

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT JOHN BROOKS,

Defendant-Appellant.

UNPUBLISHED

June 20, 2000

No. 219002

Calhoun Circuit Court

LC No. 98-000103-FH

Before: Hoekstra, P.J., and Holbrook, Jr., and Zahra, JJ.

MEMORANDUM.

Defendant appeals as of right his conviction for probation violation. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant argues that the trial court denied him due process of law when it refused to grant an adjournment to allow him to obtain evidence on whether the prescription medication he was taking at the time of the violation might have adversely affected his memory, as well as produced a false positive on his drug screen. We disagree. A trial court's decision whether to grant a continuance is reviewed for abuse of discretion. *People v Williams*, 386 Mich 565, 575; 194 NW2d 337 (1972). The totality of the circumstances are to be considered, including whether defendant was asserting a constitutional right, had a legitimate reason for asserting the right, was negligent, and had requested previous adjournments. *Id.* at 578. Defendant must also establish that he was prejudiced by the court's action. *People v Lawton*, 196 Mich App 341, 348; 492 NW2d 810 (1992).

Defendant was not asserting a constitutional right when he raised the issue of adjournment, nor did he present a legitimate reason why a continuance was necessary. Defendant only speculated that medical evidence would somehow support his claims of lack of memory and that medication affected his drug screen. One year later, defendant still has produced no better indication what additional evidence could have been presented. Furthermore, defendant has not shown that he was prejudiced by the court's failure to grant an adjournment. Under these circumstances, we conclude that the trial court did not abuse its discretion in denying defendant's request for an adjournment.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Donald E. Holbrook, Jr.

/s/ Brian K. Zahra