

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 16AP-444 (C.P.C. No. 14CR-5308)
Brian N. Spencer,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

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D E C I S I O N

Rendered on March 14, 2017

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**On brief:** *Ron O'Brien*, Prosecuting Attorney, and *Laura R. Swisher*, for appellee.

**On brief:** *W. Joseph Edwards*, for appellant. **Argued:** *W. Joseph Edwards*.

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APPEAL from the Franklin County Court of Common Pleas

BRUNNER, J.

{¶ 1} Defendant-appellant, Brian N. Spencer, appeals, by leave of this Court, a judgment entered by the Franklin County Court of Common Pleas on February 18, 2017 sentencing him to serve 16 years in prison. Because we find that the trial court properly exercised its discretion in denying Spencer's last-minute request for substitute counsel and because the trial court, having denied that request, properly examined Spencer on the pitfalls of representing himself before allowing him to do so, we overrule both of Spencer's assignments of error and affirm.

**I. FACTS AND PROCEDURAL HISTORY**

{¶ 2} On October 3, 2014, a Franklin County Grand Jury indicted Spencer for possession of heroin, marijuana, a dangerous ordinance (an allegedly automatic weapon), possessing a weapon while under a disability, and firearm specifications under both R.C. 2941.141 and 2941.144 associated with the drug and dangerous ordinance counts. The

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trial court appointed counsel. (Nov. 5, 2014 Appointment Notice.) Over the course of pretrial proceedings, the case was continued seven times. (Dec. 18, 2014 Continuance; Feb. 24, 2015 Continuance; Apr. 22, 2015 Continuance; May 28, 2015 Continuance; July 22, 2015 Continuance; Sept. 21, 2015 Continuance; Nov. 2, 2015 Continuance.) One of these continuances was sought solely by the defense, four were sought by joint motion of the parties, and two occurred on the court's instance.

{¶ 3} The parties and the trial court eventually convened for a jury trial on February 1, 2016. (Feb. 1, 2016 Voir Dire Tr., filed Oct. 17, 2016.) Prior to voir dire and in Spencer's presence, the trial court and counsel for the parties discussed settlement, including the counts, the penalties associated with each, and what penalties were mandatory and consecutive. *Id.* at 2-11. The parties' counsel argued, calculated, and put on the record Spencer's maximum exposure; Spencer participated in this discussion. *Id.* The State went on to offer Spencer two alternative plea deals. *Id.* at 4. One was that Spencer would plead guilty to all counts but not to any related specifications and that the trial court would sentence as it saw fit within a maximum exposure of 18 years. *Id.* The other was that Spencer would plead to just the heroin count which would include a one-year firearm specification, and the court would sentence in the range of 4 to 12 years. *Id.* The trial court then called a recess.

{¶ 4} Upon returning from the recess, with potential jurors waiting to appear in the courtroom for jury selection, Spencer's attorney indicated that Mr. Spencer wanted a trial and did not want to enter a plea. *Id.* at 12. Immediately after that assertion, the following colloquy ensued:

MR. SPENCER: I need a whole new attorney.

THE COURT: Well, you're not getting a whole new attorney. This case has been --

MR. SPENCER: My attorney is sitting here and literally talking shit about my dad. She's sitting here like fucking taunting me. Literally, she's threatening me into fucking signing papers saying I'm competent and shit. I cannot -- I cannot have her as my attorney whatsoever.

THE COURT: Well, you're out of luck. She's your lawyer.

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MR. SPENCER: She's fired. Before I let her fucking handle my case any longer, I'll be my own attorney. There's no way.

THE COURT: Well, if you don't quit swearing, you're going to sit in the back.

MR. SPENCER: Your Honor, she just literally came back there --

THE COURT: Let me talk. Let me talk. She's trained in the law. You're not. She's got your interests at heart, even if you think on occasion she doesn't. She's spent a lot of time with you. She's worked through figuring out who the witnesses are, what the evidence is, how there might be a defense to this case.

MR. SPENCER: Every time she has come to see me, she has literally cussed me out. She has literally talked to my family and talked crap about me to my family. Talks crap to me about my family. She has literally went up to my mom and my sister and told them how shitty of a guy I am, and that fucking I deserve to be stroked, and this, that, and the other. Literally, she got in a cuss-out with my sister. Like she should have been fired a long time ago.

THE COURT: Well, that's the trouble. You see, we had this case set repeatedly most recently November 1st.

MR. SPENCER: I tried to fire her.

