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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. RAMON DELGADO SAGASTE, Appellant.	)	2 CA-CR 2011-0184 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF GILA COUNTY

Cause No. CR201000554

Honorable Robert Duber II, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General
By Kent E. Cattani and Diane Leigh Hunt
Tucson
Attorneys for Appellee

Emily Danies
Tucson
Attorney for Appellant

H O W A R D, Chief Judge.

¶1 After an officer discovered a pound of methamphetamine, $80,000 in cash, and paraphernalia in appellant Ramon Sagaste's vehicle during a traffic stop, and subsequent drug testing showed the presence of tetrahydrocannabinol (THC), a metabolite of marijuana, in his body, Sagaste was convicted of possession of methamphetamine for sale, possession of drug paraphernalia, and driving with an illegal drug or its metabolite in his body. Sagaste claimed in his defense that he had been transporting the methamphetamine as an agent of a law enforcement agency. As the sole issue raised on appeal, Sagaste contends the trial court erred in denying his pro se motion for change of counsel. We review the court's ruling for a clear abuse of discretion. *See State v. Paris-Sheldon*, 214 Ariz. 500, ¶ 8, 154 P.3d 1046, 1050 (App. 2007).

¶2 "A criminal defendant has a Sixth Amendment right to representation by competent counsel." *State v. Moody*, 192 Ariz. 505, ¶ 11, 968 P.2d 578, 580 (1998). But, a defendant is not "entitled to counsel of choice, or to a meaningful relationship with his or her attorney." *Id.* A trial court must evaluate several factors when considering a motion for new counsel, including:

> 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.

State v. LaGrand, 152 Ariz. 483, 486-87, 733 P.2d 1066, 1069-70 (1987). A defendant's loss of trust in counsel alone does not require the trial court to appoint new counsel. *Paris–Sheldon*, 214 Ariz. 500, ¶ 14, 154 P.3d at 1051. But where "'there is a complete

breakdown in communication or an irreconcilable conflict between a defendant and his appointed counsel, that defendant's Sixth Amendment right to counsel has been violated.'" *Id.* ¶ 12, *quoting State v. Torres*, 208 Ariz. 340, ¶ 6, 93 P.3d 1056, 1058 (2004). To demonstrate a total breakdown in communication, "'a defendant must put forth 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.*, *quoting United States v. Lott*, 310 F.3d 1231, 1249 (10th Cir. 2002). The defendant has the burden of demonstrating an irreconcilable conflict or breakdown in communication. *Torres*, 208 Ariz. 340, ¶ 8, 93 P.3d at 1059.

¶3 Sagaste moved for a change of counsel in January 2011, more than four months after the offense and two months before trial, stating in his motion only that counsel "became offensive and is against me." The trial court addressed the motion at a pretrial conference shortly thereafter. Sagaste stated counsel did not "have enough confidence to help [him]," and he felt that counsel did not like him. He acknowledged he had been able to tell counsel everything he wanted and counsel had communicated with him, but he stated counsel had told him he "was a rat . . . informant" and he did not like that. Sagaste apparently had served as an informant at some point in the past.

¶4 Counsel explained to the trial court that he had told Sagaste he did not trust him and did not "believe his story" because he had found that "people that are willing to turn on their friends, [or] turn in their family, certainly have no compunction against turning on lawyers." Counsel stated he had advised Sagaste he should accept the plea agreement the state had offered because he did not think Sagaste would be believable at a

trial. But counsel stated he could work with Sagaste and asserted, "I don't know if another attorney can defend him better." When asked by the court, counsel responded that he did not believe his relationship with Sagaste was "irretrievably broken such that [he] could not actively assert [Sagaste's] legal rights and advocate on his behalf," adding that he could "ethically offer his defense and his testimony to a jury." The court thereafter denied Sagaste's request for a change of counsel.

¶5 On this record, we cannot say Sagaste met his burden to establish an irreconcilable conflict. *See State v. Cromwell*, 211 Ariz. 181, ¶ 30, 119 P.3d 448, 454 (2005) ("defendant must allege facts sufficient to support a belief that an irreconcilable conflict exists"). Although Sagaste and his counsel had difficulties due to counsel's open disbelief of Sagaste's version of events, the record does not show that the two were unable to communicate as a result of that disbelief or were unable to reconcile their differences. Indeed, Sagaste points to no evidence in the record of any further difficulties between himself and counsel. *See Torres*, 208 Ariz. 340, ¶ 16, 93 P.3d at 1061 (subsequent events may be relevant to show whether irreconcilable conflict existed). And counsel did present a defense consistent with Sagaste's version of events, arguing in closing that Sagaste had transported the methamphetamine intending to give it to law enforcement agents. Furthermore, nothing suggests another attorney would have been any more likely to accept Sagaste's claim that he had possessed the methamphetamine as an agent of a law enforcement agency, when that agency had specifically denied he had any such role. Ultimately, "we defer to the discretion of the trial judge who has seen and heard the parties to the dispute" and is therefore better situated to evaluate the

relationship between the two. *Cromwell*, 211 Ariz. 181, ¶ 37, 119 P.3d at 455. On that basis, we cannot say the trial court here abused its discretion in denying Sagaste's motion.

¶6 Sagaste's convictions and sentences are affirmed.

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge