2014 IL App (2d) 13-0093-U
No. 2-13-0093
Order filed July 1, 2014
Modified upon denial of rehearing August 25, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Winnebago County.
Plaintiff-Appellee,	)	
v.	)	Nos. 04-CF-3312 07-CF-485 08-CF-96 09-CF-3962
JAMES B. TALIDIS,	)	Honorable Patrick L. Heaslip,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Hutchinson and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's argument forfeited where the record reflects substantial compliance with Supreme Court Rule 401(a). Affirmed.

¶ 2 Defendant, James B. Talidis, waived his right to counsel and represented himself at a trial where the jury found him guilty (in case No. 08-CF-96) of a class 4 felony of aggravated driving while license revoked (DWLR) (625 ILCS 5/6-303)(d-3) (West 2008)). Following this

conviction, defendant entered into a plea agreement, admitting guilt to three other aggravated DWLR charges and agreeing to serve one-year consecutive sentences in case Nos. 04-CF-3312, 07-CF-485, and 09-CF-3962, and one year in case No. 08-CF-96, to be served concurrently (for a total of three years). Defendant now appeals only the conviction in case No. 08-CF-96, arguing that the trial court improperly permitted him to waive counsel without first issuing proper Illinois Supreme Court Rule 401(a) (eff. July 1, 1984) admonishments. Because there exists substantial compliance with Rule 401(a), we affirm defendant's conviction.

¶ 3 I. BACKGROUND

¶ 4 A. Events While Counsel Represented Defendant

¶ 5 On September 22, 2008, defendant appeared in court for case Nos. 04-CF-3312, 07-CF-485, and 08-CF-96. Private counsel represented defendant in case No. 04-CF-3312 and older cases, while Tamika Walker from the public defender's office represented defendant on case Nos. 07-CF-485 and 08-CF-96.[1] Defendant sought to waive counsel in case No. 08-CF-96. The trial court asked defendant to state the reason for representing himself and defendant replied, "Yes. I have many times. Thank you." Defendant also stated that his situation was "complicated." Defendant had several charges of DWLR going back to 1994 (as well as two DWLR convictions rendered in 2002 and 2003). Some of these DWLR cases were pending or being resolved in other counties while Winnebago County prosecuted case Nos. 04-CF-3312, 07-CF-485, and 08-CF-96. The trial court explained that defendant's case would "get more

[1] The following evidence is taken from the record in case No. 08-CF-96, the conviction at issue on appeal. However, because defendant's numerous other cases are relevant to his knowledge and, therefore, the existence of substantial compliance, we necessarily note them herein.

complicated" after a possible conviction. Defendant replied that he did not want any assistance from the public defender. Nevertheless, the trial court did not, at that time, allow defendant to waive counsel. Rather than fully discharge Walker, the trial court allowed defendant to proceed *pro se*, but only with Walker as standby counsel.

¶ 6 With Walker as standby counsel, the court scheduled case Nos. 07-CF-485 and 08-CF-96 for trial on October 27, 2008. On that day, defendant told the judge that he was not ready to proceed and he explained that he had filed a complaint at the Attorney Registration and Disciplinary Commission (ARDC). Defendant stated that the ARDC advised him to obtain legal counsel to assist with his cases, and the judge reminded defendant that assistance from the public defender's office was available. Defendant stated that the public defender was ineffective and incompetent, and claimed that he was not ready to go to trial because he did not have discovery from each pending case. Trial was continued.

¶ 7 Walker continued to assist defendant, and she prepared motions to dismiss in case Nos. 07-CF-485 and 08-CF-96, which defendant signed and filed. In defendant's motions to dismiss, he argued that there were insufficient prior DWLR convictions to sustain the charge of Class 3 aggravated DWLR. Specifically, the initial indictment for case No. 07-CF-485 charged aggravated DWLR as a Class 3 felony based upon defendant's nine prior convictions (in Winnebago, Cook, Boone, McHenry, and De Kalb counties). Similarly, the initial indictment filed in case No. 08-CF-96 also charged aggravated DWLR as a Class 3 felony and, further, it informed defendant of mandatory consecutive special sentencing. In his motions to dismiss, defendant argued that, because the State had previously dismissed a 2003 conviction, it lacked the requisite number of DWLR convictions to proceed with a Class 3 felony charge of aggravated DWLR in either case No. 07-CF-485 or No. 08-CF-96.

