IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

MARK J. LAWLER,	]	NOT FOR PUBLICATION
	]	
Appellant,	]	
	]	
v.	]	Case No. F-2012-437
	]	
THE STATE OF OKLAHOMA,	]	
	]	
Appellee.	]	

SUMMARY OPINION

LEWIS, PRESIDING JUDGE:

Mark J. Lawler, Appellant, was tried by jury and found guilty of rape in the first degree, in violation of 21 O.S.Supp.2008, § 1114(A)(5); in the District Court of Hughes County, Case No. CF-2010-85. The jury sentenced Appellant to thirty-five (35) years imprisonment.[1] The Honorable Timothy L. Olsen, Associate District Judge, pronounced judgment and sentence accordingly. Mr. Lawler appeals the following propositions of error:

1. The trial court erred when it refused to allow Appellant to represent himself pro se at his jury trial and forced counsel upon Appellant in violation of Appellant's rights under the Sixth Amendment to the United States Constitution and Article II, § 20 of Oklahoma's Constitution;

2. The trial court erred in denying Appellant's motion to dismiss for lack of speedy trial in violation of Appellant's rights under the Sixth Amendment to the United States Constitution and 22 O.S. §§ 812.1 and 812.2.

[1] Appellant must serve 85% of his sentence before being eligible for consideration for parole. 21 O.S.Supp.2009, § 13.1(10).

In Proposition One, Appellant argues that the trial court's denial of his request to represent himself violated his Sixth Amendment rights. *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975). We have often reviewed the denial of such a request for abuse of the trial court's discretion. *Halbert v. State*, 1987 OK CR 57, ¶ 4, 735 P.2d 565, 566. An abuse of discretion is a clearly erroneous conclusion and judgment, one that is contrary to the logic and effect of the facts presented. *Neloms v. State*, 2012 OK CR 7, ¶ 35, 274 P.3d 161, 170. We note, however, that under *Faretta*, a trial court has no discretion to deny a *valid* request for self-representation. *Parker v. State*, 1976 OK CR 293, ¶ 5, 556 P.2d 1298, 1300-01 (overruling pre-*Faretta* cases which held self-representation was discretionary); *Coleman v. State*, 1980 OK CR 75, ¶ 4, 617 P.2d 243, 245 (holding trial court cannot force a defendant to accept counsel if the defendant elects to represent himself). The scope of our review is therefore essentially whether Appellant made a valid request for self-representation, which the trial court denied.

The State concedes that Appellant's request to represent himself was unequivocal, but argues that the request was untimely and his waiver of the right to counsel was not knowing and voluntary. We disagree. Appellant's request, made at least five (5) days before trial, was reasonable and timely under the circumstances. *Gregory v. State*, 1981 OK CR 56, ¶ 11, 628 P.2d 384, 387 (finding *Faretta* request, coupled with request for delay, was not timely after jury was selected and sworn); *Coleman*, 1980 OK CR 75, ¶ 3, 617

P.2d 243, 245 (finding denial of request made just before jury selection violated Sixth Amendment); *Johnson v. State*, 1976 OK CR 292, ¶¶ 28-29, 35-39, 556 P.2d 1285, 1290-96 (holding defendants validly elected self-representation by discharging counsel five days before trial). From the record, we find that the request was not a tactical attempt to delay the trial or trifle with the court. The State and Appellant were ready for trial. Granting the request would not have required a continuance. *Coleman*, 1980 OK CR 75, ¶ 6, 617 P.2d at 245 (finding motion for self-representation was well-taken where nothing suggested delay of trial would have resulted from granting motion).

Before denying Appellant's request, the trial court properly warned Appellant of the dangers of self-representation. *Fitzgerald v. State*, 1998 OK CR 68, ¶ 7, 972 P.2d 1157, 1162 (finding trial court advised defendant against self-representation; that he did not know what he was doing; that it was a bad decision; and that defendant could face greater punishment as a result). Appellant indicated he knowingly accepted the risks of his decision. We repeatedly have said that the merit of such a request is not measured by "the wisdom of the decision or its effect upon the expeditious administration of justice." *Johnson*, 1976 OK CR 292, ¶ 34, 556 P.2d at 1294.

> It is only necessary that a defendant be made aware of the problems of self-representation . . . [T]echnical knowledge of the law and its operation at trial is totally irrelevant in the assessment of his knowing exercise of the right to defend himself.

Id.

Appellant was no stranger to the criminal justice system. *Id.* (finding twice convicted felon could not be considered ignorant of difficulties of self-representation). He could read, write, and express himself coherently. The trial court was understandably concerned about Appellant's 8th grade education, his lack of legal training, and the difficulty of the task before him. However, this provided no ground for forcing him to accept counsel at trial. The right to self-representation "is either respected or denied; its deprivation cannot be harmless." *McKaskle v. Wiggins*, 465 U.S. 168, 177 n. 8, 104 S.Ct. 944, 950 n. 8, 79 L.Ed.2d 122 (1984). The trial court abused its discretion by denying Appellant's request to represent himself. This error requires reversal of the conviction. *Id.*

Appellant's Proposition Two argues that delay between the filing of charges and trial requires dismissal of the case. Appellant timely filed a motion to dismiss the case in the trial court alleging denial of a speedy trial. We therefore review this claim applying the four balancing factors established in *Barker v. Wingo*, 407 U.S. 514, 530, 92 S.Ct. 2182, 2192, 33 L.Ed.2d 101 (1972): (1) length of the delay; (2) reason for the delay; (3) the defendant's assertion of his right, and (4) prejudice to the defendant. The length of delay and Appellant's assertion of the right to speedy trial weigh in his favor. *Ellis v. State*, 2003 OK CR 18, ¶ 30, 76 P.3d 1131, 1136-37 (regarding twelve month interval as threshold triggering speedy trial inquiry); *McDuffie v. State*, 1982 OK CR 150, ¶ 8, 651 P.2d 1055, 1056 (holding that incarceration makes speedy

trial demand for one in custody). The reasons for the majority of the delay were neither the fault of Appellant nor the State; but rather a combination of crowded local courts, limited judges, and unintentional neglect. These reasons ultimately rest upon the government, but weigh only slightly in Appellant's favor. *Barker v. Wingo,* 407 U.S. at 531, 92 S.Ct. at 2192. Regarding the fourth factor, Appellant has not shown that delay prejudiced his ability to defend himself, subjected him to more than typical stress and anxiety, or resulted in oppressive incarceration. On balance, he has not shown that the delay in his case violated the right to a speedy trial. Proposition Two is therefore denied.

DECISION

The Judgment and Sentence of the District Court of Hughes County is **REVERSED AND REMANDED FOR A NEW TRIAL.** Pursuant to Rule 3.15, Rules of the Court of Criminal Appeals, Title 22, Ch. 18, App. (2013), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF HUGHES COUNTY
THE HONORABLE TIMOTHY L. OLSEN, ASSOCIATE DISTRICT JUDGE

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OPINION BY LEWIS, P.J.
SMITH, V.P.J.: Concurs
LUMPKIN, J.: Concurs in Results
C. JOHNSON, J.: Concurs
A. JOHNSON, J.: Concurs