

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0212**

State of Minnesota,
Respondent,

vs.

Travis O’Neal Dillard,
Appellant.

**Filed January 3, 2022
Affirmed
Bryan, Judge**

Hennepin County District Court
File No. 27-CR-19-25170

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

Michael O. Freeman, Hennepin County Attorney, Kelly O’Neill Moller, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Worke, Presiding Judge; Florey, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

In this direct appeal of his conviction for second-degree criminal sexual conduct, appellant challenges the district court’s decision to permit appellant to discharge his counsel and represent himself without appointing substitute counsel. We conclude that the

district court did not abuse its discretion because appellant's stated reasons for discharging his attorney did not justify appointment of substitute counsel and because the district court and the public defender made a thorough inquiry.

FACTS

On October 10, 2019, respondent State of Minnesota charged appellant Travis O'Neal Dillard with aggravated second-degree criminal sexual conduct, in violation of Minnesota statutes section 609.343, subdivision 1(e)(i) (2018). In January 2020, the district court appointed the public defender's office to represent him.

A few months later, Dillard expressed general dissatisfaction with his attorney (B.L.), claiming in a letter to the district court that B.L. was "biased and doing things such as bluntly suggesting I take a life sentence, as if he's working for the accused-victim [rather] than me. [B.L.] is not working in my best interest." On June 30, 2020, the district court held a hearing regarding the claims. B.L. was not present and Dillard was instead represented by a managing attorney with the public defender's office (L.S.). At the start of the hearing, L.S. informed the court that Dillard wanted to represent himself. L.S. explained that she had advised Dillard regarding the request and proceeded to question Dillard on the record about his request for a new attorney:

L.S.: Mr. Dillard, we met this afternoon; correct?

DILLARD: Correct.

L.S.: And . . . you initially had asked me about whether or not you could get another attorney other than [B.L.;] is that correct?

DILLARD: Correct.

L.S.: And I explained to you that our office policy for obvious reasons doesn't reassign cases?

DILLARD: Correct.

L.S.: And the bench and I know the county attorney's office is aware of that because we can't reassign cases every time someone's not happy with something that's happening to them or their case and . . . we don't do that, and I explained that to you; correct?

DILLARD: Correct.

L.S.: I explained that either your choices were to either proceed with [B.L.,] or if you didn't want that, ultimately your choice was to either hire a lawyer or to represent yourself. We had that conversation; correct?

DILLARD: Correct.

Dillard continued to express a desire to represent himself, repeating the general criticism of B.L. "I feel it would be in my best interest to defend myself because I noticed several instances where my so-called alleged public defender, . . . he didn't have my best interest at heart." L.S. then inquired further:

L.S.: And so we talked about how lawyers are kind of in a unique situation—

DILLARD: Mm-hm.

L.S.: --is that they—we can't always give people the news they want.

DILLARD: Right. Right.

L.S.: --we can only tell people kind of what they're working with on their case, and we can't always give people—we're not just hired guns, we can't just do everything that everybody wants—

DILLARD: Mm-hm. Mm-hm.

L.S.: --and sometimes we have to just tell people what a case is worth.

DILLARD: Mm-hm.

L.S.: We talked about that; right?

DILLARD: Mm-hm.

L.S. then advised Dillard on the record that she did not see a basis for Dillard's concerns, explaining that it "doesn't seem that [B.L.'s] doing anything that would rise to the level to cause our office to give you a new attorney. [B.L.] is a very seasoned attorney. . . . He's

been trying felony cases for a very long time and is very able to defend difficult cases.” L.S. also explained that should B.L. fail to provide effective representation, Dillard could raise a claim of ineffective assistance of counsel claim on appeal. In response, Dillard again repeated his dissatisfaction: “[F]iguratively I felt like I couldn’t breathe anymore So I basically wanted to separate myself as far away as having him as my attorney as possible.” Dillard also repeated his belief that B.L. did “not have [Dillard’s] best interest at heart, unfortunately.”

The district court then directly questioned Dillard’s rationale for requesting to discharge his attorney:

THE COURT: Why do you think [B.L.] doesn’t have your best interest at heart?

DILLARD: Um, just several occasions; like, I just noticed he seemed so apathetic and distant from defending me, like, this is a case where I’m looking at potentially 25 years or as mentioned potentially life. And like, for instance, I have not seen nor heard from him since February or March, and we’re talking about 25 years or life. That is a long time. If I’m looking at such an extensive amount of time if I lose, I need to have an attorney that’s consistent—dealing with me consistently on if not a monthly basis at least every month and a half or two months.

THE COURT: So you say . . . February is the last time you had contact with him? . . .

DILLARD: It was on the phone.

THE COURT: . . . And so, was your expectation that he would come out to visit you?

DILLARD: Either come out to visit me or have at least, like, several additional conversations about what to do.

THE COURT: Because it seems to me that’s a big step to take to represent yourself because [B.L.] isn’t calling you. I agree with [L.S.] . . . he’s a very experienced attorney . . . [T]his decision is totally yours. You can discharge him for any reason you want to. That’s not the point here. The point is [] that you have a significant felony case . . . one in which you’re facing

. . . life in prison . . . and like you said one in which the offer is 25 years, which is a long time.

DILLARD: Mm-hm.

