

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1075**

State of Minnesota,
Respondent,

vs.

Dennis Scott Hackley,
Appellant.

**Filed July 5, 2022
Affirmed
Bjorkman, Judge**

Clay County District Court
File No. 14-CR-20-3839

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

Brian J. Melton, Clay County Attorney, Moorhead, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Segal, Chief Judge; and
Bjorkman, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges his conviction for unlawful possession of a firearm, arguing that the district court violated his constitutional right to represent himself. Because appellant's request to do so was not clear and unequivocal, we affirm.

FACTS

Respondent State of Minnesota charged appellant Dennis Scott Hackley with second-degree assault and unlawful possession of a firearm after he shot a person in the leg following a verbal dispute. Hackley applied for a public defender and was appointed representation from the Clay County Public Defender's Office. Hackley demanded a speedy trial, which was scheduled to begin on March 2, 2021.

At the March 1 pretrial hearing, Hackley's attorney informed the court that he and the other members of the public defender's office were unable to represent Hackley because of a conflict of interest. Counsel identified a new attorney who was available to represent Hackley but stated that a continuance was necessary so the new attorney could prepare for trial.

Upon hearing this, Hackley immediately said he "would like to go forward" and that he did not understand "why we're not going forward with trial." The district court explained that his case would be reassigned to "a conflict attorney to represent [him]." Hackley then asked whether he could "request a PR bond."¹ The district court acknowledged Hackley's frustration with the situation but told him the release conditions would not change. Hackley then asked: "Can I go forward if I want to represent myself pro se?"

The district court began a lengthy discussion with Hackley about the availability of a new attorney, the serious nature of the charges he faced, and the court's concerns about

¹ Hackley was in custody on unconditional bail of \$200,000 or \$100,000 with conditions.

Hackley proceeding to trial without an attorney. The district court repeatedly told Hackley that he was getting a new attorney and that his case would be tried before the end of the month. And the court explained that if Hackley went forward with the trial the next day, he “would not have an attorney at all” and faced a mandatory five-year prison sentence if convicted.

In response, Hackley stated:

I would like to go forward, but not with me going on the record. You guys discharged me as of about ten minutes ago. I mean, you guys stopped representing me a little bit ago. I would like to go forward pro se, but I’m not gonna say I would like to go forward because I don’t want to be represented by the State because the State just told me they wouldn’t represent me, but I would still have to go forward.

When the district court again told Hackley that a new attorney would represent him, Hackley again demonstrated his lack of understanding, stating, “You guys already said you weren’t [going to] represent me. That’s okay. But I still want to go forward tomorrow.” The district court then began to explain that “a conflict attorney” would take “the place of the public defender’s office.” Hackley asked if the new person is “a real attorney”; the district court confirmed that he is “a real attorney.”

Noting that Hackley had “a lot of questions,” and had made confusing statements about discharging his attorney, the district court directed Hackley to talk to his new attorney “and then make a decision on how you want to go forward.” The district court stated it was not comfortable proceeding to trial the next day, and that it wanted to ensure Hackley’s interests were protected and that he was “going forward fully informed.” Accordingly, the

district court rescheduled the trial for March 30. As the hearing concluded, Hackley asked, “Can it be on record that I chose to go forward representing myself pro se?”

At the request of Hackley’s new attorney, the trial was continued to April 26.² The jury returned a guilty verdict on the unlawful possession charge and deadlocked on the assault charges, which the state subsequently dismissed. The district court convicted and sentenced Hackley to 60 months in prison. Hackley appeals.

DECISION

The United States and Minnesota Constitutions guarantee criminal defendants the right to counsel. U.S. Const. amend. VI; Minn. Const. art. I, § 6. A corollary of the right to counsel is the right of self-representation. *See Weaver v. Massachusetts*, 137 S. Ct. 1899, 1908 (2017) (stating that the constitution protects “the defendant’s right to conduct his own defense” based on “the fundamental legal principle that a defendant must be allowed to make his own choices about the proper way to protect his own liberty”); *State v. Richards*, 456 N.W.2d 260, 263 (Minn. 1990) (acknowledging the right of criminal defendants “to represent themselves in state criminal proceedings”). Before granting a request for self-representation, the district court must find the defendant’s request is “clear, unequivocal, and timely.” *Richards*, 456 N.W.2d at 263. If the district court so finds, it must also find the defendant’s waiver of the right to counsel is knowing and intelligent. *Id.*

We review the denial of a request for self-representation for clear error. *State v. Blom*, 682 N.W.2d 578, 613 (Minn. 2004). A district court’s finding is clearly erroneous

² Hackley did not raise the issue of self-representation again.

