

62122-0

62122-0

NO. 62122-0-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

SAMIYA BROWN,

Appellant.

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2009 OCT 7 PM 2:46

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JIM ROGERS
THE HONORABLE CHERYL CAREY
THE HONORABLE ANDREA DARVAS

RESPONDENT'S ~~REPLY~~ BRIEF

DANIEL T. SATTERBERG
King County Prosecuting Attorney

MICHAEL T.J. HOGAN
Senior Deputy Prosecuting Attorney
Attorneys for Respondent

King County Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000

TABLE OF CONTENTS

	Page
A. <u>ISSUE PERTAINING TO ASSIGNMENT OF ERROR</u>	1
B. <u>STATEMENT OF THE CASE</u>	1
C. <u>ARGUMENT</u>	3
1. THE TRIAL COURT PROPERLY INQUIRED AS TO APPELLANT'S DESIRE TO REPRESENT HERSELF, AND AFTER ATTEMPTS TO DISSUADE APPELLANT, HONORED APPELLANT'S CONSTITUTIONAL RIGHT TO REPRESENT HERSELF	3
2. THE TRIAL COURT PROPERLY ASSIGNED EXPERIENCED TRIAL ATTORNEYS AS STANDBY COUNSEL TO ASSIST APPELLANT	5
3. THE RECORD SHOWS THAT APPELLANT SUCCESSFULLY NAVIGATED MULTIPLE CHARGES TO AN ADVANTAGEOUS PLEA AGREEMENT AND ENTERED AN <u>ALFORD PLEA</u>	6
D. <u>CONCLUSION</u>	7

TABLE OF AUTHORITIES

Page

Table of Cases

Federal:

Adams v. United States ex rel. McCann,
317 U.S. 269, 63 S. Ct. 236, 87 L. Ed. 268 (1942) 4

Faretta v. California, 422 U.S. 806,
95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975) 4

Washington State:

State v. Bebb, 108 Wn.2d 515,
740 P.2d 829 (1987) 3

State v. Breedlove, 79 Wn. App. 101,
900 P.2d 586 (1995) 3

State v. Fritz, 21 Wn. App. 354,
585 P.2d 173 (1978) 3

State v. Luvene, 127 Wn.2d 690,
903 P.2d 960 (1995) 4

State v. Silva, 107 Wn. App. 605,
27 P.3d 663 (2001) 3

Constitutional Provisions

Washington State:

Const. art. I, § 22 3

A. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Did the trial court commit reversible error allowing an accused to represent herself, assisted by standby counsel?

B. STATEMENT OF THE CASE

Appellant Samiya Brown was charged with Attempted Robbery in the First Degree, and two counts of Custodial Assault in three separately charged informations. CP 1-4, 40-42; 2/22/08RP 6-9; 1/16/08RP(2) 24-25.

On January 16, 2008, Ms. Brown brought a motion to proceed pro se before the Presiding Judge, the Honorable Cheryl Carey. 1/16/08RP(1) 1. Judge Carey repeatedly advised Ms. Brown against proceeding pro se. 1/16/08RP(1) 12. Ms. Brown rejected Judge Carey's advice, explaining that she had communication problems with her appointed attorney and was unable to hire an attorney. 1/16/08RP(1) 4.

After advising against it, Judge Carey allowed Ms. Brown to exercise her constitutional right to represent herself. Judge Carey provided Ms. Brown with standby counsel. 1/16/08RP(1) 4-13.

Ms. Brown's Attempted Robbery charges were assigned for trial to the Honorable Jim Rogers. Ms. Brown brought a motion to

dismiss the charges due to a "speedy trial" violation. 1/16/08RP(2) 2-3. Judge Rogers denied her motion, and explained in detail the rationale for his decision. Ms. Brown, her standby counsel, and the prosecutor then conferred during a recess. Ms. Brown's standby attorney for her Custodial Assault charges was contacted during this time frame. After consulting with Ms. Brown's standby counsel and the prosecutor, Ms. Brown entered into a plea agreement where the State reduced the Custodial Assault charges to charges of Assault in the Fourth Degree. 1/16/08RP(2) 21.

