MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Robert C. Swettenam,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

May 25, 2021

Court of Appeals Case No. 20A-CR-2281

Appeal from the Knox Superior Court

The Honorable Gara U. Lee, Judge

Trial Court Cause No. 42D01-2010-F5-45

Shepard, Senior Judge.

[1] Robert C. Swettenam appeals his conviction of domestic battery resulting in serious bodily injury, a Level 5 felony,[1] and a determination that he is an habitual offender.[2] He claims the trial court erred in allowing him to waive his right to counsel and exercise his right to represent himself. We affirm.

Facts and Procedural History

[2] On October 2, 2020, the State charged Swettenam with two counts of Level 5 felony domestic battery after Swettenam struck his stepfather. It later filed an habitual offender enhancement.

[3] The trial court held an initial hearing on October 9, 2020, during which Swettenam said he intended to waive his right to counsel and represent himself. The court asked him if he felt that he could "adequately represent himself," and he agreed. Supp. Tr. Vol. 2, p. 4.

[4] On October 21, 2020, Swettenam filed a motion to reduce his bond, arguing the $10,000 cash-only bond was "unconstitutional and a fundamental error" because it was higher than what he believed was necessary to ensure he met the requirements of a release. Appellant's App. Vol. 2, p. 39. The court denied Swettenam's motion. Swettenam subsequently moved for compassionate

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[1] Ind. Code § 35-42-2-1.3 (2020).

[2] Ind. Code § 35-50-2-8 (2017).

release, citing the "First Step Act" and the COVID pandemic. *Id.* at 55. The court also denied that motion.

[5] On November 6, 2020, the trial court held a pretrial hearing. Prior to the hearing, Swettenam had read and signed a "Waiver of Counsel and Declaration of Desire to Proceed Pro Se." *Id.* at 56. In the three-page document, he acknowledged being advised of numerous factors, including: (1) an attorney has skills, training and expertise that nonlawyers do not possess; (2) a person representing themselves will be held to the same rules of evidence and procedure as a trained attorney, with no special treatment; and (3) a person self-representing is responsible for presenting a defense, including investigating evidence, preparing motions and jury instructions, participating in jury selection, and questioning witnesses at trial, even if the person is incarcerated as the case proceeds.

[6] During the hearing, the trial judge acknowledged that she and Swettenam had previously discussed his waiver of his right to counsel, but she wanted to address that subject further. She explained to Swettenam that an attorney: (1) would be better at evaluating the strengths and weaknesses of the case, including any defenses; (2) is trained to investigate cases, including questioning witnesses and obtaining evidence; (3) would be better able to recognize and object to unfavorable evidence; (4) could provide expert advice on whether a plea agreement is advisable; and (5) would have better knowledge of what factors could reduce a possible sentence. The judge further reminded Swettenam that he would be held to the same standard as an attorney and

would have to follow all of the same rules and procedures. She also explained that the State would be represented by an attorney and "will have the advantage that an attorney presents." Tr. Vol. 2, p. 6.

[7] Finally, the trial judge told Swettenam:

> These are some of the things that I want you to consider. You know, your ability, your skills and knowledge. What skills and knowledge do you have that would make you a good representative of yourself? You know, your experience with the criminal law and the judicial system. Your participation in prior jury trials. Your education. Those types of things.

Id. at 6. Swettenham stated that he understood and wanted to waive counsel.

[8] Next, the court and the parties discussed the State's recently filed habitual offender sentencing enhancement, and Swettenam indicated he understood those allegations. He further stated, regarding his request to forego counsel, that he believed that other defendants had waited years to hear from their court-appointed attorneys, and he also believed their attorneys were working against them. Swettenam further stated he did not want his case to linger, and he wanted to reach an agreement with the State. He then asked the court to appoint co-counsel, and the trial court rejected his request.

[9] Subsequently, the trial court and Swettenam discussed whether he wanted to attend the trial in person or participate from the jail by video. The court clarified that he had the right to appear in person if he wished. When Swettenam indicated that his primary goal was to reach a deal with the State rather than go to trial, the judge left the courtroom so the parties could talk.

[10] When the hearing resumed, Swettenam told the court he wanted to plead "open." *Id.* at 17. After further discussion between Swettenam and the State, he pled guilty to one count of domestic battery and to being an habitual offender. The State dismissed the other domestic battery charge and agreed to recommend the minimum sentence on the habitual enhancement.

[11] While discussing his guilty plea with the court, Swettenam mentioned he had received treatment for mental illness long ago. The court asked him if there was anything about the treatment or his mental illness that would affect his ability to understand the proceedings, and Swettenam responded: "I 1,000 percent understand what I am doing." *Id.* at 20. The court accepted the guilty plea and later imposed a sentence. Next, Swettenam informed the court he wanted to appeal and requested counsel. This appeal followed.

