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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-114

No. COA20-844

Filed 15 February 2022

Onslow County, No. 16CRS051278

STATE OF NORTH CAROLINA

v.

TAMELL ALLAH WASHINGTON

Appeal by Defendant from judgment entered 27 February 2020 by Judge Henry L. Stevens in Onslow County Superior Court. Heard in the Court of Appeals 19 October 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Julianne L. Bradshaw, for the State-Appellee.

Dylan J.C. Buffum for Defendant-Appellant.

COLLINS, Judge.

¶ 1

Defendant Tamell Allah Washington appeals a judgment entered upon a jury's verdicts of guilty of felony possession of cocaine and misdemeanor possession of drug paraphernalia, and of attaining habitual felon status. Defendant argues that he was deprived of his Sixth Amendment right to counsel when the trial court determined that he had forfeited his right to counsel and compelled him to proceed to trial without

an attorney. We conclude that Defendant did not engage in egregious, dilatory conduct sufficient to forfeit his right to counsel. Accordingly, we vacate the judgment and remand for a new trial.

I. Factual Background

¶ 2 Defendant was arrested in February 2016 for felony drug possession. At Defendant's first appearance on 29 February 2016, he indicated that he would hire his own counsel and signed a waiver of assigned counsel. Defendant signed a second waiver of assigned counsel on 10 October 2016.

¶ 3 In May 2017, Anthony Popkin entered his appearance as Defendant's counsel. Defendant was indicted on 12 September 2017 for felony possession of cocaine and possession of drug paraphernalia. Defendant appeared in court with Mr. Popkin on 28 September 2017, at which time it was verified that the State had served Defendant with discovery and offered Defendant a plea, which he had rejected. The case was scheduled for trial on 13 December 2017. A superseding indictment was returned on 10 October 2017 for felony possession of cocaine and misdemeanor possession of drug paraphernalia, and Defendant was indicted for attaining habitual felon status.

¶ 4 In January 2018, Mr. Popkin moved to withdraw as counsel on grounds that Defendant had "failed to comply with the terms of his employment agreement" and that "a conflict [had] developed between [counsel] and the defendant as to the strategy for his cases that cause[d] the attorney-client relationship to be irretrievably broken."

STATE V. WASHINGTON

2022-NCCOA-114

Opinion of the Court

The trial court allowed the motion.

¶ 5 On 27 April 2018, Defendant signed a third waiver of assigned counsel. Handwritten on the bottom of the waiver form was the following note: “trial date to be set for 6/4/18 . . . [and] cont[inued] to 5/21/18 to address attorney.” The record includes a notice that the matter was scheduled for trial on 4 June 2018. The record is silent as to any proceedings that took place on 21 May or 4 June 2018. The record also includes a notice that the matter was scheduled for trial on 23 July 2018.

¶ 6 On 23 July 2018, Defendant completed an affidavit of indigency, requesting a court-appointed attorney. On that date, the court assigned Paul Castle to represent Defendant. The case was set for trial on 26 February 2019 but was continued by the State because, according to Mr. Castle’s notes, “the State’s key witness was not available.”

¶ 7 Mr. Castle moved to withdraw on 23 August 2019 after Defendant allegedly became upset during a trial preparation call and threatened to report Mr. Castle to the State Bar. Defendant told the trial court that Mr. Castle was pressuring him to take a plea agreement, but he wanted to have a trial. Defendant and Mr. Castle agreed that Mr. Castle be allowed to withdraw, and the trial court allowed the

motion.¹

¶ 8

On 29 August 2019, the trial court assigned Ernest J. Wright to represent Defendant. Mr. Wright notified Defendant in writing on 14 October 2019 that Defendant's case was "scheduled for the week beginning **December 9, 2019**[" that his "presence [wa]s ***mandatory*** on Monday, December 9th, 2019 at 9:00 am in Onslow County Superior Court[" that his "[f]ailure to appear [would] result in an immediate order for [his] arrest[" and advised him to "[p]lease contact our office if you have any questions." (Emphasis in original). Defendant called Mr. Wright's office in late November to inquire why they had not yet met to discuss the case. Defendant spoke with a staff person but did not speak with Mr. Wright.