“when there is no reasonable evidence to support the finding or when an appellate court is left with the definite and firm conviction that a mistake occurred.” *State v. Rhoads*, 813 N.W.2d 880, 885 (Minn. 2012). Violation of a defendant’s right to self-representation is a structural error subject to automatic reversal. *See Weaver*, 137 S. Ct. at 1908 (stating denying the “right to conduct his own defense” is structural error); *Blom*, 682 N.W.2d at 613 (“If the defendant’s right to self-representation is violated, he is entitled to a reversal and new trial.”).

Hackley argues that he made a clear, unequivocal, and timely request to represent himself and that the district court erred by failing to obtain his “voluntary and intelligent” waiver of the right to counsel. We are not persuaded.

We begin by noting that the district court did not make express findings regarding Hackley’s March 1 request to go forward with the trial the next day while representing himself. But the district court repeatedly commented on Hackley’s apparent confusion regarding the respective roles of the public defender’s office and his new attorney as well as Hackley’s inconsistent statements about whether he wanted to discharge counsel and represent himself. In doing so, the district court implicitly found that Hackley’s request was not clear and unequivocal.

The record supports this implicit finding. Hackley contends that he consistently asked to represent himself during the pretrial hearing and the district court improperly ignored his requests. Hackley expressed early on and at the end of the hearing that he wanted to “represent himself pro se.” But he repeatedly declined to confirm that request, telling the district court that he would not “go[] on the record” and that he “would like to

go forward, but not with me going on the record.” And he equivocated, saying that he “would like to go forward because I don’t want to be represented by the State,” and that he would not agree to “go forward as if I don’t want to be represented by a lawyer.” After meeting with his new attorney, Hackley did not raise the issue of self-representation.

The record suggests that Hackley’s primary motivation for raising the option of representing himself was not to safeguard the conduct of his own defense, but to get out of custody as soon as possible. *Weaver*, 137 S. Ct. at 1908 (stating the function of the right to self-representation is for a defendant to “conduct his own defense”). Upon learning that the public defender’s office could not represent him at trial the next day, Hackley’s immediate response was to request release on his own recognizance. It was only after the district court declined to modify his release conditions that he asked if the trial could proceed “if I want to represent myself pro se.” Decisions regarding the timing of a trial are choices a defendant makes in conducting his defense. But Hackley’s seemingly reflexive response to a trial continuance of less than one month coupled with his conflicting statements regarding proceeding without an attorney convince us that the district court did not clearly err in implicitly finding that Hackley did not make a clear and unequivocal request for self-representation.

Because we discern no clear error, we need not address Hackley’s argument that the district court erred by failing to obtain his valid waiver of the right to counsel. But we note the district court’s thorough efforts to ensure that if Hackley ultimately decided to represent himself, his waiver of counsel would be knowing and intelligent. *See State v. Jones*, 772 N.W.2d 496, 504 (Minn. 2009) (stating that before accepting a waiver of the right to

counsel in a felony case, the district court must “fully advise” the defendant as to “the nature of the charges, the possible punishment, mitigating circumstances, and all facts essential” to understand the consequences of their decision (quotation omitted)). The district court advised Hackley of the seriousness of the charges, the difficulties he would encounter if he proceeded to trial the next day without an attorney, and the potential prison sentence. In the face of Hackley’s questions and apparent misunderstanding regarding the availability and role of the new attorney, the district court told Hackley to talk with his new attorney and then decide if he wanted to represent himself. In short, the district court acted to both protect Hackley’s rights and to preserve his opportunity to forgo the assistance of counsel. On this record, we see no error by the district court.

Affirmed.