

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TOMMY LEE-HOWARD RIDDLE,

Defendant-Appellant.

UNPUBLISHED

July 28, 2000

No. 215578

Calhoun Circuit Court

LC No. 98-000009-FH

Before: Wilder, P.J., and McDonald and Doctoroff, JJ.

PER CURIAM.

Defendant was charged with possession with intent to deliver under fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), and with possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii); MSA 14.15(7401)(2)(d)(iii). Following a jury trial, defendant was convicted of the lesser included offenses of possession of less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v), and possession of marijuana, MCL 333.7403(2)(d); MSA 14.15(7403)(2)(d). The trial court sentenced defendant to eighteen months to eight years' imprisonment for the possession of cocaine conviction and one year imprisonment for the possession of marijuana conviction. Defendant appeals as of right. We affirm.

This case arises out of the traffic stop of a vehicle driven by defendant's brother, Trenton Riddle, in which defendant was a passenger. As defendant left the vehicle, a bag containing 10.99 grams of cocaine fell out of the vehicle from the passenger's side. Police also found a large bag of marijuana under the driver's seat, and defendant had 2.82 grams of marijuana on his person.

The only issue on appeal is whether the trial court abused its discretion in denying defendant's numerous requests to substitute appointed counsel. Defendant argues there was a breakdown in the attorney-client relationship, there was a lack of communication between him and his attorney, and there were differences in trial strategy. We disagree and find no abuse of discretion in this case.

The decision regarding substitution of counsel is within the sound discretion of the trial court and will not be reversed absent an abuse of that discretion. *People v Mack*, 190 Mich App 7, 14; 475

NW2d 830 (1991). An abuse of discretion exists when an unprejudiced person, considering the facts on which the trial court acted, would conclude that there was no justification or excuse for the ruling made. *People v Ullah*, 216 Mich App 669, 673; 550 NW2d 568 (1996).

The test for determining whether substitution of counsel and granting of a continuance is appropriate is set forth in *People v Charles O Williams*, 386 Mich 565, 578; 194 NW2d 337 (1972). The test provides criteria for determining whether substitution and continuance is appropriate as follows: (1) has the defendant asserted a constitutional right; (2) does the defendant have a legitimate reason [an irreconcilable bona fide dispute with his attorney, i.e., good cause] for asserting this right; (3) was the defendant negligent; (4) were previous adjournments attributable to the defense. *Id.* at 578. In *Williams*, the Michigan Supreme Court found that a legitimate dispute had arisen between the defendant and counsel, and noting that the defendant had not been the cause of delay in the case, held that substitution of counsel was necessary. *Id.*

In this case, it is undisputed that defendant has asserted the constitutional right to counsel; therefore the first prong of the *Williams* test is satisfied. We also find that prong three of the *Williams* test is satisfied because both defendant and defense counsel requested substitution of counsel in a timely manner.

However, defendant's claim fails because prongs two and four are not satisfied. Regarding prong four, defendant was the cause of several delays at trial. It was defense counsel who first successfully adjourned the trial at the March 16, 1998 hearing, in part because the prosecutor had only then delivered eight additional police reports and a notice of intent to produce listing witnesses to defense counsel. Moreover, at the March 18, 1998 hearing, the trial court granted defendant another adjournment in order to give defendant the opportunity to retain counsel. At the April 27, 1998 hearing, defense counsel made a motion to withdraw and for adjournment. After hearing extensive testimony regarding the problems that had arisen between defendant and his counsel, the trial court found that no real breakdown of the attorney-client relationship had occurred, and denied defense counsel's motion to withdraw. Defendant then failed to appear for trial and was charged with contempt of court.

Moreover, defendant failed to show good cause for appointment of substitute counsel. Appointment of substitute counsel is warranted only upon a showing of good cause and where substitution will not unreasonably disrupt the judicial process. *People v Ginther*, 390 Mich 436, 441; 212 NW2d 922 (1973); *Mack, supra* at 14. In *People v Hernandez*, 84 Mich App 1, 7; 269 NW2d 322 (1978), this Court stated that "[t]here is no precise definition of good cause in the context of substitution of counsel, and the resolution of this issue must be found in the circumstances surrounding each case, particularly in the reasons presented to the trial judge at the time the request is made."

