

[Cite as *State v. Anderson*, 2021-Ohio-3298.]

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

JOSHSHUN ANDERSON

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. John W. Wise, J.

Hon. Patricia A. Delaney, J.

Case No. 2020 CA 0078

O P I N I O N

CHARACTER OF PROCEEDINGS:

Appeal from the Richland County Court of
Common Pleas, Case No. 2018-CR-1025

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

September 14, 2021

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Hoffman, P.J.

{¶1} Defendant-appellant Joshshun Anderson appeals the judgment entered by the Richland County Common Pleas Court overruling trial counsel's motion to withdraw following remand from this Court, and re-entering judgment convicting Appellant of aggravated robbery (R.C. 2911.01(A)(1)) and sentencing him to nine years incarceration. Plaintiff-appellee is the state of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} On November 3, 2018, there was an armed robbery at the Goose Drive Thru in Mansfield, Ohio. Store employees reported Appellant walked into the store. Moments later, a second male walked into the store pointing a revolver at store employees and demanding money. The shooter fired several shots. A store employee reported the same two individuals were at the Drive Thru together approximately an hour prior to the incident. In store surveillance video of the robbery, Appellant is seen motioning the shooter to come into the store, stating to the shooter, "Come on. Now." Appellant denied being part of the robbery. Police were not able to determine the identity of the shooter.

{¶3} On December 20, 2018, Appellant was charged with one count of aggravated robbery, in violation of R.C. 2911.01(A)(1) & (C) and R.C. 2923.03(A)(2). The indictment alleged Appellant aided and abetted another to rob the store by use of a deadly weapon.

{¶4} The trial court appointed Attorney Hitchman to represent Appellant and set the case for trial on May 20, 2019. On April 17, 2019, Attorney Hitchman filed a motion to withdraw as counsel, stating he and Appellant were unable to effectively communicate with each other and Appellant wanted new counsel. The trial court issued a judgment

entry on May 16, 2019, permitting Attorney Hitchman to withdraw and appointing Attorney Thompson. Attorney Thompson filed a motion to withdraw on September 30, 2019, because another attorney in his office represented a witness the State intended to call at trial. On October 16, 2019, the trial court permitted Attorney Thompson to withdraw. On November 19, 2019, the trial court appointed Attorney Demetrius Daniels-Hill to represent Appellant. The trial court also issued a judgment entry continuing the trial to allow Attorney Daniels-Hill to prepare for trial.

{¶15} A jury trial was scheduled for January 13, 2020. Upon joint motion of the parties, the trial court continued the trial to February 10, 2020. On February 4, 2020, Attorney Daniels-Hill filed a motion to withdraw as counsel for Appellant at Appellant's request. The motion stated Appellant wished to obtain new counsel, Appellant believed he would be best served with different counsel because his relationship with trial counsel had broken down, Appellant wished to retain private counsel, and Appellant was unhappy with the legal representation he has received thus far in the case.

{¶16} On February 5, 2020, the trial court issued a judgment entry denying trial counsel's motion to withdraw. The trial court first noted the case was set for trial on February 10, 2020, and was previously set once before. The court noted Attorney Hitchman was permitted to withdraw, and Attorney Thompson had to withdraw due to a potential conflict. The trial court concluded, "these cases have been on the court's docket for an extended period of time and the defendant is currently incarcerated in the county jail. Accordingly, the motion to withdraw is overruled so these can be tried without further unnecessary delay." Judgment Entry, February 5, 2020.

{¶7} After three witnesses had testified, the court adjourned the trial for the day. After reconvening two days later, the trial court stated there were plea discussions after the jury left, but Appellant wanted to think about it and speak with his family. Appellant then informed the trial court he wanted to plead no contest.

{¶8} When the trial court inquired as to whether Appellant was happy with trial counsel during the plea colloquy, Appellant stated he was not. After a discussion between Appellant, the trial court, and counsel for appellant regarding appellant's specific concerns about counsel, the trial court asked Appellant if he was willing to go forward with the plea, despite having some issues with trial counsel. Appellant responded affirmatively, and the trial court accepted Appellant's plea.

{¶9} After a sentencing hearing, the trial court sentenced Appellant to nine years incarceration. Appellant filed a direct appeal to this Court.

{¶10} On appeal, Appellant argued the trial court erred failing to conduct a hearing to inquire into the breakdown of the relationship between Appellant and Attorney Daniels-Hill prior to overruling the motion to withdraw as counsel. This Court agreed, holding, “[A]ppellant's assertion of a breakdown in communication was a specific objection triggering the trial court's duty to inquire into the complaint and make such inquiry a part of the record.” *State v. Anderson*, 5th Dist. Richland No. 20CA0029, 2020-Ohio-4937, ¶ 27. We reversed and remanded for a re-investigation of the breakdown in communication between Appellant and Daniels-Hill, instructing if the trial court determined Appellant's claim was unfounded or found Appellant did not demonstrate the breakdown was of such magnitude as to jeopardize Appellant's right to effective assistance of counsel, the trial court may re-enter the judgment and sentence. *Id.* at ¶ 29.

{¶11} The trial court held a hearing on remand. Following the hearing, the trial court found disagreements as to strategy between Appellant and counsel did not result in a breakdown of such a magnitude as to have jeopardized Appellant's right to effective assistance of counsel at trial or during plea proceedings. The trial court re-entered the judgment of conviction and sentence. It is from the November 23, 2020 judgment of the trial court Appellant prosecutes his appeal, assigning as error:

THE TRIAL COURT VIOLATED APPELLANT'S RIGHTS TO COUNSEL UNDER THE FEDERAL AND STATE CONSTITUTIONS BY DENYING COUNSEL'S MOTION TO WITHDRAW DUE TO A BREAKDOWN IN THE ATTORNEY-CLIENT RELATIONSHIP.

