

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).

2016 IL App (4th) 140377-U

NO. 4-14-0377

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

March 18, 2016

Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Livingston County
DARRYL KELLY,)	No. 12TR3258
Defendant-Appellant.)	
)	Honorable
)	Robert M. Travers,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Presiding Justice Knecht and Justice Pope concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court substantially complied with Illinois Supreme Court Rule 401(a) (eff. July 1, 1984) and, thus, defendant's waiver of counsel was effective.

¶ 2 In April 2014, a jury found defendant, Darryl Kelly, guilty of driving without a valid driver's license (625 ILCS 5/6-101 (West 2012)). The trial court sentenced defendant to 10 days in jail. Defendant appeals, arguing the court did not determine whether he understood the Illinois Supreme Court Rule 401(a) (eff. July 1, 1984) admonishments prior to waiving his right to counsel.

¶ 3 I. BACKGROUND

¶ 4 On July 10, 2012, defendant received a traffic citation from the Pontiac police department, stating defendant violated section 6-101 of the Illinois Vehicle Code (625 ILCS 6/6-101 (West 2012)), driving without a valid driver's license.

¶ 5 On April 24, 2014, the same day as the scheduled jury trial, defendant expressed that he no longer wanted to be represented by his court-appointed attorney, Paul Mason.

Defendant claimed Mason had "botched" his previous trial. The following conversation occurred in open court:

"THE COURT: You're willing to waive your right?

THE DEFENDANT: Yes.

THE COURT: You're going to proceed on your own.

THE DEFENDANT: Yes.

* * *

THE COURT: All right. [Defendant], how old are you?

THE DEFENDANT: 47.

THE COURT: *** How far have you gone in school?

THE DEFENDANT: 12th.

THE COURT: Do you have any mental problems or been treated for any mental-health related problems?

THE DEFENDANT: No.

THE COURT: And do you have any prior legal matters that you represented yourself in?

THE DEFENDANT: No.

THE COURT: How many prior trials, jury trials have you been through before?

THE DEFENDANT: Two.

THE COURT: Okay. When were those?

THE DEFENDANT: Last month and about 15 years ago.

THE COURT: All right. What were the charges?

THE DEFENDANT: Possession with the intent to deliver.

THE COURT: Both times?

THE DEFENDANT: No. The second one was obstruction of justice."

¶ 6 The trial court continued to admonish defendant at length regarding his right to counsel and the role defense counsel would play in the proceedings, the nature of the charges against him, and sentencing possibilities. After these admonishments, defendant again verbally expressed his desire to waive his right to an attorney. The court accepted defendant's waiver and noted it was knowing and voluntary. The court then dismissed Mason.

¶ 7 Defendant proceeded to represent himself in the jury trial, which resulted in defendant's conviction for driving without a valid driver's license. The trial court imposed a sentence of 10 days in jail plus fines and costs.

¶ 8 This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 We first note defendant has served the 10-day jail sentence imposed in this case. This is of no consequence, as our supreme court has previously held, "while the completion of a defendant's sentence renders moot a challenge to the sentence, it does not so render a challenge to the conviction." *People v. Campbell*, 224 Ill. 2d 80, 83, 862 N.E.2d 933, 936 (2006).

¶ 11 On appeal, defendant argues the trial court erred when it failed to determine if he understood the Rule 401(a) admonishments prior to waiving his right to counsel. Specifically, he maintains the trial court failed to inquire as to whether he understood each of the admonishments

prescribed in Rule 401(a) (citing *People v. Haynes*, 174 Ill. 2d 204, 238, 673 N.E.2d 318, 334 (1996); *People v. Simpson*, 172 Ill. 2d 117, 130-32, 665 N.E.2d 1228, 1235-36 (1996); *People v. Redd*, 173 Ill. 2d 1, 17, 670 N.E.2d 583, 591 (1996); *People v. Ware*, 407 Ill. App. 3d 315, 321, 943 N.E.2d 1194, 1201 (2011)). The State argues defendant's waiver of counsel was proper and the court substantially complied with Rule 401(a). We agree with the State.

¶ 12 Defendant failed to object to any admonishment error at trial and did not raise this issue in a written posttrial motion; therefore, he has forfeited this issue. See *People v. Herndon*, 2015 IL App (1st) 123375, ¶ 24, 37 N.E.3d 398. However, the plain-error doctrine is a narrow and limited exception to the forfeiture rule and allows a reviewing court to consider unpreserved error when either the (1) evidence is close, regardless of the seriousness of the error; or (2) error is so serious, regardless of the closeness of the evidence. *Id.* Before a reviewing court can invoke this exception, it must determine whether error occurred. *Id.* ¶ 25, 37 N.E.3d 398. Therefore, we must decide whether the trial court complied with Rule 401(a) to determine whether error occurred here. *Id.* We review *de novo* whether the trial court complied with Rule 401(a). *People v. Bahrs*, 2013 IL App (4th) 110903, ¶ 13, 988 N.E.2d 773.

¶ 13 Rule 401(a) provides as follows:

"(a) *Waiver of Counsel.* 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."

(Emphasis added.) Ill. S. Ct. R. 401(a) (eff. July 1, 1984).

¶ 14 Compliance with Rule 401(a) is required for an effective waiver of counsel, but strict, technical compliance is not always required. *Haynes*, 174 Ill. 2d at 236, 673 N.E.2d at 333. Instead, substantial compliance is sufficient to effectuate a valid waiver as long as "the record indicates that the waiver was made knowingly and voluntarily, and the admonishment the defendant received did not prejudice his rights." *Id.* Defendant does not argue the trial court failed to admonish him according to Rule 401(a) or that his waiver was involuntary; rather, he only argues the trial court failed to determine whether he *understood* the admonishments to create a valid waiver of counsel. Therefore, we only need to consider whether the court made a determination that defendant understood the required admonishments.

¶ 15 Initially, we note, there is no directive in the language of the rule that requires the trial court to specifically ask the defendant if he understands. Instead, the court is to determine that the defendant understands. In assessing whether the defendant understood the Rule 401(a) admonishments, the trial court had to explore whether the defendant had the requisite capacity to comprehend the admonishments and make an intelligent and knowing waiver. In ascertaining whether the defendant has the necessary capacity to knowingly and intelligently waive his right to counsel, the trial court is to "generally consider [] *** defendant's age, level of education,

mental capacity and prior involvement, if any, in legal proceedings." *People v. Davis*, 169 Ill. App. 3d 1, 6, 523 N.E.2d 165, 168 (1988). This is precisely what the trial court did in the case at bar. The court asked defendant about his age, highest level of education, any history of mental problems, and prior experience with legal proceedings. This inquiry allowed the trial court to determine whether defendant understood the admonishments provided. Based on this inquiry, the court made a proper determination that defendant understood the admonishments. This effort by the trial court constituted substantial compliance with Rule 401(a).

¶ 16 The record as a whole clearly demonstrates defendant's decision to waive counsel was made freely, knowingly, and intelligently. All of these circumstances, combined with the trial court's admonishments, compel the conclusion defendant knew and understood the nature of the charges against him, the sentencing possibilities, and his right to counsel, all encompassed by Rule 401(a). Defendant's waiver of counsel was valid and reversal of his conviction on this ground is not warranted. In the absence of error, review pursuant to the two prongs of the plain-error doctrine is inappropriate.

¶ 17 III. CONCLUSION

¶ 18 For the reasons stated, we affirm defendant's conviction. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 19 Affirmed.