

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

ALVIN GEORGE WHITE JR.

Appellant

IN THE SUPERIOR COURT
OF PENNSYLVANIA

No. 1869 EDA 2018

Appeal from the Judgment of Sentence Entered June 11, 2018
In the Court of Common Pleas of Chester County
Criminal Division at No.: CP-15-CR-0000384-2017

BEFORE: OTT, STABILE, and McLAUGHLIN, JJ.

MEMORANDUM BY STABILE, J.:

FILED MAY 1, 2019

Appellant Alvin George White Jr. appeals from the June 11, 2018 judgment of sentence entered in the Court of Common Pleas of Chester County ("trial court"), following his jury convictions for three counts of robbery, kidnapping, false imprisonment, simple assault, terroristic threats, and theft by unlawful taking.¹ Upon review, we affirm.

The facts and procedural history of this case are undisputed. As summarized by the trial court:

On January 4, 2017, the Caln Township Police Department of Chester County received a report that a robbery was initiated at the Wawa located on Lincoln Highway and concluded at the Citadel [Federal Credit Union ("FCU")] located on Bailey Road.... The victim reported that upon returning to his vehicle after visiting the Wawa [store], Appellant, a person known to the victim from his work at the Veteran's Administration, entered his vehicle without consent and demanded money. The victim told Appellant he did

¹ 18 Pa.C.S.A. §§ 3701(a)(1)(ii),(iii), and (iv), 2901(a)(3), 2903(a), 2701(a)(3), 2706(a)(1), and 3921(a), respectively.

not have any [money], but Appellant refused to exit the vehicle until he received some money. Appellant demanded that the victim drive to a nearby ATM machine. The victim drove to the Citadel [FCU]. When they arrived, Appellant took the car keys and told the victim to withdraw money from the ATM. Video surveillance from the bank showed Appellant standing behind the victim while [the victim] typed in his PIN number, and then Appellant pushed the victim aside so Appellant could input the amount [(\$200.00)] and take the money from the ATM machine. Appellant instructed the victim not to call the police and left the bank on foot.

Trial Court Opinion, 8/29/18, at 1-2 (unpaginated). On January 5, 2017, Appellant was charged, *inter alia*, with the above-referenced crimes. Following a preliminary hearing on February 1, 2017, all charges were held for court.

On February 14, 2017, Susanna E. Dewese, Esquire, Chester County Public Defender's Office, entered her appearance on behalf of Appellant. On March 28, 2017, Appellant's trial was scheduled for May 9, 2017. On the day of trial, however, Appellant requested a continuance until the session commencing on June 12, 2017. On May 18, 2017, Appellant's trial was rescheduled to June 13, 2017. On June 8, 2017, Appellant sought a second trial continuance. On June 20, 2017, Appellant's trial was rescheduled for July 25, 2017. On July 31, 2017, Appellant and the Commonwealth sought a joint trial continuance, Appellant's third. On August 8, 2017, Appellant's trial was rescheduled for September 24, 2017.

On Thursday, September 21, 2017, two business days before the commencement of trial on Monday, September 25, 2017, the trial court conducted a pretrial hearing to address certain concerns Appellant had vis-à-vis the judicial process, Attorney Dewese and his case. Specifically, Appellant:

1. Requested Attorney Dewese to obtain a copy of the preliminary hearing transcript because Appellant believed that the magisterial district judge (“MDJ”) “called [his] case a gross case of overcharge.” N.T. Hearing, 9/21/17, at 2-3.
2. Inquired about the availability of a surveillance video capturing the outside of the Citadel FCU that purportedly shows him shaking hands with the victim. **Id.** at 9.
3. Complained about and questioned the lack of audio for the video recording of the victim’s statement and discovery of other statements. **Id.** at 11-12, 15-16.
4. Raised the issue of a violation of the Health Insurance Portability and Accountability Act (“HIPAA”) by the investigating officers. **Id.** at 17-18.
5. Claimed that Attorney Dewese had violated attorney-client privilege because of her alleged communications with other inmates at Chester County prison. **Id.** at 18-19.

