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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-75

Filed: 16 August 2016

Forsyth County, Nos. 12 CRS 51379, 13 CRS 153

STATE OF NORTH CAROLINA,

v.

RICHARD PRIDGEN, Defendant.

Appeal by Defendant from judgments entered 21 April 2015 by Judge Michael D. Duncan in Forsyth County Superior Court. Heard in the Court of Appeals 6 June 2016.

Attorney General Roy Cooper, by Assistant Solicitor General Elizabeth A. Fisher, for the State.

Paul F. Herzog, for Defendant-Appellant.

HUNTER, JR., Robert N., Judge.

Richard Pridgen ("Defendant") appeals following jury verdicts convicting him of first degree sex offense with a child, two counts of indecent liberties with a child, and rape of a child by an adult offender. The trial court sentenced Defendant to 300 to 369 months imprisonment for the first degree sex offense conviction and the two convictions for indecent liberties, and imposed a consecutive sentence of 300 to 369 months for rape of a child. On appeal, Defendant contends the trial court committed

error in allowing him to proceed *pro se*, in violation of his Sixth Amendment right to counsel, N.C. Gen. Stat. § 1242, and his State Constitutional rights under N.C. Const. art. I, §§ 19, 23, 35, 36. We disagree and hold the trial court did not commit error.

I. Factual and Procedural Background

On 22 July 2013, a Forsyth County grand jury indicted Defendant with sexual offense with a child, adult offender, two counts of indecent liberties with a child, and rape of a child, adult offender.

On 18 April 2013, the trial court found Defendant was indigent and appointed the Forsyth County Public Defender as counsel. Assistant Public Defender Andrew Keever worked on Defendant's case for eight hours before moving to withdraw as counsel on 5 March 2014, due to a conflict of interest within the Forsyth County Public Defender's Office ("Public Defender's Office"). On 5 March 2014, the trial court allowed Keever to withdraw.

On 13 March 2014, the Public Defender's Office appointed Bryan Gates as Defendant's second attorney. On 14 July 2014, Gates moved to withdraw as counsel. Gates stated he met with Defendant twice, "reviewed open file material with Defendant," and "shortly after the first meeting with Defendant, [Defendant] has repeatedly expressed dissatisfaction with the work on the case and repeated complained in writing to counsel and others about counsel's work." The trial court heard Gates and Defendant on the motion to withdraw on 15 July 2014. At the

hearing, Gates stated, "not too long after I began working on this case, [Defendant] started expressing dissatisfaction with my work on the case. . . . And it has gotten to the point where the relationship between us has broken down to the point that I don't believe I can effectively represent him." Defendant contended, "there was evidence that needed to be researched . . . . [and] [i]t would have exonerated me from this crime, and it was never researched. . . . [T]his is the second lawyer who refuses to research this evidence that I have on hand medically that will exonerate me . . . ."

The trial court asked Gates if the purported evidence was dispositive. Gates replied, "[It's] [n]ot something that would categorically prove that nothing ever happened." The court addressed Gates and Defendant as follows:

> [THE COURT]: Okay. Well, I will allow the motion to withdraw. Mr. Pridgen, I need to warn you, because of this, if a pattern—if you show a pattern of not working with your court-appointed attorneys, there is a serious danger that you could—a judge—myself or another [j]udge could find that you waived your rights to be represented by any attorney; do you understand that?
>
> [DEFENDANT]: Yes. . . .
>
> [THE COURT]: But you need to [ ] listen carefully, because if you can't work with the next lawyer—if ya'll don't—are not able to—you run a severe risk of waiving your right to all counsel; do you understand that?
>
> [DEFENDANT]: Yes, sir.
>
> [THE COURT]: Because you could then have to represent yourself, and you would be at a severe disadvantage when opposed by a professional district attorney who is an

> attorney, and you would probably lose a lot of rights that you're not even aware of. So you understand what I'm trying to warn you about?
>
> [DEFENDANT]: Yes.

