

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 09AP-918 (C.P.C. No. 09CR-03-1359)
Charles Erwin,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on June 30, 2010

Ron O'Brien, Prosecuting Attorney, and *Kimberly Bond*, for appellee.

Blaise G. Baker, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

BRYANT, J.

{¶1} Defendant-appellant, Charles Erwin, appeals from a judgment of the Franklin County Court of Common Pleas finding defendant guilty of aggravated murder with specification, murder with specification, aggravated robbery with specification, tampering with evidence, theft, and having a weapon while under disability. Defendant assigns a single error:

The trial court violated Appellant's rights under the Sixth Amendment to the United States Constitution and Article 1,

Section 10 of the Ohio Constitution by not conducting any inquiry on Appellant's requests for new counsel.

Because the trial court did not err when it failed to inquire into defendant's general complaint regarding his attorney, we affirm.

I. Facts and Procedural History

{¶2} On February 29, 2008, defendant and several other men participated in a series of events which led to the theft of a motor vehicle and the shooting death of James Lee Smith. Police arrested defendant against whom an eight-count indictment issued. The indictment charged defendant with two counts of aggravated murder in violation of R.C. 2903.01, two counts of murder in violation of R.C. 2903.02, and aggravated robbery in violation of R.C. 2911.01, each with a specification under R.C. 2941.145. The indictment further charged defendant with tampering with evidence in violation of R.C. 2921.12, theft in violation of R.C. 2913.02, and having a weapon while under disability in violation of R.C. 2923.13.

{¶3} Defendant requested a jury trial for all charges except having a weapon while under disability, for which defendant waived his right to a jury trial. On the first day of trial, prior to voir dire, defendant's court-appointed attorney on the record informed the trial court that defendant "did not think [his counsel] was looking out for his best interest" and that defendant "wanted to hire an attorney or get a new attorney." (Tr. 9, 10.) The trial court responded that "[defendant] was not going to delay this trial, he was not going to get appointed new counsel." (Tr. 10.) Defendant did not personally speak on the record. The trial court told defendant, "If I were you, I wouldn't look a free gift in the mouth when it

comes to the quality of lawyer you have sitting beside you today." (Tr. 10.) The trial court then allowed the parties to proceed with voir dire.

{¶4} The jury ultimately returned guilty verdicts for one count of aggravated murder with specification, two counts of murder with specification, aggravated robbery with specification, tampering with evidence, and theft; the trial court found defendant guilty of having a weapon while under disability. At an August 28, 2009 sentencing hearing, the trial court imposed an aggregate sentence of 48 years to life.

II. Assignment of Error

{¶5} In his sole assignment of error, defendant asserts the trial court erred when it failed to conduct an inquiry concerning defendant's request for new counsel, thus depriving defendant of his right to counsel under both the United States Constitution and the Ohio Constitution.

{¶6} The right of an accused to select his or her own counsel is inherent only in cases where the accused employs counsel; the court has no duty in assigning counsel for an indigent defendant to allow the defendant to choose his or her attorney. *Thurston v. Maxwell* (1965), 3 Ohio St.2d 92, 93; *State v. Gordon*, 149 Ohio App.3d 237, 2002-Ohio-2761. Rather, an indigent defendant is entitled to competent, effective representation from an appointed attorney. *Gordon* at 240. "Competent representation does not include the right to develop and share a 'meaningful attorney-client relationship' with one's attorney." *Id.* at 241, citing *Morris v. Slappy* (1983), 461 U.S. 1, 103 S.Ct. 1610.

{¶7} "To discharge a court-appointed attorney, the defendant must show 'a breakdown in the attorney-client relationship of such magnitude as to jeopardize the defendant's right to effective assistance of counsel.' " *State v. Coleman* (1988), 37 Ohio

St.3d 286, 292, quoting *People v. Robles* (1970), 2 Cal.3d 205, 215. Simple "[d]isagreement between the attorney and client over trial tactics and strategy does not warrant a substitution of counsel." *State v. Furlow*, 2d Dist. No. 03CA0058, 2004-Ohio-5279, ¶12. (Citations omitted.) Similarly, "mere hostility, tension and personal conflicts between 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." *Id.* Rather, a defendant is required to show "good cause, such as a conflict of interest, a complete breakdown of communication, or an irreconcilable conflict which leads to an apparently unjust result." *State v. Smith* (Dec. 29, 1998), 4th Dist. No. 98CA12, quoting *State v. Blankenship* (1995), 102 Ohio App.3d 534, 558.

{¶8} Defendant bears the burden of demonstrating grounds for the appointment of new counsel. If a "defendant alleges facts which, if true, would require relief, the trial court must inquire into the defendant's complaint and make the inquiry part of the record." *Smith*, citing *State v. Deal* (1969), 17 Ohio St.2d 17, 20. Although the inquiry may be brief and minimal, the inquiry must be made. *State v. King* (1995), 104 Ohio App.3d 434, 437; *Smith*. "Even that limited judicial duty arises only if the allegations are sufficiently specific; vague or general objections do not trigger the duty to investigate further." *Smith*, citing *Deal*, *supra*; see also *State v. Johnson*, 112 Ohio St.3d 210, 2006-Ohio-6404, ¶68, quoting *State v. Carter* (1998), 128 Ohio App.3d 419, 423.

{¶9} Once a defendant makes the requisite showing, the trial court's failure to appoint new counsel "amounts to a denial of effective assistance of counsel." *Smith*, quoting *State v. Pruitt* (1984), 18 Ohio App.3d 50, 57. "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." *Furlow* at ¶13. While defendant never personally addressed the court and never asked to do so, he asserts the trial court abused its discretion in failing to inquire, as his complaint delivered through his attorney was enough to trigger the trial court's duty to ask defendant about his dissatisfaction with his court-appointed attorney.

{¶10} Although defendant's remarks, through his attorney, alleged a general dissatisfaction with his counsel, they did not assert any specific facts indicating any specific breakdown in the attorney-client relationship. "Absent specific objections to counsel's performance, the trial court has no duty to investigate anything." *State v. Hibbler*, 2d Dist. No. 2001-CA-43, 2002-Ohio-4464, ¶15, citing *State v. Harris* (Nov. 27, 1992), 6th Dist. No. L-92-039 (stating "[t]he duty to inquire described in *State v. Deal* is not a duty to inquire into the grounds of the motion," as "[t]he accused bears the duty of announcing the grounds of the motion"); *State v. Hawkins*, 8th Dist. No. 91930, 2009-Ohio-4368, ¶54 (determining a defendant's assertion that he felt his counsel would not "fight for him to the fullest extent" did not trigger a trial court's duty to conduct a *Deal* inquiry); *State v. Ervin* (Nov. 26, 2001), 5th Dist. No. 2000CA00297 (concluding defendant's statement on morning of trial that "I just wanted to get me a lawyer to fight my case" because "I feel like he ain't representing me right" was not sufficient to invoke court's duty to inquire further); *State v. Simon* (Nov. 22, 2000), 2d Dist. No. 99CA5 (holding defendant's complaint of a mere "conflict of interest" without more is not sufficiently specific to require further inquiry); *State v. Washington* (Aug. 17, 2001), 1st

Dist. No. C-000754 (finding defendant's "general allegation of unhappiness" was so vague that it did not require further inquiry).

{¶11} Like the defendants in *Hawkins, Ervin, Simon, and Washington*, defendant here did not present sufficiently specific facts to prompt the trial court's duty to inquire. Defendant's last-minute complaint, through his counsel, that he "did not think [appointed counsel] was looking out for his best interest" is too general to require the inquiry contemplated in *Deal*. Indeed, neither in the trial court nor on appeal did defendant allege any specific instances where his court-appointed attorney inadequately represented him. See, e.g., *State v. Badran*, 8th Dist. No. 90725, 2008-Ohio-6649, ¶11 (stating "[w]e have found that 'the refusal to replace an appointed attorney is not an abuse of discretion when the request is made at the last minute prior to trial and adequate reasons for the request are not set out in the record' "), citing *State v. Smith* (Sept. 14, 2000), 8th Dist. No. 76998, quoting *State v. Harper* (1988), 47 Ohio App.3d 109, 113.

{¶12} The trial court thus did not err in failing to conduct a more detailed inquiry following defendant's complaints regarding his appointed counsel. Accordingly, defendant's sole assignment of error is overruled, and the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

BROWN and CONNOR, JJ., concur.
