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CLERK OF COURT OF APPEALS DIV II
STATE OF WASHINGTON

NO. 40995-0-II

COURT OF APPEALS, DIVISION II

STATE OF WASHINGTON,

Respondent

vs.

JORDAN KNIPPLING,

Appellant.

BRIEF OF APPELLANT

APPEAL FROM THE SUPERIOR COURT FOR
MASON COUNTY

The Honorable Amber L. Finlay, Judge
Cause No. 09-1-00119-7

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A. ASSIGNMENTS OF ERROR

1. The trial court erred in denying Knippling his constitutional right to proceed pro se.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether the trial court erred in denying Knippling his constitutional right to proceed pro se? [Assignment of Error No. 1].

C. STATEMENT OF THE CASE

1. Procedure

Jordan Knippling (Knippling) was charged by first amended information filed in Mason County Superior Court with two counts of custodial assault. [CP 194-195].

No pretrial motions regarding CrR 3.5 or 3.6 were made or heard. Knippling's sought to present a defense of diminished capacity due to a medical condition causing hallucinations resulting in the assaults. [Vol. III RP 15]. An evaluation conducted by Western State Hospital did not support Knippling's diminished capacity defense and that defense was abandoned. [Vol. VIII RP 59]. On the day set for trial to commence, Knippling's attorney was allowed to withdraw based on an irretrievable breakdown in attorney client communication, new counsel was appointed, and the trial date was reset with jeopardy not attaching as the jury had not been selected or sworn. [Vol. V RP 124-133].

Prior to trial, the State moved to preclude Knippling from presenting, through new counsel, a defense that the two corrections officers were not conducting their “official duties,” an essential element of custodial assault, when they allegedly called Knippling derogatory/discriminatory names angering Knippling and provoking him into assaulting them. [CP 163-166; Vol. XX RP 220-229]. The court granted the State’s motion to prevent Knippling from presenting this defense as “fighting words”/provocation is not a defense to assault particularly where there is no actual danger of physical injury. [Vol. XX RP 224-229]. The court also denied Knippling’s repeated requests to “fire his attorney(s)” and proceed pro se ultimately holding that the request was untimely and had previously been denied. [CP 159-160, 161-162; Vol. II RP 7-8; Vol. VII RP 37-42; Vol. VIII RP 48-53, 57-62; Vol. IX RP 77-83; Vol. X RP 98-99; Vol. XVII RP 195; Vol. XX RP 232-233; Vol. XXI RP 236-243; Vol. XXII RP 255-258]. On the first day of trial, Knippling’s behavior became so disruptive that Knippling was removed from the courtroom for the entirety of the trial. [Vol. XXII RP 253-289].

Knippling was tried by a jury, the Honorable Toni A. Sheldon presiding. [Vol. XXII RP 290-366]. After deliberating the jury could not agree on a unanimous verdict, and the court declared a mistrial. [CP 133,

134, 135; Vol. XXII RP 362-363]. The matter was reset for trial. [Vol. XXIII RP 371-373].

On May 12, 2010, Knippling's case came before the Honorable Amber L. Finlay for retrial following a hung jury. [Vol. XXIV RP 376-484]. Knippling voluntarily waived his presence at trial and did not attend the trial. [CP 128-129; Vol. XXIV RP 385-415]. Knippling had no objections and took no exceptions to the court's instructions. [CP 109-125; Vol. XXIV RP 458-459]. The jury found Knippling guilty of two counts of custodial assault. [CP 107, 108; Vol. XXIV RP 482-483].

The court sentenced Knippling to standard range sentences of 60-months, the statutory maximum, on Counts I and II running the sentences concurrently based on an offender score of 9+ on both counts. [CP 8-21, 22-106; Vol. XXV RP 515-530].

Timely notice of appeal was filed on July 20, 2010. [CP 6-7]. This appeal follows.

2. Facts

On March 2, 2009, Knippling was "fired" from his kitchen job at the Washington Corrections Center in Shelton where he was an inmate by Corrections Officer Christopher Farringer (Farringer) because his behavior was unacceptable. [Vol. XXIV RP 417-421]. On March 3, 2009, Farringer, a full-time staff member performing his official duties, was

supervising the inmate kitchen line where inmates get a tray and food from the correctional facilities kitchen when he was approached by Knippling. [Vol. XXIV RP 422-423]. Knippling began questioning Farringer about the reasons for his firing and Farringer tried to give an explanation. [Vol. XXIV RP 423]. Knippling put his tray on a nearby table then moved his hands behind his back. [Vol. XXIV RP 423-424]. Knippling suddenly began punching Farringer in the face. [Vol. XXIV RP 424]. Farringer suffered two black eyes and a laceration on his left ear. [Vol. XXIV RP 424]. Farringer testified that he remained professional and had an adult conversation with Knippling doing nothing to provoke the attack. [Vol. XXIV RP 426-427].

