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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 01/27/2011
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 09-0713
)
Appellee,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
SAMUEL DAVID MAVOIDES,) Rule 111, Rules of the
) Arizona Supreme Court)
)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-149103-001

The Honorable Shellie F. Smith, Judge

AFFIRMED

Thomas Horne, Attorney General Phoenix
By Kent E. Cattani, Chief Counsel,
Criminal Appeals/Capital Litigation Section
and Suzanne M. Nicholls, Assistant Attorney General
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix
By Eleanor S. Terpstra, Deputy Public Defender
Attorneys for Appellant

G E M M I L L, Judge

¶1 Mavoides appeals his convictions and sentences for armed robbery and kidnapping. Mavoides requests this court remand the case for a hearing on his motions requesting appointment of new counsel that were denied by the trial court. For the following reasons, we affirm Mavoides' convictions and sentences.

BACKGROUND

¶2 In August 2008, Mavoides was indicted by a grand jury on count one, armed robbery, a class 2 dangerous felony, and count two, kidnapping, a class 2 dangerous felony. The court found Mavoides to be indigent and ordered that he be appointed legal counsel.

¶3 In April 2009, Mavoides filed a motion to change counsel. The motion requested the change "due to [appointed counsel's] failure to communicate with [him] and his failure to diligently [pursue] [a] defense in [his] case." The trial court denied the motion, stating "[g]ood cause not appearing."

¶4 In May 2009, Mavoides filed a second motion to change counsel. The motion requested the change because appointed counsel "failed to maintain communication with [him], having only visited [him] to discuss [his] case twice since August [2008]" and "refused to file motions [he] asked for, thereby denying [him] [his] right to assist in [his] defense." In

addition, the motion stated that Mavoides had filed a formal complaint with the Arizona State Bar against his appointed counsel, which "creat[ed] a non-workable and distrustful relationship between" Mavoides and counsel. The trial court denied the second motion for "no good cause appearing."

¶15 In June 2009, following a four-day trial, the jury found Mavoides guilty on both counts. Mavoides was sentenced to twelve years incarceration on each of counts one and two, with both sentences to be served concurrently.

¶16 Mavoides filed a timely notice of appeal, and we have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21 (2005), 13-4031 (2010), and 13-4033 (2010).

DISCUSSION

¶17 Mavoides' sole argument on appeal is that the trial court erred by denying his two written motions requesting appointment of new counsel.

¶18 The Sixth Amendment of the U.S. Constitution guarantees a criminal defendant the right to representation by competent counsel. U.S. Const. amend. VI; see also Ariz. Const. art. 2, § 24; *State v. Torres*, 208 Ariz. 340, 342, 93 P.3d 1056, 1058 (2004). An indigent defendant, however, is not "entitled to counsel of choice, or to a meaningful relationship with his or her attorney." *State v. Moody*, 192 Ariz. 505, 507, ¶ 11, 968

P.2d 578, 580 (1998) (citing *State v. Bible*, 175 Ariz. 549, 591, 858 P.2d 1152, 1194 (1993)).

¶9 A trial court is required to appoint new counsel when there exists "an irreconcilable conflict or a completely fractured relationship between counsel and the accused." *State v. Cromwell*, 211 Ariz. 181, 186, ¶ 29, 119 P.3d 448, 453 (2005). "[A] defendant must allege facts sufficient to support a belief that an irreconcilable conflict exists warranting the appointment of new counsel in order to avoid the clear prospect of an unfair trial." *Id.* at 187, ¶ 30, 119 P.3d at 454 (citation omitted). Further, the trial court is required to conduct a hearing into a defendant's request for new counsel "[i]f a defendant makes sufficiently specific, factually based allegations in support of his request for new counsel." *United States v. Lott*, 310 F.3d 1231, 1249 (10th Cir. 2002) (citation omitted); see also *Torres*, 208 Ariz. at 343, ¶ 8, 93 P.3d at 1059. When considering a motion for appointment of new counsel, the trial judge should consider the following factors in order to balance the defendant's rights and judicial economy:

whether an irreconcilable conflict exists between counsel and the accused, and whether new counsel would be confronted with the same conflict; the timing of the motion; inconvenience to witnesses; the time period already elapsed between the alleged offense and trial; the proclivity of the defendant to change counsel; and quality of counsel.

Moody, 192 Ariz. at 507, ¶ 11, 968 P.2d at 580 (quoting *State v. LaGrand*, 152 Ariz. 483, 486-87, 733 P.2d 1066, 1069-70 (1987)). We review a trial court's denial of a defendant's request for new counsel for an abuse of discretion. *Cromwell*, 211 Ariz. at 186, ¶ 27, 119 P.3d at 453.

¶10 The trial court did not err in denying Mavoides' motions for new counsel because Mavoides' motions did not provide sufficient facts to support a finding of the existence of an irreconcilable conflict. See *Cromwell*, 211 Ariz. at 187, ¶ 30, 119 P.3d at 454. Further, the trial court was not required to hold a hearing on the motions because neither motion included "specific, factually based allegations." See *Lott*, 310 F.3d at 1249; see also *Torres*, 208 Ariz. at 343, ¶ 8, 93 P.3d at 1059. Though Mavoides did allege that counsel refused to file motions that he requested, differences in trial strategy are insufficient to establish an irreconcilable difference between defendant and counsel. *Cromwell*, 211 Ariz. at 187, ¶ 30, 119 P.3d at 454 (noting that disagreements over defense strategy are insufficient to constitute a colorable claim for substitution of counsel).

¶11 In addition, Mavoides' motion mentioned that he filed a bar complaint against his appointed counsel. Filing a bar complaint against one's attorney, however, does not automatically require substitution of counsel. See *State v.*

Michael, 161 Ariz. 382, 384-85, 778 P.2d 1278, 1280-81 (App. 1989) (as a matter of public policy, a defendant's filing of a bar complaint against his attorney should not require removal of that attorney).

¶12 Further, while Mavoides argued that counsel visited him only two times in a nine-month span, he provided no evidence to prove that this constituted such minimal contact as to make meaningful communication impossible. *Lott*, 310 F.3d at 1249 (“[T]o prove a total breakdown in communication, a defendant must put forth evidence of a severe and pervasive conflict with his attorney or evidence that he had such minimal contact with the attorney that meaningful communication was not possible.”). To the contrary, in addition to the two visits mentioned by Mavoides in his motion, the record actually provides for two additional visits between counsel and Mavoides, within the context of two pretrial hearings, in December 2008 and February 2009.

¶13 We find no abuse of discretion by the trial court in not holding hearings on Mavoides' motions. Nor do we find any abuse of discretion in the trial court's denials of the motions.

CONCLUSION

¶14 Because we find no error in the trial court's denials of Mavoides' motions requesting new counsel, we affirm Mavoides'

convictions and sentences.

_____/s/_____
JOHN C. GEMMILL, Judge

CONCURRING:

_____/s/_____
PATRICIA K. NORRIS, Presiding Judge

_____/s/_____
PATRICIA A. OROZCO, Judge