

66348-8

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No. 66348-8-1

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

STATE OF WASHINGTON,

Respondent,

v.

MARIO SUGGS,

Appellant.

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

The Honorable Beth Andrus

BRIEF OF APPELLANT

Susan F. Wilk
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, Washington 98101
(206) 587-2711

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A. ASSIGNMENT OF ERROR

Contrary to Suggs' rights under the Sixth Amendment and article I, section 22 of the Washington Constitution, the trial court erred in denying Suggs' motion to go *pro se*.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Where an accused person makes a timely and unequivocal request to represent himself, under the Sixth Amendment and article I, section 22, the trial court has an obligation to determine that the request is knowing, voluntary and intelligent. If it is, then the request must be granted. Did the trial court err when it failed to inquire into the voluntariness of Suggs' pretrial request to go *pro se*, and instead directed him to work with his counsel?

C. STATEMENT OF THE CASE

Mario Suggs was prosecuted for assault in the second degree, unlawful imprisonment, felony harassment, and interfering with domestic violence reporting in King County, based upon an alleged incident on June 20, 2010, involving his then-girlfriend, Miranda Haddow.¹ CP 8-10. Suggs exercised his right to a jury trial. However, from nearly the beginning of the proceedings Suggs

¹ Suggs was also charged with domestic violence aggravating circumstances pursuant to RCW 9.94A.535 but these were dismissed on the State's motion following the jury's verdict. 4RP 21.

voiced dissatisfaction with his appointed counsel. 1RP 101-03.²

Suggs felt his concerns were not being addressed by counsel, that his voice was “muffled,” and that counsel was not contacting necessary defense witnesses. 1RP 103.

In a pretrial hearing, defense counsel acknowledged that his relationship with Suggs was deteriorating. 1RP 103. Suggs confirmed that he felt he was not “being represented adequately.” 1RP 107. The trial court asked Suggs if he was requesting to represent himself, to which Suggs replied, “I would love that. I would love that. Really would.” Id.

Instead of engaging in a colloquy with Suggs or even providing him with information regarding his rights and expectations as a *pro se* litigant, the trial court stated,

Well I think that perhaps the two of you [Suggs and defense counsel] may need to have a discussion about that because representing yourself is a very complicated procedure. You certainly have the right, under our laws you have the right to represent yourself if you feel that’s the best way to proceed, but I can tell you it’s not generally perceived as the best way to proceed.

Id.

² The verbatim report of proceedings consists of numerous days of hearings which have been transcribed and bound into four numbered volumes. They are cited herein by volume number followed by page number, e.g., 1RP 103.

Defense counsel then advised the court that he felt comfortable proceeding with the representation, and the court asked Suggs to “sit down and go through and listen to [counsel] and his advice and share with him your concerns in a constructive manner and see if the two of you can in fact come up with a plan that you’re comfortable with . . .” 1RP 109. Suggs acquiesced to the court’s suggestion. 1RP 110.

During the trial, however, Suggs reiterated that was unhappy with his lawyer’s strategy and cross-examination of the complainant. 2RP 73-76. Indeed, it was apparent that during the cross-examination, Suggs at times could not contain himself and was vocally expressing his displeasure with his lawyer’s performance. 2RP 77-78. When the court brought this to his attention Suggs explained that he felt his lawyer was not representing him effectively. 2RP 81.

The court stated that it seemed as if Suggs wanted a new lawyer and Suggs agreed. 2RP 81. After argument by counsel, the court denied Suggs’ request, stating, “I do believe that you’ve been receiving competent assistance of counsel, so I don’t believe that there’s a basis for granting a motion to change counsel at this point in the trial.” 2RP 84. The court then presented Suggs with a

choice: to continue with defense counsel and restrain himself from any outbursts during the proceedings, or to go *pro se*. Id. The court explained, “if you make that choice I have to go through a fairly lengthy warning with you as to why that is not in your best interest.” Id. Suggs did not want to continue with his lawyer representing him. Id.

Based upon concerns regarding witness scheduling – the prosecutor anticipated calling as a witness the emergency room physician who attended to Haddow following the alleged assault – the prosecutor suggested that Suggs continue with defense counsel during that witness’ testimony. 2RP 85-86. Suggs refused, stating, “up to this point I feel uncomfortable.” 2RP 86.

At that juncture defense counsel interjected that the court could simply deny Suggs’ *pro se* motion. 2RP 87. Defense counsel said that if the court permitted Suggs to go *pro se*, to avoid prejudice to Suggs’ defense, the court might be forced to declare a mistrial and restart the proceedings with a new jury. 2RP 88. The prosecutor disagreed, stating, “I’ve seen courts make inquiry of the defendant in the course of about fifteen (15) minutes regarding his desire to be *pro se*.” 2RP 89.

The court then denied the motion, ruling:

In looking into the case law on when you have the right to represent yourself Mr. Suggs, the case law says that in Washington you have to make a timely request for self-representation and that means it has to be made before the trial starts. If the request is made during trial, then the right to proceed pro se rests largely with the discretion of the trial court – that means me. Given the stage that we are in this trial and given the problems that we have with the scheduling of the witnesses and the proceeding, if we were to stop right now and consider anything further on the motion to represent yourself, I deem this to be an untimely request to represent yourself.

2RP 90.