Defendant's complaints demonstrated a general dissatisfaction with the entire process based on defendant's unrealistic expectations of the system and the outcome, but did not constitute legitimate grounds for substitution. Defendant was unhappy that, because of the rules of evidence, counsel could not get certain evidence admitted. Specifically, defendant wanted to bring in evidence that his dead brother was the one responsible for having the cocaine and marijuana in the vehicle; however, much of it was hearsay. Defendant was also unhappy because counsel disagreed with his desires to call over forty

character witnesses to testify that he was known in the community as a marijuana smoker, not a cocaine user. Third, defendant claimed that counsel failed to give him information by not discussing strategy with him, but also complained when counsel informed him of plea bargains offered by the prosecutor. Defendant complained that generally he and counsel could not communicate. For example, defendant noted a situation where counsel began their meeting by asking him how he was doing, and he found this very offensive because obviously he was not doing well. Finally, defendant complained that counsel was working against him by working with the prosecutor. Because of his distrust of counsel, defendant refused to give her the names of several witnesses because she would then have to provide that information to the prosecutor. He was under this impression because he saw the prosecutor give counsel the eight additional police reports and he believed that counsel was somehow involved with that occurrence in order to convince him to plead. Defendant did not have a legitimate reason, i.e., good cause, for asserting that he was entitled to substitution of counsel, despite his complaints.

Defense counsel agreed with defendant that their relationship had soured. Defense counsel was obviously extremely frustrated with defendant and what she perceived as defendant's total lack of cooperation. At one point, defendant refused to give counsel the names of witnesses, and at another point, defendant refused to give her the phone numbers of witnesses who had been subpoenaed, but who failed to respond. Defendant's refusal to understand that she could not get certain evidence admitted because of the rules of evidence, and his refusal to understand how the line of defense he wanted to put forth was potentially very harmful to him, as well as his refusal to communicate with her or trust her, all undermined counsel's ability to advocate a legitimate defense on behalf of her client. Despite these obstacles, counsel successfully defended defendant on the charges of possession with intent to deliver. Throughout the case, however, defense counsel repeatedly requested that she be allowed to withdraw and that defendant be appointed substitute counsel.

The trial court held the informal fact-finding hearing required by *People v Ceteways*, 156 Mich App 108; 401 NW2d 327 (1986), on several occasions, and after hearing testimony from both defendant and counsel, found that counsel was prepared for trial, that she had in fact subpoenaed the witnesses requested by defendant, that she understood defendant's theory of the case and was acting in his best interest, and that it was defendant's choice whether he wanted to cooperate with her or not. The trial court explained to defendant more than once that any attorney would be held to the same rules of evidence as counsel.

At the center of the dispute between defendant and counsel over character witnesses were the witnesses who did show up, whose testimony was at least technically admissible in fragments, but who did not testify. The trial court handled the disagreement over which witnesses to call by having counsel put on record those witnesses who were present in response to their subpoena. Additionally, counsel put on record any dispute she had with defendant about who should be called, but he placed the final decision in counsel's hands. Counsel decided that these witnesses could offer nothing but damaging, irrelevant testimony.

In *People v Thompson*, 41 Mich App 272; 199 NW2d 859 (1972), this Court found that the defendant and attorney had disagreements about trial tactics and basic trial strategy. The attorney chose "not to request a lie detector test, a pretrial lineup, and chose not to make an opening statement." *Id.*

Acknowledging that it was using caution after reversal in *Williams*, this Court stated the following:

Whatever our errors were and those of the trial court in *Williams, supra*, they do not seem to us to be present here. Thus, we distinguish the cases on the ground above noted, and we do not feel bound by the *Williams* holding.

If, indeed, an appointed counsel is obligated to follow his client's choice of trial tactics in all respects, at the peril of later reversal, mayhaps we err again when we do not reverse here.

We do not think this is the import of *Williams*. We hold that where, as here, appointed counsel was found qualified, competent, and prepared by the trial judge upon due inquiry into the basis of defendant's request for his discharge, the request was properly denied.

Were we to reverse under these circumstances, we would, we believe, imperil the status of every defense counsel appointed in our state. It does not seem to us that attorneys can possibly function as officers of the court, discharging their professional obligations if they may exercise no independent judgment.

We find no error which would support reversal. [*Id.* at 276.]