THE COURT: You had all of November, you had all of December, you had all of January. Three months.

MR. SPENCER: And she did not show up not one time. When she did show up, she just sat there and just talked shit to me literally.

THE COURT: But if she was doing something that you thought was unfair to you, you could have raised it before today.

MR. SPENCER: I did. I did. I told you I wanted to get rid of her. And you said, Well, you got one attorney. Try to work with her. I've tried to work with her, and I can't.

THE COURT: You didn't even say anything this morning when we were together about there being a problem. I'm not

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going to replace her, and I'm not going to let you represent yourself.

MR. SPENCER: It's unfair. It's straight unfair. I filed for like a motion to dismiss, or something, because this is crazy. This is literally crazy. My attorney is working with my prosecutor all the way. She's not working for me in any way whatsoever, and she's working completely against me in every way she can.

THE COURT: Well, I haven't seen any of that in the months that I've been watching this case, including this morning when I talked to her and [the prosecutor] in your presence and back in the back, both.

MR. SPENCER: She comes out here and sits here for two seconds and stands up and says nothing, literally. I mean, how are you going to know that she's right for me or not, or working for me? I'm telling you, Your Honor, there's no way she's working for my benefit in any way, any way. You can ask anyone in my family. She's already sat there and cussed every one of them out and talked shit to me. There's no way, Your Honor.

THE COURT: She's not going to be talking to any of your family so far as I know during this trial.

MR. SPENCER: She already has. She talked crap about my dad. Literally said that he's fucking in jail, and fucking makes jokes about him. Going back there and acting like a little three-year-old child talking crap to me, taunting me, literally.

THE COURT: Well, she's not going to taunt you any more because everything will be out here in court.

MR. SPENCER: Your Honor, I don't want her even near me. I don't want her even near me.

THE COURT: Well, I think you're making a huge mistake, because you've never gone to law school, much less participated in actively trying a case such that you know how to do this.

MR. SPENCER: I don't even care. I would rather be stroked and go do fucking life in jail than be around this fucking bitch any longer, flat-out, flat-out.

THE COURT: Well, quit sweating. [sic]

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MR. SPENCER: Well, that's how I feel, Your Honor.

THE COURT: I don't care how you feel. Quit swearing in my courtroom. I'm not swearing at you. She's not swearing. Let's just put that away, okay?

MR. SPENCER: Still --

THE COURT: I understand you're upset. I'm trying to walk through this with you.

You have a prior record. Are you planning to be a witness?

MR. SPENCER: Right now, Your Honor, I can't even fucking think straight.

THE COURT: Try not to drop the F bomb. There are decisions that have to be made during the trial. I can't be your lawyer. I can't go back in the back and sit and say, for example --

MR. SPENCER: I'll be my own attorney.

THE COURT: Well, but you don't know the rules.

MR. SPENCER: Well she's working against me, so why would I have her sitting here when she's working with the prosecutor, instead of working for me?

THE COURT: I don't know how she's working --

MR. SPENCER: I'm working backwards. I would rather just stand here and just -- just stand here and stare at the -- I'm like just stand here and stare at the jury than have her sitting here, working against me.

THE COURT: She's not going to work against you in the trial.

MR. SPENCER: She has been the entire time. This entire time, she's been going over there, talking to the prosecutor, telling him stuff just to screw me over.

THE COURT: There's nothing that she's telling him that's going to be evidence. She can't give him any evidence about you. He's got what he's got. He knows the witnesses. He knows what the police are going to say. That's either going to convict you or it's not. She can't put you in jail or convict you.

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MR. SPENCER: Yeah. Well, whatever I tell her, she runs over there and tells him, and then he ends up: Okay. Well, this is what he's going to say; this is what he's going to say; you better hurry up and go get this evidence to screw him over this way.

THE COURT: Well, he's produced records of his evidence months ago.

MR. SPENCER: Probably because of her help, flat-out. There's no -- there's no working with her.

THE COURT: Well, I'm just warning you, if you represent yourself, you have, as decades of experience have proven to me and to other people, if you represent yourself, you have a fool as a client, because you cannot impartially plan your case and testify and be a participant as a litigant in it and then also be a lawyer.

This is a one-inch-thick book of just the evidence rules in Ohio. She went to law school and studied them. You didn't. It's hard enough for lawyers to figure out this book of rules, much less somebody who hasn't been to law school.

MR. SPENCER: Give me the book. I'll read it.

