



**In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana**

No. 06-16-00143-CR

KENNETH DEWAYNE HALL, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 6th District Court
Lamar County, Texas
Trial Court No. 22596

Before Morriss, C.J., Moseley and Burgess, JJ.
Memorandum Opinion by Justice Burgess

MEMORANDUM OPINION

In March 2008, Kenneth Dewayne Hall was indicted for engaging in organized criminal activity and aggravated robbery with a deadly weapon. As part of a plea bargain agreement, Hall pled guilty to aggravated robbery with a deadly weapon, the State dropped the remaining charge, and Hall was placed on ten years' deferred adjudication community supervision. Through several amended motions, the State moved to proceed with an adjudication of guilt, alleging that Hall had violated various terms of his community supervision. Hall entered a plea of not true to each of the allegations. At the conclusion of the adjudication hearing, the trial court found that Hall had violated the conditions of his community supervision, found him guilty of the underlying offense of aggravated robbery with a deadly weapon, and sentenced him to forty years in prison.

On appeal, Hall contends that the trial court erred by not allowing him to represent himself and by not properly admonishing him regarding self-representation.

We overrule this point of error and affirm the trial court's judgment because Hall failed to assert his right to self-representation.

I. Did Hall Assert his Right to Represent Himself?

In his sole point of error, Hall argues that the trial court erred by not allowing him to represent himself and by not properly admonishing him regarding his right to self-representation.

A. Standard of Review

The Sixth Amendment to the United States Constitution guarantees the right of a defendant to present his or her legal defense through trial without the aid of counsel. *Faretta v. California*, 422 U.S. 806, 818–20 (1975); *Williams. v. State*, 252 S.W.3d 353, 355 (Tex. Crim. App. 2008).

Denial of the right to self-representation results in “structural error” and is not subject to a harm analysis. *Ex parte Fierro*, 934 S.W.2d 370, 372 (Tex. Crim. App. 1996); *Garrett v. State*, 998 S.W.2d 307, 316–17 (Tex. App.—Texarkana 1999, pet. ref’d); see *McKaskle v. Wiggins*, 465 U.S. 168, 177 n.8 (1984). The right to self-representation does not attach until it is clearly and unequivocally invoked by the defendant.¹ *Faretta*, 422 U.S. at 835; *Williams*, 252 S.W.3d at 356. When a defendant asserts the right to represent himself or herself, the trial court must admonish the defendant about 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 his eyes open.’” *Faretta*, 422 U.S. at 835 (quoting *Adams v. United States ex rel McCann*, 317 U.S. 269, 279 (1942)); see TEX. CODE CRIM. PROC. ANN. art. 1.051(g) (West Supp. 2016).

B. Factual Background

Despite having appointed counsel, Hall personally objected, made comments, and asked questions during the adjudication hearing. Hall’s first outburst occurred during the State’s direct examination of its first witness, Luke Lattrell, Hall’s community supervision officer:

Q. [By the State] Okay. Did you ever hear from [Hall] at all from the time you saw him in November--

[Hall]: Objection.

THE COURT: I’m sorry, hold on just a second. Mr. Turner, did your client --

[Hall]: I’m saying you ain’t objecting to that because this is -- this is a lie. I’m sorry, Your Honor.

¹“Unlike the right to counsel, the right of self-representation can be waived by a defendant’s mere failure to assert it.” *Brown v. Wainwright*, 665 F.2d 607, 610–11 (5th Cir.1982).

THE COURT: Mr. Hall --

[Hall]: -- nothing like that but he didn't tell me if I could object --

THE COURT: Mr. Hall, you're represented by an attorney --

[Hall]: Uh-huh.

THE COURT: Your attorney is going to be the one speaking in this court --

[Hall]: And I'm --

THE COURT: I'm going to ask you to sit quietly, okay.

During the testimony of the State's third witness, Larry Masters, an officer with the Choctaw Nation Tribal Police, the following exchange occurred:

Q. [By the State] Just kind of summarize what happened.

A. There was a young man -- there was a woman playing a machine, gambling. She had a purse on her left shoulder. There was a young man that was walking around watching her as she was playing. The young man grabs the purse, rips her down, runs off out an exit of a motel room, jumps into a car.

[Hall]: Hey, Your Honor, that has nothing to do --

THE COURT: Mr. Hall, there will be no further outbursts from you during this proceeding. Do you understand that?

[Hall]: Man, I was not charged --

THE COURT: Mr. Hall -- Mr. Hall --

[Hall]: Then get me out. Just get me out because that's not -- this is unfair, man. This is not even within the law.

THE COURT: Mr. Hall --

[Hall]: -- was found against me --

THE COURT: Mr. Hall, there will be no further outbursts --

[Hall]: Y'all can take me back. I'm not about to sit and listen to something that's unjustly. This is not even within the law. He shouldn't even be here. This is charges that was put on me --

THE COURT: The Court is going to take a recess for 10 minutes.

(Recess taken).

