**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A19-0171**

State of Minnesota,
Respondent,

vs.

Antonio Lareco Jones,
Appellant.

**Filed February 10, 2020**
**Affirmed**
**Bratvold, Judge**

Hennepin County District Court
File No. 27-CR-18-17387

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Brittany D. Lawonn, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Bratvold, Judge; and Worke, Judge.

**U N P U B L I S H E D  O P I N I O N**

**BRATVOLD**, Judge

In this direct appeal from a judgment of conviction for third-degree burglary, appellant argues that he is entitled to a new trial because the district court did not obtain a

valid waiver of his right to counsel before granting his motion to represent himself at a jury trial. We affirm.

## FACTS

On July 9, 2018, at around 4:45 p.m., a witness saw a man "looking around" as he walked across a parking lot in front of her Minnetonka office building. The man twice tried to open the locked door to the witness's office. The witness called 911 and watched the man walk into a nearby law office, which she reported to 911.

Sergeant Ringate responded to the 911 call, approached the law office, and noticed a sign "plastered right next to the [office] door" stating: "Please Ring Doorbell for Assistance." Ringate opened the door and saw a man fitting the witness's description "crouching down next to a shelf" and holding a bag. Ringate stopped the man, whom he later identified as appellant Antonio Lareco Jones. A law firm employee told Ringate that Jones did not work there. Jones handed the bag, containing two legal books, to the employee.

Two days later, the state charged Jones with one count of third-degree burglary under Minn. Stat. § 609.582, subd. 3 (2016). At his first court appearance later in July, the district court appointed a public defender to represent Jones. At an August 2018 omnibus hearing, Jones rejected a plea offer from the state and demanded a speedy trial. The court set a trial for October 2018, Jones agreed to waive his speedy-trial rights, and his attorney filed a "demand for preservation and disclosure of evidence and motion for suppression and other relief."

Jones petitioned to proceed pro se, which the district court accepted at a hearing. Jones represented himself at a three-day jury trial. Four witnesses testified for the state, including the law firm employee, the witness who called 911, Ringate (the first responding officer), and a second responding officer. After the state rested, Jones presented no evidence and did not testify. The jury found Jones guilty of third-degree burglary.

The district court committed Jones to the commissioner of corrections for 15 months, but stayed execution of the sentence for three years on the condition that Jones serve 365 days in jail with 122 days' credit for time served. Jones appeals.

## D E C I S I O N

We begin our discussion by reviewing the facts relevant to the issue on appeal—whether Jones validly waived his right to counsel through his petition and petition hearing. We then analyze Jones's argument.

### A. Relevant facts

Jones filed his written petition to proceed pro se (petition) on September 18, 2018. In the section addressing whether he understood the charge against him, Jones wrote "does not understand." He also wrote "don't," i.e., "I (don't) understand that I have been charged with the crime(s) of Burg[lary] 3rd alleged to have occurred on or about July 9, 2018." On the next line, he agreed that he had discussed his "desire to represent [him]self with an attorney" and indicated the attorney's name. The petition also stated that Jones was a patient in a "mental hospital" in 2017, had received "jail check-ups" for a mental or nervous condition, and had not recently taken pills or medicine. The petition stated Jones understood that, if the court grants his petition, he "will be responsible for preparing [his]

case" and "will be bound by the same rules as an attorney." The petition also stated that the maximum penalty the court may impose for the alleged crime is "imprisonment for 5 years and/or a fine of $10k."

The next day, the district court heard Jones's petition. Jones appeared with a supervising attorney from the public defender's office, whose name was indicated on Jones's written petition. The supervising attorney stated that she "met with [Jones] yesterday in office and [they] went over a petition to proceed pro se." Jones agreed and said, "I want to represent myself."

The district court asked Jones whether the handwriting on the petition was his. Jones's attorney stated that she wrote the comments on the petition during their meeting the previous day. The district court then questioned Jones whether he understood the charge against him:

> THE COURT: Okay. So you do not understand the charges against you?
>
> THE DEFENDANT: I do not understand the charges. You cannot charge me with third-degree burglary because I was never violated with trespass. That's what third-degree burglary is in Minnesota. So [my attorney] can't comprehend the Statute 609. I don't understand why—
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> THE COURT: It sounds to me, Mr. Jones, like you understand the charges but—
>
> THE DEFENDANT: No, I do not understand.
>
> THE COURT: —you don't agree with them?
>
> THE DEFENDANT: I don't understand the charge at all.
>
> THE COURT: Okay.

