

*This opinion is nonprecedential except as provided by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
A23-1938**

State of Minnesota,
Respondent,

vs.

Samuel Morton Post, III,
Appellant.

**Filed December 2, 2024
Affirmed
Larkin, Judge**

Hubbard County District Court
File No. 29-CR-22-558

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

Jonathan Frieden, Hubbard County Attorney, John A. Olson, Assistant County Attorney,
Park Rapids, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota; and

Andrew C. Wilson, Special Assistant Public Defender, Minneapolis, Minnesota (for
appellant)

Considered and decided by Harris, Presiding Judge; Larkin, Judge; and Smith,
Tracy M., Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges his convictions for violation of an order for protection (OFP)
and obstructing legal process, arguing that the district court failed to ensure a valid waiver

of appellant's constitutional right to counsel before allowing him to discharge his court-appointed attorney midtrial and proceed as a self-represented litigant. Appellant raises additional issues in a pro se supplemental brief. Although the district court did not strictly comply with statutory and rule-based requirements governing a waiver of counsel, the facts and circumstances of this particular case show that appellant validly waived his right to counsel. And because appellant's pro se brief does not establish a basis for relief, we affirm.

FACTS

On April 27, 2022, respondent State of Minnesota charged appellant Samuel Morton Post, III with violation of an OFP and obstructing legal process. The complaint alleged that Post was barred from having contact with his ex-wife, AA, under an OFP and that Post violated that order by having telephone contact with AA on April 26, 2022. Because Post had two prior convictions for violating an OFP, the charge was enhanced to a felony. The complaint also alleged that when law enforcement went to Post's home to investigate the alleged OFP violation, Post physically resisted an officer's attempt to arrest him.

At Post's first appearance on April 28, 2022, Post indicated that he had received a copy of the charges. The district court appointed the public defender's office to represent Post. On May 2, 2022, the parties appeared for an initial hearing. Post appeared with his public defender, who was also representing him in another criminal case in which Post was

charged with two counts of perjury. The district court held a bench trial in that case and later convicted Post of one count of perjury.¹

On July 5, 2022, Post appeared with his attorney in the underlying case for an uncontested omnibus hearing. Post's attorney asked for more time to work on the case. Post again appeared at hearings on September 19, October 24, and December 12. On December 19, 2022, Post's attorney indicated that she would move the district court to dismiss for lack of probable cause. Post then filed a motion claiming judicial bias and seeking removal of the judge. The chief district court judge denied that motion on March 31, 2023. On May 1, 2023, Post appeared at a plea hearing with a new public defender. The district court granted the defense's request for a continuance. On June 5, 2023, the parties appeared before the district court and a plea of not guilty was entered on Post's behalf.

At a pretrial settlement conference on August 1, 2023, Post asked the district court to continue the trial. The district court denied that request after Post's attorney indicated that he would be prepared for trial the following week as scheduled. The district court and the parties discussed the witnesses that the state had disclosed. The district court asked Post's attorney if he intended to call any witnesses, and Post's attorney said no. At this conference, the state indicated that it intended to impeach Post with his perjury conviction if he were to testify.

¹ This court affirmed Post's conviction for perjury, and the supreme court denied further review. *State v. Post*, No. A23-0567, 2024 WL 1047110, at *1 (Minn. App. Mar. 11, 2024), *rev. denied* (Minn. May 29, 2024).

The parties appeared for trial on August 7, 2023. Before trial began, the district court asked if Post was going to stipulate to the existence of his prior convictions for OFP violations, which had enhanced the charged OFP violation to a felony-level offense. Post, speaking on his own behalf, claimed that he had evidence to prove that “neither of those should have been convictions.” The district court explained to Post that he could not collaterally attack the validity of his prior convictions. The district court also raised the concept of relevance and explained that in a prior family-law case in which Post had represented himself, the district court had given him more leeway than would be permitted in a jury trial. The district court noted that Post did not want to stipulate to the fact of his prior convictions. The district court cautioned Post that if he testified, the state would be allowed to ask him if he had a prior conviction for perjury even though Post had appealed that conviction. Post asked if he could submit his appellate brief at trial. The district court informed Post that he could not do so.

