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DISTRICT II

March 6, 2019

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You are hereby notified that the Court has entered the following opinion and order:

2018AP569-CR	State of Wisconsin v. Onansis A. Roach (L.C. #2015CF337)
2018AP570-CR	State of Wisconsin v. Onansis A. Roach (L.C. #2015CF1542)

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

In these consolidated cases, Onansis A. Roach appeals from judgments of conviction and an order denying his postconviction motion for a new trial. He claims that he was denied his right to self-representation. Based upon our review of the briefs and record, we conclude at

conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2017-18).¹ We affirm.

Roach was convicted following a jury trial of numerous crimes,² which stemmed from two separate incidents that were joined together for prosecution. In the first incident, Roach robbed a man at gunpoint and then shot at the man from a getaway car, which had an infant in the back seat. In the second incident, Roach asked the driver of the getaway car to make false statements and evade the State’s subpoena.

Prior to trial, Roach’s lawyer moved to withdraw. Roach then asked to represent himself, but also said he wanted “legal counsel” there “doing the proceedings.” The court, which would not sit as the trial court, granted counsel’s motion to withdraw but deferred the decision on Roach’s request to the trial court.³ It then scheduled a status conference with the trial court and told Roach that he could raise his request then “if that’s what [he] still want[ed] to do.”

Five days later, at the status conference before the trial court, the court indicated that another lawyer would be appointed for Roach. Roach did not object or ask to represent himself. Instead, he affirmed that he understood. When Roach’s newly appointed counsel subsequently

¹ All references to the Wisconsin Statutes are to the 2017-18 version.

² Roach was convicted as a repeater of the following crimes: armed robbery, first-degree recklessly endangering safety (two counts), possession of a firearm by a felon, felony bail jumping (four counts), solicitation of perjury, and intimidation of a witness.

³ The judge who heard Roach’s request and deferred the decision on it to the trial court was the Honorable Gerald Ptacek. The judge who presided over Roach’s trial and postconviction proceedings was the Honorable Eugene Gasiorkiewicz.

appeared on his behalf and represented him at multiple pretrial hearings and trial, Roach again did not object or ask to represent himself.

After sentencing, Roach moved for a new trial, asserting that he was denied his right to self-representation. The court denied the motion, noting that in all of his appearances with newly appointed counsel, there was “not a single utterance by [Roach] that somehow he wants to avail himself of the previously mentioned request to pro se representation that he made in front of Judge Ptacek.” Thus, the court concluded that Roach had effectively forfeited his claim through his silence and inaction. This appeal follows.

Defendants have the right to conduct their own defense under both the United States Constitution and the Wisconsin Constitution. *State v. Klessig*, 211 Wis. 2d 194, 203, 564 N.W.2d 716 (1997). Whether a defendant’s constitutional right to self-representation has been violated is a question of law that we review de novo. *State v. Darby*, 2009 WI App 50, ¶13, 317 Wis. 2d 478, 766 N.W.2d 770.

A defendant who seeks to invoke the right to self-representation must “clearly and unequivocally” inform the court of this decision. *State v. Egerson*, 2018 WI App 49, ¶11, 383 Wis. 2d 718, 916 N.W.2d 833 (citation omitted). Without a clear and unequivocal invocation by a defendant, there can be no violation of the right to self-representation. *Id.*, ¶18.

Here, we are not persuaded that Roach clearly and unequivocally invoked his right to self-representation. His request to represent himself was equivocal on its face because it was mixed with a desire to have “legal counsel” there “doing the proceedings.” His request was also equivocal because of the surrounding circumstances. As noted, Roach made his request following his lawyer’s motion to withdraw. The court deferred the decision on the request to the

trial court. It then scheduled a status conference with the trial court and told Roach that he could raise his request then “if that’s what [he] still want[ed] to do.” Roach did not raise the request then or at any later time, despite having numerous opportunities to do so. Instead, he accepted representation from his newly appointed counsel.

Under these circumstances, we cannot say that Roach was denied his right to self-representation. Indeed, we agree with the circuit court that Roach effectively forfeited his claim through his silence and inaction. *See State v. Agnello*, 226 Wis. 2d 164, 172, 593 N.W.2d 427 (1999) (“The necessity of lodging an adequate objection to preserve an issue for appeal cannot be overstated.”).

Upon the foregoing reasons,

IT IS ORDERED that the judgments and order of the circuit court are summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals