

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY GEORGE NOWAKOWSKI,

Defendant-Appellant.

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UNPUBLISHED

February 5, 2009

No. 280420

Allegan Circuit Court

LC No. 07-015071-FH

Before: Hoekstra, P.J., and Fitzgerald and Zahra, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of operating a motor vehicle while under the influence of alcoholic liquor, third offense, MCL 257.625(1)(a), (9)(c), operating a vehicle with a suspended license, second offense, MCL 257.904(3)(b), and unlawful use of a license plate, MCL 257.256. He was sentenced to concurrent terms of 15 to 48 months' imprisonment for the OUIL conviction and 41 days for both the driving with a suspended license and the improper use of a license plate convictions. He appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On November 5, 2006, Officer Theaker of the Michigan State Police was sent to investigate a vehicular accident in Allegan County. When Theaker arrived at the intersection, he found defendant's Ford Ranger pickup truck off the road with defendant sitting in the driver's seat. Defendant initially failed to respond to Theaker. When defendant did respond, his speech was slurred, he had difficulty standing up, and he was belligerent at times. Defendant told Theaker that he had been drinking a lot and all day long. Almost three hours after the accident, a blood draw showed that defendant's blood alcohol level was .26.

At trial, defendant testified that he had been drinking that day, but he claimed that his blood alcohol level was not .26 when he went into the ditch. Rather, defendant claimed that he drank more after going off the road and that is what made his blood alcohol content rise to the .26 level. Theaker testified that he found no alcohol in or around the vehicle when he arrived at the accident scene. Defendant, however, claimed there were many empty bottles in the truck when Theaker arrived.

Defendant represented himself at every stage of the legal proceedings. At each stage, the trial court advised defendant that he had a right to an attorney, including one appointed by the court if he could not afford an attorney. The court further told defendant that there were many

hazards of self-representation and that it was risky to proceed without counsel. But defendant refused to accept a court-appointed attorney unless the attorney agreed to sign a contract pledging financial allegiance to defendant. Defendant had other odd interactions with the court that often digressed from the subject of whether he was voluntarily waiving his right to counsel. Defendant brought up trademark and copyright issues surrounding the use of his signature, and he cited a presidential proclamation from the Reagan presidential years. When asked if he understood the hazards of representing himself, defendant repeatedly told the court that he could not understand all of the hazards because he did not know all of the “160 million codes and statutes” that are on the books. Although the trial court found that defendant waived his right to counsel, the court nevertheless appointed attorney Patrick Burson to appear with defendant during the proceedings and to assist him if he had any questions along the way.

Despite not having the formal training of an attorney and making many remarks that were off-topic, defendant interacted with the court directly on point much of the time, as illustrated by the following exchange:

THE COURT: I want to make clear that you still continue to wish to represent yourself in this matter?

[DEFENDANT]: Unfortunately yes, I have to.

\* \* \*

THE COURT: It’s my understanding that you’re voluntarily deciding to represent yourself. Is that correct?

[DEFENDANT]: That’s correct.

\* \* \*

THE COURT: You’re indicating that you wish to proceed on your own. If you have questions during the course of the trial you may ask Mr. Burson, however, by undertaking the effort to represent yourself you’re undertaking and accepting the hazards of representing yourself. Do you wish to represent yourself in this matter?

[DEFENDANT]: Yes, sir.

THE COURT: Alright. So, I will make a finding that you do understand that you, and voluntarily have made the decision that to represent yourself and you understand the hazards of doing so.

On appeal, defendant’s sole claim is that the trial court erred in allowing defendant to represent himself because his waiver was not knowingly and intelligently made. Specifically, defendant claims that his nonsensical behavior throughout the proceedings showed that his waiver was not knowingly and intelligently made. A trial court’s findings of fact surrounding a defendant’s waiver of his right to counsel are reviewed for clear error. *People v Russell*, 471

Mich 182, 187; 684 NW2d 745 (2004). But when “a ruling involves an interpretation of the law or the application of a constitutional standard to uncontested facts,” review is de novo. *Id.*

The Sixth Amendment, which applies to the states through the Due Process Clause of the Fourteenth Amendment, guarantees defendants facing incarceration the right to counsel at all critical stages of the criminal process. *People v Willing*, 267 Mich App 208, 219; 704 NW2d 472 (2005). Self-representation is also a right guaranteed by federal and state law, but this right is subject to the trial court’s discretion. *Id.*

Case law requires a trial court to determine three factors before granting a defendant’s request to represent himself. *Id.* Those three factors are: “(1) the defendant’s request is unequivocal, (2) the defendant is asserting the right knowingly, intelligently, and voluntarily after being informed of the dangers and disadvantages of self-representation, and (3) the defendant’s self-representation will not disrupt, unduly inconvenience, and burden the court and administration of the court’s business.” *Id.* In addition, the defendant must be advised of the charge, the maximum possible prison sentence for the offense, any mandatory minimum sentence required by law, and the risk involved in self-representation. MCR 6.005(D)(1); *Willing*, *supra* at 220. The defendant must also be offered the opportunity to consult with a retained lawyer or with an appointed lawyer if the defendant is indigent. MCR 6.005(D)(2); *Willing*, *supra* at 220.

Trial courts must substantially comply with both the court rule requirements and the three factors set forth in case law. *People v Adkins (After Remand)*, 452 Mich 702, 706; 551 NW2d 108 (1996), overruled in part on other grounds *People v Williams*, 470 Mich 634; 683 NW2d 597 (2004). “Substantial compliance requires the court to discuss with the defendant the waiver of counsel requirements set forth in both [case law] and the court rule, and to find that the defendant fully understands, recognizes and agrees to abide by these procedures.” *Id.*

The record in this case shows that defendant was advised of the charges against him and the possible sentences at the arraignment. The trial court repeatedly advised defendant of the hazards of self-representation and that he would be held to the same standard as an attorney. The trial court appointed attorney Burson as counsel to advise and consult with defendant at defendant’s discretion.

Defendant repeatedly stated that he knew there were many statutes and hazards that he was unaware of, he knew he did not have the training of an attorney, and he understood that he would have to abide by the court rules and the same standards required of attorneys. Defendant also plainly stated many times that he did not want court-appointed counsel.

Based on multiple exchanges between the trial court and defendant, including those where the court advised defendant of the hazards in self-representation, and where defendant acknowledged that there were many risks, and yet defendant consistently and adamantly refused counsel, we find that the trial court substantially complied with the requirements of both MCR 6.005(D) and the three factors required by case law. Accordingly, defendant’s waiver of counsel was valid and he was properly allowed to represent himself.

In addition, we note that during trial defendant presented a coherent and rational defense. He argued that his .26 blood alcohol level was the result of alcohol he consumed after the

accident. Defendant attempted to develop this defense through his own testimony and through the testimony of the prosecution's witnesses, including the expert toxicologist. Thus, defendant's actions at trial do not show that his waiver of the right to counsel could not have been voluntarily and intelligently made.

Affirmed.

/s/ Joel P. Hoekstra  
/s/ E. Thomas Fitzgerald  
/s/ Brian K. Zahra