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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1139**

State of Minnesota,
Respondent,

vs.

Anayyha Nakashia Black,
Appellant.

**Filed May 21, 2018
Affirmed
Connolly, Judge**

Hennepin County District Court
File No. 27-CR-16-9377

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Christina I. Warren, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Susan Andrews, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Worke, Judge; and
Connolly, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant challenges her conviction of simple robbery, arguing that she is entitled to a new trial because her request to proceed pro se was not timely and her waiver of counsel was not made knowingly and intelligently. We affirm.

FACTS

On April 6, 2016, appellant Anayya Nakashia Black was charged with simple robbery in violation of Minn. Stat. § 609.24, subd. 1 (2014). On May 31, 2016, a public defender was appointed to represent appellant. After appellant failed to appear for trial, a warrant was issued, and appellant was arrested.

The case was then set for a pretrial hearing. At that hearing, the prosecutor offered to reduce the felony charge to gross-misdemeanor theft from a person in exchange for a guilty plea. The public defender requested more time to confer with appellant concerning this offer. When the parties reconvened, appellant indicated that she wanted to accept the offer; however, she later said that she was trying to contact another attorney who advised her not to take the plea deal. The district court told appellant:

THE COURT: All right. Look. Here's your choice here: you can take this deal that you're being offered or you can set your case for trial. If you set your case for trial and you want to get a different lawyer by the trial date that we give you, you can do that. But you can't have two lawyers. You have to have one.

THE DEFENDANT: Okay.

THE COURT: And now is the time for you to make that decision. This case has been going on for almost a year.

THE DEFENDANT: I know.

Appellant then stated that she wanted to set her case for trial.

The trial was set for March 13, 2017, and on that date, appellant told the district court that she had a private attorney to represent her. The district court explained to appellant that she had the right to hire a new attorney or to represent herself, but to do either, she would have to first fire her public defender. The district court told appellant, “If you fire [the public defender] the Public Defenders’ Office doesn’t give you another public defender.” Additionally, the private attorney appeared on that date and said that he would not represent appellant at trial. Appellant then stated that she would like to fire the public defender and represent herself until she found another attorney:

THE COURT: You want to represent yourself?

THE DEFENDANT: Yes.

THE COURT: Okay.

THE DEFENDANT: For the time being until I can get another attorney.

THE COURT: So you can what?

THE DEFENDANT: Until I can get another attorney in the process.

THE COURT: Well, you don’t – on the day of trial, you don’t get another continuance to find a new attorney. You knew when this trial date was, and the case has been pending since last June, and you’ve had plenty of time to get a different attorney if you wanted one.

THE DEFENDANT: Okay.

After reviewing a letter from appellant explaining that she disagreed with the public defender’s strategy, the district court told appellant her options: she did not need to follow the public defender’s advice, she could fire the public defender, or she could hire someone else, but she could not have a continuance for the trial. Appellant said she was not asking for a continuance, but was hoping the private attorney could represent her. The private

attorney then stated that he thought he had made it clear that he was not willing to represent appellant at trial.

The district court then discussed appellant's right to counsel:

THE COURT: Now, [appellant], do you want to proceed to trial with [the public defender] or do you want to fire him?

THE DEFENDANT: I would like to fire him.

THE COURT: Okay. And then you're going to proceed to trial by representing yourself?

THE DEFENDANT: Yes.

THE COURT: Okay. Do you understand?

THE DEFENDANT: Would I be able to get a lawyer at that time to like volunteer and step up for me if they –

THE COURT: Your trial date is today.

THE DEFENDANT: Okay.

THE COURT: So, if you can find somebody to represent you today, that's fine, but otherwise, no.

THE DEFENDANT: Okay.

THE COURT: You've had ample time to do this, and I don't know how long you've been displeased with [the public defender], but you've certainly had the opportunity to be talking to him for months and months, and you could have replaced him long before now.

THE DEFENDANT: Okay.

THE COURT: So, your trial date is today. There's no further delay for that purpose.

THE DEFENDANT: Okay.

THE COURT: I must tell you if you represent yourself, you are held to the same standard as a person with a law degree. The [district c]ourt cannot give you any help. You cannot get any help from anybody other than a standby counsel, and that standby counsel would be [the public defender].

You will be expected to know the rules of evidence, the rules of criminal procedure, and to subpoena witnesses if you want them to appear for you. The trial is not about [the public defender]. The trial is about what you're charged with, right?

