

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**July 11, 2002**

Cornelia G. Clark  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 01-1478  
STATE OF WISCONSIN**

**Cir. Ct. No. 97-CF-52J**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**ROBERT J. ROZELL,**

**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for Rock County:  
JAMES P. DALEY, Judge. *Affirmed.*

Before Roggensack, Deininger and Lundsten, JJ.

¶1 PER CURIAM. Robert Rozell appeals an order denying his motion to modify a sentence imposed following the revocation of his probation. He claims that he did not knowingly, intelligently, and voluntarily waive his right to counsel at the sentencing hearing. We conclude that the record shows otherwise, and therefore affirm.

¶2 When Rozell appeared without counsel at his post-revocation sentencing hearing, the following exchange occurred:

THE COURT: And are you represented by an attorney, Mr. Rozell?

THE DEFENDANT: Actually, I'd like to waive my right to an attorney. I'd like to handle my own case, so that we can get this resolved today yet.

THE COURT: Okay.

Is there anyone who's threatened you, coerced you, made you any promises in order to get you to waive your right to an attorney?

THE DEFENDANT: No, your honor.

THE COURT: Are you doing this freely and voluntarily?

THE DEFENDANT: That I am.

THE COURT: All right. Do you think that this is in your own best interest?

THE DEFENDANT: I believe so, yes.

THE COURT: And you think you can handle your own interest here today? You have a right to do so. Just want to make sure that you are convinced of that.

THE DEFENDANT: Yes, I am aware of that. I believe I can.

THE COURT: We can proceed. I think it's freely, voluntarily waived.

Rozell claims that this colloquy was insufficient to waive his constitutional right to counsel. The parties do not dispute the applicable law:

When a defendant elects to proceed without counsel, the circuit court must insure that the defendant: (1) has knowingly, intelligently and voluntarily waived the right to counsel; and (2) is competent to proceed without counsel. To establish the first prong, the circuit court must conduct a colloquy designed to ensure that the defendant: (1) made a deliberate choice to proceed without counsel; (2) was aware

of the challenges and disadvantages of self-representation; (3) was aware of the seriousness of the charges; and (4) was aware of the general range of penalties that could be imposed.

If a court determines that the defendant knowingly, intelligently and voluntarily waived the right to the assistance of counsel, the court must next determine whether the defendant is competent to proceed without counsel. Factors to consider in making this second determination include the defendant's education, literacy, fluency in English, and any physical or psychological disability that may significantly affect his or her ability to communicate.

*State v. Coleman*, 2002 WI App 100, ¶¶13-14, \_\_\_ Wis. 2d \_\_\_, 644 N.W.2d 283 (citations omitted).

¶3 Rozell asserts that the colloquy at his sentencing hearing was inadequate because the trial court failed to inquire about the factors necessary to determine his competency to represent himself. However, the court was not operating in a vacuum at the post-revocation sentencing hearing. Rozell had appeared before the court on numerous occasions, including the plea and initial sentencing hearing, and the court was aware from those proceedings and the plea questionnaire that Rozell had completed high school, could read and write English, appeared intelligent, had fairly substantial contact with the judicial system and was aware of the potential penalty the misdemeanor charge carried. Taken in this context, we are satisfied that the trial court's colloquy, in conjunction with the record already before it, was sufficient to allow the trial court to conclude that Rozell was knowingly, intelligently and voluntarily waiving his right to counsel and that he was competent to represent himself at the hearing.

*By the Court.*—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE  
809.23(1)(b)5.

