

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ANGELO LAVELL SCOTT,

Defendant.

No. 3:08-cr-00057-JAJ

ORDER

This matter comes before the court pursuant to Defendant Angelo Lavell Scott's January 26, 2009, Motion to Appear Pro Se [Dkt. 64]. A hearing on this motion and other motions filed by Defendant was held on January 27, 2009. The court reserved ruling on defendant's motion for self-representation. For the reasons set out below, defendant's motion is denied.

The government filed a one-count indictment against defendant on June 10, 2008 [Dkt. 1]. The indictment charged defendant with conspiring to distribute at least 50 grams of a mixture and substance containing cocaine base in violation of 21 U.S.C. §§ 846 and 841(b)(1)(A) [Dkt. 1]. Trial in this matter was originally set for August 4, 2008 [Dkt. 11]. At the request of defendant, the court granted four continuances [Dkts. 17, 19, 21, 30]. A fifth continuance was granted after defendant's first appointed counsel withdrew on October 1, 2008 [Dkts. 24 and 25]. At a January 12, 2009, pretrial conference, counsel for defendant, attorney David Mullin, notified United States Magistrate Judge Thomas J. Shields that defendant was ready for trial [Dkt. 39]. On January 15, 2009, the court issued an order setting trial in this matter for Monday, February 2, 2009 [Dkt. 49].

On January 26, 2009, defendant filed a Motion to Appear Pro Se [Dkt. 64]. During a hearing on this matter, defendant stated that he wanted to represent himself because his counsel did not file a pretrial motion for an evidentiary hearing to establish the admissibility of co-conspirator statements at trial and drug quantity. Defendant stated he

was not prepared to argue motions to the court or commence trial on Monday, February 2, 2009.

“While the Sixth Amendment does not explicitly guarantee the right of self-representation, such a right is ‘necessarily implied by the structure of the Amendment.’” United States v. Edelman, 458 F.3d 791, 808 (8th Cir. 2006) (quoting Faretta v. California, 422 U.S. 806, 819 (1975)). “A defendant who wishes to waive his right to counsel, and thereby proceed pro se, must do so clearly and unequivocally.” United States v. Light, 406 F.3d 995, 998-99 (8th Cir. 2005) (quoting United States v. Webster, 84 F.3d 1056, 1062 (8th Cir. 1996)). “A defendant must knowingly and intelligently choose self-representation after being made aware of the ‘dangers and disadvantages of self-representation.’” Id. (quoting Reese v. Nix, 942 F.2d 1276, 1280 (8th Cir. 1991)).

“The right to self-representation, however, is not absolute.” Edelman, 458 F.3d at 808 (quoting Martinez v. Court of Appeal of Cal., 528 U.S. 152, 161 (2000)). A district court may deny a defendant’s request for self-representation in certain circumstances. Edelman, 458 F.3d at 808.¹ Circumstances to be considered by a district court are the timeliness of the defendant’s request, whether the defendant “deliberately engages in serious and obstructionist misconduct[]”, and the defendant’s ability to make a knowing and intelligent waiver of the right to counsel. Id. (quoting Faretta, 422 U.S. at 834). “The right [to self-representation] does not exist . . . to be used as a tactic for delay, for disruption, for distortion of the system, or for manipulation of the trial process.” Id. at 808-09 (quoting United States v. Frazier-El, 204 F.3d 553, 560 (4th Cir. 2000)).

¹ In Edelman, the Eighth Circuit affirmed the district court’s denial of a defendant’s pre-trial request for self-representation. The district court found that the request was untimely because the defendant filed it four or five days before the scheduled trial date. Noting several continuances of the case, the district court also indicated its belief that the defendant was attempting to delay the start of the trial by filling the request. Edelman, 458 F.3d at 808-09.

The court finds that defendant's request for self-representation is both untimely and an attempt to delay the start of trial. Defendant filed his request for self-representation just one week before the scheduled trial date. The timing of defendant's request, taken together with the five previous continuances and Mr. Mullin's January 12, 2009, statement that defendant was ready for trial, suggest that defendant's request is a dilatory tactic. See Hamilton v. Goose, 28 F.3d 859, 862 (8th Cir. 1994) (stating that the timing of the defendant's request to represent himself three weeks before the scheduled trial date suggested the defendant was attempting to delay the start of the trial).

Defendant's stated reasons for his desire to represent himself appear to be pretextual. The defendant is unhappy with motions filed by his attorney but could not identify additional motions with any arguable merit. In United States v. Darden, the Eighth Circuit determined that a preliminary hearing is not required to determine the admissibility of coconspirators' statements at trial. 70 F.3d 1507, 1528 (8th Cir. 1995). The Eighth Circuit Court of Appeals held that the choice of procedure to determine the admissibility of co-conspirators' statements remains within the discretion of the district court. The defendant also wanted to file a motion to clarify the weight of drugs to be offered at trial. At hearing, the government informed defendant of the drug quantities it intends to offer into evidence at trial.

"Trial courts must be allowed 'to distinguish between a manipulative effort to present particular arguments and a sincere desire to dispense with the benefits of counsel.'" Edelman, 458 F.3d at 809 (quoting Frazier-El, 204 F.3d at 560). For the reasons set out above, the court finds that defendant's request for self-representation is untimely and designed to delay the start of trial. Defendant's request for self-representation is denied.

Upon the foregoing,

IT IS ORDERED that defendant's Motion to Appear Pro Se [Dkt. 64] is denied.

DATED this 28th day of January, 2009.



JOHN A. JARVEY
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF IOWA