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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Winnebago County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 97-CF-1880
)	
GREGORY BEARD,)	Honorable
)	Randy Wilt,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices McLaren and Spence concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court did not violate defendant's right to self-representation.

¶ 2 Defendant, Gregory Beard, appeals the trial court's judgment revoking his probation for burglary (720 ILCS 5/19-1 (West 1996)) and sentencing him to three years' imprisonment. Specifically, defendant argues on appeal that the trial court violated his right to self-representation during probation revocation proceedings. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was indicted on September 17, 1997, for burglary. In 1999, defendant entered into a negotiated guilty plea and was sentenced, in part, to 30 months' probation. Between 2000 and 2012, the State filed two petitions to revoke probation, numerous status hearings were held, a bench warrant for defendant's arrest issued, and a second case (for domestic battery) against defendant commenced. Relevant to this appeal, however, defendant filed, on May 7, 2012, a "Notice of Motion[-] *Pro Se* Motion." The notice reads:

"This matter comes before the Court on defendant Gregory Beard's motion to proceed *Pro-Se* in the aforementioned case. I also ask that this Court replace my current court-appointed counsel, Public Defender Frank Perri, and that this Court replace him with a Bar Associate [*sic*] Lawyer to assist with my defence [*sic*]."

In the body of the motion, defendant noted that an attorney must swear to uphold the federal and state constitutions and to perform to the best of his or her ability. He alleged that his attorney possessed a conflict of interest and, further, that his rights to communicate and consult with his attorney, arraignment, and effective assistance of counsel had been violated. The motion concludes, "Mr[.] Perri has made statement [*sic*] like Frivolous motions when it comes to my constitutional rights[.] Mr[.] Perri has undermined any and every attempt I have made to defend myself from these charges and it will not continue."

¶ 5 On June 1, 2012, defendant appeared in court with Perri. Perri informed the court that he was prepared to either go forward with a trial or proceed on the petition to revoke probation. Defendant then noted for the court that he had filed "motions." The court informed defendant that, while represented by counsel, he could not file *pro se* motions. Defendant asked, "I can't go *pro se*?" The court explained that, if defendant wished to represent himself, that could be discussed, but that, while represented by counsel, his attorney was responsible for filing motions

and the court could not consider any motions filed by defendant *pro se*. Thereafter, discussion of the case continued and defendant noted that, if he was going to proceed *pro se*, he would need certain information. The court noted that defendant still had counsel and “You haven’t done anything yet to convince me that you want to proceed *pro se*.” Defendant asked the court if it had received his motion. The court answered that it had not and further noted that there were no handwritten motions in the file. After further conversation about the case, the court continued the case to June 11, 2012, for arraignment on the petition to revoke probation. Before retiring, the court reiterated to defendant that if, at arraignment, he wished to pursue proceeding *pro se*, the court could discuss it with him at that time. The court cautioned defendant, “you need to understand if you do handle the matter on your own, it is strictly on your own. I don’t assign a standby attorney for you. You are going to have to do it on your own. You have to abide by all of the rules of Court that everybody else has to abide by.”

¶ 6 On June 11, 2012, defendant appeared for arraignment. The assistant State’s Attorney informed the court that he had received “a number of *pro se* motions from the Defendant, including [one] that I believe is his request to go *pro se*.” The motion was not filed under the correct case number; upon locating it, the court described it as a “notice of motion. *Pro Se* Motion. He is asking to have Mr. Perri removed and have the Court replace him with a Court Bar Association lawyer.” The court inquired of defendant whether he could afford private counsel (no), whether he was asking that Perri be removed (yes), and why he wished to have Perri removed. Defendant proceeded to delineate for the court his complaints concerning appointed counsel. The court ultimately found no factual basis warranting counsel’s removal from the case and denied defendant’s motion. Further, “As a result of the fact that [the] motion

is denied, [defendant] is still represented by Mr. Perri. The Court will not consider the *pro se* motions that were otherwise filed by this gentleman.”

¶ 7 On June 27, 2012, the court conducted a hearing on the petition to revoke probation. The court found defendant violated probation and, on July 31, 2012, sentenced defendant to three years’ imprisonment. Appointed counsel filed a motion to reconsider sentence, and defendant filed a *pro se* motion to reconsider the sentence (and a postconviction petition) generally alleging, among other things, ineffective assistance of counsel and denial of his right to self-representation. The court appointed conflict counsel.

¶ 8 On January 16, 2013, at a status hearing, conflict counsel notified the court that it appeared that defendant had raised claims that the court had infringed upon his right to self-representation. The court asked defendant whether he wished to proceed *pro se*, and defendant stated that he currently did not. Defendant noted that, when he *had* wanted to proceed *pro se*, in May 2012, the court had denied his motion. The judge disagreed, responding, “I don’t remember specifically denying somebody’s request to represent themselves.” In any event, defendant stated again that he was currently “satisfied” and that he wished for conflict counsel to continue to represent him. On February 7, 2013, the court denied the motion to reconsider the sentence. Defendant appeals.

¶ 9

II. ANALYSIS

¶ 10 Defendant argues on appeal that, where it failed to consider or decide his written request to proceed *pro se*, the trial court deprived him of his constitutional right to self-representation during the probation revocation proceedings. Defendant notes that, although the court denied his motion to appoint new counsel, it did not address the portion of the motion wherein defendant requested to represent himself. Defendant asserts that the court’s error requires a remand for

new probation revocation proceedings in which he is offered the opportunity to represent himself. We disagree.

¶ 11 A defendant has a sixth amendment right to self-representation. *People v. Burton*, 184 Ill. 2d 1, 21 (1998). However, it is well-settled that, to waive counsel, a defendant's request must be "clear and unequivocal, not ambiguous." *Id.* Further, "a defendant waives his right to self-representation unless he 'articulately and unmistakably demands to proceed *pro se.*' " *Id.* (quoting *United States v. Weisz*, 718 F.2d 413, 426 (D.C. Cir. 1983)). To determine whether there has been a definite invocation of the right to self-representation, *i.e.*, whether a defendant's request is clear and unequivocal, courts look to the overall context of the proceedings. Notably, "courts must 'indulge in every reasonable presumption *against* waiver' of the right to counsel." (Emphasis added.) *Id.* at 23 (quoting *Brewer v. Williams*, 430 U.S. 387, 404 (1977)).

¶ 12 The following cases are instructive. In *Burton*, our supreme court held that the defendant's request to proceed *pro se* was not unequivocal where the defendant, after his defense attorney moved to withdraw, informed the court that he would be willing to proceed *pro se*. *Burton*, 184 Ill. 2d at 20-25. Specifically, when the trial court asked the defendant why he wished to represent himself, the defendant explained that he wanted access to certain records and, in order to obtain those records, he was willing to either represent himself or be appointed co-counsel. The court ultimately denied counsel's motion to withdraw. *Id.* The supreme court held that the defendant's request to proceed *pro se* represented only a conditional willingness to do so, not a clear and unequivocal invocation of the right to self-representation. *Id.* at 24.

¶ 13 Similarly, in *People v. Rasho*, 398 Ill. App. 3d 1035, 1041-42 (2010), the court determined that the defendant's motion to proceed *pro se* or to be appointed new counsel was not an unequivocal assertion of the right to self-representation. Further, and as support, the court

cited *People v. Rohlfs*, 368 Ill. App. 3d 540, 545 (2006), which found no unequivocal invocation of the right to self-representation, where the defendant vacillated between wanting new counsel, wanting to represent himself, and ultimately abandoning his request to proceed *pro se*. Here, in his reply brief, defendant suggests that *Rasho* should not be controlling because the court in that case also found that the defendant's request to proceed *pro se* was untimely, which implied that he was also seeking a continuance. See *Rasho*, 398 Ill. App. 3d at 1042. We, however, disagree that the court's alternative basis for affirming the trial court renders irrelevant the court's determination that the defendant's motion, which requested either to proceed *pro se* or to receive new counsel, was not unequivocal.

¶ 14 Applying the foregoing caselaw, we conclude that, here, the court did not violate defendant's right to proceed *pro se* because there was never a clear and unequivocal request to do so. Specifically, viewing the overall context of the proceedings, defendant never clearly, unequivocally, or unmistakably demanded to proceed *pro se*. Similar to the motion in *Rasho*, defendant's *pro se* motion, filed May 7, 2012, asserted that defendant was filing a: "motion to proceed *Pro-Se* in the aforementioned case. I also ask that this Court *replace* my current court-appointed counsel, Public Defender Frank Perri, and that this Court *replace* him" with private counsel. (Emphases added.) The body of the motion concerned only defendant's displeasure with his public defender. As such, the motion does not reflect an unequivocal request to invoke the right to self-representation.

¶ 15 Thereafter, on June 1, 2012, defendant mentioned to the court that he had filed *pro se* motions. The court informed defendant that he could not do so while represented by counsel. Defendant mentioned proceeding *pro se*, but the court noted that defendant had not provided any reason for doing so, nor had it received any motions to that effect. Further, the court informed

defendant that, if, at the time of the June 11, 2012, arraignment, he wished to pursue proceeding *pro se*, he could raise the issue with the court at that time. The court cautioned defendant that, if he decided to proceed *pro se*, he would do so completely unassisted and would be held to the same standards and rules as parties with counsel.

¶ 16 After receipt of that word of caution, defendant did not, when he appeared for the June 11, 2012, arraignment, unequivocally pursue self-representation. Specifically, at that hearing, the court, for the first time, reviewed defendant's May 7, 2012, written motion, which it characterized as a motion to remove and replace appointed counsel. The court treated the motion as such, allowed defendant to explain why he wanted counsel removed and replaced, and the court thereafter denied the motion. Defendant did not again mention proceeding *pro se* until posttrial proceedings, at which time he indicated that he no longer wished to do so.

¶ 17 In sum, viewing the overall context of proceedings, we reject defendant's argument that the court violated his right to self-representation.

¶ 18 III. CONCLUSION

¶ 19 The judgment of the circuit court of Winnebago County is affirmed.

¶ 20 Affirmed.