



**In the
Missouri Court of Appeals
Western District**

STATE OF MISSOURI,)
)
Respondent,) WD83999
)
v.) OPINION FILED: November 9, 2021
)
RANDY G. TETER,)
)
Appellant.)

Appeal from the Circuit Court of Cole County, Missouri
The Honorable Patricia S. Joyce, Judge

Before Division Three: Lisa White Hardwick, Presiding Judge, Gary D. Witt, Judge and Edward R. Ardini, Jr., Judge

Randy Teter ("Teter") appeals the judgment of the Circuit Court of Cole County ("trial court") convicting Teter of one count of kidnapping in the first degree, section 565.110,¹ and one count of committing violence against an employee of the Department of Corrections, section 217.385. Teter raises two points on appeal: (1) the trial court erred in failing to conduct a *Faretta*² hearing to ensure Teter's waiver of counsel was knowing, intelligent, and voluntary; and (2) the trial court erred in ordering Teter's sentence to run

¹ All statutory references are to R.S.Mo. 2016, as currently updated by supplement, unless otherwise noted.

² *Faretta v. California*, 422 U.S. 806 (1975).

consecutively to Teter's prior sentence in violation of a plea agreement previously entered into with the State. Finding no error, we affirm.

Factual and Procedural History

At all relevant times, Teter was an inmate at the Jefferson City Correctional Center ("JCCC"). Victim³ worked at JCCC in the Activities Coordinator's office. On July 27, 2018, several inmates at JCCC peered through Victim's office window in an intimidating fashion. Victim was troubled by the inmates' demeanor and began to leave work early for the day. As she was alone leaving JCCC through the interior courtyard, Teter came up from behind her and tackled her to the ground. Although Teter was not allowed in the interior courtyard, he had entered it by climbing up the roof of a building from an outdoor recreational area and jumping to the ground inside the fence for the courtyard. After tackling Victim, he wrapped his arms around her and placed a shiv⁴, which he made from a piece of fencing, up to her throat. He held her body in front of him as he sat on the ground. Several correctional officers responded to the scene immediately.

Teter demanded to talk to the correctional officer in charge of the housing units. Teter was apparently upset about housing conditions and used Victim as a hostage to demand changes at the facility. After several minutes, correctional officers were able to convince Teter to release Victim. Victim suffered injuries to her neck and face. She resigned from JCCC six months after the incident due to the emotional trauma Teter had inflicted upon her.

³ We do not identify the Victim by name to protect her privacy.

⁴ A shiv is a homemade knife or sharpened object used as a weapon.

Teter was charged with one count of kidnapping and one count of committing violence against an employee of the Department of Corrections. Teter was initially represented by a public defender but filed a motion to represent himself at trial, citing his constitutional right to do so. In Teter's motion, he referenced a previous criminal trial for prior offenses in which he represented himself, stating:

In State v. Teter, 14AC-CR02666 Teter was charged with Murder in the first degree with the State seeking the death penalty. After two Feretta [sic] hearings, the Court granted Teter his motion to represent himself. The above entitled case is nowhere near as complex as the death penalty case mentioned . . . above. Teter has multiple in court appearances without any issues from him.

At the pre-trial hearing, the trial court asked Teter if he wished to represent himself and waive his right to counsel. Teter affirmed he wished to represent himself at trial. Teter signed a written waiver of counsel form mandated by section 600.051. Teter, trial court, and the State had the following dialogue:

The Court: Mr. Teter, is that your understanding as well, that you still want to represent yourself?

Teter: Yes, Your Honor.

The Court: All right. It's my understanding that you've had several times where you've gotten this far with the Court in Cole County and they were gonna -- they had hearings on it. Do you have me having -- Do you have any objection to me taking notice of those other hearings where they went through all those rights with you?

Teter: No, Your Honor.

The Court: All right. I won't be having stand-by counsel for you; do you understand that?

Teter: That is fine, Your Honor.

