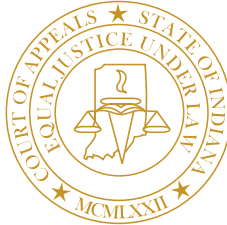


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE Court of Appeals of Indiana

Ray Timothy Dampier,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

December 3, 2024

Court of Appeals Case No.
24A-CR-594

Appeal from the Lake County Superior Court

The Honorable Gina L. Jones, Judge

Trial Court Cause No.
45G03-2205-MR-19

Memorandum Decision by Judge Brown
Judges Mathias and Kenworthy concur.

Brown, Judge.

- [1] Ray Timothy Dampier appeals his conviction for murder and claims he did not knowingly, voluntarily, and intelligently waive his right to counsel. We affirm.

Facts and Procedural History

- [2] On May 10, 2022, Dampier shot Devonte Brown, killing him, and drove away quickly. May 12, 2022, the State charged Dampier with murder. Authorities located Dampier in Illinois and transported him to Indiana. On April 28, 2023, the court held an initial hearing at which it advised Dampier of his right to proceed with or without an attorney and appointed counsel to represent him.
- [3] On June 20, 2023, the court held a hearing. Dampier’s counsel requested a trial date. Dampier stated “[o]bjection . . . I don’t request it . . . I’d rather speak on my own behalf.” Transcript Volume II at 23. Dampier stated “I will be representing myself.” *Id.* at 25. The court advised Dampier of the risks of representing himself, and Dampier indicated that he understood. He indicated that he understood the charges against him and that he was expected to adhere to the law and procedure in the courtroom. When the court described the tasks of an attorney in preparing and presenting a proper defense, Dampier stated “[i]t’s also possible that I can do that as well.” *Id.* at 30. Dampier indicated he understood that he would be required to gather appropriate documentary evidence, to obtain defense witnesses, to prepare and file pretrial motions, and to recognize objectionable and prejudicial evidence and testimony and make proper objections. Dampier indicated that he did not have a high school

diploma or GED. When asked “[h]ow far did you go in school,” he answered “[t]enth grade,” and he stated “I’ve studied very much” and “I definitely studied the law for over 25 years.” *Id.* at 32. The court stated “[t]ell me about your familiarity with the legal procedures” and “[y]ou throw out a lot of stuff like . . . that you know what you’re talking about, but maybe not in the right context,” and Dampier replied, “No, I’m not a genius at it. I’m not at that capability. However, I just know that I’m fighting for my life so I’m willing to put whatever effort into fighting for my life, that’s all.” *Id.* at 32-33. Dampier indicated he understood that he may not be successful. The court warned Dampier that, if he did something to his detriment while representing himself, he would not have a claim of incompetent counsel, and Dampier indicated that he understood. The court granted Dampier’s request to represent himself. On June 26, 2023, Dampier filed a petition for a writ of habeas corpus challenging his extradition to Indiana.

[4] On August 1, 2023, the court held a hearing at which the court denied Dampier’s June 26 petition. The court stated that, on its own motion, it was reconsidering whether Dampier could properly represent himself. Dampier stated that he would like to represent himself. The court asked Dampier about the penalty he was facing for the murder charge, and Dampier stated, “I’m not able to say. I just don’t want to say the wrong thing and then I’m scrutinized for saying it.” *Id.* at 85. The court advised Dampier of the benefits of being represented by an attorney. At one point, the court asked Dampier “what is the most recent advisement that I just told you about what attorneys can do for

you,” and Dampier answered “you’re saying that the public defender can research information and get evidence,” “for the most part, I feel like a public defender endangers my life,” and “I have a better chance of fighting for my life.” *Id.* at 88-89. The court continued to advise Dampier of the benefits of being represented by an attorney and the risks of not having an attorney. The court asked “[d]o you understand everything that I’ve told you,” and Dampier replied, “I’ve heard what you’ve said, your Honor. For the most part, I’m not giving no consent. Because when I say yes, that means everything that you just said goes against me, so I’m not giving no consent. But what I will do is, I definitely heard everything you just read.” *Id.* at 92. For the remainder of the hearing, when the court asked Dampier if he understood an advisement or asked about his education or experience, Dampier responded by stating, “I don’t consent,” “I would not consent,” or “I’m not consenting.” *Id.* at 96, 98, 100-101. The court found that Dampier was unable to represent himself and appointed counsel to represent him.

