

IN THE UTAH COURT OF APPEALS

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Orem City,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20040699-CA
v.)	
)	
Nichole Chapman,)	F I L E D
)	(May 18, 2006)
)	
Defendant and Appellant.)	<u>2006 UT App 201</u>

Fourth District, Orem Department, 041200701
The Honorable John C. Backlund

Attorneys: Laura H. Cabanilla, Provo, for Appellant

Before Judges Greenwood, McHugh, and Orme.

PER CURIAM:

Nichole Chapman appeals a conviction of obstruction of justice, a class B misdemeanor. See Utah Code Ann. § 76-8-306 (Supp. 2005). Chapman, who proceeded through trial without counsel and was subsequently sentenced to jail time, argues that her Sixth Amendment right to assistance of counsel was violated. We reverse.

It is clear from the record that Chapman did not knowingly waive her Sixth Amendment right to counsel, and that the trial court did not fully advise her of that right as required by State v. Heaton, 958 P.2d 911, 917-19 (Utah 1998) (holding that a trial court must advise defendant, at a minimum, of the "dangers and disadvantages" of self-representation).

In State v. Petty, 2001 UT App 396, 38 P.3d 998, this court recited the following requirements for the colloquy preceding a waiver of the right to counsel:

At a minimum, during the colloquy the trial court must (1) inform the defendant of [her] constitutional right to counsel and [her] right to represent [herself]; (2) determine that the defendant has the "intelligence and capacity to understand and appreciate the

consequences of the decision to represent [herself]"; and (3) make certain that the defendant "comprehends the nature of the charges and proceedings, the range of permissible punishments, and any additional facts essential to a broad understanding of the case."

Id. at ¶6 (citations omitted). Further, we noted "it must be clear from the colloquy that the defendant understands the risks [s]he faces in making the decision," and the colloquy must include "a discussion of the nature of the charges and the range of possible penalties" faced by the defendant. Id. at ¶8.

Based upon the record and the arguments in Chapman's opening brief, it is clear that no such colloquy took place in this case.

We reverse Chapman's conviction and order a new trial.

Pamela T. Greenwood,
Associate Presiding Judge

Carolyn B. McHugh, Judge

Gregory K. Orme, Judge