The Public Defender's Office appointed Defendant a third attorney, Jerry Jordan, on 16 July 2014. Defendant filed "an *ex parte* motion stating that he had not been provided discovery by his attorneys . . . ." On 3 November 2014, the trial court heard the parties on the motion. At the hearing, Jordan stated the following:

> [DEFENSE COUNSEL]: I haven't provided [Defendant] everything at this point. [Defendant] wants to look at everything I've got copies to give him. There was two trials in September. I was working to prepare for those. [Defendant] has also asked to look at the videos that were done that I have copies of. I have not had any contact visit with [Defendant] yet. But that's in the works. But my understanding is the next . . . admin court date is going to be December 15. . . .
>
> [THE COURT]: All right. So why haven't you provided him everything that he wants to see?
>
> [DEFENSE COUNSEL]: Well, we discussed quite a bit, I think Judge. And I believe I provided him some. But I've got a stack like this that I copied and just haven't provided him with that (demonstrating). Hopefully . . . the jail will let him have all that stuff. But I have not gone over any of the video interviews at this point.
>
> [THE COURT]: All right. Sir, your attorney says that he's going to allow you to see the discovery. . . .
>
> [DEFENSE COUNSEL]: [ ] It's sitting on my desk, I can walk it over to the jail this afternoon. . . .

[DEFENDANT]: [H]e said on record that he provided me with some discovery. I never received anything from him. . . .

[THE COURT]: All right. Well, I'll tell you what. They say we're going to be in court through Friday. I will tentatively put you on the calendar for Friday morning. If Mr. Jordan hasn't given you everything by Friday morning, then we'll address it again. . . .

[DEFENDANT]: I've been here 19 months.

[THE COURT]: What is it you want me to do? He says he's going to bring it down this afternoon. . . .

[DEFENDANT]: I'm sorry. . . . This is my first time being involved in anything illegal . . . .

[THE COURT]: Excuse me.

[DEFENDANT]: But I understand.

[THE COURT]: You understand what I just said?

[DEFENDANT]: Yes, I do.

[THE COURT]: What did I just say?

[DEFENDANT]: You said if I don't get provided . . . this stuff by Friday, I'll be brought back before you. . . .

[THE STATE]: Your Honor, before we leave, if I may, I don't know . . . since Mr. Jordan was the third attorney, I don't know if [The State's] plea offer was ever placed on the record. And I would like to do that at this time.

[THE COURT]: All right.

[THE STATE]: [W]e have him as a Record Level 1 for sentencing purposes. He's currently before the Court on

> two counts of indecent liberties, one count of first degree rape of a child by adult offender[,] and one count of first degree sex offense with a child by adult offender. Both of those counts carry a minimum of 300 months. [The State's] first-setting offer at this point was that [Defendant] should plead guilty to all counts and that the cases should be consolidated for judgment into the reduced charge. [The State] has it listed this way of first degree rape of a child under 13 years as that is a lesser included of the rape of a child by adult offender. And he would be sentenced to that one count—consolidated in the presumptive range. [The State's] second-setting offer is that he would plead guilty to all counts and that the charges would not be reduced. And he would not get the benefit of the lesser included, and he would receive a 300-month minimum sentence. At this point, with the issues that are provided, if he wished to avail himself of that first-setting offer, I would extend that on [The State's] behalf.
>
> [THE COURT] Mr. Jordan?
>
> [DEFENSE COUNSEL]: I believe we've spoken about a plea offer. I know Mr. Keever was his other attorney and has gone over that with him. But it's my understanding [Defendant] does not wish to plead [to] anything and wishes to have a trial. Is that correct?
>
> [DEFENDANT]: Yes.
>
> [THE COURT]: So noted.

One month later, Defendant moved *pro se* to discharge Jordan as his attorney. The trial court held a waiver hearing on 1 December 2014. The trial court discussed the following with Defendant:

> [THE COURT]: Before I peruse the file, Mr. Pridgen, what is your understanding of why you are here before me today?

[DEFENDANT]: Waive my right to counsel.

