

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

HECTOR ESPINOZA GONZALEZ, *Appellant*.

No. 1 CA-CR 16-0223
FILED 1-31-2017

Appeal from the Superior Court in Maricopa County
No. CR 2013-455013-001
The Honorable Annielaurie Van Wie, Judge *Pro Tempore*

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Elizabeth B. N. Garcia
Counsel for Appellee

Maricopa County Public Defender's Office, Phoenix
By Kevin D. Heade
Counsel for Appellant

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MEMORANDUM DECISION

Judge Margaret H. Downie delivered the decision of the Court, in which Presiding Judge Diane M. Johnsen and Chief Judge Michael J. Brown joined.

D O W N I E, Judge:

¶1 Hector Gonzalez appeals his convictions and sentences, challenging the superior court's handling of his request to change appointed counsel. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Gonzalez was indicted on two counts of aggravated driving or actual physical control while under the influence of intoxicating liquor or drugs. At the final trial management conference, he submitted an inmate request form to the court on which he had written: "Can I have a motion to change [counsel] please." The following colloquy ensued:

THE COURT: . . . I see that this is an Inmate Legal Request and it says, "Can I have a motion to change counsel, please?"

There is no basis for a change in counsel, at this point. Let me ask -- Ms. Lauritano, are you able to adequately represent Mr. Gonzalez at this point?

MS. LAURITANO: I am, but he doesn't communicate. He refuses to talk. He just sits there and will nod and not speak with me right now. So, that's all I got.

THE COURT: Well, and it's his choice whether or not he wishes to actually participate in any amount with the preparation. That is completely up to him.

Sir, if you don't want to talk to your attorney, you don't have to; but I don't think that's going to help you in the long run.

Ms. Lauritano is a very good attorney. She has been doing this for a long time. So you understand because you have a

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publically paid for attorney, you don't get to pick what attorney you want. Okay? And the way that the law says, if Ms. Lauritano feels that she can adequately represent you, then there is no cause for me to change the attorney for you. So, I recommend, you will get much better service, and you will be able to, you know, work harder on your case if you actually talk to her. If you don't though, that's your choice, but if you don't, then, I mean, quite frankly you're probably hurting yourself and your case. Okay?

We will file this, and I'm noting that I'm denying the request for new counsel.

¶3 Trial proceeded, and Gonzalez was convicted of the charged offenses. After sentencing, Gonzalez filed a timely notice of appeal.¹ We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes ("A.R.S.") sections 13-4031 and -4033(A)(1).

DISCUSSION

¶4 We review the denial of a motion to change court-appointed counsel for an abuse of discretion. *State v. Hernandez*, 232 Ariz. 313, 318, ¶ 11 (2013). A court abuses its discretion if it commits an error of law or if the record lacks substantial support for its decision. *State v. Cowles*, 207 Ariz. 8, 9, ¶ 3 (App. 2004).

¶5 Although the Sixth Amendment guarantees criminal defendants the right to counsel, "an indigent defendant is not entitled to counsel of choice, or to a meaningful relationship with his or her attorney." *Hernandez*, 232 Ariz. at 318, ¶ 12. The court is required to

¹ The sentencing minute entry reflects that Gonzalez was sentenced on count one twice. However, the court stated at sentencing that the jury determined Gonzalez's guilt "as to Count 1 and Count 2," that "both counts run concurrent to each other, and both counts have the credit for 274 days." Accordingly, we correct the minute entry to reflect that Gonzalez was sentenced on "Count 1" and "Count 2." *State v. Ovante*, 231 Ariz. 180, 188, ¶ 38 (2013) (If the discrepancy can be clearly resolved by looking at the record, an "oral pronouncement in open court controls over the minute entry," and the appellate court "can order the minute entry corrected if the record clearly identifies the intended sentence.").

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appoint new counsel, however, if “an irreconcilable conflict or a completely fractured relationship between counsel and the accused exists.” *Id.*

¶6 Gonzalez first contends the court erred by denying his request without conducting a hearing. We conclude otherwise.

