

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

City of Toledo

Court of Appeals No. L-08-1387

Appellee

Trial Court No. CRB-08-03075-0101

v.

Joseph Evans

DECISION AND JUDGMENT

Appellant

Decided: March 31, 2010

* * * * *

David Toska, Chief Prosecutor, and Michelle Turvey,
Assistant Prosecutor, for appellee.

Yvonne A. Wojtas, for appellant.

* * * * *

HANDWORK, J.

{¶ 1} This appeal is from the September 17, 2008 judgment of the Toledo Municipal Court wherein appellant, Joseph Evans, was found guilty of child endangering

in violation of Toledo Municipal Code 537.07. Appellant asserts the following assignments of error on appeal:

{¶ 2} "I. The Trial Court Erred by Denying the Defendant His Constitutional Right to Represent Himself in the Trial Court."

{¶ 3} "II. The Trial Court Erred by Conducting a Bench Trial after the Defendant Motioned for a Jury Trial."

{¶ 4} "III. The Trial Court Erred by Allowing Inadequate Counsel to Represent the Defendant in the Trial Court."

{¶ 5} "IV. The Trial Court Erred by Denying a Judgment of Acquittal Pursuant to Criminal Rule 29 and Against the Sufficiency of the Evidence. In the Alternative, the Verdict was Against the Manifest Weight of the Evidence."

{¶ 6} Appellant, in his first assignment of error, contends that the trial court erred by denying the defendant his constitutional right to represent himself.

{¶ 7} The trial record indicates that appellant was found indigent by the court and a public defender was assigned. Subsequently, appellant filed a motion asking the trial court to allow him to represent himself. The trial court summarily denied appellant's motion to represent himself, as well as all of the pro se motions that appellant had already filed.

{¶ 8} Upon the trial court's denial of his motion to represent himself, appellant filed a notice of appeal in the trial court and a motion to proceed in forma pauperis. The trial court denied these "motions" finding that: "Again, defendant may not file pro se motions. Attorney is on case." Appellant appealed the court's decision to this court.

{¶ 9} We held, pursuant to R.C. 2505.02, that: "Evans cannot appeal from the denial of his motions or the order that he cease pro se filings unless he is convicted of the charges against him." *State v. Evans*, 6th Dist. No. L-08-1095, 2008-Ohio-2093, ¶ 3. Upon our remand, the trial judge filed a journal entry stating: "Again, defendant may not file pro se motions. Clerk shall ignore any praecipe attached to any pleadings. Clerk shall merely file any pro se pleading. The Court will not act on any pro se filings. Defendant has counsel." A trial was held in which Evans was found guilty and sentenced to six months to be served consecutive to any other sentences previously imposed on appellant.

{¶ 10} Appellant asserts in his first assignment of error that the trial court denied him his constitutional right of self-representation. The right to counsel in a criminal proceeding is guaranteed under the Sixth Amendment to the United States Constitution. *Faretta v. California* (1975), 422 U.S. 806. The Sixth Amendment is incorporated to the states by the Fourteenth Amendment which guarantees the right to assistance of counsel in criminal proceedings. *Herring v. New York* (1975), 422 U.S. 853, 857. Implied within the granting of this right is the right to self-representation. *Faretta*, 422 U.S. at 819. If a

trial court denies the right of self-representation, when properly invoked, the denial is per se reversible error." *State v. Reed* (1996), 74 Ohio St.3d 534, 535, citing *McKaskle v. Wiggins* (1984), 465 U.S. 168, 177.

{¶ 11} In addition, Crim.R. 44(A) provides that: "a defendant may proceed to defend himself without the benefit of counsel when he voluntarily, knowingly, and intelligently elects to do so." See, also, *State v. Gatewood*, 2d Dist. No. 2008-CA-64, 2009-Ohio-5610, ¶ 31, citing *State v. Youngblood*, 2d Dist. No. 05-CA-0087, 2006-Ohio-3853. Consequently, when an individual elects to proceed by self-representation "the trial court must demonstrate substantial compliance with Crim.R. 44(A) by making a sufficient inquiry to determine whether the defendant fully understood and intelligently relinquished his or her right to counsel." *State v. Martin*, 103 Ohio St.3d 385, 2004-Ohio-5471, ¶ 25-26.

{¶ 12} In the case before us, appellant clearly invoked his constitutional right of self-representation. All of these requests were summarily denied by the trial court without the holding of a Crim.R. 44 hearing. We therefore find that the failure of the trial court in the present case to even consider appellant's request is constitutional error that requires automatic reversal. Appellant's first assignment of error is found well-taken. His remaining assignments of error are thereby rendered moot.

{¶ 13} The judgment of the Toledo Municipal Court is reversed. This case is remanded to the lower court for further proceedings consistent with this decision. Appellee is hereby ordered to pay the costs of this appeal pursuant to App.R. 24(A).

JUDGMENT REVERSED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Charles D. Abood, J.
CONCUR.

JUDGE

Charles D. Abood, retired, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.
