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ORIGINAL



**IN THE COURT OF CRIMINAL APPEALS OF
THE STATE OF OKLAHOMA**

JOHN EARNEST SKRDLA,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

NOT FOR PUBLICATION

Case No. F-2021-471

FILED

**IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA**

NOV 17 2022

SUMMARY OPINION

**JOHN D. HADDEN
CLERK**

ROWLAND, PRESIDING JUDGE:

Appellant John Ernest Skrdla appeals his Judgment and Sentence from the District Court of Grant County, Case No. CF-2015-28, for Possession of Child Pornography (Counts 1 and 2), in violation of 21 O.S.2011, § 1021.2, Distribution of Child Pornography (Count 3), in violation of 21 O.S.2011, § 1021.2, Sexual Abuse/Exploitation of a Child (Count 4), in violation of 21 O.S.Supp.2014, § 843.5(E) and Enabling Sexual Abuse/Exploitation of a Child (Counts 5 and 6), in violation of 21 O.S.Supp.2014, § 843.5(G). The Honorable Paul K. Woodward, District Judge, presided over Skrdla's jury trial and sentenced him, in accordance with the jury's verdict, to ten years

imprisonment and a \$20,000.00 fine on each of Counts 1, 2, and 3, and thirty years imprisonment and a \$5,000.00 fine on each of Counts 4, 5, and 6.¹ The court ordered the sentences to be served consecutively. Skrdla raises four claims for review:

- (1) whether he was denied effective assistance of counsel;
- (2) whether the district court's failure to inquire about his desire to discharge trial counsel mid-trial denied him the right to conflict-free counsel;
- (3) whether the district court erred by accepting his waiver of trial counsel and allowing him to represent himself *pro se* at formal sentencing; and
- (4) whether the district court should have been disqualified from sentencing him and ruling on the disqualification of Stephen Jones as his counsel.

We find relief is not required and affirm the Judgment and Sentence of the district court.

1.

Skrdla claims he is entitled to relief because of ineffective assistance of trial counsel. He faults trial counsel for failing to present evidence and testimony to contradict the State's case on material points, including his efforts to report the abuse to

¹ Under 21 O.S.Supp.2015, § 13.1, Skrdla must serve 85% of his sentence of imprisonment before he is eligible for parole consideration.

authorities, failing to comply with the discovery code, and failing to object to evidence of a Branson trip that violated a motion in limine. In conjunction with this claim, Skrdla filed a motion to supplement the record on appeal and request for evidentiary hearing on his claim of ineffective assistance of trial counsel. This claim requires no relief.

This Court reviews claims of ineffective assistance of counsel to determine: (1) whether counsel's performance was constitutionally deficient; and (2) whether counsel's performance prejudiced the defense depriving the defendant of a fair trial with reliable results. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *Malone v. State*, 2013 OK CR 1, ¶ 14, 293 P.3d 198, 206. Prejudice in this context is evidence supporting "a reasonable probability that, but for counsel's unprofessional errors, the outcome of the trial would have been different." *Fulgham v. State*, 2016 OK CR 30, ¶ 16, 400 P.3d 775, 780. "The likelihood of a different result must be substantial not just conceivable." *Malone*, 2013 OK CR 1, ¶ 16, 293 P.3d at 207 (quoting *Harrington v. Richter*, 562 U.S. 86, 112 (2011)). This Court need not determine whether counsel's performance was deficient if there is no showing of harm. See *Malone*, 2013 OK CR 1, ¶ 16, 293 P.3d at 207. Moreover, this Court will order an evidentiary hearing only if "the

application and affidavits . . . contain sufficient information to show this Court by clear and convincing evidence [that] there is a strong possibility trial counsel was ineffective for failing to utilize or identify the complained-of evidence." Rule 3.11(B)(3)(b)(i), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2022). Where nothing in the supplemental materials alters or amplifies in any compelling way the portrait which emerged from the testimony at trial, this Court will find the materials fail to establish by clear and convincing evidence a strong possibility that trial counsel was ineffective. *Sanchez v. State*, 2009 OK CR 31, ¶ 104, 223 P.3d 980, 1013.

Having reviewed Skrdla's request for an evidentiary hearing and the materials offered to support his request, we find that he has failed to meet his burden as he has not shown a strong possibility that defense counsel was ineffective for failing to use the identified material. Rule 3.11, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2022). He is not entitled to an evidentiary hearing to further develop his ineffective assistance of counsel allegations, and his motion, as well as this claim, are denied. See *Simpson v. State*, 2010 OK CR 6, ¶ 53, 230 P.3d 888, 905-06.

