

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 5, 2002

Cornelia G. Clark
Clerk of Court of Appeals

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 WIS. STAT. § 808.10 and RULE 809.62.*

**Appeal Nos. 01-2687-CR
01-2688-CR**

STATE OF WISCONSIN

Cir. Ct. Nos. 01-CM-39, 01-CT-21

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

SHANE K. HANSON,

DEFENDANT-APPELLANT.

APPEALS from judgments of the circuit court for Buffalo County:
DANE F. MOREY, Judge. *Affirmed.*

¶1 HOOVER, P.J.¹ Shane Hanson appeals judgments convicting him of operating a motor vehicle while his license was revoked and resisting or obstructing an officer, contrary to WIS. STAT. §§ 343.44(1)(b) and 946.41(1).

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.1(2)(f). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

Hanson contends that he was denied his constitutional right to counsel. This court concludes that Hanson forfeited his right to counsel by engaging in a pattern of conduct that frustrated the orderly administration of justice. The judgments are therefore affirmed.

BACKGROUND

¶2 On April 28, 2001, Hanson was cited for operating after revocation. Later that day, Hanson was cited again for operating after revocation and arrested for and charged with resisting arrest.

¶3 Hanson made his first initial appearance two days later. The court advised Hanson of the charges, the maximum penalties and his constitutional rights, including the right to an attorney. It also told Hanson that the court would appoint counsel for Hanson if he could not afford one. The court continued the hearing after Hanson expressed a desire to consult with counsel.

¶4 The initial appearance continued on May 16. Hanson told the court that he had difficulty consulting with different lawyers but was still looking for one. The court told Hanson that he should have an attorney because he was charged with a criminal matter. Hanson said that he was having trouble getting the money together to retain an attorney. The court continued the hearing until June 6 so that Hanson could obtain counsel. It also warned Hanson that this was the last continuance for him to retain an attorney and that he should “get out there and diligently look for a lawyer.”

¶5 On June 6, the initial appearance continued once again. Hanson told the court that he had spoken to quite a few attorneys but had not been able to retain one. When the court asked him if he needed more time, Hanson stated that

he was having trouble getting the money together for a retainer. After the State noted that this would be the third continuance, Hanson agreed to enter not guilty pleas on all counts. The court told Hanson that pleading not guilty would preserve his rights until he got an attorney and normal practice allowed defendants only one continuance to obtain representation. The court scheduled a status conference for July 11 and asked Hanson to “please get an attorney by that time.”

¶6 Hanson appeared at the July 11 status conference. The court again entered not guilty pleas on all charges. It determined that there would be a bench trial on the first operating after revocation charge on August 22 and noted that a jury trial would follow on the charge of resisting an officer.

¶7 On August 22, the court found Hanson guilty of operating after revocation, first offense. The other operating after revocation charge was amended to second offense. The court described the offense, its maximum penalties and Hanson’s constitutional rights, including the right to an attorney. After waiving the reading of the complaint, Hanson said that he “would love to have the opportunity to consult with counsel on this matter.”² The trial court noted that Hanson “has been repeatedly informed of his right to have counsel, and he still doesn’t have counsel. He does not qualify for public defender because he’s employed.” It consolidated the second operating after revocation charge with the charge of resisting an officer and set trial for August 30.

¶8 On August 30, Hanson, his father and his mother filed several motions and affidavits with the court before the jury trial and filed others after the

² Hanson waived the reading of the complaint by responding, “I have no reason to have it read to me. I’m not the person.”

jury verdict. Hanson filed an affidavit that stated he did not waive his right to counsel and did not intend to delay or obstruct the judiciary. In the same affidavit, however, Hanson denied the existence of any person with a name similar to his own.³ He further denied the existence of the United States, the State of Wisconsin, the State Bar Association of Wisconsin, and all of its members.⁴ Hanson also filed a motion in which he denied any “relation to, affiliation with, agreement with, contract with, understanding with, or connection with, of any sort, the aforementioned defendant” He asked for a copy of the trial judge’s oath of office and bond and requested “that the judge dress in the attire appropriate to the jurisdiction of this court.”

¶9 The court ruled to the extent it could on the motions and affidavits submitted by Hanson and his parents. It denied Hanson’s motion to dismiss for lack of jurisdiction and asked Hanson whether he wished to proceed to a jury trial

³ Hanson’s mother and father each filed similar affidavits denying the existence of those persons and entities.

