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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0074**

State of Minnesota,
Respondent,

vs.

John Stephen Woodward,
Appellant.

**Filed January 13, 2009
Affirmed
Crippen, Judge***

Dakota County District Court
File No. K6-06-2202

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

James C. Backstrom, Dakota County Attorney, Judicial Center, 1560 Highway 55, Hastings, MN 55033; and

Mark N. Lystig, Assistant Ramsey County Attorney, 50 West Kellogg Blvd., Suite 315, St. Paul, MN 55102 (for respondent)

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Considered and decided by Toussaint, Chief Judge; Halbrooks, Judge; and
Crippen, Judge.

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

UNPUBLISHED OPINION

CRIPPEN, Judge

Challenging his conviction on several counts of controlled substance crimes, appellant John Stephen Woodward argues that he is entitled to a new trial because his right to counsel was violated when his attorney was permitted to withdraw from representation on the morning of trial and the district court denied his motion for a continuance. Because appellant, knowing fully the risks of self representation, and being given repeated opportunities to hire an attorney, continued to engage in conduct reasonably viewed as an attempt to delay trial, we affirm.

FACTS

Based on a long investigation, including two controlled buys, the state charged appellant with several drug offenses involving the sale of methamphetamine out of his home. Between September of 2006 and June of 2007, appellant appeared in district court approximately seven times without counsel. At each appearance, appellant was cautioned about the dangers of proceeding pro se. He was given at least three continuances so that he could obtain counsel and was warned at least twice that no further continuances would be granted.

On the date scheduled for trial in June of 2007, appellant again appeared without counsel. Appellant claimed that he had not hired an attorney because he was “completely innocent.” Appellant acknowledged that he could afford to hire counsel and understood the implications of representing himself. He further offered that he was fairly intelligent, had friends who were attorneys, and believed that he could represent himself at trial.

Appellant reiterated that he believed it was in his best interest and in his family's best interest to "just do this [himself] and let the chips fall where they may."

The prosecutor explained to appellant that he was charged with multiple felony counts and that he faced a possible prison term. The prosecutor also told appellant that going to trial without an attorney is "absolutely a mistake. It's an important mistake." Appellant finally agreed to retain an attorney and was granted another continuance. He claimed that he would immediately retain an attorney. Trial was rescheduled for August 13, 2007, and the district court warned appellant that the case would be tried that day, "lawyer or not."

On August 13, 2007, appellant appeared for trial with attorney Brian Karalus. Karalus stated that he had been retained at 5:30 p.m. on Friday, August 10, and had not had time to prepare. Karalus requested a continuance, stating that he would not ask for another continuance. The prosecutor recited the history of appellant's appearance, but agreed to a short continuance. The court granted a continuance to September 13. Because appellant had violated his release conditions in July, he was taken into custody pending trial. Two weeks later, he was able to post bail and was released.

On September 13, 2007, Karalus appeared with appellant and moved to withdraw from representation. In a written motion dated September 7, 2007, Karalus stated that appellant had failed to cooperate and maintain contact. He told the district court that he felt as if appellant had "used [him] to get this case continued further." Karalus stated that when he finally spoke with appellant by phone in late August, he and appellant had a

heated argument, at the end of which appellant told Karalus to “f--- off” and hung up. Karalus stated that, as a result of these experiences, he was unable to prepare for trial.

Appellant confirmed that his last conversation with Karalus ended when he hung up after Karalus started shouting at him. He claimed that he wanted Karalus to continue to represent him but would “like to have a discussion or meeting of minds with him.”

The prosecutor stated his conclusion that appellant was making another effort to continue the trial. The district court permitted Karalus to withdraw.

During jury selection, appellant stated, outside of the presence of the potential jurors, that he wished to hire an attorney to give him advice during trial. The court indicated that appellant could do so, but also noted that appellant’s failure to hire an attorney was a “game” that appellant had been playing. The court informed appellant that trial would continue without interruption.¹

Appellant participated in jury selection, made an opening statement, and cross-examined the state’s witnesses. Trial continued the next day, and appellant again participated by cross-examining the state’s witnesses, calling his wife as a defense witness, and testifying on his own behalf after being advised of his right to not testify and waiving that right.

¹ During a break sometime that day, appellant ran into an attorney in the hallway outside the courtroom. Appellant asked the attorney to represent him. The attorney went into chambers with the prosecutor to ask if he could obtain a continuance so that he could prepare for trial, but the district court judge denied the request. The attorney then told appellant that he would not represent him.

