

THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	No. 64599-4-I
)	
Respondent,)	
)	DIVISION ONE
v.)	
)	UNPUBLISHED OPINION
)	
KOKEE JONES,)	
)	
<u>Appellant.</u>)	FILED: <u>June 13, 2011</u>

spearman, j. — Kokee Jones appeals his convictions for robbery, burglary and assault, contending that he was denied his right to represent himself at trial. But the trial court accepted a valid waiver of Jones’s right to counsel and signed an order allowing him to represent himself on the first day of trial. Because Jones’s subsequent requests for reappointment of counsel and leave to proceed pro se were wholly within the trial court’s discretion and Jones has not demonstrated any abuse of that discretion, we affirm.

FACTS

The State charged Kokee Jones with first degree robbery, first degree burglary, and second degree assault. On September 21, 2009, the parties appeared for trial and Jones complained of a conflict of interest with his attorney and asked to represent himself with the help of a man named Kevin Johnson,

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who claimed to be “a vendor at the office of public defender as a paralegal service provider for criminal defendants who represent themselves.” The trial court refused to allow a non-lawyer to sit at counsel table with Jones, who was in custody, based on security reasons, and asked Jones whether he wished to represent himself without Johnson. Jones stated that he wished to represent himself and the trial court conducted a thorough colloquy. The trial court entered an order stating, “The defendant is allowed to proceed in this matter pro se.” The trial court directed Jones’s appointed attorney to serve as standby counsel, reserved ruling on Johnson’s role in the case, as well as Johnson’s request for payment with public funds, and addressed pre-trial motions.

On the second day of trial, the trial court denied Johnson’s request for public funds and denied Jones’s request to allow Johnson to assist him directly, stating, “if you wish legal services it’s through an attorney . . . I cannot control the use of a paralegal other than through a properly admitted lawyer.” When Jones requested a different public defender, the following exchange occurred:

Court: No, not at this point. It’s too late and I don’t see [a] conflict.

Jones: So, - -so, you are saying your honor, that I either represent myself all on my own or have [appointed counsel] represent me?

Court: Correct.

Jones: Okay, then I guess I’ll have [appointed counsel] represent me.

Court: So, you withdraw your request to be pro se?

Jones: Yeah.

Court: Very well, we’re back on board with a lawyer.

On September 22, 2009, Jones became violently ill in court and was

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taken to the hospital by ambulance. The trial court granted defense counsel's motion to continue the trial.

On October 19, 2009, the parties appeared for jury selection before a different judge. Jones said that he had hired Johnson to be his paralegal and wished to represent himself with the assistance of Johnson as well as his standby counsel. The trial court refused to revisit the prior ruling and asked whether Jones wanted to represent himself without Johnson. Jones declined. Jones then asked to have Johnson assist appointed counsel. The trial court left that question to appointed counsel and then allowed Johnson to sit at counsel table at trial at appointed counsel's request.

Following trial, the jury found Jones guilty as charged and the trial court imposed a standard range sentence.

Jones appeals.

Analysis

Jones contends that the trial court denied his right to represent himself with the assistance of a privately funded paralegal. Although the constitutional right to self-representation is fundamental, it is neither absolute nor self-executing. WASH CONST. art. I, § 22; Faretta v. California, 422 U.S. 806, 819, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975); State v. Madsen, 168 Wn.2d 469, 504, 229 P.3d 714 (2010); State v. Woods, 143 Wn.2d 561, 585-86, 23 P.3d 1046 (2001). A request to proceed pro se must be timely made and stated unequivocally. State v. Stenson, 132 Wn.2d 668, 742, 940 P.2d 1239 (1997)

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(trial court did not abuse discretion by denying request to proceed pro se based on conditional and equivocal statements).

