

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0543**

State of Minnesota,
Respondent,

vs.

Edward Earl Williams,
Appellant.

**Filed April 26, 2021
Affirmed
Jesson, Judge**

Ramsey County District Court
File No. 62-CR-19-1171

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

John J. Choi, Ramsey County Attorney, Jeffrey A. Wald, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, John Donovan, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Worke, Judge; and
Jesson, Judge.

NONPRECEDENTIAL OPINION

JESSON, Judge

Dissatisfied with how his case was being handled, appellant Edward Williams discharged his public defender. Williams then requested and was appointed advisory counsel by the district court. When doing so, the court warned Williams that advisory

counsel was for the limited purpose of offering Williams advice upon request, not to represent him at trial. But on the day of trial, Williams asked the district court to “upgrade” his advisory counsel so that she could take over representation. The district court refused. Williams now argues that the district court’s denial of his request was an abuse of discretion and structural error. Because the district court did not abuse its discretion by denying Williams’s request, and because there is no constitutional right to advisory counsel, we affirm.

FACTS

The state charged appellant Edward Williams with third-degree criminal sexual conduct.¹ Williams requested and was appointed a public defender by the district court. Williams subsequently entered a plea of not guilty and demanded a speedy trial. But on the week that trial was set to begin, due to delays in receiving DNA test results, the district court granted the state’s request for a continuance. In response, Williams asked that he be conditionally released, citing his demand for a speedy trial and his mid-range risk-assessment score. The district court denied Williams’s request, but indicated that if the state was not prepared for trial on May 28, 2019, the court would grant conditional release.

When the parties appeared for trial on May 28, 2019, Williams’s public defender requested a continuance for additional time to review the DNA test results. At the same time, Williams renewed his request for conditional release. The district court granted the

¹ Minn. Stat. § 609.344, subd. 1(d) (2018).

continuance, but denied the request for conditional release because it was Williams, not the state, now delaying proceedings.

Williams then declared that he wanted to discharge his public defender. In response, the district court expressed concerns over Williams's ability to successfully proceed pro se, explaining that "although you have a right to represent yourself at this trial, I don't think that you have the ability to fully and ably protect your interests in this case." After discussing the consequences of proceeding pro se with the court, Williams chose to retain his public defender.

Yet at the next hearing, Williams changed his mind. As before, the district court strongly discouraged Williams from discharging his lawyer and scheduled a hearing for the following week to further discuss the issue. When the parties returned, Williams insisted on discharging his public defender, despite the district court's concerns. Williams asserted that any gaps in his knowledge could be filled by advisory counsel. This led to the following exchange between Williams and the district court:

THE COURT: And so you understand that what is going to happen here, is there will be times where you will lack the sufficient training and ability to competently represent yourself. Right?

WILLIAMS: I believe there could be possible times where I would have to ask questions for the [advisory] counsel.

THE COURT: *Well, you understand that I am under no obligation to appoint [advisory] counsel to represent you?*

WILLIAMS: *Correct, and that would be your choice.*

THE COURT: Right. And [advisory] counsel is under no obligation in advance of the trial to prepare anywhere—to anywhere close to the level that your trial counsel . . . would be prepared and does not carry the responsibility to fully represent you in a trial, right?

WILLIAMS: Correct.

THE COURT: They are there merely to offer advice if you request it, and if and only if you request it. So first of all, I am not obligated—I may or may not appoint advisory counsel to assist you, but even if I do, *they are there merely to respond to your questions not to direct the strategy in the case* and not to inform you to step in and say if they think you are making a bad decision or executing some strategy in a poor manner, right?

WILLIAMS: Correct.

THE COURT: *And they will not be making arguments and appear in front of the jury, right; that will be up to you.*

WILLIAMS: I am aware.

(Emphasis added.) Despite these warnings, Williams formally discharged his public defender. Upon Williams’s request, the district court appointed advisory counsel.

When the bench trial began, Williams appeared pro se with advisory counsel present. But before opening arguments, Williams moved to dismiss for violation of his right to a speedy trial. When the district court denied the motion, Williams asked if he could “upgrade” his advisory counsel to fully represent him at trial. The district court denied the request, reminding Williams:

We had a pretty extensive discussion on the record; in fact, on more than one occasion. And my concern is that

[advisory counsel] has understood that her role so far has been merely advisory. She hasn't engaged in anything like the preparation that your full-blown defense counsel would do. She is here to simply advise you. She is not fully prepared, and you should understand that to act in the role of your lawyer in the way your lawyer would be.

. . . .

. . . The reason I am not allowing [advisory counsel] to assume representation of you is because under this set of circumstances I don't believe she nor do I believe any attorney could step in at this point and represent you in an adequate fashion. Right.

