

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES LESTER,

Defendant-Appellant.

UNPUBLISHED

October 2, 2001

No. 223003

Wayne Circuit Court

LC No. 98-007919

Before: Cavanagh, P.J. and Markey and Cooper, JJ.

MEMORANDUM.

Defendant appeals as of right from a jury conviction of possession with intent to deliver 50 to 224 grams of cocaine, MCL 333.7401(2)(a)(iii), for which he was sentenced to ten to twenty years in prison. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant contends that the trial court abused its discretion in denying his request for a continuance to obtain a new lawyer. In reviewing the trial court's decision, we consider the following factors: (1) whether the defendant was asserting a constitutional right; (2) whether the defendant had a legitimate reason for asserting the right; (3) whether the defendant was negligent in raising the issue; (4) whether any prior adjournments were at the defendant's request; and (5) whether the defendant has shown that he was prejudiced by the trial court's ruling. *People v Wilson*, 397 Mich 76, 81; 243 NW2d 257 (1976).

Defendant did not unequivocally assert a constitutional right. While he had a constitutional right to effective assistance of counsel, US Const, Am VI; Const 1963, art 1, § 20; *People v Pubrat*, 451 Mich 589, 594; 548 NW2d 595 (1996), defendant did not request a continuance to obtain new counsel. Rather, he requested a continuance to think about doing so. In addition, defendant did not have a legitimate reason for requesting the continuance. As of the time defendant made his request, trial counsel had not done anything to warrant a finding that his representation fell below an objective standard of reasonableness and that the representation so prejudiced defendant as to deprive him of a fair trial. *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994). Defendant stated that his only reason for possibly wanting new counsel was because the prosecutor had suggested that his attorney was providing ineffective assistance. He was unable to articulate any reason for believing that his attorney was ineffective and did not claim that they had a bona fide dispute over a fundamental trial tactic or that there was a breakdown of the attorney-client relationship. See *People v Williams*, 386 Mich 565, 576; 194

NW2d 337 (1972); *People v O'Brien*, 89 Mich App 704, 708; 282 NW2d 190 (1979). To the contrary, defendant admitted that he did not believe the prosecutor's statement.

Defendant's motion was timely and the court's ruling was not predicated by any prior requests for adjournments. Moreover, defendant has failed to establish prejudice. After a careful review of the record, we find no apparent mistakes on the part of defendant's counsel that would have changed the outcome of the trial. *People v Stanaway*, 446 Mich 643, 687-688; 521 NW2d 557 (1994); *People v Avant*, 235 Mich App 499, 507; 597 NW2d 864 (1999). Accordingly, we find that the trial court did not abuse its discretion in denying defendant's request for a continuance.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Jane E. Markey
/s/ Jessica R. Cooper