

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0163**

State of Minnesota,
Respondent,

vs.

Cedric Antonio English,
Appellant.

**Filed January 11, 2021
Affirmed
Cleary, Judge***

Waseca County District Court
File No. 81-CR-18-586

Keith Ellison, Attorney General, Michael Everson, Assistant Attorney General, St. Paul, Minnesota; and

Rachel V. Cornelius Androli, Waseca County Attorney, Waseca, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Bratvold, Judge; and Cleary, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

CLEARY, Judge

In this direct appeal from the judgment of conviction, appellant argues that the district court erred by failing to obtain a valid waiver of his right to counsel. Because we conclude that the particular facts and circumstances of this case demonstrate a valid waiver, we affirm.

FACTS

In July 2018, the state charged appellant Cedric Antonio English with multiple counts of various degrees of controlled substance crimes. The complaint alleged that English sold narcotics to a police informant in several controlled purchases between March 23, 2018, and April 25, 2018. The district court appointed a public defender. While represented by the public defender, English successfully moved to dismiss one count of conspiracy to commit first-degree controlled substance sale for lack of probable cause.

In January 2019, after appearing with a public defender for six proceedings over the course of six months, English submitted a petition to proceed pro se, seeking to discharge the public defender. English indicated in the petition that he had discussed the decision to proceed pro se with the chief public defender in the judicial district. Before any hearing on the petition, the district court entered an order accepting English's waiver of counsel. The district court observed that English had discussed his legal rights with the chief public defender. The district court indicated in the order that English's "voluntary and intelligent waiver of the right to counsel" would be "formally entered on the record, as required by Minn. R. Crim. P. 5.04, subd. 1(4)" at the next scheduled hearing. The district court also

entered a separate order appointing advisory counsel based on the district court's "concerns about the complexity of the case based on the charges."

English did not appear for the next scheduled hearing. The district court issued a warrant, and English was ultimately brought into custody and appeared for a hearing in August 2019. Advisory counsel was present. The district court did not conduct an on-the-record colloquy with English about his decision to waive his right to counsel. Instead, the district court explained the role of advisory counsel to English and asked whether English understood. English said that he did.

Acting pro se, English filed motions to dismiss the remaining charges. At a hearing to address the motions, the district court observed that advisory counsel was present and asked English whether he wanted to continue pro se.¹ English said that he did.

English waived his right to a jury trial² and proceeded to a court trial on one count of conspiracy to commit second-degree drug sale and two counts of third-degree drug sale. At the trial, the state's primary witness was the informant who participated in the controlled purchases. The informant testified that she gave English money in exchange for methamphetamine on April 10, 2018 and on April 25, 2018. The district court found English not guilty of conspiracy to commit second-degree controlled substance sale, but guilty of both counts of third-degree controlled substance sale. The district court later sentenced English to concurrent sentences of 45 months and 57 months.

¹ English ultimately withdrew his motions to dismiss after speaking with advisory counsel.

² English's jury-trial waiver is not at issue in this appeal.

English appeals, arguing that the district court failed to secure a valid waiver of counsel.

DECISION

English argues that his waiver of counsel was invalid because the district court failed to inform him of the dangers of waiving counsel and failed to conduct an “intense inquiry” into his decision. English also raises several issues in a pro se supplemental brief. We first address English’s waiver-of-counsel argument before turning to the arguments he raises in his pro se supplemental brief.

I. Waiver of Counsel

We review a finding that a defendant validly waived his right to counsel for clear error. *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.” *State v. Rhoads*, 813 N.W.2d 880, 885 (Minn. 2012). But when the facts are undisputed, we review de novo whether a waiver of counsel was valid. *Id.* The denial of the right to counsel is a “structural error” that requires reversal and is not subject to harmless-error review. *Bonga v. State*, 765 N.W.2d 639, 643 (Minn. 2009).

