IN THE COURT OF APPEALS OF IOWA

No. 1-552 / 10-1555
Filed August 24, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

WILLIAM LAMONT TAYLOR,
Defendant-Appellant.

Appeal from the Iowa District Court for Cass County, Kathleen Kilnoski, Judge.

William L. Taylor appeals the judgment and sentence entered by the court on his guilty plea to driving while barred as an habitual offender. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Bradley M. Bender, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, and Daniel L. Feistner, County Attorney, for appellee.

Considered by Eisenhauer, P.J., and Potterfield and Tabor, JJ.

TABOR, J.

This case presents the question whether the Sixth Amendment requires a district court to perform an in-court colloquy with a defendant expressing a desire to waive the right to counsel before accepting the defendant's written guilty plea to an aggravated misdemeanor charge. William Taylor argues the plea-taking court had a duty to engage him in an "on the record colloquy" to ensure his waiver of counsel was knowing, intelligent, and voluntary. He also contends he was not adequately warned of the dangers of proceeding without counsel.

Because our supreme court has acknowledged that an in-court colloquy is not a necessary constitutional protection to waiving plea counsel in a misdemeanor case and because it also found that, at the plea stage, a written waiver of the right to counsel may be sufficient, we conclude the absence of an in-court colloquy in this case did not violate Taylor's right to counsel. We further conclude, on the facts of this case, that Taylor was provided sufficient information to satisfy the constitutional requirement that the waiver be knowing, intelligent, and voluntary.

I. Background Facts and Proceedings

On August 1, 2007, Iowa State Trooper Ryan Zenor stopped a vehicle driven by Taylor for speeding—Taylor was traveling ninety-three miles per hour in a seventy-mile-per-hour zone. After a records check revealed Taylor's driving privileges were barred, Zenor arrested him.

On August 15, 2007, the State charged Taylor with driving while barred, an aggravated misdemeanor, in violation of Iowa Code sections 321.555,

321.560, and 321.561 (2007). The court initially scheduled arraignment for September 4, 2007, but rescheduled it to September 10, 2007, at Taylor's request. When Taylor failed to appear for arraignment on September 10, 2007, the court issued a warrant for his arrest.

On October 22, 2007, the court held a pretrial conference, where Taylor's attorney informed the court that a written plea should be on file and requested that the court "take the plea as written." But neither the judge nor Taylor's attorney could locate the written plea in the court file. Taylor's attorney stated he would ensure the plea was filed. The State then informed the court that "[t]here's a plea agreement" to resolve the matter and requested that the hearing be continued for a week. The court granted a continuance and reset the pretrial conference for October 29, 2007.

On August 16, 2010, Taylor appeared and filed a signed application to proceed pro se and waiver of counsel; a signed, written plea of guilty to driving while barred; a request for immediate sentencing; and a written waiver of his rights to file a motion in arrest of judgment, to a fifteen-day delay before sentencing, and to be present for sentencing as required by Iowa Rules of Criminal Procedure 2.8 and 2.23. The trial court record does not explain the lengthy passage of time between the initial pretrial conference in October 2007, and the defendant's pro se filings in August 2010. Nevertheless, on August 16, 2010, the court determined that Taylor's application to proceed pro se and waiver of counsel were both "knowing and voluntary" and approved Taylor's request to proceed pro se. The court also entered an order "accept[ing] defendant's written

waiver of rights and plea of guilty and [found] that there [was] a factual basis for such guilty plea."

The court sentenced Taylor to sixty days in the Cass County jail with all but four days suspended and credit for time served. The court also ordered Taylor to pay a fine of $625 as well as court costs and surcharges, and placed Taylor on unsupervised probation for one year.

Taylor appeals the judgment and sentence entered by the court on his guilty plea to driving while barred as an habitual offender. He argues on appeal that the district court erred in failing to conduct a personal colloquy on his written waiver of counsel.

II. Scope and Standard of Review and Burden of Proof

Taylor asserts a violation of his right to counsel as assured by the Sixth Amendment.[1] We review constitutional claims de novo. *State v. Majeres*, 722 N.W.2d 179, 181 (Iowa 2006). In making our determination, we consider the totality of the circumstances. *State v. Bowers*, 656 N.W.2d 349, 352 (Iowa 2002).

In a direct challenge to a conviction, as Taylor raises here, the State bears the burden to prove the waiver of counsel was valid. *Compare State v. Rater*, 568 N.W.2d 655, 660 (Iowa 1997), *with Majeres*, 722 N.W.2d at 183 (indicating that when mounting a collateral attack on prior uncounseled convictions, defendant bears the burden of showing an invalid waiver of counsel).

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[1] While article I, section 10 of the Iowa Constitution also guarantees a criminal defendant the right to the assistance of counsel, Taylor limits his argument to the federal provision.