[THE COURT]: You wish to discharge Mr. Jordan and represent yourself?

[DEFENDANT] Yes. . . .

[THE COURT]: All right, sir, our Constitution provides that you may represent yourself and that is a right that you always have. As you know our Constitution also provides if you want counsel but are not able to afford counsel that the Court will appoint counsel for you, that has been done. I assume you are not satisfied with Mr. Jordan and would rather proceed, what we call, pro se, that is representing yourself; is that fair?

[DEFENDANT]: Yes.

[THE COURT]: Have you had time to think about this decision, sir?

[DEFENDANT]: Yes.

[THE COURT]: Do you have any questions for me about representing yourself and proceeding to trial or other dispositions without the benefit of counsel?

[DEFENDANT]: Will I be able to get all of my discovery?

[THE COURT]: Yes, sir, you will be provided with discovery. You are incarcerated. I don't know what rules in jail they have in terms of video and the accessibility of video. That is one of the considerations that you should probably weigh in deciding to proceed pro se. . . .

[THE STATE]: Your Honor . . . some of the discovery is medical in nature. . . . [T]he alleged victim is, I believe, six or seven years old and had a [sexual assault] exam so there are [exam] photos in there that I am pretty sure he will not be allowed to have unlimited access to at the jail.

[THE COURT]: The allegation—I understand it is just an allegation, but because the allegation is that a child was the victim the law protects photographs of children and their private parts for lack of a better word.

[DEFENDANT]: Yes, but—

[THE COURT]: Sir, don't interrupt me, please. I'm trying to explain it to you—thus you would not be allowed to see those things. I don't know to what extent you would be able to see the DVDs and that type of thing. Is it still your wish to represent yourself?

[DEFENDANT]: Yes.

[THE COURT]: Okay. I will honor that, of course, if you will sign a waiver of your right to court-appointed counsel, we will put that in the file and we will proceed.

[DEFENSE COUNSEL]: Sir, if I may place on the record, [Defendant] has every single piece of paper in my file. I have copied every document that I have and given it to him. We have not gone over the videos yet, that is something I was planning to do in the next week or two since our second setting date was not until [December] 15. . . .

[THE STATE]: Your Honor, would you consider either leaving Mr. Jordan or appointing standby counsel for him?

[THE COURT]: [ ] I am going to, at this stage, appoint Mr. Jordan as standby counsel—listen to me, sir. Listen to me. This is for your protection—standby counsel for you. If your matter goes to trial at least, at this point, you have an attorney to serve as standby counsel. Now, listen to me, as your trial draws closer if you would like another standby counsel you can ask another Judge for that. Here is the reason I am doing it now, Mr. Jordan won't be around when your case comes back [o]n December 15, so for your protection Mr. Jordan can, if nothing else, serve as a

> placeholder, if you will. You will have standby counsel, someone to sit behind you for the purpose[] of questions during your trial, if you choose to go to trial. All right, sir.
>
> [DEFENDANT]: I won't—
>
> [THE COURT]: If you object to that I won't do it.
>
> [DEFENDANT]: I would object to that.
>
> [THE COURT]: All right. At this point, I will not appoint standby counsel. That is something you can take back up . . . at a future date.

The trial court and Defendant signed a waiver of counsel form, standard form AOC-CR-227, Rev. 6/97, and the form was sworn before a deputy clerk. The trial court's signature is dated 1 December 2014, and Defendant's signature is undated. None of the boxes on the form are checked to indicate Defendant waived his right to counsel, nor are any of the boxes checked showing the trial court certified Defendant's wavier. There is a pre-printed section on the form that states: "Note: For a waiver of assigned counsel, both blocks numbered "1" must be checked. For a waiver of all assistance of counsel, both blocks numbered "2" must be checked."

