

64333-9

64333-9

NO. 64333-9-I

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

STATE OF WASHINGTON,

Respondent,

v.

SIRJONZ CATER,

Appellant.

REC'D  
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King County Prosecutor  
Appellate Unit

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THE

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

The Honorable Laura Inveen, Judge

BRIEF OF APPELLANT

JENNIFER M. WINKLER  
Attorney for Appellant

NIELSEN, BROMAN & KOCH, PLLC  
1908 E Madison Street  
Seattle, WA 98122  
(206) 623-2373

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A. ASSIGNMENT OF ERROR

The trial court violated appellant's right to represent himself.

Issue Pertaining to Assignment of Error

Where appellant's requests to represent himself were timely, unequivocal, knowing, and voluntary, did the trial court improperly deny the appellant his constitutional right to represent himself?

B. STATEMENT OF THE CASE<sup>1</sup>

The King County prosecutor charged appellant Sirjonz Cater with first degree robbery. The State alleged Cater was eligible for a sentence of life in prison without possibility of parole. CP 1-3.

The court initially found Cater incompetent and committed him to Western State Hospital for 90 days. CP 18-20. Later, after a lengthy competency hearing, the court found Cater competent. 1-8RP. The court essentially adopted the State's position that despite a history of psychotic symptoms, Cater controlled his behavior when it benefited him. CP 21-22; 8RP 8-23.

Immediately after the court's ruling, Cater announced his desire to fire his attorneys and address the court himself. 8RP 27-28. He explained

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<sup>1</sup> This brief refers to the verbatim report of proceedings as follows: 1RP – 3/9/09; 2RP – 3/10/09; 3RP – 3/11/09; 4RP – 3/12/09; 5RP – 3/16/09; 6RP – 3/17/09; 7RP – 3/30/09; 8RP – 4/10/09; 9RP – 4/17/09; 10RP – 5/8/09; 11RP – 5/22/09; 12RP – 5/29/09; 13RP – 6/26/09; 14RP – 8/3/09; 15RP – 8/17/09; 16RP – 9/4/09; 17RP – 9/18/09 and RP (4/24/09).

he was frustrated that his attorneys may have shared information with a family member without his permission. 8RP 27, 34-35, 38.

The court said Cater had not provided a reason to fire his attorneys but informed him he was welcome to address the court directly. 8RP 38. Cater said that because he faced a possible “life without” sentence, he did not want anyone else to speak for him. 8RP 38-39. Without further addressing Cater's request, the court informed the parties the time for trial expired in 47 days. 8RP 39-40.

One week later, the court held a hearing to check the status of the case and to consider defense counsels' motion to reconsider the finding of competency. 9RP 3. Cater's attorneys informed the court that Cater had refused to meet with them. 9RP 4.

Addressing the court directly, Cater reiterated his desire to fire his attorneys. The court asked if Cater wanted a new attorney or wished to represent himself. Cater said he did not trust anyone else and wanted to speak for himself at trial. 9RP 8-9, 11. He said he did not feel he was being told everything about his case. 9RP 9.

The court asked Cater a series of questions and learned he had never before represented himself at trial, had not graduated from high school, was not familiar with evidence rules, had no legal training, and had seen a trial on television. 9RP 9-10. The court also confirmed Cater

understood he could not claim ineffective assistance if he represented himself. 9RP 10. Cater reiterated that he only trusted himself and wanted to speak for himself. 9RP 11. The court asked the prosecutor if she knew of additional questions the court needed to ask to confirm Cater's waiver of counsel. 9RP 11. The prosecutor believed additional questions were necessary but could not say what they were. 9RP 12.

The court said, "I find that Mr. Cater is not knowingly giving up his right to a lawyer. That his request is equivocal." 9RP 12. The court assured Cater he would be permitted to address the court directly at times. 9RP 12. But Cater's attorneys would remain on the case and, in particular, communicate with the prosecutor regarding possible plea offers. 9RP 12-14.