> THE DEFENDANT: So that's why I want to represent myself. Because the attorney keeps—to figure out when someone gets charged with third-degree burglary that means they violated trespass. And that man is not owning that building. That's for a private owner. He says he's a private owner. He's not a private owner.
>
> THE COURT: That isn't my understanding of the law, Mr. Jones, so—
>
> THE DEFENDANT: I don't want to argue, ma'am. I just want to represent myself and that's all.
>
> THE COURT: I'm just pointing out that you don't seem to understand the law right.
>
> THE DEFENDANT: I understand what you're saying, but I don't want what your (inaudible) is saying.

The district court then asked Jones if he had "enough time to talk" with an attorney about his decision to represent himself. Jones responded, "Yes, I did."

The district court stated, "it's my responsibility to make sure that your rights are protected," then asked Jones about his treatment at a mental health facility. Jones responded, in part, "It's bipolar disorder. I have anger problems. Any man with a (inaudible) would have anger problems."

The district court next asked Jones whether he had "been through a trial before." Jones stated that, for a prior aggravated-robbery conviction, he "took a Norgaard plea deal" and "thought that [he] was going to maintain his innocence." The district court asked Jones if he had a jury trial for his aggravated-robbery conviction. Jones stated, "I don't even remember." After more discussion, Jones said he believed that it was a "judge trial" because "[t]he judge sen[t] [him] to prison for nine months."

During the hearing, the district court asked Jones to "stop and listen," to not "talk over people," and to not "act out in front of th[e] jury, as you are kind of doing with me here today."

The district court also discussed the consequences of proceeding pro se:

> THE COURT: [I]f you're not managing yourself here, my question is can you manage yourself with witnesses? Can you manage yourself through a three- or four-day trial where you have—do you understand how you might go about picking a jury? Do you understand the rules of evidence? Do you understand the rules of court? Do you understand—do you have the ability to bring in any witnesses you might want to have? Do you think you understand the strategy behind testifying or not testifying on your own behalf? Those are the things that would come in play in a trial. So as—
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> THE DEFENDANT: I understand the trial procedures.
>
> THE COURT: Okay. Mr. Jones, just hang on. As [the supervising attorney] went over with you in this petition, you will not have the services of an investigator or the staff that the public defenders would have. Certain things can be made available to you in the jail, and it should be noted you are in custody. So you can have access to law books, and we have some procedure for that, and I'm happy to do that for you. I just want to make sure that you have thought through what it really means to represent yourself.
>
> THE DEFENDANT: Oh, yes, I did. I have faith and 100 percent confidence.

The district court then stated it did not recommend that Jones proceed without a lawyer, "[b]ut if that's what you're committed to do, and you're telling me today that's what you want to do, then I will grant that request." The district court again asked Jones if he was sure he wanted to represent himself, to which Jones replied, "Yes, I would love to represent

myself." The district court did not expressly find that Jones waived his right to counsel, but accepted Jones's petition to proceed pro se.

**B. Analysis**

"Criminal defendants have a constitutional right to an attorney and a corollary constitutional right to choose to represent themselves in their own trial." *State v. Worthy*, 583 N.W.2d 270, 279 (Minn. 1998); *see generally* U.S. Const. amend. VI; Minn. Const. art. I, § 6. Accordingly, a defendant can waive his right to an attorney. *Worthy*, 583 N.W.2d at 279. A defendant can relinquish his right to an attorney in three ways: "(1) waiver, (2) waiver by conduct, and (3) forfeiture." *State v. Jones*, 772 N.W.2d 496, 504 (Minn. 2009).

When a defendant waives his constitutional right to counsel, his waiver must be "knowing, intelligent, and voluntary." *Id.* "Whether a waiver of a constitutional right was knowing, intelligent, and voluntary depends on the facts and circumstances of the case, including the background, experience, and conduct of the accused." *State v. Rhoads*, 813 N.W.2d 880, 884 (Minn. 2012). We review a district court's finding of a valid waiver for clear error. *Jones*, 772 N.W.2d at 504. But when the facts are undisputed, "the question of whether a waiver-of-counsel was knowing and intelligent is a constitutional one that is reviewed de novo." *Rhoads*, 813 N.W.2d at 885. The denial of the right to counsel "is a structural error," which precludes harmless-error analysis and requires reversal. *Bonga v. State*, 765 N.W.2d 639, 643 (Minn. 2009).

Minnesota Statutes and the Minnesota Rules of Criminal Procedure impose requirements on district courts for accepting a defendant's waiver of counsel. "[T]he

waiver [of the right to counsel] shall in all instances be made in writing, signed by the defendant, except that in such situation if the defendant refuses to sign the written waiver, then the court shall make a record evidencing such refusal of counsel." Minn. Stat. § 611.19 (2018). Before accepting a defendant's waiver of counsel in a felony case, a district court must engage in a colloquy advising the defendant of the following:

> (a) nature of the charges;
> (b) all offenses included within the charges;
> (c) range of allowable punishments;
> (d) there may be defenses;
> (e) mitigating circumstances may exist; and
> (f) all other facts essential to a broad understanding of the consequences of the waiver of the right to counsel, including the advantages and disadvantages of the decision to waive counsel.

