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The ''officially released'' date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the ''officially released'' date appearing in the opinion. In no event will any such motions be accepted before the ''officially released'' date.

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FLYNN, J., dissenting. I respectfully dissent. First, I disagree with the majority's holding that the defendant's request to represent himself was equivocal. Second, I disagree with the adoption of a per se rule that any request for self-representation is untimely if made after trial begins and that an exceptional circumstances test be applied to such requests. Third, I disagree with the rule adopted by the majority that states that the trial court has unbridled discretion in whether to assess the voluntary, intelligent and knowing exercise of the constitutional right to self-representation when that right is exercised after the start of trial.

At the outset, I emphasize that I do not criticize the competency of the defendant's trial attorney, whose efforts contributed to the acquittal on five of the charges against the defendant.[1]

However, when the sixth amendment ''right to have competent counsel ceases as the result of a sufficient waiver, the right of self-representation begins.'' *State* v. *Wolf*, 237 Conn. 633, 654, 678 A.2d 1369 (1996). The waiver proceedings necessarily must begin with the defendant's request.

I turn first to whether the defendant's request for self-representation was unequivocal and therefore sufficient to warrant a waiver hearing. The sixth amendment to the United States constitution guarantees not just the right to counsel, but also the right to represent oneself. *Faretta* v. *California*, 422 U.S. 806, 832, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975). Although I agree that the assertion of the right must be clear and unequivocal, it is evident from the record that the trial court thought that the defendant adequately enough expressed that choice because the court clearly and unequivocally denied the defendant that right on March 18, 2002.

The colloquy began when the defendant asked the court, ''Excuse me, Your Honor, don't I have the right to finish this case without [defense counsel]?'' To which the court responded: ''In a word, no.'' At the end of this colloquy, which began with the defendant's inquiry about whether he had the right of self-representation, the court stated: ''So, if you are making a request of me that you be allowed to represent yourself or that you be allowed to retain or have new counsel appointed for you, that request is denied.''[2] Two days after its denial, the court stated that it was aware that the defendant was ''angry and disappointed the other day at the turn things took about resting and *my* not permitting you to represent yourself.'' (Emphasis added.)

Furthermore, the state once conceded the clarity of the self-representation request on appeal. When the state objected to the motion for articulation filed by the

defendant's appellate attorney and stated the ''specific facts relied upon'' in its objection, it conceded that ''[t]he defendant . . . orally moved to waive counsel and proceed pro se.'' In part, on the basis of that concession, this court denied the defendant review of the denial of the motion for articulation. Therefore, I am not persuaded by the state's contradictory contention made at a later time in its appellate brief that the request was equivocal.

I next turn to whether the request was untimely.

After acknowledging that the issue is one of first impression, the state, in effect, urges this court to adopt a rule that a request to waive counsel and to represent oneself is always untimely if made after trial commences. The majority agrees with the state that this waiver was untimely. In contrast, I would interpret the reference in Practice Book § 44-3 to the exercise of the right of self-representation ''at any stage of the proceedings, either prior to or following the appointment of counsel,'' to mean just that, unless there is a specific finding that a defendant has been disruptive or seeks to delay for delay's sake. There was no such finding in the record in this case, nor is there anything in the record which would justify such a finding. Although I recognize that the court necessarily must exercise some discretion where the request is made by a person who seeks to delay the trial for the sake of delay or has been tumultuous or disruptive in the courtroom, nothing in the record suggests any of those occurrences.

Our Supreme Court has held that ''[t]he right to appear pro se exists to affirm the dignity and autonomy of the accused and to allow the presentation of what may, at least occasionally, be the accused's best possible defense. . . . It is also consistent with the ideal of due process as an expression of fundamental fairness. To force a lawyer on a defendant can only lead him to believe that the law contrives against him.'' (Internal quotation marks omitted.) *State* v. *Brown*, 256 Conn. 291, 302, 772 A.2d 1107, cert. denied, 534 U.S. 1068, 122 S. Ct. 670, 151 L. Ed. 2d 584 (2001). In *State* v. *Charles*, 56 Conn. App. 722, 726–27, 745 A.2d 842, cert. denied, 252 Conn. 954, 749 A.2d 1203 (2000), this court appreciated the distinction between seeking to substitute one counsel with another and seeking to proceed pro se. In that case, we upheld the trial court's decision to deny substitute counsel midway through trial, but permit the defendant to proceed pro se.

The majority cites *United States* v. *Calabro*, 467 F.2d 973 (2d Cir. 1972), cert. denied sub nom. *Tortorello* v. *United States*, 410 U.S. 926, 93 S. Ct. 1357, 35 L. Ed. 2d 587 (1973), for the proposition that a defendant may not obstruct orderly procedure in the courts. I agree with that necessary conclusion, but note again that nothing in the record shows any unfairness, manipulation or disorder. The defendant's request was not unfair

because, as the state noted in its brief, the state in its case-in-chief had called twenty-eight witnesses over the course of two and one-half months of trial. Whether it was prudent or not, there was nothing unfair about the defendant's request to put on his own case and call one or two witnesses of his own after the state had rested. Nor do I see any record evidence that it was manipulative—a defendant has a right to put on his own case and may wait until the state rests to make that decision. Finally, although a defendant's election to call defense witnesses results in additional trial time, that does not constitute disorder. The sixth amendment guarantees the defendant the right to present a complete defense. See *State* v. *Carpenter*, 275 Conn. 785, 850–51, 882 A.2d 604 (2005). I find it instructive that in *Calabro,* although the court would not permit delay in the proceedings while the defendants attempted to find a new attorney, it did permit all of them to exercise the choice of proceeding with the old attorney or proceeding pro se. In offering that option, the federal court recognized the federal constitutional right a defendant has to represent himself.

