STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1904

State of Minnesota,
Respondent,

vs.

Omar Kwabena Walford,
Appellant.

Filed September 30, 2019
Affirmed
Rodenberg, Judge

Ramsey County District Court
File No. 62-CR-15-4027

Keith Ellison, Attorney General, St. Paul, Minnesota; and

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Larkin, Judge; and Rodenberg, Judge.

U N P U B L I S H E D O P I N I O N

RODENBERG, Judge

In this appeal after remand to the district court for an evidentiary hearing to determine whether there was an irreparable breakdown in the relationship between

appellant and his public defender, appellant argues that the district court erred in determining that there was no breakdown in the attorney-client relationship sufficient to entitle appellant to the appointment of substitute counsel. We affirm.

FACTS

The state charged appellant with four counts of assault. The district court appointed a public defender to represent appellant. Appellant's trial was scheduled for December 14, 2015. The district court continued the trial several times, for reasons including scheduling conflicts, to provide appellant's public defender an opportunity to gather more evidence, and because appellant's public defender was on medical leave for a period of time. On January 17, 2017, appellant requested to discharge the office of the public defender and proceed pro se. Appellant told the district court that there was a breakdown in his relationship with his public defender that could not be repaired. Appellant acknowledged that another attorney would not be appointed for him. The district court accepted appellant's petition to proceed pro se and discharged the office of the public defender.

Following a court trial, the district court found appellant guilty of three of the four charges, entered judgment, and sentenced appellant. Appellant appealed. In an order opinion, we concluded that the district court abused its discretion by failing to determine if appellant's allegations concerning an irreparable breakdown in his relationship with his public defender were true and serious enough to justify the appointment of substitute counsel. *State v. Walford*, A17-1396, at *5 (Minn. App. July 31, 2018). We concluded that the district court's statement that the appointment of substitute counsel was between appellant and the public defender's office, and not an issue for the court, was an incorrect

statement of the law. *Id.* at *4. We remanded the case to the district court with "directions to conduct an inquiry into [appellant's] statement that there was an irreparable breakdown in the attorney-client relationship." *Id.* at *7. We explained that, if the district court finds that there was not an irreparable breakdown in the attorney-client relationship that affected the public defender's ability or competence to represent appellant, then appellant's waiver of counsel was voluntary and his conviction stands. *Id.* at *7-8. But if the district court finds that there was an irreparable breakdown in the attorney-client relationship that affected the public defender's ability or competence to represent appellant, the district court should determine whether appellant is entitled to a new trial. *Id.* at *8.

At the evidentiary hearing on remand, appellant testified concerning the claimed breakdown in the attorney-client relationship. Appellant testified that he met with his public defender at her office sometime between his first appearance and the omnibus hearing, during which meeting the two watched a video and discussed the case. Appellant testified that he told his public defender at this meeting that he was in custody in Florida when the charged offense occurred or, if he was not in Florida, that witness C.J. would indicate that the complaining witness was untruthful. Appellant testified that his public defender looked into the issues. She contacted K.H., for whom appellant had worked in Florida, and learned that appellant was not in custody in Florida at the time of the offense. She also spoke with C.J. Appellant opined that his public defender should have subpoenaed K.H., but never did. Appellant was also concerned that his public defender's conversation with C.J. was not in the presence of an investigator.

Appellant stated that "the beginning of the end of the trust level" happened at a February 2016 hearing where his public defender told appellant that he could face 129 months if he was convicted after trial, or 60 months consecutive for each victim. The district court asked appellant if the possible sentence was for all of the pending cases or just this one, and appellant replied that he only had one pending case at that time.

Appellant was in custody in Ramsey County between August and September 2016 for a different matter concerning which his public defender from this case was also representing him. Appellant testified that his public defender visited him with an investigator to discuss the cases. Appellant arrived at his November 2016 court date and was surprised that his public defender was not there. Appellant recounted being released in December from Hennepin County to Rice County. Upon being released from Rice County, he was released to Ramsey County for an arson charge. Appellant was told he did not qualify for a public defender when he already had one representing him on two cases, so he contacted his public defender. Appellant testified that he expected that his public defender "would have me put on a docket for the next day or two or whatever and that didn't happen." Appellant testified that he asked his public defender to contact his attorneys about cases in Dakota and Washington Counties, which she did.