When trial resumed on September 17, 2007, appellant participated by making a final argument to the jury. Throughout trial, the judge and the prosecutor continued to advise appellant of his rights and gave him leeway during his examination of witnesses and his closing argument. Following the jury's guilty verdicts, appellant was sentenced to 94 months in prison.

DECISION

1.

Seeking a new trial, appellant argues that the district court erred in allowing attorney Karalus to withdraw on the morning of trial, despite his failure to comply with Minn. R. Gen. Pract. 703. This rule prohibits withdrawal without a court order, but permits withdrawal upon written substitution of counsel approved by the court. *Id.* The rule adds that a motion for withdrawal is to be served on the client and “[n]o motion for withdrawal will be heard within 10 days certain for hearing or trial.” *Id.*

Appellant correctly observes that Karalus failed to serve appellant with a copy of his motion to withdraw. And counsel's motion, which is dated September 7, 2007, was heard on the morning of trial on September 13, six days later. But Karalus's failures under the rule do not automatically entitle appellant to a new trial. When examining a motion to withdraw, the court “should be concerned with the handling of the court's calendar and the effect withdrawal would have on the rights of the defendant, the interests of the prosecutor and the interests of the court in the efficient administration of criminal justice.” 3A David F. Herr, *Minnesota Practice* § 703.4, at 649 (2008).

Despite appellant's current claim that he had no notice of Karalus's intent to withdraw until the day of trial, appellant confirmed that he engaged in a heated argument with Karalus before trial. The court and the attorneys reasonably interpreted appellant's actions as another attempt to delay the proceedings. Under these facts, the court did not abuse its discretion in allowing Karalus to withdraw. *Cf. City of Minneapolis v. Price*, 280 Minn. 429, 434-35, 159 N.W.2d 776, 780-81 (1968) (reversing district court's decision allowing attorney to withdraw on day of trial, in part because record failed to show that defendant's actions were intended to induce her attorney to withdraw for purposes of delay).

2.

Appellant argues that the district court erred in denying his request for a continuance after it allowed Karalus to withdraw. Generally, a defendant is entitled to a continuance to obtain substitute counsel when his attorney withdraws on short notice. *Id.* at 434, 159 N.W.2d at 780. But, as suggested by the supreme court's decision in *Price*, the district court may allow withdrawal when it is clear that a defendant's conduct is intended to induce his attorney to withdraw in order to obtain a continuance. *See id.*

This court reviews the ruling on a defendant's request for a continuance for an abuse of discretion. *State v. Courtney*, 696 N.W.2d 73, 81 (Minn. 2005). A defendant may attempt delay by discharging counsel or "by arbitrarily choosing to substitute counsel at the time of trial." *Id.* at 81-82. And a motion for a continuance is properly denied when the defendant has not been diligent in obtaining counsel or preparing for trial. *Id.* at 82. On review, this court balances a defendant's right to counsel against the

public interest in an efficient and effective judicial system and against the defendant's lack of diligence. *Id.*

For reasons attributable to appellant's conduct, the district court, the prosecutor, and Karalus all believed that appellant was engaging in tactics designed to further delay trial. When finally demanding that the trial proceed, the district court properly acted to manage its own calendar.

3.

Appellant argues that the district court failed to obtain from him a valid waiver of counsel. Appellant agrees that he could waive his right to counsel in writing, on the record, or impliedly by his conduct. *See State v. Krejci*, 458 N.W.2d 407, 413 (Minn. 1990) (holding that defendant validly waived right to counsel, as implied from his conduct and on-the-record answers); *State v. Garibaldi*, 726 N.W.2d 823, 827 (Minn. App. 2007) (explaining that right to counsel can be waived in writing, on record, or impliedly by defendant's conduct). But appellant claims that he did not consent to his attorney's motion to withdraw and did not choose to represent himself, as demonstrated by the fact that he continued to try to obtain an attorney even after trial began.

In *State v. Jones*, this court held that the defendant knowingly and voluntarily waived his right to counsel by his continued failure to hire an attorney despite numerous continuances and opportunities to hire counsel. 755 N.W.2d 341, 350-51 (Minn. App. 2008), *review granted* (Minn. Nov. 25, 2008). This court concluded that the waiver was not required to be in writing where the record established that the defendant fully understood the risks of his actions and the complexities of the proceedings. *Id.*

Similarly, this record establishes that appellant, fully understanding the risks of representing himself and the complexities of the proceedings, waived his right to counsel.

Affirmed.