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COA NO. 71856-8-1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,
Respondent,

V.

ADRIAN SASSEN VANELSLOO,
Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE
OF WASHINGTON FOR WHATCOM COUTNY

The Honorable Deborra Garrett, Judge

PETITION FOR REVIEW

ADRIAN SASSEN VANELSLOO
PRO SE APPELLANT
S.C.C.C.
191 CONSTINTINE WAY
ABERDEEN, WA 98520

TABLE

TABLE OF CONTENTS

TABLE OF AUTHORITY

A. IDENTITY OF PETITIONER.

The defendant, Adrian Sassen Vanelsloo, Pro Se, Petitions this court to except review of the decision of the court of appeals in this matter, cause number 71856-8-I, dated November 19, 2015.

B. COURT OF APPEALS DECISION.

A copy of the decision is attached as Appendix A.

C. ISSUES PRESENTED FOR REVIEW.

Did the court violate Sassen Vanelsloo's constitutional right to be represented by counsel of choice, and did the court of appeals reach there decision based on facts that were not true?

D. STATEMENT OF THE CASE.

The petitioner adopts as factual background as set forth in the his opening appeals brief.

Facts of note to the importance of this request are the trial court had granted (2) previous continuances leading up to the request made by the defendant to hire new counsel. One (1) continuance requested by the state due to the prosecuting attorney retiring, and one to the defendant due to the defense needing more time to prepare.

The defendant sought to replace his counsel prior to trial due to the fact that his current counsel Ms. Anderson, not only currently was

representing a witness against the defendant, further, the state made it known that they could call Ms. Anderson as a witness against Mr. Sassen Vanelsloo at his trial in this cause number.

For these reasons the defendant sought to replace his appointed counsel with a paid attorney at his own expense. The defendant sought Michelle Dellino from the Dellino Law Group and paid out a retainer. Ms. Dellino filed a motion to take over the defense on behalf of the defendant.

Ms. Dellino petitioned the court for a continuance so that she could get caught up on the case, and she further wanted to seek a expert witness on the subject of Voluntary intoxication, and Diminished capacity. If the defense would have been allowed to argue there theroy of the facts, this expert witness could have provided the defendant with a complete defense to the charges.

The judge denied this request for continuance stating that she wa "not prepared to order a continuance long enough to allow new counsel to step in and take full advantage of all court rules that permit a two-week evaluation period then additional time for determining whether experts are necessary, That should have been done before this if it was the defense plan." 12RP 36.

The judge would not allow the change of counsel, nor would the court allow a continuance for counsel to pursue a complete defense.

UNITED STATES V. GONZALEZ-LOPEZ, 399 F.3d 924, 928, 934 (8th cir. 2005)(Quoting UNITED STATES V. MENDOZA-SALGATO, 964 F.2d 409 (2006). "It is improper for the trial court to refuse the needed continuance

to enable private counsel to prepare on the basis that assigned counsle followed a different strategy. Different trial strategies including whether to retain an expert to pursue a particular line of defense lie at the heart of the right to counsel of choice."

The Division I court abused its discretion by denying the issues brought by the defense in the appellants opening brief while relying on unsupported facts in violation UNITED STATES V. LANKENFORD, 955 F.2d 1545, 1548 (11th cir. 1992) also STATE V. DEPAZ, 165 Wash.2d 842, 858, 204 P.3d 217 (2009).

On page four (4) of the ruling on the appeals brief, the Division I court of appeals stated that "the court had granted seven (7) previous continuances resulting in a one (1) year delay."

This is a misunderstanding of this case. Ms. Anderson was defending Mr. Sasse Vanelsloo on three (3) seperate cause numbers. Although between all three of these cause numbers there had been seven (7) continuances, on this cause number there had only been two (2) continuances granted, one for the defense and one for the state.

Two (2) continuances is not an unreasonable number of continuances The defendant was seeking new counsel to represent him in a fashion to provide him with a complete defense for all charges brought against him on this cause.

