

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

REYNARD GORDON,
Appellant.

No. 2 CA-CR 2018-0270
Filed April 27, 2020

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.19(e).

Appeal from the Superior Court in Cochise County
No. CR201600595
The Honorable James L. Conlogue, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Chief Counsel
By Tanja K. Kelly, Assistant Attorney General, Tucson
Counsel for Appellee

Cochise County Office of the Legal Advocate
By Xochitl Orozco, Legal Advocate,
and Sigyn Halverstedt, Deputy Legal Advocate, Bisbee
Counsel for Appellant

MEMORANDUM DECISION

Presiding Judge Staring authored the decision of the Court, in which Chief Judge Vásquez and Judge Brearcliffe concurred.

STARING, Presiding Judge:

¶1 Reynard Gordon was convicted of one count of fraudulent schemes and artifices, one count of theft from a vulnerable adult, and two counts of forgery. Appealing from his convictions and sentences, Gordon argues that he was denied clerical assistance at trial after he chose to represent himself. We affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to sustaining the jury's verdicts and resolve all reasonable inferences against Gordon. *See State v. Murray*, 247 Ariz. 583, ¶ 2 (App. 2019). At a pretrial conference, Gordon asked to represent himself. The trial court thoroughly explained the charges to Gordon, the possible consequences, including the possibility of lengthy imprisonment, and the responsibilities of self-representation. The court further explained that Gordon could receive assistance from advisory counsel, who could be appointed or Gordon could retain his own. Gordon said he understood, and the court found he had knowingly, intelligently, and voluntarily waived his right to counsel by choosing to represent himself; the court also appointed advisory counsel.

¶3 Gordon then asserted that although he was waiving his right to an attorney, he "still maintain[ed] [his] right to counsel of choice," further asserting that "not all counsel are attorneys." The trial court denied Gordon's request for non-attorney counsel, explaining:

THE COURT: No, you will not have a non-attorney assisting you in any kind of formal court proceeding. If somebody wants to be here for moral support and they want to sit in the gallery, that's fine, but only a licensed attorney can be with you in court and act in any fashion as counsel or an attorney. . . . Outside the courtroom, you can do whatever you want.

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MR. GORDON: As long as the Court records reflect the fact that I am objecting to that because I don't see where it is an issue for the Judge or the Attorney General's Office to determine that. The Supreme Court is saying that I can only have an attorney. That's not what they are stipulating. They made it very clear that this is counsel of my choice and not a licensed attorney. Now, they could very well have stipulated that only a licensed attorney, but I didn't read that. I didn't get that from the cases I read. That didn't indicate that it was only licensed attorneys. It says "counsel," and specifically "counsel of his own choice."

THE COURT: All right. It will be an attorney licensed in good standing in the State of Arizona. . . .

MR. GORDON: Let me make sure that I am clear here, so if I want someone to sit up here and pass me papers and let me know where I am at in a certain point and give me something else to assist me, are you telling me that I can't have that?

THE COURT: Yes. . . . You are representing yourself. Now, if you had some type of paralegal that was doing papers for you or making copies or something like that, maybe we could work in that direction, but not anybody that's representing you, giving you legal advice or anything along those lines.

MR. GORDON: No, no. I am a person. I am the chief counsel, but there are people that I would want to be here to give me documents to let me know it's time to introduce something else or move in a fashion that's differently [sic]. . . . So, if you are telling me that I have to stand here alone and not have anyone to assist me, yeah, we have issues.

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THE COURT: Well, we probably have issues then. If we are at trial, [the prosecutor] can have a case officer to assist him, some type of police officer or something along those lines. You can have an investigator, if you had some investigator. [The prosecutor] is not going to have a team. That's going to be [the prosecutor], and it's going to be whatever law enforcement officer that is familiar with the case. That's it. If he has a paralegal or something else, and the paralegal is in the back and at breaks they can do something. It's going to be the same rule for you.

¶4 After an eight-day jury trial,¹ Gordon was convicted as charged and sentenced to a five-year prison term and concurrent probationary terms to commence after his release, the longest of which is five years. This appeal followed.² We have jurisdiction pursuant to article VI, § 9 of the Arizona Constitution and A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A).

Discussion

¶5 On appeal, Gordon argues the trial court erred by denying him the benefit of clerical assistance at a trial in which he represented himself. However, “a defendant’s right to proceed without counsel must be balanced against the need that trial be ‘conducted in a judicious, orderly fashion.’” *State v. Wassenaar*, 215 Ariz. 565, ¶ 28 (App. 2007) (quoting *State v. De Nistor*, 143 Ariz. 407, 412 (1985)). And, a “trial court has ‘broad discretion’ regarding its management of the manner in which trial will be conducted, and has a duty to exercise that discretion.” *Id.* (quoting *State v. Cornell*, 179 Ariz. 314, 332 (1994)). Therefore, we review for an abuse of discretion. *Cf. State v. Gomez*, 231 Ariz. 219, ¶ 8 (2012) (“A trial court’s decision to revoke a defendant’s self-representation is reviewed for an abuse of discretion.”).

¹Gordon was tried jointly with his codefendant, who was convicted of the same charges.