The trial court held a hearing on 17 December 2014. At the hearing, the parties discussed discovery issues and possible trial dates. The trial court set the case for trial for 13 April 2015. The trial court concluded the hearing by telling Defendant the following:

> I strongly ask that you consider having legal representation, sir, to assist you with this. It is clear to the

> Court that you are lacking understanding as to how the judicial system operates. Your attorney can just help you out as best he can with what evidence he is presented with to try to avail himself of any defenses, if there are, but if the State has a strong case against you then he can only operate with that. If you have a defense I assure you your attorney is going to take advantage of it.

The trial court heard the parties on 9 January 2015, after Defendant served the state with a *pro se* motion. The parties discussed a trial date, and Defendant stated, "I still have some things that I'm researching now on the case, because I've . . . pretty much just got the discovery recently." The parties agreed to set the trial for 13 April 2015.

The trial court heard the parties on 16 February 2015, after Defendant filed a motion to dismiss and a motion to prohibit the use of hearsay before the grand jury. Defendant argued his Sixth Amendment rights were violated through the use of alleged hearsay in the grand jury room. He also argued the matter could not go to trial because the indictments were "constitutionally invalid" and the trial court lacked jurisdiction. The trial court denied Defendant's motions. After repeatedly interrupting the trial court, Defendant stated "I take exception to all your . . . false rulings because they're false."

The case was called for trial 15 April 2015. The following discussion ensued before the parties selected and impaneled a jury:

> [THE COURT]: The Court has had an opportunity to review the files. I had questioned before we brought Mr.

Pridgen out whether or not a judge had gone over his rights as far as court-appointed counsel. And it appears from the transcript of December 1, 2014, that a superior court judge did go over rights of counsel and standby counsel.

[DEFENDANT]: I wasn't in court—I wasn't in court December 1. . . .

[THE COURT]: Do you remember two different hearings—one in front of . . . Judge Hall on December 1 and one in front of Judge Burke on the 17th of December?

[DEFENDANT]: I remember now. You're right. It was with Judge Hall. I remember it. . . .

[THE COURT]: That's all right. And do you remember Judge Hall going over with you your right to be—your constitutional right to be represented by an attorney?

[DEFENDANT]: He said a few things. I don't remember totally everything, but it was just a few things that he mentioned in reference to representing myself.

[THE COURT]: And at that hearing, you indicated to the Court that you wanted to represent yourself. Is that correct?

[DEFENDANT]: Yes.

[THE COURT]: Is that still your request?

[DEFENDANT]: No. Because today is trial, and I don't know anything about this court proceeding. It just sprung on me. They said I'm going to trial today, and I'm nowhere near prepared for it.

[THE COURT]: I'm not sure that it was sprung on you. . . . [Y]ou knew back in December that you had a trial date of April the 13th, did you not, sir?

> [DEFENDANT]: No. No, I didn't. . . .

The trial court reviewed the transcript with Defendant and showed him that he was made aware of the 13 April 2015 trial date in December 2014. The trial court continued:

> [THE COURT]: The first thing the Court has to decide is the issue of counsel. I do know that from the transcript that Judge Hall went over those issues with you. He even asked you about standby counsel at that time. You rejected and said you did not want a standby counsel. . . . So at this time . . . are you asking the Court to now appoint you counsel or standby counsel, Mr. Pridgen?
>
> [DEFENDANT]: Well, I'm asking the Court to give me time to continue working on my case because I don't know anything about this trial date. . . . Counsel would be—standby counsel would be preferred—because they wanted my same standby counsel who I was having conflict with, Mr. Jordan, to be my standby counsel. . . .
>
> [THE COURT]: The Court is going to take an opportunity to review the files specifically as it relates to appointment of counsel and [D]efendant's waiver of counsel. It's obviously a balancing test that the Court has to look at. I'll have to make some determination. I have noted and I will note again it's a 2012 and 2013 case. Obviously, it is a matter that needs to be tried in a short amount of time, if not today.