Minn. R. Crim. P. 5.04, subd. 1(4); *see also Jones*, 772 N.W.2d at 504 (applying these requirements in a felony case).[1]

In his brief to this court, Jones acknowledges he filed a written petition and orally requested "to discharge the public defender and represent himself." But Jones nonetheless argues that he did not validly waive his right to counsel because the district court "at no point" explained the nature of his charge, the offenses included within the charge, the range

[1] The rules of criminal procedure provide a standard form, titled "Petition to Proceed as Pro Se Counsel." *See* Minn. R. Crim. P. Form 11. The comment to rule 5 provides, "In practice, a Petition to Proceed as Pro Se Counsel may fulfill the dual requirements of providing the defendant with the information necessary to make a voluntary and intelligent waiver of the right to counsel as well as providing a written waiver." Minn. R. Crim. P. 5 cmt. Jones signed and completed this standard form and submitted it as his petition.

of allowable punishments, available defenses, or mitigating circumstances.[2] The state agrees that the district court did not conduct the waiver colloquy required under Minn. R. Crim. P. 5.04, subd. 1(4), but argues that Jones validly waived his right to counsel based on the facts and circumstances of his case.

Jones argues that the petition did not "advise him of the *nature*" of the third-degree burglary charge. But the record reflects that the district court discussed the nature of the charge when it heard Jones's petition. Jones stated he understood that he was charged with "third-degree burglary" and that "trespass" is a necessary element of burglary.[3] The district court determined that it "sounds . . . like [Jones] understand[s] the charges." It is true, however, that the district court did not review Jones's possible punishments, defenses, or mitigating circumstances at the hearing. The petition signed by Jones stated that

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[2] Jones also argues that his petition states that he received treatment in a "mental hospital" in 2017 and that "the district court did not inquire about the reason for the hospitalization" or whether it affected his "ability to appreciate the consequence of his decision to represent himself." Jones told the district court that he had "bipolar disorder" and "anger problems" and had not recently taken medication. Although the district court certainly could have inquired, for example, about Jones's mental-health "jail check-ups" and whether medication had been prescribed, Jones does not claim on appeal that further inquiry would have yielded different or additional information. And Jones has not claimed that he is or was legally incompetent, nor does he argue that his mental health affected his competency to waive counsel. *See Godinez v. Moran*, 509 U.S. 389, 401-02, 113 S. Ct. 2680, 2688 (1993) (concluding that the standard for determining whether a criminal defendant may validly waive counsel is the same standard of competence that is necessary to stand trial); *see generally* Minn. R. Crim. P. 20.01.

[3] We observe that although trespass is an element of third-degree burglary, Minnesota caselaw holds that trespass is not sufficient to sustain a burglary conviction because "the state must prove that a defendant intended to commit some independent crime other than trespass." *State v. Colvin*, 645 N.W.2d 449, 452 (Minn. 2002); Minn. Stat. § 609.582 (2016).

third-degree burglary carries a maximum sentence of five years and a maximum fine of $10,000. By failing to inquire about the range of allowable punishments at the hearing, the district court did not follow required procedures. *See* Minn. R. Crim. P. 5.04.

But a district court's failure to follow required procedures does not invalidate a waiver of right to counsel if the "particular facts and circumstances surrounding th[e] case" show that the waiver was valid. *Rhoads*, 813 N.W.2d at 889.[4] Facts and circumstances relevant to determining a valid waiver include a defendant's failure to provide good cause for discharging counsel, a defendant consulting with an attorney before discharging counsel, and a defendant's familiarity with the criminal justice system. *See Worthy*, 583 N.W.2d at 276-77. Additionally, a defendant's "numerous chances to avail herself of representation" is a relevant circumstance supporting a valid waiver. *See Finne v. State*, 648 N.W.2d 732, 736 (Minn. App. 2002), *review denied* (Minn. Oct. 29, 2002).

We conclude that facts and circumstances establish the validity of Jones's waiver of counsel for four reasons. First, Jones does not argue on appeal that he had "good cause" to discharge his attorney, and the record is unclear about his reasons for discharging his attorney.

Second, Jones consulted with the supervising attorney before he asked to discharge his public defender, as stated on the record at the petition hearing. Jones appeared *with* the

[4] Jones appears to argue that his waiver was not valid because "the district court did not find that [he] had made a knowing, intelligent, and voluntary waiver of his right to counsel." But Jones acknowledges that Minnesota caselaw holds that "a valid waiver of the right to counsel may be inferred from the particular facts and circumstances of the case." The district court implicitly found that Jones's waiver of counsel was valid when it accepted Jones's waiver and allowed him to represent himself.

supervising attorney, who stated that she had gone over the petition with Jones the day before. Jones agreed that he had enough time to discuss his decision with an attorney. Minnesota caselaw has held that a district court may infer that counsel discussed the contents of a petition to proceed pro se, including the nature of the charges, the consequences of proceeding without counsel, and possible punishments or mitigating circumstances. *See Worthy*, 583 N.W.2d at 276. All of these important topics are in Jones's signed written petition.

