

Circuit Court for Montgomery County
Case No. 137067C

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 612

September Term, 2020

ALEJANDRO JOSE PEREZ DeLEON

v.

STATE OF MARYLAND

Graeff,
Zic,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 29, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Convicted by a jury in the Circuit Court for Montgomery County of second degree murder and use of a firearm in a crime of violence, Alejandro Jose Perez DeLeon, appellant, presents for our review a single question: whether the court “erred in denying [Mr. DeLeon’s] request to discharge counsel.” For the reasons that follow, we shall affirm the judgments of the circuit court.

Prior to trial, the parties appeared before the court pursuant to “a request for an urgent status in the case from [t]he defense side.” Defense counsel stated that he had “made this request on behalf of Mr. . . . DeLeon,” who “request[ed] that [defense counsel] no longer represent him in this matter.” The court asked Mr. DeLeon “why that is,” and he replied:

I came here once and after that time I think he had a lot of time to prepare. So, after four more months were given to him for him to prepare and I agree that those four months were going to be enough as we had already agreed to go to trial. So, then late last month he showed up like four or five times at the detention center asking me or proposing another option to proceed. But my understanding was that he didn’t feel like or he doesn’t have the capacity to go forward with the trial. And then this is about the time that things are not the way they tried to portray.

But anyway, I spoke to this representative from the Public Defender. And he claims that there’s no other option that an[o]ther attorney can be assigned. So, if that is the case I feel that I would obliged either to go on my own or stick to him. So, I am between a rock and a hard place as the saying goes. I have no choice than I accept it. So, I think a lot of time has elapsed and I feel it’s time enough for him to complain to the prosecutor that this case is not the way they claim it is. And in turn the charges have even been increased against me.

The court asked defense counsel whether he was “prepared to go forward with trial.”

Defense counsel replied:

[T]here’s a lack of cooperation.

* * *

I can't adequately represent him. There was a witness that is not cooperating that I can't, I can't be ready

Defense counsel then confirmed that Mr. DeLeon was “not cooperating with [defense counsel] in terms of the representation.” Mr. DeLeon responded: “Well, I believe I said everything I had to say regarding this case and how things transpired that evening. I don't have anything else to say about the incident. So, I don't understand what I have failed to say. I have said everything.” When the court asked “what [made Mr. DeLeon] believe that [defense counsel was] not able to proceed or . . . go forward with the trial,” Mr. DeLeon stated: “Because of the way he has been conducting himself and the proposal that he has extended to me.” Defense counsel responded that “in the eyes of the defense there has not been a plea offer,” because the “plea offer [was] to plead straight up.” Defense counsel reiterated: “If I don't have a client that's willing to talk to me[,] I can't prepare for the case.”

Upon additional questioning by the court, Mr. DeLeon stated:

[E]very time we talk and I tell him that what has occurred on that particular evening he doesn't, he's not convinced. So, if he's not convinced as to how this incident happened how is he going to represent me or defend me if he doesn't believe in the truth. The prosecutor would always relay their story. So, if you tend to believe the other side how are you going to defend me? So, that's why I am, that's my doubt.

* * *

[W]e have discussed, he has discussed with me and I don't think he has the conviction to, he's not convinced, he doesn't have the power to convince the other side about this.

Defense counsel subsequently stated: “It does put me in a very difficult position in terms of preparing and trying for the case.” Mr. DeLeon responded:

You know it is customary that in this situation you could pressure and there is stuff that you miss. And I would like to have an attorney that after I relay to him the way things happened. I don’t want somebody to tell me later that I got to tell the truth. Or for instance who can I believe better than myself as to what happened. I’m also an individual who has feelings. And I also want somebody who is interested in my feelings and that is what I feel that actually happened. And somebody who understands that I am valuable to this society and if I made a mistake you know I have to spend my entire life working and studying and it’s not up to me to be here. I don’t feel like being here. So, I have never come into crime. I need an attorney who treats me with the value that I have.

The court subsequently stated:

The [c]ourt listening to him[,] and I have provided him the opportunity[,] the [c]ourt does not find that there is any meritorious reason for the discharge of [defense counsel]. Mr. DeLeon has been able to provide and communicate to [defense counsel] information that he wishes to provide to [defense counsel]. [Defense counsel] has made a point to meet with him four to five times at the detention center. He has listened to him and I believe that, I don’t want to get into the discussions but the attorneys and clients often discuss things and they disagree about things but ultimately it is the client’s case and Mr. DeLeon can direct counsel as to how to proceed subject to the counsel’s ethical obligations which I’m sure [defense counsel] would apply appropriately. So, I don’t find any meritorious defense.

Mr. DeLeon contends that because “he had been robbed of any confidence in receiving effective assistance,” “[h]e believed that counsel did not ‘have the capacity to go forward with the trial,’” and the “record established an irreconcilable conflict that had culminated in a complete breakdown of communication between them,” the “court abused its discretion in finding that there was no meritorious reason for [Mr. DeLeon’s] request to discharge counsel.” We disagree. We have stated that although a “complete breakdown

in communication is considered good cause to discharge counsel,” *Cousins v. State*, 231 Md. App. 417, 439 (2017) (internal citation and quotations omitted), “[i]t is . . . relevant to examine whether the defendant substantially and unreasonably contributed to the communication breakdown.” *Id.* (internal citation, quotations, and brackets omitted). We have also stated that “attorney-client conflicts justify the grant of a substitution motion only when counsel and defendant are so at odds as to prevent presentation of an adequate defense,” *id.* at 443 (internal citation, quotations, and brackets omitted), and a “disagreement regarding legal strategy is not . . . a meritorious reason to discharge counsel.” *Id.* (citation omitted).

Here, Mr. DeLeon stated that he wanted to discharge defense counsel because he was “proposing another option to proceed,” could not be “convinced as to how this incident happened,” and was not “interested in [Mr. DeLeon’s] feelings.” Mr. DeLeon further stated that defense counsel would not “complain to the prosecutor that this case is not the way they claim it is,” and did not “have the power to convince the other side” to resolve the case in a manner satisfactory to Mr. DeLeon. In response, defense counsel effectively confirmed that he had not advised Mr. DeLeon to accept a plea offer against his wishes, and stated that although he was in a “very difficult position in terms of preparing [for] and trying . . . the case,” he could “adequately represent” Mr. DeLeon if he cooperated with defense counsel. We conclude from these statements that Mr. DeLeon substantially and unreasonably contributed to the difficulties in communication between himself and defense counsel. We further conclude that the disagreement between Mr. DeLeon and defense counsel predominantly concerned legal strategy, and the two were not so at odds as to

prevent presentation of an adequate defense. Hence, the court did not abuse its discretion in finding that there was no meritorious reason for Mr. DeLeon's request to discharge counsel.

**JUDGMENTS OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**