IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

RICHARD THEODORE SINGLETON, II, *Appellant*.

No. 1 CA-CR 20-0410
FILED 8-31-2021

Appeal from the Superior Court in Maricopa County
No. CR2014-124005-001
The Honorable Christopher A. Coury, Judge
The Honorable Geoffrey H. Fish, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Casey Ball
Counsel for Appellee

Maricopa County Public Defender's Office, Phoenix
By Mikel Steinfeld
Counsel for Appellant

MEMORANDUM DECISION

Presiding Judge Randall M. Howe delivered the decision of the Court, in which Judge Brian Y. Furuya and Judge Michael J. Brown joined.

HOWE, Judge:

¶1 Richard Theodore Singleton, II, appeals his conviction and sentence for sale or transportation of marijuana weighing two or more pounds, arguing the superior court erred by denying his motion for new counsel. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 In August 2012, Singleton entered a post office carrying a heavily taped package. When contacted by postal investigators, Singleton appeared nervous and left without mailing the package. The investigators saw additional packages with fictitious addresses on their mailing labels in Singleton's vehicle. Drug traffickers commonly mail controlled substances using fictitious but deliverable addresses to avoid detection.

¶3 The investigators executed a search warrant on Singleton's vehicle, where they located three packages containing over 40 pounds of marijuana. Singleton's fingerprints were found on one of the packages. Singleton left the scene before he could be arrested and avoided apprehension for nearly two years. Singleton denied any involvement in drug trafficking.

¶4 A grand jury indicted Singleton on one count of sale or transportation of marijuana weighing two or more pounds, and the superior court appointed counsel to represent him. In June 2015, Singleton participated in a settlement conference with counsel present and rejected the State's plea offer. Singleton did not appear unhappy with counsel, nor did he suggest their relationship had deteriorated. At subsequent pretrial conferences, Singleton did not express concerns regarding counsel. As trial approached, counsel filed a series of motions, successfully precluding a portion of the State's evidence.

¶5 Trial commenced in September 2015. Counsel enlisted a second attorney to assist him throughout the trial. Singleton did not raise issues regarding counsel and the record indicates they communicated by

e-mail regarding trial logistics. After the first day of trial, counsel moved to preclude additional portions of the State's evidence, and the superior court granted the motion in part.

¶6 Singleton moved for new counsel on the second day of trial, arguing counsel failed to adequately prepare for trial, struggled to maintain a heavy caseload, and appeared disorganized. Singleton asserted that, after the first day of trial, a "shouting and swearing match" ensued and counsel would no longer speak to him directly. Although Singleton claimed to have evidence supporting the allegations, the motion contained no attachments or exhibits. The superior court denied the motion, concluding that no irreconcilable conflict existed, new counsel would encounter the same challenges, delay had potentially harmful consequences, and the motion appeared to be a "last minute attempt" at postponing trial. The superior court further noted that counsel was "prepared, articulate, and thorough," and had already "put up an extremely robust defense."

¶7 Singleton failed to appear on the third day of trial. Counsel avowed that Singleton e-mailed him, claiming that he left the state due to a family emergency. With Singleton's permission, counsel provided a copy of the e-mails to the superior court. The superior court denied Singleton's request for a continuance and the State proceeded *in absentia*.

¶8 In the remaining days of trial, as the superior court noted, counsel continued to raise a "vigorous defense," successfully admitting a recording of Singleton denying involvement in the offense. After closing arguments, the superior court noted that defense counsel's argument was "passionate, organized, insightful, and raised a number of points . . . the jury is going to have to think long and hard about."

¶9 The jury found Singleton guilty as charged and found aggravating factors applied. Following trial, Singleton remained at large for over four years. After his apprehension in Georgia and extradition back to Arizona in April of 2020, Singleton obtained new counsel for sentencing. The superior court imposed the mitigated term of three years' imprisonment and awarded 111 days' presentence incarceration credit. Singleton timely appealed. Although he had delayed sentencing more than 90 days after the conviction, he had not been warned such delay would result in the forfeiture of his right to appeal. Accordingly, we consider his appeal. *See* A.R.S.13–4033(C); *State v. Bolding*, 227 Ariz. 82, 88 ¶ 20 (App. 2011).

DISCUSSION

¶10 Singleton argues the superior court erred in denying his motion for new counsel. We review the superior court's denial of a motion for new counsel for an abuse of discretion. *See State v. Cromwell*, 211 Ariz. 181, 186 ¶ 27 (2005).