²After a successful petition for post-conviction relief, the trial court allowed Gordon to file a delayed notice of appeal.

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¶6 “The right to counsel under both the United States and Arizona Constitutions includes an accused’s right to proceed without counsel and represent himself,” *State v. Lamar*, 205 Ariz. 431, ¶ 22 (2003), “but only so long as the defendant ‘is able and willing to abide by the rules of procedure and courtroom protocol,’” *State v. Whalen*, 192 Ariz. 103, 106 (App. 1997) (quoting *McKaskle v. Wiggins*, 465 U.S. 168, 173 (1984)). *See also* U.S. Const. amend. VI; Ariz. Const. art. II, § 24; *Flynn v. Campbell*, 243 Ariz. 76, ¶ 24 (2017) (self-represented litigant held to same standard as attorney and not afforded special leniency); *see generally Faretta v. California*, 422 U.S. 806 (1975) (holding Sixth Amendment right to counsel includes right to self-representation).

¶7 Gordon contends he was not asking for someone to represent him or provide legal advice but wanted “someone at the defense bench not to speak, but to give him documents, papers, and things to assist him to present his own defense at his trial” and to perform “purely clerical tasks.” He further argues that despite repeatedly using the word “counsel,” he was not asking for legal counsel, but used the word because of “a differentiation of definitions of the word between a lay person not educated in the law . . . and the term of art used by attorneys and the Court.” Gordon also asserts the “distraction” of not having an assistant at trial caused him to become confused when he attempted to introduce exhibits and caused him to lose his train of thought because he lost track of documents. And, Gordon argues that although the right to self-representation “does not guarantee that the State provide all legal tools to an indigent defendant,” he “was denied a legal tool all represented parties have, a legal assistant.”³

¶8 The state counters that the trial court did not deny Gordon an assistant at trial, but “only refused to allow him the benefit of non-licensed counsel to legally advise him while he acted as ‘chief counsel’ and represented himself.” The state asserts that the court permitted Gordon to have an assistant for clerical tasks when it explained that if Gordon had

³Gordon cites no authority for his assertion parties have a right to the use of a “legal assistant” at counsel table during court proceedings, and we are aware of none. *See* Ariz. R. Crim. P. 31.10(a)(7) (opening brief must contain supporting reasons for contentions with citations of legal authorities); *State v. Moody*, 208 Ariz. 424, n.9 (2004) (“In Arizona, opening briefs must present significant arguments, supported by authority, setting forth an appellant’s position on the issues raised. Failure to argue a claim usually constitutes abandonment and waiver of that claim.” (quoting *State v. Carver*, 160 Ariz. 167, 175 (1989))). Here, although Gordon’s argument is subject to waiver, in our discretion, we also address it on the merits.

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“some type of paralegal,” “maybe we could work in that direction.” The state also argues Gordon’s request to have a non-attorney assistant to “let [him] know it’s time to introduce something else or move in a fashion that’s differently [sic]” because he “want[ed] to put together a team” indicates he was seeking more than a clerical assistant. We agree with the state.

¶9 After granting Gordon’s request to represent himself, the trial court explained he could not have “a non-attorney assisting [him] in any kind of formal court proceeding,” but told him: “[I]f you had some type of paralegal that was doing papers for you or making copies or something like that, maybe we could work in that direction, but not anybody that’s representing you, giving you legal advice or anything along those lines.” Therefore, the court did not categorically prohibit him from having an assistant to perform clerical tasks. Rather, the court explained he could not have a non-attorney advising him in the presentation of his case.

¶10 As to Gordon’s argument that he was not requesting a non-attorney to advise him, but rather an assistant to perform clerical tasks, the record establishes otherwise. First, after the trial court said he could not have “someone to sit up here and pass [him] papers and let [him] know where [he is] at in a certain point and give [him] something else to assist [him],” Gordon clarified that he wanted someone not only to give him documents, but to tell him when to introduce evidence or move in a different direction with the presentation of his case. This clarification revealed he sought to have a non-attorney to advise him in the presentation of his case. That is the advice an attorney provides.

¶11 Second, that exchange followed Gordon’s clear assertion that he had a right to “counsel of [his] choice and not a licensed attorney” because he believed “counsel of choice” meant *any* counsel and therefore was not limited to licensed attorneys. It is clear, therefore, that Gordon sought non-attorney counsel and not merely a clerical assistant. The trial court did not abuse its discretion in denying Gordon a non-attorney assistant. *See* Ariz. R. Sup. Ct. 31(b) (no person shall practice law in Arizona unless an active member of the state bar).

¶12 Additionally, the trial court explained to Gordon that if he wished to have someone sit in the gallery and work with him during breaks, he could do so. Further, the court correctly informed Gordon that he could have an investigator assist him, as the state was permitted to have a case officer or investigating officer assist at trial. *See* Ariz. R. Crim. P. 9.3(a)(2)(B)

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(allowing each party the presence of one investigator at counsel table);⁴
see also State v. Williams, 183 Ariz. 368, 380 (1995) (allowing state to have
investigator at counsel table).

Disposition

¶13 For the foregoing reasons, we affirm Gordon's convictions
and sentences.

⁴We cite the current version of Rule 9.3 because no revisions material
to this decision have since occurred.