

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-308

Filed: 6 December 2016

Transylvania County, Nos. 15 CRS 50377-78

STATE OF NORTH CAROLINA

v.

IAN SCOTT BANKS, Defendant.

Appeal by Defendant from judgments entered 29 October 2015 by Judge Forrest D. Bridges in Transylvania County Superior Court. Heard in the Court of Appeals 17 November 2016.

*Attorney General Roy Cooper, by Assistant Attorney General Letitia C. Echols, for the State.*

*Charlotte Gail Blake for Defendant-Appellant.*

INMAN, Judge.

Ian Scott Banks (“Defendant”) appeals from judgments entered upon verdicts finding him guilty of violating a domestic violence protective order and domestic criminal trespassing. On appeal, Defendant contends that the trial court erred by allowing Defendant to waive counsel and to represent himself at his jury trial in superior court. After careful review, we find no error.

STATE V. BANKS

*Opinion of the Court*

A magistrate issued orders on 9 March 2015 charging Defendant with violating a domestic violence protective order and domestic criminal trespassing. A district court judge found Defendant guilty of both charges on 7 May 2015 and Defendant appealed to superior court. On 16 June 2015, Defendant signed a waiver of counsel which is as follows:

I freely and voluntarily declare[d] that I have been fully informed of the charges against me, the nature of and statutory punishment for each such charge, and the nature of the proceedings against me; that I have been advised of my right to have counsel assigned to assist me and my right to have the assistance of counsel in defending against these charges or in handling these proceedings, and that I fully understand and appreciate the consequences of my decision to waive the right to assigned counsel and the right to assistance of counsel.

Superior Court Judge Zoro J. Guice, Jr. signed the waiver of counsel, certifying that Defendant had been fully informed of the charges, the nature of the proceeding and punishment for each charge, and his right to assistance of counsel, and that Defendant comprehended the nature of the charges and range of punishments, understood the consequences of his decision to waive counsel, and voluntarily, knowingly and intelligently elected to be tried without the assistance of counsel.

On 29 October 2015, Defendant appeared in this case before Superior Court Judge Bridges, and the following transpired:

THE COURT: Okay. Mr. Banks, I understand your case appears on the trial -- or at least one of your cases appears on the trial calendar this week. I have been informed that

STATE V. BANKS

*Opinion of the Court*

there might be some question as to what your status is with regard to legal representation. As it has been explained to me you are appearing pro se in some matters but the Public Defender has been appointed to represent you in some other matters, perhaps matters that are not on this week's trial calendar.

THE DEFENDANT: Right.

THE COURT: In any event, let me pose a question to you. Are you able to hear and understand me?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you understand that you have the right to remain silent and that any statement you make may be used against you?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Now, the charges on which the State intends to proceed this week, Ms. Shaffer, are what?

MS. SHAFFER: In file 15CRS50377, a domestic protective order violation, and in file 15CRS505 -- I'm sorry, 050378, domestic criminal trespass.

THE COURT: Those are both misdemeanors. Let's see, what level misdemeanors are they?

MS. SHAFFER: I believe that they are both Class I. I'm checking to make sure that it's not an A1. It's an A1. Thank you.

THE COURT: Let's see, the judgment that was there in District Court indicates that violation of domestic violence protective order, at least it was treated as an A1. And then the domestic criminal trespass was treated as [an] A.

So a Class A1 misdemeanor is a crime that's

STATE V. BANKS

*Opinion of the Court*

punishable by a maximum punishment of 150 days in jail. A Class I misdemeanor is a crime that's punishable by a maximum possible punishment of 120 days in jail.

THE DEFENDANT: Your Honor.

THE COURT: Yes, sir.

THE DEFENDANT: I'm a Level II presently, so it would only be 75 and 45.

THE COURT: I'm not talking about necessarily that applies to you, because I have no idea whether or not you have a prior criminal record. I'm just talking about the maximum possible punishment that is available under the law for any person.

So facing that potential punishment, you do have a right to be represented by counsel. You may hire counsel of [your] own choice if you are financially able to do so. If you are not financially able to hire counsel, you are entitled to have the Public Defender represent you. Now, as I said, as I understand it the Public Defender had been appointed for you on some cases. Did that appointment extend to either one of these [cases]?

THE DEFENDANT: It's my understanding that that appointment did not extend to the matters on this Court's docket but to those on the docket for December 7th of this year.

THE COURT: Okay. Okay. Well, in any event, it sounds like you, at least, already have a relationship with the Public Defender's Office. Hopefully, you found that to be a beneficial relationship. Do you understand what your rights are with regard to counsel?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you wish to be represented by counsel in

STATE V. BANKS

*Opinion of the Court*

these cases, these two cases?

