

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

November 28, 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, STATS.

NOTICE

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

No. 95-0585-CR

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT I

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

DANIEL J. BALINT,

Defendant-Appellant.

No. 95-1756-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

DANIEL J. BALINT,

Defendant-Appellant,

JOSH L. BURGER, PHILIP J. BUYNO,
GREGORY CHESMORE, THERESA ANN DEFOUW,
BRIDGET S. FOGARTY, ANNE J. FRANCKEK,
LUCY E. JUDGE, JAMES A. KETCHUM,

REBECCA A. LINDSTEDT, DAVID R. MARRIS,
MARY C. MATUSKA, THOMAS DALE NOWACK,
COLEEN GALE SKOTT, REBECCA A. THOMPSON and
JOHN P. ZECCA,

Defendants.

APPEAL from judgments of the circuit court for Milwaukee County: GEORGE W. GREENE, JR., Judge. *Reversed and causes remanded with instructions.*

WEDEMEYER, P.J.¹ Daniel J. Balint appeals from judgments of conviction, entered after a jury convicted him of obstructing an officer, as party to the crime, and disorderly conduct, as party to the crime, contrary to §§ 946.41(1), 947.01, and 939.05, STATS. Balint claims he was denied his constitutional right to counsel. Because there is nothing in the record to demonstrate that Balint knowingly and voluntarily waived his right to counsel, this court agrees that Balint was denied his constitutional right to representation. Accordingly, the judgments are reversed and these cases are remanded for a new trial.

I. BACKGROUND

Balint was charged with obstructing an officer, as party to the crime and with disorderly conduct, as party to the crime. Throughout the proceedings relating to each charge, Balint repeatedly indicated that he wanted to be represented by counsel. He did receive initial representation from a public defender. However, the public defender moved to withdraw shortly before the trial date. The trial court granted his request to withdraw, and instructed Balint to retain another public defender. It is undisputed that Balint took all the necessary steps to obtain another public defender, but proceeded to trial on both charges before another attorney could be appointed to represent him.

¹ This appeal is decided by one judge pursuant to § 752.31(2), STATS.

He was convicted on both charges. He now appeals.

II. DISCUSSION

Whether Balint was denied a constitutional right raises issues of constitutional fact which this court reviews *de novo*. *State v. Dean*, 163 Wis.2d 503, 511, 471 N.W.2d 310, 313-14 (Ct. App. 1991).

A defendant is guaranteed a right of representation under the Sixth Amendment, whether that representation is by counsel or *pro se*. *Faretta v. California*, 422 U.S. 806, 807 (1975). In order for a defendant to chose *pro se* representation, the trial court must first determine: (1) that the defendant knowingly and voluntarily waived his right to counsel; and (2) that the defendant is competent to proceed *pro se*. *Faretta*, 422 U.S. at 835.

The records in these cases demonstrate that Balint repeatedly indicated that he wanted to be represented by counsel. The trial court did not engage Balint in any colloquy to determine whether he was knowingly and voluntarily waiving his right to counsel. The State agrees that said colloquy did not take place. Further, there is nothing in the records which would lead this court to conclude that Balint manipulated the system or obstructed the process with respect to retaining representation. He attempted to secure counsel through the public defender's office but, for unknown reasons, the public defender's office failed to provide Balint with counsel in time for his trials.

Accordingly, this court concludes that Balint was denied his constitutional right to representation. Therefore, this court reverses his judgments of conviction and remands to the trial court for a new trial on both charges.

By the Court.—Judgments reversed and causes remanded with instructions.

This opinion will not be published. See RULE 809.23(1)(b)4, STATS.