

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANDRIEA ERIN BUSSEY,

Defendant-Appellant.

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UNPUBLISHED  
February 25, 2021

No. 354397  
Macomb Circuit Court  
LC No. 2019-003293-FH

Before: CAVANAGH, P.J., and SERVITTO and CAMERON, JJ.

PER CURIAM.

Defendant appeals, by delayed leave granted (*People v Bussey*, unpublished order of the Court of Appeals, entered 2020 (Docket No. 354397)), the sentence imposed after she violated her probation on an underlying conviction. We affirm.

On December 19, 2019, defendant pleaded guilty to attempted 4<sup>th</sup> degree fleeing and eluding, MCL 257.602a(2). The trial court sentenced defendant to 21 months' probation, and 21 days of jail time, to be served on weekends. The terms of defendant's probation included requirements that defendant not use or possess alcoholic beverages or intoxicants and that she comply with alcohol and drug testing requirements as directed by her probation officer. Less than one month after being sentenced, defendant violated her probation by failing to comply with alcohol testing requirements and failing to report to serve her weekend jail sanction. Due to actions of defendant at the arraignment on her probation violation, explained below, defendant was found to have violated her probation in other ways as well. Defendant ultimately pleaded guilty to most of the allegations concerning her probation violations (the trial court found her guilty of the other violations) and the trial court sentenced her to 365 days in jail.

Thereafter, defendant moved to correct her allegedly invalid sentence and for resentencing. The crux of defendant's argument was that she was not represented by counsel at the beginning of her arraignment on the initial probation violations and that her constitutional right to counsel was thus violated. Defendant further contended that she was denied the effective assistance of counsel with respect to her probation violations. The trial court denied defendant's motion and this Court granted defendant's delayed application for leave to appeal.

On appeal, defendant first contends that her constitutional rights to remain silent and to counsel were violated at her arraignment and these violations required that she be resentenced. Specifically, defendant asserts that because she did not have counsel at her probation violation arraignment, she incriminated herself by giving the trial court an allegedly altered medical document and the trial court later imposed a sentence upon her that took the document into consideration. We find no merit to defendant's argument.

On March 11, 2020, defendant appeared before the trial court for arraignment on her probation violations. The trial court advised defendant of the allegations against her and asked if she wanted to plead guilty, plead not guilty, or stand mute which would result in the trial court entering a not guilty plea for her. Defendant stated that she wished to plead not guilty and the trial court stated that a hearing on the probation violation would be held the next week. The trial court thereafter stated that it was not inclined to grant defendant a bond pending the hearing but indicated that because defendant was without counsel at that time, it would listen to her and would "not hold anything that you say against you so that you can just talk to me freely."

At that point, counsel that had been appointed to represent defendant on her underlying charge for fleeing and eluding entered the courtroom. Former appointed counsel had not been aware of the arraignment, but had walked into the courtroom and heard defendant's name.<sup>1</sup> Counsel told the trial court that defendant was his client. The trial court advised counsel that defendant had already been arraigned and pleaded not guilty and that a hearing date had been set to address the probation violations. The trial court further advised counsel that it was considering the issue of a bond for defendant. A probation agent was also present in the courtroom at defendant's arraignment and advised the trial court that defendant had stated that she failed to show up for her weekend jail time because she was in the hospital. The agent then asked defendant if she brought medical documentation from the hospital and she said she did and agreed she wanted to give it to the trial court. The trial court asked, "Did your attorney want to see it?" and defendant responded, "It's just the documentation that I was there." The trial court then looked at the document and, with input from the probation agent, observed that the document appeared to have been altered. The trial court then set the matter for a probation violation hearing date.

The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defence." "The right to counsel attaches and represents a critical stage only at or after the initiation of adversary judicial proceedings against the accused by way of a formal charge, preliminary hearing, indictment, information, or arraignment." *People v Anderson*, 446 Mich 392, 402; 521 NW2d 538 (1994) (internal quotation marks and citation omitted). "However, the right is invoked only by requesting counsel, usually at postcharge questioning or at arraignment." *Id.* at 402. Thus, assuming, without deciding, that the Sixth Amendment right to counsel attaches at, or even before arraignment, a defendant must still assert the right to enjoy its protection. *Patterson v Illinois*, 487 US 285, 290-291; 108 S Ct 2389; 101 L Ed 2d 261 (1998). The Sixth Amendment right to counsel is offense-specific and

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<sup>1</sup> Counsel indicated that defendant had called him, but it is not clear on the record that she did so prior to arraignment and, in any event, defendant did not retain former appointed counsel to represent her for purposes of the probation violations.

cannot be invoked once for all future prosecutions. *People v Smielewski*, 214 Mich App 55, 60; 542 NW2d 293 (1995).

