



**NUMBER 13-15-00100-CR**

**COURT OF APPEALS**

**THIRTEENTH DISTRICT OF TEXAS**

**CORPUS CHRISTI - EDINBURG**

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**CHRISTOPHER KENNETH MUNDINE,**

**Appellant,**

**v.**

**THE STATE OF TEXAS,**

**Appellee.**

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**On appeal from the 36th District Court  
of Aransas County, Texas.**

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## **MEMORANDUM OPINION**

**Before Justices Rodriguez, Benavides, and Perkes  
Memorandum Opinion by Justice Benavides**

By one issue, appellant Christopher Kenneth Mundine argues that he was denied his right to select his counsel of choice in violation of his Sixth Amendment right to counsel, his rights under Article 1, section 10 of the Texas Constitution, and his rights under article 1.05 of the Texas Code of Criminal Procedure. See U.S. CONST. art. VI;

TEX. CONST. art. 1, § 10; TEX. CODE CRIM. PROC. ANN. art. 1.05 (West, Westlaw through 2015 R.S.). We affirm.

## I. BACKGROUND

Mundine was indicted for evading arrest or detention, which was enhanced to a state jail felony due to a prior conviction. See TEX. PENAL CODE ANN. § 38.04 (West, Westlaw through 2015 R.S.). Eric Flores was appointed Mundine's trial counsel on April 22, 2014.

On January 15, 2015, Flores informed the trial court that Mundine "would like me to ask on his behalf for a continuance so that he can try to hire a lawyer, another lawyer." Later in the hearing, Flores again told the trial court that Mundine wanted to hire another lawyer. The trial court questioned Mundine regarding his indigent status and stated:

Mr. Mundine, you are set for a jury trial on the 20th. That setting is not going to change, but you are certainly welcome to hire an attorney between now and then to handle that matter, and if you are to get another attorney for the 20th and they want to present a motion for continuance, I'm sure the Court will entertain it at that time, but I am not granting any extension on time.

On February 12, 2015, the trial court held a hearing on Mundine's trial counsel's motion to withdraw. Flores stated to the trial court that Mundine had indicated he was going to enter a plea of guilty on two occasions, but changed his mind. Flores asked to be allowed to withdraw:

Flores: It's not just because he is now choosing not to do the plea, is what he informed me when he came to court today, but we can no longer effectively communicate. He disagrees with certain things that I have given him advice for, and he is not following that advice, and so I don't feel that we can effectively communicate.

So I did not put it in writing because until about an hour ago I thought we were communicating on the same page, and obviously we are not.

Trial Court: Mr. Flores, the fact that Mr. Mundine chooses not to follow your advice is not miscommunication. It's just his choice.

I am not removing you from this case.

....

Well, your motion to withdraw is denied as of today.

If you want to present that to the judge next week, you certainly are welcome to do so, but as far as trial, y'all are set, so be ready.

On February 17, following the selection of a jury, Mundine rejected the State's final plea offers on the record. The trial court asked:

Trial Court: And that is your choice, Mr. Mundine, to have a jury trial?

Mundine: Yes, sir.

Trial Court: Absolutely your privilege; not a problem at all.

Mundine proceeded to trial, was found guilty by the jury, and assessed punishment of eighteen months' imprisonment in the Texas Department of Criminal Justice—State Jail Division and a \$500.00 fine. This appeal followed.

## **II. No ABUSE OF DISCRETION BY THE TRIAL COURT**

By his sole issue, Mundine argues he was denied his right to select the counsel of his choice in violation of his Sixth Amendment rights, Article 1, Section 10 of the Texas Constitution rights, and Texas Code of Criminal Procedure article 1.05 rights. See U.S. CONST. art. VI, TEX. CONST. art. 1, § 10, TEX. CODE CRIM. PROC. ANN. art. 1.05.

### **A. Standard of Review and Applicable Law**

The trial court's ruling on a motion for continuance is reviewed for an abuse of discretion. *Janecka v. State*, 937 S.W.2d 456, 468 (Tex. Crim. App. 1996) (en banc). "To establish an abuse of discretion, there must be a showing that the defendant was actually prejudiced by the denial of his motion." *Id.* "Where denial of a continuance has resulted in demonstrated prejudice, we have not hesitated to declare an abuse of discretion." *Id.*

Additionally, "the trial court has discretion to determine whether counsel should be allowed to withdraw from a case." *King v. State*, 29 S.W.3d 556, 566 (Tex. Crim. App. 2000) (en banc). "However, the right to counsel may not be manipulated so as to obstruct the judicial process or interfere with the administration of justice." *Id.* (quoting *Green v. State*, 840 S.W.2d 394, 408 (Tex. Crim. App. 1992)). "Further, personality conflicts and disagreements concerning trial strategy are typically not valid grounds for withdrawal." *King*, 29 S.W.3d at 566. "A trial court has no duty to search for counsel agreeable to the defendant." *Id.*

"The Federal and Texas Constitutions, as well as Texas statute, guarantee a defendant in a criminal proceeding the right to have assistance of counsel." *Gonzalez v. State*, 117 S.W.3d 831, 836 (Tex. Crim. App. 2003). "The right to assistance of counsel contemplates the defendant's right to obtain assistance from counsel of the defendant's choosing." *Id.* at 837. "However, the defendant's right to counsel of choice is not absolute." *Id.* Also, Texas cases have found a "defendant's Sixth Amendment rights are protected when he has effective assistance from either retained or appointed counsel." *Trammell v. State*, 287 S.W.3d 336, 343 (Tex. App.—Fort Worth 2009, no pet.

h.).

“While there is a strong presumption in favor of a defendant’s right to retain counsel of choice, this presumption may be overridden by other important considerations relating to the integrity of the judicial process and the fair and orderly administration of justice.” *Gonzalez*, 117 S.W.3d at 836.

## **B. Discussion**

Mundine claims his rights were violated because he was not able to effectively communicate with his counsel. However, as stated in *King*, personality conflicts and disagreements concerning trial strategy are not valid grounds for removal. See *id.* Based on the statements made by Mundine’s trial counsel, he did not feel they were communicating well because Mundine did not want to accept the State’s plea offer, after saying previously he would accept it. Due to this disagreement, Mundine asked for a thirty day continuance in order to retain counsel. The trial court denied his motion, but articulated to Mundine that any retained counsel would be allowed to revisit a continuance with the trial court. However, Mundine did not hire additional counsel.

Mundine proceeded to trial. Flores asked the trial court to allow him to withdraw again following jury selection, but did not articulate any additional reasons justifying withdrawal. Mundine appeared to indicate his acceptance of Flores as his trial counsel when he indicated to the trial court that he wished to proceed to trial.

There was no violation of any of Mundine’s rights based on the trial court refusing to allow Flores to withdraw or denying his motion for continuance.

**III. CONCLUSION**

We affirm the trial court's ruling.

GINA M. BENAVIDES,  
Justice

Do not publish.  
TEX. R. APP. P. 47.2 (b).

Delivered and filed the  
4th day of August, 2016.