

People v. Lesley, 2018 IL 122100, ¶¶ 36-38, 123 N.E.3d 1060, 1069

However, a defendant may relinquish his right to counsel in three ways:

1. WAIVER

A waiver is an intentional relinquishment or abandonment of a known right or privilege.

2 FORFEITURE

Regarding forfeiture, our appellate court has held that a defendant may forfeit his right to counsel.

Forfeiture is defined as the failure to make the timely assertion of the right. Forfeiture results in the loss of a right regardless of the defendant's knowledge thereof and irrespective of whether the defendant intended to relinquish the right.

3. WAIVER BY CONDUCT

Waiver of counsel can be implied from the circumstances of the case.

Waiver of the right to counsel must depend, in each case, upon the particular circumstances of that case.

WAIVER BY CONDUCT

On appeal, the State argues that defendant was warned that he stood to lose his right to counsel if his conduct continued. The State maintains that on November 21, 2013, defendant was made aware that he would have to work with the public defender, hire private counsel, or represent himself. According to the State, the record thus establishes that defendant was warned that if he could not get along with appointed counsel, he had two other choices.

The State contends that defendant's waiver by conduct may be established by inference from the facts. **The State maintains that defendant's refusal to get along with appointed counsel and repeated failure to retain private counsel demonstrated waiver by conduct of his right to counsel.** Defendant responds that the circuit court failed to warn him that he could lose his right to counsel through his continued conduct. We reject defendant's contention that no warning was given.

Waivers by conduct are not “waiver” cases in the true sense of the word. In many situations there will be defendants who engage in dilatory conduct but who vehemently object to being forced to proceed pro se.

These defendants cannot truly be said to be “waiving” their rights because although they are voluntarily engaging in misconduct knowing what they stand to lose, they are not affirmatively requesting to proceed pro se.

(See *United States v. Fazzini*, 871 F.2d 635, 642 (7th Cir. 1989) (defendant who was warned about consequences of dilatory conduct insisted he was not waiving his right to counsel).

Waiver by conduct requires that a defendant receive a warning about the consequences of his conduct, including the risks of proceeding pro se.

The key to waiver by conduct is misconduct occurring after an express warning has been given to the defendant about the defendant's behavior and the consequences of proceeding without counsel.

A defendant who engages in dilatory conduct after having been warned that such conduct will be treated as a request to proceed pro se cannot complain that a court is depriving him of his right to counsel.