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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
BY *lsc*
DEPUTY

Court of Appeals No. 38490-6-II
Clark County No. 07-1-00157-3

STATE OF WASHINGTON,

Respondent,

vs.

MARX COONROD

Appellant.

BRIEF OF APPELLANT

ANNE CRUSER/WSBA #27944
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pm 6/29/09 wd

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A. ASSIGNMENTS OF ERROR

I. MR. COONROD WAS DENIED HIS SIXTH AMENDMENT RIGHT TO COUNSEL AT THE HEARING ON HIS MOTION TO WITHDRAW HIS GUILTY PLEA.

II. MR. COONROD WAS DENIED HIS SIXTH AMENDMENT RIGHT TO COUNSEL AT SENTENCING.

B. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

I. MR. COONROD WAS DENIED HIS SIXTH AMENDMENT RIGHT TO COUNSEL AT SENTENCING AND AT THE HEARING TO WITHDRAW HIS GUILTY PLEA.

C. STATEMENT OF THE CASE

Marx Coonrod was charged by Fourth Amended Information with five counts of robbery in the first degree and three counts of attempted robbery in the first degree. CP 1-4. He was first represented by Suzan Clark, but she was permitted to withdraw as counsel after Mr. Coonrod filed a Bar complaint against her. RP Vol. I, p. 11. Mr. George Brintnall was then appointed as counsel, and by his own admission did very little on Mr. Coonrod's case during the six month period after he was appointed. RP Vol. I, p. 12, 96-99. Mr. Coonrod also filed a Bar complaint against him, and he was permitted to withdraw at Mr. Coonrod's request. RP Vol. I, p. 86, 102. Mr. James Sowder was then appointed to the case. RP Vol. I, p. 102. Mr. Coonrod entered a guilty plea to one count of robbery in the

first degree (Count 2) and two counts of attempted robbery in the first degree (Counts 7 and 8). CP 5-14.

A sentencing hearing convened on October 3rd, 2008. At that time Mr. Coonrod filed a motion to have Mr. Sowder removed as counsel based upon his assertion of a conflict of interest, and Mr. Sowder filed a motion to withdraw based on Mr. Coonrod's wish to have new counsel and the fact that communication had broken down between he and Mr. Coonrod. CP 18-26, RP Vol. III, p. 439. Mr. Coonrod also filed a motion to withdraw his guilty plea. RP Vol. III, p. 439, CP 28-32. Mr. Coonrod was adamant when the hearing began that he wanted the assistance of counsel, and did not wish to proceed pro se. RP Vol. III, p. 440. The court, without ruling on whether there was a conflict of interest that would prevent Mr. Sowder from continuing as counsel, and without actually even ruling on Mr. Sowder's motion to withdraw, engaged in the following exchange with Mr. Coonrod:

Court: And you're prepared to go forward on sentencing, Mr. Coonrod, by yourself?

Mr. Coonrod: I suppose. If that's—you know, I would rather be given a lawyer like I asked before with the Motion to Withdraw that I had.

Court: You've already had three.

Mr. Coonrod: And yes, Sir, I've only had three, but, you know, the two that I had before—Suzan Clark lied about the cameras in the bank.

Court: Well—

Mr. Coonrod: George Brintnall did absolutely nothing except put my court dates over, and Sowder sabotaged my deals by—do you want me to go ahead and read some of the stuff that he's done?

Court: I've read it.

...

Court: If I allow Mr. Sowder to withdraw, are you prepared to argue your motion?

Mr. Coonrod: What do you mean, ar—I mean, the motion is—you mean, my Motion for Conflict of Interest?

Court: No, the motion to withdraw your plea of guilt.

Mr. Coonrod: I'm not sure. I haven't had a chance really to study it or anything. You guys are hitting me with stuff that, you know, I haven't had a chance to go to the law library and really study about. *You know, I'm not pro se, I'm asking for another lawyer.*

Court: I'm not going to give you another lawyer, Mr. Coonrod, you've had three. No one can satisfy you.

Mr. Coonrod: Okay. Well, no, it's not that no one can satisfy me, it's just that I'm not getting a fair trial with this lawyer.

...

Court: Mr. Coonrod, you had ample opportunity—at the time of entering your plea to set forth all your issues.

Mr. Coonrod: Well, I'm stating them now, then, I guess I have to.

Court: Okay.

Mr. Coonrod: I guess I have to withdraw my guilty plea.

Court: Well, all right, state your grounds.

RP Vol. III, p. 440-43.

Mr. Coonrod then stated his grounds for seeking withdrawal of his plea, without the aid of counsel. RP Vol. III, p. 443-49. At the conclusion of his presentation, he reiterated his request for counsel: "So yes, I would like to withdraw my plea of guilty and I would like a new counsel appointed for those grounds, Your Honor." RP Vol. III, p. 449. The court heard from the State, and again from Mr. Coonrod, essentially ignoring the request for new counsel. RP Vol. III, p. 449-54. The court denied the motion to withdraw the guilty plea. RP Vol. III, p. 454.

