

*This opinion is nonprecedential except as provided by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
A21-1222**

State of Minnesota,
Respondent,

vs.

Levell Darrell Booth,
Appellant.

**Filed July 18, 2022
Reversed and remanded
Slieter, Judge**

Olmsted County District Court
File No. 55-CR-20-2261

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

Mark A. Ostrem, Olmsted County Attorney, James E. Haase, Assistant County Attorney,
Rochester, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Max Brady Kittel, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Johnson, Judge; and Slieter,
Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

In this direct appeal, appellant argues that he was unconstitutionally denied his right to self-representation. Because the district court failed to rule on appellant's clear, unequivocal, and timely request to represent himself, we reverse and remand.

FACTS

On April 7, 2020, appellant Levell Darrell Booth was arrested by Rochester police officers. Respondent State of Minnesota charged Booth with one count of stalking, in violation of Minn. Stat. § 609.749, subd. 5(a) (2018), and one count of threats of violence, in violation of Minn. Stat. § 609.713, subd. 1 (2018). Booth applied for and was appointed a public defender.

The district court held a contested omnibus hearing after which it ordered briefing from counsel. On June 17, after his public defender and the prosecutor submitted briefs on the identified omnibus-hearing issues, Booth filed with the district court a written petition to represent himself. Booth appeared on June 19 for a pretrial hearing before a judge who had not presided over the omnibus hearing. During this hearing, the district court acknowledged receipt of Booth's petition for self-representation though it informed Booth that it did not want to discharge his counsel "when there's still contested omnibus issues that are outstanding." Booth replied, "Okay."

On August 10, the judge who presided over the omnibus hearing issued a written order rejecting Booth's position on the omnibus issues but did not address Booth's petition for self-representation. During an August 14 plea hearing and with representation by the public defender, Booth pleaded guilty to the threats-of-violence charge, and the stalking charge was dismissed. No discussion of the petition for self-representation occurred during the plea hearing.

The district court twice extended the sentencing date during the next ten months to allow Booth to participate in chemical-dependency treatment. On June 29, 2021, after

Booth twice failed to comply with the conditions of his pre-sentence releases, the district court adjudicated him guilty and sentenced him to 30 months' imprisonment. No discussion of the petition for self-representation occurred during any of these hearings. Booth appeals.

DECISION

The Sixth and Fourteenth Amendments to the U.S. Constitution protect the right of defendants in state criminal trials to represent themselves. *State v. Richards*, 456 N.W.2d 260, 263 (Minn. 1990) (citing *Faretta v. California*, 422 U.S. 806 (1975)). Wrongful denial of a defendant's right to self-representation is one of "a very limited class of errors, referred to as structural errors, that require automatic reversal of a conviction." *State v. Kuhlmann*, 806 N.W.2d 844, 851 (Minn. 2011) (quotation omitted). When timely made, "the right to self-representation [i]s virtually absolute, subject only to the conditions necessary to a waiver of the right to assistance of counsel." *State v. Christian*, 657 N.W.2d 186, 191 (Minn. 2003). "When a criminal defendant asks to represent himself, the court *must* determine (1) whether the request is clear, unequivocal, and timely, *and* (2) whether the defendant knowingly and intelligently waives his right to counsel." *State v. Blom*, 682 N.W.2d 578, 613 (Minn. 2004) (emphasis added) (quoting *Richards*, 456 N.W.2d at 263).

Booth argues that "[t]he district court clearly erred in not ruling on the petition [for self-representation] and thus denying Mr. Booth's right to self-representation." We agree.

A Minnesota statute and the rules of criminal procedure require defendants who wish to represent themselves to provide a written waiver of counsel. Minn. Stat. § 611.19 (2020); Minn. R. Crim. P. 5.04, subd. 1(3), (4). The appendix to the criminal-procedure

rules includes “Form 11 – petition to proceed as pro se counsel” to satisfy this requirement. On June 17, Booth filed a completed and signed Form 11 petition. No inquiry of Booth regarding his petition for self-representation thereafter occurred.

Booth’s Form 11 petition clearly and unequivocally states: “I wish to waive my right to be represented by an attorney and I wish to represent myself.” And the record reveals no equivocation by Booth of his desire to represent himself. Though Booth responded “[o]kay” during the June 19 hearing when the district court informed him that it did not, during that hearing, intend to dismiss his public defender “when there’s still contested omnibus issues that are outstanding,” he did not express any uncertainty in his desire to represent himself. *Cf. Blom*, 682 N.W.2d at 613-14 (concluding that a request for self-representation was equivocal where the defendant “stat[ed] that he did not want to represent himself, but also did not want his existing counsel”). Furthermore, after he filed his petition for self-representation and before the district court ruled on the omnibus-hearing issues, Booth sent two letters to the district court. The district court did not consider either letter because they did not come from Booth’s public defender. The record contains only one of the letters and, in this letter, Booth raises various arguments related to his arrest. This further demonstrates Booth’s desire to represent himself.

