In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-21-00215-CR

CHARLES FRANK WHITE, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 142nd District Court
Midland County, Texas
Trial Court No. CR53721, Honorable Leah G. Robertson, Presiding

June 17, 2022

MEMORANDUM OPINION

Before QUINN, C.J., and PARKER and DOSS, JJ.

"This isn't what I asked for, be careful what you ask for."[1] Charles Frank White did not ask to be convicted; he asked to represent himself. After admonishing White about the perils of that journey, the trial court acceded. White now complains about purported deficiencies in the trial court's admonishments, which deficiencies allegedly rendered his waiver of appointed counsel less than knowing and intelligent. For that reason, we are

[1] EVERCLEAR, *Be Careful What You Ask For*, *on* INVISIBLE STARS (eOne Music 2012).

asked to reverse his conviction for burglary of a building, two-year sentence, and probation. The conviction stands.[2]

According to the record, the trial court originally appointed counsel to represent White. The appointment was changed to one of standby counsel after White first sought to defend himself. Continued demands for self-representation resulted in standby counsel being released by the court. White's desire persisted when, immediately before trial, the court again queried him about waiving his right to either appointed or standby counsel. Now, White argues that his pursuit of self-representation was not knowing and intelligent since "the trial court did not inform [him] of the specific charges against him, the possible range of punishment, or possible defenses to the indicted charge." The unknowing and unintelligent choice was "exacerbated by the . . . failure to inquire into any history of mental illness, his educational background, or his familiarity with the legal system," he concludes in his sole issue. We overrule it.

Undeniably, "in most criminal prosecutions defendants could better defend with counsel's guidance than by their own unskilled efforts. But the right to defend is personal. It is the defendant, not his lawyer or the State, who will bear the personal consequences of a conviction." *Blankenship v. State*, 673 S.W.2d 578, 583 (Tex. Crim. App. 1984) (en banc). Nevertheless, self-representation is not actuated upon mere request; it is conditioned upon proper inquiry and admonishment by the court. *Bitolas v. State*, Nos. 11-09-00158-CR, 11-09-00159-CR, 2010 Tex. App. LEXIS 6093, at *1–2 (Tex. App.—Eastland July 29, 2010, no pet.) (mem. op., not designated for publication) (stating that

[2] Because this appeal was transferred from the Eleventh Court of Appeals, we are obligated to apply its precedent when available in the event of a conflict between the precedents of that court and this Court. *See* TEX. R. APP. P. 41.3.

an accused may waive his right to appointed counsel and pursue that for self-representation "[a]fter proper admonishment"). Those admonishments serve to assure that the decision is made competently, knowingly, intelligently, and voluntarily, as such a decision must be. *Moore v. State*, 999 S.W.2d 385, 396 (Tex. Crim. App. 1999). It is knowing and intelligent when made with a full understanding of the right to counsel and the dangers and disadvantages of self-representation. *Collier v. State*, 959 S.W.2d 621, 625–26 (Tex. Crim. App. 1997) (en banc); *Grinstead v. State*, No. 03-19-00848-CR, 2021 Tex. App. LEXIS 9412, at *14 (Tex. App.—Austin Nov. 19, 2021, pet. ref'd) (mem. op., not designated for publication); *accord Williams v. State*, 252 S.W.3d 353, 356 (Tex. Crim. App. 2008) (*quoting Faretta v. California,* 422 U.S. 806, 835, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975), and stating that trial judge must tell the accused about 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'")).

Included in the panoply of disadvantages about which the accused should be informed are the existence of technical evidentiary and procedural rules and the absence of any special consideration afforded a pro se defendant simply for acting pro se. *Williams*, 252 S.W.3d at 356. Yet, and contrary to White's assertion at bar, the trial judge need not inquire into an accused's age, education, background, or previous mental status as a matter of course. *Id.* All depends upon the totality of circumstances in each particular case, *id.*, and no particular script must be adhered to or formulaic questioning pursued by the trial court. *Burgess v. State*, 816 S.W.2d 424, 428 (Tex. Crim. App. 1991) (en banc); *Gilbert v. State*, No. 05-18-01072-CR, 2019 Tex. App. LEXIS 10522, at *7 (Tex. App.—Dallas Dec. 4, 2019, no pet.) (mem. op., not designated for publication).

