

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

---

PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellee,

UNPUBLISHED  
June 24, 2014

v

ERIC D. MOORE,

No. 315193  
Jackson Circuit Court  
LC No. 10-006275-FH

Defendant-Appellant.

---

Before: CAVANAGH, P.J., and OWENS and STEPHENS, JJ.

PER CURIAM.

Defendant appeals as of right his jury conviction on the charge of prisoner in possession of a weapon, MCL 800.283(4). We affirm.

While incarcerated at the Parnall Correctional Facility in December of 2010, defendant struck a corrections officer with a lock that was in a sock. He was charged with prisoner in possession of a weapon and assault of a prison employee, MCL 750.197c. Defendant underwent a competency evaluation performed by Dr. Michelle Hill and he was determined to be competent to stand trial. Defendant requested a second competency evaluation, which was granted. The second evaluation was performed by Dr. Steven Miller, who determined that defendant was competent to stand trial on the possession charge, but not on the assault charge. Thereafter, the prosecution dismissed the assault charge. Defendant requested a third competency evaluation, which was denied. Defendant also requested the appointment of a different court-appointed attorney on the ground that there had been a breakdown in his relationship with his court-appointed attorney. The trial court granted the request and a different attorney was appointed.

In January 2013, the day scheduled for trial, defendant informed the court that there had been a breakdown in his relationship with his second court-appointed attorney and requested a different attorney. The trial court denied the request, holding that it was an unjustified attempt to secure another adjournment of his trial. Thereafter, defendant advised the trial court that he wanted to represent himself and did not want his second court-appointed attorney to represent him. Defendant did, in fact, proceed to represent himself at the trial. He made an opening statement, cross-examined the prosecution's witnesses, testified as a witness, and provided a closing argument. Defendant appeals following his conviction on the charge.

First, defendant argues that he was denied his due process rights because he was not sufficiently advised of "the consequences and dangers of self-representation." We disagree.

Because this issue is unpreserved our review is for plain error that affected substantial rights. *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999). Under the plain error rule, an error must have occurred, that was plain or clear, and affected substantial rights, i.e., there generally must be a showing of prejudice. *Id.* at 763. Further, reversal is warranted only when the plain error resulted in the conviction of an actually innocent defendant or when the error seriously affected the fairness, integrity or public reputation of the judicial proceeding independent of the defendant's innocence. *Id.*

A defendant has the right to represent himself in a criminal prosecution. Const 1963, art 1, § 13; MCL 763.1; see also *Faretta v California*, 422 US 806, 819; 95 S Ct 2525; 45 L Ed 2d 562 (1975). The denial of this right to self-representation constitutes structural error requiring reversal. *People v Allan*, 299 Mich App 205, 212; 829 NW2d 319 (2013). A defendant's request to represent himself, however, must be unequivocal. *People v Anderson*, 398 Mich 361, 367; 247 NW2d 857 (1976). Further, this right must be asserted knowingly, intelligently, and voluntarily. *Id.* at 368. Consequently, before accepting a defendant's waiver of counsel, MCR 6.005(D)(1) requires the trial court to advise the defendant: of the charge, the maximum possible prison sentence, any mandatory minimum sentence, and the risk involved in self-representation, i.e., the dangers and disadvantages of self-representation. See also *Anderson*, 398 Mich at 368. The defendant must also be offered the opportunity to consult with a lawyer. MCR 6.005(D)(2). And, finally, the trial court must consider whether the court and its business will be disrupted, unduly inconvenienced, or burdened by granting such request. *Anderson*, 398 Mich at 368.

In this case, on the day of trial, defendant complained about his counsel's responses to his challenge to the felony complaint and his desire to have mental health witnesses testify on his behalf. Defendant opined that the felony complaint was deficient because it was not signed and that testimony from mental health professionals would be beneficial to his defense. Defendant's counsel responded, stating that the felony complaint was signed and that testimony from mental health professionals would not be relevant because the assault charge against defendant had been dismissed. The remaining charge was prisoner in possession of a weapon and any mental health testimony would not be relevant to defending against that charge. The prosecution agreed, arguing that the charge of prisoner in possession of a weapon is not a specific intent crime; thus, any testimony regarding defendant's mental health would not be relevant or admissible evidence in defense of the charge. The trial court agreed that testimony from mental health professionals would not be relevant in this case and, after review of the felony complaint, the trial court concluded that it was not defective.