The Court: Okay. And additionally with your history and what you're in custody for, you will have very limited rights of moving around the courtroom; do you understand that?

Teter: Yes, Your Honor, I understand that.

The Court: All right. I'm gonna go ahead and read these rights to you, and then we'll fax them over there. And if that's what you want to do, you might have to sign it later, but -- All right.

I request that the Court allow my waiver of attorney with full understanding that I'm entitled to an attorney if I so desire and with full knowledge and understanding of the following additional considerations. The offenses charged are escape from confinement --

The State: There's two other charges.

The Court then went through the range of punishment for each offense and then continued by covering Teter's constitutional rights and the rights he was relinquishing.

The Court: That you have the right to be represented by an attorney. And if indigent and unable to employ an attorney, I have a right to request the judge to appoint an attorney to assist me in defending against the charge. And the Court will appoint an attorney to assist me if it finds that I'm indigent and not able to employ one. That you have the right to a trial by jury with assistance of an attorney to confront and cross-examine witnesses. And a guilty plea waives any right to a trial. That I have the right to remain silent and not make any statement which may be used in the prosecution of the criminal charges filed against me. I am aware that any recommendation by the prosecutor is not binding on the judge who may accept or reject such recommendation. That if a guilty plea is entered, if I'm found guilty by trial of the charge, the judge is most likely to impose a sentence of confinement in jail or prison. That I've had the right to appeal the Court's decision or the jury's verdict should I exercise my right to trial by jury and be found guilty. The above rights have been read to me by the judge in open court. I understand these rights and request the Court to accept my waiver. Is that what you want to do today, sir?

Teter: Yes, Your Honor.

The Court: All right. And, Mr. Teter, it's my understanding that you're familiar with the court system and that you don't have any mental prohibitions against you representing yourself.

Teter: That's correct, Your Honor.

The Court: All right. All right. I'll discharge the public defender.

At trial, the jury found Teter guilty of both charged offenses. Teter did not file a motion for new trial. Because he was a prior offender the trial court proceeded to sentencing. In a previous criminal case in Cole County, Teter entered into a plea agreement with the State in which the parties agreed that, if the State obtained probable cause of a crime arising from the incidents in this case, "the State will agree that for any sentences arising from that prosecution the State shall recommend: (a) a concurrent sentence with all other terms and sentences of incarceration[.]" At the sentencing hearing in this case, Teter stated, "Your Honor, the only thing I have to say on the record is what the plea agreement was which is page 4, line 1 through 6. You have a copy."

During sentencing, the prosecuting attorney stated, "Judge, we're gonna defer to the Court as to the sentence and whether it's run consecutive or concurrent." When the trial court asked whether the State had a sentencing recommendation, the prosecuting attorney said, "Per agreement in his prior murder case, we are not advocating a length of time or consecutive or concurrent. We'll defer to the Court." The trial court then sentenced Teter to thirty years for kidnapping and ten years for committing violence against an employee of the Department of Corrections. The sentences were ordered to run concurrent to each other but consecutive to Teter's prior sentences. The trial court issued its judgment seven days after the jury returned its verdict. This timely appeal follows.

Standard of Review

As an initial matter, we must first address the trial court's error in issuing a premature judgment. Generally, "[i]n jury-tried cases, allegations of error to be preserved for appellate review must be included in a motion for new trial[.]" Rule 29.11(d). A motion for a new trial shall be filed within fifteen days after the return of the verdict. Rule 29.11(b). "No judgment shall be rendered until the time for filing a motion for new trial has expired and if such motion is filed, until it has been determined." Rule 29.11(c). "[A] trial court's entry of a criminal judgment in violation of Rule 29.11(c)'s timing requirements does not render the judgment 'void,' but merely voidable on a defendant-appellant's proper assertion of error." *State v. Oerly*, 446 S.W.3d 304, 310 (Mo. App. W.D. 2014). Here, the trial court entered judgment seven days after the jury returned its verdict in violation of Rule 29.11(c). However, Teter never raised this issue in a motion for new trial, motion to amend the judgment pursuant to Rule 78.07, or on appeal. Therefore, we consider this issue waived by Teter and address his points on the merits. *See id.*

