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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1661**

State of Minnesota,
Respondent,

vs.

Brandon Michael James Opatz,
Appellant.

**Filed November 9, 2020
Affirmed
Florey, Judge**

Isanti County District Court
File No. 30-CR-17-57

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

Jeffrey R. Edblad, Isanti County Attorney, Joel Whitlock, Assistant County Attorney, Cambridge, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Andrea Barts, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Florey, Presiding Judge; Hooten, Judge; and Gaitas, Judge

UNPUBLISHED OPINION

FLOREY, Judge

Appellant Brandon Michael James Opatz was convicted of first-degree burglary. In this direct appeal from the judgment of conviction, Opatz argues that the district court erred

by failing to make an adequate inquiry into whether there existed exceptional circumstances sufficient to warrant the appointment of substitute counsel. We affirm.

FACTS

Appellant Brandon Michael James Opatz was charged with first-degree and second-degree burglary. On the day before trial, Opatz asked the district court for a different public defender. Opatz read the district court a letter detailing the reasons for his request. First, he stated that his attorney's work "has been poor." In particular, he said that counsel failed to respond to his requests for information about the term "crime spree" and about "civil forfeiture." Second, Opatz said that his attorney had only received discovery three days prior to trial, which Opatz did not think was enough time to adequately prepare. Third, Opatz said that his attorney failed to request a change of venue, which Opatz believed was necessary because he had appeared in the local newspaper multiple times. Finally, Opatz stated that he requested that his attorney "file a motion to recuse" the district court judge because of the judge's personal relationship with the victim, who was the judge's dentist, but his attorney failed to comply.

In response, the district court informed Opatz that he did not get to choose his public defender and that if he chose to fire his current public defender, he would have, in effect, "fire[d] them all." The district court noted that it was not defense counsel's job to provide information about civil forfeiture to Opatz. And the district court reminded Opatz that he had disclosed that the alleged victim was his dentist at a previous hearing, and Opatz had indicated then that he had no issue proceeding.

The district court asked Opatz’s attorney if he was prepared to proceed to trial, and the attorney responded that he was. Regarding his preparedness for trial, the attorney stated: “I was appointed on this case relatively late. . . . I *haven’t* had a chance to read [the discovery] and review it. I’ve given a copy to Mr. Opatz as well.” (Emphasis added). Ultimately, in response to Opatz’s request for a new public defender, the district court stated,

I do not have the authority to do that. I don’t work for the public defender’s office. They do not work for me. I have every confidence that [defense counsel] is prepared and ready to go. So at this time your request is denied. Anything else you wanted me to know, Mr. Opatz?

Opatz responded, “No.”

On the first day of trial, the district court clarified its ruling denying Opatz’s request for substitute counsel. The district court indicated that Opatz did not allege “extraordinary circumstances” warranting the appointment of substitute court-appointed counsel. The district court also found that Opatz’s motion “on the eve of trial” was “not a timely request and was an effort to delay the proceedings further.” Opatz’s attorney declined to put anything on the record regarding the issue. The jury found Opatz guilty of first-degree and second-degree burglary. This appeal followed.

D E C I S I O N

Opatz requests a remand for a hearing on whether exceptional circumstances existed that warranted the appointment of substitute counsel. He argues that the district court abused its discretion when it denied his request for a different public defender without conducting a searching inquiry. The decision of whether to grant a request for substitute

counsel is within the discretion of the district court. *State v. Clark*, 722 N.W.2d 460, 464 (Minn. 2004).

The United States and Minnesota Constitutions guarantee a criminal defendant the right to the assistance of counsel for his defense. U.S. Const. amend. VI; Minn. Const. art. I, § 6. If the defendant cannot employ counsel, the defendant is entitled to appointed counsel. *Gideon v. Wainwright*, 372 U.S. 335, 339-45, 83 S. Ct. 792, 794-97 (1963). 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.” *State v. Fagerstrom*, 176 N.W.2d 261, 264 (Minn. 1970).

“When a defendant raises complaints about the effectiveness of appointed counsel’s representation and requests substitute counsel, the district court must grant such a request only if exceptional circumstances exist and the demand is timely and reasonably made.” *State v. Munt*, 831 N.W.2d 569, 586 (Minn. 2013) (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). But a defendant’s general “dissatisfaction” with appointed counsel does not amount to an exceptional circumstance. *Id.* (citing *Fagerstrom*, 176 N.W.2d at 265).

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. *Clark*, 722 N.W.2d at 464. The district court’s “decision is to be based on the facts and circumstances surrounding the request.” *Fagerstrom*, 176 N.W.2d at 264.

In *Munt*, the Minnesota Supreme Court addressed the scope of the district court's duty to conduct a "searching inquiry." 831 N.W.2d at 586-87. There, during a pretrial hearing, the defendant accused the police of committing crimes against him and complained that his attorney did not represent his interest, did not pursue his objectives, and was ineffective. *Id.* The supreme court determined that the district court did not abuse its discretion in failing to further investigate the allegations because none 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.* at 587. Further, after the district court allowed the defendant time to confer privately with his attorney, the attorney told the court that he and appellant were "on track" to proceed. *Id.* The supreme court concluded that defendant's "acquiescence" in his attorney's continued representation confirmed that the district court did not abuse its discretion. *Id.* at 587.

