

SUPREME COURT OF MINNESOTA

C7-88-983

ORDER DIRECTING STATE PUBLIC DEFENDER
TO PROVIDE PRELIMINARY REPRESENTATION
TO PRO SE APPELLANTS

May 9, 1988

WHEREAS, in State v. Seifert, Case No. C1-87-452, filed April 29, 1988, we held that an indigent criminal defendant may elect to represent himself on direct appeal if he validly waives his right to counsel; and

WHEREAS, if a defendant elects to represent himself on direct appeal, the State Public Defender should confer with the defendant and obtain a detailed, written and signed waiver; and

WHEREAS, the State Public Defender has petitioned this court for an order pursuant to Minn. Stat. § 611.25 (1986);

NOW, THEREFORE, IT IS HEREBY ORDERED that the State Public Defender, as an attorney, provide—consistent with our decision in State v. Seifert, supra—preliminary legal representation of and advice to all indigent criminal defendants who seek to proceed pro se on direct appeal.

Dated: *May 9, 1988*

OFFICE OF
APPELLATE COURTS

MAY 9 1988

FILED

BY THE COURT:


Douglas K. Amdahl
Chief Justice

STATE OF MINNESOTA

OFFICE OF THE STATE PUBLIC DEFENDER

Minnesota Public Defender:

C.
Paul
Jones

Attorneys:

Mollie G. Raskind
Deputy Attorney
Elizabeth B. Davies
Deputy Attorney for
Administration
Mark F. Anderson
Susan K. Maki
Marie L. Wolf
Cathryn Middlebrook
Melissa Sheridan

May 6, 1988

In Cooperation with L.A.M.P.
(Legal Assistance to Minnesota
Prisoners) in Civil Legal Matters
The Law School, Univ. of Minnesota
Telephone: (612) 625-6336
Philip Marron
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(Legal Advocacy Project)
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Margaret W. Broughton

OFFICE OF
APPELLATE COURTS

MAY 9 1988

FILED

Chief Justice Douglas Amdahl
Minnesota Supreme Court
State Capitol Building
St. Paul, MN 55155

Dear Chief Justice Amdahl:

Enclosed is a copy of the waiver of counsel form which we will use unless otherwise ordered by the Supreme Court or until a change in the form, if any, is made in the applicable court rules. In case of refusal to sign the waiver the applicable appellate court will be informed and the appellant will be notified by us that the appeal time requirements are running.

After a defendant has signed a waiver of counsel the state public defender's office will serve and file an appropriate Notice of Appeal on behalf of, not as counsel for, the defendant to get the appeal started correctly and to alert the clerk of appellate courts that the appeal is pro se by also filing the Waiver of Counsel.

We will use the enclosed receipt of transcript form unless otherwise ordered by the Supreme Court or until a change in the form, if any, is made in the applicable court rules. In cases of refusal to sign the receipt, the applicable appellate court will be informed and the appellant will be notified by us that the appeal time requirements are running.

In any case where we believe there is any question as to competency to waive, the case will be referred to the applicable District Court judge. However, due to confidentiality of communication and the appearance of our office obstructing a client's wishes, we will use the enclosed form and refer the matter to the district court without comment or recommendation and will not participate further unless otherwise ordered by the Supreme Court or until a change, if any, is made in the applicable court rules. If competency has not been finally determined by the time the transcript is completed, we may in some cases prepare and file a brief that may subsequently be used

Chief Justice Amdahl
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as the client's brief or as an amicus brief in the discretion of the court.

In view of the Supreme Court decision, in pro se cases, we assume the Clerk of appellate courts will not send out written materials relating to how to correctly proceed with an appeal.

We request that each judicial district administrator, upon receipt of a copy of this letter, notify the official court reporters that the state public defender's office will be responsible for payment of transcripts only when ordered by the state public defender's office, and will not be responsible for payment when a transcript is ordered by a defendant or other person.

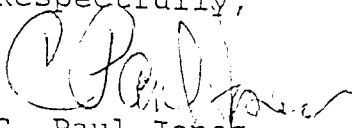
We will continue our court approved practice of informing our clients that they may prepare and have filed a pro se supplemental brief after we have prepared and filed a brief on their behalf. The transcript will be provided for this purpose when necessary to prepare the pro se supplemental brief or when it is otherwise reasonable to do so.

We are interviewing all current clients who have indicated in any way in the past that they might wish to proceed on their own.

We have requested the Commissioner of Corrections to permit our attorneys to directly deliver transcripts to the applicable inmates.

Pursuant to Minn. Stat. § 611.25 and to the limited extent and in the manner set forth above, it is respectfully requested that the Minnesota Supreme Court direct the state public defender, as an attorney, to represent as clients individuals who are seeking judicial review, and who wish to proceed pro se.

Respectfully,


C. Paul Jones
Minnesota Public Defender

CPJ/jkf

Enc.

STATE OF MINNESOTA
IN COURT OF APPEALS (SUPREME COURT)

State of Minnesota,

Respondent,

WAIVER OF COUNSEL

vs.

