

NOTICE
Decision filed 03/06/19. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2019 IL App (5th) 150375-U

NO. 5-15-0375

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Jackson County.
)	
v.)	No. 15-CF-38
)	
CHRISTIAN McLENDON,)	Honorable
)	William G. Schwartz,
Defendant-Appellant.)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Presiding Justice Overstreet* and Justice Moore concurred in the judgment.

ORDER

- ¶ 1 *Held:* The circuit court's denial of the defendant's request to represent himself was an abuse of discretion where it applied the incorrect legal standard.
- ¶ 2 The defendant was convicted of home invasion and was sentenced to 20 years' imprisonment followed by 3 years of mandatory supervised release. During the pretrial hearings on this case, the defendant made numerous requests to represent himself. The trial court, after questioning him as to his legal knowledge and educational background,

*Justice Goldenhersh was originally assigned to participate in this case. Presiding Justice Overstreet was substituted on the panel subsequent to Justice Goldenhersh's retirement, and has read the briefs and listened to the recording of the oral argument.

denied his request. For the following reasons, we vacate his conviction and remand for new proceedings.

¶ 3

BACKGROUND

¶ 4 It is important first to note that this order is being issued in conjunction with the order in *People v. McLendon*, 2019 IL App (5th) 150376-U. Many of the facts relevant to this appeal are reiterated in that case as both appeals raise the same issue by the same defendant.¹

¶ 5 The underlying conviction in this appeal arose from charges filed on January 26, 2015, when the defendant was charged with two counts of home invasion and one count of criminal damage to property. At the time of the filing of these charges, the defendant had already been charged and was out on bond for different criminal charges which are the subject of the appeal in *People v. McLendon*, 2019 IL App (5th) 150376-U. On February 19, 2015, a preliminary hearing was held on the new criminal charges at issue here. At the beginning of the hearing, the defendant asked the trial court to file a motion on his behalf because his attorney refused to do so. The court then had the following exchange with the defendant:

"THE COURT: Have a seat, Mr. McLendon.
[THE DEFENDANT]: My public defender—
THE COURT: Have a seat, Mr. McLendon.
[THE DEFENDANT]: —she is relieved of her—

¹In this appeal, the defendant raises two issues. Though we are not ruling on the second issue of whether the trial court's failure to comply with Illinois Supreme Court Rule 431(b) (eff. July 1, 2012) requires vacating the conviction, we note that should this case be retried, the trial court should be aware of and fully comply with Rule 431(b) during *voir dire*.

THE COURT: Have a seat, Mr. McLendon, right now. You may proceed, Mr. Hamrock.

* * *

[THE DEFENDANT]: I would like this motion to be filed on my behalf she is fired, Your Honor.

THE COURT: She is not fired. You can't fire her.

[THE DEFENDANT]: Yes, I can, sir."

The defendant was then removed from the courtroom and the hearing proceeded with the defendant being represented by counsel.

¶ 6 On May 5, 2015, a joint pretrial conference was held on both criminal cases.

During this hearing, the trial court and the defendant had the following exchange:

"THE DEFENDANT: All right. No problem. Last week, I invoke my right to represent myself *in propria persona*, and you even agreed on the record, you allowed me to file a motion in support to the motion to dismiss. So why is it that you are still, you know, referring to Margaret Degen as representing me in my case?

THE COURT: Mr. McLendon, I would like to take that up second to this one, if that would be okay with you.

THE DEFENDANT: I'm sorry.

THE COURT: I said we have a number of issues. The first issue I want to talk about was your motion to dismiss claiming you're an independent nation. I want to discuss that first.

The second one I was going to discuss was you representing yourself. Now, if you want to reverse order on that, I certainly can do that.

THE DEFENDANT: Yes. That's what I would like to do.

THE COURT: You would like to do that?

THE DEFENDANT: Yes, I would.

* * *

THE DEFENDANT: I said last week during my pretrial in this case—

THE COURT: Mm-hmm.