{¶12} In his sole assignment of error, Appellant argues the trial court erred in overruling Attorney Daniels-Hill's motion to withdraw as counsel following the hearing on remand from this Court.

{¶13} In order to demonstrate the good cause necessary to warrant removing court appointed counsel and substituting new counsel, a defendant must show a breakdown in the attorney-client relationship of such magnitude as to jeopardize the defendant's Sixth Amendment right to effective assistance of counsel. *State v. Coleman* (1988), 37 Ohio St.3d 286, 292, 525 N.E.2d 792 (1988); *State v. Murphy*, 91 Ohio St.3d 516, 523, 747 N.E.2d 765, 2001-Ohio-112. Disagreement between the attorney and client over trial tactics and strategy does not warrant a substitution of counsel. *State v. Glasure*, 132 Ohio App.3d 227, 724 N.E.2d 1165 (1999). Moreover, mere hostility, tension

and personal conflicts between the attorney and client do not constitute a total breakdown in communication if those problems do not interfere with the preparation and presentation of a defense. *State v. Gorden*, 149 Ohio App.3d 237, 241, 776 N.E.2d 1135, 2002-Ohio-2761.

{¶14} The decision whether or not to remove court appointed counsel and allow substitution of new counsel is addressed to the sound discretion of the trial court, and its decision will not be reversed on appeal absent an abuse of discretion. *Murphy, supra*. An abuse of discretion means more than a mere error of law or an error in judgment, and implies an arbitrary, unreasonable, unconscionable attitude on the part of the court. *State v. Adams*, 62 Ohio St.2d 151, 404 N.E.2d 144 (1980).

{¶15} At the hearing on remand, Attorney Daniels-Hill testified Appellant wanted him to file a motion to suppress statements he made to police, which would not have been timely filed, and the State agreed the statements Appellant sought to have suppressed would not be used in the State's case-in-chief. Daniels-Hill stated the relationship between himself and Appellant was contentious and didn't serve Appellant's interests very well, but never reached a point where communication stopped.

{¶16} Appellant told the trial court counsel did not want to take the case to trial, and repeatedly told Appellant he needed to identify the shooter, which Appellant declined to do. Appellant claimed Daniels-Hill said he would not fight to the best of his ability for Appellant because he believed Appellant was guilty. Daniels-Hill told the court he never told Appellant he would not advocate for Appellant to the best of his ability, but after looking at the evidence provided by the State in discovery, he did not like Appellant's chances at trial and believed Appellant would get a better outcome from a plea deal

because the prosecutor was interested in identifying and prosecuting the shooter, who remained at large.

{¶17} The trial court stated on the record the case proceeded to trial for a period of time before Appellant entered the plea of no contest, and Attorney Daniels-Hill did an excellent job representing Appellant. However, the trial court noted it was clear the person on the store video was Appellant, and from the video it was apparent Appellant was involved with the aggravated robbery. The trial court stated counsel did the best he could with the case he had to work with, and while counsel and Appellant may have argued, the breakdown in the relationship did not jeopardize Appellant's right to effective assistance of counsel.

{¶18} We find the trial court did not abuse its discretion in denying the motion to withdraw after further investigation into the breakdown of communication between Appellant and Attorney Daniels-Hill. The representations at the hearing demonstrated disagreements arose over Appellant's desire counsel file a motion to suppress which was untimely and concerned evidence the State did not intend to use, and over counsel's suggestion Appellant pursue a plea deal and identify the shooter.

{¶19} A defendant has no constitutional right to determine trial strategy or tactics. *State v. Cowans*, 87 Ohio St. 3d 68, 72, 717 N.E.2d 298 (1999). In *Cowans*, the Ohio Supreme Court further held:

Cowans's chief complaint was that his attorneys thought he was guilty. However, counsel deny ever expressing such a belief to Cowans. Even if counsel had explored plea options based on a belief that Cowans

might be guilty, counsel's belief in their client's guilt is not good cause for substitution. “ ‘A lawyer has a duty to give the accused an honest appraisal of his case. * * * Counsel has a duty to be candid; he has no duty to be optimistic when the facts do not warrant optimism.’ ” *Brown v. United States* (C.A.D.C.1959), 264 F.2d 363, 369 (en banc), *quoted in McKee v. Harris* (C.A.2, 1981), 649 F.2d 927, 932. “ ‘If the rule were otherwise, appointed counsel could be replaced for doing little more than giving their clients honest advice.’ ” *McKee*, 649 F.2d at 932, *quoting McKee v. Harris* (S.D.N.Y.1980), 485 F.Supp. 866, 869.

{¶20} *Id.* at 73, 717 N.E.2d at 304–05.

{¶21} Although Attorney Daniels-Hill represented Appellant's interests were not served very well because of the contentious nature of the relationship, the record supports the trial court's conclusion Appellant's right to effective assistance of counsel was not jeopardized by the relationship. Appellant does not have a constitutional right to dictate counsel file a motion to suppress, which in the instant case was not timely, and the State did not intend to use the evidence Appellant sought to suppress. In addition, because of the video demonstrating Appellant's participation in the aggravated robbery, counsel had a duty to be candid about Appellant's chances at trial, and to inform Appellant of the benefits of identifying the shooter in exchange for a plea deal.

{¶22} The assignment of error is overruled. The judgment of the Richland County Common Pleas Court is affirmed.

By: Hoffman, P.J.
Wise, John, J. and
Delaney, J. concur