Appellant testified that his public defender visited him with an investigator while he was in custody for the arson charge and "at that time things blew out of control with her and I." Appellant testified that he "was upset at the time" and "felt like it was the end of the world for me." Appellant testified that he believed nothing was being done on his other two cases by his public defender, and when she "came to see me at the jail in December of

2016, I wasn't happy." Appellant was concerned why it was the second or third time she came to see him with an investigator, and why the public defender had not done additional investigation. According to appellant, his public defender could not explain why she did not give a witness list to the court, and when he asked why she had not investigated his case, she could not answer the question. At that point, appellant recalled that he put his hand up and said "I'm not talking to you." Appellant admits he was upset, and that his anger may have frightened his public defender. Appellant told the district court that his public defender "packed up all her stuff and said you're not going to treat me that way."

Appellant testified that, in light of another order for protection involving his wife, appellant was scared that his public defender was going to get him charged with terroristic threats. Appellant did not talk to his public defender after that meeting. He asked the managing attorney of the public defender at the January 17, 2017 scheduled trial date to tell his public defender that he apologizes for his behavior and that he meant no harm. But he also told the managing attorney that he does not want to get into a situation with his lawyer again. Appellant testified that he told the managing attorney that there was an irreparable breakdown in the relationship and that he did not want to deal with a person to whom he cannot express himself and of whom he was afraid. Appellant asked for a new attorney. The managing attorney told him that this issue would be between him and the judge.

Appellant claimed that his public defender should have followed-through on his request to interview his wife and daughter, because they would be able to testify that the complainant was being untruthful about appellant's wife and daughter being present during

the alleged offense. Appellant argued at one point that his public defender "got involved in too many discussions" and should have given him "a chance to speak to the investigator man to man."

In response to questioning by the state, appellant testified that, during the period of time in question, he had a matter pending in "[e]very county in the metro area" and represented himself in all of those cases despite a public defender being provided in every case. But then appellant stated that he never fired a public defender, and when asked if he worked to completion with a public defender on any of those cases, he said he could not recall anything beyond this case, nor could he talk about any other cases because he was appealing all of them.

In analyzing whether the public defender's ability and competence was affected by her relationship with appellant, the district court identified two major issues that appellant raised: "One, she lied to him. Two, he was fearful of her."

Concerning the first issue, the district court found that appellant's testimony that his public defender lied about the sentence he faced was insufficiently supported because there was no transcript or record of his public defender telling him that his maximum sentence was somewhere around 110 months.[1] The district court found that, while appellant may have disbelieved or disagreed with the possible sentence, his public defender did not lie about the sentence. The district court explained that there was also no indication in the record concerning whether the attorney's estimate of appellant's possible exposure was

[1] Appellant testified that his public defender told the judge appellant could face around 129 months.

limited to just this case. The district court concluded that any misunderstanding between appellant and his public defender did not rise to the level that the public defender was either not competent or not able to represent appellant.

As to the second issue, the district court understood appellant's fear as arising from two circumstances: first, that appellant was concerned that his public defender could somehow use an order for protection in a different case against him, and second, that appellant was dissatisfied with his public defender's use of an investigator when meeting with him. The district court stated, "If the concern is an order for protection, the Court finds that a little far-fetched. If the concern is that [his public defender] would make up an accusation against [appellant], then the use of a third party witness seems to be kind of the best practice." It concluded that appellant's concern was not "terribly credible" but, "more importantly, it doesn't rise to the level that [they] had an irreparable breakdown in their communication."

The district court found that there was not an irreparable breakdown of the attorney-client relationship. Instead, there was personal tension and deep dissatisfaction with appellant's public defender, "though it's hard for this court to imagine what [his public defender] could have done in terms of her professional obligations to [appellant] to remedy that to [appellant's] satisfaction." As a result, the district court found that appellant gave a voluntary, knowing, and intelligent waiver of his right to counsel and voluntarily chose to represent himself.

This appeal followed.

D E C I S I O N

Appellant argues that the district court erred in determining that he was not entitled to the appointment of substitute counsel.