THE DEFENDANT: —I invoke my right to represent myself *in propria persona*.

THE COURT: Okay. Now stop right there.

THE DEFENDANT: That's my problem.

THE COURT: What does *propria persona* mean?

THE DEFENDANT: That's my proper person.

THE COURT: Okay. And what does that mean?

THE DEFENDANT: What do you mean? You don't know what *in propria persona*?

THE COURT: Yeah. I've never heard that term used in the law.

THE DEFENDANT: You have never heard it?

THE COURT: That's correct, sir.

THE DEFENDANT: Oh, well.

THE COURT: Other than coming in your motion and another motion identical to your motion by another defendant.

THE DEFENDANT: Oh, okay.

THE COURT: That's the only time I've heard it.

THE DEFENDANT: That's the only time you've heard *in propria persona*?

THE COURT: *In propria persona*; correct, sir.

THE DEFENDANT: Wow.

THE COURT: So I'm asking you what it means. What does it mean to you?

THE DEFENDANT: It means representing myself in my proper person as a human being, not as a corporation.

THE COURT: Well, I understand that. You couldn't represent yourself as a corporation unless you had corporate status. So we're not even talking about that here.

Now, I have indicated to you, previously, that I didn't think you were capable of representing yourself because you didn't have the necessary schooling or understanding of the law to represent yourself. You continue to ask to represent yourself even though you don't have the schooling. Why do you think you can do that?

THE DEFENDANT: Because this is not for me to go to trial. When we spoke initially about you, you're [*sic*] argument with me was that I can not conduct a jury trial.

* * *

THE COURT: Now, aside from whether you're a[n] independent nation or not, what you want to address second, the fact of the matter is that you have to have certain abilities to be able to represent yourself. As I understand what you're saying to me, today, is 'Well, there won't be any trial; There shouldn't be any trial; Therefore, I'm representing myself.'

Do I get that wrong or do I get that right?

THE DEFENDANT: Yes, sir.

THE COURT: All right. Well, there is going to be a trial and if you represented yourself, you can either sit there and do nothing, which is not in your best interest, or you can represent yourself, and representing yourself participating in the process requires some knowledge of the law so you can do it in an effective manner.

What I've been telling you is you don't have the knowledge to do it in an effective manner, which is why somebody who is schooled in the law, licensed to

practice law and does this on a daily basis, has been appointed to represent you with regard to this matter.

Working with her, if you're willing to work with her, accomplishes protecting your rights within the jurisdiction, but if you're not interested in the jurisdiction, then apparently that will not be of concern to you. But that's something I don't want to speak for you. I'm just trying to work through with [sic] what you're talking about here, today."

At the end of this conversation with the defendant, the court resumed the hearing and Ms. Degen continued representing the defendant.

¶ 7 On May 15, 2015, another pretrial hearing was held on this case. At this time, the defendant had already been convicted in the earlier case for attempted robbery. At this hearing, the trial court again addressed the defendant directly:

"THE COURT: And you have previously indicated you wish to represent yourself, but when you said that, it was my understanding it was you didn't want to have anything to do with having anybody represent you or have anything to do with this Court. Would that be a correct statement, Mr. McLendon?

[THE DEFENDANT]: Somewhat, yes. I didn't want anybody representing me or doing anything on my behalf. I want to represent myself."

¶ 8 On May 18 and May 19, 2015, a jury trial was held *in absentia*, and the jury found the defendant guilty of home invasion while in possession of a dangerous weapon other than a firearm. On July 8, 2015, the defendant was sentenced to 20 years' imprisonment followed by 3 years of mandatory supervised release. The defendant appeals.

¶ 9 ANALYSIS

¶ 10 "A defendant has a constitutional right to represent himself." *People v. Baez*, 241 Ill. 2d 44, 115 (2011) (citing *Faretta v. California*, 422 U.S. 806, 835 (1975); *People v. Burton*, 184 Ill. 2d 1, 21 (1998)). Any waiver of the right to counsel by defendant must be clear and unequivocal. *Id.* at 116. In determining whether a defendant's statement to

waive his right to counsel is clear and unequivocal, a court must determine 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 determination, "courts may look at the defendant's conduct following the defendant's request to represent himself." *Id.* at 24.