D. C. File No.
Appellate Court
File No.

_____,
Appellant.

TO THE ABOVE-NAMED COURT:

I, _____, appellant in the above-entitled case, represent and state as follows:

1. My full name is _____. I am _____ years old, my date of birth is _____. I certify I am able to read, write and understand the English language.

2. I have been convicted of _____, a felony (gross misdemeanor), in _____ County District Court. I was sentenced to _____ on _____, 19____.

3. I understand that I have the right to appeal my conviction to the Court of Appeals (Supreme Court), and that because I am indigent I have the right to be represented by the State Public Defender.

4. Notwithstanding my right to be represented on appeal by the State Public Defender, I wish to waive that right and represent myself on appeal pro se. I understand that by this

waiver I am permanently waiving my right to the assistance of the attorneys in the State Public Defender's Office or any other attorney retained at public expense. I understand that the Supreme Court has said that if I choose to act as my own attorney, I will not receive any legal advice, research, library materials, or other assistance from the State Public Defender in any state court proceeding to challenge the legality of my conviction and/or sentence. In other words, as to any challenge of this conviction and/or sentence, I am on my own.

I further understand that I will have to do the necessary legal work on this appeal by myself. This includes complying with the limited time schedules required for appeals, the legal requirements as to the substantive content of briefs and other documents, the size of briefs, the number of copies of briefs and other documents required to be filed, and proper service on the necessary parties. I understand that the State Public Defender will not be available to answer any questions I have in this regard, nor can I expect the Clerk of Appellate Courts to answer any such questions. I acknowledge that the Supreme Court has said that I will be held to the same standard of responsibility as a licensed attorney. I understand that I cannot later claim that because I made mistakes while representing myself on appeal that I am entitled to a new appeal.

5. I certify that I do not have the funds to pay for the necessary transcripts and I acknowledge that the Court will have access to any information regarding my finances.

6. I understand that a copy of the transcript will be made available to me by the State Public Defender. In order for my brief to be accepted for filing by the Court of Appeals (Supreme Court) the Supreme Court has said that I will have to return the entire transcript in an undamaged condition to the State Public Defender within 60 days, before the time for preparing, filing and serving the brief has expired. Failure to do so could result in the dismissal of my appeal. Additionally, failure to return the transcript, which is state property, is a violation of Rule 19 of the Inmate Discipline Regulations and I could be prosecuted within the prison disciplinary system. Any destruction, damage or alteration of the transcript is a violation of Rule 27 of the Inmate Discipline Regulations and I could be prosecuted within the prison disciplinary system.

I further understand that I cannot make the transcript available to any other inmate or other person, but it must remain in my personal possession until returned to the State Public Defender.

7. I understand that the Supreme Court has said no library services are required to be made available to me other than those available to other inmates in the institution.

8. I understand that all existing legal issues with respect to my present conviction and/or sentence must be raised by me in this court proceeding or they will be waived for the purpose of any further state or federal court proceedings.

9. I understand that I will not be permitted to be

personally present to argue my case to the appellate court, nor will any other person appear on my behalf.

10. I understand that Minn. Stat. §481.02, subd. 1, makes it a crime for any person who is not a lawyer to give legal advice or assistance to another person. Additionally, Rule 4 of the Inmate Discipline Regulations prohibits one inmate from performing unauthorized tasks for another inmate. I understand that I may be required to certify that the brief I file was prepared by me before my brief will be accepted for filing by the Clerk of Appellate Courts.

11. I understand that if an attorney, other than an attorney from the State Public Defender's Office or any other attorney retained at public expense, agrees to assist me that the attorney must first agree to represent me through exhaustion of all state court remedies. In that case I would return the transcript to the State Public Defender so arrangements could be made to get the transcript to the private attorney.

12. I understand that in waiving assistance of the State Public Defender on appeal, I am certifying that I am competent to make this decision, that I am not under the influence of any drug, that I am not suffering from any mental illness or defect that would prevent me from representing myself on appeal, and I understand that if I did not waive counsel, the State Public Defender would be appointed to represent me on appeal.

I hereby acknowledge that I have read or have had read to me the above-entitled waiver and that I have been advised by the

State Public Defender as to the risks involved in proceeding pro
se and that I understand those risks and am voluntarily waiving
my right to be represented by the State Public Defender.

Dated:

Appellant

Subscribed and sworn to before me :
this ____ day of _____ .

Notary Public

RECEIPT OF TRANSCRIPT

I, _____, acknowledge that I have received from the State Public Defender the _____ page transcript of the trial of State of Minnesota v. _____ and the transcripts of _____ proceedings.

I understand that the Supreme Court has said that the transcripts are state property and that the Supreme Court has also said that I must return them to the State Public Defender in an undamaged and complete condition before the appellate brief I have prepared will be accepted for filing by the Court of Appeals (Supreme Court). I understand that when I return the transcript to the State Public Defender, I will be given a return receipt and that the State Public Defender will file a duplicate receipt with the Court of Appeals (Supreme Court). I acknowledge that the pro se brief I have prepared will not be accepted for filing unless and until the State Public Defender files such a receipt with the appellate court.

I further understand that the Supreme Court has said that I cannot make the transcript available to any other inmate or other person, but it must remain in my personal possession until returned to the State Public Defender.

I agree to the above conditions and agree to return the transcript in an undamaged and complete condition to the State Public Defender on or before _____.

Dated:

Appellant

Subscribed and sworn to before me this _____ day of _____.

Notary Public

STATE OF MINNESOTA
IN COURT OF APPEALS (SUPREME COURT)

State of Minnesota,

Respondent,

vs.

REQUEST FOR DETERMINATION
OF COMPETENCY TO PROCEED
PRO SE ON APPEAL
D. C. File No.
Appellate Court
File No.

_____,
Appellant.

TO THE ABOVE-NAMED COURT:

I, _____, appellant in the above-entitled case, represent and state as follows:

1. My full name is _____. I am _____ years old, my date of birth is _____.

2. I have been convicted of _____, a felony (gross misdemeanor), in _____ County District Court. I was sentenced to _____ on _____, 19____.

3. I understand that I have the right to appeal my conviction to the Court of Appeals (Supreme Court), and that because I am indigent I have the right to be represented by the State Public Defender.

4. Notwithstanding my right to be represented on appeal by the State Public Defender, I wish to waive that right and represent myself on appeal pro se. I understand that by this waiver I am permanently waiving my right to the assistance of the attorneys in the State Public Defender's Office or any other

attorney retained at public expense. I understand that the Supreme Court has said that if I choose to act as my own attorney, I will not receive any legal advice, research, library materials, or other assistance from the State Public Defender in any state court proceeding to challenge the legality of my conviction and/or sentence. In other words, as to any challenge of this conviction and/or sentence, I am on my own.

I further understand that I will have to do the necessary legal work on this appeal by myself. This includes complying with the limited time schedules required for appeals, the legal requirements as to the substantive content of briefs and other documents, the size of briefs, the number of copies of briefs and other documents required to be filed, and proper service on the necessary parties. I understand that the State Public Defender will not be available to answer any questions I have in this regard, nor can I expect the Clerk of Appellate Courts to answer any such questions. I acknowledge that the Supreme Court has said that I will be held to the same standard of responsibility as a licensed attorney. I understand that I cannot later claim that because I made mistakes while representing myself on appeal that I am entitled to a new appeal.

5. I certify that I do not have the funds to pay for the necessary transcripts and I acknowledge that the Court will have access to any information regarding my finances.

6. I understand that a copy of the transcript will be made available to me by the State Public Defender. In order for my

brief to be accepted for filing by the Court of Appeals (Supreme Court) the Supreme Court has said that I will have to return the entire transcript in an undamaged condition to the State Public Defender within 60 days, before the time for preparing, filing and serving the brief has expired. Failure to do so could result in the dismissal of my appeal. Additionally, failure to return the transcript, which is state property, is a violation of Rule 19 of the Inmate Discipline Regulations and I could be prosecuted within the prison disciplinary system. Any destruction, damage or alteration of the transcript is a violation of Rule 27 of the Inmate Discipline Regulations and I could be prosecuted within the prison disciplinary system.

I further understand that I cannot make the transcript available to any other inmate or other person, but it must remain in my personal possession until returned to the State Public Defender.

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8. I understand that all existing legal issues with respect to my present conviction and/or sentence must be raised by me in this court proceeding or they will be waived for the purpose of any further state or federal court proceedings.

9. I understand that I will not be permitted to be personally present to argue my case to the appellate court, nor will any other person appear on my behalf.

10. I understand that Minn. Stat. §481.02, subd. 1, makes it a crime for any person who is not a lawyer to give legal advice or assistance to another person. Additionally, Rule 4 of the Inmate Discipline Regulations prohibits one inmate from performing unauthorized tasks for another inmate. I understand that I may be required to certify that the brief I file was prepared by me before my brief will be accepted for filing by the Clerk of Appellate Courts.

11. I understand that if an attorney, other than an attorney from the State Public Defender's Office or any other attorney retained at public expense, agrees to assist me that the attorney must first agree to represent me through exhaustion of all state court remedies. In that case I would return the transcript to the State Public Defender so arrangements could be made to get the transcript to the private attorney.

12. I understand that in waiving assistance of the State Public Defender on appeal, I am certifying that I am competent to make this decision, that I am not under the influence of any drug, that I am not suffering from any mental illness or defect that would prevent me from representing myself on appeal, and I understand that if I did not waive counsel, the State Public Defender would be appointed to represent me on appeal.

13. I understand that the Supreme Court has said that I will not be permitted to represent myself on appeal in this case if there is a question as to my competence to proceed pro se. I understand that the Supreme Court has also said that it is the

district court that will decide if I am competent to make this decision. I HEREBY REQUEST THE DISTRICT COURT TO REVIEW MY CASE AND MAKE A DETERMINATION AS TO MY COMPETENCE.

I hereby acknowledge that I have read or have had read to me the above-entitled waiver and that I have been advised by the State Public Defender as to the risks involved in proceeding pro se and that I understand those risks and am voluntarily waiving my right to be represented by the State Public Defender.

Dated:

Appellant

Subscribed and sworn to before me
this ____ day of _____.

Notary Public