It is not the role that she understood [she] would be playing. And it is not the role the court requested that she assume.

Williams then requested a continuance to give advisory counsel time to prepare for representation at trial, but the district court denied the request and the bench trial continued as scheduled.

The district court found Williams guilty of third-degree criminal sexual conduct with a victim who was physically helpless. At sentencing, the district court granted a downward durational departure and sentenced Williams to 36 months' incarceration, with credit for 331 days served.²

Williams appeals.

² The presumptive sentence was 41 to 57 months' incarceration with a ten-year conditional release period. Minn. Stat. § 609.3455, subd. 6 (2018); Minn. Sent. Guidelines 4.B (2018).

DECISION

Williams argues that the district court abused its discretion by refusing his request to have advisory counsel assume representation at trial and, in so doing, committed structural error. In supplemental pro se briefing, Williams also claims that the district court abused its discretion by denying motions he made during the proceedings—in particular, his requests for pretrial release—and asserts that his right to a speedy trial was violated. We address each argument in turn.

I. The district court did not abuse its discretion by denying Williams’s request to appoint advisory counsel as representation at trial.

Williams claims that the district court abused its discretion by denying his request to have advisory counsel represent him at trial. He argues that the denial constitutes an abuse of discretion for two reasons: (1) the request was not intended to delay or disrupt the proceedings; and (2) the district court failed to determine whether advisory counsel was, in fact, unprepared to represent him at trial.

As Williams acknowledges, the decision to appoint advisory counsel lies within the district court’s discretion, and we will not reverse absent a clear abuse of that discretion. *See State v. Clark*, 722 N.W.2d 460, 466-68 (Minn. 2006) (recognizing discretion is afforded to the district court). This standard also applies where, as here, a defendant seeks to have their advisory counsel assume full representation. *State v. Richards*, 552 N.W.2d 197, 206-07 (Minn. 1996).

To review the district court’s exercise of that discretion, we begin with an explanation of the two kinds of advisory counsel a court can appoint. The district court

will appoint the first type of advisory counsel when the court is concerned about the fairness of the process. Minn. R. Crim. P. 5.04, subd. 2(1). Generally, this type of advisory counsel is not expected to take over representation during the proceedings and the district court will establish at the outset the scope of advisory counsel's duties. *Id.*, cmt. The court will appoint the second type of advisory counsel when it is concerned about delays, potential disruption by the defendant, or the complexity of the trial. *Id.*, subd. 2(2). In those circumstances, advisory counsel will assume full representation if the defendant becomes disruptive or requests counsel to take over representation. *Id.* Here, the parties agree that the district court assigned the first type of advisory counsel.

Where a defendant has been appointed the first type of advisory counsel, but subsequently requests that advisory counsel take on full representation, the district court should not grant the request unless it is “timely and reasonable and reflects extraordinary circumstances.”³ *Richards*, 552 N.W.2d at 206 (quotation omitted). We turn now to whether the district court appropriately considered these factors when it denied Williams's request.

Timeliness

Williams argues that the district court abused its discretion by denying his request because it was timely. Williams made the request before trial began, so he contends that

³ Williams identifies other factors that district courts should consider, including the progress of trial, the readiness of advisory counsel to assume representation, and the potential for disruption of the proceedings in granting the request. But these factors are inherent in the elements of timeliness, reasonableness, and extraordinary circumstances. Minn. R. Crim. P. 5.04, cmt; *Richards*, 552 N.W.2d at 206-07.

there was no threat of disruption or delay of trial by allowing advisory counsel to prepare for representation. And even if his request would have required further delay, Williams asserts that the district court simply could have rescheduled the bench trial for the following trial block.

At trial, the district court expressed concern about the timeliness of Williams's request. Not only had trial already been delayed twice, Williams had also consistently reaffirmed his demand for a speedy trial and had just moved to dismiss for violation of his right to a speedy trial. The district court determined that granting the request would likely result in further delay because advisory counsel was not prepared to take over representation and compound the speedy-trial issue. The district court carefully considered the timeliness of Williams's request and, given the history of continuances and speedy-trial demands in this case, acted within its discretion to deny the request.

Reasonableness

Williams does not expressly address the reasonableness of his request, but argues that the request was timely and was neither intended to cause, nor would have resulted in, additional delay. Williams also disputes the district court's determination that advisory counsel was not ready to take on full representation, arguing that the court could not have made that determination without actually asking advisory counsel whether she was prepared. Denying his request on these grounds, Williams claims, was an abuse of discretion.

