IN THE COURT OF APPEALS OF IOWA

No. 1-046 / 10-0307
Filed March 30, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

TROY WILLIAM JAMES,
Defendant-Appellant.

Appeal from the Iowa District Court for Lee (North) County, Cynthia H. Danielson, Judge.

The defendant appeals following his conviction for willful injury causing serious injury. **AFFIRMED.**

Jeffrey M. Lipman of Lipman Law Firm, P.C., Clive, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Michael P. Short, County Attorney, and David Andrusyk and Clinton Boddicker, Assistant County Attorneys, for appellee.

Considered by Vaitheswaran, P.J., and Eisenhauer and Danilson, JJ. Tabor, J., takes no part.

VAITHESWARAN, P.J.

Troy James contends the district court violated his Sixth Amendment right to self-representation.

I. Prior Proceedings

The State charged James with willful injury causing serious injury after he punched Ian Brasfield in the face. *See* Iowa Code section 708.4(1) (2009). An attorney was appointed to represent James. Before trial, James requested substitute counsel, explaining his current attorney had represented him in connection with prior charges and pushed him into a plea bargain on those charges. Defense counsel responded by citing the amount of time he spent on James's case and by noting that James was advised of the "prospects for success at trial, which he apparently disagrees with."

The court rejected James's request for substitute counsel, finding no breakdown in communication or conflict of interest that would prohibit his current attorney's continued representation. James responded, "Well, then I want to buy my own counsel." The court informed him he could, but he "better do it fast," as the trial date was quickly approaching.

The case proceeded to trial with James's appointed attorney appearing on his behalf and with no further mention of a hired attorney. Among the State's witnesses was Brasfield, the person James punched. After defense counsel finished cross-examining Brasfield and the court excused him, James blurted out, "I'm not done with him, Your Honor. . . ." The following discussion ensued:

> THE COURT: Sir, you are not allowed to question him. Your attorney will question him.

> THE DEFENDANT: Then I'll fire my attorney, and then I'll represent myself.
> THE COURT: You must remain silent, sir.
> THE DEFENDANT: Okay. Can I ask one thing?
> THE COURT: No. No, you must remain silent. Talk to your attorney about it.
> THE DEFENDANT: I can't represent myself?
> THE COURT: No, you're not allowed to.
> THE DEFENDANT: What do you mean I'm not allowed to? You do it all the time.
> THE COURT: You are not permitted to represent—
> THE DEFENDANT: Can I say one thing, Your Honor?
> THE COURT: No.
> THE DEFENDANT: I'm firing him.

The trial continued, with no further requests by James to represent himself.

The jury found James guilty as charged. James made several more post-trial requests for substitute counsel, none of which are at issue. Following imposition of sentence, James appealed.

II. Analysis

The sole issue on appeal is whether the district court acted appropriately in denying James's mid-trial request to represent himself. As a preliminary matter, the parties disagree on our standard of review, with James advocating for de novo review and the State asserting our review is for an abuse of discretion.

We agree with James that a ruling on a request for self-representation, grounded as it is in the Sixth Amendment to the United States Constitution, is generally reviewed de novo. *See State v. Johnson*, 756 N.W.2d 682, 686 (Iowa 2008). On the other hand, the State is also correct that other jurisdictions have applied an abuse of discretion standard where the request is made during trial. *See People v. Windham*, 560 P.2d 1187, 1191 (Cal. 1977) ("[O]nce a defendant has chosen to proceed to trial represented by counsel, demands by such

defendant that he be permitted to discharge his attorney and assume the defense himself shall be addressed to the sound discretion of the court."); *accord United States v. Oakey*, 853 F.2d 551, 553 (7th Cir. 1988); *United States v. Wesley*, 798 F.2d 1155, 1155–56 (8th Cir. 1986); *Pitts v. Redman*, 776 F. Supp. 907, 915 (D. Del. 1991); *State v. Bozelko*, 987 A.2d 1102, 1113 (Conn. Ct. App. 2010); *People v. Burton*, 703 N.E.2d 49, 60 (Ill. 1998).