As to point one, Teter argues our standard of review is plain error because he did not object to the trial court's grant of his waiver of counsel. But this Court has explained the appropriate standard of review for a self-represented defendant's failure to object to the process by which the trial court approved a waiver of counsel:

“Constitutional claims must be made at the first opportunity to be preserved for review.” *State v. Davis*, 507 S.W.3d 41, 44 (Mo. App. 2016). However, “a self-represented defendant's failure to object at trial regarding the knowing, voluntary, and intelligent nature of his waiver of the right to counsel is generally excused.” *State v. Kunonga*, 490 S.W.3d 746, 759 (Mo. App. [W.D.] 2016) (citing *State v. Murray*, 469 S.W.3d 921, 925 (Mo. App. [E.D.] 2015)). This is because a *pro se* defendant “cannot be expected to

object that a [waiver of counsel] was not voluntary because of alleged inadequacies in an on-the-record inquiry designed to determine whether [the] waiver is knowing, voluntary, and intelligent.” *Id.* (citing *Murray*, 469 S.W.3d at 925). Thus, we review a claim that the [waiver-of-counsel] hearing was inadequate *de novo*. *Davis*, 507 S.W.3d at 44.

State v. Ndon, 583 S.W. 3d 145, 153 (Mo. App. W.D. 2019).

As to point two, Teter argues our standard of review is abuse of discretion because he noted the plea agreement to the trial court during sentencing and argues this constitutes an objection to the trial court's sentencing, thereby preserving the issue for appeal. "To preserve a claim of error, counsel must object with sufficient specificity to apprise the trial court of the grounds for the objection." *State v. Amick*, 462 S.W.3d 413, 415 (Mo. banc 2015) (internal quotation omitted). Here, Teter did briefly raise the issue of the plea agreement at the sentencing hearing. When asked if he had anything to say, Teter stated, "Your Honor, the only thing I have to say on the record is what the plea agreement was which is page 4, line 1 through 6. You have a copy." His explicit reference to the plea agreement, although not in a formal objection, apprised the trial court of his grounds for arguing for a concurrent sentence.

The State, however, claims Teter's point two is limited to plain error review because it was not preserved in a motion for new trial. In reply, Teter argues a motion for new trial would not have raised issues from the sentencing hearing, only errors at trial. Teter is correct. Because a motion for new trial is filed between the trial and sentencing following a jury trial, it would have only raised issues that arose during trial, not sentencing. Therefore, Teter was not required to file a motion for new trial to preserve errors at sentencing. *State v. Cowan*, 247 S.W.3d 617, 619 (Mo. App. W.D. 2008) ("Errors in

sentencing should be brought to the court's attention during the sentencing hearing to preserve them for review."), *abrogated on other grounds by State v. Pierce*, 548 S.W.3d 900 (Mo. banc 2018). Accordingly, we review point two for abuse of discretion. *See State v. Fleming*, 541 S.W.3d 560, 562 (Mo. App. W.D. 2018). "A trial court abuses its discretion if the ruling is clearly against the logic of the circumstances and is so arbitrary and unreasonable as to shock the sense of justice and indicate a lack of careful consideration." *Id.* (internal quotation omitted).

Analysis

Point One

Teter's first point argues the trial court did not conduct a thorough *Faretta* hearing to ensure his waiver of counsel was knowing, voluntary, and intelligent. "The Sixth Amendment right to counsel 'implicitly embodies a correlative right to dispense with a lawyer's help.'" *Murray*, 469 S.W.3d at 926 (quoting *Faretta*, 422 U.S. at 814). "This right applies to the states through the Due Process Clause of the Fourteenth Amendment." *Id.* The circuit court "has no discretion to force an attorney upon a defendant who validly waives the right to counsel." *Id.* "For a waiver of counsel to be effective, due process requires that the waiver be made knowingly and intelligently." *State v. Hunter*, 840 S.W.2d 850, 857 (Mo. banc 1992) (citing *Faretta*, 422 U.S. at 835)).