The decision to grant or deny a request for substitute counsel lies within the discretion of the district court and will not be reversed on appeal absent an abuse of that discretion. *State v. Clark*, 722 N.W.2d 460, 464 (Minn. 2006). "A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *State v. Guzman*, 892 N.W.2d 801, 810 (Minn. 2017).

A criminal defendant has a constitutional right to the assistance of counsel. U.S. Const. amend. VI; Minn. Const. art. I, § 6. The state has an obligation to provide counsel for indigent defendants. *Gideon v. Wainwright*, 372 U.S. 335, 344-45, 83 S. Ct. 792, 796-97 (1963). "The right to counsel includes a fair opportunity to secure an attorney of choice, but an indigent defendant does not have the unbridled right to be represented by the attorney of his choice." *State v. Worthy*, 583 N.W.2d 270, 278 (Minn. 1998). If the defendant "voices serious allegations of inadequate representation, the district court should conduct a searching inquiry before determining whether the defendant's complaints warrant the appointment of substitute counsel." *State v. Munt*, 831 N.W.2d 569, 586 (Minn. 2013) (quotation omitted). A district court should only appoint substitute counsel for an indigent defendant where "exceptional circumstances exist and the demand is timely and reasonably made." *Id.* (quotation omitted).

"[E]xceptional circumstances are those that affect a court-appointed attorney's ability or competence to represent the client." *State v. Gillam*, 629 N.W.2d 440, 449 (Minn.

2001). What constitutes an exceptional circumstance has not been specifically defined, but a defendant's general dissatisfaction with appointed counsel does not amount to an exceptional circumstance. *E.g.*, *Munt*, 831 N.W.2d at 586; *State v. Fagerstrom*, 176 N.W.2d 261, 264 (Minn. 1970). Nor does personal tension in the attorney-client relationship amount to an exceptional circumstance that would entitle a defendant to substitute counsel. *State v. Voorhees*, 596 N.W.2d 241, 255 (Minn. 1999). The district court characterized the attorney-client relationship here as personal tension and dissatisfaction.

Appellant expressly disclaims any argument concerning the public defender's competence. Appellant argues that there were exceptional circumstances affecting the public defender's ability to represent him and that he was therefore entitled to appointment of substitute counsel. Specifically, he argues that his unrebutted testimony at the evidentiary hearing established that there was a breakdown in the attorney-client relationship that affected his public defender's ability to represent him. Appellant asserts that "13 months into the representation, [the public defender] was still unprepared for trial," but he fails to acknowledge the legitimate continuances that were granted by reason of the public defender's health leave. Appellant instead characterizes her as unprepared. The district court found no exceptional circumstances, and the record supports that finding.

Appellant also argues that his public defender was unable to represent him because they met only once to review discovery and discuss the case. But the argument is contrary to appellant's own testimony at the evidentiary hearing. Appellant testified that there was a complete breakdown in communication after he met with his public defender in

December 2016 because they did not have any more contact before the scheduled trial date. This meeting took place only a few weeks before trial and the district court found that there was no indication that appellant's public defender would not continue to talk with him or accept his calls. The record evidence demonstrates that it was appellant who made clear that he refused to contact his public defender after the December meeting, where he acknowledged that he had behaved inappropriately. The record does not support appellant's assertion that his public defender was unwilling to communicate with him.

Appellant marks as significant the fact that his public defender did not appear for the scheduled trial date. But appellant conversed for approximately an hour with the managing attorney before trial started and claimed that he was unable to go forward with his public defender because he did not want to speak with her. Appellant signed a petition to proceed pro se and discharged the public defender before trial began.

The record does reflect that appellant was generally dissatisfied with his public defender and that there was personal tension between them. The district court so found. The district court concluded, however, that this dissatisfaction and tension did not affect appellant's public defender's ability or competence to represent appellant at trial. The record supports the district court's determination, which was within its discretion. *See Gillam*, 629 N.W.2d at 450 (concluding that the court-appointed attorney was competent and able to represent the defendant even though the defendant was dissatisfied with his representation). The district court followed our earlier remand instructions and the record supports its decision on remand.

Affirmed.