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Jun 13, 2016
Court of Appeals
Division I
State of Washington

NO. 74111-1-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

MATTHEW G. WUOL,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

APPELLANT'S OPENING BRIEF

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A. ASSIGNMENT OF ERROR.

Matthew Wuol was denied his right to represent himself under article I, section 22 and the Sixth Amendment.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR.

When an accused person makes a timely and unequivocal request to represent himself, the court must conduct a colloquy on the record and grant the motion if the request is knowing, intelligent, and voluntary. Mr. Wuol filed a timely and plain written motion requesting to represent himself. Without explanation, the court did not hold a hearing or conduct an inquiry into the request and never permitted Mr. Wuol to represent himself. Was Mr. Wuol denied his right to self-representation?

C. STATEMENT OF THE CASE.

Matthew Wuol was arrested and held in custody for a charge of assault that he did not believe the State could prove. 5/29/15RP 9; 6/12/15RP 3; CP 1, 86, 91. He grew frustrated that the case was continued and his assigned attorney had not investigated. 5/15/15RP 5-6; 5/29/15RP 8. He wrote to the judge complaining that his assigned counsel, “has not visited me to talk about my case. He has not investigated, interview[ed], or done anything worthy of stating that he

is working on my behalf.” CP 81 (correspondence to judge filed April 2, 2015). Despite this complaint, his case was continued several more times while his lawyer unsuccessfully tried to arrange interviews with the State’s witnesses. *See* 5/15/15RP 4; 5/29/15RP 8.

On May 4 and 12, 2015, several months after his arrest, Mr. Wuol filed motions asking to proceed pro se. CP 9-11, 16-17. He also filed a motion for “clerk’s action,” requesting a hearing be set on his “motion to proceed pro se.” CP 19; *see also* CP 101-02. The court never ruled on these motions, denied other motions he filed, and granted additional continuances over Mr. Wuol’s objection. 5/19/15RP 8-9.

After having his requests for self-representation implicitly denied without explanation or inquiry, Mr. Wuol pled guilty to a lesser charge with a sentencing recommendation of time served along with 45 days of “enhanced CCAP” (Community Center for Alternative Programs). 6/12/15RP 3, 7, 12; 9/12/15RP 3-4. The State agreed to reduce the charge due to “evidentiary concerns.” 6/12/15RP 3. Mr. Wuol later moved to withdraw his plea or stay sentencing, which is presently pending in the trial court as of this writing. CP 103, 104.

D. ARGUMENT.

By ignoring Mr. Wuol’s timely request to represent himself, he was improperly denied his constitutional right to self-representation.

1. *A clear request for self-representation must be granted unless it will obstruct justice or is not knowing and voluntary.*

The state and federal constitutions guarantee criminal defendants the right to representation by a competent attorney at all stages of a criminal proceeding, as well as the corollary right to waive counsel and represent oneself. U.S. Const. amend. 6;¹ U.S. Const. amend. 14;² Const. art. I, § 22;³ *Faretta v. California*, 422 U.S. 806, 807, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975); *State v. Madsen*, 168 Wn.2d 496, 503, 229 P.3d 714 (2010).

¹ The Sixth Amendment provides in part, In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial . . . and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

² The Fourteenth Amendment says in part: “No state shall . . . deprive any person of life, liberty, or property, without due process of law.”

³ Article I, section 22 provides in pertinent part: In criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, . . . [and] to have a speedy public trial by an impartial jury.”

The right to self-representation is “so fundamental that it is afforded despite its potentially detrimental impact on both the defendant and the administration of justice.” *Madsen*, 168 Wn.2d at 503. “The unjustified denial of this [pro se] right *requires* reversal.” *Id.* (quoting *State v. Stenson*, 132 Wn.2d 668, 737, 940 P.2d 1239 (1997) (emphasis added in *Madsen*)).

Anytime an accused person requests to represent himself, “the trial court *must* determine whether the request is unequivocal and timely.” *Madsen*, 168 Wn.2d at 504 (emphasis added). Then, unless the court finds the request is equivocal or untimely, “the court *must* determine if the request is voluntary, knowing, and intelligent, usually by colloquy.” *Id.* (emphasis added).

The “only bases” to deny a request for self-representation is the court’s finding that the request is equivocal, untimely, involuntary, or made without understanding its consequences. *Id.* This finding “must be based on some identifiable fact,” not merely on speculation by the court. *Id.* at 505. The court cannot “stack the deck” against the accused by failing to conduct the proper inquiry. *Id.* at 506.