THE COURT: We're back on the record. The Court is back on the record in Cause Number 22596. Let the record reflect Mr. Hall is present with us in this courtroom.

Mr. Hall, I need to address you. Okay?

[Hall]: Yes, sir.

THE COURT: You have the right to be present at all proceedings involving matters such as yours, okay?

[Hall]: Uh, huh.

THE COURT: However, I also have the right and duty and responsibility to ensure order and decorum in this courtroom. Do you understand that?

[Hall]: Say that again.

THE COURT: You understand that I -- you have the right to be present.

[Hall]: Right.

THE COURT: But I also have the right to conduct these proceedings orderly and subject to my rules. Okay. One of my rules is that we're not going to have outbursts by anybody, whatsoever, at any given time.

[Hall]: But my lawyer is not speaking up for me.

THE COURT: Mr. Hall, let me address you, Mr. Hall.

[Hall]: Uh-huh.

THE COURT: What I'm saying here is that you have the right to be here. However, I have the right to maintain order. Your actions a while ago were disorderly. I heard you say that you didn't want to be here. I'd prefer that you are here but I want you to remain orderly.

So I'm going to tell you right now, if you don't think you can sit quietly then I'm going to have to take some action. And I don't want to bar you from this court proceeding. I want you to be here; I think it's in your best interest. Do you understand that?

[Hall]: How is it in my best interest if everybody in here is against me?

THE COURT: Mr. Hall --

[Hall]: I mean it's unjustly. It's not fair. I mean everything that y'all are doing is not within the law. And, no, I do not want to be here if this is going to continue to proceed like this, I do not want to be here.

THE COURT: Okay. Let me ask you this, Mr. Hall: Are you making that decision not be here voluntarily?

[Hall]: No, I'm saying I'm going to keep on blurting out if my lawyer doesn't speak up for me. That's what I am saying.

THE COURT: Okay. So what you're saying is you're going to continue to disrupt these proceedings, is that correct?

Mr. Hall, let me ask you this question: Do you want to be here or not?

[Hall]: Of course I want to be here. I mean this is my life. My life is on the line. Ain't nobody speaking up for me on my behalf then I'm telling you right now I'm going to continue speaking up. So, I mean, you're the judge, decide (inaudible).

[The State]: Can I make a suggestion possibly to make this a little -- we can -- if

[Hall] doesn't -- it appears that the case in Oklahoma is really -- was bothersome to him --

[Hall]: No, everything is --

THE COURT: Let [the State] speak.

[Hall]: Okay. I'm sorry.

THE COURT: This is what I'm talking about, Mr. Hall. We're going to maintain order and decorum in this courtroom now. Not one more outburst by you. I will give you a chance to speak. Do you understand me?

[Hall]: Yes, sir.

....

THE COURT: The Court's interest is very much focused on complying with the law and ensuring that Mr. Hall's right to be here is acknowledged. However[,] I am not going to entertain any more outburst whatsoever.

The Court has great leeway in some of the ways I can keep outbursts from happening. I don't want to do that.

[Hall]: Sir, can I just say two things?

THE COURT: Two things.

[Hall]: Take me back. I don't want to be here.

THE COURT: All right. Mr. Hall has requested the right to be excused from the hearing. The Court is going to acknowledge his right. We will be removing Mr. Hall to the facility.

Mr. Hall, I'll tell you this, though, at the conclusion of this hearing the Court is going to have you return to this courtroom at the conclusion of this hearing for the final resolution of this matter.

You are excused, Mr. Hall.

The remainder of the adjudication proceedings were held outside Hall's presence.

C. Analysis

Hall's comments show that he was unhappy with how his attorney was representing him.

However, a defendant who is displeased with appointed counsel must either accept the assigned

attorney, effectively waive the right to counsel in order to represent himself or herself, or show adequate cause for a change of appointed counsel. *Thomas v. State*, 550 S.W.2d 64, 68 (Tex. Crim. App. 1977); *Cain v. State*, 976 S.W.2d 228, 235 (Tex. App.—San Antonio 1998, no pet.). Hall said that the proceedings were unfair and that he would continue “blurting out” as long as his counsel was not speaking up for him, but that did not amount to a clear and unequivocal request to represent himself.² *See Faretta*, 422 U.S. at 835. Therefore, Hall’s right to self-representation and the trial court’s duty to admonish him did not attach. *See id.* Accordingly, we overrule this point of error.

II. Conclusion

For the reasons stated above, we find that Hall did not make a clear and unequivocal request to represent himself. Accordingly, his right to self-representation was not violated, and we affirm the trial court’s judgment.³

Ralph K. Burgess
Justice

Date Submitted: January 18, 2017
Date Decided: March 21, 2017

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²Hall argues that his actions “impliedly or constructively” invoked his right to self-representation.

³The State raised a point of error on cross-appeal, arguing that the trial court was within its discretion to revoke Hall’s community supervision and adjudicate him guilty. However, we need not address this point because Hall failed to challenge the merits of the trial court’s order of adjudication.