¶ 9

Mr. Wright moved to withdraw on 6 December 2019. At the 10 December 2019 hearing on the motion, Mr. Wright stated,

[I]rreconcilable differences have come up between us, Judge, me and Mr. Washington, and I think he's better served, Judge, with another attorney. I was appointed to this case 29 August, and received discovery around 4 September in the case, Judge, and frankly, I'm not prepared to go, if the Court denies my motion but, more importantly, Judge, my dealings with Mr. Washington are such that I just cannot -- I can't zealously represent him.

¹ Judge Charles Henry originally denied Mr. Castle's motion to withdraw. Shortly thereafter, Judge Henry discovered he had a conflict and vacated his denial of the motion and withdrew from presiding over the case. Mr. Castle's motion was heard by Judge Stephan Futrell, who allowed the motion.

¶ 10 When the trial court asked Defendant to respond, Defendant stated that it was the first he had heard of Mr. Wright’s motion to withdraw, that he had neither seen nor spoken to Mr. Wright since Mr. Wright had been assigned to represent Defendant, and that he had spoken to Mr. Wright’s paralegal who told Defendant that it was not Mr. Wright’s “problem for me to come down there. It’s for me to set up an appointment to see him about my case.”

Mr. Wright responded,

[W]hen we were in court and I got appointed, the judge, from the bench, told Mr. Washington, please get up with your lawyer and set an appointment. That is my policy at my office. This last time, we called Mr. Washington and told him, please set an appointment. . . . [H]e basically became disrespectful and vile and very nasty with my staff, and I’m not going to take that disrespect, my staff nor me, and I’m just not going to do it, Judge.

¶ 11 Without arguing for or against Mr. Wright’s motion to withdraw, the State “ask[ed] the Court to find the [D]efendant has forfeited his right to a court-appointed attorney based on his actions and his behavior in dealing with his attorneys, and that this is a delay tactic to not proceed with his case.” The State acknowledged that Defendant was “[o]bviously . . . free to hire his own attorney [or] to represent himself[.]”

¶ 12 Defendant denied intentionally delaying the case and explained that he had differences of opinion with his attorneys, including feeling pressured by Mr. Castle to

take a plea deal, and that Mr. Wright had not attempted to meet with him. Defendant maintained that he was eager to have the matter tried.

¶ 13 The trial court allowed Mr. Wright’s motion to withdraw, and addressed Defendant as follows:

[T]his is the third court-appointed attorney that you’ve had that’s been allowed to withdraw. I’m going to find you have forfeited your right to court-appointed counsel in this matter, which leaves you the option of either hiring an attorney to represent you, okay, or representing yourself.

¶ 14 After some discussion with the State about where Defendant’s case was on the trial calendar, the court explained to Defendant as follows:

Mr. Washington, again, Mr. Wright is going to be released as your attorney. I found that, based on a review of the files and the fact that you’ve had three court-appointed attorneys, all of whom have been released, that you have forfeited your right to court-appointed counsel. You need to either represent yourself or hire an attorney. You also need to stay in touch with this Court to see what happens with [the case scheduled before yours] tomorrow because, should that case not go, for any reason, it’s the [S]tate’s plan to call your case for trial -- the oldest of the cases.

¶ 15 The trial court then told Defendant that he needed to be back in court the following morning at 9:30 am, 11 December 2019.²

² Judge Christopher W. Bragg signed a written order on 10 December 2019 wherein he found that “due to this being the third court appointed attorney to withdraw [] the defendant has forfeited his right to a court appointed attorney.” The order in the record on appeal has not been file-stamped.

¶ 16

The next morning, the matter of Defendant’s representation was revisited. The trial court addressed Defendant as follows: “Yesterday, I allowed Mr. Wright to withdraw and found that, based on he was the third court-appointed attorney that’s been allowed to withdraw, that you had forfeited your right to court-appointed counsel, okay?” Defendant advised the court that he had only had two court-appointed attorneys, as he had hired his first attorney. After considering this correction, the trial court set aside the previous day’s ruling that Defendant had forfeited his right to court-appointed counsel.³ After some discussion, Defendant indicated to the court that he intended to hire his own attorney. The following colloquy then took place:

THE COURT: You understand if you couldn’t afford to hire an attorney, I would consider appointing you one. Do you understand that?

THE DEFENDANT: Right.

THE COURT: And it’s your wish to hire your own attorney, is that correct?

THE DEFENDANT: Yes.

THE COURT: Okay. We’re going to give you a waiver of counsel. It’s a waiver of court-appointed counsel that says you need to hire your attorney, okay? You need to reach out as quickly as possible to do that.

