

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

COREY LAROD DAVIS, JR,

Defendant-Appellant.

UNPUBLISHED
September 3, 2009

No. 284826
Saginaw Circuit Court
LC No. 07-029579-FH-3

Before: Saad, C.J., and Whitbeck and Zahra, JJ.

PER CURIAM.

Defendant appeals as of right from his jury convictions of felonious assault, MCL 750.82, carrying a concealed weapon, MCL 750.227, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced defendant to prison terms of two years for felony-firearm, 23 months to four years for felonious assault, and 23 months to five years for carrying a concealed weapon. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant argues on appeal that his constitutional right to counsel was violated when the trial court denied his request for substitute counsel without inquiring into the reasons underlying his request. We disagree.

The right to counsel is guaranteed in both the United States Constitution and the Michigan Constitution, US Const amends XI, XIV; Const 1963, art 1, § 20. A court must balance the defendant's right to counsel of his choice against the public's interest in an efficient judicial process. An indigent defendant's dissatisfaction with counsel, on its own, is insufficient to warrant the appointment of new counsel. See *People v Ackerman*, 257 Mich App 434, 456; 669 NW2d 818 (2003). A defendant must show both good cause and that a change in counsel would not unreasonably interrupt the judicial process. *People v Bauder*, 269 Mich App 174, 193; 712 NW2d 506 (2005). "Good cause exists where a legitimate difference of opinion develops between a defendant and his appointed counsel with regard to a fundamental trial tactic." *Id.*

Defendant stated at trial that he has asked his appointed counsel to withdraw, but defendant failed to assert any reasons why a new attorney should be appointed to represent him. Admittedly, the trial court erred when it failed to inquire into the reasons underlying defendant's

request for substitute counsel. See *Benitez v United States*, 521 F3d 625, 632 (CA 6, 2008).¹ However, “[a] judge's failure to explore a defendant's claim that his assigned lawyer should be replaced does not necessarily require that a conviction following such error be set aside.” *People v Ginther*, 390 Mich 436, 442; 212 NW2d 922 (1973). Defendant failed to meet his burden in showing good cause both at trial and on appeal; thus, we hold that the trial court did not abuse its discretion by denying defendant’s request for substitute counsel.

Defendant also argues that the trial court abused its discretion when it allowed Grace Gordon, the mother of Gerald Gordon, to give a victim’s impact statement and to allow references to Gerald and Grace Gordon to be included in the Presentence Investigation Report (PSIR). We disagree.

MCL 780.764 and 780.765 grant individuals who suffer direct or threatened harm as a result of a convicted individual’s crime the right to submit an impact statement both at the sentencing hearing and for inclusion in the PSIR; however, the right is not limited exclusively to the defendant’s direct victims. Instead, “a sentencing court is afforded broad discretion in the sources and types of information to be considered when imposing a sentence.” *People v Albert*, 207 Mich App 73, 74-75; 523 NW2d 825 (1994). Moreover, this broad discretion does not infringe on a convicted individual’s due process rights, as the evidence was not taken into consideration in determining the defendant’s guilt. See *Williams v New York*, 337 US 241, 246-247; 69 S Ct 1079; 93 L Ed 1337 (1949).

Although the direct victim of defendant’s crimes was Hosie Bady, Jr., the law does not limit victim’s impact statements to direct victims. Moreover, defendant is, albeit indirectly, tied to Gerald Gordon’s death. Defendant was involved in the fight that quickly escalated into Gerald Gordon’s fatal shooting. Not only did defendant join the fight, he, too, pulled out a gun and waived it around. Although defendant’s friend actually shot and killed Gerald Gordon, defendant was still deeply involved in the incident that led to Gerald Gordon’s death. We hold that it was within the trial court’s discretion, and, therefore, not plain error, to allow Grace Gordon to give a statement at defendant’s sentencing and for the court to allow references to Gerald and Grace Gordon in the PSIR.

Affirmed.

/s/ Henry William Saad
/s/ William C. Whitbeck
/s/ Brian K. Zahra

¹ *Benitez* concerned privately retained counsel, but the case explicitly states that the court’s duty to inquire does not change under such circumstances. *Benitez, supra* at 634 (citing *Cottenham v Jamrog*, 248 F App’x 625, 636 (CA 6, 2007)).