So, you also have been offered a non-felony disposition in this case. No additional jail time. You've only been in jail because you didn't show up for court.

THE DEFENDANT: I understand.

THE COURT: And a gross misdemeanor has a completely different effect on potential future employment than a felony. So, I don't know – when I see what you say [the public defender] said to you –

THE DEFENDANT: Yeah.

THE COURT: I don't see anything in there that's wrong.

THE DEFENDANT: Okay.

THE COURT: So, it's up to you, but I mean sometimes lawyers get frustrated with their clients when they don't take advice.

THE DEFENDANT: Okay.

THE COURT: And sometimes they get frustrated with their clients when they don't follow court orders and get arrested cause they didn't show up for court.

THE DEFENDANT: Yes.

THE COURT: That happens.

THE DEFENDANT: That's true.

THE COURT: And that's not – that doesn't make him an ineffective lawyer.

Appellant again stated that she hoped the private attorney would agree to represent her, but the private attorney again stated that he was not willing to do so. After more conversation, appellant then stated, "I'll fire [the public defender] and represent myself today and then if he will stay and be my counsel for the trial, I appreciate that." The public defender then was appointed as standby counsel.

On March 14, 2017, the district court provided appellant with a "written petition to proceed pro se" and instructed appellant to ask standby counsel any questions that she had. The district court emphasized that the petition advised appellant of all the responsibilities of representing herself and that she had to sign the documents to indicate that she understood. The parties then went off the record for "fifteen, twenty minutes" for appellant to discuss the petition with standby counsel. Appellant rejected the offer to plead to a gross

misdemeanor and proceeded to trial. The district court asked appellant if she read the petition and understood it.

THE DEFENDANT: Kind of. I don't really understand exactly what I'm reading.

THE COURT: I'm sorry?

THE DEFENDANT: I said kind of. I don't understand exactly what I'm reading.

THE COURT: Okay. Well, you had quite a[n] extensive conversation with [standby counsel]. Did you discuss that?

THE DEFENDANT: Yes. But – so this means I'm just representing myself, right? And if I have any questions, he'll be willing to, like, answer my questions pretty much?

THE COURT: Okay. You're representing yourself. Part of representing yourself is that you [are] held to the same standard as a lawyer. You don't get any special consideration really. I mean, we'll make sure you understand the words we're saying and we won't use a bunch of legal language, but if you don't understand the law, you can ask [standby counsel] questions but you don't have – nobody can give you – I can't give you legal advice. You know that, right?

THE DEFENDANT: Yes.

THE COURT: Okay. And you will have to figure out how to try a case.

THE DEFENDANT: Okay.

THE COURT: And we can give you the Rules of Evidence and the Rules of Procedure, but that's about it.

THE DEFENDANT: I just have another question. Exactly what am I fighting? Am I fighting a simple robbery charge?

THE COURT: Yes. If you go to trial, you're fighting a simple robbery charge.

Appellant then consulted with standby counsel off the record, and she elected to waive a jury. The district court then explained the trial process and how to subpoena a witness.

The trial began on March 14, 2017, and lasted two days. Throughout the trial, standby counsel assisted appellant in her defense. Appellant was convicted of the charged felony and was sentenced.

This appeal follows.

DECISION

Appellant does not argue that the district court erred by refusing to appoint a substitute counsel or by refusing to grant a continuance; rather, she argues that the district court erred when it granted her request for self-representation because her request was not timely and her waiver of counsel was not done knowingly and intelligently.

Under the Minnesota and the United States Constitutions, a criminal defendant is guaranteed the right to counsel. U.S. Const. amend. VI; Minn. Const. art. I, § 6. However, a defendant also has a constitutional right to represent herself. *State v. Rhoads*, 813 N.W.2d 880, 885 (Minn. 2012). When a defendant seeks to represent herself, the district court “must determine (1) whether the request is clear, unequivocal, and timely, and (2) whether the defendant knowingly and intelligently waives right to counsel.” *State v. Richards*, 456 N.W.2d 260, 263 (Minn. 1990) (citing *Faretta v. California*, 422 U.S. 806, 835, 95 S. Ct. 2525, 2541 (1975)). This court will reverse a district court’s finding that a waiver of counsel is valid if that finding is clearly erroneous. *State v. Worthy*, 583 N.W.2d 270, 276 (Minn. 1998). “A finding is clearly erroneous when there is no reasonable evidence to support the finding or when an appellate court is left with the definite and firm conviction that a mistake occurred.” *Rhoads*, 813 N.W.2d at 885. However, when the facts are undisputed, whether a waiver of counsel was knowing and intelligent is a constitutional question that this court reviews de novo. *Id.*

I.