With respect to Appellant’s first concern, Attorney Dewese stated that despite the MDJ’s remarks about overcharging, the “judge held the charges for court.” **Id.** at 4. She explained to Appellant the reason why the MDJ’s remarks were not transcribed. “My office prepares transcripts . . . [and] what the judge says after the hearing we don’t [transcribe] because I tried – I attempted to explain to [Appellant] the fact that [what] [the MDJ] said [] might make us feel good. [A j]ury is never going to get to hear that.” **Id.** The trial court also explained to Appellant:

It doesn't matter. So whatever the [MDJ] – it's not infrequent that judges might disagree with what one of the attorneys is doing or one of the parties. Their opinion actually doesn't matter.

. . . .

Does not matter. That's why you get a trial. That's why you get a trial with twelve people to decide what they think.

Id. at 5-6.

With regard to Appellant's second concern, Attorney Dewese explained that the surveillance video the Commonwealth subpoenaed shows only the interior of the Citadel FCU. ***Id.*** at 9. According to Attorney Dewese, the Commonwealth did not request nor preserve the video showing the outside of the Citadel FCU. ***Id.*** The Commonwealth confirmed that the video of the exterior of the bank was not preserved. ***Id.*** at 9-10. The trial court then explained to Appellant that "[i]f [the tape is] not requested within thirty days it's been recorded over. So it's not they are trying to keep it from you. It's that [it] just doesn't exist anymore." ***Id.*** at 10. The trial court further explained that the jury would be instructed to render its verdict based on the evidence or lack thereof introduced at trial. ***Id.***

Addressing Appellant's concern about the lack of audio in the victim's video recording, the Commonwealth explained that Sergeant Steve Parkinson of the Caln Police Department conducted the interview in question. The Commonwealth further explained:

They have an audio visual recording system. It was visually recorded but audio did not work that day. Sergeant Parkinson realized that after it was over. At no point in time have we told [Appellant] or [Attorney] Dewese anything other than there is video, that Sergeant Parkinson wrote up a detailed report regarding that.

Id. at 12.

The trial court addressed Appellant's HIPAA claim, noting that "federal law [is] addressed in federal court" and that this issue is not before the court.

Id. at 18.

Finally, Attorney Dewese addressed and denied Appellant's accusation that she violated the attorney-client privilege. Attorney Dewese noted:

I can promise you I have not spoken to any other inmate at Chester County prison about [Appellant] or his case. Only people that I have talked to about [Appellant's] case would be attorneys from my office, which I'm permitted to do. That's not breaking client confidentiality. It's like we are a law firm. I have spoken to the [Commonwealth] about aspects of the case but nothing that [Appellant has] told me in confidence. So honestly, I have not permitted anyone, any other inmate to read any of his letters.

Id. at 19-20.

Despite his earlier acknowledgment that Attorney Dewese was a good attorney, Appellant dismissed her. **Id.** at 2, 20.

I just came here because I wanted to hear from you. Sounds like I understand what is going to happen. We are supposed to start trial Monday. Here is what is going to happen. I'm going to release [Attorney Dewese] today. I'm going to be seeking new counsel. Possibly Mr. Goldberg or Mr. Altman will be representing me after - in a week, so whatever we need to do to put a postponement on Monday, I would like to do that. I will have - they will be contacting your office within chambers within a week.

Id. at 21. The trial court denied Appellant's request for a continuance, stating "No, you're going to trial on Monday. Another attorney can represent you on Monday. That's fine." **Id.** The following exchange took place:

[Appellant]: You mean to tell me he won't have a chance to prepare for trial.

[The trial court]: It's scheduled for Monday.

[Appellant]: What I'm saying, I'm not satisfied with her counsel. I'm going to get new counsel. However you have to do that, I'm going to get new counsel.

[Attorney Dewese]: Would you prefer to represent yourself?

[Appellant]: I just told you what I'm going to do. They will contact you. That's my right. You can't take that right away from me. We'll see you Monday.

. . . .

[Appellant]: When can we do the habeas?

[The trial court]: Monday before trial.

[Appellant]: I'm going to have this attorney – I'm going to get in contact with the new attorney. They'll be contacting your office, I guess DA, either Mr. Altman or Mr. Goldberg. **Those are two I already paid.**

[The trial court]: We'll see you Monday.

Id. at 20-21, 26-27 (emphasis added). The case proceeded to trial on Monday, September 25, 2017, two business days after the pretrial hearing. At the start of trial, the following exchange occurred between the trial court and Appellant:

[The trial court]: When we were here last [Thursday] you indicated that you wish to retain private counsel.

[Appellant]: Yes.

[The trial court]: Were you able to hire private counsel?

