

No. 293254  
COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON

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EMORY E. REEVES, APPELLANT

v.

STATE OF WASHINGTON, RESPONDENT

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APPEAL FROM THE SUPERIOR COURT OF SPOKANE COUNTY  
HONORABLE MICHAEL PRICE

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BRIEF OF APPELLANT

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**I. APPELLANT’S ASSIGNMENTS OF ERROR**

- A. Appellant assigns error to the Court’s denial of his motion to substitute counsel and continue trial date on July 30, 2010.

**II. ISSUE**

- A. Whether the Court committed reversible error by denying Appellant’s motion to substitute counsel and continue the trial date?

### III. STATEMENT OF THE CASE

Mr. Reeves was arraigned on October 28, 2009. RP 6. Over the next eight months he was appointed two attorneys. On or near April 19, 2010, his initial attorney from the Spokane County Public Defender's Office had to withdraw because of a conflict with a potential witness. RP 6. New counsel from outside the Public Defender's Office was appointed, Mr. Terry Ryan, and a new trial date of May 24, 2010, was set. RP 6. The trial date was then continued once more at the State's request because a law enforcement witness was unavailable. RP 11-12. The trial date was then set for June 7, 2010. RP 6. The Trial was then continued the last time to August 2, 2010. RP 6.

Following a pre-trial conference on July 23, 2010, Mr. Reeves motioned the Court to allow him to substitute newly retained counsel. RP 5. Hearing on that motion took place on July 30, 2010. According to Mr. Ryan, all communication between he and Mr. Reeves had broken down following that pre-trial conference. RP 5, 11. Mr. Reeves informed the Court about the communication problems. RP 9. Tracy Collins appeared via telephone and the Court was informed that he had, indeed, been retained by Mr. Reeves, and that a final continuance of sixty days would be required for preparation for trial. RP 5, 10.

The Court denied the motion to substitute and continue the trial date while, at the same time, acknowledging Mr. Reeves was not confident with his current lawyer. RP 14. The factors the Court considered were limited to whether Mr. Ryan was ready to go to trial, and whether the State would be prejudiced by the continuance necessary for Mr. Collins to get prepared. RP 14,15.

#### IV. ARGUMENT

A. The Court's Analysis of the Factors for and Against Substituting Counsel was Faulty and Resulted in an Abuse of Discretion.

The right to counsel of a defendant's choice is guaranteed by the Sixth Amendment. State v. Sherrill, 145 Wn. App. 473, 482, 186 P.3d 1157 (2008). A trial court's denial of a accused's motion to retain counsel and for a continuance to do so may unlawfully deprive a defendant of that right. State v. Chase, 59 Wn. App. 501, 506, 799 P.2d 272 (1990). The standard of review for a court's decision is abuse of discretion. Sherill, supra at 482.

While the right to have counsel of one's choice is limited, State v. Roberts, 142 Wn.2d 471, 515-516, 14 P. 3d 713, "when a defendant requests a continuance to hire different counsel, the trial court must

balance the defendant's interest in counsel of choice against the public's interest in the prompt and efficient administration of justice. State v. Grimes, (No. 40392-7-II, 2011.) Factors to be considered in determining whether a court has abused its discretion in this context are "(1) whether the court had granted previous continuances at the defendant's request; (2) whether the defendant had some legitimate cause for dissatisfaction with counsel; (3) whether available counsel is prepared to go to trial; and (4) whether the denial of the motion is likely to result in identifiable prejudice to the defendant's case of a material or substantial nature". State v. Price, 126 Wn. App. 617, 631-632, 109 P. 3d 27 (2005).

The instant case went on for approximately nine months in total. During that relatively short time Mr. Reeves had two appointed lawyers through no fault of his own. Continuances were granted because of the unavoidable withdrawal of his first lawyer, and because the State had an unavailable witness. Both were beyond Mr. Reeves control, and both occurred within the short time between the end of May 2010 and the July 30, 2010 date of the hearing on the motion to substitute counsel. Under these circumstances there can be no doubt that Mr. Reeves motion to substitute counsel was timely.

The Court acknowledged that Mr. Reeves lacked confidence in his

appointed attorney. RP 14. Both Mr. Reeves and his appointed counsel expressed to the Court that they could not communicate. Mr. Reeves had retained counsel ready to go to trial within a reasonable time. It denied the motion on the record because the case had been continued many times, his appointed attorney was prepared to go to trial, and the State would be prejudiced by further continuances. RP 13-15. In doing so the Court took little notice of the established criteria set forth in Price, supra at 632, and made a scant record of the basis for denying Mr. Reeves motions.

#### V. CONCLUSION

Based on the foregoing, Emory Reeves respectfully requests this Court reverse the ruling of the trial court denying his motions to substitute counsel and continue his case and remand for new trial consistent with that ruling.

Respectfully Submitted this 7<sup>th</sup>, day of February, 2012.



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COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

STATE OF WASHINGTON,            )  
  )  
                                  Respondent,    )            No. 293254  
  )  
vs.                                        )  
  )  
EMORY E. REEVES,                )  
  )  
                                  Appellant.    )

CERTIFICATE OF SERVICE

COMES NOW Tracy Scott Collins, attorney for Appellant, and certifies that on February 7, 2011, I served a copy of the Motion to Extend Time to file Appellant’s Brief , the Declaration in Support thereof and the Brief of Appellant on the Spokane County Prosecuting Attorney’s Office, at 1100 W. Mallon, Spokane, WA 99260, by personal service at that address, and I served a copy of same on Emory E. Reeves by United States Mail at DOC# 878796, R2, G4, P.O. Box 900, Shelton, WA 98584.

CERTIFICATE OF SERVICE - 1

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