

66348-8

66348-8
ORIGINAL

NO. 66348-8-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

Mario Suggs,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JUDGE BETH ANDRUS

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FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

According to the 6th Amendment and article 1, section 22 of the Washington Constitution, an accused person is entitled to self-representation. However, a request for such representation must be made in an unequivocal and timely manner. Given these constraints, did the trial court correctly deny the defendant's request to represent himself?

B. STATEMENT OF THE CASE

Based on an incident alleged to have occurred on June 20, 2010, defendant Mario Suggs was prosecuted in King County Superior Court for one count each of second degree assault, unlawful imprisonment, felony harassment, and interfering with domestic violence reporting, all involving his then-girlfriend, Miranda Haddow. CP 8-10. Suggs was represented at trial by appointed counsel, Walter Peale.

During pre-trial hearings, the defendant voiced dissatisfaction with his ability to communicate with his appointed counsel. 1 RP 103, 106. At one point the court asked the defendant: "How am I to interpret this, that you are requesting to represent yourself?". The defendant replied: "I would love that. I

would love that. Really would." 1RP 107. The court affirmed that Mr. Suggs did have the right to represent himself but suggested that he confer with counsel before deciding how to proceed. *Id.* After defense counsel agreed to make a better effort at listening to the defendant's concerns, the court asked Mr. Suggs whether he would be willing to "sit down and go through and listen to him 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". The defendant agreed, replying "yes, your honor." 1 RP 109-110. The issue of self-representation was not raised again in pre-trial hearings.

The defense next raised his desire to represent himself mid-trial, while the State was in the process of presenting its case. 2 RP 86. His request followed an expression of dissatisfaction as to how defense counsel had cross-examined the victim, Miranda Haddow. 2 RP 70-72. During an inquiry by the court as to whether Mr. Suggs understood the proceedings, Mr. Suggs voiced a concern that: "I just really seriously fear that I am not being represented effectively at all." 2 RP 81. The court the found there was no basis to suspend the trial on competency issues, and then stated she was hearing Mr. Suggs say he wanted a different

attorney. Id. In response to the court's statement, Mr. Suggs replied "Yes, your honor", and then continued with complaints about Mr. Peale. Id. The court ruled that, based on the fact that the defendant appeared to be receiving competent assistance, there was no basis for granting a motion to change counsel mid-trial. 2 RP 84.

The court then informed Mr. Suggs that his remaining options included continuing the trial with existing counsel or representing himself. 2 RP 84. The defendant expressed the desire that his current counsel cease to represent him immediately. 2 RP 86. After considering Mr. Suggs motion for self-representation, the court ruled that:

"Given the stage that we are in in this trial and given the problems that we have with the scheduling of these 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." 2 RP 90.

Once his motion for self-representation was denied, the defendant was instructed to continue with Mr. Peale as his counsel. Id. The trial then proceeded to its conclusion. The jury ultimately acquitted the defendant of all charges and found him guilty of the

lesser included charge of third degree assault. CP 11-15. Suggs appeals. CP 52.

C. ARGUMENT

1. CRIMINAL DEFENDANTS HAVE THE RIGHT TO SELF-REPRESENTATION ONLY IF THE REQUEST IS TIMELY AND UNEQUIVOCAL

A criminal defendant's right to represent himself in court is implicit in the Sixth Amendment of the United States Constitution and explicit in article I, section 22 of the Washington State Constitution. U.S. Const. amend VI; Const. art I, sect 22. However, this right to self-representation is not absolute. In fact, both the United States Supreme Court and the Supreme Court of Washington have held that courts "are required to indulge in every reasonable presumption against a defendant's waiver of his or her right to counsel." State v. Madsen, 168 Wn.2d 496, 504, 229 P.3d 714 (2010).

The process for determining whether a request for pro se representation need be granted begins with determining whether the request is both unequivocal and timely. The right of self-representation cannot justify a defendant's disrupting a trial, or provide him license not to comply with rules of procedural and substantive law. State v. Breedlove, 79 Wn. App. 101, 107, 900

P.2d 586 (1995), citing State v Fritz, 21 Wn. App. 354, 585 P.2d 173 (1978). Once the trial court has found that the request is both unequivocal and timely, it must then go on to determine whether the request is voluntary, knowing, and intelligent, typically by way of a colloquy. Madsen, 168 Wn.2d at 504.

Appellate courts review the denial of a request for self-representation under an abuse of discretion standard. Abuse of discretion can be established if the court reached a decision that is "manifestly unreasonable or rests on facts unsupported in the record or was reached by applying the wrong legal standard." Id.

Neither of Suggs' two requests for self-representation meets the standards set forth by the court that require granting such a request. The first request was not unequivocal. The second request was not timely.

2. SUGGS' INITIAL REQUEST TO REPRESENT HIMSELF WAS NOT UNEQUIVOCAL BECAUSE HE CHANGED HIS MIND AND CHOSE TO CONTINUE WORKING WITH HIS EXISTING COUNSEL

To prevent defendants from making "capricious waivers of counsel" and to protect trial courts from "manipulative vacillations by defendants regarding representation", the court has determined

that a defendant's request to proceed pro se must be unequivocal. State v. Stenson, 132 Wn.2d 668,740, 940 P.2d 1239 (1997). This requirement stems from the conflict inherent between a defendant's rights to counsel and to self-representation. If the court too easily grants the request, an appellate court may reverse on the basis of an ineffective waiver of the right to counsel. But if the trial court rejects the request, it risks denying the defendant his constitutional right to self-representation. State v Imus, 37 Wash.App. 170, 174, 679 P.2d 376 (1984), see In re Detention of Turay, 139 Wn.2d 379, 986 P.2d 790 (1999) (court denied defendant's request for self-representation because it was unable to disentangle the request from more a more strongly expressed desire for substitute counsel).