THE COURT: And discharging your lawyer in a significant case like this is serious. And so I want to make sure that that's what you want to do.

The district court then continued the case to give Dillard additional time to consider whether he wanted to dismiss the public defender and proceed pro se. Dillard appeared with B.L. at the next hearing on July 21, 2020. B.L. informed the district court that Dillard still wanted to discharge the public defender's office and proceed pro se. In response, Dillard clarified that he only wanted to discharge B.L., but he understood that meant he would have to represent himself at trial:

DILLARD: So, rather than discharging the public defender's office, I am personally myself discharging [B.L.] because he seems rather—he seems more like an oppressor rather than someone who's working for me. So—and also, as I don't have an attorney, I will choose to represent myself, sir.

THE COURT: All right. And so this is what happens, Mr. Dillard . . . if you discharge [B.L.], essentially what that means is that you're discharging the Hennepin County public defender's office.

DILLARD: Right. And that's very unfortunate.

THE COURT: Yeah.

DILLARD: Mm-hm.

THE COURT: So, if you discharge him, they won't automatically send another lawyer—

DILLARD: Right.

THE COURT: —to represent you. But I think you already knew that—

DILLARD: Yeah, I did. I did.

THE COURT: —because I think we had some conversations about that last time.

DILLARD: Mm-hm.

. . . .

THE COURT: And so you want to discharge [B.L.]?

DILLARD: Yes, I do.

THE COURT: You want to proceed on your own?

DILLARD: Yes, I do.

The district court then reviewed Dillard's written petition to proceed pro se with him and advised Dillard of the consequences of the decision. The district court then accepted Dillard's petition to proceed pro se and discharged the public defender's office.

The case proceeded to trial in November 2020 and the jury found Dillard guilty of second-degree criminal sexual conduct, with aggravating factors. The district court sentenced Dillard to life in prison. Dillard appeals.

DECISION

Dillard argues that the district court erred when it allowed him to proceed pro se without conducting a sufficient inquiry. Because Dillard did not identify "serious allegations of inadequate representation" and because the public defender and the district court thoroughly questioned Dillard regarding the basis of his dissatisfaction with B.L., we conclude that the district court did not abuse its discretion by granting Dillard's request to represent himself.

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 (1963). This right, however, 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, the district court should only appoint substitute counsel "if exceptional circumstances exist and the demand is timely and reasonably made." *State v. Worthy*, 583 N.W.2d 270, 278 (Minn. 1998) (citation omitted). Exceptional circumstances are those that affect appointed counsel's "ability or competence to represent the client." *State v. Gillam*, 629 N.W.2d 440, 449 (Minn. 2001). A defendant's general "dissatisfaction" with appointed counsel is not an exceptional circumstance. *Id.* (citing *Fagerstrom*, 176 N.W.2d at 265). Nor can an attorney's honest statements to a defendant about their case constitute exceptional circumstances, which require the defendant to raise "serious allegations of inadequate representation." *See State v. Voorhees*, 596 N.W.2d 241, 245-55 (Minn. 1999) ("Sometimes [an] attorney is going to have to be very blunt and very honest with [a defendant] and [they are] going to say things that [the defendant is] not going to like to hear. But those matters don't go to issues of ability or competence to represent [the defendant]"); *Worthy*, 583 N.W.2d at 279 ("General dissatisfaction or disagreement with appointed counsel's assessment of the case does not constitute the exceptional circumstances needed to obtain a substitute attorney.").

When a 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. Clark*, 722 N.W.2d 460, 464 (Minn. 2006). The defendant bears the burden to establish the existence of exceptional circumstances indicating inadequate representation, *see State v. Munt*, 831

N.W.2d 569, 586-87 (Minn. 2013), and we review the district court’s decision for an abuse of discretion, *see Clark*, 722 N.W.2d at 464-65.

In this case, we conclude that the district court did not abuse its discretion for two reasons. First, Dillard expressed only general dissatisfaction with B.L. and did not include any specific examples of B.L.’s conduct that constituted serious allegations of inadequate representation. *See Gillam*, 629 N.W.2d at 449; *Voorhees*, 596 N.W.2d at 244-45; *Worthy*, 583 N.W.2d at 278-79. Dillard believed that the state’s plea offer was unfair and expressed his feelings that B.L. seemed “apathetic and distant.” At the same time, Dillard stated that B.L. seemed “like an oppressor” who was “working for the accused-victim.” Dillard also complained that B.L. did not communicate in person as frequently as Dillard had expected. These general statements do not amount to the exceptional circumstances that would justify appointment of substitute counsel.

Second, Dillard’s questioning on the record by L.S. and the district court was a sufficient inquiry to determine the basis of Dillard’s dissatisfaction. *See Clark*, 722 N.W.2d at 464. B.L.’s managing attorney met with Dillard prior to the hearing on June 30, 2020, and she inquired of his reasons for dissatisfaction with B.L. during an extended colloquy during that hearing. The district court also inquired of Dillard, asking him to provide specific examples of B.L.’s misconduct. The district court gave Dillard additional time to consider his request, and on July 21, 2020, B.L. and the district court again inquired of Dillard about the basis for his request. We conclude that the public defender and the

district court made a sufficiently searching inquiry and provided Dillard multiple opportunities to identify specific conduct that might justify appointing substitute counsel.

Affirmed.