Third, Jones is familiar with the criminal justice system. Jones had prior convictions for first-degree aggravated robbery, theft, and domestic assault. Jones argues that the district court failed to ask more questions when he said he could not remember whether he had had a jury trial for his aggravated-robbery conviction. But Jones specifically stated that he "took a Norgaard plea deal" so he could "maintain [his] innocence," which shows his familiarity with the criminal justice system. Although Jones also stated that he had a "judge trial" because "[t]he judge sen[t] [him] to prison for nine months," the record reflects that Jones understood he pleaded guilty to his prior robbery offense.

Fourth, Jones had opportunities to avail himself of legal representation leading up to his decision to represent himself. *See Finne*, 648 N.W.2d at 736. The public defender's office represented Jones for about two months, which included plea negotiations, an omnibus hearing, and his petition hearing. Jones agreed on the record that he had "enough time" to go over his petition with counsel.

With an attorney at his side at the petition hearing, Jones orally stated he wanted to discharge his attorney and represent himself. Jones told the district court that he had

prepared and signed his written petition with an attorney's help. Although the district court did not conduct a complete waiver colloquy, the district court determined whether Jones understood the pending charge, conveyed the disadvantages of self-representation, and even recommended against discharging legal counsel. Still, Jones repeatedly stated that he wanted to discharge counsel and represent himself.

Jones argues that the facts and circumstances of his case "are readily distinguishable from other cases in which a valid waiver was inferred despite the district court's failure to follow the [rule] requirements." Jones discusses *State v. Krejci*, where appellant wrote letters to the district court, stating that he did not want to be represented by appointed counsel. 458 N.W.2d 407, 412 (Minn. 1990). Appellant also stated in open court that he understood he would have to proceed pro se if he could not obtain private counsel. *Id.* Although the district court did not conduct a formal waiver colloquy, the circumstances showed that counsel and the district court had explained to appellant his defense options, his charge, and possible punishments. *Id.* at 413. The supreme court concluded that the defendant's waiver was valid because it was "clear from the record that [appellant] understood the consequences of proceeding pro se." *Id.*

Jones contends that, unlike the district court in *Krejci*, the district court did not elicit Jones's understanding of the charge, the possible punishments, and the options available to him as a defendant. And Jones stated at his petition hearing that he did not understand the charge against him "at all." As discussed above, we are not persuaded. Overall, there are more similarities to the circumstances in *Krejci* than dissimilarities.

Jones also argues that his case "closely resembles" *State v. Garibaldi*, where this court held that appellant's waiver of counsel was not valid. 726 N.W.2d 823, 831 (Minn. App. 2007). In *Garibaldi*, a private attorney initially represented appellant, who later appeared at a pretrial hearing without his attorney. *Id.* at 825. Appellant did not discharge his attorney; instead, at the pretrial hearing, appellant informed the district court that he could not afford his attorney. *Id.* The district court asked appellant if he would represent himself, and he responded affirmatively. *Id.* After appellant represented himself in a stipulated-facts trial, the district court found him guilty. *Id.* at 826. On appeal, we held that the waiver was invalid and reversed and remanded for a new trial. *Id.* at 831. We reasoned that a reversal was required because appellant did not have extensive contact with an attorney before he represented himself and "the record is silent regarding whether [appellant] was sufficiently informed by previous counsel of the consequences of representing himself." *Id.* at 829.

Here, the circumstances are unlike those in *Garibaldi*. Jones had an attorney who appeared in court on his behalf, including at the petition hearing. Jones asked to discharge his public defender, who had represented him for approximately two months during plea negotiations and at an omnibus hearing. And a supervising attorney from the public defender's office appeared at the petition hearing and stated on the record that she had reviewed Jones's petition with him. The district court also discussed, at length, the disadvantages of Jones's decision to represent himself. Jones agreed that he had "enough time" to discuss his decision with an attorney. This record establishes that, unlike the

defendant in *Garibaldi*, Jones understood the consequences of representing himself. *See Worthy*, 583 N.W.2d at 276.[5]

We conclude that, under the facts and circumstances of this case, Jones validly waived his right to counsel.

**Affirmed.**

[5] Jones also relies on an unpublished decision of this court. But unpublished decisions of this court are not precedential. *See* Minn. Stat. § 480A.08, subd. 3(c) (2018); *see also Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 800 (Minn. App. 1993).