

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 19, 2003

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

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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. 03-0264-CR

Cir. Ct. No. 01CF000422

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

REGINALD T. RADNEY,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Winnebago County: BRUCE SCHMIDT, Judge. *Affirmed.*

Before Brown, Nettesheim and Snyder, JJ.

¶1 PER CURIAM. Reginald T. Radney appeals from the judgment of conviction entered against him and the order denying his motion for postconviction relief. The issue on appeal is whether the circuit court conducted an adequate waiver of counsel colloquy before allowing Radney to proceed to trial without counsel. We agree with the circuit court's conclusion that Radney's

conduct constituted a manipulation of the system, and therefore, he waived the right to counsel. Consequently, we affirm.

¶2 Radney was charged with felony non-support. He appeared at the initial appearance and bond hearing, and the preliminary hearing without counsel. At both, he was given the opportunity to have an adjournment to obtain counsel but opted to proceed on his own. He then appeared at his arraignment without counsel. At that proceeding, the court sua sponte arranged for him to have a court-appointed attorney, Attorney Joseph Hildebrand. The court did this even though Radney said that he would hire his own attorney. The court adjourned the proceedings to allow Radney the opportunity to meet with counsel. When the proceedings resumed, Radney told the court that he would arrange to pay for Attorney Hildebrand's services. The trial court eventually entered an order appointing counsel and directing Radney to pay counsel \$25 biweekly.

¶3 On the scheduled trial date, Attorney Hildebrand appeared and asked to withdraw because he had not been able to contact Radney. Radney said that he was living in his car in Milwaukee and did not have a phone. The court then adjourned the trial date and told Radney that it was extremely important that he meet with his counsel and provide counsel with the information he required.

¶4 At the next court date, Attorney Hildebrand again asked to withdraw. Attorney Hildebrand stated that he had no way to communicate with Radney other than in writing, and that the only time they spoke was at court appearances. The court conducted a lengthy discussion with Radney about how important it was for him to contact his counsel, and why Radney had not been able to do it. The court explained to him that if Attorney Hildebrand were allowed to

withdraw, then Radney would need to go to the public defender's office to get counsel appointed. The court stated:

And if we come back in here, again, you'll tell me the same thing – "I wasn't able to contact the attorney," whatever – I'm not going to buy that. We're going to set this matter for pretrial, we're going to set the matter for a trial, and we're going to proceed here. If you don't have an attorney at the time of trial, we're going to proceed with the trial and you're not going to be represented. I've given you every opportunity. I've appointed an attorney for you. I've given you every opportunity and for one reason or another you haven't done that.

The court then allowed Attorney Hildebrand to withdraw. The court again told Radney that it was his responsibility to contact the public defender, and gave him the address of the public defender's office. Radney asked how he would pay for the attorney and Attorney Hildebrand explained that he would not have to if he was indigent.

¶5 At the pretrial hearing, Radney appeared without counsel and he told the court he wished to proceed without counsel. Radney intended to enter a no contest plea, but when he learned he was pleading to a felony, he changed his mind. The court then set the matter over for trial.

¶6 Radney appeared for trial again without counsel. The court asked if he had gone to the public defender's office and Radney responded that he had "but at the time, with the nature of the commute, having to meet first and a short time later of me having to come back here, I decided I will proceed on my own." The court then conducted a short colloquy with Radney asking if he understood that an attorney would benefit him and explaining that is why he had been sent to the public defender's office. The court further explained that the matter had been adjourned a number of times, that counsel had been appointed and moved to

withdraw because Radney did not contact him, that Radney was then directed to the public defender's office, and that Radney continued to appear without counsel. The court stated that it had given Radney sufficient time to meet with the public defender, and that Radney had not done so. The court said that Radney wished to proceed on his own and that he would be held to the same standard as an attorney. Radney said he understood and that he felt he was able to do it.

¶7 The trial went forward, and Radney was convicted. Radney, then represented by counsel, filed a motion for postconviction relief alleging that he had not been represented by counsel at trial and that the colloquy conducted by the court did not satisfy *State v. Klessig*, 211 Wis. 2d 194, 206, 564 N.W.2d 716 (1997). The court denied the motion finding that Radney had waived his right to counsel by operation of law, and that the record as a whole established that Radney understood the *Klessig* factors. Radney appeals.

¶8 A defendant's waiver of counsel must be made knowingly, intelligently, and voluntarily. *Id.* at 204. The right to counsel, however, cannot be manipulated so as to obstruct the orderly procedure of the courts. *State v. Woods*, 144 Wis. 2d 710, 715, 424 N.W.2d 730 (Ct. App. 1988). A waiver of counsel and the choice to proceed pro se, therefore, may occur, "not by virtue of a defendant's express verbal consent to such procedure, but rather by operation of law because the defendant has deemed *by his own actions* that the case proceed accordingly." *Id.* at 715-16.

¶9 We agree with the circuit court that Radney's conduct amounted to manipulation of the system, and constituted waiver of the right to counsel. Radney demonstrated utter disregard for the case despite being warned by the court repeatedly of the seriousness of the matter, and that he needed to cooperate

and consult with his attorney. Radney asserts that he was not able to meet with the lawyer appointed for him or the public defender because of the “nature of the commute.” We reject this argument. Radney was apparently living out of his car in Milwaukee. He did not have an address in Milwaukee and was not working in Milwaukee at that time. He offered no reason whatsoever why he and his car had to be in Milwaukee.

¶10 Further, the court appointed an attorney to represent Radney almost as soon as he appeared in court by himself. The court provided him with the opportunities to consult with this lawyer, but Radney did not take advantage of those opportunities. When the court-appointed attorney was allowed to withdraw, the court sent Radney to the public defender. The court warned him that he needed to be represented, and finally, that if he appeared without an attorney, he would proceed on his own. Eventually, that is just what happened. We conclude that Radney by his conduct attempted to manipulate the system, regardless of whether he intended to do so. His conduct amounted to an obstruction of the orderly administration of justice. The circuit court properly deemed this conduct to constitute a waiver of the right to counsel.

¶11 Radney also asks that we grant him a new trial in the interests of justice because the real controversy was not tried. Because we conclude that Radney’s conduct constituted a manipulation of the system, we decline to do so. For the reasons stated, the judgment and order of the circuit court are affirmed.

By the Court.—Judgment and order affirmed.

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