For the court to abuse its discretion is a direct violation of the defendants Fourteenth Amendment rights under the constitution of the united states of America.

E. CONCLUSION.

For the reasons set forth, this court should grant review and reverse the decision of the court of Appeals in this matter.

DATED THIS 19th DAY OF NOVEMBER, 2015.

RESPECTFULLY SUBMITTED,

BY: _____

ADRIAN SASSEN VANELSLOO PRO SE
STAFFORD CREEK CORRECTION CENTER
191 CONSTINTINE WAY
ABERDEEN, WA 98520.

CERTIFICATE OF SERVICE

I, ADRIAN SASSEN VANELSLOO, SWEAR UNDER THE THREAT OF THE PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT ON TODAYS DATE OF NOVEMBER 24, 2015, I DID CAUSE A COPY OF THE FOLLOWING DOCUMENTS TO BE SENT TO THE FOLLOWING ADDRESSES THROUGH THE UNITED STATES POSTAL SERVICE USING THE PRISONS "LEGAL MAIL" SYSTEM.

CLERK OF THE COURT
DIVISION I COURT OF APPEALS
ONE UNION SQUARE
600 UNIVERSITY STREET
SEATTLE, WA 98101-4170

AND TO:

WHATCOM COUNTY PROSECUTORS OFFICE
ATTORNEY AT LAW
311 GRAND AVENUE SUITE 201
BELLINGHAM, WA 98225

THIS DOCUMENT WAS SIGNED IN THE CITY OF ABERDEEN WASHINGTON ON TODAYS DATE OF NOVEMBER 24, 2015.

ADRIAN SASSEN VANELSLOO PRO SE
DOC#837829
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191 CONSTINTINE WAY
ABERDEEN, WA 98520

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. ADRIAN SASSEN VANELSLOO, Appellant	)	No. 71856-8-I DIVISION ONE UNPUBLISHED OPINION FILED: November 16, 2015

TRICKEY, J. — Adrian Sassen Vanelsloo appeals his judgment and sentence, claiming that the trial court erred when it denied his motion to substitute counsel. The court denied the motion because it had already granted numerous defense continuances and the defendant's new counsel would need additional time to prepare. We find no error and affirm the convictions. However, because the court erred when it imposed community custody conditions and discretionary legal financial obligations, we remand to strike the community custody conditions and to evaluate Sassen Vanelsloo's ability to pay legal financial obligations.

FACTS

Adrian Sassen Vanelsloo was involved in a car chase with police on December 11, 2012. The chase ended when an officer maneuvered Sassen Vanelsloo's car into a ditch. Sassen Vanelsloo surrendered after a two and a half hour standoff. The State charged him with attempting to elude a pursuing police vehicle, with both firearm and actual endangerment allegations, two counts of unlawful possession of a firearm in the first degree, and driving while license suspended in the second degree.

Sassen Vanelsloo was arraigned on December 21, 2012. The trial court

appointed counsel for him. The court initially set his trial for February 11, 2013. Over the course of the next year, the court granted seven continuances.

On February 4, 2014, defense counsel brought two motions. She moved to withdraw and substitute counsel and sought an eighth continuance based on newly discovered evidence. Sassen Vanelsloo's newly-retained counsel requested a two-week continuance to evaluate the case, plus a hearing at the end of those two weeks to determine if she needed additional time. The court denied the motion to substitute counsel but granted the motion for a continuance. The court agreed that Sassen Vanelsloo's new counsel could substitute in if she were prepared by the new trial date, March 3, 2014. Before the trial, his new counsel informed appointed counsel that she would not be substituting in because she was not ready. Sassen Vanelsloo's appointed counsel represented him at trial.

Trial began on March 3, 2014. The jury convicted Sassen Vanelsloo on all counts. Thereafter, the court sentenced him to 115 months confinement. His sentence included community custody conditions for the attempting to elude a pursuing police vehicle and both firearm possession counts. The court imposed several discretionary legal financial obligations. Sassen Vanelsloo appeals.