Here, Opatz contends the complaints that he raised to the district court constituted serious allegations of inadequate representation, amounting to exceptional circumstances that required a searching inquiry. Opatz complained to the district court that (1) his attorney's work had been poor; (2) his attorney did not perform tasks that he asked his attorney to do; (3) his attorney received discovery three days before trial which Opatz did not think was enough time to prepare; and (4) his attorney did not file motions for change of venue or to "recuse" the judge. Opatz also argues there was "no excuse for the district court not to conduct an inquiry into [his] complaints. Especially when counsel admitted that he had not read or reviewed the discovery." We disagree. While this statement alone

would have been concerning, our thorough review of the record indicates that neither the district court nor the respondent took issue with the attorney's statement.¹ The district court directly asked Opatz's attorney if he was prepared for trial, and the attorney stated that he was. The district court then stated that it had "every confidence" the attorney was prepared for trial.

While Opatz may have been dissatisfied with his attorney, none of his statements constituted serious allegations of inadequate representation that would have triggered the district court's duty to further inquire and determine whether to appoint substitute counsel. Furthermore, even if the district court was required to conduct a searching inquiry, it arguably did so by allowing Opatz to read his letter detailing his complaints, explaining why those complaints did not constitute exceptional circumstances, and determining that Opatz's attorney was prepared for trial. After giving Opatz an opportunity to voice his concerns, the district court concluded that none of Opatz's frustrations with his attorney constituted "extraordinary circumstances." Furthermore, when the district court clarified the following day that it did not find extraordinary circumstances in Opatz's complaints, Opatz's attorney did not reply, indicating that he and Opatz were prepared to begin trial.

¹ The parties dispute the meaning of trial counsel's statement. Opatz contends that, while his attorney had received discovery, "he had not had a chance to read or review it." In contrast, respondent argues that the attorney intended to state "have," indicating that he had read and reviewed discovery. Respondent argues that the district court's response that it had "every confidence that [Opatz's attorney] [was] prepared and ready to go" makes its position more likely. Even if the attorney had not yet read or reviewed the discovery, our review of the record reveals that the attorney was neither unprepared for trial nor unable to represent Opatz.

Accordingly, as in *Munt*, the district court was within its discretion to conclude that Opatz acquiesced to his attorney's continued representation.

Despite the fact that Opatz failed to show exceptional circumstances justifying substitution of counsel, it may have been improper for the district court to tell Opatz that it did not have authority to appoint substitute counsel. *See State v. Lamar*, 474 N.W.2d 1, 3 (Minn. App. 1991) (indicating that the district court's indication that it could not appoint a different public defender under any circumstances was "not an accurate statement of the law"), *review denied* (Minn. Sept. 13, 1991). When clarifying its ruling on the first day of trial, the district court recognized that it retained some "limited authority" over "the assignment of attorneys by the public defender's office." Nonetheless, any error in the district court's statement that it could not appoint substitute counsel was harmless absent a showing of incompetent representation or good cause for a new attorney. *See Lamar*, 474 N.W.2d at 3 (holding that absent a showing of error by trial counsel or good cause to have a new attorney, district court's inaccurate statement to defendant that he could not have a different public defender under any circumstances was harmless error), *review denied* (Minn. Sept. 13, 1991). Here, the district court found that Opatz made no showing of improper or incompetent representation by his attorney, and Opatz has not raised ineffective assistance of counsel as an issue on appeal. The record as a whole demonstrates that the district court provided Opatz an opportunity to explain the reasons he wanted a different attorney and that the court took those reasons into consideration. Thus, any error in the district court's statement to Opatz was harmless.

Opatz's request for substitute counsel made on the day before trial was also untimely. A district court will grant a request for substitution of counsel only if "the demand is timely." *State v. Clark*, 698 N.W.2d 173, 177 (Minn. App. 2005) (quotation omitted), *aff'd*, 722 N.W.2d 460 (Minn. 2006). A defendant cannot demand a continuance for the purpose of delay or by "arbitrarily choosing to substitute counsel at the time of trial." *State v. Paige*, 765 N.W.2d 134, 138 (Minn. App. 2009) (quoting *State v. Vance*, 254 N.W.2d 353, 358 (Minn. 1977)). District courts may deny last-minute requests to substitute counsel that "inevitably delay" the proceeding. *State v. Reed*, 398 N.W.2d 614, 616 (Minn. App. 1986), *review denied* (Minn. Feb. 13, 1987); *see also Clark*, 722 N.W.2d at 465 (concluding that defendant's request for substitute counsel was untimely when the defendant made the request after jury selection and a speedy-trial demand). The district court in the present case found that Opatz's request "on the eve of trial" was "not a timely request and was an effort to delay the proceedings further."² We discern no abuse of discretion in the district court's determination that Opatz's request was untimely.

Because our thorough review of the record reveals that Opatz neither timely requested substitute counsel nor alleged exceptional circumstances warranting substitute

² In further support of our conclusion that the district court did not abuse its discretion in concluding Opatz's request was untimely, we observe that this case was delayed several times in part due to Opatz's own actions. After pleading guilty in April 2018, Opatz requested a continuance of the sentencing hearing, failed to appear, and ultimately withdrew his guilty plea and demanded a speedy trial.

counsel, we conclude that the district court did not abuse its discretion by denying Optaz's request for substitute counsel.

Affirmed.