The trial court recessed for an eighty-five minute lunch break to research the relevant case law. The trial court returned and stated the following for the record:

> [THE COURT]: The Court has had an opportunity to review the files, review case law and the questions presented to the Court prior to breaking for lunch. . . .
>
> The Court . . . will make certain findings of fact on the record that it appears from all the files that the

defendant, Mr. Pridgen, signed a waiver of counsel on December 1st, 2014. Judge Hall at that time went over the defendant's rights with him—his right to be represented. The Court has reviewed a transcript of that hearing. And the Court specifically finds that the defendant was clearly advised of his right to assigned counsel or assistance of counsel. The Court finds that, in fact, the defendant has had three prior assigned counsel or assigned lawyers or attorneys in which he had conflicts, with the last one being released. . . .

The Court further finds, in addition to the fact that the defendant was clearly advised of his right to assigned counsel or assistance of counsel, Judge Hall went over that and asked him if he wanted standby counsel whom he could ask questions from. He specifically denied that . . . . The Court finds that [Defendant] understood and appreciated the consequences of his decision. It appears from the transcript and from the court record that he waived those consequences.

His main concern was discovery requests at that time—that he would get all the information he had requested as far as discovery. In fact, there have been hearings since that date which the Court has ordered all discovery to Mr. Pridgen, that certain documents or certain items of discovery that could not be turned over to Mr. Pridgen such as videotapes or certain photos would be held by the jail and that Mr. Pridgen would be allowed to review those. . . .

The Court does find specifically that Mr. Pridgen comprehended the nature—understood and comprehended the nature of the charges and ranges of permissible punishments.

The Court as to this finds that he had three prior appointed counsel. . . .

The Court notes that it is routine that when a plea offer is rejected that the Court goes over with the defendant the permissible range of punishments and puts on the record that he understands and that he is refusing or denying to accept the plea offers that have been presented by the State at the various settings.

The Court finds that, in fact, after the December 1, 2014, hearing in which Mr. Pridgen signed the wavier that there was a subsequent hearing with Judge Burke on December the 17th, 2014. And, again, Judge Burke urged Mr. Pridgen and stated that he strongly was asking Mr. Pridgen to consider having legal representation that would be able to assist him. That's subsequent to the defendant signing the waiver of counsel [form].

At no time did Mr. Pridgen ask for assistance of counsel or assigned counsel until today's date, which is the date of trial. The Court specifically finds that during the December 17th hearing, the defendant was informed in open court that the matter would be set for trial the week of April 13[, 2015]. The Court finds the defendant had four months' knowledge of the trial date.

Now on . . . the day of trial, the defendant has asked the Court for assigned counsel or assistance of counsel. The Court, in reviewing the record and hearing from the defendant, finds that the defendant has made no showing of good cause to support the motion to withdraw his waiver on the day of trial; that Mr. Pridgen has had four months prior to today's date and has at no time—although he's been in court several times, been advised of his right to counsel on numerous occasion and has always refused it[—] . . . ask[ed] for the Court to allow him to withdraw his waiver. The Court, in its opinion, believes it's just to frustrate the judicial process.

In addition to the Court finding that he's entered a valid waiver of counsel, that he freely and voluntarily waived his right to counsel on December 1st, 2014, and even again on [December 17, 2014] with Judge Burke, to the extent [Defendant] is now asking the Court to assign a fourth attorney to represent him and assist him, the Court believes and finds that he has previously waived counsel and, in effect, by his actions has forfeited that right as of today.

The Court is aware that forfeiture of legal right and wavier are two different things. The Court does find it's a valid wavier of counsel. But by his coming to court on the day of trial, the Court believes that through his various

> attorneys and his action, he's also forfeited that right. . . .
>
> So to the extent that Mr. Pridgen has asked for appointment of counsel and continuance of this case so he can be assigned counsel, the Court's going to deny appointment of counsel and find that it was a valid wavier of counsel and it's too late in the game to withdraw that wavier . . . . As far as the Court's concerned, we're ready to proceed to trial. . . .

Defendant responded, "You ruled accordingly to my representation. The reason why at that time I didn't want those attorneys representing me—because that's all they were doing is representing me. They wasn't defending me." Defendant further argued his *pro se* motions, which the trial court previously ruled upon and denied at earlier hearings. Defendant did not raise any objection to his wavier of counsel.

