

IN THE SUPREME COURT OF IOWA
Supreme Court No. 20—0359

STATE OF IOWA,
Plaintiff-Appellee,

vs.

WALTER MILLER, JR.,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR SCOTT COUNTY
THE HON. HENRY W. LATHAM II, JUDGE

APPELLEE’S BRIEF

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. There was no abuse of discretion in granting Miller's counsel motion to withdraw.

Authorities

State v. Lopez, 633 N.W.2d 774 (Iowa 2001)
State v. McKinley, 860 N.W.2d 824 (Iowa 2015)
State v. Vanover, 559 N.W.2d 618 (Iowa 1997)
Iowa R. Prof'l. Conduct 32:1.16(a)(1)

II. Miller's Waiver of His Right to Counsel and Invocation of His Right to Self-representation Was Knowing and Voluntary.

Authorities

Adams v. U.S. ex rel. McCann, 317 U.S. 269 (1942)
Faretta v. California, 422 U.S. 806 (1975)
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ROUTING STATEMENT

Transfer to the Court of Appeals is appropriate because this case presents the application of existing legal principles. Iowa R. App. P. 6.1101(3).

STATEMENT OF THE CASE

Nature of the Case

Walter Miller appeals following a jury trial in which he was found guilty of three crimes: possession of methamphetamine third or subsequent offense and enhanced as a habitual offender; failure to affix a drug stamp enhanced as a habitual offender; and assault while displaying a dangerous weapon. Miller claims that the district court abused its discretion in granting his trial counsel's motion to withdraw, he further mentions that his waiver of counsel was not intelligent and voluntary. The Honorable Henry W. Latham II presided over the jury trial and the motion to withdraw counsel.

Facts and Course of Proceedings

On August 24, 2019, in Scott County case number FECR404118 Walter Miller Jr., made an initial appearance on three criminal complaints: possession of controlled substances (methamphetamine) with intent to deliver, failure to affix a drug stamp, and assault while displaying a dangerous weapon. *See 8/24/2019 Criminal*

Complaints; Amended App.7–12; 8/24/2019 Hearing for Initial Appearance; Amended App.13–15. The complaints alleged that on August 23, 2019, Miller assaulted James Rowan using a machete. And that during a search of Miller’s vehicle, police officers found approximately 15 grams of methamphetamine. *Id.*

On August 26, 2019, attorney Derek G. Jones filed an appearance on behalf of Miller and waived preliminary hearing. *See* 8/26/2019 Appearance; Amended App.16; 8/26/2019 Waiver of Preliminary Hearing; Amended App.17.

On September 17, 2019, the Scott County Attorney’s office formally charged Miller by way of trial information. The trial information accused Miller of possession of methamphetamine (more than 5 grams) with intent to deliver in violation of Iowa Code section 124.401(1)(b)(7) (count I); failure to affix a drug stamp in violation of Iowa Code sections 453B.1(3)(a)(1), 453B.3, 453B.7(2), and 453B.12(2) (count II); assault while displaying a dangerous weapon in violation of Iowa Code section 708.2(3) (count III); and willful injury causing serious injury in violation of Iowa Code section 708.4(2) (count IV). *See* Trial Info; Amended App.18–22.

On September 18, 2019, Miller filed a written arraignment in which he demanded a speedy trial. *See* 9/18/2019 Written arraignment and Demand of Speedy Trial; Amended App.23–24. A final pretrial conference was scheduled for November 27, 2019 with jury trial scheduled for December 2, 2019. *See* Order following Pre-Trial Conference; Amended App.27–29.

On November 19, 2019, Miller’s court appointed attorney—Derek G. Jones—filed a motion to withdraw representation. In his motion, counsel stated:

- 2.** Further representation of Defendant would result in me violating the Iowa Rules of Professional Conduct and/or other laws. I cannot be specific without violating attorney client privilege.
- 3.** I have tried unsuccessfully to resolve the issue.
- 4.** I am therefore required to withdraw from further representation of Defendant pursuant to Iowa Rule of Professional Conduct 32:1.16(a)(1).

See 11/19/2019 Motion to Withdraw; Amended App.30. A hearing for counsel’s motion to withdraw was scheduled for November 26, 2019.

See 11/19/2019 Order Setting Hearing; Amended App.31–32.

On November 26, 2019, Miller and his counsel—Derek G. Jones—appeared for the hearing on counsel’s motion to withdraw. At

the hearing, Jones briefly expounded on his reasons for why he needed to withdraw.

