IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

FORREST EARL HOUSEWORTH,
Appellant.

No. 2 CA-CR 2014-0081
Filed April 8, 2015

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Appeal from the Superior Court in Cochise County
No. CR201200252
The Honorable Karl D. Elledge, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Section Chief Counsel, Phoenix
By Amy M. Thorson, Assistant Attorney General, Tucson
Counsel for Appellee

Emily Danies, Tucson
Counsel for Appellant

MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Chief Judge Eckerstrom and Presiding Judge Miller concurred.

E S P I N O S A, Judge:

¶1 Following a four-day jury trial, appellant Forrest Houseworth was convicted of transporting a dangerous drug for sale, possessing a dangerous drug for sale,[1] four counts of weapons misconduct, two counts of possession of marijuana weighing less than two pounds, nine counts of possession of drug paraphernalia, and resisting arrest. The trial court sentenced Houseworth to consecutive and concurrent prison terms totaling 22.5 years. On appeal, he argues the court abused its discretion when it denied his motion for change of representation (the motion), which he filed the week before the trial was scheduled to begin. For the reasons set forth below, we affirm.

¶2 In the motion, counsel asked that he be permitted to withdraw and that Houseworth be allowed to represent himself. He asserted, "the attorney-client relationship has deteriorated . . . so much that it is impossible for counsel . . . to adequately represent the interests of Defendant," and "it is impossible for [counsel] to proceed as Defendant is insisting and not commit ethical violations in this Court." The trial court conducted a hearing in January 2014, during which Houseworth testified he did not want to represent himself, but instead wanted a new attorney. Testifying that counsel "looks at this [case] altogether different," Houseworth added, "I just honestly don't think that [counsel] would represent me as good as I thought that he would when it start[ed] out." Counsel testified that

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[1]This count was later vacated after the trial court concluded it was a lesser-included offense.

Houseworth was asking him to "put on [a] defense" which he described as being "in a way unethical, and in another way prejudicial and may very well end up in a mistrial," and added that Houseworth was unwilling "to work his own case with me."

¶3 The trial court noted its concern that the jury trial was scheduled to begin in a few days and stated it would not continue the trial because of the inconvenience to the witnesses and the length of time since the 2012 indictment. The court told Houseworth he had not established that his relationship with counsel "is fractured to the point that I should relieve [counsel] of the responsibility for representing you in this case," and explained that a new attorney might be faced with "the same kind of conflict" facing his current attorney. The court pointed out that counsel "certainly can't do anything unethical" and also stated:

> I'm concerned about the timing of the motion. I have already identified that I think it would be inconvenient to the witnesses in this case. . . . The time period that's elapsed between the time this offense occurred and how long this trial date's been set in this case.
>
> And it's not a matter of [the] quality of counsel. It's a matter of effective representation of counsel is the standard [sic]. And whether or not a different attorney would approach it a different way really isn't the issue before the Court.

¶4 On appeal, Houseworth maintains the trial court erred in denying the motion, asserting "there was an irretrievable breakdown between client and attorney." Although a criminal defendant is entitled to effective representation, he "is not 'entitled to counsel of choice, or to a meaningful relationship with his . . . attorney.'" *State v. Torres,* 208 Ariz. 340, ¶ 6, 93 P.3d 1056, 1058 (2004), *quoting State v. Moody,* 192 Ariz. 505, ¶ 11, 968 P.2d 578, 580 (1998). The Sixth Amendment requires substitution of counsel when

"there is a complete breakdown in communication or an irreconcilable conflict between a defendant and his appointed counsel,"[2] and a trial court must "inquire as to the basis of a defendant's request for substitution of counsel." *Torres,* 208 Ariz. 340, ¶¶ 6-7, 93 P.3d at 1058-59.

¶5 When lesser conflicts exist between a defendant and counsel, however, the court must "balance the rights and interests of the defendant against the public interest in judicial economy, efficiency and fairness" by considering such factors as "'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.'" *State v. Cromwell,* 211 Ariz. 181, ¶¶ 29, 31, 119 P.3d 448, 453-54 (2005), *quoting State v. LaGrand,* 152 Ariz. 483, 486-87, 733 P.2d 1066, 1069-70 (1987). We will not disturb a trial court's denial of a request to substitute counsel absent a clear abuse of discretion, *Moody,* 192 Ariz. 505, ¶ 11, 968 P.2d at 580, and we must defer to the court's factual findings if they are supported by the record, *State v. Paris-Sheldon,* 214 Ariz. 500, ¶ 13, 154 P.3d 1046, 1051 (App. 2007).

¶6 As an initial matter, based on the evidence presented at the hearing, we conclude the trial court correctly determined Houseworth's differences of opinion with counsel did not amount to an irreconcilable conflict or a complete breakdown of communications between lawyer and client. *See Cromwell,* 211 Ariz.

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[2]Although counsel here was retained rather than appointed, this does not impact our ruling because the trial court "retain[s] 'wide latitude' in balancing the right to counsel of choice against the needs of the criminal justice system to fairness, court efficiency, and high ethical standards." *Id., quoting United States v. Gonzalez-Lopez,* 548 U.S. 140, 152 (2006). Moreover, while Houseworth mentions that counsel was retained, he does not raise an argument based on this distinction, and we thus do not address it. *See State v. Carver,* 160 Ariz. 167, 175, 771 P.2d 1382, 1390 (1989); *see also* Ariz. R. Crim. P. 31.13(c)(1)(vi).

181, ¶ 29, 119 P.3d at 453 ("[D]isagreements over defense strategies do not constitute an irreconcilable conflict."). To establish 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.'" *Paris-Sheldon,* 214 Ariz. 500, ¶ 12, 154 P.3d at 1051, *quoting United States v. Lott,* 310 F.3d 1231, 1249 (10th Cir. 2002).

¶7 Additionally, in considering the other factors relevant to a request to change counsel, *see LaGrand,* 152 Ariz. at 486-87, 733 P.2d at 1069-70, we conclude the trial court did not abuse its discretion by denying Houseworth's motion: the indictment had been filed almost two years earlier; although counsel had represented Houseworth since the beginning of the case, this motion was brought within a week of trial; the trial involved several witnesses who would be inconvenienced if the trial were rescheduled; and, based on counsel's assertion that Houseworth was asking him to perform in an unethical manner, the court correctly found a different attorney might face the same problem. Finally, to the extent Houseworth asserts the court erred by denying his motion because he had not previously asked for another attorney, based on the record in its entirety, we conclude the court nonetheless correctly denied the motion.

¶8 Because we find no error or abuse of discretion in the trial court's denial of Houseworth's motion, his convictions and sentences are affirmed.