The parties proceeded to trial and the State called the alleged victim as its first witness. The trial court recessed, and before trial resumed Defendant took up a matter in front of the trial court and stated, "I've got to cross-examine a baby [the alleged victim] on how she done told [sic] seven lies already. . . ." The trial court responded as follows:

> [THE COURT]: Well, one issue, is Mr. Pridgen, that at some point in time, you were asked if you wanted to represent yourself. And you told a judge that that is your desire, that you wish to represent yourself. You did not wish to have an attorney.
>
> [DEFENDANT]: I only want to represent myself, your Honor, because they wouldn't . . . defend me. . . . I can go outside and get myself together and just come back in and

> do what I need to do. But I'm telling you it's going to be hard for me.
>
> [THE COURT]: Well, the Court can appreciate that, Mr. Pridgen, as far as I can appreciate the difficulty that you are experiencing. However, as I said, at some point in time, you made that decision to represent yourself. One of the judges even asked to appoint you a standby counsel. You refused that.

The State called the alleged victim back to the witness stand and continued with its case in chief. At the close of the State's evidence, Defendant moved to dismiss all of the charges, "[b]ecause the State established no timeline in which [he] was ever alone with the [alleged victim]." The court denied Defendant's motion and Defendant did not present any evidence.

After a charge conference and closing arguments, the jury deliberated and returned guilty verdicts on all charges. The trial court sentenced Defendant, as a Prior Record Level I offender, to 300 to 369 months imprisonment for first degree sex offense of a child and the two counts of indecent liberties with a child, and sentenced Defendant to a consecutive 300 to 369 months imprisonment for rape of a child. The trial court also required Defendant to register as a sex offender and enroll in satellite-based monitoring. Defendant timely entered his notice of appeal.

II. Standard of Review

"The standard of review for alleged violations of constitutional rights is *de novo*." *State v. Graham*, 200 N.C. App. 204, 214, 683 S.E.2d 437, 444 (2009), *appeal dismissed and disc. review denied*, 363 N.C. 857, 694 S.E.2d 766 (2010); *see also*

Piedmont Triad Reg'l Water Auth. v. Sumner Hills Inc., 353 N.C. 343, 348, 543 S.E.2d 844, 848 (20010 ("[D]e novo review is ordinarily appropriate in cases where constitutional rights are implicated.").

III. Analysis

On appeal, Defendant contends the trial court violated his right to counsel under the Sixth Amendment, N.C. Const. art. I, §§ 19, 23, 35, 36, and N.C. Gen. Stat. § 1242. Defendant further argues that he did not forfeit his right to counsel by proceeding to trial *pro se*. We disagree and hold the trial court did not commit error.

"In all criminal prosecutions, every person charged with a crime has the right to be informed of the accusation . . . and to have counsel for defense." *State v. Paterson*, 208 N.C. App. 654, 660, 703 S.E.2d 755, 758–59 (2010) (quoting N.C. Const. art. I, § 23). However, our Supreme Court "has long recognized the state constitutional right of a criminal defendant to handle his own case without interference, or the assistance of, counsel forced upon him against his wishes." *State v. Moore*, 362 N.C. 319, 321–22, 661 S.E.2d 722, 724 (2008) (internal quotation marks and citations omitted).

To proceed *pro se*, a "[d]efendant's wavier of counsel must be 'knowing and voluntary, and the record must show that the defendant was literate and competent, that he understood the consequences of his waiver, and that, in waiving his right, he was voluntarily exercising his own free will.'" *State v. Reid*, 224 N.C. App. 181, 190,

735 S.E.2d 389, 396 (2012) (quoting *State v. Thacker*, 301 N.C. 348, 354, 271 S.E.2d 252, 256 (1980)). Before a trial court allows a defendant to waive representation by counsel, "the trial court must insure that constitutional and statutory standards are satisfied." *Moore*, 362 N.C. at 322, 661 S.E.2d at 724 (internal quotation marks and citations omitted). A trial court will satisfy both the statutory and constitutional standards if it conducts its inquiry pursuant to N.C. Gen. Stat. § 15A-1242 (2015). *Id.* (citations omitted).

