

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

State of Ohio

Court of Appeals No. F-09-018

Appellee

Trial Court No. 09CR000092

v.

Joseph Hill

DECISION AND JUDGMENT

Appellant

Decided: August 27, 2010

* * * * *

Scott A. Haselman, Fulton County Prosecuting Attorney, and
Paul H. Kennedy, Assistant Prosecuting Attorney, for appellee.

Stacey Burns, for appellant.

* * * * *

OSOWIK, P.J.

{¶ 1} This is an appeal from a judgment of the Fulton County Court of Common Pleas which convicted appellant of one count of breaking and entering, one count of theft, one count of burglary, one count of possession of criminal tools, and one count of

aggravated arson. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant, Joseph Hill, sets forth the following sole assignment of error:

{¶ 3} "I. The trial court violated the Appellant's 6th Amendment right to counsel."

{¶ 4} The following undisputed facts are relevant to the issues raised on appeal. On June 11, 2009, a residence outside of Delta, Ohio, was burglarized and set on fire causing in excess of \$300,000 in damages. Appellant lived in close proximity to the subject home. Shortly thereafter, appellant's wife and stepson contacted authorities and conveyed their impression that appellant had been the perpetrator.

{¶ 5} Acting upon information implicating appellant that was furnished by members of his family, appellant was discovered at a hotel in nearby Holland, Ohio. Equipment stolen from the victim's detached garage was recovered. Appellant conceded to breaking into the garage and stealing the recovered items but denied setting the home ablaze. Significantly, contrary to appellant's denial, appellant furnished his own personal identifiers when selling items of jewelry stolen from the master bedroom of the residence to a Swanton jeweler.

{¶ 6} On July 22, 2009, appellant was indicted on one count of breaking and entering, in violation of R.C. 2911.13(A), one count of theft, in violation of R.C. 2913.02(A), one count of burglary, in violation of R.C. 2911.12(A), one count of possession of criminal tools, in violation of R.C. 2923.24(A), and two counts of

aggravated arson, in violation of R.C. 2909.02(A). Appellant was determined to be indigent, not guilty pleas were entered, and defense counsel was appointed.

{¶ 7} On August 27, 2009, the matter was set for a motion to suppress hearing. Defense counsel moved to withdraw as counsel and precisely conveyed to the court a multitude of factors in support of that motion. Defense counsel stated in relevant part, "There have been accusations levied about my competency to represent him, my advocacy for him, my malpractice, my ineffective assistance of counsel. Mr. Hill and I are not able to communicate effectively anymore and I am not able to represent him adequately as is his right to have an attorney be able to do that for him. I requested certain things of Mr. Hill and he will not let me do those things."

{¶ 8} In response to his counsel's statement in support of withdrawal, appellant stated in pertinent part, "So it's not that I didn't threaten him or anything. But he clearly ineffective counsel here Your Honor. And I said to him in chambers, I said, well, if you feel that way then I'll just claim ineffective counsel." Despite the fundamental, irreconcilable breakdown in the attorney-client relationship, appellant simultaneously revealed his desire to keep the same counsel with whom he refused to cooperate and who he declared to be incompetent and ineffective so that he could, "then just claim ineffective counsel."

{¶ 9} In light of the foregoing, the trial court granted defense counsel's motion to withdraw and appointed substitute counsel to represent appellant. On September 2, 2009, substitute counsel was present in court with appellant. Substitute counsel advised the

court that appellant adamantly refused to consent to any form of a continuance to enable substitute counsel to prepare for the jury trial which was set to proceed in a few days. In conjunction with this, substitute counsel relayed to the trial court her inability to adequately prepare to represent appellant in a jury trial encompassing six felony counts with just a few days to prepare between her first coming onto the case and commencement of the jury trial. Nevertheless, appellant persisted in his refusal to waive time to enable his own counsel adequate time to prepare.

{¶ 10} Ironically, appellant next contradicted his earlier position on his initial counsel by now stating to the court that he perceived his original counsel to be adequate. Appellant stated, "Your Honor I had a perfectly competent lawyer who I was, I was happy with." Appellant had repeatedly previously stated that his original counsel was ineffective and incompetent prior to that counsel's motion to withdraw being granted. The court determined and informed appellant that, under these facts and circumstances, appellant's own positions had foreclosed all possibilities other than appellant representing himself on a pro se basis with advisory counsel being furnished by the court.

{¶ 11} In a last-ditch effort to have appellant represented by counsel, the prosecutor cooperatively suggested to the court and appellant that the motion to suppress hearing could be reset to enable either substitute counsel or the original counsel to resume representation of appellant. Appellant again flatly refused. Appellant succinctly stated, "Objection. Yeah, we're not delaying the trial for a motion hearing." On September 8, 2010, the matter proceeded to a three day jury trial with appellant representing himself on

a pro se basis with the assistance of an advisory counsel furnished by the trial court.

Appellant was convicted. Timely notice of appeal was filed.

{¶ 12} In his single assignment of error, appellant asserts that he was denied his Sixth Amendment right to representation by counsel. We note at the outset that the right of counsel dictated by the Sixth Amendment of the United States Constitution also embodies the countervailing right to dispose of counsel and proceed on a pro se basis. *Adams v. United States ex rel. McCann* (1942), 317 U.S. 269, 279.

{¶ 13} We have carefully reviewed and considered the record of evidence in this matter. The record clearly and unambiguously establishes that the trial court, several attorneys appointed to appellant, and even the prosecution itself went to great lengths to preserve appellant's right to defense counsel. However, appellant repeatedly and adamantly took positions with respect to his counsel and with respect to waiver of time that had been clearly explained to him would preclude representation other than on a pro se basis with the assistance of advisory counsel.

{¶ 14} Appellant was clearly instructed by the trial court at the genesis of this scenario of the ramifications of his actions. When his counsel asked to withdraw and conveyed appellant's refusal to waive time so as to enable trial preparation, the trial court plainly indicated to appellant that this position would ultimately result in pro se representation. Appellant stated, "I understand that sir." Despite knowing the consequences, appellant persisted in precluding representation by substitute counsel on

the same exact basis of time waiver so as to preclude any ability of trial counsel to prepare the defense of appellant.

{¶ 15} Significantly, even when the prosecutor himself offered a final solution that would enable defense counsel representation of appellant, appellant objected on the record and once again refused any continuance of the looming trial date. As such, the record clearly demonstrates that the trial court was left with no alternative by appellant himself other than to proceed on a pro se basis with advisory counsel.

{¶ 16} There is absolutely nothing in the record establishing that appellant was not fully informed of the consequences of his actions or failed to comprehend the consequences of his actions. On the contrary, the record possesses ample evidence of the trial court, multiple appointed counsel, and appellee all engaging in every effort to enable appellant to avail himself of his Sixth Amendment right to defense counsel.

{¶ 17} The record shows that despite these efforts, appellant elected his countervailing right. Appellant's uncompromising objection to any postponement of the trial date to enable trial counsel to prepare to represent him foreclosed any other option. The record clearly reflects that appellant had been informed that this position foreclosed any other option but pro se representation. Appellant made up his mind and again objected to any continuance.

{¶ 18} The record contains no evidence or indicia in support of the notion that appellant was denied the Sixth Amendment right to counsel. Appellant took stances that disposed of that right. Wherefore, we find appellant's sole assignment of error not

well-taken. The judgment of the Fulton County Court of Common Pleas is affirmed.

Appellant is ordered to pay the cost of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

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

Thomas J. Osowik, P.J.
CONCUR.

JUDGE

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.
