IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN DONALD ST. PETER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39247

FILED

AUG 22 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

This is an appeal from a judgment of conviction entered following a jury verdict, finding appellant, John Donald St. Peter, guilty of driving a motor vehicle under the influence of intoxicating liquor (DUI), in violation of NRS 484.379. The district court enhanced St. Peter's conviction to felony status under 484.3792(1)(c), based upon a finding that St. Peter had sustained two or more prior constitutionally valid DUI convictions within seven years.

St. Peter appeals claiming that (1) the district court erred by denying his pretrial Faretta[1] motion for self-representation; (2) he was denied his right to a speedy trial under the Sixth and Fourteenth Amendments to the United States Constitution; (3) the district court erred in denying his motion to dismiss the case based upon the Interstate Agreement on Detainers, codified in NRS 178.620; and (4) the State improperly sought the opinions of two police officers concerning imposition of sentence.

[1]Faretta v. California, 422 U.S. 806 (1975).

03-14168

Factual background

St. Peter was initially arrested on the charges in this matter in 1997. St. Peter fled the jurisdiction before he could be arraigned in district court following his bind-over in justice court. Thereafter, St. Peter was arrested on several occasions in connection with other DUI incidents in various jurisdictions and spent the next few years in penal institutions outside Nevada.

On August 4, 2001, the State of Nevada requested that California prison authorities place an extradition hold upon St. Peter based upon the instant charges. On August 8, 2001, St. Peter requested an immediate trial. Pursuant to this request, on August 23, 2001, St. Peter was returned to Nevada for trial. At St. Peter's continued arraignment in the Washoe County district court on September 18, 2001, St. Peter expressed his desire to represent himself or to act as "co-counsel" with Bruce Pickett, Esq., his court appointed attorney.

Initially, the district court indicated that Mr. Pickett would represent St. Peter. However, after further inquiry, the district court decided that St. Peter could represent himself with Mr. Pickett as co-counsel. When Mr. Pickett sought instruction from the district court as to his role as "co-counsel," the State interjected that, without a Faretta canvass, Mr. Pickett could not serve as standby counsel. Thereafter, the district court conducted a Faretta hearing on the record. St. Peter stated that he was fifty-seven years old, held a graduate equivalency degree, had taken several college courses, and could read at the college level. He also explained that he had spent a considerable amount of time in prison law libraries during ten previous years of incarceration. He also stated that he suffered from health problems, but assured the district court that they

would not interfere with his self-representation; that he was not under the influence of drugs; that he understood the charges he was facing; and that he was aware of some of the possible defenses to his charges, specifically mentioning lack of probable cause for the initial stop of his vehicle.

The district court then inquired into St. Peter's views on the role of his court-appointed attorney as "co-counsel." St. Peter responded that his understanding under Faretta was that a defendant may "have assistance of counsel as opposed to being represented by counsel." St. Peter also told the district court that he would not mind having the assistance of counsel, as "a coach on the side," but that he preferred to take personal responsibility for the presentation of his case.

The district court and St. Peter also discussed how he would respond if Mr. Pickett told him to "shut up." The exchange was somewhat confusing and, at times, St. Peter's responses were unintelligible. Finally, the court responded:

> All right. What I meant was when somebody says "Shut up" or "Be quiet" or "Don't say anything anymore," I understand where you're going from the standpoint of you trust this person; but, by the same token, are you smart enough--maybe I'm not using the right word--are you intelligent enough to understand that when somebody says "Shut up. Be quiet," they could mean that you're hurting yourself with your own mouth? That's what I'm talking about.
>
> And I don't know. And you have to, I guess, convince me, that if you represent yourself you're just not going to get convicted because the jury got mad at you because you're just droning on about irrelevant stuff. That's the concern.

As St. Peter and the district court continued to exchange remarks and St. Peter was unable to adequately answer the district court's questions, the court stated:

> Mr. Picket is going to be co-counsel. I do not think you can-- Excuse me. Excuse me. You're not co-counsel. You are representing Mr. St. Peter. I am appointing the public defender. Mr. St. Peter-- . . .
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> . . . .
>
> cannot concentrate, cannot understand simple question, cannot even answer questions that I'm asking. His mind wanders. He is constantly in motion. He is constantly coming up with things that are not relevant at these stages of the proceedings. And I do not think that you can represent yourself, Mr. St. Peter.