The district court explained to Post that his attorney was a “trusted advocate” and that matters of trial strategy were within his attorney’s discretion. The district court also explained that the reasons the OFP was granted were not relevant. The district court brought up the court’s preliminary jury instructions and asked if there were any objections. Post’s attorney indicated there were no concerns. Moments later, Post addressed the district court regarding his public defender, his desire to present certain evidence, and his complaints about the prosecuting attorneys. In response, the district court explained that evidence regarding parental alienation, statements made at the OFP hearing, and whether Post is suffering from emotional distress would not be relevant at trial. The district court

asked Post's attorney if he was ready for trial. Post's attorney said he was, indicating the case involved a "simple OFP violation."

At that point, Post asked if he could remove his attorney from the case. The district court responded by asking if Post wanted to represent himself. Post stated he needed representation, but that his attorney was not providing it. Post explained that he was aware that he could appeal even if he represented himself at trial and that he thought his chances at trial were better without a "corrupt attorney." The district court tried to explain to Post that his public defender was "not corrupt" and that disagreements regarding trial strategy did not make the attorney corrupt.

The district court told Post that "there's a difference between removing [the assigned public defender] as your attorney and allowing you to proceed. You have the right to proceed on your own if you want to do that." The district court asked Post why he wanted to discharge his attorney. Post said it was because his attorney would not call his daughter as a witness and had not provided the evidence against him, and because his attorney told him that a different prosecutor would be handling the case. The district court reminded Post that he had approximately 16 months to hire an attorney of his choice. The district court also told Post that the court does not interfere with the operations of the public defender's office and that the court did not discern circumstances warranting the appointment of a different attorney to represent him. After further discussion, the district court denied the motion to discharge Post's public defender, explaining that matters of trial strategy were entrusted to his attorney. The district court also told Post that his attorney

had correctly advised him that if he were found guilty of the felony OFP violation, he faced a presumptive sentence of 15 months' imprisonment, stayed.

After a jury was selected, the state made its opening statement. Post's attorney reserved the defense's opening statement until after presentation of the state's case-in-chief.

The state called AA as its first witness. AA testified that she was previously married to Post and that they had six children together. AA and Post separated in 2016. AA later sought and obtained an OFP. AA testified that her home was equipped with a landline telephone, that she received three calls on her landline telephone on April 26, 2022, and that she knew Post was the caller because the phone displayed the caller's identification. AA testified that she did not answer the phone the first time Post called. The second time, AA answered and heard Post's voice ask if he could speak to the children. After the second call, AA reported Post to the local sheriff's department. AA answered the third call and said "hello." AA then heard Post's voice say one of their children's names.

Deputy Craig Kritzeck arrived at AA's home to investigate AA's allegation. AA showed the deputy the telephone on which the calls were received, including its display of incoming calls. The state introduced three photographs of the phone, which showed the times at which Post had called. AA testified that she recognized the caller's number as Post's telephone number.

During cross-examination, Post's attorney asked AA about Post's ability to contact his children. AA acknowledged that the OFP did not prevent Post from contacting his

children and that the children were able to make and receive calls while at the residence. AA explained that there was a court order that limited Post to supervised visitation.

Deputy Kritzeck testified next, explaining that he served Post a copy of an OFP at Post's apartment on April 22, 2022. A copy of the OFP and the affidavit of service were received into evidence. Kritzeck testified that he responded to AA's call for assistance and that AA showed him her phone, which displayed the time and phone number of recent incoming calls. Kritzeck then went to speak with Post at his apartment. Kritzeck estimated that he arrived at Post's apartment around 8:15 p.m. Post lived on the second floor. When Kritzeck arrived on scene, Post came downstairs, and they spoke in a common area. During their conversation, Post admitted that he had made the phone calls to AA's home telephone. Kritzeck testified that if he believes someone has violated an OFP he is required to arrest the person and that he believed he had to arrest Post. When Kritzeck attempted to arrest Post, Post tried to go up the stairs. Kritzeck tried to grab Post, and Post yelled "sir, get off me."

Two police officers who were waiting outside entered the apartment complex to assist. Kritzeck testified that Post struggled with him for approximately 30 seconds to one minute before he was able to handcuff Post. Kritzeck also testified that Post had been convicted twice in the past ten years of violating an OFP. The state offered certified records showing that on March 20, 2017, and April 2, 2018, Post had been convicted of violating an OFP.²

² Post later stipulated to the existence of his prior convictions so that his certified convictions would not be presented to the jury.

The state's last witness was Officer Austin Rittgers. Rittgers testified that on April 26, 2022, he went to Post's residence after Kritzeck requested assistance. Rittgers testified that he and Officer Farden went to the apartment in case things went "south." To avoid overwhelming Post with too many officers, he and Farden waited outside while Kritzeck spoke with Post. Rittgers entered the building after he heard Kritzeck tell Post he was under arrest and then the sound of running. A recording from Rittgers's body camera was entered into evidence.

After the state rested, the district court temporarily excused the jury, and Post's attorney indicated that Post would testify for the defense. The district court advised Post of his right to remain silent and to have the jury instructed regarding that right. The district court again told Post that if he testified, the state could impeach him with his felony perjury conviction. Finally, the district court told Post that he would be subject to cross-examination if he testified and that he would be expected to answer leading questions with "yes" and "no" responses. The court also told Post that his attorney could conduct re-direct and ask him questions that he could answer in sentences. When asked if he understood, Post replied that his attorney would "assist [him]" and "keep it relevant." The court confirmed that his attorney would do so.

The district court asked if Post wanted to testify. Post responded that he wanted to call his daughter as a witness, but she was not present at the courthouse. Post's attorney again stated that Post would be the only witness for the defense. Post confirmed that he wanted to testify. A few moments later, Post's attorney indicated that Post changed his mind and did not want to testify. Next, Post complained to the district court that he did not

know his attorney's trial strategy. The district court excused the jury for the remainder of the day, so Post and his attorney would have more time to discuss the case.

When the parties appeared for trial the next day, Post indicated that he wanted to address the district court. Post then complained that his attorney had failed to discuss trial strategy with him and had failed to object to certain evidence. Post also complained about a prior plea offer from the state. Post asserted that he was receiving ineffective assistance of counsel. The district court told Post that his attorney was doing a "really good job." Post persisted in his complaints, again noting that his attorney had not disclosed the defense's trial strategy to him, had not made him copies of exhibits, and had not asked AA the questions he had requested, including whether AA thought he had the right to speak to his children. The district court attempted to explain to Post that he would not be allowed to relitigate the district court's grant of the underlying OFP or the circumstances of his divorce.

The district court eventually returned to the issue of whether Post was going to testify. Post responded by requesting a mistrial or that his assigned public defender be removed from the case. The district court denied a mistrial, expressed concern that Post was engaging in a "stall game . . . out of desperation," and asked Post if he wanted to discharge his attorney. Post continued to complain about his attorney and made a second request for a mistrial. After the court denied Post's second request for a mistrial, Post asked if his attorney would be able to introduce certain exhibits on his behalf. The district court asked Post to describe the exhibits. Post listed several types of evidence that he wanted his attorney to present on his behalf, including, for example, a police report, phone

records, and photos of injuries he received when he was “attacked” by the police during his arrest. The district court informed Post that none of his exhibits would be admissible, primarily because they were irrelevant or lacking foundation.

Post next complained that he did not know his attorney’s planned opening statement or closing argument. The district court eventually asked Post if he wanted to proceed without his attorney. Post responded, “I feel that he has done nothing to represent me, and I don’t feel safe with him.” When the district court followed up on that response, Post stated, “I never wanted him, Your Honor. I tried to say that yesterday.” The court then discharged Post’s public defender but ordered him to remain in the courtroom as standby counsel.

The district court informed Post that he would be free to ask standby counsel any questions about the law and that Post could testify if he chose. The district court instructed Post regarding the elements of his OFP offense and what evidence would be relevant to his case. When Post requested time to draft his opening statement, the district court allowed him 30 minutes to do so.

After giving Post time to prepare his opening remarks and before bringing in the jury, the district court advised Post as follows:

DISTRICT COURT: [Y]ou do have the constitutional right . . . to represent yourself. I should advi[s]e you, . . . if you are convicted of count one, the maximum penalty is up to three years in prison and a five thousand dollar fine. If you’re convicted of count two, the maximum penalty is up to 364 days in the county jail and a three thousand dollar fine. . . .

POST: Your Honor, I was told previously that the maximum was 15 months.

