

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Criminal Action No.
v.)	09-00112-01-CR-W-ODS
)	
CLIFTON TAYLOR,)	
)	
Defendant.)	

ORDER

On December 29, 2009, defendant filed a motion to proceed pro se. I held a hearing on the motion on January 11, 2010. During the hearing, defendant knowingly and voluntarily waived his Sixth Amendment right to assistance of counsel.

Defendant's clothing.

It is noted that during the hearing, I discussed with defendant his right to have street clothing (i.e., a suit and tie or other non-prison issued clothing), and I offered to have the Probation Office or the United States Marshal provide him with clothing. Alternatively, I informed defendant that he could have his family bring clothing to the court for him to wear. Defendant declined all of these offers.

Defendant's behavior in the courtroom.

In United States v. Ameri, 412 F.3d 893 (8th Cir. 2005), cert. denied, 546 U.S. 1206 (2006), the defendant demanded to represent himself when the court refused to appoint substitute counsel. He then admitted that he did not understand the rules

of procedure and said that the trial would be unfair. He told the judge that he "might as well just lock me in the cell, your Honor." The court warned the defendant that if he were disruptive, if he jumped up and started talking and interrupting, he would be removed from the courtroom. Mr. Ameri stated that he would not allow the government to give him injustice and therefore he would not promise the court that he would not disrupt the proceedings. "I didn't choose, your Honor. It's just injustice, your Honor. It is unfair, your Honor." During the trial, Mr. Ameri repeatedly interrupted other speakers and made conflicting demands upon the court including the demands to represent himself and the demand to leave the courtroom. The court finally excused defendant from the courtroom and his standby counsel finished the trial.

When a defendant, through a lack of cooperation, puts the district court in the impossible situation of having to choose between honoring a defendant's request for self-representation and repeated requests to be absent from the courtroom, the defendant has constrained the district court's discretion. Under such circumstances, we do not ask what the district court might have done in an ideal situation or what the district court might have done had the defendant actually demanded the opportunity to be present. We ask instead whether the district court abused its limited discretion under the constrained circumstances created by the defendant.

Id. at 898.

Defendant is reminded that his right to act as his own attorney will be limited to his ability to conduct himself properly and in a non-disruptive manner during the trial.

Recommendation to defendant.

During the hearing I advised defendant of all aspects of pretrial preparation and the trial itself for which he would be responsible. I told him that the outcome is generally not favorable when a defendant decides to represent himself. I reiterate that here.

[T]he right of self-representation is a right that when exercised usually increases the likelihood of a trial outcome unfavorable to the defendant. . . .

As a corollary, however, a defendant who exercises his right to appear pro se "cannot thereafter complain that the quality of his own defense amounted to a denial of 'effective assistance of counsel.'" Faretta [v. California], 422 U.S. [806,] 834 n. 46 [(1975)].

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

The choice of self-representation increases the likelihood of a conviction and likely length of any sentence. United States v. Erskine, 355 F.3d 1161, 1171 n. 12 (9th Cir. 2004), citing McKaskle v. Wiggins, 465 U.S. at 177 n. 8.

Despite my warnings about the likely unfavorable outcome of defendant's case should he proceed without the assistance of counsel, he insisted on waiving that right. I find that defendant's waiver was made knowingly, voluntarily, and intelligently.

Therefore, it is

ORDERED that defendant's motion to proceed pro se is granted. It is further

ORDERED that Assistant Federal Public Defender Travis Poindexter is relieved of representation in this case and instead is appointed to act as stand-by counsel. Mr. Poindexter shall attend the trial in person but will not be positioned at the defense table and instead shall remain in the gallery with the public. It is further

ORDERED that the Clerk of Court list defendant Clifton Taylor as pro se counsel with an address of CCA, 100 Highway Terrace, Leavenworth, KS 66048.

/s/ Robert E. Larsen
ROBERT E. LARSEN
United States Magistrate Judge

Kansas City, Missouri
January 11, 2010