MEMORANDUM DECISION

IN THE
Court of Appeals of Indiana

Curtis L. Williams, Jr.,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

February 13, 2024

Court of Appeals Case No.
23A-CR-2160

Appeal from the Elkhart Superior Court

The Honorable Stephen R. Bowers, Judge

Trial Court Cause No.
20D02-1911-F4-77

Memorandum Decision by Judge Bailey
Judges Crone and Pyle concur.

Bailey, Judge.

Case Summary

[1] Curtis L. Williams, Jr. appeals his conviction for Burglary, as a Level 4 felony,[1] and his adjudication as a habitual offender.[2] We affirm.

Issues

[2] Williams presents three issues for review:

I. Whether a day-of-trial request for self-representation is per-se untimely, leaving the trial court no discretion to grant the request;

II. Whether Williams received adequate advisements of the perils of self-representation to support a conclusion that his waiver of his right to counsel was made voluntarily, knowingly, and intelligently; and

III. Whether there is sufficient evidence of underlying offenses to support the habitual offender adjudication.

Facts and Procedural History

[1] Ind. Code § 35-43-2-1.

[2] I.C. § 35-50-2-8(a).

[3] On November 19, 2019, the State charged Williams with the burglary of the Elkhart County residence of Roger and Betty Kern. The State also alleged that Williams is a habitual offender.

[4] In October of 2020, Williams was appointed a public defender. At a hearing in February of 2021, appointed counsel advised the trial court that she and Williams had not had contact since the appointment, and counsel understood that Williams intended to obtain private counsel. The trial court recommended to Williams that he initiate contact with his public defender pending his hiring of private counsel.

[5] On April 5, 2021, the trial court conducted a status-of-counsel hearing. Williams advised the trial court that he had been looking for private counsel to represent him on a probation-violation matter but wished to retain his appointed counsel in the Burglary case, for the time being. The trial court addressed the public defender: "you're not out," and then directed Williams to make an appointment with his public defender. (Tr. Vol. II, pg. 19.) On June 8, 2021, appointed counsel filed a motion for withdrawal, citing lack of communication and Williams's expressed intent to obtain private counsel. The motion for withdrawal was denied.

[6] Williams's public defender filed a second motion for withdrawal, and the trial court set the matter for a hearing. Williams failed to appear, and counsel was permitted to withdraw her representation. The trial court issued a Rule to Show Cause order, commanding Williams to appear and show why he had

failed to cooperate with his appointed counsel. At a hearing on August 9, 2021, the trial court addressed Williams and reminded him that a one-and-one-half-year delay had ensued in which Williams had claimed to be attempting to obtain private counsel. The trial court stated that no more delay would be tolerated. At Williams's request, the trial court re-appointed a public defender for Williams and reiterated that Williams must promptly make an appointment with his appointed counsel.

[7] On August 19, Williams filed a pro-se motion for a continuance, making the representation that he had secured funds for hiring a private attorney. On the same day, Williams's appointed counsel filed a motion for a continuance and a motion to withdraw her representation. The motions were denied.

[8] On August 24, the parties appeared for trial. The State called and examined its first witness, and defense counsel declined to cross-examine that witness. When the witness was excused, defense counsel approached the bench and indicated that Williams wished to represent himself at trial. Outside the presence of the jury, the trial court questioned Williams about his decision and provided warnings relative to self-representation. Williams insisted upon self-representation, asserting: "I would have to be better than her." (*Id.* at 230-31.) However, he alternately offered a "proposal" for a two-week delay in which to obtain private counsel, to proceed with "settling this." (*Id.* at 239.) Ultimately, Williams was permitted to represent himself, with the public defender retained as stand-by counsel.

[9] Williams cross-examined the second witness before the trial was adjourned for the day. On the second day of trial, Williams did not appear and was tried in absentia. The jury found Williams guilty of Burglary, as charged. In the second phase of the trial, the State presented evidence that Williams had previously been convicted of two unrelated felonies, one of which was Burglary, as a Class B felony, and one of which was Escape, as either a Class C or Class D felony. The jury found Williams to be a habitual offender.

[10] In 2023, Williams was arrested in the State of Arizona. On August 21, 2023, he received a sentence of ten years for Burglary, enhanced by eight years due to his status as a habitual offender. Williams now appeals.

Discussion and Decision

Timeliness of Request for Self-Representation

[11] Williams contends that his request to represent himself stemmed from "frustration, not a true desire to represent himself." Appellant's Brief at 16. He argues that the trial court lacked discretion to grant the request because it was "untimely under Indiana law." *Id.* at 17.

[12] Williams directs our attention to *Russell v. State*, 270 Ind. 55, 383 N.E.2d 309 (1978). Considering an appellant's claim that he was erroneously denied his right of self-representation when his morning-of-trial request was not granted, the Court stated:

> [We] conclude that the right of self-representation must be asserted within a reasonable time prior to the day on which the trial begins. Morning of trial requests are thus per se untimely. None of the interests involved here, the right of self-representation, the right to counsel, or the interest in preserving an orderly criminal process, are furthered by the allowance of a last minute request such as was made in the present case. On the other hand, experience has shown that day of trial assertions of the self-representation right are likely to lead to a rushed procedure, increasing the chances that the case should be reversed because some vital interest of the defendant was not adequately protected.

Id. at 62; 383 N.E.2d at 314 (citation omitted). Although the Court "require[d] a pre-trial assertion of the self-representation right," *id.* at 63; 383 N.E.2d at 315, this was in the context of an appeal after a defendant's request for self-representation was rejected. The *Russell* decision did not set forth a blanket prohibition against granting a day-of-trial request for self-representation.

[13] And Williams makes no mention of the fact that he controlled the timing of his request. The State contends that, if the trial court erroneously entertained a per-se untimely request, it amounted to invited error. The "doctrine of invited error is grounded in estoppel," and forbids a party to "take advantage of an error that [he] commits, invites, or which is the natural consequence of [his] own neglect or misconduct." *Wright v. State*, 828 N.E.2d 904, 907 (Ind. 2005). Where a party has "created [a] situation by inviting the [error,] it cannot now take advantage of that error on appeal." *Id.* We agree with the State that such is the case here.

Adequacy of Advisements

[14] The Sixth Amendment, applicable to the states through the Fourteenth Amendment, guarantees a criminal defendant the right to counsel. *Hopper v. State*, 957 N.E.2d 613, 617 (Ind. 2011). This protection also encompasses an affirmative right for a defendant to represent himself in a criminal case. *Id*. The defendant should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that '"he knows what he is doing and his choice is made with eyes open."' *Leonard v. State*, 579 N.E.2d 1294, 1295 (Ind. 1991), quoting *Faretta v. California*, 422 U.S. 806, 835 (1975). The trial court must come to a considered determination that the defendant is making a voluntary, knowing, and intelligent waiver of his right to counsel. *Poynter v. State*, 749 N.E.2d 1122, 1126 (Ind. 2001). However, there are no prescribed "talking points" that the court is required to include in its advisement to the defendant. *Id.*

[15] In reviewing the adequacy of a waiver, we consider four factors: (1) the extent of the court's inquiry into the defendant's decision; (2) other evidence in the record that establishes whether the defendant understood the dangers and disadvantages of self-representation; (3) the background and experience of the defendant; and (4) the context of the defendant's decision to proceed pro se. *Kubsch v. State*, 866 N.E.2d 726, 736 (Ind. 2007).

[16] The trial court is in the best position to assess whether a defendant has voluntarily, knowingly, and intelligently waived his right to counsel:

> The trial court is uniquely situated to assess whether a defendant has waived the right to counsel. … And when that court "has made the proper inquiries and conveyed the proper information," and then "reaches a reasoned conclusion about the defendant's understanding of his rights and voluntariness," an appellate court, after a careful review of the record, "will most likely uphold" the trial court's "decision to honor or deny the defendant's request to represent himself." *Id.*

Wright v. State, 168 N.E.3d 244, 254-55 (Ind. 2021) (citations omitted).

[17] Here, the trial court advised Williams that he would be held to the same standards as an attorney. The trial court observed that Williams's public defender was highly experienced and capable, as were the State's attorneys. The trial court explained to Williams that self-representation involved understanding the substantive law related to burglary, as well as the rules of evidence and procedure. The trial court asked Williams if he had any training in the law or had been involved in a jury trial; Williams responded in the negative but indicated that he still wished to represent himself. The trial court reminded Williams that he had been uncooperative with his attorney and had not become familiar with the anticipated evidence. Finally, the trial court warned Williams that he would be responsible for cross-examining the State's expert witness on DNA testing results.