After defense counsel stated Cater's request to represent himself seemed unequivocal, the court repeated its finding that the request was equivocal and surmised Cater did not want to meet with his attorneys because it was inconvenient. 9RP 17. Cater disagreed and reiterated that he did not want an attorney. 9RP 18. The court set another hearing for a week later. For his part, Cater agreed to meet with his attorneys. 9RP 18-19, 21.

At that hearing, Cater renewed his request to represent himself. He also said he did not wish to waive his trial deadline, which was to expire about 30 days later. RP (4/24/09) at 18-19, 21, 27, 32.

The court confirmed Cater understood the elements of the charge and the possible sentence. Cater said that while he was unfamiliar with the rules of criminal procedure and evidence, he could learn the rules if he had a chance to read them. Id. at 32-35, 37. Cater acknowledged he had difficulty accessing legal materials at the jail because he was housed in the psychiatric ward. Id. at 40.

The court found it could not find Cater was “knowingly” waiving his right to counsel until learning whether Cater would have access to legal materials. Id. at 46; Supp. CP \_\_\_\_ (sub no. 91, Order on Criminal motion). The court asked the parties to investigate Cater’s access and scheduled a hearing for two weeks later. In the meantime, the court ordered Cater to meet with his attorneys. RP (4/24/09) at 52.

At the hearing two weeks later the court noted it had reserved ruling on Cater’s motion to represent himself. 10RP 2. The court and parties nevertheless discussed the status of plea negotiations without discussing Cater's right to proceed pro se. 10RP 3. Cater told the court he wished to speak with his disabled, elderly mother before accepting any plea deal but was unable to call her from jail. He also feared he wouldn't

see his mother again if he went to prison. 10RP 4-7. The court suggested different ways Cater might have contact with his mother and scheduled another hearing two weeks later. 10RP 9.

At the next hearing, Cater's attorneys told the court they believed Cater wished to accept the State's plea offer, but that they could not finish reviewing the plea forms because Cater insisted on first visiting his mother. 11RP 2-3. Cater explained he had spoken with his mother but wanted confirmation he could visit her. 11RP 5. The court was uncertain. 11RP 5-9. Cater did not reiterate his request to represent himself at the hearing.

A week later, Cater pled guilty to first degree theft, unlawful imprisonment, and three counts of third degree assault. 12RP 6-27. A guilty plea would avoid a sentence of life without parole. 12RP 4-5, 13, 26. As part of the plea agreement, Cater agreed to a sentencing recommendation of 30 years in prison. 12RP 16-17; CP 26-52.

At his sentencing hearing a month later, Cater was sent to Western State for another competency evaluation. 14RP 2. He eventually returned, and the court found him competent and sentenced him to 30 years in prison. 17RP 7-8, 36; CP 76-93.

C. ARGUMENT

THE TRIAL COURT VIOLATED CATER'S  
CONSTITUTIONAL RIGHT TO REPRESENT HIMSELF.

The trial court abused its discretion in denying Cater's timely and unequivocal requests to represent himself. Although Cater later pled guilty, the denial of this constitutional right affected later proceedings. Cater's plea thus did not waive his right to raise this constitutional claim on appeal.

1. The court abused its discretion when it denied Cater's unequivocal requests to proceed pro se.

The accused has a constitutional right to assistance of counsel. Wash. Const. art. I, § 22 (amend.10); U.S. Const. Amend. 6, 14. He also has the right to self-representation under both state and federal law. Wash. Const. art. I, § 22 (amend.10); Faretta v. California, 422 U.S. 806, 835, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975); State v. Madsen, 168 Wn.2d 496, 504, 229 P.3d 714 (2010).

