

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 332

September Term, 2016

BROADUS LORENZO MASON, JR.

v.

STATE OF MARYLAND

Woodward, C.J.,
Nazarian,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 2, 2017

*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.

In the Circuit Court for Worcester County, a jury convicted appellant, Broadus Lorenzo Mason, Jr., of distribution of cocaine and related offenses. On appeal, Mason presents two questions for our review:

1. Did the trial court err in its handling of Appellant’s request to discharge counsel?
2. Did the trial court err in permitting the trial to proceed with jury instructions, closing argument and verdict in Appellant’s absence?

Finding no error, we affirm.

Mason was charged with various drug offenses after engaging in narcotics transactions with an undercover police officer. He was assigned legal representation from the Office of the Public Defender (“assigned counsel”). At a pretrial conference, one month before trial, Mason requested a postponement in order to obtain private counsel. The court stated that it would consider granting a postponement if Mason retained private counsel prior to trial, but counsel was not ready to proceed. Mason was advised by the court that if he did not hire private counsel prior to trial, his options were to either proceed with assigned counsel or represent himself.

On the day of trial, Mason told the court that he had spoken to a private attorney but needed more time to assemble enough money to retain the attorney. At Mason’s request, and without objection from the State, the trial was postponed. Mason was advised by the court at that time that, unless Mason indicated otherwise, his assigned counsel would continue to represent him until such time as private counsel entered an appearance.

One month later, on the next scheduled trial date, Mason appeared, again with his assigned counsel, and requested a second postponement. As grounds for the postponement,

Mason stated that he did not see “eye to eye” with assigned counsel, whom he claimed did not “feel like he can win[,]” and that he wanted to “find someone that would 100 percent fight for my family and for my freedom.” When asked what efforts he had made to obtain private counsel in the time since the first postponement had been granted, Mason responded, “I’ve been – I had my hand in God’s hands.” The court denied the motion, finding that Mason had not stated a meritorious reason for another postponement, and the one-day trial began. At no time did Mason express a desire to proceed without counsel.

After the State rested, Mason moved for judgment of acquittal, which the court denied. Defense counsel stated that Mason would not be calling any witnesses, and Mason waived his right to testify. Defense counsel renewed the motion for judgment of acquittal, which was again denied. The court then recessed for a ten-minute break.

When the trial resumed 17 minutes later, Mason was not present. Defense counsel advised the court that he called Mason on his cell phone, but Mason did not answer, and his phone appeared to be turned off. Courthouse security had searched inside and outside of the courthouse, and defense counsel searched the corridor and the men’s restroom, but Mason could not be located.

When the trial had been in recess for 20 minutes, the court stated its intent to resume the trial. Neither the State nor defense counsel objected, but defense counsel queried whether they “should [] give it a little bit more time, or would we be viewed in hindsight as being too hasty?” and then deferred to the trial judge, who stated, “I haven’t heard anything to suggest to me that if we waited another ten minutes that he would show up.”

The trial resumed with jury instructions and closing argument. At 4:00 p.m., one hour and 20 minutes after Mason had disappeared from the courthouse, the jury returned a verdict.

Mason first contends that his expression of dissatisfaction with assigned counsel “was sufficient to apprise the court of his desire to proceed without that counsel and hence without any counsel[,]” and that the court should have conducted an inquiry to determine if he wished to proceed *pro se*. We disagree. “In order to trigger an inquiry by the trial court regarding whether the defendant desires to waive his right to counsel and proceed *pro se*, the defendant must make a statement that reasonably indicates that he desires to invoke the right to self-representation.” *Pinkney v. State*, 427 Md. 77, 90 (2012). Here, Mason stated only that he wanted a second postponement so he could find a different attorney; as in *Pinkey*, Mason “made no statement that the trial judge could have reasonably construed as indicating a desire to proceed *pro se*.” *Id.*

Mason next contends that the court abused its discretion in failing to make an adequate inquiry into whether he had intentionally absented himself from trial before allowing the trial to proceed in his absence, and in failing to continue the trial until he could be located. We note that Mason has never offered an explanation for his absence, either in a motion for new trial, or at the sentencing hearing, or in the brief that he filed in this appeal.

“[B]efore trying a defendant *in absentia*, the trial court must both (i) find a knowing and voluntary waiver of the right to be present at trial and (ii) exercise sound discretion in determining whether to proceed with the trial of an absent criminal defendant.” *Collins v.*

State, 376 Md. 359, 376 (2003) (citation omitted). “[W]hen a defendant on bond simply vanishes, it is well within a court’s discretion to conclude, from that fact alone, absent any other explanation, that the absence is voluntary, even over the objection of defense counsel.” *Lewis v. State*, 91 Md. App. 763, 770-71 (1992). Moreover, there is no abuse of discretion when a circuit court decides to proceed with trial when, as in the instant case:

(1) a defendant, free on bond, failed to return to his trial at the appointed time; (2) defense counsel never objected to continuing with trial; and (3) neither defense counsel nor the defendant himself offered any suggestion that appellant’s absence was anything other than voluntary or that it in any way prejudiced his case.

Id. at 772 (footnote omitted). Accordingly, we conclude that, because defense counsel did not object to resuming the trial when Mason did not return after the break, and no suggestion has been made that his failure to return was involuntary, or that it resulted in any prejudice, proceeding with Mason’s trial in his absence was not an abuse of discretion.

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