

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

DECEMBER 27, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62(1), STATS.

NOTICE

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

Nos. 95-0926-CR
95-0927-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

TALIB AMIN AKBAR,

Defendant-Appellant.

APPEALS from judgments and orders of the circuit court for Brown County: RICHARD J. DIETZ, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Talib Amin Akbar, pro se, appeals two judgments convicting him of two counts of second-degree sexual assault, contrary to § 940.225(2)(g), STATS., as a repeater, § 939.62, STATS., entered after a jury trial and orders denying postconviction relief. Akbar was charged with having sexual intercourse with two patients of treatment facilities while he was an employee. Akbar raises three issues on appeal, whether: (1) the trial court denied Akbar his right to self-representation; (2) Akbar validly waived his right

to counsel; and (3) an inaccurate date in the summons denied his right to a fair trial. We affirm.

1. RIGHT TO SELF-REPRESENTATION

A defendant has a constitutional right to self-representation. *In re Contempt in State v. Lehman*, 137 Wis.2d 65, 77, 403 N.W.2d 438, 445 (1987).

When a defendant has been permitted to proceed without the assistance of counsel, the trial judge should consider the appointment of standby counsel to assist the defendant Standby counsel should always be appointed in cases expected to be long or complicated

Id. at 79, 403 N.W.2d at 445 (quoting 1 ABA *Standards for Criminal Justice* § 6-3.7 (2d ed. 1980)).

Initially, Abkar appeared with attorneys appointed for him by the State Public Defenders Office. He also appeared with privately retained counsel. In all, he appeared with five different attorneys before he requested to represent himself. The trial court granted Abkar's request to represent himself and appointed standby counsel. The trial transcript shows that Akbar represented himself with the assistance of standby counsel. Based upon our review of the record, we reject Abkar's contention that he was denied his right to self-representation.

Abkar cannot claim that his self-representation amounted to a denial of effective assistance of counsel. See *Faretta v. California*, 422 U.S. 806 (1975). Absent a *Machner* hearing, we do not reach his ineffective assistance of counsel claim based upon the performance of the attorneys who represented him before his decision to represent himself. Cf. *State v. Machner*, 92 Wis.2d 797, 804, 285 N.W.2d 905, 908 (Ct. App. 1979) (A prerequisite to a claim of ineffective assistance of counsel is to preserve trial counsel's testimony.).

2. WAIVER OF RIGHT TO COUNSEL

A defendant's waiver of his right to counsel must be voluntarily, competently and intelligently made. *Godinez v. Moran*, 113 S.Ct. 2680, 2687 (1993). Akbar, employed as a nursing assistant, had numerous colloquies with the court demonstrating a competent and intelligent waiver. The record reflects no suggestion of any issue with respect to Akbar's mental capacity to proceed. Cf. *Godinez*, 113 S.Ct. at 2688 n.13 ("As in any criminal case, a competency determination is necessary only when a court has reason to doubt the defendant's competence."). Here, no competency hearing was necessary.

The record demonstrates Akbar's recognition of the complexities of the case and that he believed that he was able to present his own defense. For example, he stated "I would like to address the Court based upon my knowledge of the legal process and I've been here many times and I think ... in reference to severance I'm capable of representing myself" Akbar successfully argued his pro se pretrial motion for severance.¹ The record reflects Akbar's numerous court experiences, both before these charges were filed as well as after commencement of the proceedings. This is not a case involving an illiterate or unsophisticated defendant. As Akbar stated:

TALIB AKBAR: Your Honor, we've gone through this and I've -- I've given you an opportunity to do so. They keep giving me these people from the Public Pretender's Office (sic) and I have asked time and again that I don't want any individual from that particular office because there -- I know those people and they know me and so there's a prejudicial factor base upon that them hiring me attorneys from that office. I don't trust 'em and that's just it. I would rather represent myself or a -- allow me time to hire a private counsel. If not, then you appoint me a stand-by counsel but I do not want anyone from the Public Pretender's Office (sic) to represent me.

¹ At a later hearing, the trial court joined the cases because under *Whitty v. State*, 34 Wis.2d 278, 149 N.W.2d 557 (1967), it concluded that evidence of one crime would be admissible in the trial of the other.

Based on the record before us, we conclude that Akbar intelligently and competently waived his right to counsel.

3. DEFECTIVE SUMMONS

Finally, Akbar argues that because the summons was dated twelve days prior to the date of one of the criminal complaints, he is entitled to reversal. Because the record reflects no resulting prejudice, his argument is without merit. *See* § 971.26, STATS.

By the Court. – Judgments and orders affirmed.

This opinion will not be published. RULE 809.23(1)(b)5, STATS.