An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA11-694
NORTH CAROLINA COURT OF APPEALS

Filed: 7 February 2012

STATE OF NORTH CAROLINA

v. Guilford County
Nos. 09 CRS 79347, 80159-60, 80162, 80164-66

CYRUS ROMALE DAVIS
Defendant.

Appeal by defendant from judgments entered 2 September 2010 by Judge A. Moses Massey in Guilford County Superior Court. Heard in the Court of Appeals 17 January 2012.

Attorney General Roy Cooper, by Assistant Attorney General Amanda P. Little, for the State.

Russell J. Hollers, III for defendant-appellant.

HUNTER, Robert C., Judge.

Defendant Cyrus Romale Davis ("defendant") appeals from judgments entered upon his convictions for four counts of robbery with a dangerous weapon and three counts of second-degree kidnapping. After, careful review, we find no error.

On 6 August 2009, prior to defendant's trial, he sent a letter to his appointed counsel, Randall Jones, purporting to relieve Mr. Jones of his services. Judge V. Bradford Long

treated defendant's letter as a motion to dismiss Mr. Jones as counsel and conducted a hearing on the motion on 31 August 2009. At the hearing, defendant expressed some disagreement with Mr. Jones' handling of the case. Mr. Jones acknowledged the disagreement, but stated it had not risen to such a level that he was unable to represent defendant. Mr. Jones also indicated that defendant expressed a desire to retain counsel, but confirmed that he would continue to represent defendant in the interim.

Defendant then confirmed that he wished to hire his own attorney, but admitted that he was unable to afford one. Defendant stated that he was waiting for his family to help him financially and suggested that he would represent himself until that time. Thereafter, Judge Long dictated an order denying defendant's motion based on the conclusion that defendant had failed to demonstrate any reason why Mr. Jones should be relieved from representing him. Judge Long, however, indicated that defendant could seek to have Mr. Jones dismissed if he was able to retain counsel.

Mr. Jones continued to represent defendant throughout the pendency of the matter, which was tried at the 30 August 2010 session of Guilford County Superior Court. On 2 September 2010,

a jury found defendant guilty of four counts of robbery with a dangerous weapon and three counts of second-degree kidnapping. The trial court sentenced defendant to five consecutive terms of imprisonment. Defendant appeals.

Defendant's sole argument on appeal is that the Judge Long erred in denying his purported demand to represent himself. It is well-settled that a "defendant in a criminal proceeding has a right to handle his own case without interference by, or the assistance of, counsel forced upon him against his wishes." *State v. Mems*, 281 N.C. 658, 670-71, 190 S.E.2d 164, 172 (1972). "Before allowing a defendant to waive in-court representation by counsel, however, the trial court must insure that constitutional and statutory standards are satisfied." *State v. Thomas*, 331 N.C. 671, 673, 417 S.E.2d 473, 475 (1992). "First, waiver of the right to counsel and election to proceed *pro se* must be expressed 'clearly and unequivocally.'" *Id.* (quoting *State v. McGuire*, 297 N.C. 69, 81, 254 S.E.2d 165, 173, *cert. denied*, 444 U.S. 943, 62 L. Ed. 2d 310 (1979)). Our Supreme Court explained that "[g]iven the fundamental nature of the right to counsel, we ought not to indulge in the presumption that it has been waived by anything less than an express indication of such an intention." *State v. Hutchins*, 303 N.C.

321, 339, 279 S.E.2d 788, 800 (1981). "Second, the trial court must make a thorough inquiry into whether the defendant's waiver was knowingly, intelligently and voluntarily made." *State v. Hyatt*, 132 N.C. App. 697, 702, 513 S.E.2d 90, 94 (1999).

Defendant contends that his statements at the hearing on 31 August 2009 constituted an unequivocal request to represent himself. As further explained, we are not persuaded.

The hearing was conducted in response to defendant's request to have Mr. Jones removed as counsel, based on defendant's disagreement with Mr. Jones' handling of plea negotiations. At the hearing, defendant stated that he would hire an attorney at some unspecified time in the future with financial help from his family. When asked what he would do in the interim, defendant mentioned that he would represent himself. Given the context of the colloquy between defendant, Mr. Jones, and Judge Long, we do not find this passing mention of self-representation to rise to the level of a clear and unequivocal expression of defendant's desire to proceed *pro se*. *See State v. McGuire*, 297 N.C. 69, 82-83, 254 S.E.2d 165, 174 (1979) (holding that the defendant never clearly and unequivocally asserted his desire to proceed *pro se*, where he made a statement to the effect that he wanted to represent

himself at the same time he asked for new counsel to be appointed). Therefore, we conclude that Judge Long did not err in denying defendant's request to have Mr. Jones relieved as counsel.

No error.

Judges STEPHENS and ERVIN concur.

Report per Rule 30(e).