At this point, the State inquired if the district court was making a finding that if St. Peter represented himself he would disrupt the proceedings. The district court responded in the affirmative.

On the day of trial, the district court inquired again if St. Peter wished to represent himself before the jury. On this occasion, St. Peter's response was conditional. St. Peter stated that he would be prepared to try the case himself if the court would grant a continuance, but then his responses became disjointed. The district court commented that it did not understand where St. Peter was going. Finally, the court stated:

> I'm making the determination that you cannot represent yourself based on your inability to answer any type of question that I've asked you in this regard. . . .

The case ultimately proceeded to trial with Mr. Pickett representing St. Peter. The jury rendered verdicts of guilty in connection with three charges set forth in the criminal information: (1) driving under

the influence; (2) driving while having 0.10 percent or more by weight of alcohol in his blood; and (3) having a blood alcohol content of 0.10 percent by weight of alcohol in his blood within two hours of driving.

On January 23, 2002, the district court merged the charges and proceeded with a sentencing hearing. The State called police officers Sheffield and Eubanks to testify as to St. Peter's behavior on the evening of his arrest and elicited their opinions concerning the length of incarceration the district court should impose. Both officers indicated that St. Peter should receive the maximum penalty.[2]

The State supported the officers' suggestions and the district court sentence St. Peter to twenty-eight to seventy-two months of

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[2]According to Officer Sheffield:

> I think he should receive the maximum sentence. The reason for that is I am a DUI-enforcement officer. I see a lot of people injured or killed in accidents. DUI takes more lives than any other crime.
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> According to his criminal history, he continues to reoffend. And obviously he--according to that criminal history, he's-- no matter what-- if he gets back out, its just going to happen again. And with my family and my friends out on the streets, I'd sure hate to see them a victim of Mr. St. Peter.

According to Officer Eubanks:

> His [arrest] was the one that I remember quite vividly because of some of the comments that he actually made to me. I can—after being told that it was his ninth DUI, yeah, I would expect that the maximum sentence would be imposed, because you wouldn't want someone like that out on the street.

incarceration plus several fines. At the close of the sentencing hearing, the court stated: "Officer Sheffield, I think [St. Peter] was full of crap. You did a good job."

Discussion

Right of self-representation

St. Peter argues on appeal that the district court improperly denied his right to self-representation under Faretta. "A criminal defendant has an 'unqualified right' to represent himself at trial so long as his waiver of counsel is intelligent and voluntary."[3] In evaluating whether a waiver of counsel is intelligent and voluntary, the district court must assess, not whether the defendant can competently and intelligently represent himself, but whether the defendant can knowingly and voluntarily waive his right to counsel.[4] "[T]he defendant's technical knowledge is not the relevant inquiry."[5] "The relevant assessment examines the accused's competence to choose self-representation, not his ability to adequately defend himself."[6]

A district court may not deny a defendant's request to represent himself "'solely because the court considers the defendant to lack reasonable legal skills or because of the inherent inconvenience often

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[3]Tanksley v. State, 113 Nev. 997, 1000, 946 P.2d 148, 150 (1997).

[4]Graves v. State, 112 Nev. 118, 124, 912 P.2d 234, 238 (1996).

[5]Id. (citing Faretta, 422 U.S. at 835-36).

[6]Harris v. State, 113 Nev. 799, 802, 942 P.2d 153, 153 (1997) (emphasis added).

caused by pro se litigants.'"[7] However, a district court may deny a defendant's request for self-representation where his request is untimely, equivocal or made solely for the purpose of delay, where the defendant abuses his right by disrupting the judicial process or where the defendant is incompetent to waive his right to counsel.[8] An improper denial of a defendant's right to self-representation "is never subject to harmful error analysis; it is per se harmful."[9]

The district court properly canvassed St. Peter on his Faretta right of self-representation, but applied an incorrect standard to determine whether St. Peter could represent himself. The district court stated:

> And I don't know. And you have to, I guess, convince me, that if you represent yourself you're just not going to get convicted because the jury got mad at you because you're just droning on about irrelevant stuff. That's the concern.

It appears the district court denied St. Peter's request to represent himself, not because it found that St. Peter was incompetent to choose self-representation or could not make a knowing and voluntary waiver of counsel, but because St. Peter's behavior and speech was irritating and the district court was concerned this would prejudice St. Peter before the jury. The district court further stated:

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[7]Tanksley, 113 Nev. at 1001, 946 P.2d at 150 (1997) (quoting Lyons v. State, 106 Nev. 438, 444 n.1, 796 P.2d 210, 217 n.1 (1990)).