[18] Williams then attempted to negotiate for a two-week continuance. The trial court reiterated that a continuance would not be granted, and that self-representation was a "bad idea." (Tr. Vol. II, pg. 237.) In light of Williams's continued complaints about his counsel's performance, the trial court explained

that a choice to refrain from cross-examination might be a tactical decision. Ultimately, the trial court ordered the public defender to act as stand-by counsel with Williams representing himself.

[19] Williams now argues that the trial court should have "reminded" him that he was facing a sentence of up to thirty-two years. Appellant's Brief at 20. Also, Williams points out that the trial court did not ask about Williams's educational level or whether he suffered from a mental or emotional disability or was under the influence of alcohol or a narcotic.[3]

[20] The trial court interacted with Williams at length, having the opportunity to observe Williams's demeanor and the clarity of his responses. After receiving detailed advice about what the defense of a criminal charge entails, Williams refused representation by his appointed counsel and attempted to negotiate for more time in which to obtain private counsel. He was not a novice to the criminal justice system; rather, he had been convicted of two prior felonies. Although the trial court did not follow a particular script, it was not required to do so. *Poynter*, 749 N.E.2d at 1126. On the record before us, we are persuaded that Williams voluntarily, knowingly, and intelligently waived his right to counsel.

---

[3] Williams was diagnosed with a traumatic brain injury resulting from a vehicular collision. However, this injury occurred after Williams's trial.

Habitual Offender Adjudication

[21] The State must prove a habitual offender allegation beyond a reasonable doubt. *Gentry v. State*, 835 N.E.2d 569, 573 (Ind. Ct. App. 2005). Williams contends that here the State failed to establish the requisite predicate offenses.

[22] The statute pursuant to which Williams was adjudicated a habitual offender provided in relevant part:

> A person convicted of murder or of a Level 1 through Level 4 felony is a habitual offender if the state proves beyond a reasonable doubt that:
>
> (1) the person has been convicted of two (2) prior unrelated felonies; and
>
> (2) at least one (1) of the prior unrelated felonies is not a Level 6 felony or a Class D felony.

I.C. § 35-50-2-8(b) (2017).

[23] During the second phase of Williams's trial, the State presented testimony and evidentiary exhibits to show that Williams is a habitual offender, having been convicted of Burglary, as a Class B felony, in 2010 and Escape in 2013. As to the latter conviction, the charging information, sentencing order, and CCS indicate that it was a Class C felony while a court order accepting Williams's guilty plea indicates that it was a Class D felony. Based upon his understanding that neither of the predicate felonies can be a Class D felony, Williams contends that, "if Williams pled to the Class D felony rather than the C felony, the State

has not proven the habitual enhancement beyond a reasonable doubt." Appellant's Brief at 23.

[24] "Indiana Code subsection 35-50-2-8(b) does not allow a habitual-offender enhancement based only on two Level 6 felonies." *Calvin v. State*, 87 N.E.3d 474, 479 (Ind. 2017). It is required that "at least one" of the predicate felonies not be a Level 6 or Class D felony. *See* I.C. § 35-50-2-8(b)(2). Here, that criteria is satisfied, in that one of the predicate felonies – the existence of which Williams does not dispute – is a Class B felony. Even if Williams's prior Escape conviction is a Class D felony, the State did not fail in its burden of proof.[4]

Conclusion

[25] Williams invited the trial court to entertain his day-of-trial request for self-representation; thus, even if it may be considered per-se untimely, Williams has shown no reversible error in this regard. His waiver of counsel was made voluntarily, knowingly, and intelligently. Sufficient evidence supports his habitual offender adjudication.

[26] Affirmed.

---

[4] Because Williams received a five-year sentence for Escape, it is likely that his conviction was for a Class C felony and the reference to a Class D felony is scrivener's error.

Crone, J., and Pyle, J., concur.

ATTORNEY FOR APPELLANT

Mark D. Altenhof
Elkhart, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Ellen H. Meilaender
Deputy Attorney General
Indianapolis, Indiana