N.C. Gen. Stat. § 15A-1242 (2015) provides the following:

> 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.

Id.

Our Supreme Court has offered a fourteen-question checklist "designed to satisfy [the] requirements of N.C. Gen. Stat. § 15A-1242" as follows:

> 1. Are you able to hear and understand me?
>
> 2. Are you now under the influence of any alcoholic beverages, drugs, narcotics, or other pills?

3. How old are you?

4. Have you completed high school? College? If not, what is the last grade you completed?

5. Do you know to read? Write?

6. Do you suffer from any mental handicap? Physical handicap?

7. Do you understand that you have the right to be represented by a lawyer?

8. Do you understand that you may request that a lawyer be appointed for you if you are unable to hire a lawyer; and one will be appointed if you cannot afford to pay for one?

9. Do you understand that, if you decide to represent yourself, you must follow the same rules of evidence and procedure that a lawyer appearing in this court must follow?

10. Do you understand that, if you decide to represent yourself, the court will not give you legal advice concerning defenses, jury instructions or other legal issues that may be raised in the trial?

11. Do you understand that I must act as an impartial judge in this case, that I will not be able to offer you legal advice, and that I must treat you just as I would treat a lawyer?

12. Do you understand that you are charged with _____, and that if you are convicted of this (these) charge(s), you could be imprisoned for a maximum of _____ and that the minimum sentence is _____? (Add fine or restitution if necessary.)

13. With all of these things in mind, do you now wish to ask

> me any questions about what I have just said to you?
>
> 14. Do you now waive your right to assistance of a lawyer, and voluntarily and intelligently decide to represent yourself in this case?

Reid, 224 N.C. App. at 190–91, 735 S.E.2d at 396–97 (quoting *State v. Moore*, 362 N.C. 319, 327–28, 661 S.E.2d 722, 727 (2008) (citation omitted).

When a defendant signs a written waiver, such as AOC-CR-227, Rev. 6/97, and the waiver is certified by the trial court, the written waiver "will be presumed to have been knowing, intelligent, and voluntary, unless the rest of the record indicates otherwise." *Reid*, 224 N.C. App. at 190, 735 S.E.2d at 396 (citation omitted). While a defendant may complete a written waiver, it is not mandatory to do so. *Paterson*, 208 N.C. App. at 661, 703 S.E.2d at 759 (citing *State v. Heatwole*, 344 N.C. 1, 18, 473 S.E.2d 310, 317 (1996)).

This Court and our Supreme Court have reviewed cases in which waiver forms were imperfectly completed, much like the case *sub judice*. *See Paterson*, 208 N.C. App. 654, 703 S.E.2d 755 (waiver form was executed prior to the defendant learning of the range of permissible punishments for his charge); *State v. Fulp*, 355 N.C. 171, 177, 558 S.E.2d 156, 160 (2002) (wavier form was not completely filled out but was signed by the defendant). Using the totality of the circumstances standard, the *Fulp* Court noted the following:

> [W]e note that although the waiver of counsel form was not completely filled out, defendant did in fact sign the form. This, combined with defendant's testimony in which he

> stated multiple times that he did not wish to have an attorney represent him, and the fact that defendant signed a transcript of plea in 1993 acknowledging that he understood his rights, the charges against him, and that he was pleading guilty to a felony, provides added evidence that defendant 'knowingly, intelligently, and voluntarily' waived counsel.

Fulp, 355 N.C. at 180, 558 S.E.2d at 161.

