

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL ANTHONY WILLIAMS,

Defendant-Appellant.

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UNPUBLISHED

March 14, 1997

No. 189567

Genesee Circuit Court

LC No. 95-051828-FH

Before: Fitzgerald, P.J., and MacKenzie and Taylor, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of possession with intent to deliver marijuana, MCL 333.7401(2)(c); MSA 14.15(7401)(2)(c). He was sentenced to serve one year in the county jail and four years' probation. Defendant appeals as of right. We affirm.

Defendant first argues that he should have been given credit for time served between his arrest and sentencing because he was on parole from the state of Texas rather than the state of Michigan and he served time in jail due to his inability to pay bond. However, because defendant has already served his minimum sentence, the issue whether he was entitled to credit for time served in a Michigan jail while he was on parole from Texas prison is moot. *People v Rutherford*, 208 Mich App 198, 204; 526 NW2d 620 (1994). Therefore, although defendant was entitled to the credit, *People v Johnson*, 205 Mich App 144, 146-147; 517 NW2d 273 (1994), resentencing is unnecessary.

Defendant also argues that the trial court abused its discretion in allowing him to represent himself. The determination whether self-representation is appropriate is largely within the discretion of the trial judge. *People v Adkins*, 452 Mich 702, 721, n 1; 551 NW2d 108 (1996). Application of the waiver of counsel procedures is the duty of the trial judge, who is in the best position to determine whether the defendant has made the waiver knowingly and voluntarily. *Id.* at 723. In *Adkins*, the Court stated:

[There are] three main requirements that a court must comply with in the waiver of counsel context. First, the defendant's request must be unequivocal. Second, the

defendant must assert his right to self-representation knowingly, intelligently, and voluntarily. In assuring a knowing and voluntary waiver, the trial court must make the defendant aware of “the dangers and disadvantages of self-representation, so that the record will establish that he knows what he is doing and his choice is made with eyes open.” Third, the court must establish that the defendant will not unduly disrupt the court while acting as his own counsel. [*Adkins, supra* at 721-722, quoting *People v Anderson*, 398 Mich 361, 366-368; 247 NW2d 857 (1976).]

The trial court must also substantially comply with the waiver of counsel procedures set forth in MCR 6.005(D) before granting a defendant’s request to proceed in propria persona. *Adkins, supra* at 706. The trial court must advise defendant of the charge, the maximum possible sentence, any mandatory minimum sentence, and the risks involved in self-representation. MCR 6.005(D)(1).

Substantial compliance requires that the court discuss the substance of both *Anderson* and MCR 6.005(D) in a short colloquy with the defendant, and make an express finding that the defendant fully understands, recognizes, and agrees to abide by the waiver of counsel procedures. *Adkins, supra* at 726-727. The nonformalistic nature of a substantial compliance rule affords the protection of a strict compliance rule with far less of the problems associated with requiring courts to engage in a word-for-word litany approach. *Id.* at 727. Moreover, where there is error but it is not one of complete omission of the court rule and *Anderson* requirements, reversal is not necessarily required. *People v Dennany*, 445 Mich 412, 439; 519 NW2d 128 (1994). Whether a particular departure justifies reversal will depend on the nature of the noncompliance. *Id.*

At the arraignment on March 6, 1995, defendant was represented by counsel who informed the court that he “[had] gone through the information with [his] client” and that defendant was waiving a formal reading of the information. On July 10, 1995, counsel was allowed to withdraw from the case because defendant had filed a grievance against him. At defendant’s July 11, 1995, motion to suppress evidence, appointed counsel informed the court that defendant wished to represent himself, but that he would remain available to answer defendant’s questions should he have any. At the beginning of trial, the court questioned defendant and determined that he had made a knowing and intelligent waiver of counsel and allowed him to represent himself.

The record reveals that the court ascertained defendant’s age, level of education, familiarity with the court system, and knowledge of preparing and filing motions. The court also explained the dangers and disadvantages of self-representation, and the record reveals that defendant knew what he was doing and his choice was made with eyes open. Defendant’s request to waive counsel and represent himself was unequivocal. Defendant explained that he wished to represent himself because he felt he would be more effective than an attorney since he was more familiar with the facts of his case. The court established that defendant would not unduly disrupt the court while acting as his own counsel. Although the trial court did not formally advise defendant of the charge against him, the maximum possible prison sentence for the offense, and any mandatory minimum sentence required by law, defense counsel at the preliminary examination indicated that he had reviewed the information with defendant and that defendant waived a formal reading of the information. See *Adkins, supra* at 731 (the judge

had already discussed the nature of the charge and the possible punishments to the defendant at his arraignment; the fact that the judge did not specifically address the charged offense and the range of possible punishment is not enough to defeat a finding of substantial compliance with the waiver procedures in that case). Therefore, we find that the trial court substantially complied with the requirements set forth in *Anderson* and MCR 6.005(D) before granting defendant's request to proceed in propria persona. Accordingly, the trial court did not abuse its discretion in determining that defendant knowingly and intelligently waived his right to counsel and allowed him to represent himself.

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ Barbara B. MacKenzie  
/s/ Clifford W. Taylor