Our highest court has not explicitly adopted an abuse of discretion standard for the review of a ruling denying a trial request to proceed pro se, but has stated that "considerable weight" should be given to the trial court's decision in such cases. *See State v. Smith*, 215 N.W.2d 225, 227 (Iowa 1974).[1] In the absence of a clear instruction to employ an abuse of discretion standard, we will review the record de novo.

A criminal defendant's right to self-representation is well settled. *See Faretta v. California*, 422 U.S. 806, 835, 95 S. Ct. 2525, 2541, 45 L. Ed. 2d 562, 581–82 (1975). But, "'[o]nce the trial has begun with the defendant represented by counsel . . . his right thereafter to discharge his lawyer and to represent himself is sharply curtailed.'" *Smith*, 215 N.W.2d at 227 (quoting *United States v. Denno*, 348 F.2d 12, 15 (2d Cir. 1965)). At that juncture, "[t]here must be a showing that the prejudice to the legitimate interests of the defendant overbalances the potential disruption of proceedings already in progress, with

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[1] This court has applied an abuse of discretion standard on review of rulings requesting "hybrid" representation (a combination of self-representation and the assistance of standby counsel). *See State v. Cooley*, 468 N.W.2d 833, 837 (Iowa Ct. App. 1991). This type of representation is not implicated here, as James stated he wished to "fire" his attorney and did not ask for the assistance of standby counsel during the balance of trial.

considerable weight being given to the trial judge's assessment of this balance." *Id.* (quoting *Denno*, 348 F.2d at 15).

In denying James's trial request to represent himself, the district court did not apply the balancing test set forth above. The court was required to do so, in light of James's clear assertion of his right of self-representation. Nonetheless, this omission does not require reversal if we can glean a consideration of the pertinent factors from our de novo review of the record. *See United States v. Kosmel*, 272 F.3d 501, 506 (7th Cir. 2001) ("[A]lthough the district court never expressly balanced Kosmel's interests with the potential for disruption, the court's myriad discussions regarding Kosmel's self-representation had the same practical effect."). We can.

Prior to trial, the court noted that "a reasonable person could look" at James's request for substitute counsel "as merely an effort to prolong or delay final resolution of this case." The court warned James that it would "not allow the issues relating to counsel to be used as a tool to merely delay trial." At trial, the court did not allow James to independently question Brasfield, stating, "Your attorney will question him." These statements reflect a legitimate concern with disruption of the proceedings. *See Smith*, 215 N.W.2d at 226 (stating a defendant cannot "assume the part of the examination of any witness" once his counsel has already undertaken that task).

We turn to the other side of the balancing equation, "the prejudice to the legitimate interests of the defendant." *Id.* at 227.[2] At sentencing, James argued

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[2] James argues a prejudice analysis is not appropriate here. *See State v. Rater*, 568 N.W.2d 655, 661 (Iowa 1997) ("Harmless error analysis is not applicable to Sixth

that his attorney did not develop inconsistencies in the witnesses' stories about the number of punches that were landed and did not highlight the friendship between Brasfield and the witnesses who corroborated Brasfield's story. To the contrary, James's attorney strenuously cross-examined the witnesses about their recollection of the punches and their friendships with Brasfield. He also re-called Brasfield to the stand as part of the defense's case and specifically elicited an admission from him that one of the corroborating witnesses was his friend. Based on this record, we conclude James did not establish prejudice to his legitimate interests by virtue of his appointed attorney's continued representation of him. For that reason, the potential disruption of the proceedings clearly outweighed the potential prejudice to him, and we conclude the district court acted appropriately in denying his mid-trial self-representation request.

We affirm James's judgment and sentence for willful injury causing serious injury.

AFFIRMED.

Amendment right to self-representation questions."). *Smith* suggests otherwise. 215 N.W.2d at 227; *see also Spencer*, 519 N.W.2d at 361 (observing defendant "has pointed to nothing that he would have done differently had he represented himself at trial, nor has he demonstrated any way in which attorney McCoy denied him 'a fair chance to present his case in his own way'" (citation omitted)).