A request is not untimely because it is made as trial is about to commence. Even a request to proceed pro se made during trial must be

fully considered by the court, although at this late stage the trial court has more authority to deny the request based on its “informed discretion.” *Id.* (quoting *State v. Barker*, 75 Wn.App. 236, 241, 881 P.2d 1051 (1994)).

2. *Mr. Wuol’s request was explicit, timely, and informed.*

Mr. Wuol filed a written motion seeking to represent himself. CP 9-11. The motion is dated April 29, 2015 and docketed with a stamp on May 4, 2015. CP 9, 11. But the court never held a hearing on this motion and never mentioned it on the record.

The court summarily addressed some motions Mr. Wuol filed. It told him to properly note his motion citing *Crawford v. Washington*⁴ and denied his request to reconsider a prior decision to continue the trial and to instead dismiss the case. 5/29/15RP 8-9.

But Mr. Wuol filed other motions and written requests the court did not address. Mr. Wuol explained his frustration with his assigned counsel when complaining that defense counsel “has not visited me to talk about my case. He has not investigated, interview[ed], or done anything worthy of stating that he is working on my behalf.” CP 81. He

⁴ 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004).

asked to hold trial as soon as possible, and objected to continuances, on multiple occasions. CP 86, 91, 96, 98, 100. Each motion is written “pro se” yet the court never ruled on his motion to represent himself. *Id.*

The request to proceed pro se was unequivocal. He cited *Faretta* and the Sixth Amendment, said he was “aware of the dangers of proceeding pro se” and believed “the only way I am going to get justice is by proceeding pro se.” CP 10. One week later he filed several motions, including the same request to proceed pro se. CP 16. He asked the clerk to set the pro se motion several times. CP 19-20, 101-02.

Neither the court’s minutes nor the transcripts show the court considered these motions on the record. Instead, they were ignored and denied without a hearing.

3. *The erroneous denial of Mr. Wuol's request to proceed pro se requires reversal.*

The court's improper refusal to permit self-representation is *per se* structural error. *Madsen*, 168 Wn.2d at 503; *Breedlove*, 79 Wn.App. at 111 ("Because the unjustified denial of this right [to self-representation] requires reversal, we reverse Breedlove's conviction and order a new trial.").

The court is not free to ignore a valid request for self-representation. Mr. Wuol did not waive this request by later pleading guilty, because the court's failure to acknowledge and meaningfully consider his request left Mr. Wuol with the inescapable impression that his request was denied.

The Fourteenth Amendment's Due Process Clause requires that a defendant's guilty plea be knowing, voluntary, and intelligent. *Boykin v. Alabama*, 395 U.S. 238, 242, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969). The guilty plea is valid only when it is the product of effective representation of counsel. *See State v. Sandoval*, 171 Wn.2d 163, 169, 249 P.3d 1015 (2011). By ignoring Mr. Wuol's validly asserted right to represent himself, he was denied the opportunity to negotiate or challenge the State's case as his own advocate, even though he had the

constitutional right to represent himself. The violation of his right undermines the plea. His case should be remanded so he has the opportunity to withdraw his plea and exercise his right to self-representation if he elects to do so.

4. No appellate costs may be imposed in the event Mr. Wuol does not prevail on appeal.

The trial court expressly found Mr. Wuol “lacks the present and future ability to pay” financial obligations and therefore waived non-mandatory fines or fees. CP 67. At sentencing, he begged the court to reconsider the terms imposed so he could keep a temporary job, but the court refused. 9/21/15RP 4-6. The court found him indigent for purposes of this appeal based on unrefuted evidence he had no assets and could not contribute any money toward legal costs. Supp. CP __, sub. nos. 76, 77.

Appellate costs are discretionary and must be predicated on a finding of an individual’s ability to pay. *State v. Sinclair*, 192 Wn.App. 380, 389-90, 367 P.3d 612 (2016). The presumption of indigency continues and the record demonstrates Mr. Wuol remains impoverished. *See Id.* at 393, citing RAP 15.2(f). In the event Mr. Wuol does not

prevail in his appeal, and if the State seeks appellate costs, no costs should be awarded.

E. CONCLUSION.

This Court should remand the case and permit Mr. Wuol to withdraw his plea due to the deprivation of Mr. Wuol's right to self-representation.

DATED this 13th day of June 2016.

Respectfully submitted,

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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE**

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 74111-0-I
v.)	
)	
MATTHEW WUOL,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 13TH DAY OF JUNE, 2016, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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SIGNED IN SEATTLE, WASHINGTON THIS 13TH DAY OF JUNE, 2016.

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