The jury ultimately acquitted Suggs of all charges, convicting him only of the lesser included offense to assault in the second degree of assault in the third degree. CP 11-15. Suggs appeals.

CP 52.

D. ARGUMENT

THE DENIAL OF SUGGS' UNEQUIVOCAL REQUEST TO GO PRO SE VIOLATED HIS RIGHT TO SELF-REPRESENTATION SECURED BY THE SIXTH AMENDMENT AND ARTICLE I, SECTION 22 OF THE WASHINGTON CONSTITUTION.

1. The right to self-representation is protected by both the federal and state constitutions. “Criminal defendants have an explicit right to self-representation under the Washington Constitution and an implicit right under the Sixth Amendment to the United States Constitution.” State v. Madsen, 168 Wn.2d 496, 503,

229 P.3d 714 (2010) (citing Faretta v. California, 422 U.S. 806, 819, 95 S.Ct. 2525, 45 L.Ed.2d 262 (1975)). U.S. Const. amend. XIV; Const. art. I, § 22. This right 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 the right to self-representation is a structural error that requires reversal of the conviction. Id.

2. In Washington, a timely and unequivocal request to go pro se must be granted. The Washington Constitution provides more expansive protection of the right to self-representation than the federal constitution. State v. Rafay, 167 Wn.2d 644, 650-51, 222 P.3d 86 (2009). Thus, while courts are “required to indulge in ‘every reasonable presumption’ against a defendant’s waiver of his or her right to counsel,” this presumption “does not give a court carte blanche to deny a motion to proceed *pro se*.” Madsen, 168 Wn.2d at 504. “The grounds that allow a court to deny a defendant the right to self-representation are limited to a finding that the defendant’s request is equivocal, untimely, involuntary, or made without a general understanding of the consequences.” Id. at 504-05 (emphasis added).

A court may not deny a motion for self-representation based on grounds that self-representation would be detrimental to the defendant's ability to present his case or concerns that courtroom proceedings will be less efficient and orderly than if the defendant were represented by counsel.

Id. at 505. The value of respecting the right of self-representation "outweighs any resulting difficulty in the administration of justice."

Id. at 509.

3. The trial court improperly failed to honor Suggs' first unequivocal request to go pro se, which was made before trial.

Suggs made his first request to represent himself before the trial started. 1RP 107. The request was unequivocal. Id. According to the Court in Madsen, unless the trial court made a finding that the request was untimely, it was obligated to "determine if the defendant's request [was] voluntary, knowing, and intelligent, usually by colloquy." 168 Wn.2d at 504.

The trial court here, however, brushed off Suggs' request, instead telling him to try to work things out with his lawyer. 1RP 109-10. This was erroneous and contrary to Madsen.

When the court finally got around to considering Suggs' desire to go *pro se*, trial was well underway. The trial court accordingly concluded that it had discretion to deny Suggs' request

and did so, apparently without consideration of or reference to Suggs' request made pretrial.

In Madsen, the Court explained that an unequivocal request to go *pro se* should be evaluated along a continuum.

If the demand for self-representation is made (1) well before the trial or hearing and unaccompanied by a motion for a continuance, the right of self representation exists as a matter of law; (2) as the trial or hearing is about to commence, or shortly before, the existence of the right depends on the facts of the particular case with a measure of discretion reposing in the trial court in the matter; and (3) during the trial or hearing, the right to proceed *pro se* rests largely in the informed discretion of the trial court.

Id. at 508 (emphasis in original); accord State v. Paumier, 155 Wn. App. 673, 686-87, 230 P.3d 312 (2010).

Thus, if Suggs' only request to represent himself had occurred during the trial, then the court would have been well within its discretion denying the request. But Suggs asked the court's permission to represent himself prior to the trial, and without moving for a continuance. Thus, Suggs had the right to represent himself as a matter of law, and it was incumbent upon the trial court to determine if the request was knowing, voluntary, and intelligent by engaging in a colloquy with him. Madsen, 168 Wn.2d at 504, 508.

4. Any claim that the trial court was entitled to exercise its discretion is defeated by the court's failure to do so. In response the State may claim that because Suggs' first request to go *pro se* was made at a pretrial hearing, the existence of the right depended "on the facts of the particular case with a measure of discretion reposing in the trial court in the matter." Madsen, 168 Wn.2d at 508. If the trial court had at that juncture made a proper determination whether the request was timely and unequivocal, such an argument might have some traction. But the court did not do so. Instead, after making generalized comments that representing himself was "not generally perceived as the best way to proceed," the court simply directed Suggs to try to work with his counsel. 1RP 107-10.

Thus, rather than acting based upon its informed discretion, the trial court did not exercise its discretion at all. A trial court's "[f]ailure to exercise discretion is an abuse of discretion." Bowcutt v. Delta North Star Corp., 95 Wn. App. 311, 320, 976 P.2d 643 (1999). This Court should reject any contention that the trial court had discretion to deny Suggs' request based upon its timing, as the trial court did not utilize its discretion.

E. CONCLUSION

For the foregoing reasons, this Court should conclude that the trial court did not respect Suggs' Sixth Amendment and article I, section 22 right to self-representation, and reverse his conviction.

DATED this 22nd day of July, 2011.

Respectfully submitted:



SUSAN F. WILK (WSBA 28250)
Washington Appellate Project (91052)
Attorneys for Appellant