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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0352**

State of Minnesota,
Respondent,

vs.

Jimmy Lee Robinson,
Appellant.

**Filed March 2, 2020
Affirmed
Johnson, Judge**

Hennepin County District Court
File No. 27-CR-18-13539

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

Michael O. Freeman, Hennepin County Attorney, Mark V. Griffin, Senior Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jodi L. Proulx, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Florey, Presiding Judge; Johnson, Judge; and Segal, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

A Hennepin County jury found Jimmy Lee Robinson guilty of second-degree assault based on evidence that he stabbed his brother in the back with a knife. Robinson

argues that the district court erred by denying his request for substitution of counsel. We conclude that Robinson's request was untimely, that Robinson did not make serious allegations concerning his attorney's ability or competence, and that there were no exceptional circumstances that required the substitution of counsel. Therefore, we affirm.

FACTS

During the evening of May 20, 2018, Robinson's brother, J.R., visited Robinson's Minneapolis home with a friend who was interested in purchasing a crossbow from Robinson. When J.R. and his friend arrived at Robinson's home, they saw that Robinson was talking with another person. J.R. retrieved the crossbow from Robinson's home and took it outside to show it to his friend. After J.R.'s friend and Robinson's guest departed, Robinson came outside and asked J.R. about the location of the crossbow. J.R. told Robinson that it was in his truck. Robinson then hit J.R. on his head with a glass brandy bottle, chased J.R., and stabbed him in the back with a knife. A bystander called 911. Police officers responded to the call and arrested Robinson.

The state charged Robinson with second-degree assault, in violation of Minn. Stat. § 609.222, subd. 1 (2016). Robinson's public defender demanded a speedy trial on Robinson's behalf. In late July 2018, Robinson sent a letter from the county jail to the assigned district court judge in which he asserted that he should not be in custody because there was "no victim [in] this case." Robinson did not express any dissatisfaction with his public defender.

Robinson appeared for trial in September 2018. A different public defender appeared with him because Robinson's first public defender was in trial in a different case.

The second public defender informed the district court that Robinson was frustrated, in part because he had appeared for trial “not with his lawyer but with somebody stepping in to just kind of handle the matter today.” The district court judge continued the trial.

Trial began in October 2018. Robinson appeared with his first public defender. After a jury was selected, the state called four witnesses: J.R., a records custodian for the city’s 911 system, a juvenile who was an eyewitness to the stabbing, and one of the responding police officers. On the morning of the third day of trial, Robinson addressed the district court by saying that he was not getting a fair trial and that he wanted a new attorney, a new jury, and a new judge. The district court asked Robinson to explain the reasons for his requests. Robinson stated that his attorney had met with him only once before the trial for only five minutes and was not knowledgeable about the case. Robinson further stated that he did not receive discovery responses from the state and that his public defender did not follow up on Robinson’s suggestions of three possible defense witnesses. The district court denied Robinson’s requests because the case was in the middle of trial and Robinson’s attorney was prepared to proceed.

Robinson continued to express concerns, stating that he no longer wanted to be present during trial, reiterating that he wanted to fire his attorney, and stating that his attorney was on Facebook during trial. The district court responded by stating that Robinson’s attorney was not on Facebook and that Robinson would not be assigned another public defender. After additional colloquy, Robinson waived his right to be present during trial and left the courtroom.

The trial resumed. The state called two additional police officers as witnesses. The defense did not introduce any evidence. The case was submitted to the jury on the afternoon of the third day. The jury found Robinson guilty. The district court sentenced him to 61 months of imprisonment. Robinson appeals.

D E C I S I O N

Robinson argues that the district court erred by denying his request for the substitution of his court-appointed attorney on the grounds that the district court did not conduct a “searching inquiry” into his complaints and that exceptional circumstances warranted substitution.

The United States Constitution and the Minnesota Constitution guarantee criminal defendants the right to the assistance of counsel. U.S. Const. amend. VI; Minn. Const. art. I, § 6. Criminal defendants who cannot afford to hire an attorney are entitled to a court-appointed attorney at public expense. *Gideon v. Wainwright*, 372 U.S. 335, 339-45, 83 S. Ct. 792, 794-97 (1963); *State v. Munt*, 831 N.W.2d 569, 586 (Minn. 2013). “But the right of an indigent defendant to court-appointed defense counsel is not an ‘unbridled right to be represented by counsel of [the defendant’s] choosing.’” *Id.* at 586 (alterations in original) (quoting *State v. Fagerstrom*, 176 N.W.2d 261, 264 (Minn. 1970)). If an indigent defendant requests the substitution of a court-appointed attorney, a district court must grant the request “‘only if exceptional circumstances exist and the demand is timely and reasonably made.’” *State v. Worthy*, 583 N.W.2d 270, 278 (Minn. 1998) (quoting *State v. Vance*, 254 N.W.2d 353, 358 (Minn. 1977)). If a defendant expresses “serious allegations” about an appointed attorney’s ability or competence, “the district court should conduct a