Appellant argues that the district court should not have allowed her to represent herself because her request to proceed pro se was not timely. To support her argument, appellant cites an Eighth Circuit case that affirmed a district court's denial of defendant's request for self-representation because the district court judge was "well within his discretion" to determine the request was untimely when it was "made for the first time on the morning of trial." *Parton v. Wyrick*, 704 F.2d 415, 417 (8th Cir. 1983). However, despite appellant's suggestion, *Parton* does not hold that, when a defendant requests to represent herself on the day of trial, the request is automatically untimely. It holds that the district court was within its discretion to deny the defendant's request under those circumstances. Additionally, the timing of Parton's request was only one reason the district court denied her petition to represent herself. *See id.* (considering the gravity of the possible punishment and determining self-representation might result in injustice to defendant). Whether a request for self-representation is timely is a discretionary matter for the district court to consider for the sake of its own efficiency.

When discussing a defendant's request to relinquish self-representation after having waived her right to counsel, the Minnesota Supreme Court has held that the district court has discretion to decide if the request is timely. *State v. Richards*, 552 N.W.2d 197, 205 (Minn. 1996) (citing *Faretta*, 422 U.S. at 834 n.46, 95 S. Ct. at 2541 n.46). In *Richards*, the district court denied appellant's request to relinquish self-representation after balancing it "against the progress of the trial to date, the readiness of standby counsel to proceed, and the possible disruption of the proceedings." 552 N.W.2d at 206-07.

Here, appellant requested to proceed pro se the morning of her trial date, but before the trial had begun, so there was no risk of disrupting the proceedings or the progress of the trial. The public defender whom appellant had fired was present and willing to be appointed as standby counsel. The district court did not abuse its discretion by granting appellant's request to represent herself.

II.

Appellant next asserts that her waiver of counsel was not made knowingly and intelligently. Generally, in felony cases, a defendant must sign a written waiver of the right to counsel, but if she refuses to sign a waiver, “the [district] court shall make a record evidencing such refusal of counsel.” Minn. Stat. § 611.19 (2014). Before accepting a signed waiver, the district court must “fully advise the defendant by intense inquiry regarding the nature of the charges, the possible punishment, mitigating circumstances, and all facts essential to a broad understanding of the consequences of the waiver of the right to counsel, including the advantages and disadvantages of the decision to waive counsel.” *State v. Jones*, 772 N.W.2d 496, 504 (Minn. 2009) (quotation omitted). “Whether a waiver of a constitutional right was knowing, intelligent, and voluntary depends on the facts and circumstances of the case, including the background, experience, and conduct of the accused.” *Rhoads*, 813 N.W.2d at 884 (citing *Worthy*, 583 N.W.2d at 275-76).

Appellant argues that her waiver was not knowing and intelligent because the district court “never meaningfully questioned her about whether she truly grasped the ramifications of her decision” as is required by *State v. Krejci*, 458 N.W.2d 407 (Minn. 1990). Respondent counters that the district court had numerous discussions with appellant

that contradict appellant's claim. The district court warned appellant multiple times about the risks of proceeding pro se. Specifically, the district court warned appellant that she would be held to the same standards as an attorney and she would be expected to know the rules of evidence, the rules of criminal procedure, and how to subpoena witnesses.

The district court reviewed appellant's letter that explained why she wanted to fire her public defender. It then informed appellant that it did not believe that the public defender had done anything wrong. The district court informed appellant that, if she chose to fire her public defender on the day of trial, she would not be provided with another public defender and would not be granted a continuance to find private counsel. The district court reminded appellant that she had been offered a non-felony disposition, which meant that, if she took it, she would not have to serve any more jail time. The district court informed appellant that a felony conviction had more serious consequences for potential future employment than a gross-misdemeanor conviction. The district court then extensively walked appellant through what proceeding pro se entailed, and appellant signed a written petition waiving her right to counsel. Appellant acknowledged that she and the public defender talked about what the waiver said.

The district court gave appellant ample information to ensure her waiver was made knowingly and intelligently. Therefore, the district court did not err in granting appellant's request to proceed pro se.

Affirmed.