In the case of Suggs, it was not the defendant himself but the court who suggested that his expressed dissatisfaction with counsel indicated that he wished to represent himself.

"MR. SUGGS: I am just asking how do you come to the conclusion that I am being represented adequately if I can't, in the light of all that? I don't understand.

THE COURT: How am I to interpret this, that you are requesting to represent yourself?

MR. SUGGS: I would love that. I would love that. Really would." 1RP 107.

When the court then informed him of the seriousness of the decision to represent oneself pro se and asked whether Suggs would be willing to "talk with him (defense counsel), sit down and go through and listen to him 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", Suggs readily agreed, replying "Yes, Your Honor". 1 RP 109.

The court never formally ruled or reserved on the question of self-representation. Rather, at this point, the defendant's actions indicated that he no longer wished to represent himself. Under the circumstances, a more extensive colloquy was not necessary. Suggs had changed his mind and agreed to attempt to continue working with his existing counsel. Therefore, his request for self-representation was resolved with his agreement to continue working with assigned counsel.

3. SUGGS' SECOND REQUEST FOR SELF-REPRESENTATION WAS NOT TIMELY BECAUSE IT WAS MADE MID-TRIAL AND THREATENED TO DISRUPT THE AVAILABILITY AND SCHEDULING OF KEY PROSECUTION WITNESSES

The court denied Suggs' second request for self-representation because it was untimely. The generally agreed upon outline for determining whether a pro se request is timely is: (1) if made well before the trial and unaccompanied by a motion for continuance, the right to self-representation must be granted as a matter of law; (2) if made when the trial is about to start, or shortly before, the existence of the right depends on the facts of the case with the trial court reserving a measure of discretion; and (3) if made during the trial the right to self-representation rests largely in the informed discretion of the trial court. Breedlove, 79 Wn. App at 106-107. Given that Suggs' second request was made mid-trial and between the testimonies of two prosecution witnesses, it falls squarely within the third condition. Therefore the decision to proceed rested with the informed discretion of the court.

The timeliness requirement cannot be used as a means of limiting the defendant's constitutional right to self representation. However, a pro se request offered mid-trial also cannot serve as an excuse to unjustifiably delay a scheduled trial or to obstruct the

orderly administration of justice. Id at 107, citing Fritz, 21 Wn. App at 362. In assessing whether a request for self-representation is timely, the court should evaluate the reasons behind the request, the quality of counsel's representation of the defendant, the defendant's prior proclivity to substitute counsel, the length and stage of the proceedings, and the disruption and delay that might follow should his motion be granted. Fritz, 21 Wn. App at 363, (court denied defendant's pro se request as untimely based on the fact that he had already delayed trial twice, first by fleeing the state and then by requesting substitute counsel and a continuance on the eve of trial).

The court based its decision to deny Suggs' request on the adequacy of existing counsel and the potential delays and disruptions should he be permitted to begin representing himself at that stage in the trial. Defendant's second request to represent himself stemmed from his dissatisfaction with how defense counsel cross-examined the victim and it arose directly following her testimony. 2 RP 71-72. Suggs initially made a request for alternative counsel, a request the court denied because it found no evidence that the defendant had not received competent assistance of counsel. The court then informed him that he was left with two

options, to continue with existing counsel or to represent himself. Suggs indicated that he wanted to represent himself. 2 RP 84-86.

At the time, the prosecution's next witness, a medical doctor, was waiting in the hallway to give testimony on the day prior to a planned business trip out of town. Failing to complete his testimony that afternoon would have necessitated delaying the trial for an entire week and potentially empanelling a new jury given such a lengthy and unexpected delay. 2 RP 87, 89. However, Suggs was unwilling to proceed with his existing counsel, even just for the testimony of the doctor. 2 RP 85. Considering the scheduling problems and potential delays caused by the defendant's mid-trial request to represent himself, the court then denied his request on the basis that it was untimely. 2 RP 90.

Because the court never formally ruled or reserved on the question of self-representation at the time of Suggs' initial request, the circumstances here are not analogous to those in State v Madsen. In Madsen, the trial court deferred ruling on the question of self-representation when it was raised pre-trial then was found to have improperly denied a request made the day before trial because it was untimely. The appeals court ruled that, because of

the delayed ruling, the timeliness had to be measured from the date of the original request. Madsen, 168 Wn.2d at 501,503. In this case, no formal ruling or reservation existed. Rather, Suggs changed his own mind as to his initial request and decided to proceed with existing counsel after all. 1 RP 109.

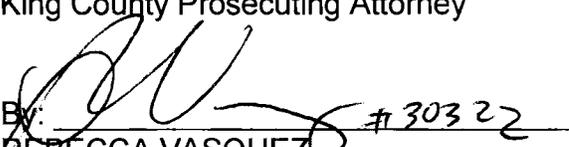
D. CONCLUSION

For the foregoing reasons, the trial court did not abuse its discretion. This court should uphold the decision to deny the defendant's request for self-representation.

DATED this 3rd day of October, 2011.

Respectfully submitted,

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