

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRY LEE CHESTER,

Defendant-Appellant.

UNPUBLISHED

January 26, 2010

No. 288549

Calhoun Circuit Court

LC No. 2008-001711-FH

Before: K. F. Kelly, P.J., and Hoekstra and Whitbeck, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of eight counts of assault with a deadly weapon, MCL 750.82, and eight counts of possession of a firearm during the commission of a felony, MCL 750.227b. We affirm.¹

I. Right to Self-Representation

Defendant first argues that he was denied the right to self-representation. We disagree. We review for an abuse of discretion a trial court's decision to permit or disallow a defendant to represent himself. *People v Hicks*, 259 Mich App 518, 521; 675 NW2d 599 (2003). A criminal defendant's right to represent himself is implicitly guaranteed by the United States Constitution, US Const, Am VI, and explicitly guaranteed by the Michigan Constitution and statute, Const 1963, art 1, § 13; MCL 763.1. *People v Kevorkian*, 248 Mich App 373, 417; 639 NW2d 291 (2001). In order for a defendant to proceed in propria persona, several requirements must be met. *People v Russell*, 471 Mich 182, 190-191; 684 NW2d 745 (2004). Relevant to this appeal, is the mandate that the defendant must ask to represent himself and that the request be unequivocal. *Id.*

Here, defendant claims that he made an unequivocal request to represent himself, but our review of the record reveals that he did not. Defendant claimed that he told his counsel that he wanted to represent himself. However, defendant did not directly tell the court that he still wished to do so when he spoke to the judge immediately before the trial. Moreover, although defendant indicated to counsel that he wanted a different lawyer and had attempted to contact the

¹ This appeal has been decided without oral argument pursuant to MCR 7.214(E).

NAACP about representing him, these statements do not unambiguously indicate that defendant wanted to represent himself. Rather, these statements express both a desire to have representation from the NAACP because of his dissatisfaction with his counsel and to represent himself for the same reason. We also note that defendant used the past tense when stating his desire to represent himself, stating, “I wanted to represent myself.” Defendant never stated that he still wished to do so. Accordingly, defendant was not denied his right to self-representation.

II. Effective Assistance of Counsel

Defendant next contends that the trial court violated his right to a fair trial by ordering his appointed counsel to ask a witness a list of questions that defendant had created. In particular, defendant asserts that the trial court’s actions usurped counsel’s role of developing a strategy for cross-examination, thereby denying him his right to effective assistance of counsel. We disagree. At the outset, we note that defendant specifically requested that defense counsel be required to ask the questions defendant had prepared. The trial court granted this request, despite defense counsel’s objection to the manner in which the questions were phrased. Because defendant’s own conduct directly caused this alleged error, he has waived his right to appellate review of this issue. *People v McPherson*, 263 Mich App 124, 139; 687 NW2d 370 (2004). Nonetheless, even assuming that defendant had not caused the error, we fail to see how counsel could be ineffective for following the trial court’s order. In other words, defendant has failed to show that counsel’s performance was deficient. See *People v Yost*, 278 Mich App 341, 387; 749 NW2d 753 (2008). Nor has defendant established that the trial’s outcome would have been different if the trial court had not ordered counsel to use defendant’s questions. See *id.* Accordingly, defendant was not denied a fair trial or the effective assistance of counsel.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Joel P. Hoekstra
/s/ William C. Whitbeck