Missouri has two requirements that must be satisfied before the circuit court can conclude that a defendant has effectively waived the right to counsel. *Kunonga*, 490 S.W.3d at 764. First, "[t]here must be a 'thorough [*Faretta*] evidentiary hearing' that establishes that 'the defendant understands exactly what rights and privileges he is waiving,

as well as the dangers associated with waiving constitutional rights." *Id.* (quoting *State v. Black*, 223 S.W.3d 149, 155 (Mo. banc 2007)). Second, the defendant must be given the opportunity to sign the written waiver of counsel form mandated by Section 600.051. *Id.*

Teter does not argue he did not sign the written waiver of counsel form mandated by section 600.051 or that the form was somehow insufficient. He only argues the trial court failed to conduct a thorough *Faretta* evidentiary hearing. "There is no specific litany required for a *Faretta* hearing." *Id.* at 763. Instead, "[w]hether a *Faretta* hearing establishes that a waiver of counsel is knowingly and intelligently made depends on 'the particular facts and circumstances surrounding the case, including the background, experience, and conduct of the accused.'" *Id.* at 763-64.

Here, Teter's waiver of counsel at the pretrial hearing was knowing and intelligent. Teter argues the trial court did not ensure his waiver was intelligent, meaning he did not know the potential consequences of waiving counsel. But the trial court read Teter's rights to him in open court. The trial court informed Teter that his waiver of counsel could result in confinement in jail or prison. Trial court also stated the potential range of punishment for each charged offense. Further, the trial court noted on the record that Teter had previously represented himself in criminal cases in the same county including a murder trial in which he had been given two full *Faretta* hearings and in which he had been found to have knowingly and voluntarily waived his right to counsel. Teter affirmatively informed the trial court that it could take judicial notice of those prior *Faretta* hearings.

Given Teter's background, experience, and conduct, including representing himself in a previous murder trial and citing that experience in his motion to represent himself in

this case, the trial court's *Faretta* hearing established that Teter reasonably understood the consequences of waiving counsel and that his waiver was knowing and voluntary. Teter points to nothing on appeal that would establish his circumstances had changed since the prior *Faretta* hearings which would affect his understanding of his rights or his ability to knowingly and voluntarily waive them.

Teter also argues the trial court could not take judicial notice of prior proceedings without first acknowledging the content of those proceedings. There is nothing in the record to suggest that the trial court failed to properly review and consider everything that occurred in those prior *Faretta* hearings. "Where a defendant affirmatively accepts and agrees to what the trial court proposes, any claim of error related to the trial court's action is affirmatively waived[.]" *State v. Winters*, 623 S.W.3d 746, 753 (Mo. App. W.D. 2021). "Ordinarily, a party cannot complain on appeal about a procedure adopted in the trial court at his or her own request, nor may an appellant complain of alleged error, which by such person's conduct at trial, he or she joined in or acquiesced or invited." *Id.* at 753-54 (quoting *State v. Pickens*, 332 S.W.3d 303, 319 n.14 (Mo. App. E.D. 2011)).

Here, Teter first invoked the prior proceedings in his motion to withdraw counsel. He affirmatively agreed that the trial court should take judicial notice of his prior *Faretta* proceedings. On appeal, Teter cannot complain of a procedure adopted by the trial court at his own invitation. The purpose of a *Faretta* hearing is to ensure the waiver is knowing and voluntary. In this case, the trial court sufficiently read Teter his rights regarding waiving counsel, which included statements ensuring Teter knew the consequences of waiving trial counsel. Teter's affirmation of the trial court's questions regarding his

understanding that a guilty verdict would result in jail or prison confinement was unambiguous. Teter also signed the waiver form required by section 600.051. Teter had prior *Faretta* hearings and proceeded to represent himself in a prior murder case in which he was convicted and sentenced to prison. It is hard to imagine anything that could be presented in a current hearing that would have provided Teter any more effective knowledge of the dangers of self-representation. Accordingly, Teter's waiver of counsel was knowing, voluntary, and intelligent. Point one is denied.