THE COURT: You'll have to sit there and read the book during the trial to get anything out of it. It doesn't work that way. It takes months to learn this stuff.

MR. SPENCER: It's just a messed-up trial. You might as well just bank me. You can just go ahead and say I'm already guilty without me admitting to anything and just bank me.

THE COURT: I can't do that legally. If you don't want to enter a guilty plea, then we have to have a trial. Those are your only two choices.

MR. SPENCER: She's not going to be my attorney. The only way that we can have a trial is if I'm representing myself, and that's the only option I have.

THE COURT: All right. But do you understand what a terrible mistake you're making? You need to have somebody arguing your side of the case. In front of me, she has always done that.

MR. SPENCER: You know, she just came in here and literally I asked her like -- no, she's like: Yeah, if we go to trial, we're

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going down smoking. I'm like: Okay. So you're not fighting for me in any way? No, no, you're getting fucked. Pretty much that -- she's not fighting for me. She's not. She's fighting completely against me.

THE COURT: A lawyer can't change the evidence, Mr. Spencer. Now, if she thinks the evidence is --

MR. SPENCER: Anything I say and --

THE COURT: If she thinks the evidence --

MR. SPENCER: -- spin it around.

THE COURT: If she thinks the evidence is going to sink you, her job is to tell you privately that it's going to sink you. That doesn't mean she's --

MR. SPENCER: She's wanting me to go down. She's wanting me to go do as much time as I possibly can

THE COURT: She doesn't decide that. I do.

MR. SPENCER: Well, she's trying to make it as easy on you as possible to bank the hell out of me.

THE COURT: But she's not saying negative stuff to me.

MR. SPENCER: She ain't got to. She says it to the prosecutor.

THE COURT: He doesn't tell me what sentence to use either.

MR. SPENCER: The shit she's saying to me alone is --

THE COURT: How about this? How about you let her represent you, but just not go in the back and talk to you any more?

MR. SPENCER: No, no. Me and her are done. I don't want her even fucking 10 feet from me. Right now, I'm holding it together, even sitting here. She's already crossed too many fucking lines.

THE COURT: Well, I'm not going to postpone your trial. We've tried to postpone this case repeatedly. And the last trial date, I picked three months ago.

MR. SPENCER: Yeah, I know.

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THE COURT: And it's not fair to anybody, including you, to just sit in jail and wait and wait and wait, because it will take six months if you get a new lawyer to get up to speed.

MR. SPENCER: I don't want to sit in jail. I don't want to fucking go through this, either, but before I let her fucking represent me, I'll do whatever the hell I got to do, man.

THE COURT: All right. I'll let you represent yourself.

MR. SPENCER: Whatever.

THE COURT: Do you want [your former counsel] to sit as what's called back-up counsel in case you want to ask questions of her?

MR. SPENCER: No, I don't want her nowhere near me.

THE COURT: It's often a big help part way through the trial if some legal questions come up.

MR. SPENCER: So she can sit here and talk shit to me? I mean, what help is that? What real help is that?

THE COURT: She's not going to talk nasty to you in the courtroom here in front of me. I can guarantee you that. Whatever has happened in the back, I didn't see it. But I know she won't do anything except try to be a professional, solid lawyer for you here in the courtroom. Now, will you take it on that basis and have her -- at least let her sit here?

MR. SPENCER: I don't want her nowhere near me. Nowhere near me.

THE COURT: All right. [Attorney], I guess you get your week back and you don't have to sit in the trial. I don't know what value it's going to be to have you as standby counsel unless you think that there might be a break-through later, in which case I'll, obviously, let you continue.

[DEFENSE ATTORNEY]: I would be more than happy to come back if [Spencer] changes his mind. I believe your bailiff has my cell phone number. You can text me as late as you would like to. I'll be here.

THE COURT: All right, [Attorney]. Well, give the jury questionnaires to Mr. Spencer.

(Thereupon, an off-the-record discussion took place.)



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[DEFENSE ATTORNEY]: May I give him my pen?

THE COURT: Sure.

(Thereupon, an off-the-record discussion took place.)

THE COURT: This is your last opportunity, Mr. Spencer, to say forget it, Judge, I'll keep her. I really recommend strongly that you do that. Please protect yourself the best you can and keep [Attorney] as your lawyer, even if you don't want to listen to her. She doesn't have to talk to you much, but at least have her sit here and watch.

MR. SPENCER: I'd rather go through the next 30 years in jail than be around her. Fuck it.

