

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY LEE LITTLEJOHN,

Defendant-Appellant.

UNPUBLISHED
October 31, 1997

No. 193141
Jackson Circuit Court
LC No. 95-072843 FH

Before: Gribbs, P.J., and Sawyer and Young, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of being a prisoner in possession of a controlled substance (marijuana), MCL 800.281(4); MSA 28.1621(4). Defendant was sentenced as an habitual offender, fourth offense, MCL 769.12; MSA 28.1084, to two to ten years' imprisonment, to be served consecutive to the sentence defendant was already serving at the time he committed the instant offense. Defendant appeals from his conviction and sentence as of right. We affirm.

Defendant first argues that the prosecution improperly elicited testimony from a witness that defendant had a previous conviction for second-degree murder for which he was serving a term of life imprisonment. Defendant failed to preserve this issue for appeal by making a timely objection at trial. MRE 103(a)(1); *People v Sardy*, 216 Mich App 111, 113; 549 NW2d 43 (1996). Moreover, in light of the overwhelming evidence of defendant's guilt, we conclude that any error in the admission of this evidence was not decisive of the outcome. *People v Grant*, 445 Mich 535, 553; 520 NW2d 123 (1994). Therefore, we decline to review this issue.

Defendant next argues that the trial court erred in denying his request for a continuance on the day of trial. We review a trial court's denial of a request for a continuance for an abuse of discretion. *People v McCrady*, 213 Mich App 474, 481; 540 NW2d 718 (1995). Factors to be considered include whether defendant (1) asserted a constitutional right, (2) had a legitimate reason for asserting the right, (3) had been negligent, and (4) had requested previous adjournments. *People v Lawton*, 196 Mich App 341, 348; 492 NW2d 810 (1992).

In the instant case, defendant sought a continuance on the ground that he was not prepared for trial because he did not have access to the prison library. Defendant, however, had over one month to prepare for trial and waited until the day of trial to notify the trial court of his difficulties in preparing his case. We conclude that under the circumstances of this case, defendant failed to establish a legitimate reason for granting a continuance, and therefore, the trial court did not abuse its discretion in denying defendant's request. Finally, we note that in a related claim, defendant briefly asserts that the trial court's decision denied him his fundamental right to counsel of his choice. However, because defendant fails to cite authority or otherwise argue the merits of this issue, we deem it effectively abandoned. *People v Piotrowski*, 211 Mich App 527, 530; 536 NW2d 293 (1995).

Defendant next argues that the trial court failed to comply with case law and MCR 6.005(D) in not advising defendant of the risks and potential consequences of waiving his right to court-appointed counsel and proceeding pro se. We review de novo whether defendant made a knowing and voluntary waiver of his right to counsel. See *People v Adkins*, 452 Mich 702, 727-731; 551 NW2d 108 (1996).

In *People v Anderson*, 398 Mich 361; 247 NW2d 857 (1976), our Supreme Court held that a trial court must comply with certain requirements in the waiver of counsel context. First, the trial court must determine that defendant's request to waive representation is unequivocal. *Id.* at 367. Second, the trial court must find that defendant asserted his right to self-representation knowingly, intelligently, and voluntarily. *Id.* at 368. In ensuring that defendant's waiver is knowing and voluntary, the trial court must inform the defendant of the dangers and disadvantages of self-representation, so that the record will establish that defendant knows what he is doing and his choice is made with "eyes open." *Id.* Third, the trial court must determine that the defendant will not unduly disrupt the court while acting as his own counsel. *Id.*

In addition to the *Anderson* litany, the trial court must comply with MCR 6.005(D) by offering the assistance of an attorney, and by advising the defendant about the possible punishment for the charged offense and the risk involved in self-representation. *Adkins, supra* at 720, 726-727. However, substantial, rather than strict, compliance is the focus. In *Adkins, supra* at 723-724, the Supreme Court explained:

Application of the waiver of counsel procedures is the duty of the court. The trial judge is in the best position to determine whether the defendant has made the waiver knowingly and voluntarily. *United States v Berkowitz*, 927 F2d 1376, 1383 (CA 7, 1991). Further, the effectiveness of an attempted waiver does not depend on what the court says, but rather, what the defendant understands. Consequently, other facts, such as evidence of a defendant's intentional manipulation or delay of the court proceedings as a tactical decision may favor a judicial finding of a knowing and intelligent waiver. *United States v Sandles*, 23 F3d 1121, 1129 (CA 7, 1994).

Similarly, the existence of a knowing and intelligent waiver depends upon the particular facts and circumstances of the case, including the defendant's background and experience. *Anderson, supra* at 370. Our review of the record in the case at bar reveals that the trial court substantially complied with

the requirements of *Anderson* and MCR 6.005(D) and that defendant knowingly and voluntarily waived counsel.

Defendant next argues that his conviction violated his double jeopardy rights because he had already been punished for possession of contraband following a Department of Corrections administrative action. This claim is without merit. See *People v Bellafant*, 105 Mich App 788, 790; 307 NW2d 422 (1981); *Pfefferle v Corrections Comm*, 86 Mich App 366, 373; 272 NW2d 563 (1976); *People v Bachman*, 50 Mich App 682, 684; 213 NW2d 800 (1973).

Defendant next argues that he is entitled to a new trial because the trial court failed to instruct the jury, sua sponte, that it could convict defendant of lesser offenses. Defendant's failure to request such instructions at trial precludes any relief on this issue. MCL 768.29; MSA 28.1052; *People v Henry*, 395 Mich 367, 374; 236 NW2d 489 (1975).

Finally, defendant argues that he was denied the effective assistance of counsel. Because defendant waived counsel and proceeded in propria persona, he cannot now claim that he was denied the effective assistance of counsel. See *People v Burden*, 141 Mich App 160, 164; 366 NW2d 23 (1985).

Affirmed.

/s/ Roman S. Gibbs

/s/ David H. Sawyer

/s/ Robert P. Young, Jr.