The appellate record discloses that the trial court did that which the law required of it. During the first hearing on June 23, 2021, the trial court learned that White contacted court personnel requesting an opportunity to represent himself. His appointed counsel verified that wish and drafted a motion to withdraw. The trial court then (1) conferred with White about it, (2) stated he had the rights to appointed counsel and self-representation, (3) broached the availability of standby counsel in lieu of no counsel, (4) explained the purpose and scope of standby counsel's obligations, (5) asked White if he understood that purpose and scope, (6) heard White answer "yes" and then iterate he did not want standby counsel, (7) told White "it is very dangerous and disadvantageous for you to waive your right to counsel and for you to self-represent yourself," and (8) mentioned reasons why. Those reasons included (1) the existence of "substantive laws that apply to your case, and the technical rules of evidence and procedure that govern the admission of evidence"; (2) a defendant being "bound by" them and "and all other rules, in the same manner as a lawyer"; (3) a defendant being "granted no special consideration because the defendant is not a lawyer" or "may not know or understand the substantive law or rule"; (4) the court's inability to "help the defendant to explain the substantive law or rules . . . during the course of trial"; (5) a defendant's risk of "fail[ing] to assert, and, thereby, give up some defenses or error because you didn't object to that particular error that was coming in or was being offered"; and (6) the effect of failing to assert defenses or object to error. When asked if he understood that, White replied, "Yes." White was also told that he could not claim "ineffective counsel" if he represented himself and that his pro se representation would not be as good as representation by legal counsel. That resulted in

White agreeing to standby counsel, which the trial court appointed. He did utter, though, "I – I – the truth is going to come out and I just want to represent myself."

Before telling White about a form he needed to execute to memorialize his choice, the trial court again asked if he "want[ed] to waive your right to counsel and to represent yourself." White again answered, "Yes." That led the court to refer to the old adage about a person who represents oneself having a fool for a client and opining "[s]o you kind of are in that position in representing yourself." Nevertheless, the court also concluded, on the record, that White had "thought this decision out" and understood "the dangers and the problems that can exist in representing yourself."

Regarding the form alluded to by the trial court, it concerned the waiver of counsel coupled with the appointment of standby assistance. The court told White to "review" it and asked if he understood the "dangers." White said, "Yes" and executed it, nonetheless. Through the form, White revealed his age (57), educational background (twelve years of school), and occupation (truck driver/handyman). He also acknowledged (1) his ability to read and write English, (2) his being told of the right to free appointed legal counsel, (3) his "wish" to waive that right, (4) his "understand[ing] [of] the nature of the offense charged against [him] in this cause and the range of punishment attached to the said offense," (5) his awareness of the dangers and disadvantages in acting pro se as specified by the trial court, (6) his receipt of standby counsel but the limitations of such counsel's authority, (7) his election to act pro se being "unconditional and unequivocal," (8) his having discussed with legal counsel the dangers and disadvantages of self-representation, and (9) his desire to defend himself despite the dangers.

Within a month, White again appeared before the trial court to discuss the impending trial and the State's motion for continuance. Apparently, the State sought postponement to secure a witness. White cogently explained to the trial court that he too desired the witness's presence and described his own efforts to secure it. Thereafter, he sua sponte raised the issue of discharging his standby counsel. The reason for that involved counsel's purported refusal to answer a question. The latter was: "Is the thrift store required to carry liability insurance?" He thought the answer important because, in his view, "this whole thing involves a thrift store." When asked if he desired alternate standby counsel, he said, "No. If the truth doesn't set me free, then I guess shame on the courts." The trial court then alluded to the discussion and form executed a few weeks early regarding the "perils" of self-representation and use of standby counsel. White acknowledged same but nonetheless opted to forgo all counsel since he did not "want to waste the taxpayers' money." The trial court responded, "You seem to be a competent individual and know what you're doing and understand the perils and whatnot, and you are going to waive those voluntarily and freely; is that correct?" White answered, "Yes, sir." The request was then granted, at which point standby counsel was discharged while delivering to White various documents. They consisted of "a pro se motion for jury to assess punishment, application for probation from the jury, and should he be convicted, a pro se notice of appeal."

About a shade under two months then lapsed when the case came for trial. Before it began, and in open court, White informed the trial court of his desire for a bench trial. That request was granted after the trial court assured he understood the right to a jury

trial and his relinquishment of same was knowing, voluntary, and intelligent. So too was he told of his right to counsel and standby counsel, rights which White again declined.

The foregoing circumstances evince a knowing, intelligent, and voluntary waiver of appointed counsel by White in accordance with *Blankenship*, *Moore*, *Collier*, and *Williams*. Maybe more could have been said, but the propoundment of formulaic questions need not occur. White knew of his rights, exhibited an awareness of the situation he faced, and consciously chose to go forward on his own behalf. His eyes were wide open when making that choice and despite being told of the pitfalls lying before him. "While we may be skeptical of his election knowing that he may conduct his defense ultimately to his own detriment, his choice must be honored." *Blankenship*, 673 S.W.2d at 583. The selection was properly honored here by the trial court. And, in affirming the decision and final judgment, we again caution future defendants: "[B]e careful what you ask for."

The judgment is affirmed.

Brian Quinn
Chief Justice

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