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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 12/28/2010
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 09-0887
)
Appellee,) DEPARTMENT E
)
v.) MEMORANDUM DECISION
)
CHRIS MICHAEL ALONSO,) (Not for Publication -
) Rule 111, Rules of the
Appellant.) Arizona Supreme Court)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR 2004-137144-001 DT
The Honorable Timothy J. Ryan, Judge
The Honorable Paul J. McMurdie, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General Phoenix
by Kent E. Cattani, Chief Counsel,
Criminal Appeals/Capital Litigation Section
and
Jeffrey L. Sparks, Assistant Attorney General
Attorneys for Appellee

Janelle A. Mc Eachern Chandler
Attorneys for Appellant

H A L L, Judge

¶1 Appellant Christopher Alonso appeals from his
convictions and sentences for one count of first-degree murder,

five counts of attempted first-degree murder, and one count of drive-by shooting. Alonso argues that the trial court abused its discretion by denying his request for new counsel. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 In December 2004, Alonso was indicted on one count of first-degree murder, a class one dangerous felony, three counts of aggravated assault, class three dangerous felonies, six counts of attempted first-degree murder, class two dangerous felonies, two counts of drive-by shooting, class two dangerous felonies, and one count of misconduct involving weapons, a class four felony.¹

¶3 Treasure VanDreumel was assigned to represent Alonso around February 2005. In July 2005, Alex Gonzalez filed a notice of appearance as second chair to VanDreumel "for all further proceedings." Alonso moved to dismiss Gonzalez as counsel in August 2007, which the court denied. In June 2008, Alonso filed a second pro se motion for change of counsel.² The court held a hearing on this motion in July 2008. At the

¹ Prior to trial, the court dismissed the three counts of aggravated assault and severed the misconduct involving weapons charge. During the trial, the court, on its own motion, dismissed one count of attempted first-degree murder and one count of drive-by shooting. At sentencing, the court granted the State's motion to dismiss the misconduct involving weapons charge.

² This motion is not part of the record on appeal.

hearing, Alonso argued that the total amount of time VanDreumel visited Alonso in jail was twelve hours, VanDreumel failed to visit him in jail between November 2005 and October 2006, Alonso could not reach VanDreumel by telephone, and VanDreumel was not present for a court date in May 2006. VanDreumel adamantly disputed these claims, except for the one missed court appearance, which she explained was due to illness. Alonso conceded that even if these contentions were true, he did not "think [he] suffered any prejudice at all."

¶4 Alonso also alleged that VanDreumel refused to answer questions concerning "how she's going to defend" Alonso and "what are the grounds for motions," and also refused to keep him apprised of the status of his case. VanDreumel reported that she did not intend to file any motions within with the next thirty days, but that in April 2008 she "spent three hours with [Alonso] in the jail and went over every motion that [she] intended to file, the goal of the motion and whether or not [she] thought it would be granted and if so, what would happen and if not, what would happen." VanDreumel also replied that she "sent 35 letters to [Alonso], each multiple pages in length and each addressing the status of the case and legal issues involved." The court stated that VanDreumel noticed defenses in pleadings she filed with the court and that her decision to wait to decide on a defense strategy is "called good lawyering. . . .

[Counsel] should wait until trial to make a decision, a calculated, prudent decision, rather than subjectively amuse [the] client . . . [and] pick [a defense] out of a hat."

¶15 Alonso further argued that he spoke with several other attorneys about his case who advised him about additional motions that should be made on his behalf. VanDreumel responded that she told Alonso "repeatedly, [she is] open to hearing any suggestions of other lawyers that he consults with." The court stated that after attorneys review Alonso's file, if any of the attorneys believe motions should be added, they can meet and confer with VanDreumel.

¶16 Next, Alonso asserted that VanDreumel made "no effort to see if there [was] a plea offer." The court showed Alonso a settlement memorandum regarding plea negotiations submitted by VanDreumel to the court and asked if there was "any additional information [Alonso felt] should be submitted on [Alonso's] behalf." Alonso responded that "[t]here is nothing to add on this issue."

¶17 Additionally, Alonso argued that the defense investigation was deficient. Although VanDreumel did not believe the investigation was lacking, she contacted a specific private investigator that Alonso requested. The private investigator declined to replace the current investigator.

¶18 Alonso also maintained that VanDreumel made a threatening remark to his mother. In her written response, VanDreumel stated that Alonso's contention was not only false, but that Alonso provided a released Maricopa County Jail inmate with VanDreumel's cellular phone number and the former inmate contacted VanDreumel on several occasions and made threatening remarks to her. VanDreumel additionally alleged that Alonso "attempted witness tampering through" the former inmate. The court found Alonso's contentions irrelevant and stated that VanDreumel is "literally not only fighting for [Alonso's] life, but she's also fighting for [Alonso] not to harm [his] case."

