

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

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PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellee,

UNPUBLISHED  
June 23, 2011

v

JERRY BERNARD MATTHEWS, JR.,  
  
Defendant-Appellant.

No. 296889  
Cass Circuit Court  
LC No. 09-010230-FH

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Before: TALBOT, P.J., and GLEICHER and M. J. KELLY, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction of failure to pay child support, MCL 750.165, for which the trial court sentenced him as a third habitual offender, MCL 769.11, to serve 60 months' probation, with 240 days in jail, and to pay child support and related expenses. Because we conclude that there were no errors warranting relief, we affirm.

The prosecution's theory of the case was that defendant was under a court order to pay child support to his daughter's mother, and had notice of the order, but failed to make more than \$16,000 in payments. Defendant began the proceedings with appointed counsel, but at the onset of trial asked to represent himself. The trial court granted the request. On appeal, defendant's sole issue is that the trial court should not have let him represent himself. This error, he maintains, warrants a new trial.

This Court reviews a trial court's decision affecting a defendant's right to counsel of choice for an abuse of discretion. *People v Akins*, 259 Mich App 545, 556; 675 NW2d 863 (2003). This Court reviews the factual findings underlying the trial court's decision for clear error, but reviews de novo the proper interpretation or application of the constitutional standard to the facts. *People v Russell*, 471 Mich 182, 187; 684 NW2d 745 (2004).

The Sixth Amendment of the United States Constitution guarantees that “[i]n all criminal prosecutions, the accused shall enjoy the right to . . . the Assistance of counsel for his defense.”<sup>1</sup> The United States Supreme Court has held that “an element of this right is the right of a defendant who does not require appointed counsel to choose who will represent him.” *United States v Gonzalez-Lopez*, 548 US 140, 144; 126 S Ct 2557; 165 L Ed 2d 409 (2006). And this right includes the right to represent oneself: “[A] defendant ‘has a constitutional right to proceed without counsel when he voluntarily and intelligently *elects* to do so.’” *Russell*, 471 Mich at 188, adding emphasis and quoting *Faretta v California*, 422 US 806, 807; 95 S Ct 2525; 45 L Ed 2d 562 (1975). Indeed, courts may not lightly deny a defendant’s request to represent himself, because forcing representation on an unwilling defendant is contrary to the basic right to defend oneself. See *Id.* at 188 n 12.

Upon a defendant’s initial request to proceed without the assistance of an attorney, the trial court must determine whether the request is unequivocal, and whether the defendant is asserting that right knowingly, intelligently, and voluntarily, by way of “a colloquy advising the defendant of the dangers and disadvantages of self-representation,” and must further determine whether the defendant’s self-representation will disrupt, unduly inconvenience, or otherwise “burden the court and the administration of the court’s business.” *Russell*, 471 Mich at 190 (noting that the proper judicial inquest necessary to effectuate a valid waiver is that stated in *People v Anderson*, 398 Mich 361; 247 NW2d 857 (1976)). Under MCR 6.005(D), a trial court must also advise the defendant of the charge, the maximum sentence and any mandatory minimum sentence, along with the hazards inherent in self-representation, and to offer the defendant the opportunity to consult with retained or appointed counsel. Nevertheless, courts do not follow a “litany approach” to ascertaining whether a waiver is valid, rather the inquiry required under *Anderson* and MCR 6.005(D) “are merely vehicles to ensure that the defendant knowingly and intelligently waived counsel with eyes open.” *People v Adkins (After Remand)*, 452 Mich 702, 725; 551 NW2d 108 (1996). Before granting a defendant’s request to represent himself, trial courts must substantially comply with the requirements set forth in *Anderson* and MCR 6.005(D). *Russell*, 471 Mich at 191-192, citing *Adkins*, 452 Mich at 726-727.

In this case, the trial court impressed upon defendant the importance of having a trained lawyer represent him at trial. The trial court further elicited repeated and unequivocal statements from defendant that he wanted to represent himself and understood the danger and disadvantages of doing so. On this record, it is clear that the trial court substantially complied with the requirements stated in *Anderson* and with a portion of MCR 6.005(D).

Notwithstanding that, defendant complains that the trial court did not precisely follow a script, or have defendant sign a written waiver that is often used to establish compliance with MCR 6.005(D). However, trial courts are not required to follow a formalistic approach to establishing a valid waiver of counsel; rather, the inquiry is whether the trial court properly

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<sup>1</sup> See also Const 1963, art 1, § 20.

found that the defendant made a knowing, voluntary, and intelligent waiver. See *Russell*, 471 Mich at 190-191.

Defendant also protests that the trial court did not say anything about standby counsel. But defendant cites no authority for the proposition that the trial court had to offer or advise him about the possibility of stand-by counsel. In fact, “there is no substantive right to hybrid representation and . . . the trial court is under no obligation to grant a request for standby counsel.” *People v Hicks*, 259 Mich App 518, 527; 675 NW2d 599 (2003).

Defendant makes issue of the trial court’s not having asked defendant about his educational background, but cites no authority for the proposition that such inquiry is required. No doubt that line of questioning is within a court’s discretion, where the court is concerned that a defendant lacks the educational capacity for self representation. But apparently the court in this instance felt no such concern, and the transcripts do not suggest that defendant was of less than average intelligence or otherwise lacking in basic language or reasoning skills.

Defendant asserts that the trial court did not ask him about any earlier experience at self representation, but the court did, in fact, elicit from defendant on the record that this was his first attempt at self-representation.

Defendant points out that the trial court did not advise him of the maximum sentence he faced, as required under MCR 6.005(D). Although stated in mandatory terms, a trial court’s failure to advise a defendant about the nature of the charges and possible sentence in compliance with MCR 6.005(D) does not warrant relief, if the defendant’s decision to waive counsel is otherwise valid. See *People v Dennany*, 445 Mich 412, 439 (opinion by GRIFFIN, J.), 461-464 (opinion by BOYLE, J.); 519 NW2d 128 (1994). Here, defendant’s felony warrant specified the charge of failing to pay child support, and listed the maximum sentence as incarceration for four years or a fine of \$2,000, or both. The warrant additionally included a habitual offender notice, and set forth the maximum penalty for his crime in connection with fourth habitual offenders, MCL 769.12.<sup>2</sup> This information was mirrored in the felony information that followed. Immediately after the preliminary examination, defendant was arraigned, and defense counsel waived a formal reading of charges, and acknowledged receipt of the information. In light of this record, and in light of defendant’s unequivocal and repeated request to represent himself even after the trial court expressly warned him of the danger of proceeding without a lawyer, any error in the trial court’s failure to repeat this information in the waiver colloquy was harmless.

For these reasons, we conclude that the trial court did not clearly err in concluding that defendant offered an unequivocal, voluntary, knowing, and intelligent waiver of his right to counsel, and did not abuse its discretion in granting defendant’s request to represent himself.

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<sup>2</sup> Defendant’s habitual offender status was changed to habitual third at sentencing.

Defendant framed his question presented for this appeal to include the assertion that the trial court erred also in allowing him to act as his own attorney at sentencing, but defendant provides no separate argument concerning sentencing. In any event, when sentencing took place, the trial court offered to appoint a lawyer for that purpose, but defendant again unequivocally declined. Further, defendant offers no argument concerning how the outcome below, at trial or sentencing, might have been different had he been forced to rely on appointed counsel.

For these reasons, we must reject this claim of error.

There were no errors warranting relief.

Affirmed.

/s/ Michael J. Talbot  
/s/ Elizabeth L. Gleicher  
/s/ Michael J. Kelly