COURT OF APPEALS
DECISION
DATED AND FILED

July 2, 2002

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 01-2816 **Cir. Ct. No. 94-CF-44**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

PAUL I. EKBLAD,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Burnett County: ROBERT RASMUSSEN, Judge. *Affirmed*.

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

¶1 PER CURIAM. Paul Ekblad appeals a judgment convicting him of fifteen counts of criminal slander of title, contrary to WIS. STAT. § 943.60,[1] and an

[1] WISCONSIN STAT. § 943.60 provides:

(continued)

order denying his motion for postconviction relief. Ekblad argues that we should vacate his judgment of conviction because (1) he was denied his right to counsel, (2) he was not indicted by a grand jury, (3) § 943.60 does not have the required enacting clause, (4) the court lacked personal jurisdiction because he is a sovereign and the court is a corporation, and (5) he is not a "person" under § 943.60. We conclude that Ekblad forfeited his right to counsel by his actions. We also reject Ekblad's other arguments and affirm the judgment and order.

BACKGROUND

¶2 In 1990, the county board of supervisors seized Ekblad's farm after a tax dispute. In retaliation, Ekblad filed commercial liens against property owned by board members. He was arrested in 1994 for criminal slander of title.

¶3 Ekblad appeared without counsel at his initial appearance. The trial court informed Ekblad that he had a Sixth Amendment right to counsel and that counsel could help him. It told him that there would be no preliminary hearing

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> (1) Any person who submits for filing, entering or recording any lien, claim of lien, lis pendens, writ of attachment, financing statement or any other instrument relating to a security interest in or title to real or personal property, and who knows or should have known that the contents or any part of the contents of the instrument are false, a sham or frivolous, is guilty of a Class D felony.
>
> (2) This section applies to any person who causes another person to act in the manner specified in sub. (1).
>
> (3) This section does not apply to a register of deeds or other government employee who acts in the course of his or her official duties and files, enters or records any instrument relating to title on behalf of another person.

All references to the Wisconsin statutes are to the 1999-2000 version unless otherwise noted.

that day if Ekblad wanted to contact an attorney.[2] Ekblad agreed that he should have counsel after expressing concern whether any attorney would be "competent" to handle his case. The court advised Ekblad that the right to counsel was so important that it outweighed the inconvenience to the State of not having the preliminary hearing that day. However, it warned Ekblad that he should not "play any games" with that right.

¶4 A public defender represented Ekblad at the preliminary hearing. Ekblad notified the court several days later that he was discharging the public defender because he was dissatisfied with the representation. The court approved the withdrawal.

¶5 The public defender then appointed another attorney to represent Ekblad. Ekblad filed a demand for counsel of choice and wrote the court stating that the attorney was not his attorney and that he had been denied his attorney of choice. The appointed counsel filed a motion to withdraw. The court granted the motion to withdraw at a pretrial hearing the day before the scheduled jury trial. The attorney expressed that he did not have the expertise to handle the constitutional issues Ekblad insisted on raising, and Ekblad told the court that he did not want the attorney to represent him if the attorney did not feel he was competent.

¶6 Later in the hearing, Ekblad demanded his counsel of choice. He asked that Pat Coughlin, who is not a licensed attorney, be allowed to represent him. The trial court rejected the motion, saying:

[2] The record shows that the State was prepared to proceed to a preliminary hearing on the date of the initial appearance.

> Your motion is denied, Mr. Ekblad. I specifically find that you have been afforded an opportunity to have legal counsel, either legal counsel of your own choosing or representation through the public defender's office. You have consistently not availed yourself of the opportunity to go out and hire your own attorney. You have rejected two attorneys provided to you through the public defender system.
>
> Counsel of your choice does not mean that you can have any person you might want speaking for you in a court of law. Mr. … Coughlin is not an attorney.

The court also addressed Ekblad's motion demanding that the court protect his rights during the upcoming trial. It advised Ekblad that he did not have to be without counsel:

> You have been afforded a great opportunity to have legal counsel. You have chosen not to avail yourself of that opportunity. But even if you told me right now, judge, I want to have an attorney licensed to practice law in Wisconsin at my side tomorrow morning when that trial starts, you would bet I would afford you that right.

