

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DANIEL LEE WEBBER,

Defendant-Appellant.

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UNPUBLISHED

October 8, 2002

No. 233928

Menominee Circuit Court

LC Nos. 00-002544

00-002545

00-002546

Before: Hood, P.J., and Bandstra and O'Connell, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of unlawful use of a motor vehicle, MCL 750.414, breaking and entering with the intent to commit larceny, MCL 750.110, and second-degree home invasion, MCL 750.110a(3).<sup>1</sup> Defendant appeals as of right, and we affirm.

While in custody in Delta County, defendant asked to speak to investigators in Menominee County. Defendant confessed to committing a purse snatching from an assisted living facility and the theft of a vehicle parked near a business. Police were in the process of investigating both crimes. Defendant also confessed to the theft of money and jewelry from a home that police were not investigating. However, when the police alerted the homeowner, she discovered the theft of cash and necklaces from a dresser drawer. The cases were consolidated for trial at the request of defense counsel. Prior to trial, defendant requested new counsel and an adjournment of the proceedings. The trial court rejected defendant's request, noting that this was the second appointment of counsel and concluded that the request was a dilatory tactic.

Defendant first alleges that the trial court abused its discretion by denying his request for substitute counsel and an adjournment of trial. 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). This Court reviews the following factors when

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<sup>1</sup> Defendant was sentenced as an habitual offender, fourth offense, MCL 769.12, to thirty months to fifteen years' imprisonment for the unlawful use of a motor vehicle conviction, sixty months to fifteen years' imprisonment for the breaking and entering conviction, and ninety-six months to fifteen years' imprisonment for the home invasion conviction. All sentences were to be served concurrently, but consecutive to convictions that occurred in Delta County.

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, 359; 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.* Based on our review of the record, we cannot conclude that the trial court abused its discretion by denying defendant's request. Trial counsel furnished the court and the prosecutor with the notice of alibi and the names of supporting witnesses to this defense. Defendant did not produce an investigator as promised and did not provide the addresses of his alibi witnesses. While defendant asserted that trial counsel did not respond to letters and telephone calls, the trial court rejected these allegations. Based on the standard of review, defendant's claim of error is without merit.

Defendant next alleges that trial counsel was ineffective for failing to sever the charges and failing to request lesser included offense instructions. We disagree. To succeed on a claim of ineffective assistance of counsel, the defendant must show that his counsel's performance fell below an objective standard of reasonableness that so prejudiced the defendant that he was denied the right to a fair trial. *People v Noble*, 238 Mich App 647, 662; 608 NW2d 123 (1999). Effective assistance of counsel is presumed, and the defendant bears a heavy burden of proving otherwise. *Id.* at 661-662. When defendant fails to move for a *Ginther*<sup>2</sup> hearing or a new trial based on ineffective assistance of counsel, any review is limited to mistakes apparent on the record. *People v Rodgers*, 248 Mich App 702, 713-714; 645 NW2d 294 (2001). Defendant must overcome the presumption that counsel's tactics constituted sound trial strategy, and this Court will not substitute its judgment for that of trial counsel regarding matters of trial strategy. *Id.* at 715. Based on the record available, defendant has failed to overcome the presumption that trial counsel's actions were trial strategy.

Affirmed.

/s/ Harold Hood  
/s/ Richard A. Bandstra  
/s/ Peter D. O'Connell

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<sup>2</sup> *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973).