DISTRICT COURT: I am not going to repeat myself. I've addressed that. [I]f you do not have a lawyer, you are still subject to the rules of procedure, evidence, and ethics that . . . apply in any proceeding, and you may be penalized or disadvantaged if you do not obey those rules. The rules are numer[o]us and complex. [T]here are many, there are some disadvantages to proceeding on your own. I want to just cover those. A lawyer understands the rules and can use them to your advantage and avoid violating or overlooking them to your disadvantage. [A] lawyer can argue legal and factual aspects of the case to the judge and jury in a proper effective way. Most importantly[,] Mr. Post, I need you to take this to heart, so I'm going to say this very slowly. A lawyer is not emotionally or personally involved in a case as the defendant is and can view the evidence in [an] objective informed way and exercise judgment that is not distorted by fear, nervousness, anger, or ignorance. You may not know how to offer evidence or testify properly. I cannot help you do these things. I am the referee, and I understand it is your desire . . . to represent yourself, and again, you have that constitutional right, and . . . you'll be afforded that constitutional right. [A]fter you finish your . . . direct examination, . . . I expect that you will be . . . impeached with the perjury conviction, and then after . . . those questions are answered, . . . I would instruct the jury under . . . the criminal jury instructions . . . that the evidence concerning a prior conviction of Mr. Post is admitted only for your consideration in deciding whether he is telling the truth. You must not consider this conviction as evidence of the defendant's character or conduct except as you may think it reflects on creditability, and then . . . I'd ask [the prosecutor] if he has any other questions. So, I do need to instruct the jury on that, and there's a similar instruction they get in the closing instructions. So, anything before we bring the jury in[,] Mr. Post?

POST: I don't believe so, Your Honor.

When the jury entered the courtroom, the district court explained that Post had exercised his constitutional right to represent himself. Next, Post began his opening statement. During his statement, Post attempted to raise issues that the district court had

already deemed irrelevant. For example, he began by stating, “Ladies and gentlemen of the jury, this case is not about an OFP violation[;] it is about denial of parental rights.” The district court sustained the state’s objection. The district court sustained several other relevance objections during Post’s opening statement.

After providing his opening statement, Post testified. Post admitted that he called AA’s home phone, but explained that he was calling his daughter, who was not a protected party under the OFP. During cross-examination, Post made multiple admissions that tended to show his guilt. He admitted that he had been married to AA for 18 years and that several years earlier, AA had obtained an OFP against him. Post admitted that, prior to April 21, 2022, AA sought an extension of that OFP. Post admitted that he opposed an extension, attended a hearing on the matter, and the order was extended for two years. Post admitted that the OFP prohibited him from having any contact with AA, including but not limited to calling her by phone. Post admitted that he believed Kritzeck provided him with a copy of the OFP on April 22. Post admitted that he was obligated to obey the OFP and that his failure to do so could be a crime. Post admitted that he and AA had a landline telephone while they lived together during their marriage and that the telephone number associated with that landline had not changed between the time they lived together and April 26, 2022. Post admitted he called the landline on April 26, but he again stated that he was calling his children. Post also stated he had no intention of calling AA. Finally, after Post stated that he believed he was a truthful person, he acknowledged that he had been convicted of perjury.

After jury instructions and closing arguments, the jury returned a verdict of guilty on both counts. The district court remanded Post into custody. After a sentencing date was set, the district court reappointed Post’s public defender. At sentencing, the district court entered judgments of conviction on both offenses. The district court granted Post’s motion—over the state’s objection—for a downward durational sentencing departure on his conviction for the OFP violation and sentenced that offense as a gross misdemeanor instead of a felony. The district court sentenced Post to serve 364 days for each conviction, consecutively, and stayed execution of that jail time for two years.

Post appeals.

DECISION

Post contends that the district court erred by accepting his waiver of counsel and allowing him to represent himself after the state presented its case-in-chief.

Criminal defendants have a constitutional right to be represented by counsel. *State v. Camacho*, 561 N.W.2d 160, 170 (Minn. 1997); *see* U.S. Const. amends. VI, XIV. “Though the right to counsel is a constitutional requirement, it may be relinquished in three ways: (1) waiver, (2) waiver by conduct, and (3) forfeiture.” *State v. Jones*, 772 N.W.2d 496, 504 (Minn. 2009). “Waiver is the voluntary relinquishment of a known right.” *Id.* A waiver of the right to counsel must be knowing, intelligent, and voluntary. *Id.* “A written waiver of the right to counsel is necessary in felony cases unless the defendant refuses to sign such a waiver.” *Id.*

Under Minn. Stat. § 611.19 (2022), “Where counsel is waived by a defendant, the waiver shall in all instances be made in writing, signed by the defendant, except that in

such situation if the defendant refuses to sign the written waiver, then the court shall make a record evidencing such refusal of counsel.” Minn. R. Crim. P. 5.04, subd. 1(4), also requires that a waiver of counsel in a felony-level case be in writing, but if a defendant refuses to sign a written waiver, the waiver must be on the record. Before accepting the waiver, the district court must advise the defendant of the following:

- (a) nature of the charges;
- (b) all offenses included within the charges;
- (c) range of allowable punishments;
- (d) there may be defenses;
- (e) mitigating circumstances may exist; and
- (f) 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.