Juan Barcelona (Barcelona), a full-time staff corrections officer at the Washington Corrections Center performing his official duties on March 3, 2009, saw Knippling punching Farringer and ran to Farringer's assistance. [Vol. XXIV RP 428-430]. Barcelona grabbed Knippling's coveralls to pull him off of Farringer when Knippling started punching him along his hairline. [Vol. XXIV RP 431]. Other officers came to assist and Knippling was subdued. [Vol. XXIV RP 431, 440-441].

A video recording of the incident was admitted and played to the jury. [Vol. XXIV RP 443-448].

Knippling did not testify at trial.

D. ARGUMENT

(1) KNIPPLING WAS DENIED HIS CONSTITUTIONAL RIGHT TO REPRESENT HIMSELF.

A criminal defendant has a constitutional right to waive assistance of counsel and proceed pro se at trial. Faretta v. California, 422 U.S. 806, 45 L. Ed. 2d 562, 95 S. Ct. 2525 (1975); Sixth Amendment to the United States Constitution; Art. 1, section 22 of the Washington Constitution; State v. Fritz, 21 Wn. App. 354, 358, 585 P.2d 173 (1978). In order to exercise the right, a defendant's request must be unequivocal, knowingly and intelligently made, and it must be timely. State v. Vermillion, 112 Wn. App. 844, 851, 51 P.3d 188 (2002). To determine the validity of a defendant's self-representation request, the trial court examines the facts and circumstances and the entire record. State v. DeWeese, 117 Wn.2d 369, 378, 816 P.2d 1 (1991). The court should also engage in a colloquy with the defendant to ensure that he or she understands the risks and consequences of self-representation. State v. Vermillion, 112 Wn. App. at 851. However, a defendant's technical legal knowledge is "not relevant to an assessment of his knowing exercise of the right to defend himself." Faretta, 422 U.S. at 836.

An appellate court reviews a trial court's denial of a defendant's self-representation request for an abuse of discretion that lies along a

continuum, corresponding to the timeliness of the request: (a) if made well before the trial...unaccompanied by a motion for continuance, the right of self-representation exists as a matter of law; (b) if made as the trial 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 (c) if made during trial the right to proceed pro se rests largely in the informed discretion of the trial court. State v. Vermillion, 112 Wn. App. at 855, *citing* State v. Fritz, 21 Wn. App at 361. However, a defendant cannot seek self-representation in order to delay or obstruct the administration of justice, and a defendant can waive self-representation by disruptive words or misconduct. State v. Vermillion, 112 Wn. App. at 851. The erroneous denial of a defendant's motion to proceed pro se requires reversal without any showing of prejudice. State v. Breedlove, 79 Wn. App. 101, 110, 900 P.2d 586 (1995).

Here, Knippling repeatedly expressed his dissatisfaction with his appointed counsel and asserted his constitutional right to represent himself. [CP 159-160, 161-162; Vol. II RP 7-8; Vol. VII RP 37-42; Vol. VIII RP 48-53, 57-62; Vol. IX RP 77-83; Vol. X RP 98-99; Vol. XVII RP 195; Vol. XX RP 232-233; Vol. XXI RP 236-243; Vol. XXII RP 255-258]. The trial court in response to Knippling's requests allowed him to ask questions regarding the information/discovery and raise issues pertaining to

his case rather than engage in the appropriate colloquy necessary to determine whether Knippling was aware of the risks and consequences of self-representation. The court did not inquire as to Knippling's level of education, did not inquire whether he had an understanding of the procedures involved in a trial including objections and cross-examination or an understanding of the rules of evidence, and did not inquire whether Knippling was unequivocally asserting his right to self-representation.

The trial court's consistent failure to engage in the proper colloquy in order to make a determination of whether or not to deny Knippling's constitutional right to proceed pro se does not constitute a proper exercise of discretion in light of the record. While it is true that during the course of the proceedings in this matter that Knippling's behavior became so disruptive that he was removed from the proceedings, Knippling's behavior can be attributed to his dissatisfaction with appointed counsel and his frustration with the court in failing to properly entertain his repeated requests to "fire" his counsel and proceed pro se. The trial court should have granted Knippling's constitutional right to proceed pro se as his requests were not made for any improper reason; he was taking active involvement in his own defense. This court should reverse Knippling's convictions and remand for a new trial in order to afford him his right to represent himself on the charges.

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E. CONCLUSION

Based on the above, Knippling respectfully requests this court to reverse and dismiss his convictions for two counts of custodial assault.

DATED this 24th day of December 2010.

Patricia A. Pethick
PATRICIA A. PETHICK
Attorney for Appellant
WSBA NO. 21324

CERTIFICATE OF SERVICE

Patricia A. Pethick hereby certifies under penalty of perjury under the laws of the State of Washington that on the 24th day of December 2010, I delivered a true and correct copy of the Brief of Appellant to which this certificate is attached by United States Mail, to the following:

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Signed at Tacoma, Washington this 24th day of December 2010

Patricia A. Pethick
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