

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA05-898

NORTH CAROLINA COURT OF APPEALS

Filed: 2 May 2006

STATE OF NORTH CAROLINA

v.

Richmond County
No. 04 CRS 050537

WILLIAM LEWIS WALL
Defendant

Appeal by defendant from a judgment dated 24 February 2005 by Judge Michael E. Beale in Richmond County Superior Court. Heard in the Court of Appeals 27 March 2006.

Attorney General Roy Cooper, by Special Deputy Attorney General Kathryn Jones Cooper, for the State.

Susan J. Hall for defendant-appellant.

BRYANT, Judge.

On 24 February 2005, a jury acquitted William Lewis Wall (defendant) of communicating threats and found him guilty of disorderly conduct. On the same date, Judge Beale sentenced defendant to sixty days imprisonment, suspended forty-five days of that sentence, and ordered him to serve an active sentence of fifteen days in the county jail. From the judgment entered, defendant appeals.

When defendant's case came on for trial, defendant's appointed counsel informed the trial court that defendant wanted to represent

himself without the assistance of counsel. Thereafter, a colloquy took place between the trial court and defendant in which the trial court informed defendant he had a right to have a lawyer represent him and cautioned him about the hazards of representing himself. Defendant was also allowed to consult with his appointed counsel one last time before making his decision to proceed *pro se*. After this consultation, defendant informed the trial court he "want[ed his] lawyer to withdraw himself in [his] case." Defendant then signed a waiver of counsel indicating he would represent himself at trial. The case proceeded to trial and the jury found defendant guilty of disorderly conduct.

The dispositive issue in this case is whether the trial court committed reversible error by allowing defendant to proceed *pro se* in his trial. It is well-established that "[o]nce a defendant clearly and unequivocally states that he wants to proceed *pro se*, the trial court, to satisfy constitutional standards, must determine whether the defendant knowingly, intelligently, and voluntarily waives the right to in-court representation by counsel." *State v. Thomas*, 331 N.C. 671, 674, 417 S.E.2d 473, 476 (1992) (citation omitted). The inquiry required by N.C. Gen. Stat. § 15A-1242 of the North Carolina General Statutes satisfies these constitutional requirements. *Id.*

This statute provides:

A defendant may be permitted at his election to proceed in the trial of his case without the assistance of counsel only after the trial judge makes thorough inquiry and is satisfied

that the defendant:

- (1) Has been clearly advised of his right to the assistance of counsel, including his right to the assignment of counsel when he is so entitled;
- (2) Understands and appreciates the consequences of this decision; and
- (3) Comprehends the nature of the charges and proceedings and the range of permissible punishments.

N.C. Gen. Stat. § 15A-1242 (2005). A defendant's waiver of counsel is not knowing, intelligent, or voluntary when the trial court fails to ascertain whether defendant knows the consequences of his decision, the nature of charges, and the range of permissible punishments as required under N.C.G.S. § 15A-1242. *State v. Evans*, 153 N.C. App. 313, 316, 569 S.E.2d 673, 675 (2002). "The execution of a written waiver is no substitute for compliance by the trial court with N.C. Gen. Stat. § 15A-1242." *Id.* at 315, 569 S.E.2d at 675.

Here, the record indicates the trial court informed defendant he had a right to have a lawyer represent him and discussed with him the consequences of his decision to represent himself. It is further evident that defendant had been advised of his right to assigned counsel because "he had exercised the right and counsel had been appointed to represent him." *State v. Dunlap*, 318 N.C. 384, 389, 348 S.E.2d 801, 804 (1986). The record, however, does not indicate the trial court made any inquiry to satisfy itself defendant comprehended "the range of permissible punishments" as required by N.C.G.S. § 15A-1242(3). Because the inquiry under

N.C.G.S. § 15A-1242 is mandatory and the trial court failed to make the third inquiry mandated by this statute, we conclude the trial court committed prejudicial error in allowing defendant to proceed to trial *pro se*. See *State v. Pruitt*, 322 N.C. 600, 603, 369 S.E.2d 590, 592 (1988) ("The inquiry to be made by the trial court under N.C.G.S. § 15A-1242 is mandatory and failure to conduct such an inquiry is prejudicial error."). Accordingly, defendant is entitled to a new trial. *State v. Stanback*, 137 N.C. App. 583, 586, 529 S.E.2d 229, 230-31 (2000) (granting the defendant a new trial where the trial court failed to make any inquiry to satisfy itself the defendant comprehended "the nature of the charges and proceedings and the range of permissible punishments" before allowing him to proceed *pro se*).

Because we have determined defendant is entitled to a new trial, we need not address defendant's remaining arguments.

New trial.

Chief Judge MARTIN and Judge GEER concur.

Report per Rule 30(e).