

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

TRINNEL A. DIAL,

Appellant.

No. 39571-1-II

UNPUBLISHED OPINION

Armstrong, P.J. — Trinnel A. Dial appeals his Pierce County conviction of failure to register as a sex offender. He contends that his trial attorney failed to provide effective representation because counsel requested a continuance that could have been avoided. We affirm.

FACTS

Dial was charged with the crime on March 18, 2009, and arraigned on April 1. The court scheduled trial for May 27, 2009, the 46th day of the 60-day speedy trial period. At the omnibus hearing on May 14, defense counsel asked for a short continuance, stating:

Mr. Dial and I have a very good working relationship and all of my dealings with him has [sic] been very positive, but I'm not available on his trial date of May 27th. I'm an Army reservist and I'm going to be doing Army things that day, so I'd ask the Court to reset the trial to Monday, June 1st.

Report of Proceedings (May 14, 2009) at 3. The court granted the request despite Dial's objection. It also granted continuances on June 1, 2, and 3 because there was no court room available. Dial waived a jury, and the bench trial occurred on June 4, 2009. The court convicted him as charged and sentenced him to 43 months in prison, the low end of his standard range.

ANALYSIS

Dial contends that trial counsel's request for a continuance constitutes ineffective representation because counsel could have avoided a continuance by making a timely motion for an earlier trial, or arranging for another Department of Assigned Counsel attorney to handle the trial.

In order to prove that his attorney provided ineffective assistance, Dial must show both deficient performance and resulting prejudice. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); *State v. McFarland*, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995). Counsel's performance is deficient if, considering all of the circumstances, it falls below an objective standard of reasonableness. *McFarland*, 127 Wn.2d at 334-35. Defendant is prejudiced if the outcome of the trial would have been different but for counsel's error. *McFarland*, 127 Wn.2d at 337.

The unavailability of counsel justifies a continuance if there is a valid reason for it. *See State v. Williams*, 104 Wn. App. 516, 522, 17 P.3d 648 (2001); *State v. Selam*, 97 Wn. App. 140, 143, 982 P.2d 679 (1999). Military obligations are valid reasons for unavailability. *See State v. Nguyen*, 68 Wn. App. 906, 914-15, 847 P.2d 936 (1993).

The request for a continuance was reasonable. We will make no assumptions about when defense counsel learned of his military obligation, but we note that there could be many reasons why an earlier trial might not have been a good idea, including time needed for preparation and a pending plea offer.¹ There are likewise many arguments against substitution of another attorney.

¹ The record indicates that the State had made an offer, which was still pending on May 14.

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This attorney had a good relationship with Dial, and he was familiar with the case. It is doubtful that a new attorney would have been ready for trial on May 27. The record does not support Dial's claim that trial counsel's performance fell below acceptable standards.

Neither has Dial satisfied the second prong of the *Strickland* test. Trial was delayed only one week. There is no indication that the delay had any impact on the evidence or any other aspect of the trial. Dial's only claim of prejudice is that in the absence of counsel's request for the first continuance, the other continuances would have been improper, and the charge would have been dismissed.² He assumes, without any basis whatsoever, that even without the continuance, trial would not have occurred on May 27. That is the barest speculation, and it does not show prejudice.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Armstrong, J.

We concur:

Van Deren, J.

Worswick, A.C.J.

² The continuance granted the defense extended the speedy trial time for an additional 30 days. CrR 3.3(b)(5).

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