

*This opinion is nonprecedential except as provided by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
A22-0990**

State of Minnesota,
Respondent,

vs.

Tevin Marcel Bellaphant,
Appellant.

**Filed March 27, 2023
Affirmed
Connolly, Judge**

Ramsey County District Court
File No. 62-CR-21-5572

Keith Ellison, Attorney General, St. Paul, Minnesota; and

John J. Choi, Ramsey County Attorney, Jeffrey A. Wald, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Andrew J. Nelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Connolly, Judge; and Larkin, Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Appellant challenges his conviction of domestic assault, arguing that he is entitled to a new trial because the district court did not obtain a sufficient waiver of counsel before permitting appellant to discharge his attorney and proceed pro se. We affirm.

FACTS

Respondent State of Minnesota charged appellant Tevin Bellaphant with domestic assault and threats of violence. After being appointed a public defender, appellant asked the district court to discharge his public defender and permit him to proceed pro se. The district court granted the request and later appointed advisory counsel. The charges were then tried to the bench. The district court found appellant guilty of domestic assault, but not guilty of threats of violence. The district court later sentenced appellant to 23 months in prison. This appeal follows.

DECISION

Appellant challenges the validity of the waiver of his right to counsel. This court reviews a finding that a defendant validly waived the right to counsel for clear error. *State v. Rhoads*, 813 N.W.2d 880, 885 (Minn. 2012); *State v. Bonkowske*, 957 N.W.2d 437, 440 (Minn. App. 2021). But where a district court makes no findings as to waiver and the facts are not disputed, we review de novo whether there was a valid waiver of the right to counsel. *See Rhoads*, 813 N.W.2d at 885. An invalid waiver and the corresponding denial of the right to counsel are “structural error[s]” that require reversal. *Bonga v. State*, 765 N.W.2d 639, 643 (Minn. 2009).

The United States and Minnesota Constitutions guarantee a criminal defendant the right to counsel. U.S. Const. amends. VI, XIV; Minn. Const. art. 1, §§ 6, 7. A defendant may waive the right to counsel, but must do so knowingly and intelligently. *Rhoads*, 813 N.W.2d at 885. If a defendant knowingly and intelligently waives the right to counsel, the

defendant “must be allowed to represent himself despite his lack of legal ability to conduct a good defense.” *State v. Thornblad*, 513 N.W.2d 260, 262 (Minn. App. 1994).

The rules of criminal procedure govern the procedure that district courts must follow when a defendant charged with a felony wishes to waive his right to counsel. *See* Minn. R. Crim. P. 5.04, subd. 1(4). Before accepting the waiver, the district court must advise the defendant of the “nature of the charges,” “all offenses included within the charges,” the “range of allowable punishments,” the facts that “there may be defenses” and that “mitigating circumstances may exist,” and “all 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.” *Id.*, subd. 1(4)(a)-(f). The district court has a duty to ensure a knowing and intelligent waiver of the right to counsel. *State v. Hawanchak*, 669 N.W.2d 912, 914 (Minn. App. 2003).

Appellant first contends that the “district court violated Minnesota Statutes and [the] Rules of Criminal Procedure by failing to obtain a written waiver of counsel.” Indeed, defendants must ordinarily complete a written waiver of their right to counsel. Minn. R. Crim. P. 5.04, subd. 1(4) (stating that defendant must enter written waiver); Minn. Stat. § 611.19 (2022) (“[W]aiver shall in all instances be made in writing, signed by the defendant, except . . . if the defendant refuses to sign the written waiver.”). But a waiver of the right to counsel may still be constitutionally valid even if the waiver is not in writing “if the circumstances demonstrate that the defendant has knowingly, voluntarily, and intelligently waived his right to counsel.” *State v. Haggins*, 798 N.W.2d 86, 90 (Minn. App. 2011); *see State v. Garibaldi*, 726 N.W.2d 823, 829 (Minn. App. 2007). Thus, the

lack of a written waiver here does not, in and of itself, invalidate appellant's waiver of his right to counsel.

Appellant contends that the "circumstances surrounding [his] waiver of counsel do not demonstrate that the waiver was knowing and intelligent." We disagree. Whether the waiver of the right to counsel is valid depends on "the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused." *State v. Worthy*, 583 N.W.2d 270, 275-76 (Minn. 1998) (quotation omitted). The defendant "should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that he knows what he is doing and his choice is made with eyes open." *Id.* at 276 (quotations omitted). And the district court should ensure that a defendant waiving counsel is aware of the "possible punishments, mitigating circumstances, and any other facts relevant to the defendant's understanding of the consequences of the waiver." *Id.* (quotation omitted).