Jones: I filed a motion to withdraw under the rules of professional conduct. I'm in a situation for professional considerations where withdrawal is mandatory. I cannot be specific without violating privilege, but I believe that continued representation of Mr. Miller through trial would result in my either violating a rule of professional conduct or another law. And I've attempted to resolve the situation unsuccessfully, and under the rules, like I said, I'm required to withdraw at this point.

The Court: Mr. Miller, do you understand what your attorney is telling me? That based on his investigation and his conversations with you, he believes he cannot ethically represent you and must withdraw. Do you understand?

Defendant: Okay. Yes.

The Court: Very well. Do you have any objection?

Defendant: By being so close to trial, what am I supposed to do?

The Court: The State has filed a motion to continue. Is that correct [Prosecutor?]

Prosecutor: That is correct.

See Motion to Withdraw Tr. p. 2, Lines 11–p. 3, Lines 14. At this point, Miller advised the court that he would be objecting to any waiver of his speedy trial rights. *Id.* p. 4, Lines 4–8. The court then stated:

The Court: Well, let's first start with the issue of your right to counsel. You have a constitutional right to have an attorney appointed to represent you because you remain indigent. The Court grants—Well, based on the colloquy that I have had with your attorney, I believe I have no choice but to grant his application to withdraw. Does that, then, disqualify the public defender office in this matter, Mr. Jones?

Jones: In this case, it would.

The Court: Sir, because you have the right to have an attorney appointed to represent you, I am willing to appoint another attorney to represent you. Do you request the appointment of counsel?

Defendant: No.

The Court: Is it your desire, then, to continue in this matter to represent yourself?

Defendant: Yes.

Id. p. 4, Lines 9–p. 5, Lines 1.

At this point, because Miller had indicated his desire to represent himself, the court engaged him in a colloquy to determine whether his choice of self-representation was voluntary and intelligently made and whether he understood the obstacles inherent in self-representation.

The Court: Sir, before I can allow you to waive your right to be represented by counsel, I must inquire about your understanding of the waiver and of this important constitutional guarantee. To assure myself you are waiving this right intelligently, voluntarily, and

knowingly, I'm going to ask you a number of questions. Please answer them out loud so my court reporter can take down your answers.

If you do not understand the question, please let me know and I will rephrase it. If at any time during this process you wish to speak with Mr. Jones, you will be allowed to do so. Do you understand?

Defendant: Yes, sir.

Id. p. 5, Lines 5–22. The court then asked whether Miller had any trouble reading and understanding the English language. Miller said he did not. *Id.* p. 6, Lines 3–5. Miller further stated that no one had coerced him or threatened him as regards the decision to represent himself, and that he was not taking any medication, was not under the influence of any drugs or alcohol, nor was he under any psychiatric care. *Id.* p. 6, Lines 9–p. 7, Lines 10. When asked whether he was familiar with the law, Miller responded that he had previously represented himself in a trial in which he had a standby counsel. *Id.* p. 7, Lines 11–p. 9, Lines 11. At this point of the colloquy, the court, on its own motion, reversed its decision to grant withdrawal of Jones's representation so that Jones could assist in answering any questions in regard to Miller's representation. *Id.*

The court then made a searching inquiry on whether Miller understood *voire dire* and the other mechanics of the jury trial

process. Miller answered clearly and unequivocally that he understood the process and was able to navigate it himself. *Id.* p. 10, Lines 2–p. 12, lines 12. The court admonished Miller that if he represented himself, he would have to comply with the evidentiary rules and that the court would not grant him preferential treatment. Miller stated that he understood. *Id.* p. 12, Lines 14–p. 13, Lines 7. The court finally advised Miller of the nature of the charges and the potential penalties upon conviction as well as the State’s plea offer. *Id.* p. 13, Lines 13–p. 15, Lines 14. The court then asked Jones whether it would be unethical for him to act as Miller’s standby counsel. *Id.* p. 15, Lines 15–25. Jones stated that he would be in the same ethical problem and requested the court appoint a different standby counsel. *Id.* At the conclusion of the hearing, the trial court instructed Jones to find Miller a replacement counsel who would act on a standby basis. The court further stated that it would grant Jones’s motion to withdraw once a replacement counsel had been identified. *Id.* p. 18, Lines 4–p. 19, Lines 8.