The district court's primary concern about Williams's request was that advisory counsel was not prepared to represent Williams at trial. Although the court did not ask

counsel whether she was prepared for trial, the court had appointed her only 22 days before trial began in a case involving DNA evidence, video recordings, and multiple witnesses. The court also reiterated that advisory counsel—and Williams—had been told that counsel’s role would be “merely advisory” and would not include “appear[ing] in front of the jury.” And despite Williams’s claim that advisory counsel was adequately prepared, he concedes in pro se briefing that *on the day of trial* advisory counsel told him “she would need a little time to prepare” before representing him.

When Williams then asked for a continuance to allow advisory counsel more time to prepare, the district court reminded him that trial had already been delayed twice and that any additional delay would violate Williams’s demand for a speedy trial. Delaying trial, the district court also noted, presented “a hardship for the victim to continually have to have this process be delayed so she can’t move on and gain closure.” Furthermore, the court reminded Williams that there had been a “pretty extensive discussion” about Williams’s choice to discharge his public defender and proceed pro se with advisory counsel.

The district court, by addressing advisory counsel’s preparedness, the potential for further delay, the impact on the victim, and the repeated warnings Williams had been given, seriously considered the reasonableness of Williams’s request. As such, the court acted within its broad discretion to deny Williams’s request.

Extraordinary Circumstances

Williams does not identify any extraordinary circumstances to support his assertion that the district court abused its discretion by denying his request. And our review of the

record reveals that there were no extraordinary circumstances for the court to consider. The circumstances were unchanged from when Williams discharged his public defender and was appointed advisory counsel to when he made his request. No new evidence came to light. No new witnesses were called. No additional facts were introduced. Nor could Williams have been surprised by the scope of advisory counsel's role at trial. The district court repeatedly explained that advisory counsel had been appointed for the limited purpose of advisement, not representation. Based on these unchanged circumstances, we discern no abuse of discretion in the district court's denial of Williams's request.

In sum, our review of the record leads us to conclude that the district court thoroughly considered the three relevant factors of timeliness, reasonableness, and extraordinary circumstances when it denied Williams's request. In doing so, the district court acted within its broad discretion.

II. The district court did not commit structural error by denying Williams's request to have advisory counsel represent him at trial.

Williams also argues that the district court's denial of his request to have advisory counsel take over representation at trial was structural error. In doing so, Williams asserts the court deprived him of his constitutional right to representation, and as a result, he is entitled to automatic reversal.

In reviewing a claim of structural error, we consider whether the alleged error fundamentally affected the nature of the trial so as to call into question its fairness and reliability. *State v. Dalbec*, 800 N.W.2d 624, 627 (Minn. 2011). Minnesota appellate courts have identified a "very limited class" of errors that are considered structural. *Id.*

(quotation omitted). The denial of a defendant's constitutional right to representation, which Williams contends occurred here, is such an error. *State v. Dorsey*, 701 N.W.2d 238, 252 (Minn. 2005). But the constitutional right to representation does not include representation by advisory counsel. *State v. Chavez-Nelson*, 882 N.W.2d 579, 587 (Minn. 2016) ("Simply put, there is no constitutional right to advisory counsel."). As such, the denial of advisory counsel is not a structural error requiring automatic reversal. *Clark*, 722 N.W.2d at 467 (concluding that the district court's failure to appoint advisory counsel "did not affect the structural integrity" of the trial because the defendant did not have a constitutional right to advisory counsel).

But Williams nonetheless urges us not to apply *Chavez-Nelson* because the facts in this case are distinguishable. Williams claims that because, unlike the defendant in *Chavez-Nelson*, he was never represented at trial, his right to representation was violated. 882 N.W.2d at 587. We disagree. In reaching its decision, the supreme court explicitly stated that because the defendant was unrepresented during the initial stages of trial *by choice*, his constitutional right to representation was not violated. *Id.* The same is true here. Williams knowingly and intelligently waived his right to counsel when he dismissed his public defender. His lack of representation was due to his own desire to discharge his attorney, not due to an error committed by the district court. The district court's denial of Williams's request was not structural error.

III. The district court did not abuse its discretion by denying Williams’s request for conditional release and Williams’s right to a speedy trial was not violated.

Finally, Williams asserts additional claims in pro se briefing, but because not all are adequately briefed, we focus on his arguments that the district court abused its discretion by denying him conditional release and violated his right to a speedy trial.⁴ We review a district court’s denial of pretrial release for an abuse of discretion and review whether a defendant’s right to a speedy trial was violated de novo. *State v. Osorio*, 891 N.W.2d 620, 627 (Minn. 2017) (explaining that the denial of a speedy trial is a constitutional question subject to de novo review); *State v. Martin*, 743 N.W.2d 261, 265 (Minn. 2008) (stating that the standard of review for pretrial release is for an abuse of discretion).