A defendant does not have an absolute right to choose any particular advocate and the desire not to be represented by a particular attorney does not by itself constitute an unequivocal request for self-representation. State v. DeWeese, 117 Wn.2d 369, 375-76, 816 P.2d 1 (1991). The pro se defendant does not have an absolute right to standby counsel and there is no right to “hybrid representation,” such as a pro se defendant serving as co-counsel with his attorney. DeWeese, 117 Wn.2d at 379, quoting State v. Bebb, 108 Wn.2d 515, 524, 740 P.2d 829 (1987).

Before allowing a defendant to represent himself, the trial court must determine that a waiver of counsel is knowing and valid, preferably with a colloquy on the record. DeWeese, 117 Wn.2d at 379. After accepting a valid waiver, “the trial court is not obliged to appoint, or reappoint, counsel on the demand of the defendant. The matter is wholly within the trial court’s discretion.” DeWeese, 117 Wn.2d at 379.

Jones claims that the trial court failed to exercise its discretion on October 19 by relying on the prior order of a different judge on a different question. In particular, Jones claims that the first judge only denied a request to proceed pro se with a publicly funded paralegal. Jones mischaracterizes the record. On September 21, the trial court specifically denied Jones’s request to represent himself with Johnson’s help before any mention of public funding. The

trial court stated, “[Y]ou can’t have a non[-]lawyer come in and sit with you and be your advisor ... You’re in custody and we’re not going to let anyone other than a lawyer sit with [you at] counsel table. . . . So, it has to be a lawyer, if you want to have anybody help you. . . . So, you’d be on your own.” Jones stated that he understood and “[A]t this point I’m better off on my own. . . .” After the trial court conducted a thorough colloquy and signed the order allowing Jones to represent himself, Jones submitted documents to the court requesting public funds for Johnson’s services. Jones does not assign error to the trial court’s acceptance of his valid waiver of counsel on September 21.

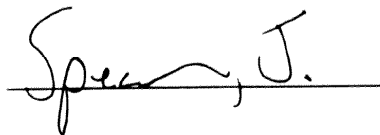
On September 22, after the trial court denied the motion for public funds to pay Johnson, Jones requested reappointment of counsel. Despite the trial court’s question at the hearing clarifying that Jones wanted to “withdraw [his] request to be pro se,” the record reflects that the trial court properly accepted a valid waiver of counsel and signed a written order authorizing Jones to represent himself on September 21, and then granted a motion to reappoint counsel on September 22. The trial court entered written pretrial rulings listing the following as occurring on September 22: “The defendant moved the court for an order re-appointing . . . the defendant’s attorney. Motion granted.” Jones has not assigned error to the trial court’s ruling reappointing counsel on September 22. Given the trial court’s proper acceptance of a valid waiver of counsel on September 21, the trial court had no obligation to reappoint counsel on September 22; the matter was “wholly within the trial court’s discretion.”

DeWeese, 117 Wn.2d at 379.

Similarly, on October 19, given the prior acceptance of a valid waiver and the discretionary reappointment of counsel, the trial court had wide discretion to evaluate Jones's renewed request to proceed pro se. As the trial court stated, "Mr. Jones, I'll hear from you, but I will tell you that once you've made the decision not to represent yourself, it's pretty much unheard of for the court to let you do it again." Jones again asked to represent himself with Johnson's assistance. The trial court stated that the motion had been denied and asked, "Without your paralegal, do you want to represent yourself?" Jones refused.

Jones complains that the trial court improperly conditioned his right to proceed pro se on his relinquishment of assistance from his privately hired paralegal and his First Amendment right to associate with Johnson. But it was Jones who conditioned his various requests upon Johnson's involvement at trial. Jones fails to identify any relevant authority for his claim that either the right to self-representation or the First Amendment right of association includes the right to be assisted at trial by a person of the defendant's choice who is not an attorney. Jones fails to establish any abuse of discretion in the trial court's consideration of the matter of Jones's representation on October 19.

Affirmed.

A handwritten signature in black ink, appearing to read "Speer, J.", written over a horizontal line.

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WE CONCUR:

Schiveller, J

Appelwick, J