

LEXSEE 2000 U.S. App. LEXIS 25397

**United States of America, Appellee, v. Karl L. Foster, also known as Karl Act,
Appellant.**

No. 98-2337

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

2000 U.S. App. LEXIS 25397; 86 A.F.T.R.2d (RIA) 6558

October 4, 2000, Submitted

October 12, 2000, Filed

NOTICE:

[*1] RULES OF THE EIGHTH CIRCUIT COURT OF APPEALS MAY LIMIT CITATION TO UNPUBLISHED OPINIONS. PLEASE REFER TO THE RULES OF THE UNITED STATES COURT OF APPEALS FOR THIS CIRCUIT.

26 U.S.C. § 7212(a), for which the district court n1 sentenced him to an aggregate of seventy-eight months imprisonment and three years supervised release. We reject each of his arguments and affirm.

SUBSEQUENT HISTORY:

Reported in Table Case Format at: *2000 U.S. App. LEXIS 30519*.

n1 The Honorable James M. Rosenbaum, United States District Judge for the District of Minnesota.

PRIOR HISTORY:

Appeal from the United States District Court for the District of Minnesota.

At an April 16, 1997 motion hearing, Foster was examined in accordance with *Faretta v. California*, 422 U.S. 806, 45 L. Ed. 2d 562, 95 S. Ct. 2525 (1975), after which he knowingly, intelligently, [*2] and unequivocally waived his constitutional right to counsel. The district court was not required to re-examine Foster when he discharged his standby counsel on the first day of trial, because he had no constitutional right to standby counsel. See *United States v. Einfeldt*, 138 F.3d 373, 378 (8th Cir.), cert. denied, 525 U.S. 851, 142 L. Ed. 2d 102, 119 S. Ct. 126 (1998). For this reason, Foster also cannot claim ineffective assistance of standby counsel. See *United States v. Morrison*, 153 F.3d 34, 55 (2d Cir. 1998).

DISPOSITION:

AFFIRMED.

COUNSEL:

For UNITED STATES OF AMERICA, Plaintiff - Appellee: William B. Michael, Jr., U.S. ATTORNEY'S OFFICE, Minneapolis, MN.

For KARL L. FOSTER, Defendant - Appellant: Karl L. Foster, Duluth, MN.

JUDGES:

Before BEAM, FAGG, and LOKEN, Circuit Judges.

OPINION:

PER CURIAM.

Karl Foster appeals his tax-offense convictions for violations of 18 U.S.C. § 371, 26 U.S.C. § 7206(2), and

The district court did not clearly err in determining that Foster was competent to proceed with his defense after he suffered an injury on November 18. See *United States v. Hinton*, 218 F.3d 910, 912 (8th Cir. 2000) (standard of review). The court was entitled to discount Foster's proclamation of incompetence and his doctor's cursory opinion, in favor of the opinion of a doctor who conducted an independent medical examination, as well as the court's own observations of Foster's ability to

participate in his defense. See *James v. State of Iowa*, 100 F.3d 586, 589 (8th Cir. 1996).

Foster's [*3] argument that IRS agents lacked authority to investigate his tax offenses is without merit, see *United States v. Rosnow*, 977 F.2d 399, 409 n.17, 413 (8th Cir. 1992) (per curiam), cert. denied, 507 U.S. 990 (1993), as is his argument that the IRS agents were not authorized to testify before the grand jury or at trial, see Fed. R. Evid. 601 ("Every person is competent to be a witness except as otherwise provided in these rules.").

Finally, the indictment sufficiently charged each of Foster's offenses. See *United States v. Ervasti*, 201 F.3d 1029, 1037-38 (8th Cir. 2000) (§ 371 charge); *United States v. Warner*, 428 F.2d 730, 735 (8th Cir.) (§ 7206(2) charge), cert. denied, 400 U.S. 930, 27 L. Ed. 2d 191, 91 S. Ct. 194 (1970); *United States v. Williams*, 644 F.2d 696, 699, 701 (8th Cir.) (§ 7212(a) charges), cert. denied, 454 U.S. 841 (1981).

Accordingly, we affirm the judgment of the district court.

