STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GEORGE ANDREW SCALF,

Defendant-Appellant.

UNPUBLISHED
December 1, 1998

No. 200535
Marquette Circuit Court
LC No. 95-030710 FC

Before: Saad, P.J., and Hood and Gribbs, JJ.

PER CURIAM.

Defendant appeals by right from his convictions by a jury of assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279, and inmate in possession of a weapon, MCL 800.283(4); MSA 28.1623(4). The trial court, applying a fourth offense habitual offender enhancement under MCL 769.12; MSA 28.1084, sentenced him to fifteen to thirty years in prison on the assault charge and to ten to twenty years on the possession charge. We affirm.

Defendant argues that the trial court abused its discretion in allowing him to proceed in propria persona because it did not conduct a searching inquiry into his request to represent himself and did not make specific substantive findings on the record regarding the request. We do not agree.

Before allowing a defendant to proceed in propria persona, a trial court must comply with waiver of counsel requirements. On the record, the court must assess the propriety of self-representation and ensure that the defendant is intentionally giving up his or her right to counsel. *People v Adkins*, 452 Mich 702, 720-721; 551 NW2d 108 (1996). There are three main requirements, originally laid out in *People v Anderson*, 398 Mich 361, 366-367; 247 NW2d 857 (1976), for a valid waiver of counsel: (1) the defendant's request to represent himself or herself must be unequivocal; (2) the request must be made knowingly, intelligently, and voluntarily -- the defendant must understand the dangers and disadvantages of self-representation; and (3) the trial court must determine that self-representation by the defendant will cause no undue disruption. *Adkins*, *supra* at 721-722; *Anderson*, *supra* at 366-367. Furthermore, a trial court must comply with MCR 6.005, which requires it to (1) advise the defendant of the charge and the possible sentence; (2) explain the risk of self-representation

to the defendant; and (3) offer the defendant an opportunity to consult with an attorney. The requirements of *Anderson* and MCR 6.005 need not be strictly adhered to in order for a valid waiver to occur. As the Supreme Court stated in *Adkins*, *supra* at 723, ". . . the effectiveness of an attempted waiver does not depend on what the court says, but rather, what the defendant understands." Only *substantial compliance* with the waiver requirements is necessary. A "word-for-word litany approach" is not required in assessing whether a defendant should represent himself or herself. *Id*. at 727.

In this case, defendant's request was unequivocal. Defendant clearly indicated that there was a large, irreconcilable conflict between himself and his attorney and that he wanted to represent himself. Defendant asserted his right to self-representation knowingly, voluntarily, and intelligently. The trial court adequately advised defendant of the dangers of self-representation and noted that defendant was articulate and knowledgeable; defendant subsequently maintained his desire to represent himself. The trial court took steps to ensure that defendant would not disrupt the trial proceedings, indicating that if defendant wanted to move about the courtroom as an attorney might, he would have to remain shackled and that he should ask his former attorney for help in marking exhibits. Moreover, the court laid out a method for ensuring security, advised defendant to avoid aiming the laser pointer at anyone, and indicated that defendant should not speak after the prosecutor objects. Defendant agreed to abide by all of these "ground rules" laid out by the judge.

Under MCR 6.005, the trial court was to advise defendant of the risks of self-representation; as indicated above, the court did so. The court was also to advise defendant of the charges against him and the potential sentences. This would have been done at defendant's arraignment; furthermore, the court reiterated the charges at the start of trial and defendant acknowledged that he was facing a possible life sentence. This was sufficient to satisfy the court rule. See *Adkins*, *supra* at 731. MCR 6.005's requirement that defendant be offered the opportunity to consult with an attorney was also satisfied. The court required defense counsel to remain and assist defendant throughout the trial and invited defendant to "seek his counsel." Because the trial court substantially complied with the requirements of *Anderson*, *supra* at 361, and MCR 6.005, the decision to allow defendant to represent himself was not an abuse of discretion.