‘searching inquiry’ before determining whether the defendant’s complaints warrant the appointment of substitute counsel.” *Munt*, 831 N.W.2d at 586 (quoting *State v. Clark*, 722 N.W.2d 460, 464 (Minn. 2006)). This court applies an abuse-of-discretion standard to review a district court’s denial of a request for the substitution of a court-appointed attorney. *Id.*

We begin by addressing one of the state’s responsive arguments, which is focused on a prerequisite of a request for substitution of counsel. The state argues that Robinson’s request was untimely. Indeed, a district court must grant a request for the substitution of counsel “*only* if . . . the demand is *timely* and reasonably made.” *Worthy*, 583 N.W.2d at 278 (quotation omitted) (emphasis added). In *Worthy*, the defendants requested the substitution of their court-appointed attorneys on the morning of the first day of trial. 583 N.W.2d at 278. The supreme court concluded that the requests were untimely. *Id.* at 278-79. Similarly, in *Clark*, the defendant requested substitution of his court-appointed attorney after jury selection had begun. 722 N.W.2d at 465. The supreme court concluded that the request was untimely. *Id.* In this case, Robinson requested the substitution of his court-appointed attorney on the third and last day of trial, after the parties had selected a jury and after the state had presented four witnesses. Robinson had not expressed any concerns about his attorney on the first or second day of trial. In light of *Worthy* and *Clark*, Robinson’s request was untimely.

Robinson’s primary argument is that the district court erred by denying his request for substitution of counsel without conducting a “searching inquiry” into his concerns. The state responds by arguing that the district court was not obligated to conduct a searching

inquiry because Robinson did not “voice[] serious allegations of inadequate representation.” *See Munt*, 831 N.W.2d at 586. The state is correct that serious allegations are a prerequisite to a searching inquiry: “When 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.” *Id.* (quoting *Clark*, 722 N.W.2d at 464). In *Munt*, the supreme court rejected an argument similar to Robinson’s argument on the ground that the defendant merely “may have been dissatisfied with his defense counsel” but that “neither of his statements constituted serious allegations of inadequate representation that would have triggered the district court’s duty to further inquire and determine whether it needed to appoint substitute counsel.” *Id.* Robinson’s concerns in this case are similar to the concerns expressed in *Munt*. Robinson’s concerns do not implicate his attorney’s “ability or competence” to provide Robinson an adequate defense. *See State v. Gillam*, 629 N.W.2d 440, 449 (Minn. 2001). Thus, the district court was not obligated to conduct a searching inquiry into his concerns before ruling on his untimely request for the substitution of his court-appointed attorney. Even if the district court were obligated to conduct a searching inquiry, we likely would conclude that the district court satisfied that duty because the district court asked Robinson to explain his concerns and patiently listened to his explanations.

Robinson’s secondary argument is that the district court erred by denying his request for substitution of counsel on the ground that exceptional circumstances were apparent and required substitution. Exceptional circumstances warranting the substitution of court-appointed counsel are “those that affect appointed counsel’s ability or competence to

represent the client.” *Munt*, 831 N.W.2d at 586 (quotation omitted). General dissatisfaction with appointed counsel does not amount to an exceptional circumstance. *Id.* Robinson asserts that exceptional circumstances existed because his attorney was not prepared for trial, did not “vet out” possible witnesses that Robinson had identified on the second day of trial, did not engage the state or its witnesses in the adversarial process, and was distracted during trial. Robinson’s assertions are not supported by the record. The district court stated on two occasions that Robinson’s attorney was adequately prepared for trial. The district court also implied that Robinson’s attorney was advocating on his behalf in a satisfactory manner. The district court further stated that Robinson’s attorney was not on Facebook. Because the record does not reveal any reason to doubt Robinson’s attorney’s “ability or competence” to provide him with an adequate defense, there were no exceptional circumstances requiring the substitution of the attorney. *See Munt*, 831 N.W.2d at 586; *see also Gillam*, 629 N.W.2d at 449.

In sum, the district court did not err by denying Robinson’s request for the substitution of his court-appointed attorney.

Affirmed.