

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
September 27, 2011

v

JOSEPH ARTHUR GRAHAM-KING,
Defendant-Appellant.

No. 298267
Kalamazoo Circuit Court
LC No. 2009-001084-FH

Before: O'CONNELL, P.J., and METER and BECKERING, JJ.

PER CURIAM.

Defendant was found guilty by a jury of second-degree home invasion, MCL 750.110a(3), and larceny in a building, MCL 750.360. The trial court sentenced him as a fourth habitual offender, MCL 769.12, to concurrent prison terms of 32 to 300 months and 29 to 180 months, respectively. Defendant appeals as of right. We affirm.

Defendant contends that the trial court erred by not addressing or considering "his timely request to represent himself," not advising him that he had the right to represent himself, and requiring that a motion be filed rather than entertaining such motion at the time defendant raised the issue. We disagree.

On February 1, 2010, approximately seven weeks before trial, the trial court heard and denied defense counsel's motion to withdraw as counsel, as it found no good cause for withdrawal. After the trial court delivered its ruling from the bench, the following exchange took place:

Defendant. Can I ask you something else. Could I just not have a lawyer and I just represent myself?

Court. Well, we can deal with that later. That motion is not before me right now, but talk to your attorney and he can outline the good and the bad with that and the next—

Defendant. All right.

Court. If a motion needs to be filed then he can help you with that and I'll address it later.

Defendant did not file a motion to represent himself or otherwise raise the issue of self-representation before the trial court at any time following the above exchange. On March 24, 2010, the first day of trial, before the potential jurors entered the courtroom, the trial court inquired of counsel whether there was “anything we need to address at this time before jury selection,” to which defense counsel responded in the negative. Trial began and defendant was represented by counsel. Defendant sat quietly when counsel introduced himself as representing defendant and conferred with counsel at times during the case.

“In relation to a defendant’s waiver of the right to counsel and invocation of the right to self-representation, this Court reviews for clear error a trial court’s findings of fact and de novo the trial court’s application of legal and constitutional standards.” *People v Brooks*, __ Mich App __; __ NW2d __ (Issued August 16, 2011, Docket No. 298299), slip op p 6.

Although a criminal defendant has a right to represent himself, the right is not absolute. *People v Adkins*, 452 Mich 702, 721 n 16; 551 NW2d 108 (1996), overruled in part on other grounds *People v Williams*, 470 Mich 634, 641 n 7; 683 NW2d 597 (2004). “Proper compliance with the waiver of counsel procedures . . . is a necessary antecedent to a judicial grant of the right to proceed in propria persona. Proper compliance requires that the court engage, on the record, in a methodical assessment of the wisdom of self-representation by the defendant.” *Id.* at 720-721; see also *People v Hicks*, 259 Mich App 518, 523; 675 NW2d 599 (2003).

Before a trial court grants a request for self-representation, the trial court must find that: (1) the request is unequivocal; (2) the assertion of the right of self-representation is knowing, intelligent, and voluntary, with the defendant having been made aware by the trial court of the dangers and disadvantages of self-representation; and (3) the defendant will not unduly disrupt the court while acting as his own counsel. *People v Ahumada*, 222 Mich App 612, 614-615; 564 NW2d 188 (1997), citing *Adkins*, 452 Mich at 722. Additionally, MCR 6.005 imposes a duty on the trial court to inform the defendant of the charge and penalty he faces, advise him of the risks of self-representation, and offer him the opportunity to consult with retained or appointed counsel. See *Ahumada*, 222 Mich App at 615.

Thus, to represent himself, the accused must knowingly and intelligently forgo traditional benefits associated with the right of counsel. Courts indulge every reasonable presumption against the waiver of fundamental constitutional rights, such as the right to counsel. *Johnson v Zerbst*, 304 US 458, 464; 58 S Ct 1019; 82 L Ed 1461 (1938), overruled in part on other grounds by *Edwards v Arizona*, 451 US 477; 68 L Ed 2d 378; 101 S Ct 1880 (1981).

We find that the record does not establish that defendant made an unequivocal request to represent himself. In fact, given the exchange between defendant and the trial court, it is unclear whether defendant was actually seeking the court’s permission to allow him to represent himself, or rather, merely inquiring about whether he had such a right. It is apparent, however, that the trial court did not believe the motion was actually before it at that time, and that before entertaining such motion, the trial court first required defendant to confer with counsel so that he would be informed and advised before deciding whether to represent himself, which is in keeping with MCR 6.005(D)(2). The trial court also made it clear that if defendant did choose to file a motion to represent himself, the court would be willing to address it. Defendant never

raised the issue again. Under the circumstances presented, we find that defendant did not unequivocally request, nor was he deprived of, his right to self-representation.

Affirmed.

/s/ Peter D. O'Connell

/s/ Patrick M. Meter

/s/ Jane M. Beckering