

*This opinion is nonprecedential except as provided by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
A20-0731**

State of Minnesota,
Respondent,

vs.

Dorale Dominique Brooks,
Appellant.

**Filed June 1, 2021
Affirmed
Smith, Tracy M., Judge**

Ramsey County District Court
File No. 62-CR-19-1726

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, Gina D. Schulz, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Connolly, Judge; and

Klaphake, Judge.*

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

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this direct appeal from final judgment, appellant Dorale Dominique Brooks argues that he is entitled to a new trial because the district court erroneously denied his request for substitute counsel without conducting a searching inquiry into the basis for his request. Because any request by Brooks for substitute counsel was untimely and unsupported by assertions of exceptional circumstances warranting substitute counsel, the district court did not abuse its discretion. We affirm.

FACTS

The facts underlying the charges in this case were established in a bench trial. On March 5, 2019, Brooks broke into the apartment of his ex-girlfriend and entered her home while she was in the shower. After she grabbed her handgun, he wrested it from her, hit her with the gun while choking her, and then fled. Two days later, respondent State of Minnesota charged Brooks with first-degree burglary and with second-degree assault.

At an April 15 omnibus hearing, Brooks, represented by a public defender, pleaded not guilty to both charges and demanded a speedy trial. Trial was set for June 10. At a May 6 pretrial hearing, Brooks asked to remove his public defender. The district court did not rule on the request but indicated to Brooks that it had not “heard or seen” circumstances warranting the appointment of substitute counsel.

At the next hearing on May 14, Brooks’s public defender informed the district court that Brooks did not want to be represented by the public defender’s office. Brooks submitted a petition to proceed pro se. In questioning before the district court, Brooks’s

counsel went through the petition with him, and Brooks confirmed that he wished to represent himself and to have the public defender's office discharged. The district court accepted Brooks's petition.

The parties appeared before the district court on June 10. The district court informed the parties that trial would begin the following day and asked Brooks whether he still intended to proceed pro se. Brooks suggested that he thought he was going to be given "co-counsel or something like that." The district court explained that Brooks had petitioned to represent himself, and the appellant confirmed, "Yeah, I want to represent myself, then." The district court explained to Brooks that it had appointed a public defender to represent him and that it did not find grounds to appoint substitute counsel. It explained that Brooks had knowingly and voluntarily petitioned to represent himself. Appellant said, "That's cool."

The parties appeared for trial on June 11. The proceedings began with the state's motions in limine. Brooks complained that he had not been fully informed about the consequences of proceeding pro se with respect to representation on appeal. The district court reminded Brooks that he had chosen to represent himself and that the trial would go forward, and it addressed the motions in limine and other evidentiary issues. After a brief recess, Brooks decided to waive his right to trial, and he pleaded guilty to first-degree burglary.

Brooks subsequently wrote three letters to the district court, seeking to withdraw his plea. The district court held a hearing on August 23. The district court questioned Brooks as to how he would proceed if the motion to withdraw his plea was granted, and Brooks

raised several complaints regarding his previous public defender. At a subsequent hearing on September 6, the district court granted Brooks's motion to withdraw his guilty plea, reasoning that his petition to proceed pro se inaccurately suggested that Brooks would be appointed advisory counsel. The district court reappointed the public defender and told Brooks that, if he wanted to represent himself, it was a decision he would have to make.

At a September 24 pretrial hearing, Brooks again articulated his belief that the state lacked "evidence to support a conviction." After contending that there was no evidence of an assault, Brooks said that he would like to "fire" his public defender and "procure [his] own lawyer." The district court informed Brooks that the judge assigned to preside over Brooks's trial would address that issue.

The parties appeared before the district court on October 28 for a trial roll call. Brooks's counsel requested a continuance to permit Brooks to hire private counsel. The district court denied a continuance. Brooks stated that he "can't use the Public Defender's Office" and that his counsel "ha[d] not done anything that [he] asked him to do." He also again contended that there was no evidence to support the state's case.

The parties appeared for trial on November 4. Brooks made several motions, including for discharge of his public defender and substitute counsel from the public defender's office. Brooks was given the opportunity to explain why he wanted substitute counsel, and he complained that his lawyer had not filed any motions on his behalf. In response, the district court explained that his counsel is obligated to do what is appropriate as a lawyer and not everything that Brooks wants him to do. Brooks said that he understood and that he "just wanted him to look into certain things and he's never looked into [them]."

