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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1301**

State of Minnesota,
Respondent,

vs.

William Elijan Watson,
Appellant.

**Filed July 30, 2012
Affirmed
Worke, Judge**

Hennepin County District Court
File No. 27-CR-10-34924

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

Michael O. Freeman, Hennepin County Attorney, Elizabeth R. Johnston, Assistant
County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Jessica Merz Godes, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Halbrooks, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant challenges his first-degree-burglary and first-degree-aggravated-robbery
convictions, arguing that the district court abused its discretion by failing to inquire into

whether exceptional circumstances warranted the appointment of substitute counsel. Because appellant failed to establish the existence of exceptional circumstances, the district court did not abuse its discretion in refusing to appoint substitute counsel. We affirm.

D E C I S I O N

Appellant William Elijan Watson argues that the district court committed reversible error by failing to conduct a searching inquiry into whether exceptional circumstances warranted the appointment of substitute counsel and by denying his request for substitute counsel. The decision to appoint substitute counsel rests within the district court's discretion. *State v. Gillam*, 629 N.W.2d 440, 449 (Minn. 2001).

Appellant was charged with first-degree burglary and first-degree aggravated robbery and appointed a public defender. An indigent defendant has a constitutional right to the effective assistance of counsel at every stage of the criminal process. U.S. Const. amend. VI; Minn. Const. art. I, § 6. But an indigent defendant does not have “the unbridled right to be represented by counsel of his own choosing.” *State v. Fagerstrom*, 286 Minn. 295, 299, 176 N.W.2d 261, 264 (1970). The district court is obligated to furnish an indigent defendant with a capable attorney, whom the indigent defendant must accept unless the defendant's request for substitute counsel is reasonable and justified by “exceptional circumstances.” *Id.*

Exceptional circumstances that justify substituting counsel are “those that affect a court-appointed attorney's ability or competence to represent the client.” *Gillam*, 629 N.W.2d at 449-50 (concluding that general dissatisfaction with court-appointed counsel's

representation and disagreements about trial strategy did not meet “ability and competence” standard); *see also State v. Voorhees*, 596 N.W.2d 241, 255 (Minn. 1999) (concluding that “personal tension” between counsel and defendant during trial-preparation phase was not exceptional circumstance); *State v. Worthy*, 583 N.W.2d 270, 279 (Minn. 1998) (concluding that general dissatisfaction or disagreement with counsel’s assessment of case does not constitute exceptional circumstance warranting substitute counsel); *State v. Benniefield*, 668 N.W.2d 430, 434-35 (Minn. App. 2003) (concluding that defendant who was dissatisfied with counsel’s handling of case and wanted attorney who was “willing to fight” was not entitled to substitute counsel), *aff’d on other grounds*, 678 N.W.2d 42 (Minn. 2004). Only when a defendant raises “serious allegations of inadequate representation,” may a district court deem it necessary to conduct a searching inquiry into the request for substitute counsel. *State v. Clark*, 722 N.W.2d 460, 464 (Minn. 2006). A defendant has the burden of showing the existence of exceptional circumstances. *Worthy*, 583 N.W.2d at 279.

Appellant’s trial was scheduled to begin on November 1, 2010, but his attorney had mistakenly written down that it was a pretrial hearing and was not prepared for trial.

Appellant informed the district court that he wanted to fire his attorney because

ever since my first court date, I’ve been [asking] for my motion. He never gave it to me. My last court date was August the 27th. He told me on September the 7th he was going to set me a bail hearing. He never did. I never hear from him. I leave messages and everything and he never get[s] back at me. And it seems like he’s not trying to fight the case. He’s not the right attorney for me, so I would like time to find another attorney.

Appellant further argued that he wanted to be conditionally released because his mother had lined up jobs for him and because he needed to care for his son. The district court told appellant, “If you fire [your public defender] you won’t get another lawyer from the public defender’s office. You would have to proceed on your own . . . or you would have to hire another lawyer.” The district court explained, “[T]he way that [the public defender’s office] work[s] is if you fire one of their lawyers, you don’t get a different one.” Appellant stated that his mother would hire an attorney.

On November 15, the district court held a hearing to determine whether appellant hired a different attorney. Appellant indicated that he did not hire an attorney but, again, requested that he be released. Appellant’s appointed attorney supported this argument by emphasizing that appellant turned himself in and that he has no history of violent crimes. Appellant’s attorney also argued that the state’s case was not strong, and that the charges would likely be dismissed once the defense presented its case. The district court agreed to reduce bail, but declined to grant appellant conditional release.

Appellant next appeared for trial on January 11, 2011, but his appointed attorney was ill. The district court asked appellant if he was still interested in hiring a different attorney. Appellant replied that his appointed attorney could continue representing him and he, again, asked to have his bail reduced. The district court denied appellant’s request. Appellant then stated that his attorney does not answer his phone calls and inquired whether he could file a motion for a dismissal. The district court instructed appellant to request that his attorney move for dismissal. The district court also provided appellant with the number to the public defender’s office and the name of his attorney’s

supervisor. Appellant suggested that he should be entitled to another public defender because his attorney was not proceeding with his best interests in mind. The district court instructed appellant to call the public defender's office and speak with his attorney's supervisor. The district court stated, "I cannot give you a new lawyer. It has to come from the public defender's office."