Ms. Brown pled guilty by way of Alford plea, where she maintained her innocence but entered into the plea agreement because she wanted to take advantage of the State's plea offer. 1/16/08RP(2) 26-45.

At her sentencing, Ms. Brown's mother spoke on behalf of Ms. Brown. Standby counsel spoke on behalf of Ms. Brown, who did not personally address the Court.

Judge Andrea Darvas sentenced Ms. Brown to 30 months in prison, concurrent to companion gross misdemeanor sentences. 2/22/08RP 23.

C ARGUMENT

1. THE TRIAL COURT PROPERLY INQUIRED AS TO APPELLANT'S DESIRE TO REPRESENT HERSELF, AND AFTER ATTEMPTS TO DISSUADE APPELLANT, HONORED APPELLANT'S CONSTITUTIONAL RIGHT TO REPRESENT HERSELF.

Article I, section 22 of the Washington Constitution's Declaration of Rights is entitled "Rights of the Accused" and provides in relevant part, "In criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel" This phrase has been interpreted as unequivocally guaranteeing an accused the constitutional right to represent oneself. State v. Silva, 107 Wn. App. 605, 618, 27 P.3d 663 (2001); State v. Breedlove, 79 Wn. App. 101, 105-06, 900 P.2d 586 (1995). Our court has also recognized that the right to represent oneself also could include assistance by standby counsel. State v. Bebb, 108 Wn.2d 515, 524, 740 P.2d 829 (1987).

The right to self-representation is a substantive right, not a mere formality. State v. Silva, 107 Wn. App. 605, 620, 27 P.3d 663 (2001). A defendant has a personal right to be a fool. State v. Fritz, 21 Wn. App. 354, 359, 585 P.2d 173 (1978). The trial court must find that a criminal defendant has affirmatively waived the

right to counsel. Faretta v. California, 422 U.S. 806, 819, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975). The right of self-representation is conditioned on a knowing and intelligent waiver of the right to counsel. Adams v. United States ex rel. McCann, 317 U.S. 269, 279, 63 S. Ct. 236, 87 L. Ed. 268 (1942). The decision must be unequivocal. State v. Luvene, 127 Wn.2d 690, 698, 903 P.2d 960 (1995).

A review of the record in this case shows that Ms. Brown's request to represent herself was knowing, intelligent and unequivocal. In her motion to represent herself on January 16, 2008, her attorney, Tim Johnson, told Judge Carey that Ms. Brown had requested a hearing to proceed pro se "about a week and a half ago" ... "and Ms. Brown would – has made it quite clear that she would like to represent herself." 1/16/08RP(1) 1.

Ms. Brown stated that she wanted to represent herself because she had a communication barrier between herself and her attorney, and that she had been unable to get a court to replace him. 1/16/08RP(1) 4. The Court clarified that Ms. Brown faced Attempted Robbery in the First Degree and Custodial Assault charges, represented by Tim Johnson, and that Ms. Brown faced a third felony charge of Custodial Assault in another cause number

where Ms. Brown was represented by attorney Jenny Divine. 1/16/08RP(1) 5, 6. The Court also advised Ms. Brown that there were other potential cases of Custodial Assault which could be filed against her. 1/16/08RP(1) 7. The Court discussed that Ms. Brown could be facing several years of incarceration. 1/16/08RP(1) 8, 9. The Court advised Ms. Brown that she would have no lawyer to assist her, that she would be held to the rules of evidence and court rules, as well as how she would be required to present her own testimony, should she choose to testify. 1/16/08RP(1) 10-11. Judge Carey “strongly, strongly” advised against Ms. Brown representing herself since she was unfamiliar with the rules of evidence, the court rules, methods of presenting testimony, empaneling a jury, etc. Judge Carey asked Ms. Brown if, knowing her lack of familiarity with the above, still wanted to represent herself. Ms. Brown said “yes.” 1/16/08RP(1) 12, 13.

