NO. 07-10-00300-CR

IN THE COURT OF APPEALS

FOR THE SEVENTH DISTRICT OF TEXAS

AT AMARILLO

PANEL C

DECEMBER 2, 2011

JACKIE LEE BIBBS, APPELLANT

v.

THE STATE OF TEXAS, APPELLEE

FROM THE 396TH DISTRICT COURT OF TARRANT COUNTY;

NO. 1160104D; HONORABLE GEORGE W. GALLAGHER, JUDGE

Before QUINN, C.J., and HANCOCK and PIRTLE, JJ.

ORDER

We abated this appeal and directed the trial court to conduct a hearing due to appellant, Jackie Lee Bibbs, filing a "Motion to Dismiss Appellant Counsel and Proceed Pro Se" that requested appellant be allowed to represent himself on appeal. Our order directed the trial court to enter findings of fact on the following issues: (1) whether appellant desires to prosecute the appeal; (2) whether appellant's request to remove appointed counsel and represent himself is an attempt to obstruct court procedure or interfere with the fair administration of justice; (3) whether appellant asks to waive appointed counsel and represent himself pro se; (4) if appellant wishes to represent

himself, whether appellant's decision is competently and intelligently made, including whether appellant is aware of the dangers and disadvantages of self-representation, and that such a decision would result in appointed counsel's brief being withdrawn in toto; and (5) if appellant wishes to proceed pro se, whether allowing him to do so is in his best interests, the State's best interest, and is in furtherance of the proper administration of justice.

Appellant; J. Warren St. John, appellant's court-appointed appellate counsel; and an assistant district attorney were present for the hearing. Following the hearing, the trial court found that appellant wishes to represent himself on appeal because his appointed counsel did not raise certain alleged errors in the appellate brief filed on behalf of appellant. The trial court further found that appellant has not studied the law, has a 6th grade education, and represented that he has an IQ of 68. Due to these findings, the trial court found that appellant would not be able to adequately represent himself on appeal. Finally, the trial court recommended that the brief that was filed by St. John be considered by the Court of Appeals.

Before we can rule on appellant's request to represent himself on appeal, we must first determine whether a criminal appellant has a right to appellate self-representation. We conclude that there is no such right.

The United States Supreme Court addressed the question of whether there is a federal constitutional right to self-representation on direct appeal from a criminal conviction in Martinez v. Court of Appeal of Cal., Fourth Appellate Dist., 528 U.S. 152, 164, 120 S.Ct. 684, 145 L.Ed.2d 597 (2000). The court examined its reasoning and

holding in Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975), and concluded that the constitutional right to represent oneself does not extend to the appellate process under either the Sixth Amendment or the Due Process Clause. The Court, however, observed that its holding does not preclude the states from recognizing a right to appellate self-representation under their own constitutions. Martinez, 528 U.S. at 163. On the other hand, the Court held that the states are clearly within their discretion to conclude that the government's interests in the fair and efficient administration of justice outweigh an invasion of the appellant's interest in self-representation. Id.

No Texas court has recognized a state constitutional right to self-representation on direct appeal. See In re Kuhn, No. 03-11-00570-CV, 2011 Tex.App. LEXIS 8655, at *3 (Tex.App.—Austin Oct. 28, 2011, no pet. h.) (mem. op.); Cormier v. State, 85 S.W.3d 496, 498 (Tex.App.—Houston [1st Dist.] 2002) (order); Stafford v. State, 63 S.W.3d 502, 506 (Tex.App.—Texarkana 2001) (per curiam order); Hadnot v. State, 14 S.W.3d 348, 350 (Tex.App.—Houston [14th Dist.] 2000) (order). Furthermore, the Texas Code of Criminal Procedure does not provide a right to self-representation on appeal. See Crawford v. State, 136 S.W.3d 417, 418 (Tex.App.—Corpus Christi 2004) (per curiam order); Cormier, 85 S.W.3d at 498. But see Sickles v. State, 170 S.W.3d 298, 299 (Tex.App.—Waco 2005) (per curiam order); Fewins v. State, 170 S.W.3d 293, 296 (Tex.App.—Waco 2005) (per curiam order) (implying a statutory right to self-representation arising under article 1.051 of the Texas Code of Criminal Procedure).

However, this Court does have the discretion to permit appellant to represent himself on appeal. Glenn v. State, No. 03-03-00212-CR, 2003 Tex.App. LEXIS 7082, at *3 (Tex.App.—Austin Aug. 6, 2003) (order). Our exercise of this discretion will depend on a case-by-case analysis that considers the best interest of the appellant, the State, and the administration of justice. Bibbs v. State, No. 07-10-00300-CR, 2011 Tex.App. LEXIS 8426, at *2-*3 (Tex.App.—Amarillo Oct. 21, 2011) (per curiam order); Crawford, 136 S.W.3d at 418; Cormier, 85 S.W.3d at 498.

In the present case, appellant represented himself at trial. The same judge who presided over the trial concluded that appellant would not be able to adequately represent himself on appeal. Therefore, while we respect appellant's genuine desire to proceed pro se, we nevertheless find that it would not be in his best interest. We also find that the State's interest in the fair and efficient administration of justice would not be served in this case by allowing appellant to represent himself.

Consequently, appellant's "Motion to Dismiss Appellant Counsel and Proceed Pro Se" is denied. J. Warren St. John remains appellant's counsel of record on appeal, and consideration of the appellate brief St. John has filed on appellant's behalf will occur in due course.

It is so ordered.

Per Curiam