³ Judge Bragg signed an order on 11 December 2019. The order in the record on appeal has not been file-stamped.

THE DEFENDANT: I understand that. I understand.

THE COURT: Not the week before court. I mean, like start today getting up with your -- getting up and trying to hire an attorney to represent you in this matter, okay? So we'll get you to sign a waiver and the clerk will swear that to you.

¶ 17 Defendant signed a waiver of assigned counsel, his fourth in this case. The trial court announced that it was continuing the case to 27 January 2020, and again addressed Defendant:

THE COURT: All right. Mr. Washington, this is about six weeks, okay. You need to get on that issue immediately. Once you do hire that attorney, you need to have the attorney contact the D.A.'s office immediately so they can get the discovery for you and get your case ready. It will be on the January 27th trial docket, all right?

THE DEFENDANT: All right.

THE COURT: All right. Thank you, sir.

¶ 18 On 27 January 2020, Defendant appeared in court and explained that he hoped to retain attorney Wally Paramore, but that Defendant needed more time to retain him. Mr. Paramore, who was present, confirmed that Defendant had spoken to him about the case but had not yet retained him, and told the trial court that he had not reviewed discovery. Defendant requested a continuance, which was allowed over the State's objection. The trial court continued the case to 24 February 2020 and told Defendant, "[i]f you're not prepared February the 24th with a hired attorney then you're probably going to have to represent yourself."

STATE V. WASHINGTON

2022-NCCOA-114

Opinion of the Court

¶ 19 On 24 February 2020, Defendant appeared in the court room for calendar call alone. The trial court asked Defendant if he had retained counsel and Defendant responded, “I was just talking to an attorney just then when [the bailiff] came out there and got me.” Defendant acknowledged that his trial might be called the next day and was told by the trial court to return at 9:30 am, “ready for trial.”

¶ 20 The following day, 25 February 2020, court was called to order at 9:30 am. Defendant’s case was called but Defendant was not present in the courtroom. Defendant’s bond was called at 9:34 am and an order was issued for his arrest. When Defendant arrived in the courtroom at some point prior to 10:46 am, he was taken into custody.

¶ 21 At 10:46 am, the State announced it was ready to proceed to trial. When asked if Defendant had an attorney, Defendant responded that he had one and that “he’s in Raleigh now.” The following exchange then took place:

THE COURT: Well, if he’s not here, ready to proceed, then we’ve got a problem because we’re going to proceed with it today.

THE DEFENDANT: Okay. Well then I need access to a law library. Then if y’all want me to do it, then I need access to a law library.

Before jury selection, the court engaged Defendant in the following colloquy:

THE COURT: . . . [T]he bottom line is it was first set for trial in 2017. It keeps getting put off because of the attorney situation and your getting new charges. The right

STATE V. WASHINGTON

2022-NCCOA-114

Opinion of the Court

to an attorney is a shield. It's a right for you to protect yourself. It's not a sword -- to be used as a sword to continually push things off.

THE DEFENDANT: That's not --

THE COURT: And so this matter is set for trial today. I understand that in the past the judge has found that you forfeited your right to an attorney, and then he withdrew that because there were only two court-appointed attorneys. But at this point, we're going to go forward.

THE DEFENDANT: Right.

THE COURT: I'm going to find that you have forfeited your right if you haven't retained an attorney. We're not doing this for the purpose of delaying. We're going to go forward with it.

. . . .

THE DEFENDANT: But -- but the way they making it seem like I'm -- y'all making it seem like I was pushing it off on delay on purpose. No, I don't have nothing to do with that. . . .

THE COURT: Okay. You had the opportunity to hire an attorney two years ago and you come in here today saying I've hired an attorney in Raleigh who is not here.

THE DEFENDANT: No, I'm not saying he's in Raleigh.

THE COURT: So, again, you're asking to continue it to hire an attorney.

THE DEFENDANT: No, Your Honor. I didn't say I hired an attorney in Raleigh. I said the attorney is in Raleigh doing a case.

THE COURT: Okay. Well, either way, we don't have an attorney here today --

THE DEFENDANT: Okay.