[Appellant]: No. We're going to go ahead with [Attorney] Dewese for now. For the record I want to apologize for my behavior in your courtroom the other day. I was a little out of my mind, out of myself. Just apologize to the DA and to the [c]ourt.

[The trial court]: So are you ready to proceed this morning?

[Appellant]: Yes, I am.

N.T. Trial, 9/25/17, at 3.² Thereafter, Appellant stated that he did not “need [Attorney Dewese] to represent [him].” **Id.** at 4. In particular, he remarked:

I want to represent myself. But if I’m going to represent myself, Your Honor[.] . . . I’m going to ask if possible, I think I would do much better with representing myself. I think I can. You don’t have to explain to me the pros and cons of my appellate rights I will lose by representing myself. I’m quite clear on that. But I do need – I would like to have one person subpoenaed. I would like [Attorney] Dewese, if she’s not going to represent me, I understand her role which would be [to] assist me with certain questions I may have or maybe some objections or some things I may not be clear on, she can guide me through that. I can actually navigate myself through this trial with the DA very easily.

Id. at 4-5. Appellant later remarked “I think that – I think I’m going to have a better chance at even remotely having a not guilty verdict with me. Nothing against [Attorney] Dewese.” **Id.** at 27. Eventually, Appellant executed a written waiver of counsel colloquy and an oral waiver of counsel colloquy on the record. **Id.** 29-39. Following trial, the jury found Appellant guilty of three counts of robbery, kidnapping, false imprisonment, simple assault, terroristic threats, and theft by unlawful taking. **See** N.T. Trial, 9/27/17, at 391-94.

Thereafter, Appellant requested appointment of counsel. On October 6, 2017, the trial court appointed Thomas P. McCabe, Esquire, as conflict counsel.³ On December 4, 2017, Attorney McCabe filed a motion for extraordinary relief under Pa.R.Crim.P. 704(B), challenging the trial court’s

² Attorney Dewese stated at the start of trial that she had not prepared a formal *habeas* motion because Appellant had indicated at the September 21, 2017 hearing that he had retained other counsel.

³ The trial court noted that a conflict existed between Appellant and the public defender’s office. **See** Trial Court Order, 10/6/17.

denial of Appellant's request for continuance and seeking a new trial. After several continuances, the trial court conducted a sentencing hearing on June 11, 2018,⁴ at which it denied the motion for extraordinary relief. The trial court sentenced Appellant to an aggregate term of 16 to 32 years' imprisonment. Appellant did not file any post-sentence motion. Appellant timely appealed to this Court. The trial court directed Appellant to file a Pa.R.A.P. 1925(b) statement of errors complained of on appeal. Appellant complied, raising a single assertion of error. In response, the trial court issued a Pa.R.A.P. 1925(a) opinion.

On appeal, Appellant argues that

the trial court abused its discretion by violating the Sixth and Fourteenth Amendments of the United States Constitution, and Article 1, § 9 of the Pennsylvania Constitution, by denying [his] pre-trial continuance request to obtain private counsel that [Appellant] made at a pre-trial hearing that occurred on September 21, 2017, by failing to make an extensive inquiry into the reasons of [Appellant's] dissatisfaction with his then current counsel, and by failing to balance [Appellant's] constitutional right to retain private counsel versus the Commonwealth's right to the swift administration of justice[.]

Appellant's Brief at 4.

It is well-settled that we review a trial court's grant or denial of a continuance request for an abuse of discretion. In ***Commonwealth v.***

⁴ At sentencing, Attorney McCabe for the first time introduced exhibits showing that Appellant had filed a complaint against Attorney Dewese with the disciplinary board and that Appellant was under the impression that his trial would be held on October 17, 2017, instead of September 25, 2017. These arguments were not raised before the trial court at the pretrial hearing, during trial or at any time before sentencing. Accordingly, we cannot consider the exhibits on appeal. ***Commonwealth v. Rominger***, 199 A.3d 964, 975 n.6 (Pa. Super. 2018) (citing Pa.R.A.P. 302(a)).

Pettersen, 49 A.3d 903 (Pa. Super. 2012), **appeal denied**, 63 A.3d 776 (Pa. 2013), this Court explained:

It is well settled that the grant of a continuance rests within the sound discretion of the trial court and that the decision to deny the continuance will not be reversed unless a clear abuse of discretion is shown. Moreover, an appellate court will not find an abuse of discretion if the denial of the continuance did not prejudice the appellant.