*Id.* at 12-22.

{¶ 5} Spencer represented himself during the trial. Ultimately the jury convicted him of the heroin, marijuana, and weapon under disability counts with a one-year R.C. 2941.141 specification for each drug count. (Feb. 4, 2016 Verdict Forms.) The jury acquitted him of the dangerous ordinance count and the two six-year firearm specifications that had been charged pursuant to R.C. 2941.144 as a result of his alleged possession of an automatic weapon. *Id.*

{¶ 6} Spencer now appeals.<sup>1</sup>

## II. ASSIGNMENTS OF ERROR

{¶ 7} Spencer assigns two errors for our review:

[1.] THE TRIAL COURT COMMITS PREJUDICIAL ERROR WHEN IT FAILS TO HOLD A PRE-TRIAL HEARING ON THE ISSUE OF SELF-REPRESENTATION, CONTRA THE 5TH, 6TH & 14TH AMENDMENTS TO THE UNITED STATES CONSTITUTION .[sic]

[2.] THE TRIAL COURT EFFECTIVELY DENIES DEFENDANT THE RIGHT TO COUNSEL BY REFUSING TO APPOINT NEW COUNSEL AFTER IT WAS CLEAR THE ATTORNEY CLIENT [sic] RELATIONSHIP HAS DETERIORATED THEREBY FORCING HIM TO REPRESNET [sic] HIMSELF, CONTRA THE 5TH 6TH & 14TH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

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<sup>1</sup> We previously granted Spencer leave to file a delayed appeal on July 20, 2016.

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(Oct. 24, 2016 Spencer Brief at v.)<sup>2</sup> For ease of discussion, we address these in reverse order.

### III. DISCUSSION

#### A. Second Assignment of Error—Whether the Trial Court Erred in Failing to Appoint Substitute Counsel for Spencer on the Morning of Trial

{¶ 8} The United States Supreme Court has explained that a defendant has a right to be represented by counsel of choice and that deprivation of this right is structural error. *United States v. Gonzalez-Lopez*, 548 U.S. 140, 144, 150 (2006). However, this right has limitations when counsel has been appointed for an indigent defendant.

[T]he right to counsel of choice does not extend to defendants who require counsel to be appointed for them. Nor may a defendant insist on representation by a person who is not a member of the bar, or demand that a court honor his waiver of conflict-free representation. We have recognized a trial court's wide latitude in balancing the right to counsel of choice against the needs of fairness, and against the demands of its calendar. The court has, moreover, an "independent interest in ensuring that criminal trials are conducted within the ethical standards of the profession and that legal proceedings appear fair to all who observe them."

(Citations omitted.) *Id.* at 151-52, quoting *Wheat v. United States*, 486 U.S. 153, 160 (1988), citing *Caplin & Drysdale v. United States*, 491 U.S. 617, 624 (1989); *Wheat* at 159-60, 163-64; *Morris v. Slappy*, 461 U.S. 1, 11-12 (1983). Based on these principles, the Supreme Court of Ohio has explained:

Factors to consider in deciding whether a trial court erred in denying a defendant's motion to substitute counsel include "the timeliness of the motion; the adequacy of the court's inquiry into the defendant's complaint; and whether the conflict between the attorney and client was so great that it resulted in a total lack of communication preventing an adequate defense." In addition, courts should "balance \*\*\* the accused's right to counsel of his choice and the public's interest in the prompt and efficient administration of justice." Decisions relating to the substitution of counsel are within the sound discretion of the trial court.

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<sup>2</sup> Spencer's brief contains, at one juncture, assignments of error that differ from these. (Spencer Brief at ii.) Based on references to the record, we assume the difference to be clerical error and we otherwise ignore them.

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(Citations omitted.) *State v. Jones*, 91 Ohio St.3d 335, 342-43 (2001), quoting *United States v. Jennings*, 83 F.3d 145, 148 (6th Cir.1996), citing *Wheat* at 164.

{¶ 9} Spencer's request for substitute counsel was not timely. It occurred the morning of trial. (Voir Dire Tr. at 12.) Spencer asserted that "every time" he saw his attorney she behaved unprofessionally toward him, used profanity against him, and "she should have been fired a long time ago." *Id.* at 13. According to Spencer, his attorney was appointed on November 5, 2014. He claims she behaved intolerably toward him and his family throughout her representation. If this is true, he should have fired her "a long time ago" before the seventh trial date. *Id.*; Appointment Order. His failure to do this, seeking trial counsel substitution the morning of trial, weighs against him.