Generally, a defendant must submit a written waiver of counsel. Minn. Stat. § 611.19 (2018). The decision to waive the right to counsel “must be made knowingly and intelligently.” *Rhoads*, 813 N.W.2d at 885 (citing *Faretta v. California*, 422 U.S. 806, 835, 95 S. Ct. 2525, 2541 (1975)). “[T]o ensure a knowing, intelligent, and voluntary waiver-of-counsel, district courts should comprehensively examine the defendant regarding the

defendant's comprehension of the charges, the possible punishments, mitigating circumstances, and any other facts relevant to the defendant's understanding of the consequences of the waiver." *Id.* at 885-86 (quotation omitted).³ "A district court's failure to conduct an on-the-record inquiry regarding waiver, however, does not require reversal when the particular facts and circumstances of the case demonstrate a valid waiver." *Id.* at 886. "[W]hether [a waiver of the right to counsel] is valid depends upon the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused." *Id.* at 889 (quotation omitted).

Minnesota caselaw has identified several circumstances that might be relevant to whether a defendant's waiver of counsel was valid despite a district court's failure to conduct a thorough on-the-record inquiry. One important consideration is whether the defendant was represented by counsel before deciding to proceed pro se. *See State v. Garibaldi*, 726 N.W.2d 823, 828 (Minn. App. 2007) (recognizing that in previous cases affirming waiver of counsel despite district court's failure to conduct on-the-record colloquy on the decision, the defendants had "either extensive contact with defense attorneys or stand-by counsel or both"). "When a defendant has consulted with an attorney prior to waiver, a trial court could reasonably presume that the benefits of legal assistance

³ The "comprehensive examination" contemplated in *Rhoads* is set forth in Minn. R. Crim. P. 5.04, subd. 1(4), which requires the district court, before accepting waiver of counsel, to advise the defendant of (1) the nature of the charges, (2) all offenses within the charges, (3) the range of allowable punishments, (4) that there may be defenses, (5) that mitigating circumstances might exist, and (6) any other "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." *Rhoads*, 813 N.W.2d at 886 n.6.

and the risks of proceeding without it had been described to defendant in detail by counsel.” *Worthy*, 583 N.W.2d at 276 (quotation omitted). But when defense counsel makes only brief, limited appearances with the defendant, we have concluded that prior representation did not obviate the need for a more thorough inquiry. *See Garibaldi*, 726 N.W.2d at 830 (concluding that prior representation did not lessen the need for a thorough colloquy when the defendant’s “previous attorney made only a brief scheduling appearance before the district court and did not continue to represent [the defendant] at the pretrial hearing a month later, nor during the time leading up to the stipulated-facts trial two months after that”).

Another factor relevant to the analysis is the defendant’s familiarity with the criminal justice system. *Worthy*, 583 N.W.2d at 276. A defendant’s history of felony convictions and his familiarity with criminal trial may diminish the need for a detailed, on-the-record colloquy regarding the defendant’s choice to waive counsel. *Id.*

Other relevant circumstances include the defendant’s intelligence, education level, and age. *State v. Camacho*, 561 N.W.2d 160, 173 (Minn. 1997); *Burt v. State*, 256 N.W.2d 633, 636 (Minn. 1977).

English was represented by counsel at six hearings over the course of six months before he submitted his petition to proceed pro se. English asserts that this circumstance should not weigh in favor of a valid waiver because he was only represented “for a few months” and that the hearings in which counsel was present were “short and mainly ministerial in nature.” We are not persuaded. English was represented for a significant amount of time. While the hearings were generally short, they were not all ministerial. At

one hearing, the district court addressed English's motion to dismiss the first-degree count. At another hearing, English made an important decision—to waive his right to a speedy trial. Moreover, English discussed his decision to waive counsel with the chief public defender before submitting the petition. That English was represented by an attorney and that English discussed his decision to waive counsel with the chief public defender weigh in favor of concluding that English's waiver was valid. *Worthy*, 583 N.W.2d at 276.