¶ 8 Rather than dismiss the cases, the trial court allowed the State to file superseding indictments in case Nos. 07-CF-485 and 08-CF-96. On December 11, 2008, defendant and Walker appeared before the court. The court was told, "[we are here for] arraignment on the bill, Your Honor. There should be one 2008; 08-CF-96." The trial court informed defendant "we have here an indictment returned by the Winnebago County Grand Jury under that caption – case number consisting of one count charging you with the offense of aggravated driving after revocation," and the court asked defendant whether he intended to obtain private counsel to help him with his case. Defendant stated that he did, but that he was experiencing financial difficulties. The judge asked defendant for a date by which he thought he may have private counsel and set the next court date for the date that defendant supplied. Defendant failed to secure private counsel and continued to represent himself with Walker as standby counsel.

¶ 9 On February 5, 2009, Walker informed the court that defendant threatened to sue her for malpractice. The following exchange took place:

> "MS. WALKER: It did come to my attention that there is a possibility that [defendant] is indicating he may be suing me personally for malpractice. I'm not sure if I should continue on this case.
>
> THE COURT: Yeah, you know, they – they sue me, they sue you. Let's worry about that when –
>
> DEFENDANT: She has my permission to withdraw.
>
> THE COURT: You know. What?
>
> DEFENDANT: She has my permission to withdraw."

The court allowed Walker to withdraw. No subsequent counsel was appointed in case No. 08-CF-96.

¶ 10 B. Events After Counsel Withdrew

¶ 11 The common law record reflects that the superseding bill of indictment in case No. 08-CF-96 was filed on February 25, 2009. The superseding indictment informed defendant of mandatory consecutive sentencing with a 180, no day-for-day minimum, under the Class 4 felony of aggravated DWLR.

¶ 12 On August 17, 2009, trial in case No. 08-CF-96 commenced. Defendant represented himself *pro se*. In the course of doing so, he admitted to driving and that at the time his license was revoked. The jury found defendant guilty of DWLR.

¶ 13 Following defendant's conviction, but before sentencing, a new complaint charged defendant with another Class 4 felony of aggravated DWLR and cannabis possession (case No. 09-CF-3962). Defendant entered into a plea agreement, whereby he pleaded guilty to the aggravated DWLR charges in case Nos. 04-CF-3312, 07-CF-485, and 09-CF-3962, and the State agreed to recommend one-year consecutive sentences for the three aforementioned cases, in addition to a one-year sentence for case No. 08-CF-96, to be served concurrent with the one-year sentence in case No. 07-CF-485 (for a total of three years).

¶ 14 The trial court accepted the plea agreement. Thereafter, defendant, with the assistance of the public defender's office, timely moved to withdraw the guilty pleas. However, on June 1, 2012, the assistant public defender informed the trial court that there was no legal basis for the motion to withdraw the guilty pleas and, therefore, that it would not represent defendant on that particular motion. Defendant elected to proceed on the motion *pro se* and delayed the hearing on the motion for about six months, until it was finally heard and denied on December 7, 2012.

¶ 15 Prior to December 7, 2012, each time defendant appeared in court, he filed *pro se* motions and complained about the county jail. Defendant specifically complained about a

change in the legal research database at the jail, explaining to the judge that "FindLaw" replaced the former case law databases available to prisoners. According to defendant, because of a limited subscription, "FindLaw" is an inadequate database for case law research compared to the former "Loislaw" and Lexis databases. Defendant could not access supreme court and appellate court cases issued prior to 1988. Defendant also complained that the law books were not up to date.

¶ 16 In response to defendant's complaints, the trial court stated that it would discuss with jail personnel the alleged restrictions on legal research. The trial court also reminded defendant that he could have a public defender appointed to help him address his complaints and issues, and it continued to remind defendant of this option over the course of the six-month delay. In part in response to the continuing admonitions, defendant moved to substitute the judge, arguing, in part, that the judge was biased for discouraging defendant's decision to proceed *pro se* and repeatedly recommending that he obtain assistance of counsel. (The motion for substitution was denied by another judge, and defendant's other pending motions were ultimately resolved.)

¶ 17 On January 7, 2013, defendant filed his notice of appeal, challenging only the alleged failure to properly admonish him in accordance with Rule 401(a).

¶ 18 II. ANALYSIS

¶ 19 On appeal, defendant argues that the court failed, in case No. 08-CF-96, to substantially comply with the admonishments required by Rule 401(a), which require that a defendant seeking to waive counsel be informed as to: "(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."

Ill. Sup. Ct. R. 401(a) (eff. July 1, 1984). Defendant admits that, at the time he sought to waive counsel, he knew of his right to counsel. However, defendant argues that he lacked awareness concerning the nature of the charge, the range of the sentence, or the possibility of consecutive sentencing.