Booth’s petition for self-representation was also timely. The supreme court has held that requests for self-representation “made weeks before jury selection was to begin” did not raise timeliness concerns and that the “potential disruption and possible delay of proceedings already in progress” addressed by the timeliness requirement do not arise until

jury selection. *Christian*, 657 N.W.2d at 191, 193. Thus, Booth’s petition, which he filed before the district court scheduled a trial, was timely.

After Booth made his clear, unequivocal, and timely request to represent himself, he had done everything necessary to assert his right. It then became the district court’s obligation to determine whether Booth “knowingly and intelligently waive[d] his right to counsel.” *Blom*, 682 N.W.2d at 613 (quoting *Richards*, 456 N.W.2d at 263); *see also Christian*, 657 N.W.2d at 191. This it did not do. Because this failure to address his petition effectively denied Booth his right to self-representation, we must reverse his conviction. *Kuhlmann*, 806 N.W.2d at 851.

The state contends that plain-error analysis applies to the district court’s failure to rule on Booth’s request. The state argues that the district court did not commit plain error because “it was reasonable for the district court to assume that Booth had, *in fact*, abandoned his ill-conceived notion of representing himself” by appearing with the public defender and entering a guilty plea. We disagree.

First, as we explain above, failure to address Booth’s petition for self-representation is a structural error. *Kuhlmann*, 806 N.W.2d at 851. “Structural errors are ‘defects in the constitution of the trial mechanism, which defy analysis by “harmless-error” standards.’” *Id.* (quoting *Arizona v. Fulminante*, 499 U.S. 279, 309 (1991)). And with such errors “[t]he entire conduct of the trial from beginning to end is obviously affected.” *Fulminante*, 499 U.S. at 309-10. Moreover, without the basic protections that are guaranteed by the right that has been violated, “no criminal punishment may be regarded as fundamentally fair.” *Id.* at 310; *see also Vasquez v. Hillery*, 474 U.S. 254, 263-64, (1986) (stating that an

error that undermines the basic “structural integrity of the criminal tribunal itself . . . is not amenable to harmless-error review”).

In contrast, the plain-error doctrine applies only when the error affects the defendant’s substantial rights. *State v. Epps*, 964 N.W.2d 419, 423 (Minn. 2021). Therefore, because structural errors presumptively have an impact on the defendant’s rights, the plain error doctrine does not apply to our review.

Second, we “indulge every reasonable presumption against the loss of constitutional rights.” *State v. Finnegan*, 784 N.W.2d 243, 247 (Minn. 2010); *see also Johnson v. Zerbst*, 304 U.S. 458, 464 (1938) (“It has been pointed out that courts indulge every reasonable presumption against waiver of fundamental constitutional rights and that we do not presume acquiescence in the loss of fundamental rights.” (quotation omitted)). The Supreme Court has stated that denial of the right to self-representation “forc[es] a lawyer upon an unwilling defendant” and denies the accused “the defense guaranteed him by the Constitution, for, in a very real sense, it is not *his* defense.” *Faretta*, 422 U.S. at 817, 821. Additionally, the Supreme Court has stated that a violation of a defendant’s Sixth Amendment right to the assistance of counsel “is ‘complete’ when the defendant is erroneously prevented from being represented by the lawyer he wants.” *United States v. Gonzalez-Lopez*, 548 U.S. 140, 148 (2006). Erroneously depriving a defendant of the counsel of their choice is a structural error because the choice of counsel has “consequences that are necessarily unquantifiable and indeterminate” such as “whether and on what terms the defendant cooperates with the prosecution, plea bargains, or decides instead to go to trial.” *Id.* at 150 (quotation omitted).

Booth's later appearance with a public defender therefore has no bearing on whether he clearly, unequivocally, and timely petitioned to represent himself. A violation of Booth's right to self-representation was "complete" when the district court failed to rule on his petition, and this structural error requires an "automatic reversal." *Kuhlman*, 806 N.W.2d at 850; *Johnson v. United States*, 520 U.S. 461, 468 (1997).

Reversed and remanded.