Discussion and Decision

[12] Before we address the merits of Swettenam's claim that he should not have been allowed to represent himself, we note he appeals after pleading guilty. This Court's prior decisions indicate that a defendant who pleads guilty defaults any right to appeal the waiver of counsel. *See, e.g.*, *Hoskins v. State*, 143 N.E.3d 358 (Ind. Ct. App. 2020) (dismissing appeal addressing waiver of counsel; Hoskins had pled guilty). But in this case, the State has not argued waiver, choosing instead to address the merits of Swettenam's claim. Further, Swettenam's claim is not complex. We choose to not dismiss his appeal.

[13] The Sixth Amendment guarantees a defendant the right to counsel. *Henson v. State*, 798 N.E.2d 540 (Ind. Ct. App. 2003), *trans. denied*. The Sixth Amendment also provides a right to proceed without counsel. *Id.* A defendant must waive the right to counsel before representing oneself, and the trial court must determine that the waiver is "knowing, voluntary, and intelligent." *Id.* at 544. The law "indulges every reasonable presumption against a waiver of this fundamental right." *Poynter v. State*, 749 N.E.2d 1122, 1126 (Ind. 2001). We review de novo a trial court's acceptance of a defendant's waiver of counsel. *Jackson v. State*, 992 N.E.2d 926 (Ind. Ct. App. 2013), *trans. denied*.

[14] The Indiana Supreme Court has identified the following considerations as helpful in reviewing whether a defendant knowingly, voluntarily, and intelligently waived the right to counsel:

> (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*.

Poynter, 749 N.E.2d at 1127-28 (quoting *United States v. Hoskins*, 243 F.3d 407, 411 (7th Cir. 2001)). Although our review is de novo, the trial court is "uniquely situated" to assess the validity of a defendant's waiver of counsel. *Wright v. State*, No. 20S-LW-260, 2021 WL 1748414, at *3 (Ind. May 4, 2021).

[15] Starting with the extent of the trial court's inquiry, the court twice discussed with Swettenam his intent to waive the right to counsel and proceed pro se,

once briefly during the October 9, 2020 hearing and in more detail during the November 20, 2020 hearing. Among other advisements, the court told Swettenam that he would be held to the same standards as an attorney and that the State would continue to be represented by counsel regardless of his decision. The court further discussed the types of tasks Swettenam would be responsible for accomplishing prior to and during trial.

[16] Turning to other evidence that establishes whether Swettenam was aware of the risks of representing himself, he signed a three-page document that discussed the duties of a defendant who waives counsel. The advisements included a warning that he would not receive any special treatment from the trial court.

[17] As for Swettenam's background and experience, he claims the court failed to ask him about his education and other background information. But the court raised those issues with Swettenam and asked him to consider them. In any event, the record demonstrates that Swettenam understood criminal law procedures to a degree. He filed two motions for bond reduction and asked the court to appoint co-counsel. His knowledge possibly stems from his lengthy criminal history, which includes thirteen prior felony convictions and eleven prior misdemeanor convictions. He also has a GED.

[18] Swettenam argues he displayed confusion about topics including the sentencing implications of a habitual offender enhancement and his right to appear in person for trial. But he also demonstrated an understanding of the State's case against him by refusing to plead guilty to one of the domestic battery counts,

stating he did not commit that offense as charged. Indeed, despite initially stating that he wished to submit an open plea of guilty, Swettenam negotiated with the State to dismiss one of the felony charges and to receive the minimum possible sentence from the habitual offender sentencing enhancement. Also, although Swettenam received treatment for mental illness in the past, he stated during the guilty plea portion of the November 20, 2020 hearing that his illness did not hinder his ability to understand court proceedings.

[19] Finally, we consider the context of Swettenam's decision to represent himself. He explained that he believed a court-appointed attorney would unduly delay the case and might not work in his best interests. One may disagree with Swettenam's perspective, but his decision was based on strategic considerations. *See Henson*, 798 N.E.2d at 548 (affirming trial court's acceptance of Henson's waiver; Henson wanted to represent himself because he believed the public defender had a conflict of interest); *cf. Wirthlin v. State*, 99 N.E.3d 699 (Ind. Ct. App. 2018) (reversing trial court's acceptance of Wirthlin's waiver; the court had a cursory, incomplete discussion with Wirthlin, who wanted to resolve the case as quickly as possible for family reasons), *trans. denied*. Considering the facts and circumstances, the trial court did not err in determining Swettenam knowingly, voluntarily, and intelligently waived his right to counsel.

Conclusion

[20] For the reasons stated above, we affirm the judgment of the trial court.

[21] Affirmed.

Robb, J., and Altice, J., concur.