Ekblad then complained about time to prepare the case. The court asked him if he was asking to delay the trial to let him get an attorney, but Ekblad said that he could not afford one.[3]

¶7 During the pretrial conference the next day, Ekblad complained that he needed counsel and was not capable of defending himself. The court engaged Ekblad in a lengthy colloquy regarding Ekblad's right to counsel, his previous attorneys and his request to have Coughlin represent him:

[3] The trial court made reference to an indigency hearing. It later assumed that Ekblad qualified for a public defender because he was provided with two. Ekblad argues that he does not have the money to secure the attorney of his choice, but that is not his right. *See* ***Wheat v. United States***, 486 U.S. 153, 159 (1988). Further, Ekblad, who the record amply demonstrates was not reticent in regard to making inquiries of the court or in pursuing his rights, did nothing to pursue the matter of an indigency hearing.

THE COURT: Well, let's make the record clear on this, Mr. Ekblad. I thought I made it clear yesterday.

Number one, you have known since the beginning, sir, that you could go out and retain your own attorney if you wanted to do so, right?

DEFENDANT: Yes, but I have no money to do so.

THE COURT: Number two, the public defender's office has provided you with two different attorneys, both of which you ultimately objected.

DEFENDANT: No, sir, you said that yesterday, and I am going to correct you today. I did not reject the gentleman yesterday, he withdrew himself.

THE COURT: The documents you filed with the court, Mr. Ekblad, you clearly say he is not your attorney, that you do not want him as your attorney, that you believe he is incompetent by his own admission.

DEFENDANT: Uh-hum (indicating yes). It is his admission.

THE COURT: I am not going to get into a semantical argument with you, sir, but that, sir, is the essence of rejection.

DEFENDANT: He withdrew himself, sir. And, obviously, once he said he was incompetent, I wouldn't accept him. I would not accept another attorney who is incompetent either. I have to have a competent attorney.

THE COURT: Mr. Ekblad, you have had more than adequate opportunity to retain your own counsel. I have not done an examination with regard to your indigency. Apparently you qualified under the state public defender's standards. But you can't have it both ways. You can't demand a speedy trial and then come on the day before the trial and the morning of trial saying, judge, I want a nonlawyer, i.e., Pat Coughlin, to represent me. And that's what you have told me. You haven't ever told me that you want an attorney, a particular attorney to represent you, sir.

DEFENDANT: I had Pat Coughlin here in October. That wasn't just the day before the trial. And you rejected him then. So yesterday wasn't the first time I mentioned this.

THE COURT: Let's make the record clear on that, Mr. Ekblad. In October, I don't believe you ever asked to have Pat Coughlin as your counsel with regard to this matter. You had him at counsel table when we started that proceeding. I told Mr. Coughlin that he had to have a seat behind the rail because he was not an attorney authorized to practice law in the State of Wisconsin. He did that.

As I recall, you did consult with him possibly during the trial over the rail – not during the trial, but during that proceeding in October, but I have never been asked until yesterday to have Pat Coughlin as your counsel.

I rejected that yesterday. Even if you had asked earlier, I would have rejected him because he is not authorized to practice law in the State of Wisconsin. But, sir, you have never come forward and said, I want this attorney as my attorney. For you to say it now the morning of trial, and maybe – are you asking me to appoint you a specific attorney?

DEFENDANT: No. I am just unable to proceed on my own and I am incapable of doing it myself and I need counsel.

THE COURT: Well, but you know, Mr. Ekblad, you want to choose your own counsel, Mr. Ekblad, don't you?

DEFENDANT: I have to interview and find out if he is capable, your honor. … I want to interview him and find out if he is qualified.

I went to see Mr. Lein and he decided himself that he wasn't qualified.

