

IN THE SUPREME COURT OF THE STATE OF NEVADA

SABIN BARENDT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38912

FILED

AUG 19 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Richard
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of two counts of sexual assault of a minor under the age of fourteen. On appeal, appellant Sabin Barendt contends that the district court erred in denying his motion to represent himself at the sentencing stage of his trial.

A defendant is guaranteed the right to self-representation by the United States and Nevada Constitutions.¹ Denial of that right is per se reversible error.² However, before allowing a defendant to waive counsel and represent him or herself, the trial court must ensure that the defendant is competent and that the waiver of counsel is knowing, voluntary, and intelligent.³ A trial court may also deny a request for self-representation that is untimely, equivocal, made solely for purpose of

¹Wayne v. State, 100 Nev. 582, 584, 691 P.2d 414, 415 (1984).

²McKaskle v. Wiggins, 465 U.S. 168, 177 n.8 (1984).

³Faretta v. California, 422 U.S. 806, 835 (1975); see also Godinez v. Moran, 509 U.S. 389, 400-01 (1993).

delay, or if the defendant abuses the right by disrupting the judicial process.⁴

Federal courts have agreed that the right of a defendant to self-representation in a criminal trial is not absolute.⁵ Such a right is subject to the sound discretion of the trial court once the trial has commenced.⁶ The court should exercise that discretion mindful of its duty to protect the judicial processes from deterioration resulting from the improper conduct of criminal defenses.⁷

The right to proceed in proper person must be timely asserted.⁸ The request ordinarily must be made prior to trial.⁹ If a defendant does not timely assert his right to proceed in proper person, the decision to grant the request and to permit the discharge of counsel after trial has begun is left to the sound discretion of the trial court.¹⁰

⁴Tanksley v. State, 113 Nev. 997, 1001, 946 P.2d 148, 150 (1997).

⁵See, e.g., United States v. Mitchell, 138 F.2d 831, 831 (2d Cir. 1943).

⁶United States v. Dunlap, 577 F.2d 867, 868 (4th Cir. 1978).

⁷People v. Burson, 143 N.E.2d 239, 247 (Ill. 1957).


⁸United States v. Jones, 514 F.2d 1331, 1334 (D.C. Cir. 1975).

⁹Sapienza v. Vincent, 534 F.2d 1007, 1010 (2d Cir. 1976). See also State v. Fritz, 585 P.2d 173, 178 (Wash. 1978).

¹⁰State v. Brown, 676 A.2d 513, 517 (Md. 1996); Fritz, 585 P.2d at 178.

In exercising its discretion, the trial court should consider the effect that a change of counsel will have on the efficiency of the court.¹¹ Barendt's motion to proceed in proper person was based solely on his decision to pursue a new strategy contesting all charges after he had knowingly and voluntarily entered a guilty plea. He offered no justification to the court for his motion other than dissatisfaction with his appointed counsel's reluctance to file a motion to withdraw plea and to request a new trial on all thirty alleged counts. We conclude the district court did not err in concluding the request was untimely. Accordingly, we
ORDER the judgment of the district court **AFFIRMED**.

 _____, J.
Shearing

 _____, J.
Leavitt

 _____, J.
Becker

cc: Hon. Valorie Vega, District Judge
Clark County Public Defender
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

¹¹Tanksley, 113 Nev. at 1001, 946 P.2d at 150.