¶ 20 Defendant concedes that he did not object at the time he sought to waive and did not file a post-trial motion for a new trial in that case, and, therefore, that he failed to preserve the issue for appeal. *People v. Enoch*, 122 Ill. 2d 176, 186-87 (1988). Accordingly, defendant requests that we apply plain-error review. The plain-error doctrine allows a reviewing court to address an unpreserved clear or obvious error when: (1) the evidence is close, regardless of the seriousness of the error, or (2) the error is serious, regardless of the closeness of the evidence. *People v. Thompson*, 238 Ill. 2d 598, 613 (2010). Here, defendant concedes that the evidence is not close, regardless of the seriousness of the error, but he asserts that a failure to substantially comply with Rule 401(a) denied him a fundamental right to counsel, which is a serious and reversible error, regardless of the closeness of the evidence. *People v. Black*, 2011 IL App (5th) 080089, ¶ 24; *People v. Vernon*, 396 Ill. App. 3d 145, 152-53 (2009).

¶ 21 In order to assess defendant's claim under the plain-error doctrine, it is first necessary to determine whether a clear or obvious error occurred. *Thompson*, 238 Ill. 2d at 613. Substantial, rather than strict, compliance is permissible. *People v. Campbell*, 224 Ill. 2d 80, 84 (2006). Accordingly, a clear or obvious error occurred in this case if the trial court failed to substantially comply with Supreme Court Rule 401(a) admonishments, a question of law that we review *de novo*. *Black*, 2011 IL App (5th) 080089, ¶ 20, 23-24; see also *Campbell*, 224 Ill. 2d at 84. For the following reasons, we conclude that the record reflects substantial compliance with Rule 401(a). Therefore, there is no clear or obvious error and we honor defendant's forfeiture.

¶ 22 We note first that, although defendant points to the hearing on September 22, 2008, as the date upon which the court failed to properly admonish him, he is incorrect that Rule 401(a) was triggered at that time. Specifically, the court did not grant defendant's initial request to waive counsel, instead it ordered defendant to proceed *pro se* with standby counsel. Rule 401(a) is not triggered when a court allows a defendant to proceed *pro se* with standby counsel. See, *e.g.*, *Vaughn*, 116 Ill. App. 3d at 197 ("[r]equiring defendant to proceed *pro se* with standby counsel is not a waiver within the meaning of Rule 401(a) and thus the admonitions of the rule were not required[.]"). As such, defendant did not appear without counsel until after February 5, 2009, when the court allowed Walker to withdraw. Defendant gave his "permission" for that withdrawal. Thus, assuming Rule 401(a) was not triggered until February 5, 2009, when counsel withdrew and no subsequent counsel was appointed, we review "the entire record" to see whether it reflects substantial compliance with the admonitions required by the rule. *People v. Johnson*, 119 Ill. 2d 119, 132 (1987). Substantial compliance occurs when any failure to fully provide admonishments does not prejudice defendant because *either*: (1) the absence of a detail from the admonishments did not impede defendant from giving a knowing and intelligent waiver; or (2) defendant possessed a degree of knowledge or sophistication that excused the lack of admonition. *People v. LeFlore*, 2013 IL App (2d) 100659, ¶ 52; see also *People v. Coleman*, 129 Ill. 2d 321, 340 (1989); *People v. Ware*, 407 Ill. App. 3d 315, 348 (2011). Here, we conclude that both were satisfied and, therefore, substantial compliance exists.

¶ 23 We address first whether defendant's waiver of counsel was made knowingly and intelligently. We conclude that, with respect to the nature of the charge, sentencing, and possibility of consecutive sentencing in case No. 08-CF-96, it was. Defendant's argument that he did not know the nature of the charge is completely unpersuasive, given that he was

previously charged with DWLR cases on numerous occasions, including Class 4 charges, the same as ultimately charged here. See *People v. Johnson*, 119 Ill. 2d 119, 132 (1987) (the defendant was no stranger to criminal proceedings and, although the court did not advise the defendant that life imprisonment was the minimum penalty, the record reflected that the defendant was aware of the penalty).