Appellant merely stated, "He's not the right attorney for me," indicating general dissatisfaction with his appointed attorney. *See Gillam*, 629 N.W.2d at 449-50 (stating that general dissatisfaction with court-appointed counsel's representation does not demonstrate exceptional circumstances warranting substitution of counsel). It appears that appellant's main complaint was that he believed that his attorney failed to get him released pending trial. The first time that appellant expressed dissatisfaction, he stated that it was because his attorney failed to get him a bail hearing. Appellant continued to argue for conditional release at subsequent hearings. But appellant's attorney argued for reduced bail and conditional release, and his argument for reduced bail was successful. Appellant was not granted conditional release because appellant was on probation for a controlled-substance offense and he had two bench warrants within the last four months. Appellant's complaints—lack of communication and failure to look out for appellant's best interests—are not the type of "exceptional circumstances" that justify substituting counsel. *See id.* at 449 (stating that exceptional circumstances that justify substituting counsel are those that affect an attorney's ability or competence to represent the client).

Nevertheless, despite the fact that appellant failed to show exceptional circumstances justifying substitution of counsel, it may have been improper for the

district court to tell appellant that it *could not* appoint substitute counsel. *See* Minn. R. Crim. P. 5.04, subd. 1(1)-(2) (stating that appointment and substitution of public defenders is the district court's ultimate decision). While the district court may have told appellant that the court was not in a position to appoint substitute counsel because appellant failed to show any circumstances that warranted substitution, it was within the court's discretion to appoint substitute counsel. But any error in the district court's stating that it could not appoint substitute counsel was harmless absent a showing of incompetent representation or good cause for a new attorney. *See State v. Lamar*, 474 N.W.2d 1, 3 (Minn. App. 1991) (holding that absent improper representation or showing of good cause to have a new attorney, district court's inaccurate statement to defendant that he could not have a different public defender under any circumstances was harmless error), *review denied* (Minn. Sept. 13, 1991).

Here, appellant received competent representation. The state's case consisted of the victim, S.H., testifying that he responded to a knock on his apartment door and appellant put a gun to his neck before entering with another armed man; together the armed men ransacked the apartment before leaving with cash and several items. S.H. claimed that he did not know appellant, but recognized him as someone he frequently saw at apartment ten in the building; S.H. further denied selling marijuana to appellant or to anyone else.

But appellant's attorney called three witnesses to rebut S.H.'s testimony that he neither knew appellant nor sold marijuana. One witness testified that an individual who lived in apartment ten introduced him to S.H. in order for him to purchase marijuana

from S.H. He also testified that he introduced appellant to S.H. in order for appellant to purchase marijuana from S.H. This first witness testified that after he made the introduction, he saw appellant purchase marijuana from S.H. A second witness testified that he went with individuals to purchase marijuana from S.H. He testified that on the day of the burglary, he and appellant went to the apartment building together to purchase marijuana. This second witness also testified that appellant did not purchase the “grade of weed that he wanted,” and demanded the return of his money. He testified that appellant met with someone outside of the apartment building, exchanged something, and then returned to their vehicle and they left. A third witness testified that he knew S.H. through appellant. This witness also testified that he saw S.H. three or four times to purchase marijuana from him. Based on the testimonies of these witnesses, the district court found that S.H. may have known appellant and that S.H. may have been selling marijuana, which the district court found discredited some of S.H.’s testimony.

Appellant’s attorney also received several rulings in his favor. During the prosecutor’s direct examination of S.H., appellant’s attorney objected to leading questions and the eliciting of hearsay; the district court sustained these objections. During S.H.’s fiancée’s testimony, appellant’s attorney objected to the witness being nonresponsive, which the district court sustained. He also objected when the prosecutor questioned her about how her children were affected by having their video-game system stolen. The police officer who responded to the robbery testified that S.H. appeared as “someone who had just experienced kind of a traumatic event.” The district court sustained appellant’s attorney’s objection to this characterization. A second officer

testified regarding S.H.'s report of the robbery. Appellant's attorney objected to hearsay, which the district court sustained.

At sentencing, the state urged the district court to follow the pre-sentence report recommending that appellant be sentenced consecutively to 106 months in prison. The state argued for a durational departure based on the court finding that the offense was committed in the presence of S.H.'s two children. But appellant's attorney effectively argued for a concurrent 58-month sentence; he was able to convince the district court to not impose an aggravated sentencing departure and to reject the pre-sentence investigator's recommendation that appellant receive 106 months in prison.

Because appellant's allegations failed to warrant the appointment of substitute counsel and because his attorney provided competent representation, the district court did not abuse its discretion in refusing to appoint substitute counsel.

Affirmed.