THE COURT: Let me make this real clear, Mr. Ekblad. You had Jim McLaughlin as your attorney. There is no question that Jim McLaughlin is fully capable of representing you in these proceedings. You discharged Mr. McLaughlin. You have said several times that you believe Mr. McLaughlin was incompetent or ineffective at the time of the preliminary examination, that he didn't ask the right questions, he didn't present your case in the right fashion. I am not going to continue these proceedings, because at the 11th hour you now, even today, you can't tell me who you think is competent to represent you except Pat Coughlin. And Pat Coughlin is not an attorney.

¶8 The trial proceeded with Ekblad representing himself. Ekblad made comments about his need for an attorney in the presence of the jury at least twice. The jury convicted Ekblad of all fifteen counts of criminal slander of title. The court sentenced Ekblad to ten years. He was released on parole after two years in prison. In June 2000, Ekblad filed a WIS. STAT. § 974.06 postconviction motion alleging lack of subject matter jurisdiction, a denial of his right to counsel and a lack of a grand jury indictment. The court denied the motion and Ekblad appeals the judgment and order.

DISCUSSION

I. RIGHT TO COUNSEL

¶9 Ekblad argues that we should vacate his convictions because he was tried without counsel. He contends that (1) the trial court did not advise him of the dangers of proceeding to trial without counsel, (2) he never waived his right to counsel and (3) the court did not question him to determine whether he was competent to represent himself. We conclude that Ekblad forfeited his right to counsel by manipulating the right so as to obstruct the orderly procedure of the courts and interfere with the administration of justice. Additionally, the court warned Ekblad of the importance of counsel and both expressly and implicitly deemed him competent to represent himself based on his appearances and filings with the court.

¶10 Both the United States and Wisconsin Constitutions guarantee a criminal defendant the right to assistance of counsel at trial. ***State v. Cummings***, 199 Wis. 2d 721, 747-48, 546 N.W.2d 406 (1996). Whether an individual is denied his right to counsel is a question of constitutional fact that we review independently as a question of law. ***Id.*** at 748.

¶11 Here, it is undisputed that Ekblad did not have counsel at trial. Ekblad argues that he did not voluntarily waive his right to counsel. We agree. Rather, we conclude that he forfeited his right to counsel by virtue of his own actions.

¶12 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. Klessig***, 211 Wis. 2d 194, 203-04, 564 N.W.2d 716 (1997). "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." ***Cummings***, 199 Wis. 2d at 752. The right to counsel cannot be manipulated to obstruct the orderly procedure for trial or to disrupt the administration of justice. ***Rahhal v. State***, 52 Wis. 2d 144, 147-48, 187 N.W.2d 800 (1971).

¶13 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)).

¶14 The court repeatedly advised Ekblad of his right to counsel and the importance of counsel. The public defender's office provided Ekblad with two appointed attorneys, but he either literally or effectively dismissed them both. The record shows that the reason they were unsatisfactory is that they refused to make arguments such as those Ekblad made in his pro se filings and raises on appeal. Ekblad also repeatedly requested that a non-lawyer represent him, which is unlawful.[4] Despite his requests for the assistance of counsel, Ekblad made it clear he would have to "interview" any attorney appointed to make sure he was "qualified."[5] The primary aim of the right to counsel "is to guarantee an effective advocate for each criminal defendant rather than to ensure that a defendant will inexorably be represented by the lawyer whom he prefers." ***Wheat v. United States***, 486 U.S. 153, 159 (1988).

¶15 There is further evidence to support the inference that Ekblad was manipulating the system rather than requesting counsel. After conviction, but before sentencing, the court twice offered Ekblad the opportunity to have a new trial if he would agree to be represented by a licensed attorney. Ekblad declined both times and said, "I had a man here to help me and you chase[d] him away," referring to the fact that he again brought Coughlin, not a licensed attorney, to represent him.

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[4] It is unlawful for anyone other than a member of the Wisconsin bar or someone accompanied by a member of the bar to appear on behalf of another in court. ***State v. Olexa***, 136 Wis. 2d 475, 481, 402 N.W.2d 733 (Ct. App. 1987).

[5] Despite Ekblad's claims that he was being denied his right to counsel, the protests were proven hollow when he said at sentencing: "No attorney in Wisconsin has a license. There are no licenses for attorneys in Wisconsin."