⁴ In the affidavit, “Shane Kirk Hanson, Affiant, denies the existence of each of the following persons and denies that each is an actual or legal entity, aggregate, or corporation duly organized and existing:

SHANE KIRK HANSON, SHANE K. HANSON, SHANE HANSON, Shane K. Hanson, and Shane Hanson, each of UNITED STATES; U.S.; US; UNITED STATES OF AMERICA; STATE OF WISCONSIN; The State of Wisconsin; State of Wisconsin; STATE BAR ASSOCIATION OF WISCONSIN; ALL BAR ASSOCIATIONS; and all other MEMBERS, ASSOCIATES, PERSONNEL, AGENTS, OFFICERS, FACILITATORS, EMPLOYEES, PARTNERS, CONTRACTORS, SUBCONTRACTORS, AFFILIATES, or HEIRS OR ASSIGNS of the aforementioned enterprises who are or may be associated with any claim on, upon, or against the living body or possessions of Shane Kirk Hanson.

without an attorney. Hanson stated that he wanted an attorney, but that he had not gotten one because there was not an attorney competent to represent him.

¶10 Hanson refused to participate in the trial. He did not make an opening or closing statement, present evidence or cross-examine the State's witnesses. Hanson repeatedly told the court that he could not act or answer for the defendant. The jury found Hanson guilty of both charges. The court reminded Hanson that he had the right to an attorney at sentencing. It continued sentencing to another date so that Hanson could retain an attorney after Hanson said, "Counsel is definitely something I would, indeed, request."

¶11 Nevertheless, Hanson appeared at the sentencing hearing without an attorney. The court reminded Hanson that he had the right to an attorney at this stage in the proceeding. Hanson responded, "If I could get an attorney, I would. But there isn't one that is willing to cooperate with me. So I guess we can proceed." The trial court sentenced Hanson and stayed the sentences pending appeal.

DISCUSSION

¶12 Hanson argues that his judgments should be reversed because he did not waive his constitutional right to counsel. This court concludes that Hanson's conduct waived his right to counsel as a matter of law and affirms the judgments.

¶13 A defendant's right to counsel is guaranteed by the Sixth Amendment to the United States Constitution and article 1, § 7, of the Wisconsin Constitution. *Strickland v. Washington*, 466 U.S. 668, 694 (1084). Whether an individual is denied a constitutional right is a question of constitutional fact that

this court reviews independently as a question of law. *State v. Woods*, 117 Wis. 2d 701, 715, 345 N.W.2d 457 (1984).

¶14 Generally, a defendant can proceed pro se only after the circuit court determines that the defendant voluntarily and knowingly waived the right to counsel. *State v. Cummings*, 199 Wis. 2d 721, 752, 546 N.W.2d 406 (1996). “However, unusual circumstances, ‘most often involving a manipulative or disruptive defendant,’ permit a court to find that the defendant’s voluntary and deliberate choice to proceed pro se has occurred by operation of law.” *Id.*

¶15 In *State v. Woods*, 144 Wis. 2d 710, 715-16, 424 N.W.2d 730 (Ct. App. 1988), this court noted:

In such a situation, a waiver of counsel and the deliberate choice to proceed pro se occurs, not by virtue of a defendant’s express verbal consent to such procedure, but rather by operation of law because the defendant has deemed by his own actions that the case proceed accordingly.

There are situations where the trial court must have the ability to find that a defendant has forfeited his right to counsel. *Cummings*, 199 Wis. 2d at 756. “[T]he Sixth Amendment does not bestow upon a defendant absolute rights,” and “a defendant can forfeit Sixth Amendment rights through his or her own disruptive and defiant behavior.” *Id.* at 757 (citing *Illinois v. Allen*, 397 U.S. 337, 342-43 (1970)).

¶16 Here, Hanson’s behavior resulted in the forfeiture of his right to counsel. The trial court repeatedly reminded Hanson of his right to obtain an attorney and repeatedly gave Hanson time to hire one. Yet Hanson never did.⁵

¶17 Before his jury trial began, Hanson said that he would prefer to have a lawyer but had “not gotten an attorney because there’s not one competent to represent me.”

¶18 After the jury verdict, the court continued the sentencing to another date so that Hanson would have an opportunity to retain an attorney. Nevertheless, Hanson appeared at sentencing without a lawyer. The court reminded Hanson that he had the right to an attorney at sentencing, and Hanson replied, “If I could get an attorney, I would. But there isn’t one that is willing to cooperate with me.”

¶19 The court’s repeated warnings to Hanson about his right to counsel, its offer to appoint counsel if Hanson could not afford one, Hanson’s failure to request that the court consider appointing an attorney, his continued failure to retain an attorney and his filing of other documents challenging the court’s authority cumulatively demonstrate that Hanson’s course of conduct ultimately was calculated to frustrate the orderly administration of justice. “Such tactics cannot be condoned when they are used solely to ‘interfere with the proper administration of criminal justice.’” *Id.* at 757 (quoting *Allen*, 397 U.S. at 343).

⁵ In fact, Hanson filed an affidavit with the court denying the court’s authority over him and denying the existence of the State Bar of Wisconsin and its members. It is peculiar, then, that he argues on appeal that he was denied the assistance of an attorney.

Therefore, this court concludes that Hanson forfeited his right to counsel by his actions and affirms the judgments.

By the Court.—Judgments affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