III. Analysis

Taylor argues the court had a duty to conduct an in-court colloquy to ensure his waiver of the right to counsel was knowing, intelligent, and voluntary. He maintains that his written wavier was insufficient to ensure the protection of his constitutional rights. Taylor also contends he was not adequately warned of the dangers of proceeding without counsel as required by *State v. Cooley*, 608 N.W.2d 9 (Iowa 2000), stating:

> [He] was not informed of the dangers he would encounter as his own [attorney]. Nor was he advised with respect to the criteria outlined in *Cooley*. Taylor was not sufficiently admonished by the court as to the usefulness of an attorney at that particular proceeding, or made cognizant of the danger of continuing without counsel.

Taylor requests that we reverse his conviction and remand for further proceedings.

The State counters that Taylor's written waiver of counsel was effective and that an in-court colloquy was not required to satisfy the Sixth Amendment because this case involves the waiver of plea counsel—rather than trial counsel—in a misdemeanor case. The State also contends the circumstances in this case indicate that Taylor understood his rights sufficiently to waive them knowingly, intelligently, and voluntarily. With respect to the stage of proceedings and the nature of the offense, the State reasoned that

> If the State may properly use a prior uncounseled misdemeanor guilty plea resulting in incarceration to enhance a subsequent conviction, it reasonably follows that the lack of a personal colloquy for the waiver of plea counsel in such cases does not violate the Sixth Amendment.

The State also points out that "no rule or decision require[s] a personal colloquy for waiver of plea counsel in misdemeanor cases."

The State asserts Taylor had the requisite information to knowingly, intelligently, and voluntarily waive his rights, stating he was "sufficiently aware of the right to plea counsel, the nature of the offense, and the applicable range of punishment." In support of this argument, the State points out that Taylor initially appeared with counsel, who indicated Taylor intended to file a guilty plea. The State also points out that in his application waiving counsel, "Taylor indicated that he understood the charge and evidence against him and the right to have an attorney to answer his questions, represent his interests, and advise him of potential defenses."

A. Waiver of Counsel Principles

The Sixth Amendment provides a criminal defendant with the right to counsel during "all critical stages of the criminal proceeding." *Majeres*, 722 N.W.2d at 182. A guilty plea to a felony or misdemeanor charge "ranks as a 'critical stage' at which the right to counsel adheres." *Id.* (citation omitted). But a defendant may elect to waive the constitutional right to counsel and proceed without an attorney, provided the waiver is made "knowingly and intelligently with sufficient awareness of the relevant circumstances." *Id.*; *see also Hannan v. State*, 732 N.W.2d 45, 52 (Iowa 2007). "A waiver that is not voluntary and intelligent cannot be accepted." *Cooley*, 608 N.W.2d at 15.

Case law recognizes a distinction between two contexts where defendants may waive counsel: at *trial* and at the *plea stage* in a misdemeanor case. *See*

Iowa v. Tovar, 541 U.S. 77, 88–89, 124 S. Ct. 1379, 1387–88, 158 L. Ed. 2d 209, 220–21 (2004); *see also Majeres*, 722 N.W.2d at 182 (providing, for example, that a "defendant requires less rigorous warnings as to the waiver of plea counsel than for the waiver of trial counsel"). These cases articulate different standards that must be met in each context to satisfy the constitutional requirement that waiver of counsel be knowing, intelligent, and voluntary. *See Tovar*, 541 U.S. at 88–89, 124 S. Ct. at 1387–88, 158 L. Ed. 2d at 220–21.

To ensure a valid waiver of one's right to counsel *at trial*, the court must engage the accused in a personal colloquy. *Hannan*, 732 N.W.2d at 53; *Cooley*, 608 N.W.2d at 14–15. When waiving trial counsel, the defendant "must be warned specifically of the hazards ahead." *Tovar*, 541 U.S. at 88–89, 124 S. Ct. at 1387, 158 L. Ed. 2d at 220. The warnings must refer to the nature of the charges, the range of possible punishments, possible defenses and mitigating circumstances, and other facts relevant to a full understanding of the dangers of proceeding without counsel. *Hannan*, 732 N.W.2d at 53; *Cooley*, 608 N.W.2d at 14–15.

But when a defendant waives the right to counsel at the *plea stage* of a misdemeanor case, "[a]n in-court colloquy is not necessary to ensure the waiver was voluntary, knowing, and intelligent." *Majeres*, 722 N.W.2d at 183. Rather,

> [w]hen a defendant waives the right to counsel and enters a plea of guilty, the Sixth Amendment is satisfied by the trial court informing the defendant "of the nature of the charges against [the defendant], of [the defendant's] right to be counseled regarding his [or her] plea, and of the range of allowable punishments attendant upon the entry of a guilty plea."

