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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A17-0946**

State of Minnesota,  
Respondent,

vs.

Dominick Dwayne Johnson,  
Appellant.

**Filed May 29, 2018  
Affirmed  
Smith, John, Judge\***

Ramsey County District Court  
File No. 62-CR-16-7933

Lori Swanson, Attorney General, St. Paul, Minnesota; and

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney,  
St. Paul, Minnesota (for respondent)

Melissa Sheridan, Eagan, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Connolly, Judge; and Smith,  
John, Judge.

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to  
Minn. Const. art. VI, § 10.

## UNPUBLISHED OPINION

**SMITH, JOHN**, Judge

We affirm because the district court did not commit reversible error by not substituting a new public defender after the appellant discharged his public defender.

### FACTS

Appellant Dominick Dwayne Johnson held a BB gun to a woman's head and threatened to kill her. The state charged him with threatening a crime of violence and, by amended complaint, second-degree assault. *See* Minn. Stat. §§ 609.222, subd. 1, .713, subd. 1 (2016).

The government provided Johnson a public defender. But at a pretrial hearing, Johnson's public defender informed the district court that Johnson "wishe[d] to discharge the public defender's office and represent himself." Johnson explained to the district court that he was frustrated with how the public defender had been handling the case. The public defender told the district court that he believed he had been representing Johnson diligently, and that Johnson's frustrations stemmed from a damaging statement made by Johnson's parole officer during the public defender's investigation. Johnson clarified that he did not want to discharge the public defender's office; instead, he wanted a different public defender.

The district court advised Johnson that he could not pick and choose his public defender, and that if he chose to discharge his public defender, he would be discharging the entire public defender's office, leaving him with the option of hiring private counsel or

proceeding pro se. Johnson said he would rather represent himself. The district court discharged the public defender's office and Johnson proceeded pro se.

Johnson waived his jury-trial right. Over Johnson's repeated objections, the district court appointed advisory counsel for Johnson's bench trial. At trial, Johnson reiterated his intent to proceed pro se. Before opening statements, the state dismissed the second-degree-assault charge. The district court convicted Johnson of threatening a violent crime.

### **D E C I S I O N**

Johnson argues that the district court abused its discretion by telling him that if he chose to discharge his public defender, he could either proceed pro se or hire his own counsel, without analyzing if exceptional circumstances existed to justify appointing substitute counsel. We review a district court's decision whether to appoint substitute counsel for abuse of discretion. *State v. Gillam*, 629 N.W.2d 440, 449 (Minn. 2001).

Criminal defendants have a constitutional right to counsel and a corollary constitutional right to choose to represent themselves. U.S. Const. amend. VI; Minn. Const. art. I, § 6; *see State v. Worthy*, 583 N.W.2d 270, 279 (Minn. 1998). The right to counsel includes "a fair opportunity to secure an attorney of choice," but it does not guarantee an indigent defendant the "unbridled right to be represented by the attorney of his choice." *Worthy*, 583 N.W.2d at 278.

If "a defendant raises complaints about the effectiveness of appointed counsel's representation and requests substitute counsel, the district court must grant such a request only if exceptional circumstances exist and the demand is timely and reasonably made." *State v. Munt*, 831 N.W.2d 569, 586 (Minn. 2013) (quotation omitted). Although what

constitutes an exceptional circumstance is fact-specific, it generally includes those scenarios that “affect a court-appointed attorney’s ability or competence to represent the client.” *Gillam*, 629 N.W.2d at 449. But it is well-established that an exceptional circumstance does not include “[g]eneral dissatisfaction or disagreement with appointed counsel’s assessment of the case.” *Worthy*, 583 N.W.2d at 279.

At the pretrial hearing, Johnson’s public defender told the district court that Johnson wished to discharge the public defender’s office. Johnson replied, “I never said I wanted to dismiss the Ramsey County Public Defender’s Office. I want to dismiss Mr. Sadowski as my public defender. And I have many reasons why.” The district court told Johnson that he did not get “to pick and choose [his] public defender.” The district court explained that if it discharged Johnson’s public defender, it would be “discharging the public defender’s office from representing [him].” The district court then said, “And that means that one of two things would happen. Either [Johnson] would represent [him]self or [he] would retain another lawyer.”

