

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY DARNELL LANUS,

Defendant-Appellant.

UNPUBLISHED

September 17, 2009

No. 285081

Alger Circuit Court

LC No. 07-001788-FH

Before: Murphy, P.J., and Meter and Beckering, JJ.

MEMORANDUM.

Defendant appeals as of right his jury trial conviction of assault of a prison employee, MCL 750.197c(1). We affirm. This opinion is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the trial court abused its discretion when it refused to appoint substitute counsel. We disagree. “Appointment of a substitute counsel is warranted only upon a showing of good cause and where substitution will not unreasonably disrupt the judicial process. Good cause exists where a legitimate difference of opinion develops between a defendant and his appointed counsel with regard to a fundamental trial tactic.” *People v Mack*, 190 Mich App 7, 14; 475 NW2d 830 (1991) (citations omitted). “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).

Defendant argues that good cause for substitution of counsel was established where defense counsel failed to call any witnesses other than defendant. Generally, defense counsel’s choice not to call additional witnesses is regarded as a matter a matter of trial strategy. *People v Ackerman*, 257 Mich App 434, 455; 669 NW2d 818 (2003). This Court has held that such questions of professional judgment do not rise to the level of a breakdown in the attorney-client relationship that would justify substitution of counsel. *Traylor, supra* at 463, citing *People v O’Brien*, 89 Mich App 704, 708; 282 NW2d 190 (1979). Moreover, there is no indication in the record that defendant ever informed defense counsel of the existence of any witnesses that would have aided in his defense. Thus, defendant did not prove good cause for requesting substitute counsel.

In addition, defendant fails to show that this substitution would not have unreasonably disrupted the judicial process. Defendant made his request after the jury had been sworn in and trial proceedings had commenced.

Moreover, in light of the overwhelming evidence adduced below, defendant has not demonstrated any prejudice resulting from the trial court's decision. Indeed, defendant admitted to intentionally assaulting the officer, and a videotape of the incident was played for the jury. There is also no evidence that defendant believed he was in danger at the time of the assault and that the action he took was immediately necessary to defend himself. See *People v Kemp*, 202 Mich App 318, 322-323; 508 NW2d 184 (1993).¹

Affirmed.

/s/ William B. Murphy

/s/ Patrick M. Meter

/s/ Jane M. Beckering

¹ To the extent that defendant claims he is constitutionally entitled to counsel of his choice, defendant has not demonstrated plain error affecting his substantial rights. *People v Carines*, 460 Mich 750, 763, 774; 597 NW2d 130 (1999). Because he was appointed defense counsel, defendant did not have a constitutional right to choose a different attorney. See *People v Aceval*, 282 Mich App 379, 386-387; 764 NW2d 285 (2009).