

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KUMAL JEROME BURTON,

Defendant-Appellant.

UNPUBLISHED

August 22, 1997

No. 187771

Ingham Circuit Court

LC No. 94-068306-FC

Before: Hood, P.J., and McDonald and Young, JJ.

PER CURIAM.

Following a jury trial defendant was convicted of first-degree murder, MCL 750.316; MSA 28.548, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), and sentenced to life in prison without the possibility of parole for the murder conviction and two years' imprisonment for the felony-firearm charge. Defendant now appeals as of right. We affirm.

Defendant first claims his convictions must be reversed because the trial court's refusal to grant a continuance to permit his retained counsel to prepare a defense for trial violated his right to counsel under both the federal and Michigan Constitutions. US Const, Am VI; Const 1963, art 1, §20. Although we agree the trial court abused its discretion in failing to grant defendant's request for a continuance, *People v Wilson*, 397 Mich 76; 243 NW2d 257 (1976), reversal is not mandated in this case. Generally, prejudice need not be demonstrated where a defendant is denied the Sixth Amendment right to counsel of the defendant's choice. See *People v Johnson*, 215 Mich App 658; 547 NW2d 65 (1996) and cases cited therein. However, here, shortly after denying the continuance, the trial judge disqualified herself and the matter was assigned to a different judge who provided defendant the option of adjourning trial to allow him the opportunity to obtain other retained counsel. Defendant declined the offer and stated his satisfaction with his appointed counsel. Thus defendant declined to exercise the very right he now claims he was denied. No reversal is required.

Defendant's remaining claims have no merit. The record does not support defendant's request for instruction on the lesser offense of voluntary manslaughter, *People v Pouncey*, 437 Mich 382; 471 NW2d 346 (1991), or reveal any evidence of prosecutorial misconduct resulting in a denial of

defendant's right to a fair and impartial trial, and the jury array was not challenged before the jury was impaneled and sworn, *People v Hubbard (After Remand)*, 217 Mich App 459; 552 NW2d 593 (1996). Finally there were no errors the cumulative effect of which denied defendant a fair and balanced trial. *People v Spencer*, 130 Mich App 527; 343 NW2d 607 (1983).

Affirmed.

/s/ Harold Hood

/s/ Gary R. McDonald

/s/ Robert P. Young, Jr.