Court of Appeal, Second Appellate District, Division One - No. B291203

S252242

IN THE SUPREME COURT OF CALIFORNIA

En Banc

BRIAND WILLIAMS, Petitioner,

v.

SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent;

THE PEOPLE, Real Party in Interest.

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice

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BRIAND WILLIAMS, Petitioner,

v.

SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent;

THE PEOPLE, Real Party in Interest.

The time for granting or denying review in the above-entitled matter is hereby extended to and including January 25, 2019, or the date upon which review is either granted or denied.

CANTIL-SAKAUYE

Chief Justice

Filed 9/28/18 P. v. Williams CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. BRIAND WILLIAMS, Defendant and Appellant.	B283473 (Los Angeles County Super. Ct. No. BA443387)
In re BRIAND WILLIAMS, on Habeas Corpus.	B291203 (Los Angeles County Super. Ct. No. BA443387)

APPEAL from an order of the Superior Court of Los Angeles County. Katherine Mader, Judge. Affirmed.

ORIGINAL PROCEEDING; petition for writ of habeas corpus. Petition denied.

Steven A. Brody, under appointment by the Court of Appeal, for Defendant and Appellant.

Briand Williams, in pro. per., for Petitioner in No. B291203.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Stephanie A. Miyoshi and William N. Frank, Deputy Attorneys General, for Plaintiff and Respondent.

Briand Williams appeals from an order denying his motion to discharge his retained attorney during a sentencing hearing, contending the trial court failed meaningfully to consider the motion and abused its discretion in denying it. We affirm the order. Williams also challenges in a petition for a writ of habeas corpus the calculation of his good conduct credits. We deny the petition.

BACKGROUND

In 1996, Williams was convicted of performing lewd or lascivious acts involving a child aged 14 or 15 by a person at least 10 years older, which obligated him to register with law enforcement pursuant to the Sex Offender Registration Act, Penal Code section 290, et seq., and update his registration annually. (Pen. Code, §§ 288, subd. (c)(1), 290, 290.012.) In 2011, Williams was convicted of failing to update his registration and was sentenced to three years in prison.

Five years later, in April 2016, the Los Angeles County District Attorney's Office filed an information charging Williams with again failing to update his annual sexual offender registration, and further alleged he had served three prior prison terms without remaining free of custody for five years before committing more felony offenses. (Pen. Code, §§ 290.012, subd. (a), 667.5, subd. (b).) He pleaded no contest and admitted to the

recidivist allegation. The trial court found him guilty, dismissed two of the special prison-term allegations, and found the remaining allegation to be true. The court then put the matter over for two weeks, to August 31, 2016, for sentencing. The court released Williams on his own recognizance and informed him that if he appeared on August 31 with proof that he had updated his registration he would be sentenced to time served, but if he failed to do so he would be sentenced to up to four years in prison, comprising the upper term of three years for failure to register plus one year for recidivism. Williams failed to appear on August 31, and the court issued a bench warrant for his arrest. He was arrested on the warrant seven months later.

At the resumed sentencing hearing the trial court informed Williams he would be sentenced to four years in prison, but offered a short continuance to afford him an opportunity to coordinate the sentencing in this case with that in another criminal case pending in another court. Williams accepted the continuance.

At the continued hearing Williams's privately retained attorney, Gary Casselman, argued for a low or middle term and indicated Williams would like to address the court to explain why he had failed to appear back in August. Then the following colloquy occurred:

"The Court: And as I understand it, there is still no registration.

"Mr. Casselman: I received no information to the contrary.

"The Court: And neither have I.

"Mr. Casselman: Other than what he's about to tell the court, that he—

"The Court: I don't want to hear something other than he's registered.

"Mr. Casselman: Well, I think—

"The Court: Any excuse, any legal reason for him not registering, I don't want to hear it. I don't want to hear that again.

"The Defendant: Marsden hearing. I'm requesting a Marsden hearing. [*People v. Marsden* (1970) 2 Cal.3d 118 (a defendant may seek to replace his appointed counsel).]

"The Court: There is no appointed counsel.

"The Defendant: I'm entitled to it.

"The Court: Denied.

"The Defendant: Motion to withdraw the plea.

"The Court: Denied.

"The Defendant: I'm entitled to make my argument on the record.

"The Court: You will."

Williams then explained at length that he had been unable to update his sex offender registration because his landlord wrongfully locked him out of his residence, rendering him homeless and thus unable to provide an address to law enforcement. He attempted to contest the eviction by filing an ex parte motion in another court on August 30, 2016, but was told to come back the next day, August 31, the day he was also to appear in the instant matter for sentencing. He returned to the civil courtroom on the morning of August 31, but the hearing was put over to the afternoon when he refused to stipulate to his motion being heard by a commissioner or pro tem judge. Williams explained he could not appear for sentencing in the instant matter because he was "actually ordered back to somewhere

else," and stated that "Mr. Casselman didn't notify the court of the order I had to be in Santa Monica."

Williams further explained that in February 2017 he tried to turn himself in to police at the Los Angeles Police Department's Southeast Community Police Station on 108th Street, but "they don't take medicals." (Williams uses a wheelchair.) In March he attempted to turn himself in at a Los Angeles County Sheriff's station but was told they had no record of his bench warrant. In April he tried to update his registration at a sheriff's station in downtown Los Angeles but was told he could do so only at a substation. When he went to a substation he was arrested on the bench warrant.

