STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 13, 2002
v	No. 231958 Ingham Circuit Court
WENDALL DARNELL ALDRIDGE, Defendant-Appellant.	LC No. 99-074335-FH

Before: Zahra, P.J., and Hood and Jansen, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of possession of less than twenty-five grams of a mixture containing cocaine, MCL 333.7403(2)(a)(v), and resisting or obstructing a police officer, MCL 750.479. He was sentenced as an habitual offender, fourth offense, MCL 769.12, to consecutive terms of 30 to 180 months' imprisonment for the possession conviction and 24 to 180 months' imprisonment for the resisting or obstructing conviction. Defendant appeals as of right, and we affirm.

On July 6, 1998, Lansing Police Officer George Kelley was on patrol with recruit John Cosme. After clearing a call to an apartment complex, Officer Kelley observed defendant with an open intoxicant in a public area. He asked defendant to approach. Defendant walked toward the officer, then ran from the police. Officer Kelley was able to tackle defendant, but he continued to struggle with Kelley and Cosme. After struggling for approximately four minutes and with the use of "freeze spray," defendant was handcuffed. Officer Kelly conducted a pat-down search for weapons prior to placing defendant in a police vehicle. A thorough search would occur at the jail. Lansing Police Officer Mark Lewandowsky was transporting defendant to jail, when defendant complained of breathing problems. Officer Lewandowsky received permission to transport defendant to a medical facility. Defendant was treated in a private room with one bed. Initially, defendant's hands were cuffed behind his back, but he was cuffed to a rail of the bed while in the private room. Nurse Wendy Stanley entered the room and gave discharge instructions to defendant and Officer Lewandowsky. Defendant got off the bed, and the nurse began to change the bedding, pursuant to hospital policy. A baggie containing crack cocaine was observed on the bed.

Defendant testified that a fight had occurred at the apartment complex, but he was not involved. Defendant was seated on a friend's porch when called over by police. A friend told police that defendant had not been involved in the fight. Defendant was scared and ran from

police. He testified that police where able to catch him because he stopped running from them, and he denied resisting arrest. When police reached him, they sprayed him in the face, and he was unable to see. Defendant testified that the crack cocaine found in the hospital bed did not belong to him.

Defendant did not appear for trial on March 18, 1999, and a bench warrant for his arrest issued. After notice of the return of the bench warrant, the case was reopened, and trial was rescheduled for June 5, 2000. After the jury was selected, defendant objected to the continuation of trial. Defendant alleged that he was being "railroaded" because of the age of the case, the destruction of evidence, and the improper description in the bench warrant. Defendant also alleged that he had never been arraigned in circuit court and a pretrial had never been held. Defendant requested a new trial judge and a new attorney. Additionally, defense counsel moved to withdraw because of breakdown in the attorney/client relationship. The trial court denied defense counsel's motion to withdraw and gave defendant the option of proceeding with appointed counsel or acting in propria persona with counsel present to assist. Defendant advised the trial court that it was "crooked" and "a lot of people were scared" of the court. The trial court stated that any irregularity in the description of the bench warrant was irrelevant. Additionally, the trial court noted that pretrials were not held as a matter of course, but to aid the parties if necessary. The court did not make an express finding, but indicated that the allegations raised by defendant were designed to delay.

Defendant first alleges that the trial court should have sua sponte granted a mistrial following the emotional outburst that culminated in defendant approaching the bench in a threatening manner that prompted the court deputy to intervene and reach for his gun. We disagree. A trial court's decision regarding the declaration of a mistrial is reviewed for an abuse of discretion. *People v Blackburn*, 94 Mich App 711, 714; 290 NW2d 61 (1980). Because of the attachment of double jeopardy protections prior to the end of trial, a sua sponte declaration of a mistrial by a trial court bars retrial unless the mistrial was prompted by manifest necessity. *People v Rutherford*, 208 Mich App 198, 202; 526 NW2d 620 (1994). A trial court properly exercises its discretion to declare a mistrial if an impartial verdict could not be reached or if the verdict of conviction would be reversed on appeal due to an obvious procedural error in the trial. *Id*. The avoidance of a mistrial is preferred. Therefore, prior to such a declaration, a hearing should be held on the record with explicit findings that no reasonable alternative exists. *Id*.

The only record evidence that defendant approached the trial court and caused the court deputy to take precautions is presented in the affidavit of trial counsel for defendant submitted with the brief on appeal. There is no indication in the record that the trial court was alarmed by defendant's conduct or that the trial court directed the court deputy to subdue or contain defendant. The exchange regarding the propriety of the continuation of trial occurred outside the presence of the jury. When defendant asserted that he could not obtain a fair trial before the court, the trial judge expressly stated that the jury would render any decision regarding guilt. Based on these circumstances, the trial court did not abuse its discretion by failing to sua sponte declare a mistrial. *Blackburn, supra*.

Defendant next alleges that the trial court abused its discretion when it denied defendant's request for a new attorney and defense counsel's request to withdraw. We disagree. A trial court's decision regarding substitution of counsel will not be disturbed absent an abuse of discretion. *People v Traylor*, 245 Mich App 460, 462; 628 NW2d 120 (2001). We review the

following factors when addressing the denial of a defense attorney's motion to withdraw and a defendant's request for a continuance for substitution of counsel: (1) whether the defendant is asserting a constitutional right; (2) whether the defendant has legitimate reasons for asserting the right; (3) whether the defendant was negligent in asserting the right; (4) whether the defendant is attempting to delay trial; and (5) whether the defendant demonstrated prejudice resulting from the trial court's decision. *People v Echavarria*, 233 Mich App 356, 369; 592 NW2d 737 (1999). Appointment of substitute counsel is proper only upon a showing of good cause and where substitution will not unreasonably disrupt the judicial process. *Traylor, supra*. A defendant may not refuse to cooperate with assigned counsel and argue that good cause for substitution exists based on this purposeful misconduct. *Id*.

After review of the relevant factors, the trial court's denial of the motion to withdraw and motion for substitution of counsel was not an abuse of discretion. Defendant merely made blanket assertions regarding deficiencies in trial counsel's representations. These alleged deficiencies are not raised as a basis for reversal of the convictions on appeal. For example, while defendant challenged the lack of motions filed in this case, he failed to identify any motions that should have been filed. Defendant did not challenge trial counsel's representation prior to the commencement of trial, but waited until the jury had been selected. The trial court questioned the sincerity of defendant's objections in light of the timing. Although defense counsel moved to withdraw from the case, counsel indicated that it was based on defendant's lack of cooperation, and he was prepared to proceed to trial. While it is alleged on appeal that the resentment between defendant and counsel affected performance, even if only subconsciously, there is no evidence of deficiency in the record. Under these circumstances, defendant's claim of error is without merit.

Lastly, defendant alleges that the enhancement of his sentence was disproportionate to the offense and this offender. We disagree. The judicial sentencing guidelines in effect at the time of this offense do not apply to habitual offenders. *People v Reynolds*, 240 Mich App 250, 253 n 1; 611 NW2d 316 (2000). Rather, we review the sentence of an habitual offender for an abuse of discretion. *People v Hansford (After Remand)*, 454 Mich 320, 323-324; 562 NW2d 460 (1997). There was no abuse of discretion.

Affirmed.

/s/ Brian K. Zahra
/s/ Harold Hood
/s/ Kathleen Jansen