¶7 “To preserve a defendant’s Sixth Amendment right to counsel, the trial court has a duty to inquire as to the basis of a defendant’s request for substitution of counsel.” *Id.* at ¶ 13. “The nature of the court’s inquiry will depend upon the nature of the defendant’s request.” *Id.* at ¶ 14. “[G]eneralized complaints about differences in strategy may not require a formal hearing or an evidentiary proceeding,” while “sufficiently specific, factually based allegations in support of his request for new counsel” require a hearing. *State v. Torres*, 208 Ariz. 340, 343, ¶ 8 (2004); *see also State v. Gomez*, 231 Ariz. 219, 225–26, ¶ 29 (2012) (Court “is not required to hold an evidentiary hearing . . . if the motion fails to allege specific facts suggesting an irreconcilable conflict or a complete breakdown in communication, or if there is no indication that a hearing would elicit additional facts beyond those already before the court.”).

¶8 Gonzalez’s one-sentence request included no facts or allegations suggesting an irreconcilable conflict or a completely fractured relationship with counsel. The superior court nevertheless followed up to determine the status of the attorney-client relationship and, implicitly, the reasons behind any breakdown in communication. Although the court’s inquiry was brief, given the paucity of information Gonzalez offered, it was sufficient. And although the relevant focus is not the quality of current counsel, the court is not precluded “from considering facts related to effective assistance of counsel in determining whether the relationship was completely fractured.” *State v. Peralta*, 221 Ariz. 359, 362, ¶ 12 (App. 2009).

¶9 Gonzalez’s reliance on *Torres* is unavailing. In *Torres*, the defendant submitted a detailed motion to change appointed counsel, alleging “he could no longer speak with his lawyer about the case, he did not trust him, he felt threatened and intimidated by him, there was no confidentiality between them, and his counsel was no longer behaving in a professional manner.” *Torres*, 208 Ariz. at 342, ¶ 2. The superior court denied the motion without further inquiry. *Id.* On appeal, the court held that because the defendant had presented “specific factual allegations that raised a colorable claim that he had an irreconcilable conflict with his

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appointed counsel,” the superior court abused its discretion by not conducting any inquiry into his request. *Id.* at ¶ 9.

¶10 Gonzalez’s request bears no resemblance to the detailed motion at issue in *Torres*. Moreover, the superior court *did* conduct an inquiry – albeit brief – into Gonzalez’s request. Its response was commensurate with Gonzalez’s request.

¶11 Gonzalez alternatively contends the court abused its discretion by denying his motion. We disagree.

¶12 A defendant “bears the burden of proving either a complete breakdown in communication or an irreconcilable conflict.” *Hernandez*, 232 Ariz. at 318, ¶ 15. “To satisfy this burden, the defendant must present evidence of a severe and pervasive conflict with his attorney or evidence that he had such minimal contact with the attorney that meaningful communication was not possible.” *Id.* In evaluating a motion to change counsel, a court should consider:

Whether an irreconcilable conflict exists between counsel and the accused, and whether new counsel would be confronted with the same conflict; the timing of the motion; inconvenience to witnesses; the time period already elapsed between the alleged offense and trial; the proclivity of the defendant to change counsel; and quality of counsel.

Torres, 208 Ariz. at 344, ¶ 15. The court need not, however, make factual findings regarding all of these factors. *Peralta*, 221 Ariz. at 362, ¶ 9.

¶13 The record before the superior court at the time of its ruling reflected that Gonzalez was refusing to speak with his appointed counsel. A defendant has an obligation to behave reasonably and to participate in good faith in his defense. *Id.* at ¶ 15. Where “a defendant behaves unreasonably with respect to his appointed counsel, he cannot then complain that the result is a fractured relationship that entitles him to a new lawyer.” *Id.* Disagreements over trial strategy, personality conflicts, or a general loss of confidence or trust in counsel do not require the appointment of new counsel. *See id.*; *see also State v. Paris-Sheldon*, 214 Ariz. 500, 505, ¶ 14 (App. 2007).

¶14 Based on the record before it, the superior court did not abuse its discretion in denying Gonzalez’s request for a change in appointed counsel.

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CONCLUSION

¶15 We affirm Gonzalez's convictions and sentences.



AMY M. WOOD • Clerk of the Court
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