Point Two

In Teter's second point, he argues the trial court erred in ordering his sentence to run consecutively to the sentence from his prior offense. Teter bases his argument on the plea agreement he entered into with the State in a prior criminal case, which read, "[The state] shall recommend . . . a concurrent sentence with all other terms and sentences of incarceration" arising from this case.

"A prosecuting attorney has the power to enter into a plea agreement that provides for: (1) a dismissal of other charges; (2) a recommendation for a particular sentence; (3) an agreement that a specific sentence is the appropriate disposition of the case; or (4) a recommendation for another appropriate disposition of the case." *State v. Wright*, 120 S.W.3d 792, 794 (Mo. App. W.D. 2003) (internal quotation marks omitted); Rule 24.02(d)(1).

"In formulating a plea agreement, the prosecuting attorney and the defendant should act fairly so that the reasonable expectations of both sides are met." *Wright*, 120 S.W.3d at 794. "Where a plea [agreement] is based to a significant degree on a promise by the

prosecutor, to the extent that it is part of the inducement or consideration for entering the plea, the promise must be fulfilled." *Id.* (internal quotation omitted). "If the promise is not fulfilled, the defendant must get relief." *Id.* "The defendant may get either specific performance of the plea agreement or an opportunity to withdraw his guilty plea." *Id.*

However, trial courts are not bound by sentencing recommendations from either party in a nonbinding plea. *See State v. Lowe*, 674 S.W.2d 262, 265-66 (Mo. App. E.D. 1984). If the State agrees to make a recommendation for sentencing under Rule 24.02(d)(1)(B), the trial court neither accepts nor rejects that agreement. *See Stanley v. State*, 420 S.W.3d 532, 545 (Mo. banc 2014). Rather, "[i]n the context of a nonbinding plea agreement for a particular sentence, the prosecutor's recommendation is what the court rejects, not the plea agreement itself, and Rule 24.02(d)(4) does not apply." *Id.* It is clear from the record that the trial court had the prior plea agreement in front of it and Teter specifically drew the court's attention to the terms of that agreement.

Here, Teter argues the trial court erred by ordering his sentence to run consecutively, not concurrently, to his prior sentence. However, Teter was specifically informed prior to trial that, "I am aware that any recommendation by the prosecutor is not binding on the judge who may accept or reject such recommendation." Trial courts may or may not follow sentencing recommendations, so Teter cannot point to any claim of error by the trial court. Teter correctly notes that a "plea agreement is a binding contract between the state and a defendant[,]" not the trial court. *See App. Br.* at 19 (quoting *Evans v. State*, 28 S.W.3d 434, 439 (Mo. App. E.D. 2000)).

If the State breached its plea agreement from an earlier case by not recommending a concurrent sentence in this case, Teter may seek relief in the proper postconviction procedure in his previous case. *See Eckhoff v. State*, 201 S.W.3d 52, 55 (Mo. App. E.D. 2006) (holding the movant was entitled to relief under Rule 24.035 because the State breached the plea agreement rendering the plea unknowing, involuntary, and unintelligent). Teter acknowledges this Court has never addressed breaches of a plea agreement in one criminal case in the direct appeal of a separate case, yet he asks us to remand this case for resentencing so the State abides by the plea agreement in the prior case. However, Teter's point on appeal is limited to allegations of error by the trial court. Therefore, this Court is limited to addressing claims of error by the trial court, not an opposing party. *See* Rule 84.04(d)(1). And the trial court did not err, plainly or otherwise, nor did it abuse its discretion by ordering consecutive sentences. Accordingly, point two is denied.

Conclusion

For the foregoing reasons, the judgment of the trial court is affirmed.



Gary D. Witt, Judge

All concur