

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

EDWIN DEWAYNE BROOKS,

Defendant-Appellant.

UNPUBLISHED
September 20, 2011

No. 293840
Berrien Circuit Court
LC No. 2008-411704-FH;
2008-411724-FH

Before: GLEICHER, P.J., AND HOEKSTRA AND STEPHENS, JJ.

PER CURIAM.

Defendant appeals as of right his convictions following a jury trial of first-degree home invasion, MCL 750.110a(2); second-degree home invasion, MCL 750.110a(3); receiving and concealing stolen firearms, MCL 750.535b; felon in possession of a firearm, MCL 750.224f; and receiving and concealing a stolen motor-vehicle, MCL 750.535(7). We affirm.

Defendant represented himself at trial, with the assistance of counsel. Defendant argues that he inadequately waived his Sixth Amendment right to counsel. We disagree. In *People v Williams*, 470 Mich 634, 640-641; 683 NW2d 597 (2004), when addressing an alleged waiver of a defendant's Sixth Amendment rights, our Supreme Court adopted the standard of review that applies to waivers of Fifth Amendment rights, as set forth in *People v Daoud*, 462 Mich 621, 629-630; 614 NW2d 152 (2000). The Court in *Daoud* stated

“Although engaging in a de novo review of the entire record ..., this Court does not disturb a trial court's factual findings regarding a knowing and intelligent waiver of [Sixth Amendment rights “unless that ruling is found to be clearly erroneous.”] [*People v. Burrell*, 417 Mich. 439, 448, 339 N.W.2d 403 (1983).] Credibility is crucial in determining a defendant's level of comprehension, and the trial judge is in the best position to make this assessment.”

Although we review for clear error the trial court's factual findings regarding a defendant's knowing and intelligent waiver of [Sixth Amendment] rights, ... the meaning of “knowing and intelligent” is a question of law. We review questions of law de novo. [*People v Daoud*, 462 Mich. 621, 629-630; 614 NW2d 152 (2000), quoting *People v Cheatham*, 453 Mich. 1, 30; 551 NW2d 355 (1996).]

The Sixth Amendment, the Michigan Constitution, and MCL 763.1 each guarantee a criminal defendant the assistance of counsel. US Const, Am VI; Const 1963, art 1, § 13; *Gideon v Wainwright*, 372 US 335, 339; 83 S Ct 792; 9 L Ed 2d 799 (1963). Indigent defendants are entitled to have counsel appointed for them. *Gideon*, 372 US at 344. Additionally, defendants have a right to self-representation. Const 1963, art 1, § 13; *Faretta v California*, 422 US 806, 819; 95 S Ct 2525; 45 L Ed 2d 562 (1975). Defendants cannot be compelled to accept an attorney against their will. *Id.*

Before defendants can waive their right to counsel and represent themselves, three requirements must be met: (1) the defendant must unequivocally request to represent himself, (2) the defendant must assert his right “knowingly, intelligently, and voluntarily,” and (3) the trial court must determine that allowing the defendant to represent himself will not unduly disrupt the court proceedings. *People v Anderson*, 398 Mich 361, 366-368; 247 NW2d 857 (1976). Additionally, MCR 6.005(D) requires a trial court to warn a defendant about the prison sentence he faces and offer the indigent defendant the “opportunity to consult with an appointed lawyer.” Trial courts must substantially comply with the requirements of *Anderson*, 369 Mich at 366-368, and MCR 6.005(D). *People v Adkins (After Remand)*, 452 Mich 702, 726; 551 NW2d 108 (1996).

Defendant argues that his waiver of his right to counsel was equivocal and involuntary. *Anderson*, 398 Mich at 366-368, requires waiver to be unequivocal to “abort frivolous appeals by defendants who wish to upset adverse verdicts after trials at which they had been represented by counsel.” Defendants must explicitly choose between the right to self-representation and the right to counsel. *People v Dennany*, 445 Mich 412, 444; 519 NW2d 128 (1994).

In making his requests, defendant stated that he desired to proceed in propria persona because the trial court denied his requests for substitute counsel. As an indigent defendant, defendant was not entitled to choose his appointed counsel. *People v Ginther*, 390 Mich 436, 441; 212 NW2d 922 (1973). He needed to show good cause for the appointment of substitute counsel. *Id.* Defendant did not appeal the trial court’s denial of his request for substitute counsel, and we do not review that decision. However, we note that the record supports the trial judge’s decision to deny appointment of new counsel.

Defendant affirmatively requested to represent himself at least five times. On the first day of trial, after much discussion wherein the trial court reiterated the dangers of self-representation, emphasized defendant’s lack of skill, and stated that self-representation was unwise, the trial court asked defendant, “[s]o you want to represent yourself, Mr.—”: defendant replied, “[y]es, sir.” Defendant’s answer was unequivocal, and came following the extensive information about the dangers of self-representation, and possible prison sentences. Thus, the decision was knowingly, voluntarily and intelligently made, and the trial court noted defendant’s lack of disrupting or inconveniencing the court. On this record, we conclude that the trial court substantially complied with the requirements of *Anderson*, 398 Mich at 366-368, and MCR 6.005 (D). *Adkins*, 452 Mich at 726. The trial court did not err in granting defendant’s request to represent himself.

Defendant, however, argues that by conditioning his desire to proceed in propria persona on the trial court’s denial of his requests, his waiver was equivocal and involuntary. In *Adkins*,

452 Mich at 732, the Supreme Court held that a defendant's initial hesitation about representing himself does not necessarily render a subsequent unambiguous waiver equivocal. The trial court and the defendant had the following exchange:

THE COURT: You still wish to represent yourself?

THE DEFENDANT: Yes. Your Honor, you recall when I dismissed the attorney, Mr. Craig Daily, I sent a letter to the Court besides the letter I sent to Craig Daily explaining to the Court why I was dismissing Craig Daily. *It's not that I don't want an attorney to represent me, it's just that Craig Daily never spoke to me. I had a trial date and never had a chance to talk to my attorney. I couldn't understand it, it's very unprofessional.* [*Id.* at 732 (emphasis added).]

The trial court then asked defendant to state unequivocally whether he wanted to represent himself. *Id.* The defendant said he wished to represent himself. *Id.* at 732-733. There was no error in the trial court's decision not to allow the defendant to represent himself. *Id.* at 736. Similarly, while defendant herein initially expressed a desire for substitute counsel, he eventually stated unambiguously that he wished to proceed in propria persona.

We additionally reject defendant's argument that his decision to represent himself was involuntary because the trial court forced him to choose between an attorney who he did not want and self-representation. Defendant cites *Russell*, 471 Mich 182, to support his argument, but the case is easily distinguished. In *Russell*, 471 Mich at 192, the defendant never opted to proceed without counsel. In contrast, defendant, unprompted by the trial court, requested to represent himself several times and chose to represent himself.

Finally, defendant argues that his reliance on assistance from appointed counsel at trial shows that his decision to represent himself was involuntary. During the trial, the trial court had the same concern and twice asked defendant whether he wished to continue representing himself. Each time, defendant replied that he wanted to continue representing himself. Defendant voluntarily waived his right to counsel, and we will not grant him relief from his decision.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Joel P. Hoekstra
/s/ Cynthia Diane Stephens