2.

Skrdla claims he was deprived of conflict free counsel because of the trial court's failure to take any action when he told the court, *ex parte*, of his desire to discharge trial counsel and secure new representation mid-trial. At formal sentencing, the trial court judge recounted his encounter with Skrdla in the courthouse stairwell/hallway and how he advised Skrdla to discuss the matter with trial counsel. The court observed no motion was presented after the encounter concerning any request for new counsel.

The cases relied upon by Skrdla in which he claims the court was required to conduct additional inquiry are distinguishable and involve conflicts of interest stemming from representation of multiple clients in the same or related criminal matters. Nothing said by Skrdla in the hallway indicated a conflict of interest. At best, his statement suggested dissatisfaction with trial counsel's handling of the case, making this case more like *Swain v. State*, 1980 OK CR 120, ¶¶ 12-13, 621 P.2d 1181, 1183. There the Court found no error in the denial of a request for new counsel where the defendant sought to discharge appointed counsel after both sides had rested but before closing argument had occurred. The Court stated:

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3.

Skrdla claims the district court forced him to proceed *pro se* at formal sentencing and deprived him of his right to counsel of his choice. He argues the district court abused its discretion by not allowing attorney Stephen Jones to re-enter the case for formal sentencing and to prosecute a motion for new trial in light of his signed written waiver of any previous conflict of interest with Jones. He also claims his waiver of counsel was not knowing and voluntary because the district court failed to inform him of the dangers, disadvantages, and pitfalls of self-representation. We review a district court's ruling on an attorney's disqualification and on a motion to waive counsel for an abuse of discretion. *See Alexander v. State*, 2019 OK CR 19, ¶ 20, 449 P.3d 860, 867; *United States v. Roach*, 912 F.Supp.2d 1153, 1169 (D. N.M. 2012).

In *Wheat v. United States*, 486 U.S. 153, 158–59 (1988), the Supreme Court stated that the Sixth Amendment right to counsel envisions a right to select and be represented by one's preferred attorney. The Court further stated:

The District Court must recognize a presumption in favor of petitioner's counsel of choice, but that presumption may be overcome not only by a demonstration of actual conflict

but by a showing of a serious potential for conflict. The evaluation of the facts and circumstances of each case under this standard must be left primarily to the informed judgment of the trial court.

Id. 486 U.S. at 164. In *Rutan v. State*, 2009 OK CR 3, ¶ 66, 202 P.3d 839, 852, we found that a defendant's right to counsel of his choice is not absolute and that courts must balance a defendant's constitutional right to retain counsel of his choice against the need to maintain the highest standards of professional responsibility, the public's confidence in the integrity of the judicial process and the orderly administration of justice. We consider it well settled that the constitutional right to counsel includes the right to the assistance of counsel who is free from conflicts of interest. *Id.* 2009 OK CR 3, ¶ 67, 202 P.3d at 852; *Carey v. State*, 1995 OK CR 55, ¶ 8, 902 P.2d 1116, 1118. We observed that “[c]ounsel cannot be effective if conflicts of interest, no matter how subtle, dull the zeal of undivided loyalty.” *Rutan*, 2009 OK CR 3, ¶ 67, 202 P.3d at 853 (quoting *Banks v. State*, 1991 OK CR 51, ¶ 34, 810 P.2d 1286, 1296).

The district court did not abuse its discretion in rejecting Jones's post-trial entry of appearance because of Jones's earlier

disqualification in the case based upon a conflict of interest.² Jones represented to the court in his motion to withdraw as counsel in 2018 that the conflict he had with Skrdla in this case was incurable and should not be waived. He maintained he could not effectively defend Skrdla and defend himself against accusations of ineffective assistance of counsel. Jones maintained, "there is a clear conflict in the attorney-client relationship which prevents Defense Counsel from representing Defendant Skrdla at trial." Jones further stated he had advised the State of the conflict of interest and the prosecutor agreed "there is a conflict that should not be waived." The fact Jones required Skrdla to sign an agreement for him to re-enter the case, releasing him from liability and agreeing to indemnify him against

² Jones represented Skrdla for over four years and sought to withdraw twice within the final year of his representation. His second motion to withdraw was granted because of a conflict of interest. The second motion was predicated on Jones's discovery that Skrdla was being sued for breach of contract by Charles Reinert, a non-lawyer whom Skrdla had hired/enlisted to help him sue Jones for ethical violations and malpractice and to aid Skrdla in finding new counsel in this criminal case. According to the complaint, Reinert was to be paid from monies recovered in the lawsuit against Jones, and he alleged he had performed his part of the contract, but Skrdla had not. Jones also discovered that Skrdla had secretly recorded their attorney-client conversations as well as conversations Skrdla had about the case with a Grant County judge. Skrdla, contrary to Jones's advice not to discuss the case with third parties, spoke about his case with other lawyers in front of Reinert, waiving attorney-client privilege. Skrdla also had complaints about Jones's expenditure of funds as well as his evidence collection.