- [5] On August 15, 2023, the court held a pretrial conference. The court stated that Dampier was represented by an attorney, and Dampier stated, “I object because she’s not . . . my attorney. You is not gonna force this lady on me.” *Id.* at 122. Dampier repeatedly interrupted the hearing to speak, and the court found him in contempt. Dampier’s counsel later filed a motion to reset trial. On August 29, 2023, the court held a hearing at which it asked if there was any objection to resetting the trial, Dampier stated that he objected, the court told Dampier that he had an attorney who would speak for him, and Dampier, interrupting the

court, replied “[t]hat’s not true,” “I have a First Amendment right . . . to speak for myself,” “I have a Sixth Amendment right to speak for myself,” and “I represent myself.” *Id.* at 130. The court found him in contempt.

[6] On September 28, 2023, Dampier filed a motion for change of judge, and on October 2, the court granted the motion. On October 20, 2023, the court held a hearing at which Dampier stated “[a]t this point I will be firing my attorney in this Court today,” “I will be representing myself today,” and “I demand that. I’m not asking for it.” *Id.* at 157. The court set the matter for further proceedings to set a trial date and address the issue of Dampier representing himself.

[7] On November 7, 2023, the court held a hearing. Dampier’s counsel stated that Dampier had expressed that he did not want to be represented by the public defender’s office and wanted to represent himself. The court advised Dampier that he had the right to an attorney, that he had the right to represent himself, and that, to represent himself, he must waive his right to an attorney, and Dampier indicated that he understood. Upon questioning by the court, Dampier indicated that he could read and understand English, he had never been declared incompetent, and he was not suffering from and had never suffered from any mental illness or disability which would prevent him from understanding the rules, procedures, and decorum of court. The following exchange occurred:

[Court]: And at this time, do you waive your right for an attorney?

[Dampier]: That's correct.

[Court]: And there are disadvantages to self representation. First, you are charged with murder, which is a felony with a minimal sentence of 45 years and a maximum of 65 years. If you are convicted of that offense, that is the maximum and minimal sentence that you could receive. You may have one or more defenses that are available to you and there may be factors that could result in a more lenient or severe sentence. An attorney has developed skills and expertise to prepare and present a defense to all of the charges that are against you. An attorney is also able to identify mitigators and aggravators, which might affect your sentence. Some of these skills include investigating and analyzing the facts and the evidence of your case, negotiating with the prosecutor, locating, examining and cross examining witnesses, preparing and filing motions, [and] making appropriate objections. In addition, if you're convicted, you will not be able to appeal your conviction on the basis of ineffective counsel. If you proceed without an attorney, you will not receive any special treatment with your defense. I can't give you any advice about what you should do or what you can do. You will have to follow all of the same legal rules and the proceedings as an attorney. Do you understand all that I've explained to you regarding the advantages and disadvantages of representing yourself?

[Dampier]: Yes, I do.

Id. at 163-164. Dampier stated, "I do not wish to have an attorney at this point." *Id.* at 167. The court asked Dampier if he had ever participated in a trial or represented himself in any criminal proceeding, and Dampier replied, "[y]es, I have. . . I have, not in this particular setting, but throughout my years of . . . [s]ort of practice, I have represented myself." *Id.* at 168-169. When the court asked "[w]hat skills or knowledge do you have that will be helpful to you to represent yourself," he answered, "I can comprehend" and "[s]o hopefully I

just get the access to information so that I will be able to.” *Id.* at 169. The court found that Dampier had the mental capacity to make a lawful waiver of his right to counsel, that he was advised of his constitutional rights, that he understands all of those rights, and that he expressed an explicit voluntary, knowledgeable, and intelligent decision to represent himself. The court granted Dampier’s request to represent himself.

