

Order

Michigan Supreme Court
Lansing, Michigan

August 3, 2021

Bridget M. McCormack,
Chief Justice

162688

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

RONALD DEAN EHINGER,
Defendant-Appellant.

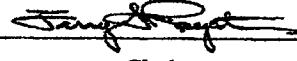
SC: 162688
COA: 353570
Ontonagon CC: 19-000047-AR

On order of the Court, the application for leave to appeal the February 2, 2021 order of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

August 3, 2021



Clerk

Court of Appeals, State of Michigan

ORDER

People of MI v Ronald Dean Ehinger

Docket No. 353570

LC No. 19-000047-AR

Michael J. Kelly
Presiding Judge

Amy Ronayne Krause

Brock A. Swartzle
Judges

The delayed application for leave to appeal is DENIED for lack of merit in the grounds presented.

Presiding Judge



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

February 2, 2021

Date

Chief Clerk

STATE OF MICHIGAN

IN THE 32ND CIRCUIT COURT FOR THE COUNTY OF ONTONAGON

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff/Appellee,

v

Circuit Court File No. 19-47 AR
Lower Court File No. 18-105 SM

RONALD DEAN EHINGER,

Defendant/Appellant.

OPINION

At a session of said court held at the courthouse in the City of Bessemer, Michigan, on the 25th day of February, 2020.

PRESENT: HONORABLE MICHAEL K. POPE - CIRCUIT JUDGE

This case involves an appeal of right. Appellant Ronald Dean Ehinger, through court-appointed appellate counsel, appeals by right his jury conviction for the misdemeanor offense of taking a deer without a valid license. On 9/27/2019, appellant filed his brief. The People did not appear. This court heard oral argument on December 18, 2019.

FACTS

In the 98th District Court for Ontonagon, appellant faced two misdemeanor counts involving the unlawful taking of a deer. Before trial, the people dismissed one count. On April 18, 2019, a jury convicted appellant of taking a deer without a valid license. The district court sentenced appellant on 6/17/2019 to five days jail, with credit for time served, plus fines and costs, and placed him on 24 months of probation. On June 26, 2019, appellant requested court appointed appellate counsel. By an ex parte order appointing appellate counsel, the district court granted appellant's request on July 1, 2019.

Appellant claims the trial court erred in denying his request to represent himself. Appellant argues that at his arraignment on 12/17/2018 and two pretrial hearings (2/11/2019 and 4/9/2019), appellant "clearly" expressed a desire to represent himself.

The following exchange occurred between appellant and the district court at his 12/17/2018 arraignment:

THE COURT: All right. You have a right to be represented by an attorney in this matter, and if you are not able to afford your own, one could be appointed for you by the Court. Do you wish to be represented by an attorney?

FILED

THE DEFENDANT: I would like to have assistance of counsel for consultation-

THE COURT: All right.

FEB 27 2020

ONTONAGON COUNTY
CIRCUIT COURT CLERK

(P, 1)

THE DEFENDANT: -and possibly for doing the legal paperwork and any appeals.

THE COURT: Okay. We're not there yet, but let's get you a lawyer at this point. Are you able to afford your own attorney?

THE DEFENDANT: No.

THE COURT: All right. Did you fill out the court-appointed request form?

THE DEFENDANT: I haven't got it completely filled yet.

THE COURT: Okay. Why don't you finish that. Ms. Floyd is back, so we'll take her case-

THE DEFENDANT: Okay.

THE COURT: -and then, when we're done with her, we'll take your case back. (12/17/18, transcript, pages 5-6).

After reviewing appellant's completed request form, the court appointed attorney James McKenzie to represent him. That was after defendant declined to be represented by an indigent defense attorney who had represented him in a previous matter.

On February 11, 2019, the court heard pretrial motions. At the end of that hearing, appellant's trial court counsel made an oral motion to withdraw because "I am apparently not bringing the motions and procedure that he [appellant] wishes to have brought in this case." (2/11/19 transcript, page 12). The district court held this discussion with the appellant:

THE COURT: Mr. Ehinger, against my better judgment, I am going to allow you a brief opportunity to respond – to address the Court regarding your motion. Why do you believe that Mr. McKenzie should not be your lawyer?

THE DEFENDANT: Because I believe he should have filed counter-claim charges against the officers.

THE COURT: All right. Well-

THE DEFENDANT: Because we do not have-

THE COURT: Hold on. You do – told me why, and I – I'm satisfied. This is not the first case you have had in front of this court, and in a previous case, even while you had counsel, you repeatedly filed motions –first of all that the Court is not able to read, and the – they're not legible and I got photo copies of – it looks like pencil writing, and they are voluminous, and they are typically not on point. The Court is aware that you do not have legal training, and so, there's a lot that you are filing with the court that simply doesn't relate to the charges before the Court. Therefore, this Court reached the conclusion in the prior case and will – and I think you requested an attorney this time, but the Court is of the opinion that [you] require the assistance of counsel in order to address the legal issues and only the legal issues involved in the case. If you have other issues that you

want to file civil lawsuits on, that's a whole different ball of wax, but right now what we have are simply these criminal charges dealing with these – these deer, and that's it. So, for that reason I am going to deny your motion to have counsel withdraw. There's nothing personal about Mr. McKenzie, is there?