2. THE TRIAL COURT PROPERLY ASSIGNED EXPERIENCED TRIAL ATTORNEYS AS STANDBY COUNSEL TO ASSIST APPELLANT.

Ms. Brown asked the court to allow her to have standby counsel. Judge Carey granted Ms. Brown’s requests to represent herself, and to have standby counsel. 1/16/08RP(1) 12, 13.

“Ms. Brown, I think you’re a smart woman. I think you understand the situation you’re in.” The court repeatedly asked Ms. Brown if, understanding her unfamiliarity with law and procedures, she wanted to represent herself with standby counsel, and Ms. Brown repeatedly said “yes.” 1/16/08RP(1) 14-18. The Court held that Ms. Brown was making her decision “voluntarily and knowingly.” 1/16/08RP(1) 16.

3. THE RECORD SHOWS THAT APPELLANT SUCCESSFULLY NAVIGATED MULTIPLE CHARGES TO AN ADVANTAGEOUS PLEA AGREEMENT AND ENTERED AN ALFORD PLEA.

The subsequent record shows that Ms. Brown, with standby counsel Tim Johnson and Jenny Divine, engaged in plea discussions with the prosecution. The cases were assigned to Judge Jim Rogers, who again asked Ms. Brown if she wanted to represent herself. Ms. Brown replied “yes.” 1/16/08RP(2) 2. Ms. Brown moved to dismiss the charges based on a speedy trial violation, which was denied. 1/16/08RP(2) 2-7.

Ms. Brown then indicated that she wanted to plead guilty by way of Alford plea. Her standby lawyers were granted time to negotiate her three pending felonies. 1/16/08RP(2) 10-14, 16-23.

Ms. Brown entered into a plea agreement, assisted by standby counsel, in which the State agreed to reduce two separate Custodial Assault charges to Assault in the Fourth Degree charges. She pled guilty by way of Alford plea to the Attempted Robbery in the First Degree as well. 1/16/08RP(2) 24-45. Ms. Brown told the Court that she read all the forms, had a chance to ask questions about things she didn't understand to her standby counsel Tim Johnson and Jenny Divine. 1/16/08RP(2) 41-45. Judge Rogers found that Ms. Brown's plea to be knowing, intelligent and voluntary, that she understood the charges and the consequences of the plea. 1/16/08RP(2) 45.

Ms. Brown also had the assistance of standby counsel Tim Johnson and Jenny Divine at sentencing, and they spoke on her behalf. Judge Darvas sentenced Ms. Brown based on an agreed recommendation of 30 months in prison. The gross misdemeanors were run concurrently. 2/22/08RP 3-23.

D. CONCLUSION

Judge Carey's colloquy with Ms. Brown supports her conclusion that Ms. Brown's election to exercise her constitutional right of self-representation was voluntary, knowing, and

unequivocal. Judge Carey granted Ms. Brown's request to have the assistance of excellent standby counsel. The record also shows that Ms. Brown successfully engaged in plea bargaining which resulted in two companion felonies being reduced to gross misdemeanors, as well as a District Court case dismissal, and other cases not being filed. 2/22/08RP 6-9. She handled herself intelligently during her motion to proceed pro se, as well as her motion to dismiss, and entry of her Alford plea.

Ms. Brown's motions to reverse her convictions should be denied, and her convictions affirmed.

DATED this 30 day of September, 2009.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: Mike Hogan
MICHAEL T.J. HOGAN, WSBA #12676
Senior Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

Certification of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Vanessa M. Lee, the attorney of record for the appellant, at the following address: Washington Appellate Project, 1511 Third Avenue, Suite 701, Seattle, WA 98101-3635, containing a copy of Respondent's Reply Brief, in STATE V. SAMIYA BROWN, Cause No. 62122-0-I, in the Court of Appeals, Division I, of the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Betty A. Huddleston
Done in Seattle, Washington

10/1/09
Date

FILED
COURT OF APPEALS DIV. I
STATE OF WASHINGTON
2009 OCT - 1 PM 2:46