

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
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: 08/30/2011
RUTH A. WILLINGHAM,
CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 10-0173
)
Appellee,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
) Rule 111, Rules of the
JUAN TAMERIN PETROVICH,) Arizona Supreme Court)
)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-165837-001

The Honorable Timothy J. Ryan, Judge
The Honorable Susanna C. Pineda, Judge

AFFIRMED

Thomas C. 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 Edith M. Lucero, Deputy Public Defender
Attorneys for Appellant

P O R T L E Y, Judge

¶1 Defendant, Juan Tamerin Petrovich, challenges his convictions and sentences for two counts of child molestation and one count of sexual conduct with a minor.

FACTUAL BACKGROUND

¶2 Petrovich was accused of sexual contact and oral sexual contact with a ten-year-old boy. After the boy's family notified police, Petrovich was arrested. He was subsequently indicted and the trial court appointed the Maricopa County Public Defender's Office to represent him.

¶3 Petrovich filed a motion to change counsel.¹ At a pretrial conference prior to jury selection, the trial court summarily dismissed the motion because it was "conclusory in nature." The next day, and after the jury had been impaneled, Petrovich orally requested new counsel. He expressed his concerns about his lawyer's preparation for trial.² His request was denied.

¹ The motion was written on a pre-printed form. It stated that: "I, Juan Petrovich, hereby request that William Fisher be withdrawn as my counsel of record, and that another public defender be substituted as my attorney in all future proceedings in the trial court."

² He told the court that he was concerned that his attorney had been unable to interview certain witnesses. He also explained that he had filed a bar complaint against his lawyer prior to filing the written motion.

¶4 Petrovich was found guilty as charged. He was sentenced to twenty years in prison for sexual conduct with a minor along with consecutive seventeen-year sentences for each count of molestation. He was given 470 days of presentence incarceration credit. He appealed, 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(A)(1) (2003), 13-4031 and -4033(A)(4) (2010).

DISCUSSION

¶5 The sole issue on appeal is whether it was error for the trial court to summarily dismiss Petrovich's written motion without inquiring into why he wanted to change counsel. We review the denial of a defendant's request to change counsel for an abuse of discretion. *State v. Paris-Sheldon*, 214 Ariz. 500, 504, ¶ 8, 154 P.3d 1046, 1050 (App. 2007).

¶6 The Sixth Amendment guarantees criminal defendants the right to representation by competent counsel. U.S. Const. amend. VI; Ariz. Const. art. 2, § 24; *State v. LaGrand*, 152 Ariz. 483, 486, 733 P.2d 1066, 1069 (1987). A 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)).

¶17 We find *State v. Torres*, 208 Ariz. 340, 93 P.3d 1056 (2004), instructive. In *Torres*, the defendant filed a motion requesting a new lawyer. *Id.* at 341-42, ¶ 2, 93 P.3d at 1057-58. Torres asserted "he could no longer speak with his lawyer about the case, he did not trust him, he felt threatened and intimidated by him, there was no confidentiality between them, and his counsel was no longer behaving in a professional manner." *Id.* at 342, ¶ 2, 93 P.3d at 1058. The trial court denied the motion and advised the defendant to contact the public defender's office. *Id.* The case proceeded to trial and the defendant was convicted, and he appealed. *Id.* We reversed, and the supreme court agreed that the trial court abused its discretion when it failed to conduct an inquiry into Torres' request. *Id.* at 342-43, ¶¶ 3, 7, 93 P.3d at 1058-59.

¶18 Our supreme court held that once a request for new counsel is made, the trial court "has the duty to inquire as to the basis of a defendant's request for substitution of counsel" if the defendant's allegations are factually based and sufficiently specific. *Id.* at 343, ¶ 7, 93 P.3d at 1059. "The nature of the inquiry will depend upon the nature of the defendant's request." *Id.* at ¶ 8. A trial court abuses its discretion if it "fails to inquire into the basis for the defendant's dissatisfaction with counsel or fails to conduct a hearing on the defendant's complaint after being presented with

specific factual allegations in support of the request for new counsel." *Paris-Sheldon*, 214 Ariz. at 504, ¶ 8, 154 P.3d at 1050.

¶9 Here, there was no abuse of discretion. Petrovich filed a conclusory motion asking the trial court to replace his counsel with another public defender. The motion did not allege any facts. The court was not legally required to inquire further. See *Torres*, 208 Ariz. at 343, ¶ 7, 93 P.3d at 1059. Consequently, the court did not err when it summarily dismissed the written motion.³

CONCLUSION

¶10 For the foregoing reasons, we affirm Petrovich's convictions and sentences.

/s/

MAURICE PORTLEY, Presiding Judge

CONCURRING:

/s/

MARGARET H. DOWNIE, Judge

/s/

MICHAEL J. BROWN, Judge

³ Petrovich did not appeal the denial of his oral motion to change counsel after the jury was impaneled.