Id. at 182 (citing *Tovar*, 541 U.S. at 81, 124 S. Ct. at 1383, 158 L. Ed. 2d at 216). Further, Iowa Rule of Criminal Procedure 2.8(2)(b) allows a defendant to waive the in-court colloquy when entering a plea of guilty "to a serious or aggravated misdemeanor." Iowa R. Crim. P. 2.8(2)(b). It reasonably follows that a defendant may likewise forego the in-court colloquy in entering a written waiver of the right to counsel in a misdemeanor case at the plea stage.

With respect to the information that must be communicated to a defendant before he or she can validly waive counsel, our courts have not "prescribed any formula or script" that must be provided to a defendant who elects to proceed without counsel. *Tovar*, 541 U.S. at 88, 124 S. Ct. at 1387, 158 L. Ed. 2d at 220. Rather, "[t]he information a defendant needs to waive counsel intelligently depends upon the particular facts and circumstances surrounding each case." *Majeres*, 77 N.W.2d at 182. In *Majeres*, for example, the court acknowledged that the defendant had never engaged in an in-court colloquy with the judge, but nevertheless stated:

> In that written [guilty] plea [entered without counsel], [the defendant] acknowledged the charge against her as OWI, second offense; her right to counsel; and the maximum and minimum sentences. Thus, her written plea met the informational requirements under *Tovar* to waive the right to counsel and plead guilty.

Id. at 182–83. And, "[a] defendant requires less rigorous warnings as to the waiver of plea counsel than for the waiver of trial counsel." *Majeres*, 722 N.W.2d at 182; *see also Tovar* , 541 U.S. at 89–90, 124 S. Ct. at 1388, 158 L. Ed. 2d at 221 (stating that "[w]arnings of the pitfalls of proceeding to trial without counsel . .

. must be 'rigorous[ly]' conveyed," whereas "[w]e require less rigorous warnings pretrial").

B. Application

When we apply these waiver-of-counsel principles to the instant situation, we conclude the district court properly accepted Taylor's waiver of counsel and plea without conducting an in-court colloquy. A written guilty plea in a misdemeanor case, accompanied by a written waiver of counsel containing the information necessary under *Tovar*, is "prima facie evidence the defendant gave the waiver voluntarily, knowingly, and intelligently." *Majeres*, 722 N.W.2d at 183. In *Majeres*, our supreme court held that "[t]he defendant's written guilty plea in the prior proceeding met the requirements of the Sixth Amendment to the United States Constitution and article I, section 10 of the Iowa constitution." *Id.* We see no reason why the rule in *Majeres*—addressing a collateral challenge to a misdemeanor conviction used for enhancement purposes—would not also apply to a defendant's direct challenge to his conviction. And Taylor offers us no argument distinguishing *Majeres*.

The information communicated to Taylor when he waived counsel for his misdemeanor guilty plea satisfied the Sixth Amendment. Taylor's application to proceed pro se acknowledged the nature of the charge against him by stating: "I have been charged with DRIVING WHILE BARRED, an Aggravated Misdemeanor in violation of Iowa Code Sections 321.555, 321.560 & 321.561," and further stating that Taylor reviewed the "complaint and affidavit and/or trial information . . . and underst[oo]d the charges against [him] by the State."

Taylor's application and waiver of counsel further advised that he understood his right to representation by stating:

> I have been advised that I have the right to an attorney in this case. I understand that I have the right to have an attorney appointed to represent me if I cannot afford an attorney. . . . I understand that the attorney would be available to answer questions for me and represent my interests in all Court proceedings. I am aware that there may be defenses to criminal charges that may not be known to non lawyers. I accept the risk that waiving counsel might result in a defense being overlooked. I know that by proceeding without an attorney, I will be giving up the opportunity to get an independent opinion on how to proceed under the facts of my case and the law.

The waiver further indicated Taylor understood "that if [he is] ever charged with a crime in the future, a conviction or disposition of this case may be used against [him] to increase the charge for any future crime and/or sentencing for a future crime."

Again, as our supreme court concluded in *Majeres*,

> When a defendant waives the right to counsel and enters a plea of guilty, the Sixth Amendment is satisfied by the trial court informing the defendant "of the nature of the charges against [the defendant], of [the defendant's] right to be counseled regarding his [or her] plea, and the range of allowable punishments attendant upon the entry of a guilty plea.

722 N.W.2d at 182. Because Taylor acknowledged this information in his application, as outlined above, we conclude his waiver of counsel was knowing, intelligent, and voluntary. *See Majeres*, 722 N.W.2d at 182–83. Our conclusion is further bolstered by the fact that Taylor originally appeared in court with his attorney who indicated that Taylor intended to enter a written guilty plea. Accordingly, we affirm.

AFFIRMED.