The district court said that was “a separate issue” and said that they were scheduled for trial. The district court denied Brooks’s request for substitute counsel. Brooks waived his right to a jury, and a bench trial ensued.

Following two days of trial, the district court found Brooks guilty as charged and sentenced him to 86 months’ imprisonment. This appeal follows.

DECISION

The United States and Minnesota Constitutions guarantee a criminal defendant the right to the assistance of counsel for one’s defense. U.S. Const. amend. VI; Minn. Const. art. I, § 6. If unable to afford counsel, a criminal defendant has the right to court-appointed counsel. *Gideon v. Wainwright*, 372 U.S. 335, 339-45, 83 S. Ct. 792, 794-97 (1963). However, the right to court-appointed “counsel does not give [a defendant] the unbridled right to be represented by counsel of [their] own choosing.” *State v. Gillam*, 629 N.W.2d 440, 449 (Minn. 2001) (quotation omitted). A defendant’s request for substitute counsel must be granted only if “exceptional circumstances exist and the demand is timely and reasonably made.” *State v. Clark*, 722 N.W.2d 460, 464 (Minn. 2006) (quotations omitted). Exceptional circumstances are those that “affect a court-appointed attorney’s ability or competence to represent the client.” *Gillam*, 629 N.W.2d at 449. If a defendant “voices serious allegations of inadequate representation,” the district court must conduct a “searching inquiry” to determine whether exceptional circumstances are present. *Clark*, 722 N.W.2d at 464. Motions for substitute counsel are not timely and reasonably made when they are made on the day of trial. *See State v. Worthy*, 583 N.W.2d 270, 278-79 (Minn. 1998).

Appellate courts review the decision to deny a request for substitute counsel for an abuse of discretion. *Clark*, 722 N.W.2d at 464.

A. Brooks’s request for substitute counsel was untimely.

Brooks argues that he timely and reasonably requested substitute counsel because he “started asking for substitute counsel at the very beginning of the case and renewed his motion at almost every opportunity.” The state counters that Brooks’s assertion that he “repeatedly asked for substitute counsel” is not supported by the record and that he did not request substitute counsel until November 4—the day trial was scheduled to begin.

Brooks points first to the May 6 pretrial hearing when he asked to “remove” his public defender. The district court informed Brooks of his right to hire an attorney and represent himself. The district court further explained that, while there was a required legal analysis for a motion for substitute counsel, which it was not going to do “on the fly,” it had not “heard or seen” circumstances warranting the appointment of substitute counsel. Despite this explanation, Brooks did not follow up with a request for substitute counsel. Instead, at the next hearing on May 14, Brooks petitioned to represent himself. The district court clarified with Brooks, “What I’m hearing is that you don’t want to take advantage of the public defender’s office,” to which Brooks replied, “No, sir.” Brooks’s counsel told the district court that Brooks did not want the public defender’s office to represent him and that Brooks was “adamant” that he wished the entire office to be discharged. The district court granted Brooks’s petition to proceed pro se. On this record, Brooks did not request substitute counsel in May.

Brooks also points to the hearing on September 24, following withdrawal of his guilty plea and the reappointment of his public defender. At this hearing, Brooks asked, “Your honor, can I put a motion to fire him? I don’t want him. He’s not on my side.” Brooks said that he would like to “procure [his] own lawyer.” The district court informed Brooks that the judge assigned to preside over Brooks’s trial would address that issue. Brooks did not request substitute counsel.

Brooks also cites the hearing on October 28. At that hearing, Brooks requested a continuance for the purposes of hiring private counsel, stating that “[he] c[ould]n’t use the Public Defender’s Office.” Again, he did not request substitute counsel.

While Brooks expressed dissatisfaction with his representation and sought variously to represent himself or to have time to hire private counsel, he did not “repeatedly ask[] for substitute counsel.” He first requested that another lawyer from the public defender’s office be appointed to represent him on November 4. But trial was set to begin on that date, and a motion made at such a late date is not timely. *See Worthy*, 583 N.W.2d at 278-79. The district court did not abuse its discretion by denying Brooks’s untimely motion for substitute counsel.