any and all future claims provides compelling proof of the ongoing strain/conflict involving this attorney-client relationship. The district court balanced Skrdla's constitutional right to retain counsel of his choice—with its limits—against the need to maintain the highest standards of professional responsibility and the orderly administration of justice and concluded Jones should remain disqualified. That ruling is supported by the record. Accordingly, we find the district court did not abuse its discretion in rejecting Jones's entry of appearance based upon his prior disqualification in the case.

Nor did the district court abuse its discretion in accepting Skrdla's waiver of counsel and allowing him to represent himself at formal sentencing. *See Alexander*, 2019 OK CR 19, ¶ 20, 449 P.3d at 867. In *Mitchell v. State*, the Court summarized the law controlling a defendant's right to self-representation:

A criminal defendant has a constitutional right of self-representation. ... A defendant must be warned of the dangers and disadvantages of self-representation, based on all the circumstances of the case. Armed with that information, he must then knowingly and intelligently waive the benefits of counsel. No particular knowledge of law or courtroom procedure is required. “[A] defendant must be competent to make this decision and must be clear and unequivocal in his desire to proceed *pro se*.” If these requirements are met, a defendant who understands

his right of self-representation and has a clear intent to exercise it must be allowed to proceed.

2016 OK CR 21, ¶ 4, 387 P.3d 934, 937-38 (citations omitted).

The district court advised Skrdla that it planned to conduct formal sentencing as scheduled and asked him if he wanted trial counsel to represent him or if he wanted to represent himself. Skrdla conferred with Jones, who remained disqualified, before opting to represent himself and consenting to trial counsel's withdrawal. The district court confirmed Skrdla's understanding of the situation. The district court's warning under the circumstances of this case was adequate. Skrdla well understood that he would be representing himself for the imposition of the jury's verdict upon his consent to the withdrawal of trial counsel. Because the court had resolved the pending post-trial motions while Skrdla was represented, all that remained was the formality of imposing the jury's sentencing verdict. See 22 O.S.2011, § 926. Unlike other stages in a criminal trial, the typical dangers or pitfalls normally warned against did not exist in a formal sentencing proceeding. Under these circumstances, we find the court's warning was sufficient in this case and the district court

did not abuse its discretion in accepting Skrdla's waiver of counsel. This claim is denied.

4.

Skrdla claims his trial judge should have been disqualified from sentencing him and ruling on the disqualification of Jones as his counsel. According to Skrdla, the judge was a potential fact witness at a future evidentiary hearing litigating his motion for new trial claim of ineffective assistance of counsel. After the judge denied Skrdla's recusal request and motion for continuance of sentencing, the ruling was appealed to Presiding Judge Jill Weedon, who affirmed the trial judge's refusal to recuse. This Court also affirmed the ruling, denying extraordinary relief in *Skrdla v. Hon. Paul Woodward*, Case No. MA-2021-430 (Okl.Cr. June 4, 2021). Skrdla maintains that this claim is not barred from review because the standards of review are different on direct appeal versus a mandamus action, and our Order did not address all issues. We disagree.

The ruling on Skrdla's motion for recusal has been thrice denied, both because it was untimely under Rule 15, *Rules for District Courts of Oklahoma*, Title 12, Ch. 2, App., and because there was no evidence of bias in the record. Our previous ruling on this issue in

the mandamus action bars further review. *See Hanson v State*, 2009 OK CR 13, ¶ 15, 206 P.3d 1020, 1027 (observing claims or issues previously decided in an extraordinary writ appeal will not be reviewed in a subsequent direct appeal based upon doctrine of collateral estoppel and/or the “law of the case” doctrine). The mandamus action resolved this issue completely. Accordingly, this claim is denied.

DECISION

The Judgment and Sentence of the district court is **AFFIRMED**. Skrdla’s motion to supplement the record and for evidentiary hearing are **DENIED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2022), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF GRANT COUNTY THE HONORABLE PAUL K. WOODWARD, DISTRICT JUDGE

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HUDSON, V.P.J.: Concur
LUMPKIN, J.: Concur
LEWIS, J.: Concur
MUSSEMAN, J.: Concur