Affirmed and Memorandum Opinion filed March 24, 2011.

In The

Fourteenth Court of Appeals

NO. 14-09-00832-CR

CHERYL RENEE LETT, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 212th District Court
Galveston County, Texas
Trial Court Cause No. 08CR2004

MEMORANDUM OPINION

Appellant Cheryl Renee Lett appeals her conviction for manslaughter, claiming in a single issue that the trial court erred in denying her requests to remove her retained legal counsel and offer her an opportunity to obtain replacement counsel. Finding no merit in appellant's challenge, we affirm the trial court's judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant was charged with the felony offense of murder, to which she pleaded "not guilty." The offense was alleged to have occurred in June 2008, Appellant retained her own counsel and waived appointment of counsel on June 24, 2008.

Trial originally was set for October 2008, but was reset multiple times. On June 30, 2009, appellant filed a document entitled "Motion to Dismiss Court-Appointed Counsel." Despite the title of the motion, appellant actually sought dismissal of her retained trial counsel and the appointment of replacement counsel. In the motion appellant refers to counsel Mark Aronowitz as being appointed by the trial court ten months before appellant filed the motion; Aronowitz was actually appellant's retained counsel. In her motion, appellant complained that Aronowitz never visited her or informed her of the status of her case and that Aronowitz had been confined on drug charges. Appellant named three other individuals or law firms that she asked the trial court to consider appointing to serve as her counsel instead of Aronowitz. Appellant, claiming to be indigent, also filed a motion for appointment of counsel.

The record contains a letter from the trial court coordinator in response to appellant's motion, which reads in pertinent part:

> The Court has received your motion for appointment of counsel. I am unable to appoint you an attorney because you have retained Mark Aronowitz to represent you on this charge. You need to contact your attorney and see if he is willing to file a motion to withdraw.

Aronowitz, on July 1, 2009, filed a motion seeking to withdraw as appellant's retained counsel of record. Aronowitz cited a "fundamental and unalterable disagreement" with appellant pertaining to the objectives to be pursued in preparing and presenting her defense. Aronowitz claimed that this disagreement impaired his ability to exercise his professional judgment and jeopardized appellant's right to effective assistance of counsel. In support of the motion, and as evidence that appellant agreed with the request,

Aronowitz attached as an exhibit appellant's "Motion to Dismiss Court-Appointed Counsel."

At a hearing on the motion to withdraw on July 9, 2009, Aronowitz indicated that he filed the motion at appellant's request. The trial court noted that the trial was set to commence in two weeks. Appellant indicated her desire to continue with this imminent trial setting and expressed confusion as to why she was "still here." Appellant made a vague reference to her pending "drug cases." Aronowitz explained to the trial court that appellant had been in custody for over a year and had run out of money to pay for his services and the services of an expert. After a brief discussion about DNA testing and the need to pay for appellant's expert witness, the trial court ruled, "I'm not taking you off this case. We're not starting offer [sic] again." Aronowitz referred to appellant's four older, pending cases as contributing to her confinement for over a year; appellant again stated her desire to continue to trial in the murder case with the current setting. In response, the trial court stated, "I'm ready to get this resolved [,] too. That's what my intentions are. If we get you a different lawyer we will have to start all over. I'm going to keep him." After consulting with the State, the trial court determined that the murder case should be tried before the other pending cases. The trial court granted appellant's request for funds for an expert. The trial court did not permit Aronowitz to withdraw.

One day before trial commenced on August 20, 2009, appellant indicated she did not understand the plea-bargain process as it pertained to the pending drug charges,[1] but appellant stated that she was ready to proceed to trial on the murder charge. The trial court explained that the process can be complicated and, referring to the training and education required of attorneys, stated, "That's why we appoint you a good lawyer to do that." Then, the following exchange occurred:

[1] The record is not entirely clear, but, at one point, the State had offered a plea bargain relating to the pending drug charges. Appellant had rejected the offer, and the offer was no longer available at the time of trial.

> [APPELLANT]: Like I said, I didn't feel he was a good enough lawyer to go to trial[.] When I offered to fire him you wouldn't let me. Like I said everything I tried to do in your court, ma'am you denied it.
>
> [TRIAL COURT]: I'm not going to deny you a right to trial.
>
> [APPELLANT]: I feel like I'm in a no win situation. I mean, but I'm prepared to go forward.
>
> [TRIAL COURT]: Well, he's actually done a very good job. He's actually brought a whole lot of things to light and he actually been fighting very hard on your behalf. He's brought up a whole lot of issues. He's worked very hard on this and you're very lucky to have him. *And if you want to hire somebody else in the event that you want to just feel free to do that, but as long as we are paying for it—I'll make sure the person who represents you is qualified.* I'm very, very diligent about that. I will take them off the case in a heartbeat if I think they're not doing a good job, but he is doing a good job and we're going to proceed. So, let's go get the jury and bring them in and we're going to proceed.
>
> [PROSECUTOR]: Just for the record so the record is clear Mr. Aronowitz was not appointed.
>
> [TRIAL COURT]: I'm sorry. You hired him?
>
> [ARONOWITZ]: Yes, I have been retained.
>
> [CLERK]: Roberto has been appointed on her drug case.
>
> [TRIAL COURT]: Well, you hired him and, let's go, we're ready to go.

