STATE OF MINNESOTA
IN COURT OF APPEALS
A09-916

State of Minnesota,
Respondent,

vs.

Ravan Lamont Hart,
Appellant.

Filed July 6, 2010
Affirmed
Worke, Judge

Ramsey County District Court
File No. 62-KO-07-3360

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Susan Gaertner, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, St. Paul, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Worke, Judge; and Johnson, Judge.

U N P U B L I S H E D O P I N I O N

WORKE, Judge

Appellant challenges his third-degree controlled-substance-crime conviction, arguing that the district court failed to ensure that he validly waived his right to trial

counsel. In a pro se brief, appellant argues that he was improperly charged and that his conviction violates double jeopardy. We affirm.

D E C I S I O N

Appellant Ravan Lamont Hart argues that the district court erred in accepting his waiver of trial counsel. We review a defendant's waiver of his right to counsel to determine whether the "record supports a determination that [a defendant] knowingly, voluntarily, and intelligently waived his right to counsel." *State v. Garibaldi*, 726 N.W.2d 823, 829 (Minn. App. 2007). "[T]o determine whether a waiver of the right to counsel is knowing, intelligent, and voluntary, [district] courts 'should comprehensively examine the defendant regarding the defendant's comprehension of the charges, the possible punishments, mitigating circumstances, and any other facts relevant to the defendant's understanding of the consequences of the waiver.'" *State v. Worthy*, 583 N.W.2d 270, 276 (Minn. 1998) (quoting *State v. Camacho*, 561 N.W.2d 160, 173 (Minn. 1997)). A district court's finding on the validity of a waiver of the right to counsel will be overturned only if it is clearly erroneous. *Id.*

Waiver of Counsel Advisory

A defendant's waiver of the right to counsel must be in writing or made orally on the record if a defendant refuses to sign the written waiver. Minn. Stat. § 611.19 (2006); Minn. R. Crim. P. 5.02, subd. 1(4) (2008). Before accepting a waiver of the right to counsel, the district court must advise the defendant of

> the nature of the charges, the statutory offenses included within the charges, the range of allowable punishments, that there may be defenses, that there may be mitigating

> circumstances, and all other facts essential to a broad understanding of the consequences of the waiver of the right to counsel, including the advantages and disadvantages of the decision to waive counsel.

Minn. R. Crim. P. 5.02, subd. 1(4).

Appellant argues that the district court's waiver advisory was insufficient because the court failed to advise him of the elements of the charged crime. In *State v. Jones*, the supreme court invalidated a waiver when the district court merely asked the defendant whether he understood that he had a right to an attorney and then summarized prior proceedings in the case. 772 N.W.2d 496, 504 (Minn. 2009). Similarly, we held in *Garibaldi* that a "cursory" inquiry by the district court with no further explanation of proceeding pro se invalidated a waiver. 726 N.W.2d at 830.

But the district court's advisory to appellant was far more extensive than the abbreviated inquiries in *Jones* and *Garibaldi*. Appellant was charged with third-degree controlled-substance crime. The court asked appellant, "You understand that you are charged . . . [with] violation of the controlled substance law in the third degree, sale of cocaine, from May 3, 2007?" Appellant responded, "Yes, sir." The court informed appellant that "the maximum penalty that you could receive is[,] according to the statute[,] 20 years in [] prison and a fine up to $250,000." The court also alluded to a possible defense available to appellant, instructing appellant that "[i]f the [] [state] can't prove your case, then you're going to [be] acquitted," and explaining that the court was aware that the state had video evidence of the alleged drug deal, "and the video didn't pick up whatever happened." The court also alerted appellant that there likely were no

mitigating factors present and that he would serve an executed sentence if convicted. And the court exhaustively covered the advantages and disadvantages of waiving counsel, repeatedly vouching for the skills and experience of appellant's public defender. Although the district court did not identify the specific elements of the charged crime, this omission does not render appellant's waiver invalid, given the depth of the district court's inquiry.

Appellant also argues that the district court erred by advising him that another public defender could not be appointed. It is within the discretion of a district court to grant an indigent defendant's request for different counsel if exceptional circumstances exist and the demand is timely and reasonably made. *State v. Clark*, 722 N.W.2d 460, 464 (Minn. 2006). Appellant was charged in 2007 and had appointed counsel consistently up to his trial date in early 2009. Immediately before his trial began, appellant informed the court that he intended to discharge his public defender. Appellant advanced no exceptional circumstances warranting the appointment of new counsel. And a request on the morning of trial is hardly timely. Thus, although the district court *could* have appointed another public defender, such an appointment was not required. Appellant's waiver was not impacted by the district court failing to explain the unlikely possibility of appointing another public defender.