¶ 24 Further, with standby counsel's help, defendant demonstrated a sophisticated knowledge of the difference between the Class 3 felony charge of aggravated DWLR, with which he was originally charged, and a Class 4 charge of aggravated DWLR by filing two motions to dismiss, arguing that the indictments for the Class 3 felonies in case Nos. 07-CF-485 and 08-CF-96 relied on an insufficient aggravating factor, specifically, a previous DWLR conviction from 2003 that was not a conviction and that the prosecution had actually dismissed. Therefore, defendant argued, the State did not have enough prior convictions to charge Class 3 DWLR and defendant should instead face another Class 4 felony charge (like the charge in his 2004 aggravated DWLR case). Moreover, defendant received in case No. 08-CF-96 both original and superseding indictments noting mandatory consecutive sentencing. The changes in the superseding indictments, brought about by defendant's own motions, reveal that defendant had detailed knowledge of the charges he faced and the implications of Class 3, as opposed to Class 4, aggravated DWLR felonies. Thus, defendant's ultimate waiver of counsel was made with knowledge of the nature of the charges and sentences.

¶ 25 Alternatively, the foregoing, coupled with additional support in the record, reflects that defendant possessed a degree of legal knowledge or sophistication that excused the lack of admonishments. Defendant's ARDC complaints, motion practices, frequent successful motions for continuance, and extensive criminal record of DWLR charges all demonstrate the requisite

legal knowledge or sophistication necessary for substantial compliance with Rule 401(a). See *Black*, 2011 IL App (5th) 080089, ¶ 20; *Ware*, 407 Ill. App. 3d at 348. Specifically, defendant filed a complaint with the ARDC, filed a motion for substitution of the judge, and threatened a malpractice suit against his standby counsel, which, combined with his permission, resulted in her dismissal. Even after entering into a plea agreement (following his conviction in case No. 08-CF-96), defendant successfully sought continuances of hearing on his motions and he ignored the advice of the trial court. Defendant drafted and filed motions without assistance and articulated an extraordinary familiarity with legal research that purportedly came from representing himself in the past. Defendant knew that the county jail previously provided "Loislaw" and Lexis and knew the scope of those databases. Defendant drew comparisons between the old legal research databases and the new "Findlaw" database to point out inadequacies. Thus, defendant's statement that he had represented himself "many times" before when he sought to waive counsel was certainly corroborated by his comparative knowledge of the legal research services available in the county jail in the past and present.

¶ 26 Defendant's criminal history reflects numerous prior DWLR arrests, charges, and convictions, which reflect a significant familiarity with DWLR proceedings, the nature of the charges, and possible sentences. While extensive criminal history cannot *alone* demonstrate adequate legal knowledge or sophistication, a defendant's criminal history in combination with other factors indicative of legal knowledge or sophistication is sufficient. *Black*, 2011 IL App (5th) 080089, ¶ 20. The record reflects that defendant had at least seven charges of DWLR, the *same charges* as here, dating back to 1994. Defendant had two other felony charges for aggravated DWLR pending at the same time he sought to waive counsel for case No. 08-CF-96,

and he subsequently acquired two more. Our review of the entire record reveals that defendant possessed a degree of knowledge or sophistication that excused the lack of admonition.

¶ 27 Finally, we note that defendant does not argue that he would *not* have waived counsel if he had been fully admonished. Indeed, the record belies any such assertion. See *Johnson*, 119 Ill. 2d at 134 (the supreme court noted that the defendant made no claim that he would not have waived counsel if properly admonished, and the court's review of the record showed that he could make no such claim). Defendant persistently refused assistance from the public defender and ultimately permitted her withdrawal. After the trial court had repeatedly recommended that defendant seek counsel, defendant moved to substitute the judge, citing those recommendations as a form of bias. As such, it is clear that, even if defendant had been specifically admonished pursuant to Rule 401(a), he would not have accepted court-appointed or other counsel. Indeed, as the trial court allowed defendant the time he requested to secure his desired form of representation, the record suggests that defendant now seeks to "benefit from an alleged error by the court which he invited through his own conduct." *Id.* at 135. While the right to counsel is a fundamental right, a defendant's attempt to "thwart the administration of justice or to otherwise embarrass the effective prosecution of crime" through the assertion of that right cannot be supported. *Id.* (*citing People v. Myles*, 86 Ill. 2d 260, 268 (1981)).

¶ 28 For the foregoing reasons, the record as a whole, including the series of indictments and superceding indictments and defendant's: successful motion practice, repeated refusal to accept available assistance from the public defender, representation that he had previously represented himself, his extensive knowledge of legal research databases available in the county jail, and extensive criminal history involving DWLR and aggravated DWLR charges, establishes

substantial compliance with Rule 401(a). Thus, no clear or obvious error occurred and defendant's claim is forfeited.

¶ 29 III. CONCLUSION

¶ 30 For the reasons stated, we affirm the judgment in case No. 08-CF-06 of the circuit court of Winnebago County.

¶ 31 Affirmed.