- [8] In January 2024, the court held a jury trial, and the jury found Dampier guilty of murder. The court sentenced him to sixty-two years.

Discussion

- [9] Dampier contends that he did not knowingly, voluntarily, and intelligently waive his right to counsel. He argues that, following the change of judge, the court “barely scratched the surface as to the pertinent inquiry,” “[t]he apparent basis of Dampier’s decision was to exercise his Sixth Amendment and First Amendment rights and to argue that his appointed attorney would not do,” “[h]owever, Dampier never explained what rights he was trying to vindicate, what inquiries he had made with his appointed counsel to challenge the denial of those rights nor how the invocation of those rights would make a difference in the outcome of the proceeding,” and “[t]hus, the extent of the trial court’s inquiry upholding Dampier’s right to represent himself was not enough.” Appellant’s Brief at 14. Dampier further argues the record shows that he did not understand the dangers and disadvantages of self-representation, the court did not delve into the proceedings in which he had represented himself, and there was no indication that he had the experience to represent himself.

[10] The Sixth Amendment, applicable to the states through the Fourteenth Amendment, guarantees a criminal defendant the right to counsel before he may be tried, convicted, and punished. *Hopper v. State*, 957 N.E.2d 613, 617 (Ind. 2011). This protection also encompasses an affirmative right for a defendant to represent himself in a criminal case. *Id.* When a criminal defendant waives his right to counsel and elects to proceed *pro se*, we must decide whether the trial court properly determined that the defendant’s waiver was knowing, intelligent, and voluntary. *Jones v. State*, 783 N.E.2d 1132, 1138 (Ind. 2003). Waiver of assistance of counsel may be established based upon the particular facts and circumstances surrounding the case, including the background, experience, and conduct of the accused. *Id.* There are no prescribed “talking points” the court is required to include in its advisement to the defendant; it need only come to a considered determination that the defendant is making a voluntary, knowing, and intelligent waiver. *Poynter v. State*, 749 N.E.2d 1122, 1126 (Ind. 2001). 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. *Leonard v. State*, 579 N.E.2d 1294, 1295 (Ind. 1991).

[11] In reviewing the adequacy of a waiver, we consider: (1) the extent of the court’s inquiry into the defendant’s decision, (2) other evidence in the record that establishes whether the defendant understood the dangers and disadvantages of self-representation, (3) the background and experience of the defendant, and (4) the context of the defendant’s decision to proceed *pro se*. *Kubsch v. State*, 866

N.E.2d 726, 736 (Ind. 2007), *reh'g denied*, *cert. denied*, 553 U.S. 1067, 128 S. Ct. 2501 (2008). The trial court is in the best position to assess whether a defendant has knowingly and intelligently waived counsel, and we will most likely uphold the trial judge's decision to honor or deny the defendant's request to represent himself where the judge has made the proper inquiries and conveyed the proper information, and reaches a reasoned conclusion about the defendant's understanding of his rights and voluntariness of his decision. *Poynter*, 749 N.E.2d at 1128 (citation omitted).

[12] The record reveals that the trial court advised Dampier regarding the risks and disadvantages of representing himself and that Dampier indicated that he understood. The court asked Dampier about his ability to read and his prior experience in the legal system. The court found that Dampier had the mental capacity to make a lawful waiver of his right to counsel. The trial court was in a position to observe Dampier's demeanor, his statements regarding his understanding of the charges against him and the proceedings, and his responses and to assess whether he understood the disadvantages of self-representation. Dampier maintained his position that he wished to represent himself during the exchanges with the court regarding his ability and desire to represent himself despite the possible disadvantages of doing so. We conclude that the trial court's inquiry and Dampier's responses were sufficient to establish that he made his decision to represent himself knowingly, voluntarily, and intelligently.

[13] For the foregoing reasons, we affirm Dampier's conviction.

[14] Affirmed.

Mathias, J., and Kenworthy, J., concur.

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