{¶ 10} The record shows that the trial court adequately explored Spencer's complaints about his counsel. The trial court's initial posture was a definitive denial of Spencer's request, but the trial court did engage with Spencer in a substantial discussion on the record, inquiring about the timing and nature of the alleged problems between Spencer and his attorney. (Voir Dire Tr. at 12-22.) The trial court also discussed on the record with Spencer whether the conflict with his counsel was reconcilable. *Id.* Taken together and based on the record, this factor also weighs against Spencer.

{¶ 11} Spencer stated he could not even stand to be in the same room as his attorney, and he refused the trial court's offer that she remained appointed on his behalf to act as standby counsel. *Id.* Spencer's statements would support that such a great conflict existed between him and his counsel that he could not be provided an adequate defense by her remaining as his counsel. *Jones* at 342-43. This factor could weigh in his favor, but on balance, sufficient factors weigh against him such that we find the trial court properly exercised its discretion in denying Spencer's request for a last-minute substitution of counsel.

{¶ 12} Spencer's second assignment of error is overruled.

**B. First Assignment of Error—Whether the Trial Court Erred in Permitting Spencer to Represent Himself**

{¶ 13} In the United States a defendant has a right to represent himself. *Faretta v. California*, 422 U.S. 806, 833-36 (1975). Yet a trial court must undertake certain precautions before permitting a defendant to do so. As the United States Supreme Court has stated:

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When an accused manages his own defense, he relinquishes, as a purely factual matter, many of the traditional benefits associated with the right to counsel. For this reason, in order to represent himself, the accused must "knowingly and intelligently" forgo those relinquished benefits. Although a defendant need not himself have the skill and experience of a lawyer in order competently and intelligently to choose self-representation, he should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that "he knows what he is doing and his choice is made with eyes open."

(Citations omitted.) *Id.* at 835, quoting *Adams v. United States ex rel. McCann*, 317 U.S. 269, 279 (1942), citing *Johnson v. Zerbst*, 304 U.S. 458, 464-65 (1938); *Von Moltke v. Gillies*, 332 U.S. 708, 723-24 (1948) (plurality opinion of Black, J.). The Supreme Court of Ohio has further explained:

1. The Sixth Amendment, as made applicable to the states by the Fourteenth Amendment, guarantees that a defendant in a state criminal trial has an independent constitutional right of self-representation and that he may proceed to defend himself without counsel when he voluntarily, and knowingly and intelligently elects to do so.
2. In order to establish an effective waiver of right to counsel, the trial court must make sufficient inquiry to determine whether defendant fully understands and intelligently relinquishes that right.

(Citations omitted.) *State v. Gibson*, 45 Ohio St.2d 366 (1976), paragraphs one and two of the syllabus, citing *Faretta*; *see also, e.g.*, Crim.R. 44(A).

{¶ 14} There is no precise formula for determining if the trial court has adequately undertaken the necessary precautions by conducting a "sufficient inquiry" before permitting self-representation to a defendant in a criminal matter. *State v. Schleiger*, 141 Ohio St.3d 67, 2014-Ohio-3970, ¶ 18-19. The Supreme Court of Ohio has stated:

The defendant "need not himself have the skill and experience of a lawyer" in order to choose to represent himself, but he "should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that 'he knows what he is doing and his choice is made with eyes open.' " Whether a defendant's choice was made with eyes open typically "depend[s], in each case, upon the particular

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facts and circumstances surrounding that case, including the background, experience, and conduct of the accused." Thus, a defendant's unambiguous assertion of the right to self-representation triggers a trial court's duty to conduct the *Faretta* inquiries to establish that the defendant is knowingly and voluntarily waiving his constitutional right to counsel.

(Citations omitted.) *State v. Obermiller*, 147 Ohio St.3d 175, 2016-Ohio-1594, ¶ 30, quoting *Faretta* at 835; *Adams* at 279; *Zerbst* at 464, citing *United States v. Cromer*, 389 F.3d 662, 682-83 (6th Cir.2004).

{¶ 15} Immediately before Spencer declared he wanted a new attorney and before he declared he would represent himself, the trial court, prosecutor, and defense attorney had engaged in a lengthy discussion about the nature of the charges against Spencer, the specifications to the charges, and the maximum, mandatory, and consecutive possible penalties. (Voir Dire Tr. at 2-11.) Spencer participated in that discussion:

[DEFENSE ATTORNEY]: Yes. I tend to agree with [Spencer]. I think the max is 18, because the spec[ification]s would have to be concurrent.