English also had a relatively extensive criminal history. From 1994 to 2018, English had been convicted of eight felony offenses. The most recent felony conviction occurred in 2018, and all other convictions occurred in 2008 or earlier. English's criminal history suggests a familiarity with the criminal justice system, which weighs in favor of concluding that English's waiver was valid. *Id.*

Finally, we observe that English reiterated his request to proceed pro se at a subsequent hearing and was made aware of the option of having advisory counsel take over the case for him.⁴ A waiver may be valid when the defendant chooses not to avail himself of representation despite numerous opportunities to do so. *See Finne v. State*, 648 N.W.2d 732, 736 (Minn. App. 2002), *review denied* (Minn. Oct. 29, 2002). We conclude that English's decision to decline the opportunity to have advisory counsel take over the case is a circumstance suggesting that English's waiver was valid.

English suggests that the record does not demonstrate that his waiver was knowing or intelligent because the petition to proceed pro se indicated that he was charged with first-

⁴ English did, however, ask that his advisory counsel make remarks on his behalf at the sentencing hearing.

degree controlled substance sale, when that charge had in fact been dismissed. But English *had* been charged with first-degree controlled substance sale. When we consider the circumstances as a whole, we cannot conclude that this notation in English's petition to proceed pro se demonstrates that his waiver was invalid.

Ultimately, we are troubled by the district court's failure to conduct a more thorough on-the-record inquiry regarding English's decision to waive counsel. We strongly encourage district courts to engage in the appropriate on-the-record colloquy when a defendant wishes to waive his or her right to counsel. But viewing the particular facts and circumstances of this case, including the facts that English was previously represented, that he discussed his decision with an attorney, and that English had significant experience with the criminal justice system, we conclude that English's waiver was valid.

II. English's Pro Se Arguments

In English's pro se supplemental brief, he challenges the credibility of the informant who testified at trial and alleges that the state failed to comply with several discovery rules. We find no merit to English's arguments.

English appears to assert that the evidence supporting his convictions was insufficient solely because the informant was not credible. But it is not our role to assess the credibility of a witness or reweigh evidence. *State v. Johnson*, 568 N.W.2d 426, 435 (Minn. 1997). English's argument regarding the informant's credibility is unavailing on appeal.

English next contends that the state failed to notify him of scientific tests that the state conducted on the controlled substances at issue. *See State v. Hochstein*, 623 N.W.2d

617, 621 (Minn. App. 2001) (discussing state’s obligation under Minn. R. Crim. P. 9.01, subd. 1(4), to notify defendant before conducting tests that may preclude further tests or experiments). While English raised this issue before the district court, there is no evidence that the state actually failed to notify English before conducting any tests. The record does not support English’s argument.

English asserts that the state failed to disclose certain evidence. But English only vaguely identifies evidence that he claims he did not receive. English’s vague assertions that the state failed to disclose evidence, without citation to legal authority or support in the record, are insufficient to prevail on appeal. *See State v. Krosch*, 642 N.W.2d 713, 719 (Minn. 2002) (indicating that allegations of error not supported by “argument or citation to legal authority in support of the allegations” are waived).

English does specifically identify one item of discovery that the state purportedly did not disclose—the contract that the informant signed with law enforcement to become an informant. English claims that he was prejudiced by the state’s failure to disclose the informant’s contract because he was unable to question the informant openly about her drug use and her involvement with another witness who was implicated in the alleged drug-sale conspiracy. But in fact, English did cross-examine the informant about her drug use and her involvement with the other witness. Because English fails to articulate how he was actually prejudiced by the alleged discovery violation, his argument fails. *See State v. Palubicki*, 700 N.W.2d 476, 490-91 (Minn. 2005) (indicating that a defendant must demonstrate that an alleged discovery violation resulted in prejudice to prevail on appeal).

In sum, we conclude that the particular facts and circumstances of this case demonstrate that English's waiver of counsel was valid. Despite this disposition, we stress the importance of conducting an on-the-record inquiry into a defendant's decision to waive counsel. We also conclude that English fails to raise any meritorious argument in his pro se supplemental brief.

Affirmed.