¶16 The court advised Ekblad at sentencing that it would grant him a new trial if he would agree to retain counsel either of his own choosing who was licensed to practice law in Wisconsin or through the public defender's office. The court even asked a public defender to be present in case Ekblad wanted an attorney for a new trial or sentencing. The public defender offered to explain Ekblad's options to him, and the court provided a recess so that Ekblad could speak to the public defender. After the recess, Ekblad rejected the offer of a new trial and stated that his speedy trial rights had been violated and he was "here as a prisoner of war under the war powers act." The court then sentenced Ekblad to probation.

¶17 The State moved for probation review because Ekblad refused to cooperate with probation and parole. During that hearing, however, the court offered Ekblad a second new trial if he would agree to be represented by a licensed attorney, but Ekblad refused. The court vacated Ekblad's probation and resentenced him.

¶18 We conclude that Ekblad forfeited his right to counsel by his actions. "Such tactics cannot be condoned when they are used solely to 'interfere with the proper administration of criminal justice.'" ***Cummings***, 199 Wis. 2d at 757 (quoting ***Allen***, 397 U.S. at 343). The trial court correctly concluded that Ekblad had been afforded an opportunity to have legal counsel and had chosen not to avail himself of that opportunity. These refusals support the inference that Ekblad's intent regarding the right to counsel issue was to manipulate the system rather than to secure an attorney to represent him.

¶19 Ekblad also argues that the trial court never determined whether he was competent to represent himself. Recently, in ***State v. Coleman***, 2002 WI App 100, ¶¶ 32-36, we concluded that when a court determines that a defendant has

forfeited the right to counsel, it must determine whether the defendant is competent to proceed without counsel. The court should consider the defendant's education, literacy, fluency in English, and any physical or psychological disability that may significantly affect his ability to communicate a possible defense. ***Id.*** at ¶34.

¶20 When Ekblad claimed that he did not know what to say regarding an evidentiary question, the court responded outside the presence of the jury:

> [I]f you are competent to determine what attorney is incompetent to represent you, if you know the constitutional issues that are involved in this case so much better than any other attorney, don't tell me that you are unprepared or unable to adequately participate in this. You can't have it both ways. Either you can judge the competency of an attorney, which you have undertaken, and are able to represent yourself at trial ….

This was tantamount to the finding ***Coleman*** requires. Further, the court implicitly found Ekblad competent to represent himself after observing him over many months in court and reading his many pro se filings. From that, the court knew Ekblad was literate and fluent in English. While it did not know the specifics of Ekblad's education, it did not observe any physical or psychological disability that significantly affected Ekblad's ability to communicate a possible defense. *See* ***id.*** The record does not demonstrate nor does Ekblad allege any difficulties.

¶21 This is a clear case where the defendant has attempted to use the right to an attorney to whipsaw the criminal justice system. On one hand, Ekblad has no intention of availing himself of the counsel and learning of an attorney. On the other hand, based on his actions it is evident he fully appreciates how

insistence on the right may perhaps hold the system hostage.[6] The sophistication and ingenuity of Ekblad's pro se "motion" practice, advancing legally meritless propositions, but with superficially plausible reliance on authority, supports the trial court's finding that Ekblad was competent to proceed without counsel.

II. GRAND JURY INDICTMENT

¶22 Ekblad argues that we should vacate his convictions because the Fifth Amendment to the United States Constitution requires a grand jury indictment and he was charged unlawfully without one. We reject his argument, as did the trial court, because the Fifth Amendment indictment requirement is not applicable to the states. *See* ***State v. Lehtola***, 55 Wis. 2d 494, 496, 198 N.W.2d 354 (1972). Therefore, states may proceed by information rather than indictment. ***Id.***

III. WISCONSIN STAT. § 943.60 ENACTING CLAUSE

¶23 Ekblad contends that the trial court lacked subject matter jurisdiction because WIS. STAT. § 943.60 does not have an enacting clause. We disagree, as did the trial court. In the Wisconsin Constitution, paragraph (1) of article IV, section 17, requires, "The style of all laws of the state shall be 'The people of the state of Wisconsin, represented in senate and assembly, do enact as follows' ….." Ekblad cites no case law for the proposition that a failure to have an enacting clause affects a court's subject matter jurisdiction in a subsequent prosecution for

