

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 25, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

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

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.

No. 98-1879-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

OLLIE B. LEFLORE,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Outagamie County: HAROLD V. FROEHLICH, Judge. *Affirmed.*

Before Cane, C.J., Myse, P.J., and Hoover, J.

PER CURIAM. Ollie LeFlore appeals a judgment convicting him of uttering a forged writing and an order denying his motion for a new trial. After LeFlore discharged his first trial counsel and filed a complaint with the Board of Attorneys Professional Responsibility against his second attorney, the trial court granted LeFlore's request to represent himself at trial. On appeal, LeFlore argued

that he did not knowingly, voluntarily and intelligently waive counsel and that he was not competent to represent himself. At the State's request, this court remanded the waiver and competency questions to the trial court. The trial court found that LeFlore knowingly, voluntarily and intelligently waived counsel and was competent to represent himself. We affirm the trial court's decision.

The trial court's findings of historical fact will be sustained unless they are clearly erroneous. *See* § 805.17(2), STATS. The ultimate issues, however, whether LeFlore knowingly, voluntarily and intelligently waived counsel and whether he was competent to represent himself, are questions of constitutional fact that we review without deference to the trial court. *See State v. Klessig*, 211 Wis.2d 194, 204, 564 N.W.2d 716, 720-21 (1997).

A defendant has a right to represent himself at trial. *Id.* at 203-04, 564 N.W.2d at 720. However, the trial court must insure that the defendant has knowingly, intelligently and voluntarily waived his right to counsel and is competent to proceed *pro se*. *Id.* The record must reflect not only a deliberate choice of self-representation, but also the defendant's awareness of the difficulties and disadvantages of self-representation, the seriousness of the charge and the general range of possible penalties that may be imposed. *See Pickens v. State*, 96 Wis.2d 549, 563-64, 292 N.W.2d 601, 609 (1980). When considering competency, the court should consider factors such as the defendant's education, literacy, fluency in English, any physical or psychological disabilities and his ability to communicate. *Id.* at 569, 292 N.W.2d at 611. The court must conduct a colloquy to establish the defendant's knowing and voluntary waiver of counsel and his competency to proceed *pro se*. If the court failed to independently consider whether the defendant was competent to represent himself, it must decide whether it can make an adequate and meaningful *nunc pro tunc* inquiry into his

competency.¹ If the court concludes it can conduct such an inquiry, it must hold an evidentiary hearing and determine whether the defendant was competent to proceed *pro se*. **Klessig**, 211 Wis.2d at 213, 564 N.W.2d at 724.

The record shows LeFlore's deliberate choice to represent himself as established by his own words at the initial waiver hearing. His second attorney specifically advised him that he could seek replacement counsel from the State Public Defender. LeFlore chose to represent himself. He acknowledged that he did not know court room procedures and lacked formal training. Therefore, he was aware of the difficulties and disadvantages of representing himself. He testified that he received a copy of the complaint from his first attorney and admitted that he reviewed and understood it, showing that he was aware of the seriousness of the offense and the potential penalty. Therefore, LeFlore knowingly, intelligently and voluntarily waived his right to counsel.

The record also establishes no basis on which to find that LeFlore was not competent to represent himself. He filed articulate pretrial motions while he was still represented by an attorney and actively participated in his own defense. He is literate, fluent in English and has no physical or psychological disabilities that would affect his ability to communicate with the jury. In fact, the trial court commended LeFlore on the job he had done at trial.

LeFlore argues that he was not competent because he did not understand the technicalities involved in the charge, and did not understand the difference between forgery and counterfeiting. Technical legal knowledge is not

¹ Although the circuit court did not specifically determine that it could make an adequate and meaningful *nun pro tunc* inquiry into LeFlore's competency to proceed *pro se*, it implicitly found that it could when it held the hearing.

required. *Pickens*, 96 Wis.2d at 568-69, 292 N.W.2d at 611. The competency determination should not prevent a person of average ability and intelligence from representing himself unless a specific problem or disability can be identified that may prevent a meaningful defense from being offered should one exist. *Klessig*, 211 Wis.2d at 212, 564 N.W.2d at 724. No such problem or disability was asserted or identified.

By the Court.—Judgment and order affirmed.

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