Minn. R. Crim. P. 5.04, subd. 1(4)(a)-(f).

Caselaw similarly requires the district court to “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.” *Jones*, 772 N.W.2d at 504 (quotations 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.” *State v. Rhoads*, 813 N.W.2d 880, 884 (Minn. 2012). When the facts are not disputed, as is the case here, “the question of whether a waiver-of-counsel was knowing and intelligent is a constitutional one that is reviewed de novo.” *Id.* at 885.

The denial of a defendant's right to counsel is a structural error, requiring reversal of a conviction. *See Bonga v. State*, 765 N.W.2d 639, 643 (Minn. 2009).

Although section 611.19 and the rules of procedure require a written waiver of the right to counsel, the circumstances of a particular case may demonstrate a valid waiver despite the absence of a written waiver. For example, in *State v. Haggins*, we upheld the district court's dismissal of a public defender even though the district court did not obtain a written waiver of counsel. 798 N.W.2d 86, 90 (Minn. App. 2011). We stated that "even if a waiver is not in writing, it may still be constitutionally valid if the circumstances demonstrate that the defendant has knowingly, voluntarily, and intelligently waived his right to counsel." *Id.*

Moreover, in *Rhoads*, the supreme court explained that "[a] district court's failure to conduct an on-the-record inquiry regarding waiver . . . does not require reversal when the particular facts and circumstances of the case demonstrate a valid waiver." 813 N.W.2d at 886. This court recently reiterated that possibility in *State v. Gant*, stating:

A waiver of the right to counsel may withstand constitutional muster if the circumstances demonstrate that the defendant has knowingly, voluntarily, and intelligently waived his right to counsel. *The validity of the waiver depends on the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused. The record must demonstrate among other things that the defendant's waiver is made with eyes open.* Accordingly, a defendant should be made aware of the dangers and disadvantages of self-representation and the district court 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.

996 N.W.2d 1, 7-8 (Minn. App. 2023) (emphasis added) (quotations and citations omitted).

Post argues that his waiver was invalid because it was “not in writing, there is no record that [he] refused to sign a waiver form, and the specific facts and circumstances of this case do not demonstrate that [he] made his decision to discharge counsel with eyes open.”

It is regrettable that the district court did not comply with the relevant statute and rule when accepting Post’s waiver of his right to counsel. A written waiver is certainly the best practice, and we encourage the district court to make every attempt to comply with that requirement. *See id.* at 11-12 (emphasizing best practices for a district court and “strongly encourag[ing] district courts to secure a waiver of the right to counsel in compliance with Minn. R. Crim. P. 5.04, subd. 1(4), to foreclose the possibility of structural error”). However, the district court’s failure to do so here does not compel a conclusion that Post’s waiver was invalid. Instead, we must evaluate the particular facts and circumstances of this case. *See id.* at 7-8 (evaluating the validity of a waiver of counsel based on the particular facts and circumstances of the case when a written waiver was lacking).

The circumstances of this case show that Post made a valid waiver of his right to counsel and did so with his “eyes open.” *See id.* at 12 (quotation omitted). First, as noted above, the district court discussed Post’s dissatisfaction with his attorney and the possibility of discharging counsel immediately before the start of trial and again before the start of trial the next day. The district court explained the following: (1) how Post’s attorney could

help him during the remainder of the trial; (2) what self-representation would entail; (3) that Post would be expected to comply with the rules of procedure and evidence at trial; (4) the concept of relevance, that only relevant evidence would be admitted, and that evidence Post sought to admit was not relevant; (5) the elements that the state had to prove to establish his guilt; (6) what Post should expect during cross-examination; (7) that Post could be impeached with his perjury conviction; and (8) the sentence that could be imposed if Post was found guilty of the felony charge at trial.