Appellant asserts that the district court failed to properly advise him of his decision to proceed pro se because the court prepared a written waiver that was inconsistent with the standard language of Minn. R. Crim. P. Form 11. Appellant contends that the form he signed omitted the language pertaining to the appointment of

advisory counsel contained in form 11. But the district court's detailed explanation of the nature of advisory counsel exceeded the information contained in the form, and appellant still declined the offer of advisory counsel. Under these circumstances, minor omissions on the form appellant signed did not alter the court's comprehensive waiver overview.

The district court conducted an extensive review into appellant's decision to waive counsel and gave appellant four opportunities to change his mind before accepting the waiver, questioning the prudence of appellant's decision on each occasion. Accordingly, the district court's advisory was sufficient to ensure that appellant validly waived his right to counsel.

Consultation Regarding Waiver

Appellant relies on our decision in *Garibaldi* in arguing that the district court failed to provide him with an adequate opportunity to confer with counsel before entering his waiver. 726 N.W.2d at 829-30. In *Garibaldi*, the defendant was represented by counsel at his first hearing, but appeared by himself at the next hearing. *Id.* at 825. When asked by the court where his attorney was, the defendant stated that he would be representing himself. *Id.* at 825-26. The prosecutor asked the defendant whether he understood that he had a right to an attorney, including a court-appointed attorney, but the district court failed to inquire whether he had consulted with his previous attorney about the challenges of proceeding pro se. *Id.* at 826. Because the record was devoid of any information provided to the defendant about the challenges of proceeding pro se, we concluded that the defendant's waiver was deficient. *Id.* at 830-31.

Here, appellant was represented by counsel up until the morning of trial, and his public defender was present with him when he informed the court of his intent to waive counsel. This fact alone distinguishes appellant's case from *Garibaldi*. *See Worthy*, 583 N.W.2d at 276 (indicating that the district court could reasonably presume that defendants were fully advised by their previous attorneys on the consequences of proceeding pro se when they "were provided with competent legal representation for over a month before trial and took full advantage of that representation up until the morning of their scheduled trial date"). Moreover, before accepting the waiver, the district court explicitly notified appellant that it was "willing to give [him] more time to talk to another attorney," and asked him if he "want[ed] more time to talk to an attorney[.]" Appellant rejected this offer and insisted that trial begin. Appellant's argument that his waiver of counsel was invalid because he was not offered a sufficient opportunity to consult with an attorney is unavailing.

Standby Counsel

A pro se defendant does not have a constitutional right to advisory counsel. *Clark*, 722 N.W.2d at 466. Rather, a district court *may* appoint advisory counsel to assist a defendant who validly waives the right to counsel. Minn. R. Crim. P. 5.02, subd. 2 (2008). We review a district court's decision regarding appointment of advisory counsel for an abuse of discretion. *Jones*, 772 N.W.2d at 507.

Appellant again cites to *Garibaldi* in arguing that the district court abused its discretion by not appointing standby counsel. 726 N.W.2d at 830. But in *Garibaldi*, the defendant was not offered the assistance of standby counsel. *Id.* Here, the district court

expressly offered standby counsel to appellant, specifically asking appellant four times if he wanted the court to secure standby counsel. The offers were made after the district court thoroughly detailed the challenges of self-representation. Nevertheless, appellant declined the offer of standby counsel. The district court did not abuse its discretion in declining to appoint standby counsel over appellant's unambiguous rejection of the offer.

Pro Se Argument

Finally, appellant seems to argue in his pro se brief that he was improperly tried because the charge was initially dismissed before the state re-filed the complaint one month later. But the state is allowed to re-file complaints following a voluntarily pre-trial dismissal without prejudice. *State v. Pettee*, 538 N.W.2d 126, 132 n.5 (Minn. 1995). Additionally, appellant asserts that protections against double jeopardy should have precluded conviction. But re-filing a complaint after a voluntary dismissal does not trigger double-jeopardy concerns. *See State v. Abraham*, 335 N.W.2d 745, 748 (Minn. 1983) (stating that jeopardy attaches when the jury is impaneled). Accordingly, appellant's pro se arguments fail.

Affirmed.