Self-representation is a grave undertaking and courts should indulge in every reasonable presumption against waiver of the right to counsel. In re Det. of Turay, 139 Wn.2d 379, 396, 986 P.2d 790 (1999). This presumption, however, "does not give a court carte blanche to deny a motion to proceed pro se." Madsen, 168 Wn.2d at 504-05. Instead, when an accused informs the court he wishes to represent himself, the trial court

must first determine whether the request is unequivocal and timely. State v. Stenson, 132 Wn.2d 668, 737, 940 P.2d 1239 (1997). If so, the court must then determine if the request is voluntary, knowing, and intelligent, preferably through an on-the-record colloquy reflecting that the defendant understands the seriousness of the charge, the possible maximum penalty, and the existence of the technical procedural rules governing the presentation of his case. State v. DeWeese, 117 Wn.2d 369, 378, 816 P.2d 1 (1991).

It is the trial court's obligation to inform the accused of the nature of the charges, the possible penalties, and the risks of self-representation. United States v. Keen, 104 F.3d 1111, 1120 (9<sup>th</sup> Cir. 1996). Put another way,

If a defendant seeks to represent himself and the court fails to explain the consequences of such a decision to him [and then denies his self-representation request], the government is not entitled to an affirmance of the conviction it subsequently obtains. To the contrary, the defendant is entitled to reversal and an opportunity to make an informed and knowing choice.

United States v. Arlt, 41 F.3d 516, 521 (9<sup>th</sup> Cir. 1994).

Even if a request is unequivocal, timely, voluntary, knowing, and intelligent, a court may defer ruling if it is reasonably unprepared to immediately respond to the request. Madsen, 168 Wn.2d at 504. But the right to self-representation is so fundamental it cannot be denied simply

because it will be a burden on the efficient administration of justice. Id. at 503 (citing Faretta, 422 U.S. at 834; Vermillion, 112 Wn. App. at 850-51). Likewise, doubts about a defendant's competency alone are insufficient to deny a defendant's request; the proper course is to order a competency review. Madsen, 168 Wn.2d at 505 (citing In re Fleming, 142 Wn.2d 853, 863, 16 P.3d 610 (2001); RCW 10.77.060(1)(a)).

This Court reviews a trial court's denial of a request to proceed pro for abuse of discretion. Madsen, 168 Wn.2d at 504.

Cater made three unequivocal requests to represent himself. First, Cater told the court he wanted to discharge his attorney and speak for himself because of the harshness of the potential sentence. 8RP 27-28, 34-35, 38-39. A week later, Cater stated he wanted to be able to speak for himself and did not trust anyone else to do so. 9RP 8-9, 11. A week after that, Cater reiterated that he did not trust his attorneys. He contemplated asking for a new attorney, but once he learned new counsel would need a continuance, Cater repeatedly informed the court he wished to represent himself. RP (4/24/09) at 21-25, 32-39.

In addition to being unwavering, Cater's requests were timely. For example, when he made his second request, there were still 40 days left before the speedy trial deadline expired. And importantly, Cater never requested a continuance. 8RP 39-40; see State v. Barker, 75 Wn. App.

236, 241, 881 P.2d 1051 (1994) (if the demand for self-representation is made well before the trial and is unaccompanied by a motion for a continuance, the right of self-representation exists as a matter of law).

The court never ruled on the timeliness of Cater's requests. This failure constituted an abuse of discretion, because a failure to exercise discretion is an abuse of discretion. State v. Grayson, 154 Wn.2d 333, 342, 111 P.3d 1183 (2005). In addition, the court abused its discretion by finding Cater's clear requests were equivocal. Littlefield, 133 Wn.2d at 47. The record establishes Cater during three separate hearings clearly stated he wanted to fire counsel and "speak for" himself. As both the State and defense counsel appeared to recognize, there was no ambiguity. The trial court erred by failing to grant Cater's requests when made.

That conclusion can in no way be affected by what transpired after those requests. See Madsen, 168 Wn.2d at 507 ("a trial court's finding of equivocation may not be justified by referencing future events then unknown to the trial court"). Moreover, even the court properly reserved ruling on Cater's third request, the court's first two rulings remain erroneous.