¶11 The Sixth Amendment guarantees criminal defendants the right to representation by competent counsel. *See* U.S. Const. amend. VI; Ariz. Const. art. 2 § 24; *State v. Moody*, 192 Ariz. 505, 507 ¶ 11 (1998). A complete breakdown in communication or genuine irreconcilable conflict between a defendant and counsel violates the right to competent counsel. *See State v. Torres*, 208 Ariz. 340, 342 ¶ 6 (2004). To prevail on a motion for new counsel, however, a defendant must present evidence of a severe and pervasive conflict with counsel or evidence that he had such minimal contact with counsel that meaningful communication was not possible. *See State v. Paris-Sheldon*, 214 Ariz. 500, 505 ¶ 12 (App. 2007). A colorable claim "must go beyond personality conflicts or disagreements with counsel over trial strategy." *Cromwell*, 211 Ariz. at 187 ¶ 30.

¶12 In evaluating a motion for new counsel, the superior court must bear "the rights and interest of the defendant in mind tempered by exigencies of judicial economy." *State v. LaGrand*, 152 Ariz. 483, 486 (1987). The superior court should look at the factors set forth in *LaGrand* and consider (1) whether an irreconcilable conflict exists between counsel and the accused, and whether new counsel would be confronted with the same conflict; (2) the timing of the motion; (3) inconvenience to witnesses; (4) the time period already elapsed between the alleged offense and trial; (5) the defendant's proclivity to change counsel; and (6) the quality of counsel. *Id.* at 486–87. The superior court has "wide latitude in balancing the right to counsel of choice against the needs of fairness, and against the demands of its calendar." *See United States v. Gonzalez-Lopez*, 548 U.S. 140, 152 (2006) (internal citations omitted).

¶13 Reasonable evidence supports the superior court's denial of Singleton's motion for new counsel. Nothing in the record shows a "complete breakdown in communication or genuine irreconcilable conflict." *See Torres*, 208 Ariz. at 342 ¶ 6. Counsel and client maintained some form of communication throughout the trial process. Until trial began, he appeared for his court dates, understood the nature of the proceedings and charges against him, and participated in a thorough settlement conference with counsel present. He and counsel continuously discussed trial strategy. Even after the alleged shouting match, counsel and client

communicated via e-mail, including whether Singleton would testify. After he failed to appear for trial, he actively communicated with counsel over e-mail. Singleton has therefore failed to establish that contact with counsel was so minimal that meaningful communication was not possible. *See Paris-Sheldon*, 214 Ariz. at 505 ¶ 12.

¶14 Furthermore, the superior court listed the *LaGrand* factors and analyzed each in its order. Given counsel's significant pretrial litigation and assistance from co-counsel, any issues with trial strategy or motion practice would likely have occurred with new counsel. As the superior court explicitly noted, counsel mounted a thorough and vigorous defense, even in Singleton's absence after the alleged shouting match. A significant period elapsed between the alleged offense and the trial date and any delay would have caused significant inconvenience to witnesses. Finally, the late timing of the motion for new counsel supports the superior court's concern that Singleton used the filing as an attempt to further delay trial. The superior court acted within its discretion in weighing Singleton's desire for new counsel against "the timely administration of justice," *Cromwell*, 211 Ariz. at 187 ¶ 34, and properly balanced all relevant interests in refusing to accommodate Singleton's motion for new counsel. The court did not err.

¶15 Singleton nonetheless argues that a complete breakdown in communication after the alleged shouting match required substitution of counsel. Aside from avowals in his motion, the record shows no other reference to a deterioration in the attorney-client relationship. Even if he had engaged in a "shouting match" with counsel, the disagreement did not result in any ascertainable loss in communication; Singleton and counsel continued to have contact via e-mail. A single allegation of a personality conflict, lost trust, or dispute over trial strategy does not require substitution of counsel. *See Cromwell*, 211 Ariz. at 186–87 ¶¶ 29–30.

¶16 Singleton next argues that the superior court should have substituted counsel based on the factors set forth in *LaGrand*, 152 Ariz. 483. As stated above, the superior court properly considered the *LaGrand* factors in reaching its conclusion. Without more, the record does not demonstrate that he suffered a severe and pervasive conflict with counsel, *see Paris-Sheldon*, 214 Ariz. at 505 ¶ 12, and we will not reweigh the evidence on appeal, *see State v. Lee*, 189 Ariz. 590, 603 (1997).

CONCLUSION

¶17 For the foregoing reasons, we affirm.

AMY M. WOOD • Clerk of the Court
FILED: AA