Here, the State advised Defendant he was a Prior Record Level I offender and faced two 300 month mandatory minimum sentences for his charges. Defense counsel met with Defendant, discussed the charges and possible punishments with Defendant as well, and informed him of a plea deal, to plead guilty to all charges in exchange for a consolidated judgment. The State revived this offer months after it expired, during a hearing in which Defendant fired his third appointed attorney. Defendant persisted with his wish to proceed *pro se* and denied appointed standby counsel, which the trial court urged him to utilize. At this hearing, Defendant and the trial court signed a written waiver, AOC-CR-227, Rev. 6/97, and left the boxes unchecked. Had the parties checked the necessary boxes, this form would be evidence of a presumptively valid waiver of counsel. Nevertheless, this form, taken together with Defendant's statements, indicates Defendant waived counsel knowingly, intelligently, and voluntarily.

Forfeiture of counsel is separate from waiver because waiver requires "a knowing and intentional relinquishment of a known right," whereas forfeiture "results in the loss of a right regardless of the defendant's knowledge thereof and

irrespective of whether the defendant intended to relinquish the right." *State v. Montgomery*, 138 N.C. App. 521, 524, 530 S.E.2d 66, 69 (2000). "Any willful actions on the part of the defendant that result in the absence of defense counsel constitutes a forfeiture of the right to counsel." *State v. Leyshon*, 211 N.C. App. 511, 518, 710 S.E.2d 282, 288 (2011) (quoting *State v. Quick*, 179 N.C. App. 647, 649–50, 634 S.E.2d 915, 917 (2006)). Typically, forfeiture occurs when a defendant obstructs or delays the proceedings by refusing to cooperate with counsel or refusing to participate in the proceedings. *See State v. Blakeney*, ___ N.C. App. ___, ___, 782 S.E.2d 88, 94–95 (2016) (citing *Montgomery*, 138 N.C. App. 521, 530 S.E.2d 66; *Quick*, 179 N.C. App. 647, 634 S.E.2d 915; *State v. Rogers*, 194 N.C. App. 131, 669 S.E.2d 77 (2008); *State v. Boyd*, 200 N.C. App. 97, 682 S.E.2d 463 (2009); *Leyshon*, 211 N.C. App. 511, 710 S.E.2d 282; *State v. Cureton*, 223 N.C. App. 274, 734 S.E2.d 572 (2012); *State v. Mee*, 233 N.C. App. 542, 756 S.E.2d 103 (2014); *State v. Joiner*, ___ N.C. App. ___, 767 S.E.2d 557 (2014); *State v. Brown*, ___ N.C. App. ___ 768 S.E.2d 896 (2015)).

In *Quick*, this Court held a defendant forfeited his right to counsel because he signed a waiver of appointed counsel form and did not retain private counsel during the eight months leading up to his probation revocation hearing. *Quick*, 179 N.C. App. at 650, 634 S.E.2d at 918. In *Montgomery*, this Court held a defendant forfeited his right to counsel, "when he had fifteen months to obtain counsel, twice released his appointed counsel and retained private counsel, caused the trial to be delayed

because he was disruptive in the courtroom on two occasions, and refused to cooperate with his private counsel and assaulted him . . . ." *Leyshon*, 211 N.C. App. at 518, 710 S.E.2d at 288 (citing *Montgomery*, 138 N.C. App. at 525, 530 S.E.2d at 69).

Here, Defendant signed an imperfect waiver of counsel form, made repeated statements indicating he wished to proceed *pro se*, fired three appointed attorneys, and refused appointed standby counsel. The record does not disclose whether Defendant was disruptive to the point of delaying trial, but it does indicate he observed less-than-perfect courtroom decorum. Under the totality of the circumstances, the trial court did not commit error in finding Defendant forfeited his right to counsel because Defendant's "willful actions . . . result[ed] in the absence of defense counsel [which] constitutes a forfeiture of the right to counsel." *Quick*, 179 N.C. App. at 649–50, 634 S.E.2d at 917 (citing *Montgomery*, 138 N.C. App. at 524, 530 S.E.2d at 69).

IV. Conclusion

For the foregoing reasons, we hold the trial court did not commit error.

NO ERROR.

Chief Judge McGEE and Judge DILLON concur.

Report per Rule 30(e).