On November 27, 2019, the court found that there was good cause for Jones’s motion to withdraw and granted the motion. *See* 11/27/2019 Order Granting Withdrawal; Amended App.33–34. In

the same order, the court appointed attorney Ryan Beckenbaugh as Miller's standby counsel. *Id.* Trial was scheduled for December 9, 2019. *Id.*

On December 9, 2019, prior to commencement of trial, the court elected to make another comprehensive record to ensure that Miller's decision to represent himself was knowing and voluntary. During this second lengthy colloquy, Miller once again reaffirmed his desire to waive his rights to counsel and stated his waiver was knowing and intelligent. Jury Trial Tr. p. 7, Lines 10–p. 26, Lines 17.

The jury returned a guilty verdict on three of Miller's four charges. *See* 12/12/2019 Criminal Verdict Forms; Amended App.35–38. Miller timely appealed. *See* 2/20/2020 Notice of Appeal; Amended App.42–43.

On this direct appeal, Miller contends (1) the trial court abused its discretion in granting his counsel's motion to withdraw, and (2) he did not knowingly and voluntarily waive his constitutional right to counsel and invoke his right to self-representation.

ARGUMENT

I. **There was no abuse of discretion in granting Miller’s counsel motion to withdraw.**

Preservation of Error

The State does not contest error preservation. *See* 11/19/2019 Motion to withdraw; Amended App.30; 11/27/2019 Order Granting Withdrawal; Amended App.33–34.

Standard of Review

Review of an order regarding defense counsel’s motion to withdraw is for an abuse of discretion. *State v. Lopez*, 633 N.W.2d 774, 778 (Iowa 2001). To constitute an abuse of discretion there has to be a showing the district court exercised its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *State v. Vanover*, 559 N.W.2d 618, 627 (Iowa 1997).

Merits

Miller claims the trial court abused its discretion in granting his attorney’s motion to withdraw from representation. Def’s Br. at 12–18. Critically, he does not challenge the fact that his attorney’s continued representation was going to result in his attorney violating the Iowa rules of professional Conduct or other law. Rather, he seizes on this statement by the trial court: “Well, based on the colloquy that

I have had with your attorney, I believe I have no choice but to grant his application to withdraw,” *See* Motion to Withdraw Tr. p. 4, Lines 9–15, and argues that because the court has inherent power to order an attorney to continue representation notwithstanding good cause for withdrawal, the court’s statement that it “had no choice” made the ruling untenable. Def’s Br. at 16–17. According to Miller, the proper course of action was for the court to conduct “some form of further inquiry to determine whether Miller believed continued representation by his current counsel was possible if the court ordered it.” Def’s Br. at 17–18. He adds, without citing to any authority, that “this additional step is required where, as here, the Defendant has demanded a speedy trial and the circumstances of counsel’s withdraw[sic] raise the strong possibility withdraw[sic] may prejudice the defendant.” *Id.* Miller’s *ipse dixits* lack merit.

Iowa Rule of Professional Conduct 32:1.16(a)(1) requires a lawyer to withdraw from representing a client when “the representation will result in violation of the Iowa Rules of Professional conduct or other law. Here, Miller’s attorney moved to withdraw citing the fact that his continued representation of Miller would violate the attorney ethics rule. *See* 11/19/2019 Motion to

Withdraw; Amended App.30. And the trial court made the necessary inquiry into the foundation for the motion before granting the motion. That cannot be said to be an abuse of discretion.

Nevertheless, Miller claims abuse of discretion and urges that “some form of further inquiry” was warranted. Def’s Br. At 17. Yet, he does not even care to state what sort of inquiry was lacking. To the extent that Miller is arguing that because he preferred Jones as his counsel and thus the court was required to order him to represent Miller even in the face of violating the ethical rules, he is incorrect. A defendant’s preference for retaining their court appointed counsel does not preclude disqualification when circumstances require it. *See State v. McKinley*, 860 N.W.2d 824, 880 (Iowa 2015). And here, there can be no abuse of discretion when the court reasonably balances the need for orderly justice and integrity of the judicial system with the facts underlying the request and finds that a substitute or a standby counsel can be appointed to represent a defendant. Miller has failed to meet his burden proving an abuse of discretion. This Court should affirm.

II. Miller’s Waiver of His Right to Counsel and Invocation of His Right to Self-representation Was Knowing and Voluntary.

Preservation of Error

The State does not contest error preservation. The duty of the court to conduct an adequate colloquy when the defendant exercises his Sixth Amendment right to self-representation is not subject to forfeiture through lack of error preservation. *See State v. Stephenson*, 608 N.W.2d 778, 782 (Iowa 2000).