The final question is whether Cater's request was knowing, voluntary, and intelligent. Key to this determination are whether the accused understands the seriousness of the charge, the possible maximum

penalty involved, and the existence of the technical procedural rules governing the presentation of his defense. DeWeese, 117 Wn.2d at 378. The record indicates Cater knew the sentence he faced. The court also notified him of the existence of specialized legal rules governing trials. After this warning, and again after a more detailed colloquy a week later, Cater persisted in his request to represent himself. 9RP 11, 18; RP (4/24/09) at 32-37.

Even if, however, this Court finds the trial court's advisements inadequate, it should not penalize Cater for the court's shortcomings. Keen, 104 F.3d at 1120; Arlt, 41 F.3d at 521. Instead, failure to explain the consequences of a decision to proceed pro se requires reversal and the opportunity to make an informed and knowing choice on remand. Id.

In sum, the trial court improperly denied Cater's requests to represent himself. The unjustified denial of the fundamental right to self-representation requires reversal. Madsen, 168 Wn.2d at 503; see also Vermillion, 112 Wn. App. at 851 ("The right to self-representation is either respected or denied; its deprivation cannot be harmless."); State v. Breedlove, 79 Wn. App. 101, 110, 900 P.2d 586 (1995) ("The erroneous denial of a defendant's motion to proceed pro se requires reversal without any showing of prejudice."). As discussed below, this is true even where a defendant later pleads guilty.

2. A guilty plea does not preclude this challenge to the denial of the constitutional right to self-representation.

A guilty plea after the erroneous denial of a defendant's request to represent himself imposes unreasonable constraints on the defendant's ability to make a decision and thereby renders the plea involuntary. United States v. Hernandez, 203 F.3d 614, 626-27 (9<sup>th</sup> Cir. 2000), overruled on other grounds by Indiana v. Edwards, 554 U.S. 164, 128 S. Ct. 2379, 171 L. Ed. 2d 345 (2008). In other words,

When a defendant is offered a choice between pleading guilty and receiving a trial that will be conducted in a manner that violates his fundamental Sixth Amendment rights, his decision to plead guilty is not voluntary, for in that case, he has not been offered the lawful alternatives – the free choice – the Constitution requires.

Id. at 627; see also People v. Robinson, 56 Cal.App.4th 363, 368-70, 370 n. 2, 65 Cal.Rptr.2d 406 (1997) (denial of the right of self-representation before plea permeates all later proceedings and, despite plea, may properly be raised on appeal); but see United States v. Montgomery, 529 F.2d 1404, 1406-07 (10<sup>th</sup> Cir. 1976) (voluntary guilty plea blocks later challenge to denial of right to self-representation). Thus, despite Cater's guilty plea, he may now raise this claim.

D. CONCLUSION

The trial court improperly rejected Cater's timely, unequivocal, and voluntary request to represent himself in violation of his constitutional rights. Cater has not waived this claim by later pleading guilty. This Court should therefore reverse his convictions.

DATED this 16<sup>th</sup> day of September, 2010.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC

  
\_\_\_\_\_  
JENNIFER M. WINKLER  
WSBA No. 35220  
Office ID No. 91051

Attorneys for Appellant

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DIVISION ONE**

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STATE OF WASHINGTON,	)	
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Respondent,	)	
	)	
v.	)	COA NO. 64333-9-I
	)	
SIRJONZ CATER,	)	
	)	
Appellant.	)	

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**DECLARATION OF SERVICE**

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 16<sup>TH</sup> DAY OF SEPTEMBER, 2010, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] SIRJONZ CATER  
DOC NO. 914290  
WASHINGTON STATE PENITENTIARY  
1313 N. 13<sup>TH</sup> AVENUE  
WALLA WALLA, WA 99362

**SIGNED** IN SEATTLE WASHINGTON, THIS 16<sup>TH</sup> DAY OF SEPTEMBER, 2010.

x *Patrick Mayovsky*

FILED  
COURT OF APPEALS  
DIVISION ONE  
2009 SEP 16 PM 4:17