Here, the record reflects that the district court questioned appellant extensively on the record regarding his request to waive his right to counsel. Specifically, the following colloquy occurred on the record:

COURT: [Appellant], I understand that you want to discharge the Public Defender's Office. Is that what I heard?

APPELLANT: Yes ma'am, you did. I always get bad luck in every time that I supposed to get nothing I end up charged, convicted, charged with attempted murder for people that have never been shot and I cannot use those people.

COURT: Okay. Well, [appellant], I need to make sure that you understand what it means if you fire the Public Defender's Office. So are you planning to hire a private attorney?

APPELLANT: No. I'm going to represent myself. It's the best thing.

COURT: All right. Well, I want to make sure then that you understand what your rights are. So do you understand you're charged with a felony?

APPELLANT: Mhmm. Yes, I do.

COURT: All right. And do you understand that in a felony level offense you could be looking at a prison sentence that's executed if you go to trial and you get convicted?

APPELLANT: Yes, I understand. I would like to request a speedy bench trial too. Immediately.

COURT: Okay. Well you can ask for a speedy discharge, but I'm trying to determine whether I'm going to allow you to represent yourself today

APPELLANT: Okay.

COURT: And if you listen to your rights when they were previously played, do you understand that you're going to be held to the same standard that a defense attorney would be held to?

APPELLANT: Yes, I understand.

COURT: And that means that you need to know the rules of court, you need to know the rules of evidence. Do you understand that?

APPELLANT: Yes, I understand.

COURT: And do you think that you're able to do that?

APPELLANT: Yes, ma'am, I am.

COURT: And so do you . . . realize that if you fire the Public Defender's Office you're not going to be able to come back later and ask to have them reappointed to represent you?

APPELLANT: Yeah. I understand all that.

COURT: All right. And that's what you want to do today?

APPELLANT: Yes, it is.

The district court then discharged appellant's public defender.

At the next pretrial hearing, appellant requested, and was granted, advisory counsel. At that hearing, the district court again asked appellant if he understood that if he represented himself he would be held to the same standard as an attorney. And at the following hearing the district court had an extensive discussion with appellant about his potential prison sentence if convicted of both counts.

The exchanges between the district court and appellant show that appellant's decision to represent himself was made "with eyes open." *See Worthy*, 583 N.W.2d at 276 (quotation omitted). The district court explained to appellant the disadvantages of self-representation, such as the expectation that appellant would be held to the same standard as an attorney, and appellant acknowledged that he understood. Appellant also stated that he understood that, once he discharged his public defender, he could not later ask for one to be reappointed. And appellant acknowledged that he understood that he was charged with a felony and could be sentenced to prison if convicted. Thus, the district court's on-the-record inquiry covered much of the advisory established in Minn. R. Crim. P. 50.4, subd. 1(4).

Moreover, other circumstances, such as a defendant's background, experience, and conduct, can show that a waiver of counsel was knowing and intelligent. *See Rhoads*, 813 N.W.2d at 886, 889. For example, one factor affecting how detailed the district court's examination into the validity of the defendant's waiver must be is whether a defendant was represented by counsel before deciding to proceed pro se. *See Garibaldi*, 726 N.W.2d at 828 (recognizing that, in previous cases affirming waiver of counsel despite the 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 [district] court could ‘reasonably presume that the benefits of legal assistance and the risks of proceeding without it had been described to defendant in detail by counsel.’” *Worthy*, 583 N.W.2d at 276 (quoting *State v. Jones*, 266 N.W.2d 706, 712 (Minn. 1978)).

Another factor relevant to the waiver analysis is the defendant’s familiarity with the criminal justice system. *Id.* A defendant’s history of felony convictions and his familiarity with the criminal process may diminish the need for a detailed, on-the-record colloquy regarding the defendant’s choice to waive counsel. *Id.*

Here, the record reflects that, at the time of the waiver, appellant was represented by counsel. As such, the district court could reasonably presume that appellant had discussed with his attorney the risks of proceeding pro se. *See id.* Moreover, the record reflects that appellant has an extensive criminal history. Appellant has two gross misdemeanor/misdemeanor convictions and three felony convictions. He also has an extensive juvenile criminal history, which includes ten offenses. Appellant’s familiarity with the court system, his ability to consult with counsel before he discharged his public defender, and the extensive discussions the district court had with appellant on the record demonstrate that appellant’s waiver was knowing and intelligent. Appellant cannot show that his waiver of his right to counsel was invalid.

Affirmed.