IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-30304

Summary Calendar

RICKY L. LAZZELL,

Petitioner-Appellant,

versus

JOHN WHITLEY, in his capacity as Warden of the Louisiana State Penitentiary at Angola, and RICHARD P. IEYOUB, Attorney General, State of Louisiana

Respondents-Appellees.

Appeal from the United States District Court
for the Eastern District of Louisiana
(CA-94-60-N)

(February 8, 1995)

Before GARWOOD, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:*

A Louisiana jury convicted Ricky L. Lazzell of aggravated rape, aggravated burglary, and aggravated crimes against nature. During arraignment, Lazzell told the court that he wanted to represent himself. The court responded by appointing counsel for

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*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Lazzell, but informing him that if he wished to represent himself, he would at least have "an attorney present throughout all stages of the proceedings." At trial, Lazzell permitted the appointed counsel to proceed with his defense.

In this appeal from the district court's denial of his petition for writ of habeas corpus, Lazzell argues that he was denied the right to self-representation or, alternatively, that the trial court failed to inquire whether his waiver of counsel was knowing and voluntary. The transcript of the arraignment is plain -- the trial court did not prevent Lazzell from representing himself, but rather ensured that should he choose such a path, an attorney would be present to act as an advisor. Lazzell's argument that he was denied his right to self-representation in violation of the Sixth and Fourteenth Amendments is without merit.

Before granting a self-representation request, "the trial judge must caution the defendant about the dangers of such a course of action so that the record will establish that 'he knows what he is doing and his choice is made with eyes open.'" United States v. Martin, 790 F.2d 1215, 1218 (5th Cir.) (quoting Faretta v. California, 422 U.S. 806, 835 (1975)), cert. denied, 479 U.S. 868 (1986); but see Neal v. Texas, 870 F.2d 312, 315 n.3 (5th Cir. 1989) (no particular hearing or form of dialogue required). However, such warnings were unnecessary in this case because Lazzell waived his right to self-representation by allowing stand-by counsel to proceed with his defense. Even if a defendant asserts his right to represent himself, he may be deemed to have

waived that right if his "subsequent conduct indicat[es] he is vacillating on the issue or has abandoned his request altogether." Brown v. Wainwright, 665 F.2d 607, 611 (5th Cir. 1982). Lazzell's second contention, therefore, is also without merit.

The decision of the district court is AFFIRMED.