right to counsel and the difficult challenges he would face if he proceeded *pro se*. Thereafter, defendant’s responses indicated that he did not want to proceed *pro se* but rather wanted to resolve his case with a pretrial motion and

without accepting a plea bargain. In this context, the court properly sought clarification of defendant's waiver request, and defendant ultimately informed the court that day that he would wait until his family could hire an attorney to represent him at the trial but appointed counsel could represent him in the interim.

¶ 32 When defendant appeared in court again in June of 2015 and said that he would represent himself, the court was required to determine whether he freely, knowingly and intelligently was waiving his right to counsel. Moreover, the trial court acted within its discretion by the manner in which it questioned defendant and admonished him about the dangers and disadvantages of proceeding *pro se*. Specifically, the court properly stressed to defendant that his criminal history meant he would be subject to mandatory sentencing as a Class X offender upon conviction in the instant case. The court also expressed its concerns that defendant would be outmatched if he went to trial *pro se* and might not know how to prevent the admission of harmful evidence and articulate questions to the State's witnesses to elicit information favorable to his defense. In addition, the court told defendant that he had a constitutional right to represent himself and could choose that option. After this discussion, the court asked defendant whether he would let appointed counsel stay on the case and represent him, and defendant responded that he would just have to go to trial with his appointed counsel.

¶ 33 We conclude that the record establishes the trial court did not err when it spoke to defendant about replacing his appointed counsel or proceeding *pro se* because defendant did not clearly and unequivocally request to proceed *pro se*. The court gave him multiple opportunities to clarify his requests and remarks, and defendant's ambiguous statements indicated that he actually wanted a different appointed attorney who would resolve the case without a plea bargain.

¶ 34 Defendant also argues that he only acquiesced to representation after the trial court and appointed counsel jointly coerced defendant to abandon his request to represent himself. Defendant asserts that the trial court improperly vouched for appointed counsel’s experience and qualifications and pressured defendant to acquiesce to representation. We disagree.

¶ 35 Defendant’s argument mischaracterizes the trial court’s statements, which are set forth in detail above. A court properly ensures that a defendant’s request to represent himself is intelligent and knowing by admonishing him on cautionary matters, including defense counsel’s substantial experience and knowledge of the rules of law and the challenge of facing the prosecution’s experienced attorneys. *People v. Burns*, 2012 IL App (4th) 110670, ¶ 12; *People v. Ward*, 208 Ill. App. 3d 1073, 1081 (1991). A trial court acts within its discretion by telling a defendant that representing himself is “universally viewed as unwise given the highly technical rules governing the conduct of a trial.” (Internal quotation marks omitted.) *People v. Foster*, 391 Ill. App. 3d 487, 493 (2009).

¶ 36 Viewed in context, the trial court’s statements—that appointed counsel was a very experienced criminal defense lawyer who has won cases and fights for his clients—were appropriate and consistent with the court’s duties to caution defendant about the dangers and disadvantages of going to trial *pro se* and to determine whether defendant was making a knowing and voluntary waiver of his right to counsel. Consequently, we reject defendant’s argument that the trial court improperly coerced him into abandoning a request to represent himself.

¶ 37

### III. CONCLUSION

¶ 38 For the foregoing reasons, we affirm the judgment of the trial court.

¶ 39 Affirmed.