The district court informed Post:

[I]f you have a question about the law, you're free to ask [standby counsel] . . . but from this point you're representing yourself. So, you can take the stand if you choose to. [Y]ou can testify about your version of events. [T]he struggle will be . . . for you to . . . stay kind of in the rails of what's relevant, and again, I kind of brough[t] this up a few times, . . . you believe . . . your entire custody battle is relevant to the jury and it's not. The . . . elements are very simple. Was there [an] order in existence; had you been served with it; what were the parameters of the order; and was there a violation of the order. So, these things that you want to talk about [such as] whether you actually had visitation and those types of things, I realize that you feel that you have been wronged, but [they are] still not relevant for this trial.

The district court was also clear that it would not continue the trial, provide substitute counsel, or grant a mistrial. Thus, Post was well aware that if he waived counsel, he was expected to proceed with his trial as scheduled.

Second, Post's self-representation was limited to the presentation of his own case. Up until that point at trial, and with the exception of his first appearance in the underlying case, Post was represented by counsel at every hearing over the course of 15 months. The

record indicates that Post had represented himself in a family-law matter before the same judge, and the district court warned him that he would receive less latitude in a jury trial than he had received in his family-law proceeding. Finally, the record indicates that Post had been the subject of prior criminal proceedings involving allegations that he violated an OFP. These circumstances show that Post was familiar with the trial process, the criminal justice system as it regards an OFP violation, and the role of an attorney.

Third, Post was aware that he would have the benefit of standby counsel to provide some legal assistance. The availability of standby counsel to assist a self-represented defendant is relevant when considering whether the defendant validly waived his right to counsel. *See id.* at 8-9 (considering whether defendant had the benefit of standby counsel when determining validity of waiver); *see also State v. Krejci*, 458 N.W.2d 407, 412-13 (Minn. 1990) (concluding that waiver of counsel was valid and noting that the district court appointed the defendant's second public defender as standby counsel); *Haggins*, 798 N.W.2d at 90-91 (concluding that waiver of counsel was valid even though the district court did not initially offer standby counsel).

Under the circumstances, *State v. Worthy* is on point. 583 N.W.2d 270 (Minn. 1998). In *Worthy*, the supreme court concluded that although the district court's on-the-record inquiry regarding a waiver of counsel did not include a recitation of the charges or potential punishments, the defendants were "fully aware of the consequences" of firing their counsel and proceeding pro se; the supreme court noted that the defendants "were provided with competent legal representation for over a month before trial and took full advantage of that representation up until the morning of their scheduled trial date," and

the supreme court noted that when a defendant has consulted with an attorney prior to waiver, a district court can “reasonably presume that the benefits of legal assistance and the risks of proceeding without it had been described to defendant in detail by counsel.” *Id.* at 276 (quotation omitted).

Like the *Worthy* defendants, Post had been represented by counsel for a long period of time before he waived his right to counsel. He first appeared with counsel at a hearing on May 2, 2022, and continued to be represented by counsel at all hearings prior to trial and through the state’s presentation of its case-in-chief at trial on August 7, 2023. As the *Worthy* court suggested, we can reasonably presume that the benefits of legal assistance and the risks of proceeding without it had been explained to Post by his attorney(s) over the course of that 15-month period.

Post relies on *State v. Hawanchak*, but he misunderstands the procedural history in that case. 669 N.W.2d 912 (Minn. App. 2003). Post asserts that “this [c]ourt reversed and remanded because a defendant who sought to discharge his attorney was permitted to do so without first entering a valid waiver of his right to counsel.” In fact, the defendant never appeared with counsel; instead, he applied for a public defender, but one was not appointed to represent him because he did not qualify for the services of a public defender. *Id.* at 914. And, after the district court told him—on the day of trial—that he did not qualify for a public defender, the district court refused to grant a continuance so the defendant could prepare for trial. *Id.* at 913-14. The case proceeded to trial without a written or other waiver of counsel, and the defendant was convicted. *Id.* at 914. We held that “[a] defendant’s right to counsel is violated when a district court fails to obtain a written waiver

of the right to counsel or make a record evidencing a refusal of counsel before requiring the defendant to represent himself at trial.” *Id.* at 912.