Johnson told the district court that he would rather represent himself, explaining that he would “feel more comfortable with doing that than having [the public defender] represent [him].” But Johnson wanted “to put on record why.” Johnson explained that he could not understand why his parole officer would tell the investigator that he violated parole for drinking, reasoning that the parole officer had “no reason to lie.” Johnson also attacked the public defender’s investigation, explaining that all the evidence Johnson had received “was a police call that was made to get [him] arrested.” The public defender responded that he “did get an investigator assigned and [he] did in fact contact that PO.”

The public defender further stated that he believed he had diligently done his job, but he also said that the “results may not have been what Mr. Johnson hoped.”

The district court explained to Johnson that by discharging the public defender’s office he would be losing an experienced attorney who understands rules of evidence and criminal procedure and all of the resources that go along with that office. The district court also explained that he would be losing the opportunity to have an attorney file motions and subpoena witnesses. The district court presented Johnson his different options. The district court could appoint standby or advisory counsel, or Johnson could represent himself without any attorney assistance. Johnson chose to represent himself pro se. The district court offered Johnson additional time to consider his options, but he declined. The district court discharged the public defender and, over Johnson’s repeated objections, eventually appointed advisory counsel.

The facts presented here are similar to those in *State v. Benniefield*, 668 N.W.2d 430 (Minn. App. 2003), *aff’d on other grounds*, 678 N.W.2d 42 (Minn. 2004). In *Benniefield*, the defendant discharged his public defender, expressing “dissatisfaction with the way the attorney had been handling his case.” 668 N.W.2d at 434. The discharged public defender told the district court that he and the defendant disagreed over his representation. *Id.* The defendant explained to the district court that he wanted an attorney who would be “willing to fight [the defendant’s] case in [his] best interest.” (quotation omitted). *Id.* The district court allegedly told the defendant that it could not appoint substitute counsel, and if the defendant chose to discharge his public defender, he would be discharging the entire public defender’s office. *Id.* at 433.

The defendant argued that the district court erred by not appointing substitute counsel. *Id.* at 434. We explained that “[t]o the extent that the district court’s comments may have suggested that it could not appoint substitute counsel, it was incorrect.” *Id.* But we reasoned that exceptional circumstances warranting substitute counsel did not exist because the defendant “expressed mere dissatisfaction with his attorney’s representation, and did not show that his attorney was incompetent or otherwise unable to adequately represent him.” *Id.* at 434-35. We also reasoned that the defendant was “extensively warned of the consequences of discharging his public defender”; the defendant was “informed that the responsibility of finding new counsel would fall on him”; and the district court “appointed standby counsel who was available to appellant throughout trial.” *Id.* at 435. We concluded that the district court did not err “when it refused to appoint another public defender after appellant made it clear he did not want to be represented by the public defender initially appointed.” *Id.*

Here, like in *Benniefeld*, the district court might have made it seem like it could not have substituted counsel; therefore, to the extent that the district court did so, it was wrong. *See id.* at 434. But, as in *Benniefeld*, the record here makes it clear that exceptional circumstances did not exist to justify substituting counsel because Johnson did not show that the public defender was incompetent or otherwise unable to adequately represent him. *Id.* at 435-35. When the district court asked Johnson to explain why he wanted to discharge his public defender, he discussed his dissatisfaction with the results of the investigation and his parole officer’s comments. Mere dissatisfaction with an attorney’s representation does not rise to an exceptional circumstance. *See id.* Also, like in *Benniefeld*, (1) Johnson

was “extensively warned of the consequences of discharging his public defender,” (2) he was “informed that the responsibility of finding new counsel would fall on him,” and (3) the district court “appointed [advisory] counsel who was available to [Johnson] throughout trial.” *See id.* at 435.

Although Johnson may have preferred having a new public defender rather than proceeding pro se, it is clear from the record that he unambiguously chose to discharge his public defender, failed to show the district court that exceptional circumstances existed to justify appointing another public defender, and then failed to retain alternative counsel. *See id.* For the above reasons, on these facts, we conclude that the district court did not abuse its discretion in discharging Johnson’s public defender.

**Affirmed.**