

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz.R.Sup.Ct. 111(c); ARCAP 28(c);
Ariz.R.Crim.P. 31.24



DIVISION ONE
FILED: 09/27/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

**IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE**

STATE OF ARIZONA,) 1 CA-CR 11-0905
)
Appellee,) DEPARTMENT B
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ANGELO RAPHAEL REA,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2010-161566-001DT

The Honorable Robert E. Miles, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General Phoenix
by Kent E. Cattani, Chief Counsel,
Criminal Appeals/Capital Litigation Division
and Barbara A. Bailey, Assistant Attorney General
Attorneys for Appellee

Marty Lieberman, Office of the Legal Defender Phoenix
by Cynthia Dawn Beck, Deputy Legal Defender
Attorneys for Appellant

H O W E, Judge

¶1 Angelo Raphael Rea appeals his convictions and sentences for possession of dangerous drugs and possession of

drug paraphernalia. He argues that the trial court erred in failing to grant a continuance to allow him to be represented by retained counsel of his choice. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Rea was charged on November 23, 2010, with possession of dangerous drugs, a class 4 felony, and possession of drug paraphernalia, a class 6 felony. The trial court appointed counsel to represent Rea because he was indigent. Counsel from the Office of the Legal Defender represented Rea at all pretrial, trial and sentencing proceedings.

¶3 From November 2010 to March 15, 2011, the court continued the preliminary hearing five times, three at Rea's request and two because Rea failed to appear at court proceedings. On March 29, 2011, the court granted Rea's request for a sixth continuance of one week so that he could retain private counsel. Meanwhile, Rea's appointed counsel filed motions and sought discovery in preparation of trial, and Rea expressed no dissatisfaction with his appointed counsel and took no action to retain private counsel.

¶4 At the trial management conference on September 14, 2011, the State offered a plea agreement to Rea, and Rea asked for a one-week continuance to get his affairs in order before accepting the plea. The court granted a continuance and reset

the trial management conference for September 21, 2011, and the trial for September 28, 2011. At the trial management conference a week later, however, Rea rejected the plea offer and asked to hire private counsel. The court set a status conference for two days later to allow him to explain why he wanted new counsel.

¶15 At the status conference, Rea stated that he wanted new counsel because his appointed counsel should have filed a motion to suppress, should have communicated with him more consistently, and did not do "what [he] need[ed] her to do." The court denied his request, explaining that he did not show that there was a total breakdown in his relationship with appointed counsel, that new counsel would not face the same issues in dealing with him that appointed counsel faced, and that appointment of new counsel would not inconvenience the parties and the witnesses.

¶16 On the first day of trial, Rea requested a one-day continuance to retain private counsel. The State did not object, and the court reset the trial for the next day. The next day, the court reset the trial for October 3, 2011, noting that Rea's "efforts to retain counsel" were still underway.

¶17 On October 3, 2011, Rea appeared at trial with private counsel, who stated that Rea had retained him just minutes before trial. Private counsel stated that he was not prepared

to try the case that day and asked for a continuance of "a couple of weeks" to allow him to prepare for trial. The court denied the request, and Rea's trial proceeded with his appointed counsel. Rea remained for trial that day but did not appear the following two days; he was tried and convicted in absentia as charged. Rea was subsequently arrested and sentenced to concurrent mitigated terms of eight years' imprisonment on Count 1, and three years' imprisonment on Count 2, with credit for 61 days of presentence incarceration.

¶8 Rea timely appealed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1), 13-4031 and -4033(A)(1) (Westlaw 2012).¹

DISCUSSION

¶9 Rea argues that the trial court violated his Sixth Amendment right to obtain counsel of his choice by denying a continuance to allow his newly retained counsel to prepare for trial. We review a court's interpretation of constitutional rights de novo, *State v. Aragon*, 221 Ariz. 88, 90, ¶ 4, 210 P.3d 1259, 1261 (App. 2009), but review for an abuse of discretion a trial court's ruling on a motion to continue trial to obtain

¹ Absent material revisions to this decision, we cite the current version of applicable statutes.

particular counsel, *State v. Hein*, 138 Ariz. 360, 368, 674 P.2d 1358, 1366 (1983).

¶10 We find no violation. A defendant has the right to assistance of counsel, see *Gideon v. Wainwright*, 372 U.S. 335 (1963), which includes the right to be represented by counsel of one's choice, *Powell v. Alabama*, 287 U.S. 45, 53 (1932). But the right to obtain counsel of one's choice must be balanced against the smooth and efficient administration of justice. *Hein*, 138 Ariz. at 368, 674 P.2d at 1366. A defendant's right to counsel of his choice "is not absolute [and does not] include the right to repeated continuances to hire new counsel." *State v. West*, 168 Ariz. 292, 296, 812 P.2d 1110, 1114 (App. 1991). In determining whether to grant a continuance to allow new counsel time to prepare for trial, trial courts must consider whether other continuances have been granted; whether the defendant had other competent counsel prepared to try the case; whether a continuance would inconvenience the litigants, counsel, witnesses and the court; whether the length of the requested delay was excessive; whether the case was complex; and whether the reasons for the requested delay were legitimate or merely dilatory. *Hein*, 138 Ariz. at 369, 674 P.2d at 1367.

¶11 The trial court applied these factors to Rea's case and did not abuse its discretion in denying Rea a tenth continuance. Rea received nine continuances in a seven-month

period; he had other competent counsel prepared to try the case on the scheduled trial date; and a continuance would have inconvenienced counsel and the court because the trial date had been reset three times, witnesses were present and prepared to testify, and the jury was waiting for trial to begin. Moreover, the trial court had granted Rea a continuance in March 2011 to allow him to retain private counsel, yet he failed to do so for the following five months and retained counsel only minutes before trial. Consequently, the trial court did not violate Rea's Sixth Amendment rights.

CONCLUSION

¶12 For the foregoing reasons, we affirm.

_____/s/_____
RANDALL HOWE, Judge

CONCURRING:

_____/s/_____
MAURICE PORTLEY, Presiding Judge

_____/s/_____
PATRICIA A. OROZCO, Judge