Next, defendant argues that the trial court erred by instructing the jury that he had a duty to retreat if possible. Defendant maintains that the Marquette Branch State Prison was his "home," as well as the victim's home, for purposes of the "no duty to retreat in one's home" rule. In Michigan, there is "no duty to retreat in the face of an attack when it occurs in the home where both the assailant and the assailed have an equal right to be. . . ." *People v Garrett*, 82 Mich App 178, 180; 266 NW2d 458 (1978). As recognized in *People v Fisher*, 166 Mich App 699, 711; 420 NW2d 858 (1988), rev'd after second remand on different grounds 442 Mich 560; 503 NW2d 50 (1993), there exists no precise definition of "home" for purposes of the "no retreat" rule. However, we can obtain some guidance by looking to the purposes of the rule:

> The justification for [the no retreat rule] is difficult to pinpoint. Justice Cardozo [has observed,] 'It is not now, and never has been the law that a man assailed in his own dwelling, is bound to retreat. If assailed there, he may stand his ground, and resist

> the attack. He is under no duty to take to the fields and the highways, a fugitive from his own home.' See *People v McGrandy*, 9 Mich App 187; 156 NW2d 48; 26 ALR3d 1292 (1967).
>
> Dean Prosser has suggested that the no retreat rule is based on '"an instinctive feeling that a home is sacred, and that is it improper to require a man to submit to pursuit from room to room in his own house."' Prosser, Torts (4th ed), § 19, p 111, quoting from Restatement of Torts, Tentative Draft, Commentary to § 84.
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> On a more pragmatic level it can be argued that one's own dwelling is presumptively the safest haven from attack and retreat therefrom would correspondingly increase the risk of harm and thus be impractical and unnecessary. [*Fisher, supra* at 711-712, quoting *People v Godsey*, 54 Mich App 316, 319; 220 NW2d 801 (1974).]

These justifications indicate that the Marquette Branch Prison did not constitute defendant's "home" under the "no retreat" rule. First of all, in the absence of a "no duty to retreat" instruction, defendant would not have been forced to "take to the fields and the highways, a fugitive from his own home" in order to avoid an attack. Nor would defendant be forced to "submit to pursuit from room to room" in the absence of a "no duty to retreat" instruction, as the movement of prisoners is highly regimented and regulated in prison. In the structured prison environment, corrections officers were immediately at hand. Because a prison does not have the characteristics of a home, a prison is not an inmate's "home" for purposes of the "no duty to retreat" rule. This conclusion is supported in *State v McCray*, 312 NC 519, 533; 324 SE2d 606 (1985), in which the Court stated ". . . the entire Caledonia Prison simply may not be considered as the defendant's 'home' for purposes of the self defense and defense of one's habitation doctrines."

Finally, defendant argues that the trial court abused its discretion in requiring defendant to wear shackles during trial. Generally, a defendant may be shackled during trial to prevent escape, to prevent harm to those in the courtroom, and to maintain order during trial. *People v Jankowski*, 130 Mich App 143, 146; 342 NW2d 911 (1983). In the case at bar, the trial court based its decision to shackle defendant on his potential to harm people in the courtroom. During the hearing on the shackling decision, the following testimony was elicited: (1) defendant had been implicated in the death of a fellow inmate; (2) defendant had been found in possession of dangerous weapons and a hacksaw blade while he was in another prison; (3) defendant was currently ranked as a level five security risk, the highest level available at the Marquette Branch Prison; (4) defendant had stabbed a fellow inmate in a different prison; and (5) defendant had previously been convicted of bank robbery. Defendant had a criminal and institutional record which indicated a lack of discipline and a tendency toward violence and the trial court's decision to have defendant shackled during trial was not an abuse of discretion. See *People v Dixon*, 217 Mich App 400, 405; 552 NW2d 663 (1996).

Affirmed.

/s/ Henry William Saad
/s/ Harold Hood
/s/ Roman S. Gribbs