Here, defendant did not assert her right to counsel at her arraignment on the probation violations. Her former counsel had simply been in the courtroom, and even after counsel stated that defendant had been his client, defendant still did not assert that she wanted him to represent her for purposes of the probation violation charges. It was only *after* defendant had submitted the medical document to the trial court and the court had observed that the document appeared to have been altered, that it was clear that former counsel would be appointed for purposes of the probation violations.

After the trial court set a hearing date, the court clerk asked the trial court, “Judge, are you appointing [former counsel] on this case?” and the trial court indicated that it was doing so. In fact, defendant did not petition for the appointment of counsel with respect to her probation violations until after her arraignment and counsel was not officially appointed to represent defendant until two days after the arraignment. Moreover, when asked if she wanted to show her former counsel the document before she submitted it to the court, defendant’s response indicated that she did not feel it was necessary. Thus, defendant’s Sixth Amendment right to counsel was not violated.

Defendant’s Fifth Amendment right against self-incrimination was also not violated. The Fifth Amendment provides that no person “shall be compelled in any criminal case to be a witness against himself.”

This prohibition not only permits a person to refuse to testify against himself at a criminal trial in which he is a defendant, but also privileges him not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings. However, as the Fifth Amendment privilege speaks only of compulsion, it is not concerned with moral and psychological pressures to confess emanating from sources other than official coercion. It does not preclude a witness from testifying voluntarily in matters which may incriminate him. [*People v Wyngaard*, 462 Mich 659, 671–72; 614 NW2d 143 (2000) (quotation marks and citations omitted)]

At the arraignment on her probation violation, the trial court did not compel defendant to respond to any question posed to her, let alone any question where the answers may incriminate her. At the beginning of the arraignment, the trial court gave defendant the option to stand mute. She did not avail herself of this opportunity. Thereafter, the trial court indicated that it was not inclined to allow defendant a bond on the probation violation charge, but would listen to anything defendant had to say with *respect to a bond*. It also advised that it would not hold anything defendant said in addressing that issue against her. Defendant did not say anything to the court with respect to bond. Rather, a probation agent indicated that defendant had said she did not appear because she was in the hospital and the probation agent then asked defendant if she had brought any documentation to show her hospitalization. Defendant indicated that she did and thereafter submitted an allegedly falsified document to the trial court. No one compelled defendant to answer the question posed by the probation agent and no one compelled defendant to submit an allegedly

falsified document to the trial court. Moreover, defendant's action, in submitting the document, could arguably be deemed to be a waiver of her Fifth Amendment right to remain silent.

At the later hearing on defendant's probation violations defendant was represented by former counsel, stated she was satisfied with counsel's services, and specifically pleaded guilty to the new probation violation stemming from the submission of the medical document. By pleading guilty, defendant has waived constitutional violations alleged to have occurred before the plea. See, *People v New*, 427 Mich 482, 487; 398 NW2d 358 (1986) ("This Court has held, as a general rule, that a plea of guilty waives all nonjurisdictional defects in the proceedings."). Because defendant's arguments concerning violations of her constitutional rights fail, there is also no basis for defendant's claims that counsel was ineffective for failing to interview defendant and review the allegedly altered medical document prior to her submitting the document to the trial court,<sup>2</sup> and in not motioning the court to exclude the document or objecting to its use because counsel had not looked at it before she submitted it to the court.

Affirmed.

/s/ Mark J. Cavanagh  
/s/ Deborah A. Servitto  
/s/ Thomas C. Cameron

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<sup>2</sup> Not only was counsel not appointed until after she had submitted the document, it is questionable whether one requires the advice of legal counsel concerning the detriments of submitting false documents to a court.