

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MIAMI COUNTY

STATE OF OHIO

Appellee

v.

RYAN A. WALTERS

Appellant

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C.A. No. 2025-CA-47

Trial Court Case No. 2025 CRB 01543

(Criminal Appeal from Municipal Court)

**FINAL JUDGMENT ENTRY &
OPINION**

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Pursuant to the opinion of this court rendered on October 9, 2026, the judgment of the trial court is affirmed as modified.

Costs to be paid as stated in App.R. 24.

Pursuant to Ohio App.R. 30(A), the clerk of the court of appeals shall immediately send a copy of the court's ruling to each party and note that action on the docket. Additionally, pursuant to App.R. 27, the clerk of the court of appeals shall send a certified copy of this judgment, which constitutes a mandate, to the clerk of the trial court and note the service on the appellate docket.

For the court,



CHRISTOPHER B. EPLEY, JUDGE

LEWIS, P.J., and HANSEMAN, J., concur.

OPINION
MIAMI C.A. No. 2025-CA-47

HOLLY M. SIMPSON, Attorney for Appellant
LENEE BROSH, Attorney for Appellee

EPLEY, J.

{¶ 1} Ryan A. Walters appeals from his conviction in the Municipal Court of Miami County on one count of telecommunications harassment, a first-degree misdemeanor. He argues that he did not validly waive his right to counsel. For the following reasons, we affirm, as modified, the trial court's judgment.

I. Facts and Procedural History

{¶ 2} On August 22, 2025, Walters was charged by complaint with telecommunications harassment in violation of R.C. 2917.21(A)(10), a first-degree misdemeanor. Walters was arraigned before the municipal court magistrate on September 2, 2025. The magistrate informed Walters, "Because the offense carries potential jail, you're entitled to an attorney. If you need an attorney and cannot afford one, one can be appointed for you by the Court. They would defend you at no charge to you if you qualify. To find out if you qualify, you would leave Court and go down to the second floor to the Public Defender's Office and ask them to take your case."

{¶ 3} On November 4, 2025, Walters appeared for trial without an attorney. The trial judge said to him, "Okay, I notice you don't have an attorney here so I'm going to give you, tell you a couple of things just to make sure we do everything right here. You are subject to the same standards as though you were an attorney, with respect to the introduction of evidence, cross-examination of witnesses. Things of that nature and you have to understand, we're being recorded today and you can ask any question you want of any

witness. You cannot engage in inappropriate questioning or comments and I'm sure the prosecutor will object when that, if that happens and it always does when somebody's unrepresented. You just, you're not a lawyer."

{¶ 4} The case proceeded to a bench trial. At the end of the evidence and trial, the court made a finding of guilty. The court ordered a pre-sentence investigation before sentencing, which was scheduled for December 10, 2025.

{¶ 5} On December 10, 2025, Walters appeared without a lawyer for sentencing and made a statement in allocution. The trial court sentenced Walters to 180 days in jail (all of which were suspended), placed him on low-risk probation for two years, required him to complete a mental health evaluation and a drug and alcohol evaluation, and ordered him to pay a fine of \$50 and court costs.

{¶ 6} Walters, with counsel, filed a timely notice of appeal.

II. Waiver of Counsel

{¶ 7} In his lone assignment of error, Walters states that the trial court erred in allowing him to represent himself without a knowing, voluntary, and intelligent waiver of counsel.

{¶ 8} Pursuant to the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 10 of the Ohio Constitution, criminal defendants have the right to assistance of counsel for their defense. *Gideon v. Wainwright*, 372 U.S. 335 (1963); *State v. Martin*, 2004-Ohio-5471, ¶ 22. The right to counsel extends to misdemeanor cases, including those involving petty offenses, that could result in the imposition of a jail sentence. *E.g.*, *State v. Perdue*, 2010-Ohio-565, ¶ 33 (2d Dist.); *State v. Ruley*, 2018-Ohio-3201, ¶ 12 (2d Dist.).

{¶ 9} Criminal defendants also have a corresponding right to self-representation. *Faretta v. California*, 422 U.S. 806, 819 (1975); *Martin* at ¶ 23. Accordingly, defendants may defend themselves without the benefit of counsel when they knowingly, intelligently, and voluntarily elect to do so. *State v. Wilson*, 2020-Ohio-2962, ¶ 41 (2d Dist.).