¶ 22 The trial court entered a written order finding that “due to the number of attorneys appointed and/or hired on this case and then subsequently fired on this case, [the] court orders Defendant’s right to an attorney forfeited.” The matter proceeded to trial with Defendant representing himself. The jury returned guilty verdicts on both charges and found Defendant had attained the status of habitual felon. The convictions were consolidated into one judgment and Defendant was sentenced to an active term of confinement of 23 to 40 months. Defendant appealed.

II. Discussion

¶ 23 Defendant argues that he was denied his Sixth Amendment right to counsel when the trial court compelled him to proceed to trial without an attorney. We agree with Defendant that the record does not support the trial court’s determination that Defendant forfeited his right to counsel.

¶ 24 This Court reviews de novo a trial court’s determination that a defendant forfeited counsel. *State v. Simpkins*, 373 N.C. 530, 533, 838 S.E.2d 439, 444 (2020). “Under a de novo review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal.” *State v. Williams*, 362 N.C. 628, 632-33, 669 S.E.2d 290, 294 (2008).

¶ 25 “A criminal defendant’s right to representation by counsel in serious criminal matters is guaranteed by the Sixth Amendment to the United States Constitution

and Article I, §§ 19, 23 of the North Carolina Constitution.” *State v. Blakeney*, 245 N.C. App. 452, 459, 782 S.E.2d 88, 93 (2016). In certain circumstances, a criminal defendant can forfeit this constitutional right through “egregious misconduct.” *Simpkins*, 373 N.C. at 535, 838 S.E.2d at 446.

¶ 26 In *Simpkins*, the Supreme Court acknowledged that it had “never previously held that a criminal defendant in North Carolina can forfeit the right to counsel” but that our Court had done so in many published decisions. *Id.* at 535, 838 S.E.2d at 445-46. The Supreme Court synthesized our precedent and set forth the following test to apply in forfeiture cases: “A finding that a defendant has forfeited the right to counsel requires egregious dilatory or abusive conduct on the part of the defendant which undermines the purposes of the right to counsel[.]” *Id.* at 541, 838 S.E.2d at 449.

¶ 27 The Court further divided this test into two distinct categories. First, forfeiture is appropriate if the defendant’s behavior is so threatening or abusive towards counsel that it makes “the representation itself physically dangerous.” *Id.* at 538, 838 S.E.2d at 447. In the present case, there is no evidence in the record that suggests Defendant threatened or physically abused his counsel. Thus, this analysis from *Simpkins* is inapplicable.

¶ 28 Second, the Court held that forfeiture is permissible when “the defendant is attempting to obstruct the proceedings and prevent them from coming to completion.”

Id. The Court offered examples of conduct that might result in a finding of obstruction, such as a defendant who “refuses to obtain counsel after multiple opportunities to do so, refuses to say whether he or she wishes to proceed with counsel, refuses to participate in the proceedings, or continually hires and fires counsel and significantly delays the proceedings.” *Id.*

¶ 29 Here, the record indicates that Defendant signed his first waiver of assigned counsel on 29 February 2016 and his second on 10 October 2016. Mr. Popkin was hired by Defendant and entered his appearance as Defendant’s counsel in May 2017. Mr. Popkin’s motion to withdraw because of a conflict regarding strategy was allowed in January 2018.

¶ 30 On 27 April 2018, Defendant signed his third waiver of assigned counsel. The waiver form notes that the matter was “cont[inued] to 5/21/18 to address attorney” and “trial date to be set for 6/4/18.” The record does not reflect if the matter came before the court on these dates. The record includes notice that the matter was scheduled for trial on 23 July 2018.

¶ 31 On 23 July 2018, Defendant requested a court-appointed attorney and Mr. Castle was assigned to represent Defendant. Mr. Castle’s motion to withdraw for Defendant’s alleged inability to cooperate with counsel was allowed in August 2019. Defendant again requested to be represented by appointed counsel and Mr. Wright was assigned on 29 August 2019 to represent Defendant. Mr. Wright moved to

withdraw on 6 December 2019, arguing that he could not zealously represent Defendant because Defendant had been rude to Mr. Wright’s staff. At the 10 December 2019 hearing on the motion, Mr. Wright acknowledged that he had yet to meet with Defendant and that he was “not prepared to go” to trial on that date. The trial court allowed Mr. Wright’s motion to withdraw.

¶ 32 At the same proceeding, the trial court asked Defendant, “[I]s it your desire to ask for another court-appointed counsel, or are you going to hire your own attorney?” Defendant replied, “I don’t know. I just don’t want the same thing to happen. You know what I mean?” After a brief colloquy with the trial court, Defendant stated that it would be in his “best interests” to hire his own attorney. Defendant signed his fourth waiver of assigned counsel. When Defendant appeared in court on 27 January 2020, Defendant explained that he hoped to retain Mr. Paramore, who was present, as his attorney but needed more time to retain him. The trial court then granted a continuance to 24 February 2020 and cautioned Defendant, “[i]f you’re not prepared February the 24th with a hired attorney then you’re probably going to have to represent yourself.”

¶ 33 On 24 February, the case came on for trial and Defendant appeared in court without counsel. The trial court stated that the case would be heard the following day. Defendant appeared again without counsel on 25 February 2020 and explained that he had contacted, but had not retained, an attorney. Defendant told the trial

court he was not prepared to represent himself and requested more time to secure counsel. The trial court denied the request and found that “due to the number of attorneys appointed and/or hired on this case and then subsequently fired,” Defendant had forfeited his right to counsel.

¶ 34 This record does not support a conclusion that Defendant engaged in “egregious dilatory or abusive conduct” in an “attempt[] to obstruct the proceedings and prevent them from coming to completion.” *Simpkins*, 373 N.C. at 538, 838 S.E.2d at 447. First, the trial court did not find and we do not discern from the record before us that as a result of “the number of attorneys appointed and/or hired on this case and then subsequently fired[,]” the proceedings were significantly delayed. *See Simpkins*, 373 N.C. at 538, 838 S.E.2d at 447.

¶ 35 Moreover, even assuming some delay resulted from Defendant’s desire to hire alternate counsel, “willful actions on the part of the defendant that result in the absence of defense counsel, standing alone” cannot support forfeiture. *State v. Patterson*, 272 N.C. App. 569, 575, 846 S.E.2d 814, 818 (2020) (citing *Simpkins*, 373 N.C. at 539, 838 S.E.2d at 448, n.7). Those willful actions amount to forfeiture only if “defendant is attempting to obstruct the proceedings and prevent them from coming to completion.” *Simpkins*, 373 N.C. at 538, 838 S.E.2d at 447.

¶ 36 Here, the record does not show that the proceedings were significantly delayed as a result of Defendant’s conduct, much less that Defendant was “attempting to

obstruct the proceedings and prevent them from coming to completion.” *See Blakeney*, 245 N.C. App. at 463-64, 782 S.E.2d at 95 (concluding that where “the case was three years old at the time of trial” but the delay was not the result of defendant’s actions, “defendant’s request for a continuance in order to hire a different attorney, even if motivated by a wish to postpone his trial, was nowhere close to the ‘serious misconduct’” previously held to constitute forfeiture of counsel). In fact, of the several dates during that time that the case had been put on the trial calendar, at least one was postponed at the State’s request. Furthermore, contrary to the trial court’s written order, none of the three attorneys who were hired by or appointed to represent Defendant were “subsequently fired” by Defendant. Instead, each attorney moved to withdraw, citing various reasons, and each attorney was allowed by the trial court to do so.⁴

¶ 37 Mr. Popkin withdrew because of disagreement with Defendant regarding strategy and Defendant’s “fail[ure] to comply with the terms of his employment agreement.” Mr. Castle likewise withdrew because of a disagreement with Defendant

⁴ While the trial court has the discretion to allow or deny an attorney’s motion to withdraw, *Benton v. Mintz*, 97 N.C. App. 583, 587, 389 S.E.2d 410, 412 (1990), and the propriety of the decisions in this case are not before us, an attorney may only withdraw from an action after making an appearance if there is “(1) justifiable cause, (2) reasonable notice to his clients, and (3) permission of the court.” *Wicker v. Wicker*, 268 N.C. App. 664, 666-67, 835 S.E.2d 874, 876 (2019) (quotation marks and citation omitted). Courts consider whether “withdrawal could prejudice the client, delay ongoing proceedings, or disrupt the orderly administration of justice.” *See id.*

regarding strategy. It is well-established that if an attorney and client disagree on strategy, the client's preference should prevail. *See* N.C. Rules of Prof'l Conduct R. 1.2(a) (stating that "a lawyer shall abide by a client's decisions concerning the objectives of representation"). This is especially true where an attorney and client disagree about whether a defendant should take a plea offer. *McCoy v. Louisiana*, 138 S. Ct. 1500, 1509 (2018) ("When a client expressly asserts that the objective of 'his defense' is to maintain innocence of the charged criminal acts, his lawyer must abide by that objective and may not override it by conceding guilt."); *see* N.C. Rules of Prof'l Conduct R. 1.2(a)(1) ("In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify."). Further, there is no record evidence that Mr. Wright worked on Defendant's case before seeking to withdraw. Mr. Wright arrived in court unprepared to proceed with trial and moved to withdraw without having met with Defendant, because Defendant allegedly was rude to Mr. Wright's staff.

¶ 38 The attorneys' withdrawals, whether based on Defendant's desire to plead not guilty and proceed to trial, against their advice; a personality conflict; or even Defendant's rudeness, could not be a basis for concluding that Defendant forfeited his right to counsel. *See, e.g., State v. Harvin*, 268 N.C. App. 572, 595, 836 S.E.2d 899, 912 (2019) (reversing the trial court's forfeiture ruling and granting defendant a new

trial after determining that defendant’s attorneys withdrew due to “differences related to the preparation of Defendant’s defense”(emphasis omitted)); *Patterson*, 272 N.C. App. at 575, 846 S.E.2d at 818 (concluding that the trial court’s ruling that defendant had forfeited his right to counsel was unsupported where two court-appointed attorneys withdrew because defendant was “uncooperative” with them, insisted they pursue a futile strategy, and had multiple “uncivil” conversations with them).

¶ 39 Additionally, Defendant did not “refuse[] to say whether he [] wishe[d] to proceed with counsel.” *Simpkins*, 373 N.C. at 538, 838 S.E.2d at 447. On the record, Defendant repeatedly asserted his desire to be represented by counsel, whether hired or appointed, and repeatedly tried—up until the day that the case came on for trial—to secure an attorney. “We are not here dealing with a situation where the record shows that a criminal defendant, capable of employing counsel, has attempted to prevent his trial by refusing to employ counsel” *State v. Bullock*, 316 N.C. 180, 186, 340 S.E.2d 106, 109 (1986); *cf. State v. Leyshon*, 211 N.C. App. 511, 519, 710 S.E.2d 282, 288-89 (2011) (finding that defendant forfeited his right to counsel where defendant “willfully obstructed and delayed the trial court proceedings by continually refusing to state whether he wanted an attorney or would represent himself”); *State v. Brown*, 239 N.C. App. 510, 519, 768 S.E.2d 896, 901 (2015) (finding that defendant forfeited his right to counsel where defendant refused to answer whether he wanted

assistance of counsel and “repeatedly and vigorously objected to the trial court’s authority to proceed”).

¶ 40

Furthermore, Defendant did not “refuse to participate in the proceedings.” *Simpkins*, 373 N.C. at 538, 838 S.E.2d at 447. On the contrary, Defendant engaged with the trial court throughout, appearing before the court numerous times between 2017 and 2020. “[None] of the [three] attorneys who requested to withdraw because of their relationship with Defendant . . . requested to withdraw because Defendant was refusing to participate in preparing a defense, or question the legitimacy of the proceeding against him[;] but instead due to differences related to the preparation of Defendant’s defense.” *Harvin*, 268 N.C. App. at 595, 836 S.E.2d at 912; *cf. State v. Boyd*, 200 N.C. App. 97, 102-03, 682 S.E.2d 463, 467 (2009) (affirming defendant’s forfeiture of his right to counsel where defendant repeatedly refused to communicate with his attorneys or assist in the preparation of his defense and insisted that the case not go to trial).

¶ 41

Under the analysis outlined in *Simpkins*, we conclude that Defendant has not engaged in egregious and dilatory conduct rising to the level of obstruction that would support a finding of forfeiture. Accordingly, Defendant did not forfeit his constitutional right to counsel, and it was error for the trial court to compel Defendant to proceed pro se at his trial. *See Simpkins*, 373 N.C. at 540-41, 838 S.E.2d at 449.

III. Conclusion

¶ 42 The trial court deprived Defendant of his constitutional right to counsel by concluding, in the absence of egregious and dilatory conduct by Defendant, that he had forfeited this right and compelling him to proceed to trial without an attorney. We vacate the judgment of the trial court and remand for a new trial.

VACATED AND REMANDED FOR NEW TRIAL.

Judges ZACHARY and MURPHY concur.

Report per Rule 30(e).