B. Brooks’s request for substitute counsel did not demonstrate exceptional circumstances.

Even if Brooks’s motion for substitute counsel had been timely, the district court did not abuse its discretion by denying it because Brooks failed to allege exceptional circumstances.

Brooks argues that that the district court did not sufficiently inquire into his complaints to ascertain whether exceptional circumstances justified the appointment of substitute counsel. He asserts that he did not merely indicate dissatisfaction with counsel but instead made serious allegations of inadequate representation. The state counters that Brooks was given ample opportunity to express his concerns on November 4 and that the concerns he expressed did not rise to the level of exceptional circumstances.

At the August 23 hearing to withdraw his guilty plea, when Brooks was representing himself and therefore no motion for substitute counsel was before the district court, the district court heard Brooks's allegations that his public defender had not filed motions on his behalf. When asked how he would proceed if the district court granted his plea withdrawal, Brooks asserted:

[Counsel] could have put in a simple motion of evidence, you know what I'm saying, and mitigated this whole thing, you know what I'm saying? But he never once came, once, to help me out. He came and sat in my face and told me I wasn't going nowhere. When it's clearly stated, there is no assault that had happened.

. . . .

Do you know what I'm saying? There's no assault that happened, there's no weapon, do you know what I'm saying? There's no fingerprints. You know what I'm saying? So where's the evidence being recited on record that holds me accountable to this charge?

Thus, Brooks complained to the district court that his public defender had not filed a pretrial motion to "mitigate" his charges and tied this complaint to his assertion, repeated throughout the pretrial proceedings, that no assault had occurred based on the evidence.

After hearing Brooks's complaints, the district court reappointed Brooks's public defender and stated that Brooks had "a fundamental misunderstanding of the elements of [his] case." No further inquiry was required to understand Brooks's complaints that defense counsel was not filing appropriate motions.

At the November 4 hearing—the day the trial was to begin—Brooks asserted in support of his motion for substitute counsel:

[Counsel] has not been represent[ing] me right. A number of things. But he has never done anything that I asked him to do. I asked him to file motions on my behalf. He has not filed motions on my behalf at all. Any motions that I have filed, I have filed them myself. [The public defender] have never did nothin'—I fired him back in—uh, uh, I believe that was, uh, uh, May?

The district court responded:

All I could tell you that the attorney who is appointed to represent you has the obligation to represent you to the best of his ability. He does not have to do everything that you want him to do. His obligation as a lawyer is to do what he believes is appropriate to do so as a lawyer, not what you want him to do.

Brooks then stated he wanted his counsel "to look into certain things and he's never looked into [them]." Brooks immediately began again contesting the underlying facts of the case and contending that no assault occurred. The district court had already, on previous occasions, extensively explained to Brooks the statutory elements of the charges, and Brooks had strenuously contended that there was no evidence or facts that supported the charges. It is evident that his complaints were an expression of his general unhappiness

with the charges against him rather than allegations about the ability or competence of counsel.

Brooks also told the district court on November 4, “Like a lotta times you don’t feel like they’re doin’ something—when they get up in front of the—yeah, you know.” This vague statement did not challenge counsel’s competence. Brooks also questioned why his counsel had been “[un]able to obtain witnesses in [his] favor.” He said, “I fired him. And I messed up my whole other trial and stuff . . . I don’t know how to—I couldn’t obtain no witnesses. Once he got re-appointed, I told him that my daughter—what my daughter and stuff told me.” Brooks’s public defender stated at this hearing that he was “unable to reach the witness” that Brooks had directed him to contact but indicated that he would “continue to try” to reach this witness. Given the public defender’s explanation, the district court did not abuse its discretion by determining that substitute counsel was not warranted.

“Personal tension” between attorney and client does not constitute an exceptional circumstance warranting substitute counsel, *see State v. Voorhees*, 596 N.W.2d 241, 255 (Minn. 1999), nor does general dissatisfaction with counsel’s “assessment of the case,” *Worthy*, 583 N.W.2d at 279; *see also State v. Munt*, 831 N.W.2d 569, 586-87 (Minn. 2013) (concluding that statement that counsel “didn’t represent [his] interest” did not establish exceptional circumstances warranting further inquiry). Though Brooks on several occasions voiced complaints about his lawyer, the concerns he expressed did not rise to the level of serious challenges to his counsel’s competence. The district court did not abuse its discretion by not appointing substitute counsel.

Affirmed.