

A defendant was charged with armed robbery. The defendant had only an eighth-grade education and no legal knowledge.

At a pretrial hearing, the defendant told the judge that he was unhappy with the public defender who had been appointed to represent him and that he wanted the judge to appoint another lawyer. The judge refused to appoint another lawyer, telling the defendant, with no further explanation, that his only other choice was to represent himself. The defendant said that he would represent himself at trial then, as "anything [was] better than having this lawyer."

The defendant did not raise the subject again, and he represented himself at trial. After hearing overwhelming evidence of the defendant's guilt, the jury convicted him of armed robbery. On appeal, the defendant has requested a new trial on the ground that he was deprived of his right to counsel.

Should the appellate court grant the defendant's request?

- A. No, because the defendant voluntarily waived his right to counsel.
- B. No, because the trial court's error was harmless in light of the overwhelming evidence.
- C. Yes, because the defendant was not capable of effectively representing himself.
- D. Yes, because the record does not establish a valid waiver of the right to counsel.

## Explanation:

### Waiver of Sixth Amendment right to counsel

<b>Knowing</b>	Aware of right to counsel
<b>Intelligent</b>	Understands nature of charges Knows range of punishment Recognizes disadvantages of self-representation
<b>Voluntary</b>	Waiver is given freely Not choosing self-representation over incompetent counsel

In *Faretta v. California*, the Supreme Court held that a criminal defendant may only **waive his/her Sixth Amendment right to counsel** and **engage in self-representation** if the waiver is made **knowingly, intelligently, and voluntarily**. To ensure that this standard is met, a judge must confirm on the record that the defendant is both:

aware of the nature of the charges, the range of punishment, and the disadvantages of self-representation *and*

not being forced to choose between incompetent counsel and self-representation.

Here, the defendant told the judge he was unhappy with his public defender and wanted another lawyer. The judge then forced the defendant to keep his current counsel or represent himself. Therefore, the defendant's waiver and subsequent trial were invalid, and a new trial should be granted.

**(Choice A)** The defendant did *not* voluntarily waive his right to counsel since the judge forced the defendant to choose between his existing counsel and self-representation.

**(Choice B)** Most trial court errors are reviewed on appeal for harmless error—ie, whether the error was so damaging that it caused an incorrect judgment. But **structural errors** (eg, deprivation of the right to counsel) are never harmless since they affect the entire framework of a trial and render it fundamentally unfair. Therefore, they require automatic reversal on appeal.

**(Choice C)** The defendant likely was not capable of effectively representing himself since he has an eighth-grade education and no legal knowledge. But a defendant has the right to engage in self-representation even if he/she cannot do so effectively, so this is not a basis for granting a new trial.

### Educational objective:

A defendant can only waive his/her Sixth Amendment right to counsel and engage in self-representation if the trial court confirms that the defendant (1) knows the nature of the

charges, range of punishment, and disadvantages of self-representation and (2) is not being forced to choose between incompetent counsel and self-representation.

### **References**

U.S. Const. amend. VI (right to assistance of counsel).

*Faretta v. California*, 422 U.S. 806, 834–35 (1975) (holding that right to self-representation is implicit in the Sixth Amendment but waiver of counsel must be knowing, intelligent and voluntary).

*Johnson v. Zerbst*, 304 U.S. 458, 465 (1938) ("[The Sixth Amendment] imposes the serious and weighty responsibility upon the trial judge of determining whether there is an intelligent and competent waiver by the accused").

Copyright © 2019 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.