THE DEFENDANT: No. (2/11/19 transcript, pages 13-14).

The district court denied the motion to withdraw.

The trial court conducted a pretrial conference on April 9, 2019. At the conclusion of same, the court went on the record to address appellant's motion to discharge his attorney "because of conflict of interest." (4/9/19 transcript, page 3). During the 15-minute hearing, appellant repeatedly interrupted the judge. In support of appellant's oral motion, he took issue with a trial date error in defense counsel's letter to him (despite the fact that the actual trial notice was enclosed with the letter) and defense counsel's failure to review discovery materials from the prosecutor with him (which took place immediately after the hearing). Appellant advised he could be his own attorney, but the district court found him incapable of doing that.

ANALYSIS

A defendant has a constitutional and a statutory right of self-representation. *US Const. Am VI*; *Const. 1963 art 1, §13*; *MCL 763.1*; *Faretta v California*, 422 US 806, 807 (1975). However, the right to proceed to trial without counsel is not absolute. *People v Dennany*, 445 Mich 412, 427 (1994). "[I]n exercising the right of self- representation, a defendant necessarily waives [the] correlative Sixth Amendment right to counsel. Consequently, a knowing and intelligent waiver of the right to counsel [is]....an essential pre-requisite to the right to proceed *per se*]." *Dennany*, at 427. Of the many steps a court must follow to ensure a valid waiver of the right to counsel, a defendant's request must be an unequivocal and self- representation must not disrupt, unduly inconvenience, or burden the court. *Dennany*, at 438-439. Courts must make every reasonable presumption against the waiver of a fundamental constitutional right, including the waiver of the right to the assistance of counsel. *People v Russell (Lord)*, 471 Mich 182, 188 (2004). A trial court's factual findings are only reviewed for a clear error, while the appellate court reviews the ultimate constitutional issue *de novo*. *Russell*, at 187).

In this matter, the court finds no error. Appellant did not make an unequivocal request to represent himself. To the contrary, appellant's discourse with the court at the arraignment indicated an acceptance of court-appointed counsel. Appellant did not balk at the appointment of counsel, but rather, appellant participated in the selection of court-appointed counsel. Bottom line, appellant never made an objection to the appointment of counsel. Likewise, defendant never made a clear objection at the motion hearings on 2/11/2019 and 4/9/2019. Even if he had, the trial court's findings did not allow appellant self-representation.

A court can consider whether or not self-representation would disrupt, unduly inconvenience, or burden the court. In making that analysis, the trial court determined that appellant's self-representation would be disruptive, unduly inconvenient, and burdensome. "[T]he Court is of the opinion that [you] require the assistance of counsel in order to address the legal issues and only the legal issues involved in the case." (2/11/2019 transcript, page 14). The trial court referenced appellant's numerous illegible and off point filings in prior court cases. Also, appellant repeatedly interrupted the court during the 4/9/2019 motion hearing. Even if appellant had made a valid waiver of counsel and assertion of self-representation, the trial court did not err in finding that that would be disruptive, unduly inconvenient and burdensome to the court.

BB

1 P.32

During this appeal, appellant, *in pro per*, filed in excess of 15 documents either in the form of a correspondence or pleading. All of these documents were handwritten. It is almost impossible to decipher appellant's claims, let alone the authority to sustain appellant's positions. This court declines to consider the issues raised by appellant in the aforementioned documents for the following reasons.

1. The documents fail to conform to filing requirements. MCR 1.109 and MCR 7.111(B). Pursuant to MCR 7.111(D), this court strikes the nonconforming documents.
2. Although appellant can file a Standard 4 brief⁴, only one such brief is permitted. Moreover, issues raised must be supported by citation to relevant authority. *People v Payne*, 285 Mich App 181, 188 (2009); *People v Watson*, 245 Mich App 572, 587 (2001). A party cannot "announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position." *Mitcham v Detroit*, 355 Mich 182, 203 (1959).

For the foregoing reasons, this court declines to consider the issues raised in appellant's numerous documents.

For the foregoing reasons, this court AFFIRMS appellant's conviction and sentence. This court does not retain jurisdiction.

DATED: February 25, 2020

Michael K. Pope

MICHAEL K. POPE
CIRCUIT JUDGE

PROOF OF SERVICE

I CERTIFY THAT A COPY OF THIS INSTRUMENT WAS SERVED UPON THE ATTORNEYS OF RECORD AND/OR ALL INTERESTED PARTIES BY MAILING IT TO THEM AT THEIR RESPECTIVE BUSINESS ADDRESSES AS DISCLOSED BY THE PLEADINGS, WITH POSTAGE PREPAID ON

THE 21 DAY OF February 2020 I DECLARE, UNDER PENALTY OF PERJURY, THAT THIS STATEMENT IS TRUE TO THE BEST OF MY INFORMATION, KNOWLEDGE AND BELIEF

Stacy Davis
County Clerk

⁴ A defendant can file an *in pro per* brief under Michigan Supreme Court Administrative Order 2004-6.

**Additional material
from this filing is
available in the
Clerk's Office.**