[PROSECUTOR]: (Nods no.)

THE COURT: They are consec[utive].

[DEFENSE ATTORNEY]: They have to be consec?

[PROSECUTOR]: Mm-hmm.

THE COURT: They have to be consec if he loses on the specs.

MR. SPENCER: I do the mandatory time, and then after that, it would still be the same. It would still be 18 years.

THE COURT: If he got maxed on everything, it would be 18 years; is that right?

[PROSECUTOR]: Mm-hmm.

THE COURT: But that's a total of 25 with the specs. Seven for the specs.

MR. SPENCER: Yeah, that's counting the seven. Eighteen is counting the seven.

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THE COURT: No, it's not. It's 11 for the F1, 3 each for the F3s, and one year for the F5. Eleven plus 3 plus 1 plus 3 is 18. That doesn't allow anything for the specs. So what you're looking at, as I understand it in all seriousness, is a potential max of 25. I'm not saying that I would do that if you lose on this case, but who knows, because I haven't heard the facts.

MR. SPENCER: If that's right, it's right.

*Id.* at 6-7. Spencer's response ("Yeah, that's counting the seven. Eighteen is counting the seven.") to the shorthand terminology used by the participants to the pre-trial courtroom discussion (e.g. "consec," "specs," "maxed," etc.) indicates that Spencer had familiarity with the terms being used and understood the nature of the charges against him and the potential penalties.

{¶ 16} And the trial court attempted on several occasions to make Spencer aware of the pitfalls of representing himself and that it was inadvisable:

THE COURT: \* \* \* She's trained in the law. You're not. She's got your interests at heart, even if you think on occasion she doesn't. She's spent a lot of time with you. She's worked through figuring out who the witnesses are, what the evidence is, how there might be a defense to this case.

\* \* \*

THE COURT: Well, I think you're making a huge mistake, because you've never gone to law school, much less participated in actively trying a case such that you know how to do this.

\* \* \*

THE COURT: I understand you're upset. I'm trying to walk through this with you.

You have a prior record. Are you planning to be a witness?

\* \* \*

THE COURT: \* \* \* There are decisions that have to be made during the trial. I can't be your lawyer. I can't go back in the back and sit and say, for example --

MR. SPENCER: I'll be my own attorney.

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THE COURT: Well, but you don't know the rules.

\* \* \*

THE COURT: Well, I'm just warning you, if you represent yourself, you have, as decades of experience have proven to me and to other people, if you represent yourself, you have a fool as a client, because you cannot impartially plan your case and testify and be a participant as a litigant in it and then also be a lawyer.

This is a one-inch-thick book of just the evidence rules in Ohio. She went to law school and studied them. You didn't. It's hard enough for lawyers to figure out this book of rules, much less somebody who hasn't been to law school.

MR. SPENCER: Give me the book. I'll read it.

THE COURT: You'll have to sit there and read the book during the trial to get anything out of it. It doesn't work that way. It takes months to learn this stuff.

\* \* \*

THE COURT: This is your last opportunity, Mr. Spencer, to say forget it, Judge, I'll keep her. I really recommend strongly that you do that. Please protect yourself the best you can and keep [Attorney] as your lawyer, even if you don't want to listen to her. She doesn't have to talk to you much, but at least have her sit here and watch.

*Id.* at 13-22. Rather than heed the trial court's thorough warnings and advice, Spencer launched a profanity-riddled diatribe against his attorney, frequently interrupting the trial court in its attempts to make him aware that his decision to represent himself was ill advised. *Id.* Under the circumstances, including Spencer's adverse demeanor and disrespect of the decorum and respect for a judicial setting, the trial court continued to advise him not to represent himself and did what was constitutionally necessary to ensure Spencer's decision to proceed pro se was knowing and intelligent.

{¶ 17} We thus overrule Spencer's first assignment of error.

#### IV. CONCLUSION

{¶ 18} Based on the record, including the pre-trial discussion the trial court had with counsel and with the criminal defendant, himself, it was not an abuse of discretion for the trial court to have denied Spencer's last minute request for substitute appointed

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counsel. The trial court conducted an adequate *Faretta* colloquy with the defendant to assure that he was aware of the dangers and disadvantages of self-representation. Therefore, we affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

BROWN and HORTON, JJ., concur.

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