{¶ 10} Crim.R. 44 also addresses the appointment of counsel. Under Crim.R. 44(B), the trial court *may* assign counsel to represent a defendant charged with a petty offense who is unable to obtain counsel. *Compare* Crim.R. 44(A) (“Where a defendant charged with a serious offense is unable to obtain counsel, counsel *shall* be assigned to represent the defendant at every stage of the proceedings” unless the right to counsel is waived. (Emphasis added.)). For petty offenses, the trial court may not impose a sentence of confinement on an unrepresented defendant “unless after being fully advised by the court, the defendant knowingly, intelligently, and voluntarily waives assignment of counsel.” Crim.R. 44(B). Crim.R. 44(B)’s prohibition against confining a defendant who lacks counsel and who has not validly waived his or her right to counsel applies regardless of whether the defendant is indigent. *State v. Owens*, 2010-Ohio-564, ¶ 21 (2d Dist.).

{¶ 11} To establish an effective waiver of the right to counsel, the trial court must “make sufficient inquiry to determine whether [the] defendant fully understands and intelligently relinquishes that right.” *State v. Gibson*, 45 Ohio St.2d 366 (1976), paragraph two of the syllabus. To be valid, a waiver of counsel ““must be made with an apprehension of the nature of the charges, the statutory offenses included within them, the range of allowable punishments thereunder, possible defenses to the charges and circumstances in mitigation thereof, and all other facts essential to a broad understanding of the whole matter.”” *Id.* at 377, quoting *Von Moltke v. Gillies*, 332 U.S. 708, 723 (1948); *see also State v. Simkins*, 2019-Ohio-4369, ¶ 16 (2d Dist.). Additionally, the defendant ““should be made

aware of the dangers and disadvantages of self-representation.” *State v. Gatewood*, 2009-Ohio-5610, ¶ 33 (2d Dist.), quoting *Faretta* at 835.

{¶ 12} “Courts are to indulge every reasonable presumption against the waiver of a fundamental constitutional right, including the right to counsel.” *State v. Dyer*, 117 Ohio App.3d 92, 95 (2d Dist. 1996); *State v. Street*, 2015-Ohio-2789, ¶ 35 (2d Dist.). The waiver must affirmatively appear in the record, and the State bears the burden of overcoming presumptions against a valid waiver. *Dyer* at 95; *Street* at ¶ 35. Under Crim.R. 44(C), a waiver of counsel must be “in open court and the advice and waiver shall be recorded as provided in [Crim.R.] 22.” For petty offenses, the waiver does not need to be in writing. Crim.R. 44(C); *State v. Brooke*, 2007-Ohio-1533, ¶ 24. Merely advising a defendant about his or her right to legal representation, either through retained or appointed counsel, is insufficient. *State v. Lewis*, 2017-Ohio-9311, ¶ 10 (2d Dist.).

{¶ 13} We review de novo, based on the totality of the circumstances, whether a defendant knowingly, intelligently, and voluntarily waived his or her right to counsel. *Simkins* at ¶ 15.

{¶ 14} The State acknowledges that there is no record of Walters’ knowingly and intelligently waiving his right to counsel. At the arraignment, Walters was told the maximum penalty and that an attorney could be appointed for him if could not afford one. He was told to stop by the public defender’s office before leaving the building. Walters pled not guilty at that time. There was no broad inquiry about the matter or the dangers and disadvantages of self-representation. Accordingly, Walters’ assignment of error is sustained.

{¶ 15} Walters requests that we vacate the conviction outright or remand the matter for a new trial or vacate the sentence. This court has continued to hold that the appropriate remedy for an invalid waiver of counsel is vacation of the term of incarceration. See *State v.*

Conard, 2024-Ohio-1906 (2d Dist.). We decline to reconsider our position in this case. Walters' conviction is affirmed, but his sentence must be modified to remove the 180-day suspended jail sentence.

III. Conclusion

{¶ 16} The trial court's judgment is affirmed as modified.

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LEWIS, P.J., and HANSEMAN, J., concur.