COURT OF APPEALS
DECISION
DATED AND RELEASED

July 29, 1997

NOTICE

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-1425-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

DARRYL H. STEGALL,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: JOHN F. FOLEY, Judge. *Reversed and cause remanded with directions.*

CURLEY, J. Darryl H. Stegall appeals from a judgment of conviction after he entered an ***Alford*** plea to one count of battery.[1] Stegall raises one issue for review—whether the trial court erred in allowing him to proceed *pro se* without first determining whether he knowingly, intelligently, and

[1] *See* ***Alford v. North Carolina***, 400 U.S. 25 (1970).

voluntarily was waiving his right to counsel. The State concedes that the trial court erred. This court agrees, and reverses and remands the matter with directions to the trial court to allow Stegall to withdraw his ***Alford*** plea and then conduct any further proceedings consistent with the supreme court's recent decision in ***State v. Klessig***, ___ Wis.2d ___, 564 N.W.2d 716 (1997).[2]

I.

The procedural facts of this case are rather confusing. In June 1995, the State charged Stegall with one count of misdemeanor battery, arising out of a domestic quarrel. Stegall received appointed counsel to represent him. Later, this counsel was allowed to withdraw after disagreements arose between him and Stegall. After a delay, Stegall received another appointed counsel. On the morning of December 13, 1995, Stegall's counsel appeared without Stegall's presence at a hearing. After a brief discussion with the trial court, Stegall's second counsel was allowed to withdraw from further representing Stegall. Later that afternoon, Stegall appeared *pro se* at another hearing. The following exchange took place:

> THE COURT: Have you discussed a negotiated plea with this gentleman, Mr. District Attorney?
>
> [PROSECUTOR]: Actually, I don't think he's been free to because he's been represented by an attorney. I am not here to negotiate.
>
> THE COURT: You want to talk to the district attorney, get rid of this? This is a nothing case.
>
> THE DEFENDANT: Thank you.

[2] This appeal is decided by one judge pursuant to § 752.31(2), STATS.

> THE COURT: You hit these things like you're charged with first-degree murder.
>
> THE DEFENDANT: They come after me like I'm being charged – they come after me with the past record.
>
> THE COURT: You have no past record?
>
> THE DEFENDANT: No.
>
> THE COURT: You are not represented by counsel?
>
> THE DEFENDANT: True.
>
> [PROSECUTOR]: The Court has indicated that perhaps if you talk to the district attorney this matter could be expedited and perhaps ameliorated and terminated.
>
> THE COURT: Hopefully today.
>
> Did you wish to talk to the district attorney?
>
> THE DEFENDANT: Yes, I would like to talk to him.
>
> [PROSECUTOR]: Would you like to talk to me, sir?
>
> (Discussion off the record.)
>
> THE COURT: We have an agreement? All right, let's call the case.

After negotiations between Stegall and the State, Stegall agreed to enter an ***Alford*** plea to the one count of misdemeanor battery. He entered the plea and was sentenced.

II.

Stegall argues that the trial court erred in allowing him to proceed *pro se* without first determining whether he was knowingly, intelligently, and voluntarily waiving his right to counsel. The State concedes that the trial court erred in this case by never conducting a colloquy with Stegall to determine if he

wanted a third attorney to represent him. Therefore, the State further concedes that it is impossible to determine if Stegall's "agreement to talk to the district attorney" without counsel was a voluntary waiver of counsel.

Although this court is not bound by the State's concession, *see* ***State v. Gomaz***, 141 Wis.2d 302, 307, 414 N.W.2d 626, 629 (1987), the record in this case does not reflect that Stegall knowingly, voluntarily, and intelligently waived his right to counsel.

The right to counsel is one of the essential rights guaranteed by our constitutions. Hence, in order to be valid, a waiver of that right to counsel must be an intentional relinquishment of that right. *See, e.g.,* ***Edwards v. Arizona***, 451 U.S. 477, 482 (1981).

> When a defendant seeks to proceed pro se, the circuit court must insure that the defendant (1) has knowingly, intelligently and voluntarily waived the right to counsel, and (2) is competent to proceed pro se. If these conditions are not satisfied, the circuit court must prevent the defendant from representing himself or deprive him of his constitutional right to the assistance of counsel. However, if the defendant knowingly, intelligently and voluntarily waived his right to the assistance of counsel and is competent to proceed pro se, the circuit court must allow him to do so or deprive him of his right to represent himself.

Klessig, ___ Wis.2d at ___, 564 N.W.2d at 720 (citations omitted).

The trial court in this case did not follow the above procedure. Accordingly, this court must reverse and remand the matter with directions to the trial court to allow Stegall to withdraw his ***Alford*** plea and then conduct any further proceedings consistent with the supreme court's decision in ***Klessig***.

By the Court.—Judgment reversed and cause remanded with directions.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.