After a five-day trial, the jury found appellant guilty of the lesser-included offense of manslaughter. The jury found an enhancement paragraph to be true, and the trial court sentenced appellant to imprisonment for life.

ISSUE PRESENTED

In a single issue, appellant challenges her conviction, claiming the trial court erred in denying her requests to remove Aronowitz as her retained legal counsel.

ANALYSIS

The federal and Texas constitutions contemplate the qualified right to obtain paid, non-appointed counsel of one's choice. *See United States v. Gonzalez-Lopez*, 548 U.S. 140, 144, 126 S. Ct. 2557, 2561, 165 L. Ed. 2d 409 (2006); *Gonzalez v. State*, 117

S.W.3d 831, 836–37 (Tex. Crim. App. 2003). The trial court is vested with discretion to determine whether retained counsel should be allowed to withdraw from a case. *Green v. State*, 840 S.W.2d 394, 408 (Tex. Crim. App. 1992), *overruled on other grounds*, *Trevino v. State*, 991 S.W.2d 849 (Tex. Crim. App. 1999). The right to counsel of one's choice must be balanced with the trial court's need for prompt, orderly, effective, and efficient administration of justice. *See Gonzalez*, 117 S.W.3d at 837; *Emerson v. State*, 756 S.W.2d 364, 369 (Tex. App.—Houston [14th Dist.] 1988, pet. ref'd). We consider the asserted error in light of these principles and the particular facts of the case under review.

Notably, after appellant filed her motion to dismiss her trial counsel, which was followed by Aronowitz's motion to withdraw, the trial court conducted a hearing. At the hearing the trial court noted that trial was set to commence within two weeks. Given the imminent trial setting, the trial court acted within its discretion. *See Green*, 840 S.W.2d at 408 (concluding trial court did not abuse discretion in denying retained counsel's motion to withdraw just over one month away from trial); *see also King v. State*, 29 S.W.3d 556, 565–66 (Tex. Crim. App. 2000) (concluding trial court did not abuse its discretion in denying appointed counsel's motion to withdraw two weeks before scheduled jury selection). The trial court did not abuse its discretion in denying appellant's motion to dismiss filed two weeks before trial was set to commence. *See Green*, 840 S.W.2d at 408; *see also King*, 29 S.W.3d at 565–66.

Although trial was reset once more before the actual trial commenced, appellant waited until the day of jury selection to again request the trial court to allow Aronowitz to withdraw from the case. An accused may not wait until the day of trial to demand different counsel or to request that counsel be dismissed in order to retain different counsel. *See Webb v. State*, 533 S.W.2d 780, 784 (Tex. Crim. App. 1976). The untimely nature of appellant's request was problematic for several reasons.

The record reflects that appellant paid Aronowitz in June 2008, and the trial court concluded that Aronowitz had devoted a great deal of time and effort in the preparation

of appellant's defense. *See King*, 29 S.W.3d at 566 (considering fact that counsel had worked on the case for several months and filed a number of pretrial motions). Given the amount of time and effort Aronowitz already had invested in appellant's case, a substitution of counsel would have necessitated another delay of trial. *See id.* Furthermore, at the hearing on the motion to withdraw, appellant seemed far more interested in moving forward with the trial than in her dissatisfaction with Aronowitz's representation. *See id.* (involving an accused who failed to express dissatisfaction with counsel at hearing on motion to withdraw). Moreover, appellant does not assert that Aronowitz performed inadequately at trial. *See Green*, 840 S.W.2d at 408 (considering counsel's representation in a determination as to whether trial court abused its discretion in denying motion to withdraw). Before trial, the trial judge noted that Aronowitz had done a "very good job" in his representation of appellant in that he "actually brought a whole lot of things to light," he fought "very hard" on appellant's behalf, and "brought up a whole lot of issues."

Although appellant asserts that the trial court's docket could not have been "such an overriding concern" that appellant could not have been afforded more time to secure other counsel, the record reflects that trial had been reset at least six times. *See Green*, 840 S.W.2d at 408 (noting that case already had been reset once in concluding that trial court did not abuse its discretion in denying motion to withdraw counsel). Additionally, at both the hearing on the motion to withdraw and the day before trial commenced, appellant indicated more than once that she wished to proceed to trial and announced "ready." To the extent appellant claims the trial court erred in failing to allow reasonable time to retain or appoint new counsel, appellant did not seek a continuance at trial for this purpose. *See Ex parte Windham*, 634 S.W.2d 718, 720 (Tex. Crim. App. 1982) (enumerating factors for consideration in a determination of whether to grant a continuance for the absence of an accused's choice of counsel). Under the circumstances, we cannot say that the trial court abused its discretion in denying

appellant's request to allow Aronowitz to withdraw as her retained legal counsel. *See Green*, 840 S.W.2d at 408–409. We overrule appellant's sole issue on appeal.

The trial court's judgment is affirmed.

/s/ Kem Thompson Frost
Justice

Panel consists of Chief Justice Hedges and Justices Frost and Christopher.
Do Not Publish — TEX. R. APP. P. 47.2(b).