Pettersen, 49 A.3d at 914 (citations and quotation marks omitted). “[A defendant] must be able to show specifically in what manner he was unable to prepare his defense or how he would have prepared differently had he been given more time. [This Court] will not reverse a denial of a motion for continuance in the absence of prejudice.” **Commonwealth v. Ross**, 57 A.3d 85, 91 (Pa. Super. 2012) (citation omitted), **appeal denied**, 72 A.3d 603 (Pa. 2013).

In **Commonwealth v. Prysock**, 972 A.2d 539 (Pa. Super. 2009), our Court set forth the following factors to consider on appeal from a trial court’s ruling on a continuance motion to obtain private representation: (1) whether the court conducted “an ‘extensive inquiry’ into the underlying causes of defendant’s dissatisfaction with current counsel;” (2) whether the defendant’s dissatisfaction with counsel amounted to “irreconcilable differences;” (3) “the number of prior continuances;” (4) “the timing of the motion” for continuance; (5) “whether private counsel had actually been retained;” and (6) the readiness of private counsel to proceed in a reasonable amount of time. **Id.** at 543.

The ***Prysock*** Court further explained

[t]he right to counsel is guaranteed by both the Sixth Amendment to the United States Constitution and by Article I, Section 9 of the Pennsylvania Constitution. In addition to guaranteeing representation of the indigent, these constitutional rights entitle an accused to choose at his own cost and expense any lawyer he may desire. The right to counsel of one's own choosing is particularly significant because an individual facing criminal sanctions should have great confidence in his attorney.

We have held, however, that the constitutional right to counsel of one's choice is not absolute. Rather, the right of the accused to choose his own counsel, as well as the lawyer's right to choose his clients, must be weighed against and may be reasonably restricted by the state's interest in the swift and efficient administration of criminal justice. Thus, this Court has explained that while defendants are entitled to choose their own counsel, they should not be permitted to unreasonably clog the machinery of justice or hamper and delay the state's efforts to effectively administer justice. At the same time, however, we have explained that a myopic insistence upon expeditiousness in the face of a justifiable request for delay can render the right to defend with counsel an empty formality.

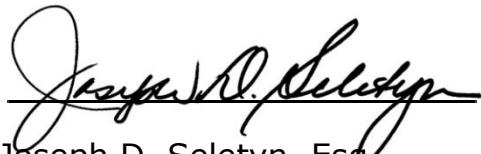
Id. at 542 (citations, quotation marks, and brackets omitted).

After careful review of the record and the relevant case law, we conclude that the trial court accurately and thoroughly addressed the merits of Appellant's claim. ***See*** Trial Court Opinion, 8/29/18, at 5-9 (unnumbered). Instantly, as the pretrial hearing transcript reveals, the trial court (1) conducted an extensive inquiry into the underlying causes of Appellant's dissatisfaction with Attorney Dewese; (2) concluded that Appellant's dissatisfaction with Attorney Dewese did not amount to irreconcilable differences because Appellant did not seek to terminate her until two business days prior to the start of trial and that they were able to communicate respectfully and effectively; (3) noted the three prior continuances granted to Appellant in this case; (4) determined that Appellant sought the continuance

at issue two business days prior to the start of trial; and (5) found that Appellant did not retain new counsel despite his claim that he had paid for new counsel to represent him and that no new counsel had entered his or her appearance on behalf of Appellant. Accordingly, we affirm the trial court's June 11, 2018 judgment of sentence. We further direct that a copy of the trial court's August 29, 2018 opinion be attached to any future filings in this case.

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 5/1/19

COMMONWEALTH OF PENNSYLVANIA

IN THE COURT OF COMMON PLEAS CHESTER COUNTY, PENNSYLVANIA

v.

NO.: CP-15-CR-0000384-2017 1869 EDA 2018

ALVIN GEORGE WHITE, JR.

CRIMINAL ACTION - LAW

Nicholas J. Casenta, Jr., Esquire, Attorney for the Commonwealth
D. M. Caba, Esquire, Attorney for Appellant

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CLERK OF COURT

RULE 1925(a) OPINION

BY: WHEATCRAFT, J.

AUGUST 29, 2018

Alvin George White, Jr. ("Appellant"), appeals this court's June 11, 2018 judgment of sentence. Appellant sets forth one error in his Concise Statement of Errors Complained of on Appeal. Appellant submits that the court "abused its discretion ... by denying [Appellant's] pre-trial [c]ontinuation request to obtain private counsel ..., by failing to make an extensive inquiry into the reasons of the Defendant's dissatisfaction with his then current counsel, and by failing to balance Defendant's constitutional right to retain private counsel versus the Commonwealth's right to the swift administration of justice." (Appellant's Concise Statement of Errors, p. 1, par. 1).

For the reasons set forth below, we find no error was made.

PROCEDURAL HISTORY

On January 4, 2017, the Caln Township Police Department of Chester County received a report that a robbery was initiated at the Wawa located on Lincoln Highway and concluded at the Citadel FCU located on Bailey Road. The victim reported that upon returning to his vehicle after visiting the Wawa, Appellant, a person known to the victim from his work at the Veteran's Administration, entered his vehicle without consent and demanded money. The victim told Appellant he did not have any, but Appellant refused to

exit the vehicle until he received some money. Appellant demanded that the victim drive to a nearby ATM machine. The victim drove to the Citadel Federal Credit Union. When they arrived, Appellant took the car keys and told the victim to withdraw money from the ATM. Video surveillance from the bank showed Appellant standing behind the victim while he typed in his PIN number, and then Appellant pushed the victim aside so Appellant could input the amount and take the money from the ATM machine. Appellant instructed the victim not to call the police and left the bank on foot.

Appellant was charged with three counts of Robbery (18 Pa.S.C.A. §3701(a)(1)(ii), (iii) &(iv)); one count of Kidnapping (18 Pa.S.C.A. §2901(a)(3)) and additional related misdemeanor charges. Susanna Dewese, Esquire of the Chester County Public Defender's Office entered her appearance on February 14, 2017. Several defense continuances of the trial were granted, until the trial was scheduled to commence on a date certain, September 24, 2017.

The court was notified that Appellant wished to address certain concerns related to his case and his counsel. A hearing was held on September 21, 2017. At that time, Ms. Dewese informed the court that she had met with Appellant on several occasions and had discussed the possibility of filing various pretrial motions, including a motion to suppress Appellant's statement to the police. It was her professional, legal opinion that such a motion was not warranted. (N.T., 09/21/17, p. 45, l. 22 – p. 5, l. 3).

At the September 21, 2017 hearing, Defendant voiced a number of additional concerns related to his defense counsel and the judicial process in general:

- a. He alleged that the magisterial district justice made a remark suggesting that Appellant had been overcharged by the Commonwealth (N.T., 09/21/17, p. 2, ll. 9-20);

- b. He complained about the unavailability of a video recording for the outside area of the Citadel FCU, *Id.* at p. 9, ll. 5-15;
- c. He complained about the lack of audio for the video recording of the victim's statement due to unknown technical difficulties with the recording equipment (N.T., 09/21/17, p. 11, p. 12 ll. 10-19, p. 12, ll. 4-9);
- d. He alleged that there was confusion with the discovery regarding the video recording of Appellant's statement, *Id.* at pp. 15-16;
- e. He alleged HIPPA violations by the investigating officers, *supra* at p. 18, ll. 2-6; and
- f. He alleged defense counsel violated his attorney-client privilege, *Id.* at ll. 15-21.

The court explained the legal significance and/or lack of legal significance attached to Appellant's concerns. (See N.T., 09/21/17). The court informed Appellant that his evidentiary concerns were better addressed during trial as a means of challenging the credibility of the investigating officers, and that the allegations of a privilege violation on the part of defense counsel was found to have no merit.

At the September 21, 2017 hearing, a Thursday, Appellant acknowledged that "Miss Dewese is a good attorney." (N.T., 09/21/17, p. 2, ll. 22-23). Nonetheless, Appellant stated he was not satisfied with Ms. Dewese and that he was going to retain new counsel whom he had "already paid." *Id.* at p. 21, ll. 16-18, p. 26, l. 23 – p. 27, l. 1. It was also Appellant's intent to have a *habeas* hearing immediately prior to the commencement of trial. *Supra* at p. 26, ll. 21-22.

