COURT OF APPEALS
DECISION
DATED AND FILED

February 6, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2012AP2147 **Cir. Ct. No. 2008CI1375**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

IN RE THE COMMITMENT OF MILTON W. TAYLOR:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

MILTON W. TAYLOR,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Rock County: DANIEL T. DILLON, Judge. *Affirmed*.

Before Blanchard, P.J., Lundsten and Sherman, JJ.

¶1 PER CURIAM. Milton Taylor appeals a commitment order under WIS. STAT. ch. 980,[1] and an order denying his motion for postcommitment relief. The issue is whether the circuit court erred by denying Taylor's request to proceed without counsel. We affirm.

¶2 Taylor made his request to the court on November 22, 2010, in the form of a motion by his attorney to withdraw. The case was at that time set for trial starting December 13, 2010. The court held a hearing on November 29, 2010, and denied the motion.

¶3 The parties partially agree as to the applicable law on self-representation. They agree that ch. 980 respondents are "suitors" who have the right to represent themselves under WIS. CONST. art. I, § 21(2). They agree that the above conclusion can be drawn from ***S.Y v. Eau Claire Cnty***., 162 Wis. 2d 320, 328-30, 469 N.W.2d 836 (1991), in which the court reached that conclusion as to respondents in ch. 51 commitment cases. From there, disagreement begins.

¶4 Taylor argues that the right to self-represent is absolute, that is, the right is not subject to limitations. The State, in contrast, argues that the right is limited by considerations such as whether the request to self-represent is timely made and whether the respondent has the necessary competency for self-representation. We agree with the State.

¶5 In ***S.Y.***, after the court held that the respondent had the right to self-represent, the court noted that this conclusion did not, by itself, determine whether

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

it was appropriate for the court to have allowed the respondent to self-represent in that particular case. ***Id.*** at 330. The court went on to determine "whether there was a proper waiver" of the right to counsel. ***Id.*** at 333. The court noted the public defender's acknowledgement that the standards of ***Pickens v. State***, 96 Wis. 2d 549, 292 N.W.2d 601 (1980), are appropriate for reviewing a waiver of counsel, and the court implicitly agreed they were appropriate as demonstrated by the fact that the court then went on to apply them. ***Id.*** at 334-37. Therefore, we conclude that the ***Pickens*** test, as supplemented by the later ***State v. Klessig***, 211 Wis. 2d 194, 564 N.W.2d 716 (1997), and other related case law, is proper to apply to requests to self-represent in cases under WIS. STAT. ch. 980.

¶6 Taylor's argument that the right to self-represent is absolute appears to rely entirely on a statement by this court in ***Hlavinka v. Blunt, Ellis & Loewi, Inc.***, 174 Wis. 2d 381, 394, 497 N.W.2d 756 (Ct. App. 1993) ("Every natural person in Wisconsin has an absolute right to appear *pro se*.") However, in that opinion we did not explain the "absolute" reference further, and we did not distinguish or acknowledge the supreme court's opinion in ***S.Y.*** We conclude that ***S.Y.*** controls in the current situation.

¶7 Accordingly, we conclude that while Taylor had a state constitutional right to self-represent, it was not absolute, and was subject to the familiar ***Pickens/Klessig*** test from criminal cases. Under that test, the court must determine whether the defendant is making a knowing, voluntary, and intelligent waiver of the right to counsel, and whether the defendant has the necessary competency for self-representation. ***State v. Imani***, 2010 WI 66, ¶22, ¶36, 326 Wis. 2d 179, 786 N.W.2d 40.

¶8 The court may consider whether the request for self-representation is timely in relation to the trial schedule. ***Id.***, ¶37, ¶39. In ***Imani***, the court held that the circuit court "was justified in taking into consideration the timing of Imani's motion … and the fact that it was first presented to the court less than one month" before trial. ***Id.***, ¶39.

¶9 In the present case, one reason the court denied Taylor's motion to represent himself was the court's belief that it was a delaying tactic. The circuit court recited the history of the case, including the fact that Taylor was on his "fourth set" of attorneys, and that the case had been "pending for two years," but this was the first time Taylor had asked to represent himself.

¶10 Taylor argues that the court's finding that he was acting for the purpose of delay was clearly erroneous because the request was made to the court more than three weeks before trial, and because the court's concern about potential delay was based only on the court's own speculation about what might occur, rather than on any request by Taylor for more time.

¶11 However, it does not appear that Taylor disputes the court's recitation of the historical facts of the case up to that point. Given that history, and the circuit court's own opportunities to have assessed Taylor's actions up to that point, the circuit court's decision on the issue of Taylor's motivation, or to reject the court's prediction about the likelihood that self-representation would lead to further delay. We cannot conclude that the finding is clearly erroneous.

¶12 Taylor also argues that the court erroneously paraphrased a passage from ***Hamiel v. State***, 92 Wis. 2d 656, 285 N.W.2d 639 (1979). However, the court's description of the case was generally accurate in the most significant respects. The court's discussion was consistent with ***Hamiel*** and ***Imani***.

¶13 Accordingly, we conclude that the court did not err in finding that Taylor's request was untimely and for an improper purpose. In addition to rejecting his request on that basis, the court also concluded that Taylor was not competent for other reasons, some of which Taylor disputes on appeal. However, it is not necessary for us to address those issues. The court's findings that the request was untimely and would cause further delay were a sufficient basis to reject his request. The record shows no reason to believe that, if the court had found Taylor competent, it would have allowed him to self-represent.

By the Court.—Orders affirmed.

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