STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0669

State of Minnesota,
Respondent,

vs.

Anthony Michael Bishop,
Appellant.

Filed May 2, 2022
Affirmed
Connolly, Judge

Ramsey County District Court
File No. 62-CR-18-7781

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

John Choi, Ramsey County Attorney, Jeffrey A. Wald, Assistant County Attorney, St. Paul, Minnesota (for respondent)

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

Considered and decided by Smith, Tracy M., Presiding Judge; Connolly, Judge; and Reilly, Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Appellant challenges his conviction of failing to register as a predatory offender, arguing that the district court erred by accepting his waiver of appointed counsel without first determining whether he was entitled to appointment of different counsel. We affirm.

FACTS

In October 2018, respondent State of Minnesota charged appellant Anthony Bishop with failing to register as a predatory offender between the dates of July 21, 2018, and October 26, 2018. On March 6, 2019, Bishop stated that he wanted "to discharge the public defender's office." The district court informed Bishop that it "will not be able to appoint an attorney to represent [him] for free" "[b]ecause the only attorneys that the Court has authority to appoint to represent you without charge are the public defender's office." The district court also told Bishop that he could represent himself but did not recommend it. After Bishop replied that he understood, the district court discharged the public defender's office. Bishop did not request substitute counsel.

On April 3, 2019, Bishop expressed his desire to proceed pro se. The district court informed Bishop of his rights and duties as a pro se party, and Bishop "unequivocally" indicated that he wished to represent himself. Bishop was then appointed advisory counsel.

After several hearings, at which some Bishop failed to appear, the district court, on February 7, 2020, again asked Bishop whether he wished to proceed pro se. Bishop answered in the affirmative and, after inquiry, the district court determined that Bishop voluntarily, knowingly, and intelligently waived his right to counsel. The district court also required Bishop to fill out a petition to proceed pro se, which he did.

At another hearing on February 24, 2020, the district court asked Bishop why he previously discharged his public defender. Bishop responded that he "didn't feel that they would represent me in my best interests." The prosecutor then explained to the district court that "Bishop had a number of motions and a number of issues he wanted dealt with

on the predatory offender case and his attorney would not file those because his attorney did not believe that they were valid and grounded under the law."

In March 2020, Bishop agreed to waive his right to a jury trial and submit the case to the district court on stipulated evidence pursuant to Minn. R. Crim. P. 26.01, subd. 4. The district court found Bishop guilty as charged and later sentenced him to a stayed term of 24 months in prison and placed him on probation. This was a downward dispositional departure. This appeal follows.

DECISION

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 (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.* Nor can an attorney's honest statements to a defendant about their case constitute exceptional circumstances. *See State*

v. Voorhees, 596 N.W.2d 241, 255 (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.").

If 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 has 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). We review the district court's decision related to the appointment of substitute counsel for an abuse of discretion. *See Clark*, 722 N.W.2d at 465.

Bishop argues that the district court "committed reversible error by accepting [his] waiver of counsel without first determining whether he was entitled to appointment of different counsel." But the supreme court has held that 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." *Worthy*, 583 N.W.2d at 278 (emphasis added). The record here reflects that Bishop never requested substitute counsel. Instead, Bishop repeatedly and "unequivocally" stated at multiple hearings that he wanted to represent himself. Because

Bishop never requested substitute counsel, the district court was under no obligation to determine whether he was entitled to the appointment of substitute counsel.

Moreover, we "generally will not decide issues which were not raised before the district court." *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). By not requesting substitute counsel below, Bishop forfeited his argument that the district court should have inquired whether he was entitled to the appointment of substitute counsel. And, as Bishop acknowledges, he waived appellate review of this issue by stipulating to the state's case under Minn. R. Crim. P. 26.01, subd. 4(f), which provides that by stipulating to the state's case, "appellate review will be of the pretrial issue, but not of the defendant's guilt, or other issues that could arise at a contested trial." *See State v. Myhre*, 875 NW.2d 799, 802 (Minn. 2016) (stating that rule 26.01, subd. 4 "allows a criminal defendant to plead not guilty; waive all trial-related rights, including his or her right to a jury trial; stipulate to the state's evidence in a trial to the court; and then appeal a dispositive pretrial ruling"); *see also State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009) (stating that when a defendant stipulates to the state's evidence under what is now rule 26.01, subd. 4, "review is . . . limited to the pretrial order that denied [the defendant's] motion to suppress").

Bishop argues that we should address this issue in the interests of justice. *See* Minn. R. Crim. P. 28.02, subd. 11 (stating that "[o]n appeal from a judgment, the court may review any order or ruling of the district court or any other matter, as the interests of justice require"). But even if we were to address the issue on the merits, Bishop cannot establish that he is entitled to relief.

Despite Bishop's argument to the contrary, the district court conducted a sufficient inquiry to determine the basis of Bishop's dissatisfaction with his public defender that led to his desire to dismiss the public defender's office. The record reflects that on March 6, 2019, Bishop expressed his desire to discharge the public defender's office. Although the district court granted Bishop's request without inquiring of the grounds for the discharge, such an inquiry was made at the next hearing on April 3, 2019. At that hearing, the district court asked Bishop to "explain" why he wanted to represent himself. Bishop stated that he wanted to represent himself because the failure-to-register charge was "illegal," and he and his public defender did not "see eye-to-eye" in defending that charge. And Bishop's basis for discharging his public defender was reiterated to the district court at the February 24, 2020 hearing. As the state points out, Bishop's desire to discharge his public defender because they did not "see eye-to-eye," and because his public defender would not bring a frivolous motion challenging the legality of the failure-to-register charge, is not an "exceptional circumstance" calling into question the public defender's ability or competence to represent Bishop. *See Gillam*, 629 N.W.2d at 449 (stating that exceptional circumstances are those that affect appointed counsel's "ability or competence to represent the client"). Nor did Bishop identify serious allegations of inadequate representation. Because there were no "serious allegations of inadequate representation," no further inquiry was required by the district court. *Cf. Clark*, 722 N.W.2d at 464. Therefore, the inquiry made by the district court was adequate and Bishop cannot show that his Sixth Amendment right to counsel was violated.

Affirmed.