MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI

RESPONDENT,

v.

RANDY G. TETER

APPELLANT.

DOCKET NUMBER WD83999

DATE: November 9, 2021

Appeal From:

Cole County Circuit Court
The Honorable Patricia S. Joyce, Judge

Appellate Judges:

Division Three: Lisa White Hardwick, Presiding Judge, Gary D. Witt, Judge and Edward R. Ardini, Jr., Judge

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Attorneys:

Daniel N. McPherson, Jefferson City, MO, for respondent.

James C. Egan, Columbia, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI, RESPONDENT,
v.
RANDY G. TETER, APPELLANT.

WD83999 Cole County

Before Division Three Judges: Lisa White Hardwick, Presiding Judge, Gary D. Witt, Judge, and Edward R. Ardini, Jr., Judge

Randy Teter appeals the judgment of the Circuit Court of Cole County convicting Teter of one count of kidnapping in the first degree and one count of committing violence against an employee of the Department of Corrections. Teter raises two points on appeal: (1) the trial court erred in failing to conduct a *Faretta* hearing to ensure Teter's waiver of counsel was knowing, intelligent, and voluntary; and (2) the trial court erred in ordering Teter's sentence to run consecutively to Teter's prior sentence in violation of a plea agreement previously entered into with the State in a separate matter.

AFFIRMED.

Division Three holds:

Teter's waiver of trial counsel at the pre-trial hearing was knowing, voluntary, and intelligent. In Teter's motion to waive counsel, he referenced previous criminal trials in which he represented himself in felony charges in the same circuit and was convicted and sentenced. At the pre-trial hearing in this case, Teter stipulated the trial court could take judicial notice of the *Faretta* hearings in his previous case. Teter cannot complain of a procedure adopted by the trial court at his own invitation. *See State v. Winters*, 623 S.W.3d 746, 753 (Mo. App. W.D. 2021). The trial court also read Teter his rights in open court and informed Teter a guilty verdict could result in prison confinement. Teter affirmed he wished to represent himself at trial. Teter also signed a written waiver of counsel form mandated by section 600.051, RSMo. Given Teter's background, experience, and conduct, including representing himself in previous criminal trials in which he was convicted and sentenced to prison confinement, it is hard to imagine anything that could be presented in a hearing that would have provided Teter more effective knowledge of the dangers of self-representation.

The trial court did not err in ordering Teter's sentence to run consecutively to prior sentences. At the sentencing hearing, Teter drew the trial court's attention to the plea agreement he entered into with the State in a previous criminal matter. This plea agreement required the State to recommend any sentence arising from this case to run concurrently with previous terms of incarceration. However, the trial court is not bound by sentencing recommendations from either party in a nonbinding plea. *See State v. Lowe*, 674 S.W.2d 262, 265-66 (Mo. App. E.D.

1984). Because trial courts may or may not follow sentencing recommendations, Teter cannot point to any claim of error by the trial court. If the State breached its plea agreement with Teter, Teter may seek relief through the proper postconviction process. *See Eckhoff v. State*, 201 S.W.3d 52, 55 (Mo. App. E.D. 2006). But this court is limited to addressing claims of error by the trial court, not by an opposing party. Rule 84.04(d)(1). And the trial court did not err in ordering Teter's sentence to run consecutively to previous terms of incarceration.

Opinion by: Gary D. Witt, Judge November 9, 2021

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