[8]Id. at 1001, 946 P.2d at 150 (citing Lyons, 106 Nev. at 443-44, 796 P.2d at 213)).

[9]Lyons, 106 Nev. at 443, 796 P.2d at 213 (citing McKaskle v. Wiggins, 465 U.S. 168, 177 n.8 (1984)).

> Mr. St. Peter--cannot concentrate, cannot understand simple questions, cannot even answer questions that I'm asking. His mind wanders. He is constantly in motion. He is constantly coming up with things that are not relevant at these stages of the proceedings. And I do not think that you can represent yourself, Mr. St. Peter.

We conclude that the district court committed reversible error by denying St. Peter's right to self-representation. Therefore, we vacate St. Peter's conviction and remand this matter to the district court for further proceedings consistent with this order.[10]

Interstate Agreement on Detainers

St. Peter argues that the district court erred in denying his motion to dismiss based upon the Interstate Agreement on Detainers, codified at NRS 178.620. The record indicates that the State followed all of the requirements it was obligated to follow under NRS 178.620, Article III (a).[11] Additionally, the district court correctly determined that St.

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[10]We conclude that the renewed Faretta inquiry shortly before trial and St. Peter's conditional response does not cure the prior failure to allow self-representation at a point where St. Peter could prepare on the assumption that he would be defending himself.

[11]NRS 178.620, Article III (a) states:

> Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the

continued on next page . . .

Peter failed to establish, based on a lack of documentary evidence, that he validly executed all appropriate documents, in accordance with NRS 178.620, Article III (b),[12] until August 8, 2001, at which point the 180-day requirement for final disposition of the outstanding charge was triggered. St. Peter was brought to trial within the statutory time frame. Thus, we

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. . . continued

> appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint: provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(Emphasis added.)

[12]NRS 178.620, Article III (b) states:

> The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

conclude that the district court did not err in denying St. Peter's motion to dismiss based upon the interstate compact. We also reject St. Peter's claim that the State of Nevada was under a duty of timeliness to lodge the interstate detainer against him.

St. Peter's right to a speedy trial

St. Peter argues that the State denied him his right to a speedy trial under the Sixth and Fourteenth Amendments to the United State Constitution.

> In determining whether a criminal defendant has been denied the right to a speedy trial, this court must consider four factors: the length of the delay, the reason for the delay, the defendant's assertion of his right to a speedy trial, and the prejudice to the defendant caused by the delay.[13]

First, the delay between the filing of charges and trial was about three-and-a-half years. Second, the cause for the delay was St. Peter's flight from Nevada and his subsequent arrests, convictions, and incarcerations in other jurisdictions. Third, he never requested a speedy trial on the pending charges in Nevada during his incarceration in other jurisdictions. Also, St. Peter never took any steps between absconding and his request under the interstate compact that would have facilitated a speedy trial. Fourth, St. Peter's claim of prejudice is that he was unable to have his sentence on the Nevada charges run concurrently with his other sentences. This last concern does not satisfy the prejudice prong under Fain's four-factor analysis.[14]

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[13]State v. Fain, 105 Nev. 567, 568, 779 P.2d 965, 966 (1989).

[14]See id.

We therefore conclude that St. Peter's speedy trial claim lacks merit.

St. Peter's sentencing

St. Peter contends that he is entitled to a new sentencing hearing due to the inappropriate comments by two police officers, the prosecution, and the district court.

Although NRS 176.015 generally makes no specific provision for the testimony of police officers during the sentencing phase of the trial, NRS 176.015(6) does "not restrict the authority of the court to consider any reliable and relevant evidence at the time of sentencing." We conclude that the testimony of the police officers was not improper.

At the end of the sentencing hearing, the district court made a intemperate comment. The district court stated on the record, "Officer Sheffield, I think [St. Peter] was full of crap. You did a good job." Although we conclude that this remark did not affect St. Peter's right to receive a fair sentencing hearing, we caution the district court judge against making remarks of this nature in the future.

Accordingly, we

ORDER the judgment of the district court VACATED AND REMAND this matter to the district court for proceedings consistent with this order.

_____, J.
Rose

_____, J.
Maupin

_____, J.
Gibbons

cc: Hon. Steven R. Kosach, District Judge
Washoe County Public Defender
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk