STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 6, 2007
v	No. 272632 Wayne Circuit Court
CHARLES BLUNT, Defendant-Appellant.	LC No. 06-004996-01

Before: Cavanagh, P.J., and Donofrio and Servitto, JJ.

PER CURIAM.

Defendant claims an appeal from his convictions of bank robbery, MCL 750.531, two counts of armed robbery, MCL 750.529, felon in possession of a firearm, MCL 750.224f, carrying a concealed weapon, MCL 750.227, second-degree fleeing a police officer, MCL 750.479a, and possession of a firearm during the commission of a felony, MCL 750.227b, entered after a bench trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Prior to trial, defendant requested that he be allowed to represent himself. The trial court denied defendant's request. The trial court found that defendant's request was voluntarily made, but questioned whether the request was knowingly and intelligently made, because defendant did not seem to have a clear grasp of the bases for excluding evidence and accepting or rejecting a plea offer. Moreover, the trial court found that defendant's self-representation could become unduly burdensome and inconvenient, noting that during a pretrial hearing defendant had requested assistance in securing the testimony of Saddam Hussein, and that defendant had been found by the Forensic Center to be a malingerer who manufactured false issues of mental illness.

The trial court convicted defendant and sentenced him as a fourth habitual offender, MCL 769.12, to concurrent terms of 40 to 80 years for bank robbery and armed robbery, two to five years for felon in possession of a firearm and carrying a concealed weapon, and one to four years for second-degree fleeing a police officer. These sentences were to be served consecutively to defendant's two-year term for felony-firearm. Defendant received no credit for time served, because he was on parole at the time he committed the instant offenses.

Defendant argues that his convictions of both bank robbery and armed robbery violate the constitutional prohibitions against double jeopardy. The Double Jeopardy clauses of the United States Constitution and the Michigan Constitution provide that an accused may not be put in

jeopardy twice for the same offense. US Const, Am V; Const 1963, art 1, § 15. The purpose of the prohibition against multiple punishments is to protect a defendant's interest in not receiving more punishment than was intended by the Legislature. *People v Calloway*, 469 Mich 448, 451; 671 NW2d 733 (2003). Under the Michigan Constitution, the validity of multiple punishments is determined under the federal same elements test set out in *Blockburger v United States*, 284 US 299, 304; 52 S Ct 180; 76 L Ed 306 (1932). If the Legislature has not clearly expressed its intent to impose multiple punishments, multiple offenses may be punished if each has an element that the other does not. However, if the Legislature has clearly intended to impose multiple punishments, the imposition of multiple sentences is permissible, even if the multiple offenses have the same elements. *People v Smith*, ___ Mich ___; ___ NW2d ___ (Docket No. 130353, decided June 20, 2007), slip op at 26. A double jeopardy claim presents a question of law that we review de novo. *People v Herron*, 464 Mich 593, 599; 628 NW2d 528 (2001).

The offense of bank robbery is committed by accessing a bank, safe, vault, or other depository containing valuables, for the purpose of stealing the contents thereof. The perpetrator need not be armed with a weapon. MCL 750.531; see also *People v Ford*, 262 Mich App 443, 458; 687 NW2d 119 (2004). The elements of armed robbery are: (1) an assault; and (2) a felonious taking of property from the victim's person or presence; (3) while the defendant is armed with a specified weapon. MCL 750.529; *Ford*, *supra*. The offenses of bank robbery and armed robbery each contain an element that the other does not. A perpetrator need not be armed in order to commit bank robbery. An armed perpetrator need not gain access to a vault or other depository in order to commit armed robbery. Pursuant to the test set out in *Blockburger*, *supra*, and adopted in *Smith*, *supra*, a defendant may be punished for both bank robbery and armed robbery. See *Ford*, *supra*.

Defendant argues that the trial court abused its discretion by denying his request that he be allowed to represent himself at trial. A criminal defendant's right to self-representation is implicitly guaranteed by the United States Constitution, US Const, Am VI, and is explicitly guaranteed by the Michigan Constitution, Const 1963, art 1, § 13, and statute, MCL 763.1. The right is not absolute, and several requirements must be met before a defendant may represent himself. *People v Russell*, 471 Mich 182, 190-191; 684 NW2d 745 (2004). First, the defendant's request to proceed in propria persona must be unequivocal. Second, the trial court must determine that the defendant's request is knowing, intelligent, and voluntary. The trial court must make the defendant aware of the dangers of self-representation. *People v Williams*, 470 Mich 634, 643; 683 NW2d 597 (2004). Third, the trial court must determine that the defendant's self-representation would not unduly disrupt, inconvenience, or burden the court. Fourth, the trial court must comply with the requirements of MCR 6.005 by advising the defendant of the charge, the maximum possible sentence and any mandatory minimum sentence, the risks of self-representation, and the opportunity to consult with an attorney. *Russell*, *supra*.

A trial court's finding whether waiver of counsel was knowing and intelligent is reviewed for clear error. *Williams*, *supra* at 640. The decision to permit a defendant to represent himself is reviewed for an abuse of discretion. *People v Hicks*, 259 Mich App 518, 521; 675 NW2d 599 (2003). The erroneous denial of the right to self-representation is a structural error requiring reversal. *United States v Gonzalez-Lopez*, ___ US ___; 126 S Ct 2557; 165 L Ed 2d 409, 419 (2006).

The trial court correctly found that defendant's request to represent himself was voluntary, and the trial court's finding that the request was not knowingly and intelligently made was not clearly erroneous. The lack of legal competence is not a sufficient reason, in and of itself, to deny a defendant's request that he be allowed to represent himself. *People v Anderson*, 398 Mich 361, 368; 247 NW2d 857 (1976). However, defendant assumed, erroneously, that he had the right to demand that he participate in a lineup simply because he contended that he had been falsely charged. Defendant also assumed, erroneously, that he could not be convicted of both bank robbery and armed robbery. Defendant's assertion that his successful representation of himself in the past was evidence that he was competent to do so in this case was disingenuous. In *People v Blunt*, 189 Mich App 643, 650-651; 473 NW2d 792 (1991), defendant's conviction was reversed on the ground that the trial court erroneously allowed defendant to represent himself. Finally, the trial court's finding that defendant's self-representation could become an undue burden on the court was not clearly erroneous in light of the fact that defendant had been found to be a malingerer, and had made an absurd request to call Saddam Hussein as a witness. The trial court did not abuse its discretion by denying defendant's request to represent himself at trial. *Hicks*, *supra* at 521.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Pat M. Donofrio
/s/ Deborah A. Servitto