THE DEFENDANT: I've already prepared my defense pro se. And I have also already waived counsel in this matter in District Court or at the District Court level. I'm prepared to proceed.

THE COURT: Okay. So are you telling me then that you do not wish to be represented either by retained counsel or by appointed counsel in these cases that are on this calendar?

THE DEFENDANT: That's correct, Your Honor.

THE COURT: Okay. Then let's let him execute [a] waiver of his right to all counsel in these cases if that is, in fact, what he wishes to do. And please swear him to that waiver.

(A waiver was signed and sworn to.)

The trial then proceeded with Defendant representing himself.

Defendant contends that Judge Bridges erred by allowing him to waive counsel and to represent himself without making the inquiry mandated by N.C. Gen. Stat. § 15A-1242, which 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

STATE V. BANKS

*Opinion of the Court*

(3) Comprehends the nature of the charges and proceedings and the range of permissible punishments.

N.C. Gen. Stat. § 15A-1242 (2015). The court's failure to make this inquiry is prejudicial error. *State v. Thomas*, 331 N.C. 671, 674, 417 S.E.2d 473, 476 (1992). The record must affirmatively show that the court conducted the inquiry for a waiver of counsel to be valid even when the defendant has signed a written waiver of counsel. *State v. Sorrow*, 213 N.C. App. 571, 573-74, 713 S.E.2d 180, 182 (2011) (citation omitted). Whether the trial court complied with N.C. Gen. Stat. § 15A-1242 is traditionally reviewed *de novo* by this Court. *State v. Watlington*, 216 N.C. App. 388, 393-94, 716 S.E.2d 671, 675 (2011). In reviewing the trial court's inquiry, "the critical issue is whether the statutorily required information has been communicated in such a manner that defendant's decision to represent himself is knowing and voluntary." *State v. Carter*, 338 N.C. 569, 583, 451 S.E.2d 157, 164 (1994), *cert. denied*, 515 U.S. 1107, 132 L. Ed. 2d 263 (1995).

Defendant argues that the record does not affirmatively show that the court made inquiry into the second and third prongs, *i.e.*, whether he understood and appreciated the consequences of waiving counsel and whether he comprehended the nature of the proceedings and range of permissible punishments. The State argues in rebuttal that Defendant's execution of waivers of counsel certified by Judges Guice and Bridges carried a presumption of regularity sufficient to satisfy the requirements of N.C. Gen. Stat. § 15A-1242.

STATE V. BANKS

*Opinion of the Court*

“When a defendant executes a written waiver which is in turn certified by the trial court, the waiver of counsel will be presumed to have been knowing, intelligent, and voluntary, unless the rest of the record indicates otherwise.” *State v. Warren*, 82 N.C. App. 84, 89, 345 S.E.2d 437, 441 (1986). “A thorough inquiry into the three substantive elements of the statute, conducted at a preliminary stage of a proceeding, meets the requirements of N.C.G.S. § 15A-1242 even if it is conducted by a judge other than the judge who presides at the subsequent trial.” *State v. Lamb*, 103 N.C. App. 646, 649, 406 S.E.2d 654, 655 (1991). Thus, when a prior judge in the same case attests that the defendant has been informed about all of the requirements set forth in N.C. Gen. Stat. § 15A-1242, the trial judge confirms that the defendant still desires to proceed without assistance of counsel, and the defendant on appeal fails to rebut the presumption of regularity accorded to the executed waiver of counsel, we may hold that the waiver of counsel is in accordance with the requirements of N.C. Gen. Stat. § 15A-1242 and is consistent with the defendant’s constitutional right to counsel. *State v. Wall*, 184 N.C. App. 280, 284-85, 645 S.E.2d 829, 832-33 (2007); *State v. Kinlock*, 152 N.C. App. 84, 89-90, 566 S.E.2d 738, 741-42 (2002), *aff’d per curiam*, 357 N.C. 48, 577 S.E.2d 620 (2003).

Here, Judge Guice certified that Defendant had been fully informed in accordance with N.C. Gen. Stat. § 15A-1242. Before starting the trial, Judge Bridges advised Defendant of his right to counsel and asked Defendant whether he wished to

STATE V. BANKS

*Opinion of the Court*

be represented by counsel. Defendant responded that he had already prepared his defense, that he had represented himself in the district court, and that he was prepared to proceed. Defendant's responses to Judge Bridges's questions demonstrate an awareness of the nature of the proceedings, the possible punishments, and the possible consequences of self-representation. The record contains several hand-written motions filed by Defendant during proceedings in the court below, including requests for jury instructions, indicating his preparation for trial.

Based upon the record before us, we conclude Defendant voluntarily and intelligently waived his right to counsel. We find no error.

NO ERROR.

Judges STROUD and TYSON concur.

Report per Rule 30(e).