In the present case, the defendant first attempted to discharge his attorney prior to trial, but the court denied that motion. The defendant then timely asserted his right of self-representation at the end of the state's evidence when it became clear to him that his trial attorney would not call a witness that the defendant wanted to call in his defense. That request should have triggered a hearing pursuant to Practice Book § 44-3.

However, the court conducted no formal inquiry under Practice Book § 44-3 (3) concerning whether the defendant comprehended the nature of the charges and proceedings, the ranges of permissible punishments and any additional facts essential to a broad understanding of the case necessary to establish a waiver of the right to counsel. That failure apparently arose out of the court's view that the defendant had no right to discharge counsel and proceed pro se at the close of the state's case, as expressed in its response to the defendant: ''In a word, no.''

I agree with the defendant's assertion that Practice Book § 44-3, permitting self-representation at any stage in the proceedings, is pertinent, not an ''exceptional circumstances'' test as applied by the court, which may pertain when a defendant, rather than representing himself, desires a new lawyer to replace his current trial attorney.

I would decline to adopt the per se rule urged by the state and would instead give effect to Practice Book § 44-3. Practice Book § 44-3 provides in relevant part: ''A defendant shall be permitted to waive the right to counsel and shall be permitted to represent himself . . . at any stage of the proceedings, either prior to or following the appointment of counsel. . . .'' See also

State v. *Charles*, supra, 56 Conn. App. 724–25 (defendant permitted to discharge counsel and proceed pro se after two days of trial).

The majority contends that although Practice Book § 44-3 provides that a defendant may represent himself at any stage of the proceedings, it does not provide that he may assert that right at any stage of the proceedings. The judges of the Superior Court, like members of the legislature, are presumed to adopt rules in light of the requirements of our state constitution and to intend a sensible result. Does it make common sense to hold that the right of self-representation ceases once trial begins when a defendant cannot know what might unfold in weeks of trial of the state's case-in-chief? Under the construction of the rule, which the majority urges, the self-representation election must be exercised prior to trial beginning, but not later, unless the trial judge elects to confer that option as a matter of privilege. When construing a rule, as we construe a statute, each phrase and word where possible must be given its meaning. The practical effect of the majority's construction is that the phrase, ''at any stage of the proceeding,'' is to diminish, if not actually eliminate, the meaning and significance of the words. Because article first, § 8, of the constitution of Connecticut specifically provides in relevant part: ''In all criminal prosecutions the accused shall have the right to be heard by himself . . . .'' I cannot agree with this interpretation.

Our Supreme Court has held that ''[b]oth the federal constitution and our state constitution afford a criminal defendant the right to [forgo] the assistance of counsel and to choose instead to represent himself or herself at trial. As a matter of federal constitutional law, the right to self-representation is premised on the structure of the Sixth Amendment, as well as in the English and colonial jurisprudence from which the Amendment emerged. . . . The Connecticut constitution is more explicit, stating directly that [i]n all criminal prosecutions, the accused shall have a right to be heard *by himself* and by counsel . . . . Conn. Const., art. I, § 8. We repeatedly have interpreted this language to establish an independent state constitutional guarantee of the right to self representation.'' (Citations omitted; emphasis in original; internal quotation marks omitted.) *State* v. *Day*, 233 Conn. 813, 820, 661 A.2d 539 (1995).

In *Day*, the court went on to state: ''We harbor no illusions that a defendant's decision to waive counsel and proceed pro se generally will lead to anything other than disastrous consequences. . . . Nonetheless, the values informing our constitutional structure teach that although [a defendant] may conduct his own defense ultimately to his own detriment, his choice must be honored out of that respect for the individual which is the lifeblood of the law.'' (Citation omitted; internal quotation marks omitted.) Id., 821.

Because a fundamental right to self-representation was denied the defendant and no hearing was held to establish whether the waiver of the right to counsel was knowing and voluntary, and no findings were or could be made that there would be resulting inordinate delay, tumult or disorder, I would reverse the defendant's conviction and remand the case for a new trial on the charge of conspiracy to commit assault in the first degree.

[1] The defendant's unpreserved claim is reviewed under *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989). His claim satisfies *Golding* because, contrary to the majority's assertion, a constitutional violation clearly does exist, and *Golding*'s fourth prong does not apply because the denial of the right to self-representation is not subject to harmless error analysis. *McKaskle* v. *Wiggins*, 465 U.S. 168, 177 n.8, 104 S. Ct. 944, 79 L. Ed. 2d 122 (1984). Furthermore, I am not sure how the defendant could have preserved the issue, since he was not permitted to represent himself and the attorney he wanted to supplant took no exception for him.

[2] The facts in this case, contrary to the majority's assertion, are distinguishable from those in *State* v. *Carter*, 200 Conn. 607, 513 A.2d 47 (1986). The defendant in *Carter* wanted a different public defender, and it is settled law that a defendant does not have a right to go through a series of lawyers in the middle of trial. The defendant here, however, did not couch his desire to question a witness in terms of his request for a different attorney. Instead, the defendant clearly requested that he be able to finish his case by himself without defense counsel. The court denied his request. In *Carter*, the trial court never recognized that the defendant was exercising his right to self-representation. In contrast here, the court specifically denied the defendant's request after recognizing the defendant's assertion of the right to self-representation.