

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT LEE HOGAN,

Defendant-Appellant.

UNPUBLISHED
November 4, 1997

No. 195779
Branch Circuit Court
LC No. 94-105834 FH

Before: Holbrook, Jr., P.J., and Michael J. Kelly and Gribbs, JJ.

MEMORANDUM.

Defendant pleaded nolo contendere to attempted malicious destruction of property over \$100, MCL 750.92(3); MSA 28.287(3); MCL 750.377a; MSA 28.609(1), and was sentenced to serve three years probation, with the first eighty days to be served in the county jail. Defendant appeals as of right. We affirm.

The trial court initially appointed counsel to represent defendant, but counsel moved to withdraw after defendant indicated his intent to retain counsel. The trial court granted the motion to withdraw, adjourned trial, and permitted defendant a reasonable opportunity to secure retained counsel. Defendant failed to retain counsel. Instead, he made three requests for appointment of new trial counsel, each being rejected by the trial court on the ground that defendant was not indigent and, therefore, not entitled to representation by appointed counsel.

Defendant argues that the trial court erroneously granted appointed counsel's motion to withdraw. We disagree. The trial court acted within its discretion in allowing counsel to withdraw where defendant sought to replace appointed counsel with retained counsel. *People v Arquette*, 202 Mich App 227, 231; 507 NW2d 824 (1993). A criminal defendant has a constitutional right to defend his action through a retained attorney of his choice. *Id.*; *People v Stinson*, 6 Mich App 648, 654; 150 NW2d 171 (1967).

Defendant also argues that the trial court erroneously denied his requests for appointed counsel. An indigent criminal defendant is entitled to the representation of counsel appointed at public expense. *People v Ginther*, 390 Mich 436, 441; 212 NW2d 922 (1973). Indigence must

be determined on a case-by-case basis. *Arquette, supra*, 230; *People v Morris*, 30 Mich App 169, 172; 186 NW2d 10 (1971). We decline to overturn the trial court's determination that defendant was not indigent where defendant failed to present record support for his claim.

Defendant's unconditional plea waives appellate review of his claim that he was denied his constitutional right to a speedy trial. *People v Wynn*, 197 Mich App 509, 510; 496 NW2d 799 (1992).

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Michael J. Kelly

/s/ Roman S. Gibbs