Conditional Release

While a case against a defendant is pending, the district court must release the defendant unless it finds that doing so would either endanger the public or would not guarantee the defendant’s appearance at subsequent hearings. Minn. R. Crim. P. 6.02, subd. 1. Here, the district court did not release Williams, but instead adhered to its initial decision that he should remain incarcerated with bail set at \$20,000. Williams does not explain—nor do we discern any evidence of—how the district court’s denial amounted to an abuse of discretion. In fact, the district court had been prepared to release Williams on

⁴ Williams further asserts that the district court abused its discretion by denying “all the motions that [he] requested, but grant[ing] numerous motions by the prosecution.” But Williams does not specify how the district court abused its discretion, or why the district court should have granted any of his motions. Because these arguments are not adequately briefed and we discern no obvious prejudicial error on mere inspection, we do not address these arguments. *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971).

May 28, 2019, if the state was not ready to proceed to trial. The district court denied Williams's request for conditional release that day because it was Williams who delayed the trial, not the state. And as the district court explained, the delay caused by Williams was not a substantial change in circumstances warranting conditional release. In sum, the district court did not abuse its discretion by denying Williams's request for conditional release.

Speedy Trial

Upon a defendant's demand for a speedy trial, the district court must begin trial within 60 days, unless there is good cause for delay. Minn. R. Crim. P. 11.09(b). In reviewing de novo the question of whether an appellant's right to a speedy trial was violated, four factors guide our analysis: (1) the length of delay; (2) the reason for delay; (3) whether the defendant asserted the right to a speedy trial; and (4) whether the delay resulted in prejudice. *Osorio*, 891 N.W.2d at 627; *State v. Windish*, 590 N.W.2d 311, 315 (Minn. 1999). Williams's trial did not begin until 100 days after he made his speedy-trial demand. Because the trial began after the 60-day period, the delay is presumptively prejudicial and we look to the remaining factors to determine whether Williams's right was violated. *Windish*, 590 N.W.2d at 315-16.

The second factor—the reason for delay—weighs against Williams. *Id.* After demanding a speedy trial, Williams's trial was delayed twice. The first continuance was requested by the state for additional time to obtain DNA test results. Although the delay is attributable to the state, we have determined that a continuance to allow for DNA testing may be for good cause. *State v. Stroud*, 459 N.W.2d 332, 335 (Minn. App. 1990). And

the second delay was caused by Williams, whose public defender requested a continuance to allow more time to review the DNA test results. Where a defendant causes the delay, “there is no speedy trial violation.” *State v. Taylor*, 869 N.W.2d 1, 20 (Minn. 2015). Thus, this factor does not weigh in Williams’s favor. But the third factor—whether the defendant asserted the right to a speedy trial—weighs in Williams’s favor because he explicitly demanded a speedy trial. *Windish*, 590 N.W.2d at 317.

Finally, we consider whether delaying Williams’s trial resulted in prejudice. *Id.* at 318. There are three interests protected by the right to a speedy trial: (1) prevention of oppressive pretrial incarceration; (2) reduction of the accused’s anxiety and concern; and (3) impairment of the accused’s defense. *Id.* Williams’s claim focuses on the length of the delay, rather than the anxiety he may have experienced or the potential impairment of his defense.

While incarceration beyond the 60-day period presumptively prejudices the defendant, this factor weighs against the defendant when the defendant is the cause of the delay. *State v. Johnson*, 498 N.W.2d 10, 16 (Minn. 1993). Here, part of the delay experienced by Williams was a result of his own request for a continuance. When Williams appeared on May 28, 2019, the state was prepared to go to trial. But Williams’s public defender told the district court that he was not prepared for trial and requested a continuance, suggesting the district court reschedule trial for its next available trial block. The district court granted the request, and accordingly scheduled trial for the week of July 22, 2019. Williams’s trial began on July 25, 2019, during the period requested by his

public defender and scheduled by the district court. Therefore, any prejudice Williams may have experienced was due in part to his requested continuance.

When considered as a whole, these four factors do not weigh in Williams's favor. Although Williams expressly demanded a speedy trial, the resulting delay was, in part, caused by Williams and did not result in undue prejudice. For these reasons, we conclude that Williams's right to a speedy trial was not violated.

In sum, we are not persuaded by Williams's arguments. Despite being incarcerated beyond the 60-day period, his right to a speedy trial was not violated. And the district court did not abuse its discretion by denying Williams's requests for conditional release prior to trial. Finally, the district court's denial of Williams's request to have advisory counsel take over representation at trial was neither structural error nor an abuse of discretion.

Affirmed.