Standard of Review

Constitutional challenges are reviewed de novo. *State v. Rater*, 568 N.W.2d 655, 657 (Iowa 1997).

Merits

It is now a fundamental precept of our criminal justice systems that every defendant, rich or poor, has the right to assistance of counsel. *See Gideon v. Wainwright*, 372 U.S. 335, 343 (1963). Yet a criminal defendant also has the right under the Sixth and Fourteenth Amendments to waive the right to counsel and represent himself or herself. *Faretta v. California*, 422 U.S. 806, 819–20 (1975). Because a defendant choosing to represent himself relinquishes the benefits associated with the assistance of counsel, he or she must “knowingly and intelligently” waive that right. *Id.* at 835. Nevertheless, “a

defendant need not himself have the skill and experience of a lawyer in order competently and intelligently choose self-representation”

Id.

If the defendant is mentally competent and, within a reasonable time before trial, makes an unequivocal request knowingly and voluntarily after having been advised by the court of the dangers of self-representation, the request must be granted. *Faretta*, 422 U.S. at p. 835. To ensure a waiver of counsel is knowing, intelligent, and voluntary, a district court judge “must investigate [the request to proceed pro se] as long and as thoroughly as the circumstances of the case before him demand.” *State v. Cooley*, 608 N.W.2d 9, 15 (Iowa 2000). “The degree of inquiry necessary to assure a valid waiver varies with the nature of the offense and the ability of the accused to understand the process.” *Stephenson*, 608 N.W.2d at 782; *see also State v. Hindman*, 441 N.W.2d 770, 772 (Iowa 1989) (holding a limited inquiry is sufficient for an operating while intoxicated offense).

The U.S. Supreme Court has taken a “pragmatic approach” to the waiver-of-counsel question and to evaluating “the type of warnings and procedures that should be required before a waiver of

that right will be recognized.” *Patterson v. Illinois*, 487 U.S. 285, 298 (1988). The inquiry is not designed to test the competency or skill of a defendant in effectively representing himself; rather, it is a safeguard to ensure that the defendant seeking to represent himself “knows what he is doing and his choice is made with eyes open.” *Adams v. U.S. ex rel. McCann*, 317 U.S. 269, 279 (1942). Substantial compliance is sufficient. *See State v. Milton*, 2005 WL 1630040 (Iowa Ct. App. July 13, 2005).

Without presenting an adequate argument with proper citation to the record, Miller suggests he did not knowingly and intelligently waive his right to counsel. Def’s Br. at 19–20. He claims the trial court offered him a “false choice” when it granted his attorney’s motion to withdraw. Def’s Br. at 19. To the extent that his argument is that his decision was not knowing and intelligently made, the record flatly belies his claim.

Here, a review of the record reflects Miller knowingly and voluntarily waived his right to counsel and invoked his right to self-representation on not one but two separate hearings. *See generally* 11/26/2019 Motion to Withdraw Tr. p. 5, Lines 10–p. 18, Lines 13; *see also* Jury Trial Tr. p. 7, Lines 10–p. 26, Lines 17.

In both hearings, the trial court made a comprehensive inquiry and adequately advised Miller on his decision for self-representation and took time to ensure Miller understood the usefulness of counsel and the dangers of proceeding without counsel with specificity. *Id.* In both colloquies, Miller's choice to proceed without counsel was unquestionably clear and unequivocal. *Id.* The court made a searching inquiry concerning Miller's decision, his familiarity with the criminal proceedings from prior criminal charges, the nature of the charges facing him and the potential punishments, the reasons for his decision and whether he was capable of making an informed decision. *Id.* The court inquired into Miller's age, education, and his understanding of the charges against him and the various penalties. *Id.* The court repeatedly warned Miller of the dangers he would encounter as his own attorney, including that he would be held to the same standard of an attorney with respect to detail such as cross examination, picking and addressing the jury and the rules of evidence. *Id.* Throughout the lengthy colloquies, Miller remained consistent that he wanted to represent himself and that he was ready for that responsibility. Because the entire record shows that Miller's

waiver of his right to counsel was knowing, voluntary, and intelligent, this Court should affirm.

CONCLUSION

The district court did not abuse its discretion in granting Miller's trial counsel's motion to withdraw and Miller knowingly and voluntarily chose to represent himself at trial; his convictions should be affirmed.

REQUEST FOR NONORAL SUBMISSION

This case is appropriate for submission without oral argument.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **3,036** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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