After advising Mr. Coonrod of his right to appeal within 30 days, the court asked the State for its sentencing recommendation. RP Vol. III, p. 455. During the State's presentation, Mr. Coonrod briefly interrupted to dispute some of what the prosecutor said. RP Vol. III, p. 456. The court asked the prosecutor to continue his presentation. *Id.* The State

recommended 116 months in prison. RP Vol. III, p. 457. The court then turned to Mr. Sowder, saying “Mr. Sowder?” Id. Understandably confused, Mr. Sowder replied “Well, I did move to withdraw at his request and mine. Am I still in the game or not?” The court replied “You—was the plea agreement 87 to 116 months?” Mr. Sowder replied “It was free to recommend within that range.” The court replied “Okay. All right.” RP Vol. III, p. 457. Without asking for any further input from Mr. Sowder, the court recounted the standard ranges and applicable fines and conditions. RP Vol. III, p. 457-59. Mr. Sowder briefly interrupted to advise the court that Mr. Coonrod had agreed to pay restitution on the dismissed counts as part of the plea bargain. RP Vol. III, p. 458.

Although not asked for his input, Mr. Coonrod again spoke on his behalf, arguing that the sentence sought by the State was excessive. RP Vol. III, p. 459. The Court then pronounced a sentence of 100 months on the robbery, and 65.5 months on the two attempted robberies. RP Vol. III, p. 459, CP 41. Mr. Sowder then interjected: “It’s fairly quiet over here because I had that Motion to Withdraw. Am I still arguing sentencing issues or?” RP Vol. III, p. 459. The court replied “Well, I want to make sure you’re following the plea agreement, that’s the sole status I want you to be re—” RP Vol. III, p. 459. Mr. Sowder replied “Okay.” RP Vol. III,

p. 460. The Court then finished pronouncing sentence. RP Vol. III, p. 460.

This timely appeal followed. CP 52-63.

D. ARGUMENT

I. MR. COONROD WAS DENIED HIS SIXTH AMENDMENT RIGHT TO COUNSEL AT SENTENCING AND AT THE HEARING TO WITHDRAW HIS GUILTY PLEA.

A defendant has a constitutional right to appointed counsel at all critical stages of a criminal prosecution. *State v. Harrell*, 80 Wn.App. 802, 804, 911 P.2d 1034 (1996). A plea withdrawal hearing is a critical stage of a criminal prosecution, as is a sentencing hearing. *Harrell* at 804, *State v. Bandura*, 85 Wn.App. 87, 97-98, 931 P.2d 174 (1997).

a. Sentencing

In *Bandura*, Division II of the Court of Appeals held that the defendant was denied his Sixth Amendment right to counsel when the trial court forced the defendant to represent himself at sentencing after denying his request for new counsel. *Bandura* at 97-98. The Court stated:

If a demand for new counsel is untimely, or otherwise unwarranted, the court has discretion (a) to require that present counsel remain and that the case proceed as scheduled or (b) to relieve present counsel and postpone further proceedings until new counsel can appear. When a critical stage of the proceeding is upcoming, however, the court cannot relieve present counsel and require a non-waiving defendant to proceed without counsel.

Bandura at 97, internal citations omitted.

Here, the trial court squarely violated the rule stated in *Bandura*. The court denied Mr. Coonrod's request for new counsel because, in the court's view, Mr. Coonrod was impossible to please. When an understandably confused Mr. Sowder *twice* sought clarification of whether he was still counsel, the court essentially declined to answer. The court merely wanted to know the agreed standard range, as though that substituted for advocacy and a sentencing recommendation on behalf of Mr. Coonrod. The court never inquired about the potential conflict of interest between Mr. Sowder and Mr. Coonrod, and declined to question Mr. Sowder about the breakdown in communication between him and Mr. Coonrod. Instead, the court determined that Mr. Coonrod was merely ungrateful and forced him to argue both his motion to withdraw his guilty plea and defend himself at sentencing pro se. Mr. Coonrod is entitled to a new sentencing hearing with appointed counsel to represent him. *Bandura* at 98.

b. Motion to Withdraw Guilty Plea

As noted above, a defendant has a Sixth Amendment right to counsel at a hearing on a motion to withdraw a guilty plea. *State v. Harrell*, 80 Wn.App. 802, 804, 911 P.2d 1034 (1996). As also noted above, the trial court squarely violated Mr. Coonrod's right to counsel by

forcing him to argue his motion to withdraw his plea pro se. As in *Harell*, Mr. Coonrod did not waive his right to counsel. Indeed, Mr. Coonrod stated no fewer than three times at the hearing that he wanted counsel. That he responded when the court ignored his requests and said asked him to state his grounds cannot be deemed a knowing, intelligent, and voluntary waiver of the right to counsel. *Harell* at 805, *State v. Sinclair*, 46 Wn.App. 433, 437, 730 P.2d 742 (1986); *In re Wentworth*, 17 Wn.App. 644, 647, 564 P.2d 810 (1977) (“Waiver is not to be presumed, but must be knowing, and with the understanding of the petitioner...Moreover, courts indulge every reasonable presumption against the waiver of fundamental constitutional rights.”)

The *Harell* Court stated: “An outright denial of the right to counsel is presumed prejudicial and warrants reversal without a harmless error analysis.” *Harell* at 805. Mr. Coonrod is entitled to a new hearing on his motion to withdraw his plea with appointed counsel to represent him. *Harell* at 805.

E. CONCLUSION

Mr. Coonrod should be granted a new sentencing hearing and a new hearing on his motion to withdraw his plea.

RESPECTFULLY SUBMITTED this 29th day of June, 2009.



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STATE OF WASHINGTON
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STATE OF WASHINGTON,)	Court of Appeals No. 38490-6-II
)	Clark County No. 07-1-000157-3
Respondent,)	
)	
vs.)	DECLARATION OF MAILING
)	
MARX COONROD,)	
)	
Appellant.)	

ANNE M. CRUSER, being sworn on oath, states that on the 29th day of June, 2009
declarant placed a properly stamped envelope in the mails of the United States addressed
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