¶19 The court denied Alonso's motion for change of counsel after concluding that

coupled with [Alonso's] phone calls, coupled with [Alonso's] jail visits, coupled with the information that Ms. VanDreumel has developed in this case, [the court] remember[s] dealing with the trial dates in this case, talking about when to reset it for trial and all the things that we've talked about that's been done in this case, so just from that perspective as the [court] managing [Alonso's] trial date for trial, [the court is] not concerned in the least that there's anything other than the best counsel [Alonso] can possibly have representing [him] in this matter, notwithstanding the hurdles being thrown in the way by well-intended family members and an effort to be [Alonso's] third attorney. [The court] would recommend to [Alonso] that [Alonso is] correct, much more than [he knows], that [Alonso is] facing the death penalty. It is literally life or death in [Alonso's] situation. Toward that end, [Alonso's] attorneys understand that better than [Alonso does], because this isn't the first time they have had to deal with capital defense and capital litigation

setting. They know what's at stake. They know the rules of evidence. They know capital litigation. That's what they do. That's their professional calling. That's their specialized training. To micromanage by phone calls and fill up a voice mail or to do the other things that have been done in the case doesn't help [Alonso's] case. In fact, things such as this took away a resolution management conference being set in as timely a fashion as possible. Having [Alonso's] family members get orchestrated into a set of angst or being upset isn't helping the attorneys do their job in literally trying to save [Alonso's] life.

¶10 VanDreumel and Gonzalez continued to represent Alonso for the remainder of the case.

¶11 After an extensive jury trial, the jury found Alonso guilty of one count of first-degree murder, a class one dangerous felony, five counts of attempted first-degree murder, class two dangerous felonies, and one count of drive-by shooting, a class two dangerous felony. The court sentenced Alonso to consecutive sentences of life with the possibility of parole after 25 years for the first degree murder conviction, 12.5 years for one count of attempted first-degree murder, and 10.5 years for the remaining four counts of attempted first-degree murder and the drive-by shooting count.

¶12 Alonso timely appealed. This court has jurisdiction pursuant to the Arizona Constitution, Article 6, Section 9, and Arizona Revised Statutes (A.R.S.) sections 12-120.21(A)(1) (2003), 13-4031 and -4033 (2010).

DISCUSSION

¶13 Alonso presents the sole issue on appeal of whether the trial court erred in denying his request for new counsel. We will not disturb a trial court's denial of a request for new counsel absent an abuse of discretion. *State v. Cromwell*, 211 Ariz. 181, 186, ¶ 27, 119 P.3d 448, 453 (2005). Although a defendant has a Sixth Amendment right to representation by competent counsel, U.S. Const. amend. VI; Ariz. Const. art. 2, § 24; *Cromwell*, 211 Ariz. at 186, ¶ 28, 119 P.3d at 453, this does not include a right to a "meaningful relationship with counsel," nor does it entitle a defendant to counsel of his choice. *State v. Torres*, 208 Ariz. 340, 342, ¶ 6, 93 P.3d 1056, 1058 (2004); see also *State v. Moody*, 192 Ariz. 505, 507, ¶ 11, 968 P.2d 578, 580 (1998). The Sixth Amendment is violated only "when there is a complete breakdown in communication or an irreconcilable conflict between a defendant and his appointed counsel." *Torres*, 208 Ariz. at 342, ¶ 6, 93 P.3d at 1058. The trial court must inquire about the defendant's basis for a request for new counsel, and the defendant has the burden of showing an irreconcilable conflict or total breakdown of communication. *Id.* at 343, ¶¶ 7-8, 93 P.3d at 1059. "[A]llegation[s] of lost confidence in counsel [do] not require the appointment of new counsel, and disagreements over defense strategies do not constitute an irreconcilable conflict." *Cromwell*, 211 Ariz. at

186, ¶ 29, 119 P.3d at 453. In order “[t]o constitute a colorable claim, a defendant’s allegations must go beyond personality conflicts or disagreements with counsel over trial strategy.” *Id.* at 187, ¶ 30, 119 P.3d at 454.

¶14 Alonso argued for a change of counsel both orally at a hearing and in a written motion to the court. The court heard the alleged reasons for an irreconcilable conflict between Alonso and VanDreumel, and spoke with Alonso at length about its reasoning for denying Alonso’s request. Although Alonso may not have agreed with the manner in which VanDreumel represented him or the time that VanDreumel allocated to his case, VanDreumel was present and acted as Alonso’s attorney for the vast majority of court hearings and appearances, she filed copious motions on his behalf, ardently argued on Alonso’s behalf throughout the various proceedings, and diligently visited Alonso and explained the status of his case to him. Further, Alonso conceded he was not prejudiced by his allegations against VanDreumel that he was unable to contact her, VanDreumel did not visit the jail for an extended period of time, and VanDreumel was absent from one court appearance. Alonso additionally could not identify any information he wanted VanDreumel to submit in her settlement memorandum. VanDreumel further complied with Alonso’s request for contacting an additional investigator and she agreed to discuss ideas for potential motions with other attorneys.

¶15 Although Alonso maintains that Alonso's mother was threatened by VanDreumel and that VanDreumel likewise felt threatened by Alonso's family, we agree with the State that when "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." *State v. Peralta*, 221 Ariz. 359, 362, ¶ 15, 212 P.3d 51, 54 (App. 2009). Moreover, Alonso's claims that his mother felt threatened by VanDreumel were not supported by the record, and not relevant, as found by the trial court.

¶16 Alonso has failed to illustrate to this court that VanDreumel's representation of Alonso constituted an irreconcilable conflict or created a total breakdown of communication. *Torres*, 208 Ariz. at 342, ¶ 6, 93 P.3d at 1058. We therefore conclude that the trial court did not abuse its discretion in denying Alonso's request for new counsel.

CONCLUSION

¶17 For the foregoing reasons, we affirm Alonso's convictions and sentences.

_____/s/_____
PHILIP HALL, Presiding Judge

CONCURRING:

_____/s/_____
SHELDON H. WEISBERG, Judge

_____/s/_____
PETER B. SWANN, Judge