In this case, defendant repeatedly delayed the trial, once by fleeing and failing to show up for the original trial date, and at other times for other reasons. Based on the reasons presented to him at the time, the trial court found that the only bona fide disagreements between defendant and counsel were decisions he felt were best left to counsel's discretion. Had he let defendant have any more say in the process, the presence of counsel and even the judge's own presence, for that matter, would have been rendered meaningless. Thus, this Court's sound reasoning in *Thompson, supra*, 276, seems particularly applicable.

This case is easily distinguished from the *Williams* case. Unlike in the *Williams* case where counsel failed to track down alibi witnesses, the disputed witnesses in this case were weak character witnesses at best. Another distinction between this case and the *Williams* case is that in *Williams*, counsel had apparently failed to even subpoena or interview the alibi witnesses that the defendant wanted. *Williams, supra* at 570-571. In this case, counsel subpoenaed all of the witnesses defendant wanted, had as many as possible present or otherwise available to testify, and investigated what specific testimony they could offer, before making an informed decision that their testimony would be damaging and irrelevant. Moreover, as discussed above, defendant in this case was the cause of extensive previous delay in the matter, and was clearly choosing to be uncooperative with counsel in providing witness information, whereas in *Williams*, the record failed to show that the defendant had caused any delay or that he was intentionally uncooperative. *Id.* at 577. Perhaps the most important distinction is that in *Williams*, the trial court failed to hold any evidentiary inquiry into the matter and hastily concluded that counsel had prepared in accordance with the defendant's wishes. In this case, the court heard extensive testimony from both defendant and counsel, and made an informed decision that, in fact,

defendant had an effective relationship with an adequate counsel.

The evidence that defendant wanted admitted but that did not come in was evidence that counsel had subpoenaed, but that was mostly unobtainable, and irrelevant. Despite any doubts counsel had about the importance of some of these items, she nonetheless had a hearing before the trial court to request the authorization of funds for an investigator to obtain them. The trial court told counsel to subpoena most of the items, assuming they were in fact obtainable, and authorized funds for the fingerprint specialist to retest the fingerprints on the bags.

In response to the subpoenas, counsel received notice that many of these items were either unobtainable or else very difficult and time-consuming to obtain, and that many of the witnesses were either unable or unwilling to testify. The trial court considered the reasonableness of defendant's requests, the efforts already made to obtain the items and to reach the potential character witnesses, and the additional efforts that would be necessary to obtain them, if possible, and weighed the importance of the evidence and the likelihood that it could actually be obtained, against the burden of delaying trial once again and the further effort involved in obtaining them. Ultimately, he refused to substitute counsel or to further delay the trial on the basis of the various missing evidentiary items and witnesses requested by defendant.

The record supports the trial court's decision. No bona fide dispute existed between defendant and counsel. A distinction must be made between legitimate and illegitimate disagreements among defendants and their counsel. Any lack of communication in this case was the result of defendant's own sabotage. Any disputes that did exist involved trial strategy, which counsel necessarily had the discretion to dictate. This situation did not involve a dispute between counsel and defendant over which of two legitimate strategies to put forth at trial. Furthermore, defendant had the false impression that because his attorney was court-appointed rather than privately retained, he was not getting the best he could get. Exercising its discretion, the trial court resolved the inconsistencies between the accounts of defendant and counsel in counsel's favor, finding that defendant was misrepresenting the number of contacts and types of discussions had between himself and counsel. Moreover, the judge found that defendant was actually complaining about limitations imposed by the rules of evidence and the practical limitations of obtaining the numerous, questionably relevant items he wanted submitted and of the failure to secure the character testimony of several unresponsive subpoenaed witnesses. The trial court properly resolved the issue based on the circumstances surrounding this particular case and the reasons presented at the time the request was made. See *Hernandez, supra* at 565.

Finally, defendant argues that the trial court incorrectly applied the standard for evaluating whether counsel is effective. We disagree. The trial court addressed defense counsel's effectiveness because defendant questioned it.

The trial court did not abuse its discretion by refusing to substitute counsel after it held informal evidentiary hearings on defendant's complaints and concluded that the attorney-client relationship was intact, and that counsel's work product demonstrated preparedness and effective communication, so that no legitimate cause existed for substitution.

Affirmed.

/s/ Kurtis T. Wilder

/s/ Gary R. McDonald

/s/ Martin M. Doctoroff