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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0754**

State of Minnesota,
Respondent,

vs.

Dominique Demetris Wright,
Appellant.

**Filed March 16, 2020
Remanded
Ross, Judge**

Hennepin County District Court
File No. 27-CR-18-10970

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Brittany D. Lawonn, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Benjamin J. Butler, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Cochran, Judge; and Segal, Judge.

UNPUBLISHED OPINION

ROSS, Judge

The day before Dominique Wright’s trial for prohibited possession of a firearm, his attorney allowed Wright to present his own motion for a continuance. The next day, Wright

told the district court that he was discharging his public defender for misleading him and requested a different attorney. The district court refused his request for substitute counsel without inquiring further into the nature of the attorney's representation. Wright represented himself at trial, the jury found him guilty, and the district court denied him 187 days' jail credit at sentencing. Wright appeals, arguing that he was deprived counsel at a critical stage, that the district court erred by failing to appoint substitute counsel, and that the district court improperly denied him jail credit. We conclude that Wright was not deprived of counsel, but that the district court erred by refusing to inquire into whether the circumstances warranted the appointment of substitute counsel. The error left the record undeveloped as to whether the district court should have appointed substitute counsel. We therefore remand to the district court to conduct a hearing to determine whether exceptional circumstances existed entitling Wright to the appointment. If the district court determines that the appointment was unnecessary, Wright should receive 187 days' jail credit.

FACTS

The state charged Dominique Wright in April 2018 with prohibited possession of a firearm after police stopped him for speeding, learned that he was the subject of an arrest warrant, and discovered a handgun in his car in a post-arrest inventory search. The district court appointed a public defender to represent Wright. Wright requested a *Rasmussen* hearing to challenge the stop and the search. The district court scheduled the hearing with the trial to begin days later. But the district court rescheduled the trial because the state did not timely disclose a DNA report. The district court canceled the *Rasmussen* hearing and it was not rescheduled.

The parties appeared for a hearing on the day of the rescheduled trial. Wright's attorney indicated that Wright wanted him to ask for a continuance, saying, "I will let him address the Court directly as to the basis for that." Wright said that he wanted a continuance to allow him to find additional evidence he wanted to present at trial. The district court denied Wright's request for a continuance, observing the tardiness of the request on the eve of trial and noting that Wright had had months to prepare his defense.

The parties appeared for trial the next day, and the district court asked if either had anything to discuss before bringing the potential jurors into the courtroom. Wright answered, "I don't wish to proceed with my current representation." He said that he believed his attorney was "inefficient" and had "misled" him.

The judge asked Wright, "So are you prepared to continue on your own?"

Wright answered, "If I have to."

The judge replied, "Yeah. You will have to. . . . I'm not going to give you another chance to get another attorney." She added, "You either have to continue with [appointed counsel] . . . as your standby counsel. However, if you do decide that you don't want the Public Defender's Office representing you, you will . . . have to proceed today pro se on your own behalf. So it's your choice." When Wright asked whether he had the right to effective counsel, the judge answered, "I don't make the decision or determination whether or not you have one."

Wright asked, "Could you tell me who does make that decision?"

The judge answered, "No. Because I don't get involved in relationships between attorney [and] client."

The district court therefore did not inquire into the nature of the breakdown between Wright and his attorney. It said that it would not give Wright additional time to get a new attorney because trial was about to proceed and Wright had not raised the issue the previous day when he had sought a continuance. Wright explained that he was requesting a new attorney because, the previous day, he had wanted a continuance to obtain new evidence but his attorney had not moved for a continuance as Wright had expected.

The district court obtained a form petition to proceed pro se and directed Wright to fill it out. The district court then found that Wright knowingly, voluntarily, and intelligently waived his right to counsel.

Wright represented himself at the trial. He stated that he intended to tell the jury he had just discharged his attorney and was unprepared, but the district court told him that he could not. Wright gave no opening statement. He called no witnesses. He cross-examined none of the state's witnesses. Wright did ask if he could recall one of the state's witnesses, but the district court denied the request because Wright had not submitted a witness list and the state's subpoena no longer bound the witness to testify. The district court told Wright that he could not argue that the gun belonged to someone else because he had not given the state notice of an alternative-perpetrator defense. Wright made no closing argument.