ANALYSIS

Counsel of Choice

Sassen Vanelsloo argues that the court abused its discretion when it denied his request to substitute counsel. He contends that this denial was a violation of his Sixth Amendment right to counsel of choice. We disagree.

The Sixth Amendment guarantees criminal defendants the right to counsel.

U.S. CONST. amend. VI. For a defendant who can afford to hire private counsel, that right includes the right to choose a qualified attorney to represent him. State v. Hampton, 182 Wn. App. 805, 817-18, 332 P.3d 1020 (2014), review granted, 182 Wn.2d 1002, 342 P.3d 327 (2015). But, this right does not mean that a defendant may "unduly delay the proceedings." State v. Aguirre, 168 Wn.2d 350, 365, 229 P.3d 669 (2010). Therefore, when a defendant requests a continuance in order to substitute counsel, the court must balance "the defendant's right to choose his counsel against the public's interest in the prompt and efficient administration of justice." Aguirre, 168 Wn.2d at 365.

Until recently, Washington courts considered four factors when making this determination:

> (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, even though it fell short of likely incompetent representation; (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, 632, 109 P.3d 27 (2005). However, a recent opinion from this court held that United States Supreme Court precedent "precludes application of [the second and fourth] factors." Hampton, 182 Wn. App. at 824; see United States v. Gonzalez-Lopez, 548 U.S. 140, 146, 126 S. Ct. 2557, 165 L. Ed. 2d 409 (2006). Therefore, a court should only consider the first and third factors.

We review the denial of a continuance for an abuse of discretion. Hampton, 182 Wn. App. at 827.

Here, the trial court did not abuse its discretion. Both remaining Price factors way against granting Sassen Vanelsloo's motion.

First, the court granted seven continuances, resulting in a one-year delay, before Sassen Vanelsloo attempted to substitute counsel. Five of those continuances were sought by the defense alone. When granting the defense's second continuance in late June 2013, the court "note[d] that all of these [were] 2012 cases, so it would be good to get them to trial."[1] The court expressed a similar concern when deciding whether to grant Sassen Vanelsloo's request to substitute counsel. That the court already granted five continuances at the request of defense counsel supports the trial court's decision to deny Sassen Vanelsloo's motion to substitute counsel.

Sassen Vanelsloo argues that the trial court did not "hold the previous continuances against Sassen Vanelsloo," because he had objected to some of them.[2] To the extent that Sassen Vanelsloo is arguing that the trial court did not rely on this factor when it denied Sassen Vanelsloo's motion to substitute counsel, we disagree. Although the court commented that many of the defenses were not "Mr. Sassen Van-Elsloo's [sic] making or his fault," it noted that the delay in the case had not "been one-sided and only the State asking for continuances."[3]

Second, Sassen Vanelsloo's newly-retained counsel was not prepared to proceed without a continuance. She requested a two-week continuance and a hearing at the end of that period to determine whether she could "prepare

[1] Report of Proceedings (RP) (Jun. 27, 2013) at 15.
[2] Appellant's Br. at 17.
[3] RP (Feb. 4, 2104) at 32.

adequately on the Court's timeframe to represent Mr. Sassen [Vanelsloo]."[4] The court expressed concern that allowing the substitution of counsel would mean another significant delay. For unrelated reasons, the court continued the trial until March 3, 2014. The court agreed to permit Sassen Vanelsloo's substitution of counsel at that time, provided the new counsel was adequately prepared. She was not. The unpreparedness of the newly-retained counsel also supports the court's decision to deny Sassen Vanelsloo's motion to substitute counsel.

In conclusion, given the number of defense continuances already granted, it was a proper exercise of the court's discretion to deny Sassen Vanelsloo an open-ended continuance in order to allow his new attorney to prepare.