[6] That he has no intent of actually availing himself of an attorney's services is revealed by his active pro se motion practice, even while represented, by his assertions that there are no licensed attorneys in Wisconsin and his reference to a supposed statement by Chief Justice Warren Burger that 90% of all attorneys are incompetent.

violation of the section. In any event, § 943.60 was created by Laws of 1979, ch. 221, § 843o. The beginning of ch. 221 includes the enacting language and satisfies the constitutional requirement. Laws of 1979, ch. 221.

IV. PERSONAL JURISDICTION

¶24 Ekblad argues that the trial court lacked personal jurisdiction over him because he is a sovereign and the court is a corporation. We reject his argument, as did the trial court.

¶25 In ***State v. Olexa***, 136 Wis. 2d 475, 479, 402 N.W.2d 733 (Ct. App. 1987), the defendant claimed that the court had no subject matter or personal jurisdiction over her because she was a sovereign who had rescinded all contracts with the state and federal governments. We rejected her claims. ***Id.*** Personal jurisdiction merely assures that the defendant has a sufficient relationship to the jurisdiction exercising authority and notice of the charges. ***Id.*** at 479-80. We determined that the requirements for personal jurisdiction were satisfied because the alleged crime took place in Wisconsin, thus subjecting Olexa to prosecution by the state and the action was commenced pursuant to methods prescribed by WIS. STAT. § 967.05(1).[7] ***Olexa***, 136 Wis. 2d at 480.

[7] WISCONSIN STAT. § 967.05(1) provides that:

> (1) A prosecution may be commenced by the filing of:
>
> (a) A complaint;
>
> (b) In the case of a corporation or limited liability company, an information;
>
> (c) An indictment.

¶26 The same is true here. Ekblad's alleged crime was committed in Wisconsin, and the action was commenced pursuant to WIS. STAT. § 967.05(1). Therefore the trial court had personal jurisdiction over Ekblad. *See* ***Olexa***, 136 Wis. 2d at 480.

V. "PERSON" UNDER WIS. STAT. § 943.60

¶27 Ekblad contends that we must vacate his convictions because he is not a "person" under WIS. STAT. § 943.60. He maintains that § 943.60 applies only to "any person" and he is not a person because WIS. STAT. § 990.01(26) says that "Person" includes all partnerships, associations and bodies politic or corporate.[8] Ekblad argues that he is not a partnership, association or body politic or corporate. We conclude that Ekblad is a person subject to prosecution.

¶28 Nothing in WIS. STAT. § 990.01(26) protects Ekblad from prosecution. Section 990.01(26) does not define "person." It extends the meaning of "person" in any statute beyond the ordinary meaning of human being or individual to include the entities set forth in the statute. WEBSTER'S THIRD NEW INT'L DICTIONARY 1686 (unabr. 3d ed. 1993) defines "Person" as "an individual human being." *See* ***State v. Steenberg Homes, Inc.***, 223 Wis. 2d 511, 519 n.3, 589 N.W.2d 668 (Ct. App. 1998). Section 990.01(26) adds to the general meaning of "person" and does not exclude individuals from being "persons."

[8] WISCONSIN STAT. § 990.01(26) sets forth rules to be observed when construing statutes unless construction in accordance with a rule would produce a result inconsistent with the manifest intent of the legislature.

Also, WIS. STAT. § 943.60(3) exempts from the prohibition "a register of deeds or other government employee who acts … on behalf of another person." This language shows that individuals are "persons" under the statute. We agree with the trial court that Ekblad's construction of the statute would produce an absurd result because the statute would not cover individuals who filed false liens. We construe statutes to avoid absurd results. ***State v. Coble***, 95 Wis. 2d 717, 725, 291 N.W.2d 652 (Ct. App. 1980).

By the Court.—Judgment and order affirmed.

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