The jury found Wright guilty. The district court sentenced him to 60 months in prison. It refused to give Wright credit for the 187 days that he spent in custody after his arrest, reasoning that he was on conditional release at the time of his arrest and that his new

sentence should be served consecutive to a previous sentence. The district court credited 39 days, which was the time Wright served after the verdict but before sentencing.

Wright appeals.

DECISION

Wright urges us to reverse his conviction and remand for a new trial, arguing that he was denied his right to counsel by having to move for a continuance on his own behalf and that he involuntarily waived his right to counsel because the district court refused to appoint substitute counsel. He argues alternatively that the district court improperly failed to award him jail credit for the 187 days he spent incarcerated before his conviction. We remand to the district court for a hearing on the substitute-counsel issue.

I

Wright argues that his right to counsel was violated because he had to move for a continuance himself, rather than his attorney making the motion on his behalf. The federal and state constitutions provide a criminal defendant the right to the assistance of counsel. U.S. Const. amend. VI; Minn. Const. art. I, § 6. Whether a defendant's right to counsel was violated is a constitutional question that we review de novo. *State v. Slette*, 585 N.W.2d 407, 409 (Minn. App. 1998). A defendant is entitled to the presence of counsel at all "critical stage[s]" of the criminal proceedings. *Rothgery v. Gillespie County*, 554 U.S. 191, 212, 128 S. Ct. 2578, 2591 (2008). We assume for the purposes of this appeal that Wright's motion for a continuance was a critical stage.

Wright points to no evidence in the record indicating that he was denied counsel. Wright's attorney appeared at the proceeding, told the district court that Wright wanted to

move for a continuance, and presented Wright to explain the reasons for requesting a continuance. After the district court denied the motion, Wright's attorney continued to speak on Wright's behalf at the proceeding. Wright identifies no authority for the proposition that a defendant's right to counsel is violated by his attorney's presenting the defendant to inform the district court of the basis for requesting a continuance. The thin record lacks any evidence of either the absence of representation or deficient representation, and it may be interpreted to reflect that Wright's attorney momentarily served as standby counsel during the brief exchange after raising the continuance issue on Wright's behalf. *See State v. Lande*, 376 N.W.2d 483, 485 (Minn. App. 1985) (recognizing that a pro se defendant's right to counsel may be satisfied by appointment of standby counsel), *review denied* (Minn. Jan. 17, 1986). Because the record is silent about the attorney's rationale for handling the hearing in the fashion he did, we cannot say that his actions amounted to a denial of Wright's right to counsel.

II

Wright argues that his waiver of his right to counsel was involuntary because the district court erred by refusing to appoint substitute counsel after Wright discharged his publicly appointed attorney. The constitutional right to assistance of counsel discussed in the previous section "includes a [defendant's] fair opportunity to secure counsel of his choice." *State v. Vance*, 254 N.W.2d 353, 358 (Minn. 1977). But the right to substitution of counsel has limits. *Id.* We review a district court's decision denying a defendant's request to substitute counsel for an abuse of discretion. *State v. Clark*, 722 N.W.2d 460, 464 (Minn. 2006). The district court should grant a defendant's request to substitute

counsel in “exceptional circumstances” if the defendant made the request “timely and reasonably.” *State v. Worthy*, 583 N.W.2d 270, 278 (Minn. 1998). Exceptional circumstances are those that affect an attorney’s “ability or competence” to represent a defendant. *State v. Gillam*, 629 N.W.2d 440, 449 (Minn. 2001).

The thin nature of the record prevents us from reviewing whether “exceptional circumstances” existed here. When a defendant “voices serious allegations of inadequate representation,” the district court should conduct a “searching inquiry” to determine whether appointment of substitute counsel is warranted. *State v. Munt*, 831 N.W.2d 569, 586 (Minn. 2013) (quoting *Clark*, 722 N.W.2d at 464). Wright’s explanation to the district court should have triggered this sort of inquiry. He told the district court that his attorney had “misled” him. He explained that he had believed that his attorney was going to seek a continuance the previous day to give him time to obtain additional evidence, but his attorney never did. His contention that his attorney had misled him and his description of the unusual exchange that occurred the previous day in the court’s presence implied a serious allegation relating to the attorney-client relationship and suggested that the attorney was not adequately representing Wright. The allegation sufficiently alerted the district court that it must searchingly inquire into whether an exceptional circumstance existed. The district court erred by failing to so inquire.