Sassen Vanelsloo argues that allowing his new attorney sufficient time to prepare "would not have made any meaningful difference in the scheme of things."[5] Specifically, he argues that the long delay weighs in favor of another continuance, because justice has already been delayed. This is not persuasive. The court expressed concern about the long delay months before Sassen Vanelsloo's request to substitute counsel. It was appropriate for the court to consider "the demands of its calendar." Hampton, 182 Wn. App. at 826.

Finally, Sassen Vanelsloo argues that the court's refusal to grant a continuance denied him a "fair opportunity" to retain chosen counsel.[6] But, as the court noted, Sassen Vanelsloo did have "a lot of time to consider hiring private

[4] RP (Feb. 4, 2014) at 12.
[5] Appellant's Br. at 19.
[6] Appellant's Br. at 19 (quoting Powell v. Alabama, 287 U.S. 45, 53, 53 S. Ct. 55, 77 L. Ed. 158 (1932)).

counsel."[7] He waited over one year. Additionally, this is not a case, unlike in Hampton, where the charges increased dramatically right before trial. See 182 Wn. App. at 826-27. Here, the charges had been the same since January 2013.[8] Denying Sassen Vanelsloo's request for a continuance did not deprive him of a chance to hire his own counsel.

Statement of Additional Grounds for Review

In his Statement of Additional Grounds for Review, Sassen Vanelsloo contends that the court abused its discretion when it granted a continuance to accommodate a State's witness but denied his motion for a continuance to substitute counsel. He also contends that these rulings demonstrated bias and violated the appearance of fairness doctrine.

We reject Sassen Vanelsloo's first argument for reasons already discussed. Sassen Vanelsloo's second argument is also without merit.

"Judicial rulings alone almost never constitute a valid showing of bias." In re Davis, 152 Wn.2d 647, 692, 101 P.3d 1 (2004). As discussed above, the court's denial of Sassen Vanelsloo's request to substitute counsel was a proper exercise of discretion. Additionally, it is a proper exercise of discretion for the court to grant a continuance to accommodate the scheduled vacation of a police officer witness. State v. Grilley, 67 Wn. App. 795, 799, 840 P.2d 903 (1992). Neither these rulings, nor the court's comment that it was "less sympathetic" to Sassen Vanelsloo's request to substitute counsel than to a request for a continuance on the basis of

[7] RP (Feb. 4, 2014) at 35.
[8] The State amended the information three times, but after adding a second count of unlawful possession of a firearm to the First Amended Information, the charges themselves did not change.

newly discovered evidence, show any bias.[9] "Without evidence of actual or potential bias, an appearance of fairness claim cannot succeed and is without merit." State v. Post, 118 Wn.2d 596, 619, 826 P.2d 172 (1992).

Sentence

Finally, Sassen Vanelsloo raises two issues regarding his sentence. First, he argues that the court exceeded its authority by imposing community custody conditions for the counts of eluding a pursuing police vehicle and the firearm possessions. Second, he argues that the court improperly imposed discretionary legal financial obligations without inquiring into Sassen Vanelsloo's ability to pay. Sassen Vanelsloo asks that this court strike the community custody conditions and remand this case to the trial court for an individualized inquiry into his ability to pay legal financial obligations.

The State properly concedes that the community custody conditions were outside the scope of the trial court's authority. The court did not have the authority to impose community custody conditions for eluding a pursuing police vehicle or unlawful possession of a firearm. See RCW 9.94A.701; RCW 9.94A.441(2); former RCW 9.94A.030(45), (54)(a) (2012).

The State does not object to remanding this case for a reconsideration of Sassen Vanelsloo's ability to pay legal financial obligations. We agree that this is proper. Before imposing discretionary legal financial obligations, the trial court must make an individualized inquiry into a criminal defendant's ability to pay them. State v. Blazina, 182 Wn.2d 827, 838, 344 P.3d 680 (2015).

[9] RP (Feb. 4, 2014) at 35.

We affirm the judgment and sentence and remand for the trial court to strike the community custody conditions and to reconsider the imposition of discretionary legal financial obligations.

Trickey, J

WE CONCUR:

Dwyer, J.

Cox, J.