¶ 11 If a defendant's request to represent himself is freely, knowingly, and intelligently made, it must be accepted. *People v. Lego*, 168 Ill. 2d 561, 564 (1995). The determination of whether a defendant has made an intelligent waiver is case specific and depends on the particular facts and circumstances, including the background, experience, and conduct of defendant. *Id.* A trial court's determination as to whether a defendant's waiver was knowingly and intelligently made will not be overturned absent an abuse of discretion; however, a court abuses its discretion when it applies the improper legal standard. *People v. Woodson*, 2011 IL App (4th) 100223, ¶ 21 (citing *Rockford Police Benevolent & Protective Ass'n v. Morrissey*, 398 Ill. App. 3d 145, 154 (2010)).

¶ 12 The defendant concedes that his claim challenging the trial court's denial of his request to represent himself was forfeited as it was not raised in a posttrial motion. However, under Illinois Supreme Court Rule 615(a) (eff. Jan. 1, 1967), "[p]lain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court." The plain error rule allows review of a forfeited claim of error if the error is clear or obvious and either (1) "the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error," or (2) "the error is so serious that it affected the fairness

of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. McDonald*, 2016 IL 118882, ¶ 48. An error in denying a defendant the right to represent himself is a structural error that may be reviewed under the second prong of the plain error doctrine as it is "a systemic error that serves to erode the integrity of the judicial process and undermine the fairness of a trial." *People v. Washington*, 2012 IL 110283, ¶ 59.

¶ 13 The State argues that the defendant never made a clear and unequivocal request to represent himself because his intention was not to act as his own counsel but in fact to sit out the trial and have no representation. We find this argument unpersuasive. It is clear from the record that the defendant made numerous clear and unequivocal requests to represent himself. As quoted above, over the course of multiple hearings, the defendant said in open court: "she is fired, Your Honor"; "I invoke my right to represent myself *in propria persona*"; "I want to represent myself"; and "I didn't want anybody representing me or doing anything on my behalf." Throughout the course of the pretrial proceedings, including after he was convicted in the earlier case for attempted robbery, the defendant was adamant that he was invoking his right of self-representation. The court disagreed with the defendant's trial strategy of not participating in the proceedings and sitting in his jail cell; after explaining to the defendant that representing himself would not be in his best interest, the court denied the defendant's request because he "didn't have the necessary schooling or understanding of the law." The record is clear that the defendant made an unequivocal request, the court considered the request, and then denied the defendant's request based on his lack of legal knowledge.

¶ 14 As we have previously noted, it is well-settled law that the appropriate standard for determining whether a defendant's motion for self-representation should be granted is whether the waiver of the right to counsel was made freely, knowingly, and intelligently. *Baez*, 241 Ill. 2d at 115-16. This is not a case where the defendant lacked the mental capacity to intelligently and knowingly waive his right to counsel. The defendant was not trying to effectuate a delay on the court or the proceedings. Instead, the defendant wanted to represent himself. He wanted to file a motion to dismiss—which he did and was denied—and then sit in his jail cell. Though the defendant's defense strategy was obviously misguided and would have been disastrous, that fact is irrelevant to the inquiry into whether the defendant made an unequivocal and clear request to represent himself, and whether the trial court's denial of that request was based on the proper legal standard. The record establishes that the court denied the defendant's request because it determined that he did not have the requisite legal knowledge to represent himself. The court was obviously frustrated with the defendant's misguided attempts to have the case dismissed under his "sovereign citizen" status; however, the court abused its discretion when it then denied his request to represent himself because of his limited knowledge of the law.

¶ 15 CONCLUSION

¶ 16 Therefore, the defendant's conviction is vacated and the case is remanded for new proceedings.

¶ 17 Vacated and remanded.