

T A T E O F M I C H I G A N
C O U R T O F A P P E A L S

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MELVIN STEEN,

Defendant-Appellant.

UNPUBLISHED

August 1, 2000

No. 214114

Wayne Circuit Court

LC No. 97-010043

Before: White, P.J., and Doctoroff, and O'Connell, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of felonious assault, MCL 750.82; MSA 28.277, and third-degree fleeing and eluding, MCL 750.479a(3); MSA 28.747(1)(3). He was sentenced to concurrent terms of one to five years for fleeing and eluding, and two to four years for felonious assault. He appeals as of right, and we affirm.

Following defendant's arrest after a high-speed car chase, he was released on bond. At a calendar conference held on February 20, 1998, defendant requested a jury trial. The court scheduled trial for May 18, 1998. At a motion hearing held on May 13, 1998, defense counsel moved to withdraw, and the trial court denied the motion. Defense counsel renewed her motion to withdraw before trial began on May 18, 1998. The trial court again denied the motion. Trial commenced, and defendant was convicted and sentenced. Defendant argues that the trial court erred by denying the motions to withdraw. We disagree.

A trial court's denial of a motion to withdraw as counsel is reviewed for an abuse of discretion. *People v Echavarria*, 233 Mich App 356, 370; 592 NW2d 737 (1999). When reviewing a trial court's decision to deny a defense attorney's motion to withdraw, this Court considers the following factors:

(1) [W]hether the defendant is asserting a constitutional right, (2) whether the defendant has a legitimate reason for asserting the right, such as a bona fide dispute with his attorney, (3) whether the defendant was negligent in asserting his right, (4) whether the

defendant is merely attempting to delay trial, and (5) whether the defendant demonstrated prejudice resulting from the trial court's decision. [*Id.* at 369.]

At the May 13, 1998, hearing on defense counsel's motion to withdraw, defendant stated that he would "like to hire an attorney" rather than have his appointed counsel represent him at trial. He also requested that the court give him "time to retain an attorney." As this Court has stated, the "right to counsel is clearly a constitutional right." *People v Ferguson*, 46 Mich App 331; 208 NW2d 647. Thus, when defendant asserted a desire to change counsel, he was asserting a constitutional right.

However, while defendant asserted the constitutional right to counsel, he failed to establish a legitimate reason for asserting that right. At the motion hearing, defendant expressed the following complaints regarding his appointed counsel:

[S]he never – every time I attempted to call her or to set appointment [sic], she's never in her office.

* * *

[S]he hadn't helped me as far as investigation regarding my witnesses.

* * *

She don't have much experience in the type of this type of case.

In contrast, defense counsel stated:

I tried to contact [defendant]. There was never an answer at the number. I continued to send letters at 17889 Wexford. Those letters were returned to me, your Honor.

* * *

Your Honor, yesterday I asked [defendant] if he had his list of witnesses. He says you have the list of witnesses. They're prosecution witnesses. Your Honor I have read all the PCR's and they're all police witnesses.

* * *

I asked [defendant for his] witnesses' names and address [sic] . . . I have sent [defendant] letters regarding that and I have not had a response.

Although it appears from this testimony that defendant and his appointed counsel were not communicating effectively at the time of the hearing, there was no "bona fide irreconcilable dispute." *People v Hernandez*, 84 Mich App 1, 9; 269 NW2d 322 (1978). Evidence of such a dispute must be present in order to warrant substitution of counsel. *Id.* None of defendant's complaints relate to trial tactics. Instead, defendant appears to have been "simply unsatisfied with his attorney's efforts" regarding consultation and the location of witnesses. *Id.*

On appeal, defendant argues that the trial court should have allowed his counsel to withdraw based on defendant's belief that counsel did not have "enough experience to try his case," and defendant's desire to "hire counsel or represent himself." We disagree. While a "genuine disagreement between counsel and the defendant over the use of a substantial defense or of a fundamental trial tactic" is adequate cause to support substitution, "a mere allegation that a defendant lacks confidence in his attorney" is not. *People v Tucker*, 181 Mich App 246, 255; 448 NW2d 811 (1989). Thus, defendant's contention that the trial court should have granted the motion to withdraw because of defendant's "lack of trust" in his appointed counsel is meritless.

Furthermore, defendant did not prove any lack of diligence on the part of his appointed counsel with regard to locating and preparing witnesses for trial. Before trial proceedings began on May 18, 1998, defense counsel told the court that defendant had supplied her with a list of proposed witnesses and their addresses on May 13, 1998. Counsel stated:

[M]y investigator went to issue . . . subpoenas as soon as those addresses were given to me. Those were given to me on the 13th. I gave them to [the investigator] on the 14th. He went out to houses on the 14th and the 15th.

Defendant admitted that he provided counsel with the proposed witness list on May 13, 1998. The record shows that defendant's witness list was filed with the court on May 14, 1998. The witness list contains the names of five individuals. Two of the individuals listed, Tyra Hicks and Darlene Ingram, testified at trial as defense witnesses. The record does not support defendant's contention that defense counsel failed to act promptly to locate, subpoena and prepare proposed witnesses for trial. Therefore, defendant has failed to establish that his constitutional right to counsel was legitimately implicated.

Additionally, the motion to withdraw was properly denied because defendant acted negligently by waiting to assert that right until May 13, 1998, which was five days before the trial was scheduled to begin. Defendant had nearly three months to express a desire to substitute counsel. It would seem that defendant's admitted, and unsatisfactorily explained, failure to provide counsel with needed information was the cause of his delay in asserting the desire for substituted counsel. Therefore, even if defendant had a bona fide reason for asserting his constitutional right to counsel, he was negligent in failing to assert it earlier. It appears that the trial court's belief that defendant was merely attempting to delay trial by asserting the right to counsel was justified.

We also note that defendant has the burden of "demonstrat[ing] prejudice resulting from the trial court's abuse of discretion" in denying the motions to withdraw. *People v Wilson*, 397 Mich 76, 81; 243 NW2d 257 (1976). Defendant has not done so.

Defendant next argues that his sentences violate the rule of proportionality. However, defendant fully served his minimum two-year prison term on April 19, 2000. Where "a subsequent event renders it impossible for this Court to fashion a remedy, an issue becomes moot." *People v Rutherford*, 208 Mich App 198, 204; 526 NW2d 620 (1994). Therefore, we do not address this issue.

Affirmed.

/s/ Helene N. White
/s/ Martin M. Doctoroff
/s/ Peter D. O'Connell