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CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Appellee,	)	Filed September 9, 1977
vs.	)	
FAY MONROE VAN METER,	)	211
Appellant.	)	56971 & 57273

Combined appeals from Webster and Calhoun District Courts - James C. Smith, Judge.

Appeal from two convictions of falsely drawing and uttering a check, in violation of § 713.3, The Code, 1973.

AFFIRMED.

Jerry L. Jones, of Ames, counsel for appellant.

Richard C. Turner, Attorney General of Iowa, Ray Sullins, Assistant Attorney General, William J. Thatcher, Webster County Attorney, and David Wallenzein, Calhoun County Attorney, counsel for appellee.

Submitted to Allbee, C. J., Donielson, Snell, Oxberger and Carter, JJ.

DONIELSON, J.

Defendant-Van Meter appeals two convictions of falsely drawing and uttering a check, in violation of § 713.3, The Code, 1973, which were subsequently consolidated for purposes of this appeal. After a jury trial, Van Meter was found guilty in Webster District Court on November 9, 1973, and was sentenced to an indeterminate term of seven years. He was also found guilty by a Calhoun District Court jury on November 21, 1973, and was sentenced to a term not to exceed seven years.

Defendant initially contends that the trial court constitutionally erred in imposing appointed counsel upon him over his objections. He apparently asserts that he was entitled to proceed in his own behalf without the assistance of counsel if he so desired, and was also entitled to be informed of such right by the trial court. Van Meter was ultimately represented at both trials by Warren Bush, who was appointed after five separate attorneys had withdrawn as a result of either conflicts of interest, concern over payment of attorney's fees, or doubts about the defendant's sincerity and candor.

At no time, either prior to or during either trial, did Van Meter make any request to represent himself. Similarly, Van Meter did not request that Bush be dismissed as his attorney during either trial, although he did make such a request at the arraignment in the Calhoun County case. The trial judge there denied this request because he viewed it as merely a tactic designed to impede the progress of the criminal proceedings.

In support of his argument that he had a right to represent himself, defendant primarily relies upon Faretta v. California, 422 U.S. 806, 45 L.Ed.2d 562, 95 S.Ct. 2525 (1975), for the proposition that a defendant has a constitutional right, under the Sixth Amendment to the United States Constitution, to represent himself or be assisted by counsel. However, his reliance upon that case is misplaced for two reasons: first, weeks before trial, the defendant in Faretta had clearly and unequivocally declared to the trial judge that he desired to represent himself and did not want counsel, and second, the defendant there was unquestionably literate, competent, and understanding. 45 L.Ed.2d at 582. In the instant case, Van Meter did not ever ask to defend himself, and the records in both cases indicate that Bush

had recommended that a psychiatric evaluation be made to determine if Van Meter was competent. Further, the fact that both trial courts conducted pre-trial hearings to determine if such an evaluation would be appropriate or desired indicates that competency was an issue in both cases.

Although decided before Faretta, the Iowa case of State v. Smith, 215 N.W.2d 225 (Iowa 1974) is in accord. In a case remarkably similar to the instant one, the defendant in Smith had been unsuccessful in his relationships with various attorneys. At the time of trial, his fourth attorney requested permission to withdraw. The court held that the defendant's request to fire counsel was merely a tactic designed to delay trial. There, as here, the defendant asserted that his actions constituted an implicit expression of his desire to proceed pro se. In rejecting this argument, the court stated:

> "... We decline to hold a trial court has the affirmative obligation to formally advise an accused of his right to proceed without an attorney. ... The rule seems well settled that the right to proceed pro se is waived by the failure of an accused to make an unequivocal request to act as his own attorney." (citations omitted) 215 N.W.2d at 226.

Accord, State v. McCray, 231 N.W.2d 579, 580 (Iowa 1975); State v. Grady, 231 N.W.2d 869, 873 (Iowa 1975). In light of this language and the fact that Van Meter never affirmatively and unequivocally expressed a desire to represent himself, we reject his argument as being without merit.

Van Meter also contends that the trial court erred in failing to instruct the jury that his prior conviction should only be considered in terms of his credibility as a witness. However, he raises this issue for the first time on appeal. In a case presenting the same issue, State v. Lyon, 223 N.W.2d 193, 194 (Iowa 1974), the court held that no reversible error is committed where an instruction limiting the use of prior convictions to the evaluation of credibility is not given and no request for it or objection to its absence has been made at trial. In Lyon, as in the instant case, the defendant made no such request or objection, nor did he raise the issue in a motion for new trial. As the Lyon court stated, supra, at 194:

> "We have repeatedly held that ordinarily, matters not raised in the trial court, including constitutional questions, cannot be effectively asserted for the first time on appeal." (citations omitted)

Accord, State v. Lyles, 225 N.W.2d 124, 126-127 (Iowa 1975); State v. Smith, 228 N.W.2d 111, 112 (Iowa 1975). Since this issue was not raised in a timely and appropriate manner at trial, we will not consider it on appeal.

Finally, Van Meter asserts that the trial court in both the Webster and Calhoun County cases erred in refusing to sustain his motions for directed verdicts. After a careful review of the records of both cases, we find defendant's contention without merit. See, State v. Johnson, 196 N.W.2d 563, 566-567 (Iowa 1972); State v. Mathias, 216 N.W.2d 319, 321 (Iowa 1974); State v. Coburn, 244 N.W.2d 560, 563 (Iowa 1976).

Therefore, both convictions are affirmed.

AFFIRMED.