This case is distinguishable from *Hawanchak* primarily because the district court did not require Post to represent himself at trial without the benefit of counsel. Instead, Post asked for that opportunity. And Post had the benefit of counsel for 15 months, including during voir dire and during the state’s presentation of its case-in-chief at trial. Thus, he was in a much better position to understand counsel’s role. Post simply is not similarly situated to the *Hawanchak* defendant, who had not had the benefit of counsel in a criminal case and was forced to proceed without counsel at the trial of that case. Instead, Post is more like the *Worthy* defendants who discharged counsel at a very late stage of the proceedings. Indeed, in *Hawanchak*, we reasoned that “[t]his is not a case like *Worthy* . . . in which the defendant[] refused to accept the services of appointed counsel. Instead, the record indicates that on two occasions, [Hawanchak] requested the services of the public defender.” *Id.* at 915 (citations omitted).

Post argues that much of the district court’s conversation with him regarding the risks of self-representation occurred *after* the court discharged his public defender and authorized him to proceed without counsel. Post seems to acknowledge that the district court engaged “in the intense rights inquiry required by Minn. R. Crim. P. 5.02, subd. 1(4),” but he complains that the district court did not do so until after it allowed Post to proceed without counsel. Post argues, “The intense rights inquiry is meant to precede acceptance of the waiver and, therefore, the waiver itself was invalid.”

We disagree that the timing of the inquiry renders Post's waiver invalid. In *Haggins*, this court upheld the waiver of counsel in part based on a post-discharge advisory by the district court. 798 N.W.2d at 91. In *Haggins*, the district court discharged the defendant's public defender at the fourth hearing and without a full advisement of rights. *Id.* at 88-89. At the final pretrial hearing, the district court further inquired into the defendant's prior decision to waive counsel and proceed pro se. *Id.* at 89. The district court explained that trying a case pro se is difficult and highlighted the differences between the current case and one in which the defendant had previously represented himself. *Id.* The district court also advised the defendant of the presumptive sentence and the possibility of an upward departure. *Id.*

On appeal, we held that, even though the original waiver of counsel was incomplete, the subsequent interactions between the district court and the defendant, including at the pretrial hearing, made the defendant's decision "knowing, intelligent, and voluntary." *Id.* at 90-91. We reach the same conclusion here. By the time Post began his self-representation, he was fully advised.

To be clear, we do not suggest that Post's decision to waive counsel and represent himself was a wise choice. But as the Minnesota Supreme Court has recognized, a defendant's competency to waive counsel does not refer to legal ability; it refers to mental ability. *State v. Bauer*, 245 N.W.2d 848, 859 n.13 (Minn. 1976). In this sense, Post is like the defendant in *State v. Richards*, 456 N.W.2d 260 (Minn. 1990). In *Richards*, the defendant was charged with murder, was represented by a succession of attorneys, and was dissatisfied with most of them. 456 N.W.2d at 261-62. The district court denied the

defendant's request to discharge counsel and to represent himself at trial. *Id.* at 263. The defendant was found guilty at trial, and the supreme court reversed his conviction stating:

Unquestionably, defendant is manipulative and argumentative. He persists in wandering into annoying irrelevancies. He says he would be better off with competent counsel (which, incidentally, is another indicia of his intelligence), but he is dissatisfied with anyone's competence except his own. We can appreciate the trial judge's concerns for defendant's interests. But, for better or worse, defendant wants to represent himself. *Faretta* was meant by the United States Supreme Court for just such people. We have no alternative but to reverse the judgment of conviction and grant defendant a new trial where he may represent himself.

Id. at 263, 266 (footnote omitted); see *Faretta v. California*, 422 U.S. 806, 807 (1975) (recognizing that criminal defendants have a constitutional right to represent themselves).

Post argues that his failure to heed the district court's warnings regarding the evidence and issues that were not relevant at this trial shows that he did not proceed with his eyes open. Given our review of the transcript, it is just as likely that Post simply refused to accept the court's determination that his preferred defense strategy was based on irrelevant considerations. For better or for worse, Post wanted to control his case strategy and represent himself during the presentation of his case. We are satisfied that the particular facts and circumstances in this case show that Post's eyes were open when he made the decision to represent himself during the presentation of his case at trial and that, under the circumstances, his waiver of counsel was valid.

II.

Post filed a pro se supplemental brief raising several additional issues. He contends that the district court erred by not allowing his daughter to testify. He appears to challenge the sufficiency of the evidence to sustain the jury's guilty verdicts. He suggests that he received ineffective assistance of counsel. And he claims that the district court judge was biased against him. Finally, he asserts that AA violated his rights under Minn. Stat. § 518.17 (2022) by denying him telephonic communication with his daughter. *See* Minn. Stat. § 518.17 (concerning child custody).

