

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA09-1506

NORTH CAROLINA COURT OF APPEALS

Filed: 7 September 2010

STATE OF NORTH CAROLINA

v. Pitt County  
Nos. 08 CRS 56493  
08 CRS 56494

MAMADOU LAMINE THIAM,  
Defendant.

Appeal by defendant from judgments entered 14 April 2009 by Judge W. Russell Duke, Jr. in Pitt County Superior Court. Heard in the Court of Appeals 24 August 2010.

*Attorney General Roy Cooper, by Assistant Attorney General Kimberly L. Wierzel, for the State.*

*Larry C. Economos for defendant-appellant.*

HUNTER, Robert C., Judge.

Defendant Mamadou Lamine Thiam appeals from his convictions for possession with the intent to sell counterfeit/pirated sound recordings and possession of goods with a counterfeit trademark. We agree with defendant's sole contention on appeal that the trial court failed to comply with N.C. Gen. Stat. § 15A-1242 (2009) prior to allowing defendant to represent himself at trial without the assistance of counsel. Consequently, defendant is entitled to a new trial.

---

On 17 November 2008, defendant was charged with possessing with the intent to sell 100 counterfeit/pirated sound recordings and possessing goods with a counterfeit trademark. Defendant pled not guilty and the case proceeded to trial, where the following colloquy occurred when the case was called for trial:

THE COURT: All right. Mr. Thiam, if you will come up here, please.

(Mr. Thiam stands at defendant's table.)

THE COURT: Do you understand that you are the first case for trial?

[DEFENDANT]: Yes, Your Honor.

THE COURT: And how far did you go in school?

[DEFENDANT]: I was graduated in '89 in France – I was graduated in '89.

THE COURT: In France?

[DEFENDANT]: (Indicates affirmatively.)

THE COURT: Would it be high school or college?

[DEFENDANT]: College.

THE COURT: So you graduated in a French college in 2000 and what?

[DEFENDANT]: '89.

THE COURT: I mean in 1989.

[DEFENDANT]: (Indicates affirmatively.)

THE COURT: How old are you?

[DEFENDANT]: Forty-two.

THE COURT: Forty-two. And do you understand that the Court is not going to assist you in your conduct of your defense?

[DEFENDANT]: I understand, yes, sir.

THE COURT: Do you understand that you are on your own?

[DEFENDANT]: Yes, Your Honor.

THE COURT: And do you think you can do it?

[DEFENDANT]: Yes, Your Honor, I will try.

THE COURT: All right. This is what you want to do?

[DEFENDANT]: [Sic] I was asking since a month more time, but like I was explaining to the D.A. and the Court, I going through a lot, and I have a baby born on May 1st, and it's more than 12 months on the respirator, and going to need six surgeries, and bills. So I am starting another - with my own business and my wife was pretty much hard and I have to work every night for my son from 11 until 7 because he is under medical for 24/7. So that means like I need to get together myself for my family because I can help myself. Our house - or we are without a lot of something to pay for a lawyer. I cannot afford a lawyer like that. I ask them why the State is asking now, because he said he would do it today.

THE COURT: Are these felonies?

[PROSECUTOR]: Yes, sir. They are. Class I.

THE COURT: Class I felonies. Do you know what level of punishment it is?

[PROSECUTOR]: At least level 1.

THE COURT: Okay. All right. We are going to start this case about - probably about 2:15.

[PROSECUTOR]: Yes, sir.

THE COURT: Anything else?

[PROSECUTOR]: No, Your Honor.

Defendant proceeded *pro se* and the jury convicted him of both charges. The trial court sentenced defendant to two consecutive presumptive-range terms of six to eight months imprisonment,

suspended the sentences, and imposed 36 months of supervised probation. Defendant timely appealed to this Court.

---

In his sole argument on appeal, defendant contends the trial court erred by not complying with the statutory mandate of N.C. Gen. Stat. § 15A-1242 before allowing him to proceed *pro se* at trial. The 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. "Compliance with section 15A-1242 serves to insure the defendant 'voluntarily made a knowing and intelligent waiver of his constitutional right to counsel in order to exercise his constitutional right to represent himself.'" *State v. Stanback*, 137 N.C. App. 583, 585-86, 529 S.E.2d 229, 230 (2000) (quoting *State v. Dunlap*, 318 N.C. 384, 388, 348 S.E.2d 801, 804 (1986)). Accordingly, "[t]he record must reflect that the trial court is satisfied regarding each of the three inquiries listed in the statute." *Id.* at 586, 529 S.E.2d at 230.

In its brief, the State concedes – and we agree – that "the trial court did not conduct the inquiry required by N.C.G.S § 15A-1242." Here, the trial court merely inquired into: (1) defendant's age and level of education; (2) the class and level of the felonies with which defendant was charged; and (3) whether defendant understood that he was "on his own." The transcript indicates, however, that the trial court did not inquire into whether defendant had been advised of his right to assistance of counsel, as mandated by N.C. Gen. Stat. § 15A-1242(1). Nor did the trial court make any inquiry as to whether defendant "[c]omprehend[ed] the nature of the charges and proceedings and the range of permissible punishments" to which he would be exposed if found guilty. N.C. Gen. Stat. § 15A-1242(3). "[B]ecause it is prejudicial error to allow a criminal defendant to proceed *pro se* without making the inquiry required by N.C. Gen. Stat. § 15A-1242," *State v. Hyatt*, 132 N.C. App. 697, 704, 513 S.E.2d 90, 95 (1999), defendant is entitled to a new trial. See *State v. Moore*, 362 N.C. 319, 326, 661 S.E.2d 722, 727 (2008) (granting new trial where trial court erred in "accept[ing] defendant's waiver of the right to counsel . . . without first making the 'thorough inquiry' mandated by N.C.G.S. § 15A-1242 to ensure that defendant's decision to represent himself was knowingly, intelligently, and voluntarily made").

New Trial.

Judges BRYANT and STEELMAN concur.

Report per Rule 30(e).