We reject the state’s contention that the circumstances implied no serious allegation of inadequate representation. It is true that the district court need not inquire simply because a defendant has voiced displeasure with his attorney and that a statement of general dissatisfaction is not a serious allegation requiring a searching inquiry. *Id.* at 586–87.

At oral argument on appeal, the state's counsel postulated that Wright's attorney's decision to turn the floor over to Wright rather than to argue for a continuance on Wright's behalf rested on his belief that a continuance motion would have lacked any good-faith justification. Counsel theorized further that Wright's discharging his attorney was merely another attempt to gain the continuance that the district court had denied him. These are indeed reasonable inferences one might draw from the limited record. But the record does not exclude less favorable inferences about the representation. For example, the record does not rule out the possibility that the attorney had promised Wright to move for a continuance but then left Wright to defend the motion for himself, unprepared. It also does not rule out the possibility that the attorney had left Wright to obtain evidence that his attorney had failed to secure on Wright's behalf. Because the district court did not inquire further, it never learned the circumstances that would have informed a finding of either adequate or inadequate representation. And the omission likewise leaves us unable to review whether the quality of representation justified allowing Wright to substitute his counsel.

The district court amplified the error by thrice misstating the law. It told Wright that it could not appoint a new attorney on the same day. It told him that the court was not the entity to decide whether Wright was receiving effective assistance of counsel. And it told Wright that the attorney-client privilege prevented it from inquiring into the relationship to assess the adequacy of the representation. These statements are inconsistent with the court's duty to searchingly inquire after a defendant requests substitute counsel and alleges a serious representation deficiency. *See State v. Lamar*, 474 N.W.2d 1, 3 (Minn. App.

1991) (“While the trial court told [the defendant] he could not have a different public defender under any circumstances, this is not an accurate statement of the law.”), *review denied* (Minn. Sept. 13, 1991). The district court’s misstatement of the law, by itself, does not require reversal. *See State v. Benniefield*, 668 N.W.2d 430, 434–35 (Minn. App. 2003) (holding that district court’s erroneous suggestion that it could not appoint substitute counsel was harmless because defendant did not present any exceptional circumstances), *aff’d*, 678 N.W.2d 42 (Minn. 2004). But in this case, the district court’s misstatements accompanied its failure to inquire to determine the nature of Wright’s reason for seeking to discharge his attorney.

We add that, as far as we can tell from the inadequate record, Wright’s request for substitute counsel was also timely under the circumstances. We recognize that a request for substitute counsel ordinarily will be appropriately denied when the defendant makes the request just before trial. *See Clark*, 722 N.W.2d at 465; *Worthy*, 583 N.W.2d at 278–79. But although Wright made his request the day that the trial was set to begin, he implied that the representation deficiency ripened only on the previous day. On these facts, Wright’s request was timely.

A remand is necessary. *See State v. Paige*, 765 N.W.2d 134, 140 (Minn. App. 2009) (concluding that district court erred by failing to determine how defendant wished to proceed after discharging counsel and remanding “to clarify and address [defendant’s] request to discharge counsel”). We remand the case to the district court to conduct a hearing inquiring into the circumstances leading Wright to discharge his attorney and seek substitute counsel. If the district court finds that exceptional circumstances support the

requested discharge and substitution, then Wright's waiver of his right to counsel was involuntary and he is entitled to a new trial.

III

Wright argues that the district court incorrectly denied him 187 days' credit for the time he spent in jail prior to his conviction. We consider this issue de novo. *State v. Clarkin*, 817 N.W.2d 678, 687 (Minn. 2012). A defendant is entitled to jail credit for convictions that would have led to concurrent prison terms, but not for convictions that would have led to consecutive terms. *Id.* at 685. The district court rejected the proposed jail credit because Wright was on conditional release for a previous offense when police arrested him, and because the prosecutor erroneously stated that Wright's presumptive sentence called for consecutive prison terms. But supervised release does not trigger a presumptive consecutive sentence. *See* Minn. Sent. Guidelines 2.F.1.a (Supp. 2017). The state therefore correctly concedes that Wright is entitled to the jail credit. If the district court on remand determines that Wright is not entitled to a new trial, then it must amend Wright's sentence to reflect 187 days of jail credit.

Remanded.