First, the district court did not prohibit Post's daughter from testifying. The district court discussed that possibility with Post, but Post's daughter was not present at the courthouse to testify.

Second, to the extent that Post challenges the sufficiency of the evidence to support the jury's guilty verdicts, our standard of review requires us to view the evidence in a light most favorable to the verdict, assume that the jury believed the state's witnesses and disbelieved contrary evidence, defer to the jury's credibility determinations, and not reweigh the evidence. *State v. Harris*, 895 N.W.2d 592, 600-01 (Minn. 2017); *State v. Franks*, 765 N.W.2d 68, 73 (Minn. 2009); *State v. Olhausen*, 681 N.W.2d 21, 25 (Minn. 2004). "We will not disturb the verdict if the jury, while acting with proper regard for the presumption of innocence and regard for the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense." *Olhausen*, 681 N.W.2d at 25-26.

The evidence presented at trial was sufficient to permit the jury, acting with due regard for the presumption of innocence and requisite burden of proof, to reasonably conclude that Post was guilty of the charged offenses. We therefore do not disturb the jury's guilty verdicts.

Third, as to Post's complaints regarding his attorney's performance, "[t]o prevail on an ineffective assistance of counsel claim, an appellant must demonstrate that representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *State v. Jackson*, 726 N.W.2d 454, 463 (Minn. 2007) (quotation omitted). Claims of ineffective assistance of counsel based on trial strategy are generally not reviewable. *Opsahl v. State*, 677 N.W.2d 414, 421 (Minn. 2004). Choices concerning which investigations to conduct or objections to raise are generally matters of trial strategy and beyond review. *See State v. Nicks*, 831 N.W.2d 493, 506 (Minn. 2013) ("We give trial counsel wide latitude to determine the best strategy for the client.").

"Generally, an ineffective assistance of counsel claim should be raised in a postconviction petition for relief, rather than on direct appeal." *State v. Gustafson*, 610 N.W.2d 314, 321 (Minn. 2000). However, we will consider an ineffective-assistance-of-counsel claim for the first time on appeal if the record is adequately developed. *Voorhees v. State*, 627 N.W.2d 642, 649 (Minn. 2001). The record in this case is not adequately developed regarding any ineffective-assistance-of-counsel claim. Although we will not consider the merits of such a claim on this record, we preserve

Post's right to pursue such a claim in a postconviction proceeding under the requirements and standards prescribed by law. *See Jackson*, 726 N.W.2d at 463 (“[The defendant’s] claims about his counsel’s investigation and witness contacts require consideration of facts not in the trial record. Accordingly, we deny those claims without prejudice to [the defendant’s] right to raise them in a postconviction proceeding.”).

Fourth, we unequivocally reject Post’s assertion that the district court judge was biased against him. Post asserts, “In court I was disrespected so harshly by the judge that there was no way for the jury to view me fairly” and, “The judge’s disdain for me was so obvious, that it was clear to the jury that the court wanted them to find me guilty.” We have carefully reviewed the transcript and find no support for these assertions. Post was treated no differently than any other attorney during a trial. When he persisted in raising irrelevant issues, the district court sustained objections. As the district court warned, Post was subject to the same standards as an attorney once he waived his right to counsel and proceeded to represent himself during his case at trial. The fact that the judge ruled against him during that process does not show judicial bias. “[B]ias must be proved in light of the record as a whole” and “[p]revious adverse rulings by themselves do not demonstrate judicial bias.” *Hannon v. State*, 752 N.W.2d 518, 522 (Minn. 2008). Moreover, we presume that a district court judge properly discharged all judicial duties. *McKenzie v. State*, 583 N.W.2d 744, 747 (Minn. 1998).

The remaining assertions of error in Post’s pro se brief are forfeited because Post failed to support them with legal argument or authority and our review reveals no obvious prejudicial error. *See State v. Bartylla*, 755 N.W.2d 8, 22-23 (Minn. 2008) (stating

assertions of error without supporting legal argument or authority are forfeited unless prejudicial error is obvious on mere inspection); *State v. Krosch*, 642 N.W.2d 713, 719 (Minn. 2002) (deeming arguments in a pro se brief waived because the brief contained “no argument or citation to legal authority in support of the allegations”).

In sum, Post’s pro se supplemental brief does not establish a basis for relief.

Affirmed.