Prior to the commencement of trial on Monday September 25, 2017, the court inquired as to whether Appellant had retained new counsel. Appellant stated he did not

hire new counsel and was "going to go ahead with Ms. Dewese for now." (N.T., 09/25/17, p. 3, ll. 8-9). The court again asked if Appellant was ready to proceed with the trial. Appellant responded "Yes, I am. ... I don't mind doing a trial." *Id.* at ll. 14-16, 23. Appellant explained as follows:

[Appellant]: Okay, if we [are] going to move to trial, at this particular moment that's what I want to do. I don't need [Ms. Dewese] to represent me. I have to – I want to represent myself ...

I think I would do much better with representing myself. ... You don't have to explain to me pros and cons of my appellate rights I will lose by representing myself. I'm quite clear on that ...

I understand [Ms. Dewese's] role which would be [to] assist me with certain questions I may have or maybe some objections or some things I may not be clear on, she can guide me through that. I can actually navigate myself through this trial with the DA very easily.

(N.T., 09/25/17, p. 4, l. 12 – p. 5, l. 6).

Appellant went on to state, "I think I'm going to have a better chance at even remotely having a not guilty verdict with me. Nothing against Miss Dewese." *Id.* at p. 27, ll. 8-10. The court specifically put a colloquy on the record regarding Appellant's right to proceed *pro se*, the offenses charged, and the maximum penalties related to the offenses.

(N.T., 09/25/17, pp. 29-38). Trial commenced thereafter.

Trial concluded on September 27, 2017. Appellant was found guilty on three counts of Robbery (18 Pa.C.S.A. §3701(a)(1)(ii),(iii), and (iv)), one count of Kidnapping (18 Pa.C.S.A. §2901(a)(3)), False Imprisonment (18 Pa.C.S.A. §2903(a)), Simple Assault (18 Pa.C.S.A. §2701(a)(3)), Terroristic Threats (18 Pa.C.S.A. §2706(a)(1)) and Theft by Unlawful Taking or Disposition (18 Pa.C.S.A. §3921(a)). Prior to sentencing, Appellant made a request for new defense counsel. Thomas P. McCabe, Esquire was appointed as conflict counsel. Mr. McCabe filed a Post Trial Motion for New Trial on November 27, 2017. The court denied the motion on December 4, 2017.

The sentencing was continued until June 11, 2018 at Appellant's request. Appellant was sentenced to 10 to 20 years of incarceration on one count of Robbery and 6 to 12 years of incarceration on one count of Kidnapping consecutive to the Robbery. At that time, Appellant also received a copy of "Defendant's Acknowledgment of Post-Sentencing Procedures Following Trial" in open court.

Appellant filed his Notice of Appeal on June 28, 2018 and we issued our Rule 1925(b) Order on July 2, 2018. Appellant filed a timely Concise Statement of Errors Complained of on Appeal on July 17, 2018. Our Rule 1925(a) Opinion follows.

ERRORS CLAIMED BY APPELLANT

In his Concise Statement, Appellant sets forth one error; that the trial court violated Appellant's federal and state Constitutional rights by denying his request for a continuance of trial without fully investigating the reasons Appellant was dissatisfied with his defense counsel and failing to balance the legal interests of the parties.

DISCUSSION

A. Standard of Review (Continuance Request)

Appellant's chief complaint is that the court erred by denying Appellant's request

for a continuance prior to the start of trial.

Appellate review of a trial court's continuance decision is deferential. "The grant or denial of a motion for a continuance is within the sound discretion of the trial court and will be reversed only upon a showing of an abuse of discretion. As we have consistently stated, an abuse of discretion is not merely an error of judgment. Rather, discretion is abused when 'the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias, or ill-will, as shown by the evidence or the record....' " *Commonwealth v. Randolph*, 873 A.2d 1277, 1281 (Pa. 2005) (quoting *Commonwealth v. McAleer*, 748 A.2d 670, 673 (Pa. 2000) (internal citations omitted)).

Commonwealth v. Brooks, 104 A.3d 466, 469 (Pa. 2014).

B. Legal Analysis

There is no set test for this court to use when determining whether to grant or deny a continuance for the sole purpose of retaining private counsel. In making a determination as to whether to grant or deny Appellant's request for a continuance, we weighed Appellant's right to choose his own legal representative against the Commonwealth's interest in proceeding efficiently and effectively in its "administration of criminal justice." Pa.Const. Art. 1, § 9, *Commonwealth v. McAleer*, 561 Pa. 129, 748 A.2d 670 (Pa. 2000) (citing *Commonwealth v. Robinson*, 364 A.2d 665, 674 (Pa. 1976); *Ungar v. Sarafite*, 376 U.S. 575 (S.Ct. 1964)). Deference is given to the trial court in its determination to grant or deny a defendant's continuance request. In making the determination, the trial court must weigh the defendant's right to legal counsel or self-representation against the government's interests in the efficient administration of justice. *Rudolph supra* at 1281-82. See also *Morris v. Slappy*, 461 U.S. 1, 11-12 (S.Ct.

