

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

UNITED STATES OF AMERICA)
)
 v.) 1:11-cr-00185-JAW
)
JAMES STILE)

ORDER ON MOTION FOR LEAVE TO FILE PRO SE MOTION

On May 8, 2013, James Stile acting pro se moved for permission “to proceed as a pro-se litigant as his attorney has not filed any suppression motions that he has been requested.” *Mot. for Leave to File Pro-Se Mot.* at 1 (ECF No. 168). Mr. Stile asserts that “this motion is submitted in a timely manner as a pretrial motion.” *Id.*

Mr. Stile’s motion presents a number of issues but the most urgent is the status of his representation by counsel. First, Mr. Stile is currently represented by court-appointed defense counsel, William Maselli. Mr. Stile has the right, if he chooses to do so, to represent himself. *Faretta v. California*, 422 U.S. 806, 819-20 (1975). However, as the First Circuit recently reiterated, “[b]ecause of the disadvantages to a defendant that inure from pro se representation, a defendant must knowingly and intelligently waive his right to counsel before he may be permitted to proceed pro se.” *United States v. Francois*, No. 11-2195, 2013 U.S. App. LEXIS 7972, at *17 (1st Cir. Apr. 22, 2013) (quoting *United States v. Kneeland*, 148 F.3d 6, 11 (1st Cir. 1998)) (internal quotation marks omitted). Mr. Stile has recently been filing documents with the Court, identifying himself as pro se, but

under the law, before he is allowed to act pro se, the Court is obligated to hold a hearing and warn Mr. Stile “of the dangers and disadvantages of self-representation, so that the record will establish that [the defendant] knows what he is doing and his choice is made with eyes open.” *Id.* at *18 (quoting *United States v. Proctor*, 166 F.3d 396, 402 (1st Cir. 1999)) (internal quotation marks omitted). The Court has not yet held this required hearing and until it does so, Mr. Stile will not be allowed to act as his own lawyer.

In situations like this, there are three realistic alternatives: (1) Mr. Stile may continue to be represented by Attorney Maselli; (2) Mr. Stile may—with the Court’s permission after a hearing—assume his own defense and represent himself; and, (3) the Court may allow Mr. Stile to represent himself and appoint Attorney Maselli to act as standby counsel.

A fourth alternative, hybrid representation, does not appear viable in this case. Hybrid representation occurs when a defendant represents himself on some matters and an attorney represents him on others. Although hybrid representation is not forbidden, it is “to be employed sparingly and, as a rule, is available only in the district court’s discretion.” *United States v. Campbell*, 61 F.3d 976, 981 (1st Cir. 1995) (quoting *United States v. Nivica*, 887 F.2d 1110, 1121 (1st Cir. 1989)). As the First Circuit wrote, “[a] party has a right to represent himself or to be represented by an attorney, but he cannot have it both ways. There is no right to hybrid representation in the federal courts.” *McCulloch v. Velez*, 364 F.3d 1, 5 (1st

Cir. 2004). What is happening in this case right now is unauthorized hybrid representation.

Where a criminal defendant is represented by counsel and files a motion with the Court, the Court has adopted a procedure to determine whether the pro se motion should be acted upon. The Court sends the motion to counsel and inquires as to whether counsel wishes to adopt the motion. If so, the motion is docketed; if not, the motion is not. Typically, the Court will attempt to determine whether the filing by the defendant means that the defendant wishes to exercise self-representation.

Here, it is apparent that the question of representation has been raised by Mr. Stile's recent and numerous pro se filings and the Court must act quickly to resolve this issue. Even though Mr. Stile recently wrote the Court and, in very direct language, demanded that he not be brought to Court before he filed his contemplated motions to suppress because travel to and from his place of incarceration would divert his attention from the task of motion-filing, the Court is scheduling a hearing to determine the status of his representation. It makes little sense for Mr. Stile to prepare motions he is not allowed to file.

So that Mr. Stile may prepare for the hearing, the Court will ask him whether he wishes to continue to have Mr. Maselli represent him or whether he wishes to represent himself. If he says that he wishes to represent himself, the Court will review with him the dangers of self-representation and will warn him against self-representation.

Accordingly, the Court ORDERS the case scheduled for a hearing to determine the status of representation and it DISMISSES without prejudice the Motion for Leave to File Pro Se Motion (ECF No. 168).

SO ORDERED.

John A. Woodcock, Jr.
JOHN A. WOODCOCK, JR.
CHIEF UNITED STATES DISTRICT JUDGE

Dated this 9th day of May, 2013

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