APPENDIX A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-4798

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CLARENCE SCRANAGE, JR.,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Henry E. Hudson, Senior District Judge. (3:17-cr-00023-HEH-1)

Submitted: October 31, 2018 Decided: November 9, 2018

Before KING, KEENAN, and DIAZ, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Leza L. Driscoll, LAW OFFICE OF LEZA L. DRISCOLL, PLLC, Raleigh, North Carolina, for Appellant. G. Zachary Terwilliger, United States Attorney, Alexandria, Virginia, Angela Mastandrea-Miller, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Clarence Scranage, Jr., appeals from his convictions by a jury for conspiracy to distribute and dispense oxycodone and multiple counts of distribution of oxycodone. On appeal, Scranage contends that he did not knowingly, intelligently, and voluntarily waive his Sixth Amendment right to the assistance of counsel before proceeding to represent himself in his criminal proceedings. He claims that the district court's consideration of a plan requiring him to sell some of his assets to reimburse court-appointed counsel compelled him to proceed pro se to avoid financial hardship.

We review de novo a district court's determination that a defendant has waived his Sixth Amendment right to counsel. *United States v. Singleton*, 107 F.3d 1091, 1097 n.3 (4th Cir. 1997). The Sixth Amendment guarantees not only the right to be represented by counsel but also the right to self-representation. *Faretta v. California*, 422 U.S. 806, 819 (1975). The decision to represent oneself must be knowing and intelligent, *id.* at 835, and courts must entertain every reasonable presumption against waiver of counsel. *Brewer v. Williams*, 430 U.S. 387, 404 (1977). The record must show that the waiver was clear, voluntary, knowing, and intelligent. *United States v. Bernard*, 708 F.3d 583, 588 (4th Cir. 2013).

While a district court must determine whether a waiver of counsel is knowing and intelligent, no particular interrogation of the defendant is required, as long as the court warns the defendant of the dangers of self-representation so that "'his choice is made with his eyes open.'" *United States v. King*, 582 F.2d 888, 890 (4th Cir. 1978) (quoting *Faretta*, 422 U.S. at 835). "The determination of whether there has been an intelligent

waiver of right to counsel must depend, in each case, upon the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused." *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938); *see Singleton*, 107 F.3d at 1097-98 (court must consider record as a whole, including the defendant's background, capabilities, and understanding of the dangers and disadvantages of self-representation).

Here, we find that the district court did not err in granting Scranage's request to waive counsel and represent himself. An examination of the record demonstrates that Scranage's election to proceed pro se was clear, knowing, intelligent, and voluntary. The magistrate judge's colloquy was detailed and complete, and Scranage, a medical doctor, stated under oath that he fully understood his choice. Moreover, court-appointed counsel was designated as standby counsel for the duration of the proceedings to assist Scranage when needed for procedural matters, at no cost to Scranage. The court repeatedly reminded Scranage that standby counsel was available to assist him. Further, the record is devoid of any indication that the court's consideration of a plan to require Scranage to sell a few identifiable assets to reimburse court-appointed counsel amounted to financial duress compelling Scranage to proceed pro se.

Accordingly, we affirm the district court's judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

APPENDIX F

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

UNITED STATES OF AMERICA,	)	
	)	
v.	)	Criminal Case No. 3:17cr23 (HEH)
	)	
	)	
CLARENCE SCRANAGE, JR.,	)	
Defendant.	)	
	)	

ORDER

On February 24, 2017, Defendant appeared before the Court for an initial appearance arising from an indictment that charges him with Conspiracy to Possess with Intent to Distribute and Dispense and Cause the Distribution and Dispensation of Controlled Dangerous Substances, and Distribution of Controlled Substances and Aiding and Abetting, in violation of 21 U.S.C. §§ 841 and 846 and 18 U.S.C. § 2. At that time, Defendant informed the Court that he had the resources to retain counsel and would do so. On March 1, 2017, Defendant appeared before the Court for a scheduled detention hearing; however, he had not hired counsel. Consequently, the hearing was rescheduled for March 3, 2017, and the Court again instructed Defendant to obtain counsel. On March 3, 2017, at the second scheduled detention hearing, Defendant submitted a financial affidavit and requested Court-appointed counsel. The Court informed Defendant that an attorney would be provisionally appointed to represent him, but, if Defendant should hire his own counsel, the Court-appointed attorney would be released. The detention hearing was then rescheduled for March 7, 2017.

On March 6, 2017, the Court provisionally appointed Amy L. Austin as counsel for Defendant. On March 7, 2017, Defendant again appeared before the Court without having hired counsel; however, Ms. Austin appeared at the Court's request. At that time, the Court lacked sufficient information to properly assess Defendant's ability to retain counsel. Thus, the Court ordered Ms. Austin and the Government to brief the issue of Defendant's alleged indigence. On March 21, 2017, the Court granted the Government's motion for a hearing regarding that issue, and scheduled the hearing for March 28, 2017.

On March 28, 2017, the Court heard evidence and oral argument regarding Defendant's eligibility for Court-appointed counsel. Having reviewed Defendant's financial affidavit and supplement, and based upon the evidence at the hearing, the Court hereby FINDS that Defendant possesses sufficient assets to hire counsel and, therefore, is ineligible for Court-appointed counsel. Of course, Defendant may hire his own counsel, but he has failed to do so thus far.

To ensure that this case moves forward in a timely manner, the Court hereby ORDERS that Ms. Austin will continue to represent Defendant as described in the Court's previous Order dated March 7, 2017 (ECF No. 30). Furthermore, the Court hereby ORDERS Defendant to liquidate those assets listed in his financial affidavit and supplement, including all vehicles, except for the 1989 Mercedes 500 SEC, and all business equipment and assets. To that end, the Government and Ms. Austin SHALL meet and confer regarding a plan for selling those assets, and submit to the Court their agreed plan by 5:00 p.m. on Friday, March 31, 2017. Further, if counsel are unable to agree to such a plan, then they will submit their respective positions to the Court by 5:00 p.m. on March 31, 2017, and the Court will conduct a hearing at 11:00 a.m. on April 6, 2017, to determine how the sale of Defendant's assets will proceed. The proceeds from the sale of Defendant's assets shall be paid directly to the Clerk, U.S. District Court. At the

conclusion of this matter, after the Court has been fully reimbursed for Ms. Austin's fees, the remaining proceeds from the sale of Defendant's assets, if any, shall be returned to Defendant, absent any intervening event.

Let the Clerk file this Order electronically and notify all counsel accordingly.

It is so ORDERED.

/s/
David J. Novak
United States Magistrate Judge

Richmond, Virginia
Dated: March 28, 2017

APPENDIX C

FILED: February 4, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-4798
(3:17-cr-00023-HEH-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

CLARENCE SCRANAGE, JR.

Defendant - Appellant

ORDER

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

The court denies the motion to receive mail stamped "Legal Mail".

Entered at the direction of the panel: Judge King, Judge Keenan, and Judge Diaz.

For the Court

/s/ Patricia S. Connor, Clerk

Received
2-7-2019