Finding Williams to be entirely incredible, the trial court sentenced him to four years in prison.

Williams appealed and sought a certificate of probable cause, which was denied.

DISCUSSION

Williams contends the trial court erred by denying a request to discharge his attorney, thereby depriving him of the right to be represented by an attorney of his choice. We disagree.

To assert the right to discharge retained counsel a defendant must clearly indicate the desire to do so. (*People v. O'Malley* (2016) 62 Cal.4th 944, 1005, 1006.) An ambiguous statement that leaves the trial court uncertain as to what the defendant wants may be denied out of hand, as there is "no request to be ruled on." (*Id.* at p. 1006.)

Here, Williams made no request to remove counsel, expressed no dissatisfaction with his representation (other than to say Casselman had not informed the court about unlawful detainer proceedings in another court), and gave no indication

that he had a substitute attorney in mind, whether retained or appointed. He said only, "I'm requesting a Marsden hearing," and, "I'm entitled to it."

A *Marsden* hearing affords an indigent criminal defendant the opportunity to substitute one appointed attorney for another if he or she can demonstrate either that the first appointed attorney is providing inadequate representation or the defendant and attorney are "embroiled in irreconcilable conflict." (*People v. Ortiz* (1990) 51 Cal.3d 975.) Such a hearing would have been unnecessary here because Williams was represented by counsel he had himself retained, and whom he could have fired without cause any time before the hearing. On the face of it, Williams asked only for an opportunity to offer a gratuitous and irrelevant complaint about his chosen attorney. The request was properly denied.

Williams argues the trial court must have understood he was seeking to remove his counsel because that is the purpose of a *Marsden* hearing. He argues the court made insufficient inquiry into his concerns about his retained counsel and failed to evaluate whether a continuance to retain a different attorney would cause unreasonable delay.

Assuming Williams's ostensible request for a *Marsden* hearing was really a motion to continue the sentencing hearing so he could retain a different attorney, the motion merited no inquiry and its denial no explanation.

A criminal defendant's Sixth Amendment right to effective assistance of counsel includes the right to retain counsel of his or her choice, and concomitantly to discharge counsel with or without cause at virtually any time. (*People v. Ortiz, supra*, 51 Cal.3d at p. 983.) But the right is not absolute. The trial court

may in its discretion deny a motion to discharge counsel if it will result in "significant prejudice" to the defendant, for example by forcing him or her to trial without adequate representation, or if it is untimely and will result in " 'disruption of the orderly processes of justice.' " (*Ibid.*; *People v. Lucev* (1986) 188 Cal.App.3d 551, 556 ["due process, as it relates to the right of counsel, does not require that a defendant be allowed under all circumstances to be represented by a particular attorney"].) In evaluating the disruption an untimely request to replace counsel will cause, the court must consider the practical difficulties of assembling witnesses, lawyers and jurors at the same time and place (*People v. Courts* (1985) 37 Cal.3d 789, 790), and balance the disruption, if any, stemming from the substitution of counsel against the defendant's interest in new counsel (*People v. Turner* (1992) 7 Cal.App.4th 913, 919).

Courts have found no unreasonable disruption where the defendant moves to discharge counsel at the first hearing following arraignment, or two weeks before trial, or where nothing points to the defendant's desire to delay trial or suggests a continuance would prevent the appearance of witnesses. (*People v. Lara* (2001) 86 Cal.App.4th 139, 159-160.) On the other hand, when a defendant waits until the first day of trial to request new counsel and circumstances suggest the true motivation is to delay the trial, the disruption necessitated by substituting counsel may be unreasonable. (*Id.* at pp. 160-161; see, e.g., *People v. Keshishian* (2008) 162 Cal.App.4th 425, 429 [no error in denying attempt to discharge counsel on the day of trial when the case had been pending for over two years, new counsel had neither been identified nor retained, and scheduled witnesses would have been further inconvenienced; *People v.*

Turner, supra, 7 Cal.App.4th at p. 919 [late request would have necessitated a mandatory continuance and inconvenience to witnesses and other participants].)

A trial court has "wide latitude in balancing the right to counsel of choice against the needs of fairness" and the demands of its calendar. (*United States v. Gonzalez-Lopez* (2006) 548 U.S. 140, 152.) We review a court's denial of a motion to discharge retained counsel for abuse of discretion. (*People v. Lara, supra*, 86 Cal.App.4th at p. 151.)

By the third sentencing hearing Williams had received two continuances over a period of seven months, during which time he had every opportunity to express and unilaterally act on any dissatisfaction with Casselman. Yet he waited until deep into the third hearing, after it had become clear an adverse pronouncement was imminent, before purportedly moving to discharge his attorney, giving no explanation either for the motion or the delay in bringing it.

Under the circumstances the court could reasonably conclude Williams had no actual concerns about his attorney, but sought only to disrupt the proceedings and delay sentencing.

DISPOSITION

The judgment is affirmed. The petition for writ of habeas corpus is denied.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

ROTHSCHILD, P. J.

CURREY, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Additional material from this filing is available in the Clerk's Office.