1983) ("broad discretion must be granted trial courts on matters of continuances; only an unreasonable and arbitrary 'insistence upon expeditiousness in the face of justifiable request for delay' violates the right to the assistance of counsel.").

Appellant's claim of error is that this court abused its discretion when it denied Appellant's request for a continuance "without fully investigating the reasons Appellant was dissatisfied with his defense counsel and failing to balance the legal interests of the parties." (Concise Statement of Errors, 07/17/18, par. 1). This argument is not supported by the record. Appellant was able to place all of his concerns on the record and they were addressed by the court. It was explained to Appellant how certain concerns could be addressed during trial. Appellant's questions about why some evidence was unavailable were also answered, and his belief that the attorney-client privilege was violated was explored and found to have no merit.

We examined the facts and history of the case prior to Appellant making his request for a continuance. Ms. Dewese had requested numerous continuances for discovery and trial preparation. Appellant had reviewed and was well-versed on the discovery turned over by the Commonwealth. We also considered Appellant's dissatisfaction with Ms. Dewese, and the fact that Appellant took no action to terminate Ms. Dewese as his defense counsel prior to September 21, 2017, two business days before the scheduled commencement of trial. We specifically note that although Appellant claimed on September 21, 2017 that he was retaining new counsel and had paid for new counsel to represent him, Ms. Dewese had not been contacted by new counsel and no entry of appearance was filed in the Clerk of Courts.

On the day of trial, September 25, 2017, Appellant notified the court that he did not have private counsel and that he wished to have Ms. Dewese represent him on his

Habeas Corpus Motion. (N.T., 09/25/17, p. 1, ll. 4-9, p. 4, ll. 2-8). Ms. Dewese explained that she had not prepared a formal motion since Appellant had indicated on September 21st that she was no longer needed as his counsel since that he had retained private counsel. She also explained to Appellant that the remedy sought by filing a *Habeas Corpus* could be addressed by proceeding with trial and making a motion for dismissal of the charges at the end of the Commonwealth's case. At that point, Appellant stated to the court that he was ready to proceed with trial. Appellant further indicated that he wished to represent himself. (N.T., 09/25/17, p. 1, ll. 14-16, p. 2, ll. 12-14). He explained that he thought he "would do much better with representing himself." (N.T., 09/25/17, p. 4, ll. 21-22).

Considering the totality of the circumstances presented to us on September 21, 2017 and September 25, 2017, we found Appellant's request for a continuance to constitute a delay tactic. On both September 21st and September 25th, Ms. Dewese indicated that she was prepared to proceed with trial. The court also observed the demeanor between Appellant and Ms. Dewese; they were able to communicate respectfully and effectively.

We find the record supports our decision to deny Appellant's continuance request. We did not abuse our discretion in denying Appellant's request for a postponement of trial in that: (1) Appellant had counsel who was able and prepared to proceed; (2) the relationship between Appellant and Ms. Dewese was not impaired in any manner as reflected in their communication and exchanges before this court; and (3) Appellant had the opportunity to seek new counsel prior to the eve of trial. Appellant's actions reflect his true goal, to delay trial. When faced with the court's refusal to delay the trial further, he chose to represent himself. Consequently, we find no

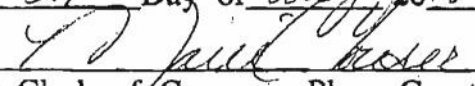
error in denying Appellant's request for a continuance of trial. See *Commonwealth v. Brooks*, 104 A.3d 466 (Pa. 2014).

CONCLUSION

It is our determination for the reasons stated above, that Appellant has failed to meet his burden to show the court abused its discretion in denying his request to continue his trial. We submit that no error was committed and we respectfully ask that the Superior Court AFFIRM this Court's June 11, 2018 judgment of sentence.

BY THE COURT:


Ann Marie Wheatcraft, J.

Certified From The Record
This 29 Day of Aug, 2018

Deputy Clerk of Common Pleas Court