Thereafter, the trial court asked defendant whether he wanted his counsel to represent him or whether he still wanted to represent himself in this case. Defendant stated that he wanted to represent himself and continued to argue at length that he had a right to present testimony from mental health professionals. The court accepted defendant's waiver of counsel, but did not specifically follow the dictates of MCR 6.005(D)(1) by advising defendant of the charge, the maximum possible prison sentence, any mandatory minimum sentence, and the risk involved in self-representation. However, the trial court required defendant's court-appointed lawyer to remain as an advisor to defendant if he sought such counsel.

It is clear from the record that defendant was very familiar with the legal system and cited to cases, statutes, and court rules in support of his arguments. He unequivocally elected to represent himself because he disagreed with his counsel's legal conclusions, primarily regarding the relevancy of testimony from mental health professionals. Defendant did not relent on this issue despite the trial court's agreement with defendant's counsel that such testimony was not relevant and, therefore, was not admissible to defend against the charge of prisoner in possession of a weapon. Only two elements must be established to secure a conviction on that charge: that defendant was a prisoner and possessed, or had under his control, a weapon or other implement that could be used to injure another person. See MCL 800.283(4). It is a general intent crime; thus, insanity is not a defense. See *People v Carpenter*, 464 Mich 223, 236; 627 NW2d 276 (2001).

In light of the record evidence, including extensive testimony from corrections officers regarding defendant's possession of a lock in a sock which defendant used to strike a corrections officer, we cannot conclude that any error on the part of the trial court with regard to accepting defendant's waiver of his right to counsel constituted reversible error warranting appellate relief. Even if plain error occurred with regard to the trial court's acceptance of defendant's waiver of counsel, such error did not affect the outcome of the trial and it did not result in the conviction of an actually innocent defendant or seriously affect the fairness, integrity or public reputation of the judicial proceeding independent of his innocence. See *Carines*, 460 Mich at 763.

In a related argument, defendant contends that he was entitled to substitute appointed counsel and the trial court erred when it denied his request. After review of the trial court's decision for an abuse of discretion, we disagree. See *People v Traylor*, 245 Mich App 460, 462; 628 NW2d 120 (2001).

Indigent defendants are guaranteed the right to counsel, but the appointment of substitute counsel is warranted only upon a showing of good cause and only if substitution will not unreasonably interrupt the judicial process. *People v Mack*, 190 Mich App 7, 14; 475 NW2d 830 (1991). "Good cause exists where a legitimate difference of opinion develops between a defendant and his appointed counsel with regard to a fundamental trial tactic." *Id.* Accordingly, when a defendant claims that his appointed counsel is not adequate, diligent or is uninterested, the trial court should listen to the grievance and, if a factual dispute exists, take testimony on the matter. *People v Strickland*, 293 Mich App 393, 397; 810 NW2d 660 (2011) (citation omitted).

In this case, as discussed above, defendant requested substitute counsel because his second appointed counsel did not agree that testimony from mental health professionals regarding defendant's mental state was relevant to defend the charge of prisoner in possession of a weapon. Because such evidence was not relevant and, thus, was inadmissible, defendant failed to establish that a "legitimate difference of opinion" gave rise to good cause for the appointment of substitute counsel. Thus, the trial court did not abuse its discretion when it denied defendant's request.

Finally, defendant argues that the trial court abused its discretion when it denied his request to call mental health professionals as expert witnesses to testify regarding defendant's mental health. For the reasons discussed above, we disagree. Such testimony was not relevant and, thus, was inadmissible. See MRE 402. In other words, the testimony of mental health

professionals would not tend to make the existence of any fact of consequence to the determination of the action—whether defendant, a prisoner, was in possession of a weapon—more or less probable than it would be without the evidence. See MRE 401. Accordingly, the trial court did not abuse its discretion when it denied defendant’s request to call mental health professionals as witnesses on his behalf.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Donald S. Owens

/s/ Cynthia Diane Stephens