Circuit Court for Allegany County
Case No. C-01-CR-17-176

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2621

September Term, 2018

TRAVIS DEVON TERRY

v.

STATE OF MARYLAND

Fader, C.J.,
Gould,
Battaglia, Lynne A.,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Gould, J.

Filed: November 15, 2019

*This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

Appellant Travis Devon Terry appeals from his conviction in the Circuit Court for Allegany County for first-degree assault of a correctional officer, possession of a weapon in a place of confinement, and related offenses. Mr. Terry claims that the circuit court wrongfully denied his pre-trial motion for a change of venue and his mid-trial request to discharge his attorney. Finding no abuse of discretion with respect to either ruling, we affirm.

FACTS AND LEGAL PROCEEDINGS

Mr. Terry was an inmate in cell 32 on Housing Unit 1, Tier B at the North Branch Correctional Institution ("NBCI") in Cumberland, Maryland. James Vinci was a correctional officer at NBCI, assigned to the same unit. On the morning of April 10, 2013, Officer Vinci went to Mr. Terry's cell to take him to the shower. When Officer Vinci opened the door to the cell, Mr. Terry stepped out into the corridor and began stabbing Officer Vinci "around the neck area" with a 3- to 4-inch metal shank.

Randall Leasure, another correctional officer at NBCI, responded when he heard a commotion. Upon seeing that Mr. Terry was stabbing Officer Vinci, Officer Leasure radioed for help and pepper-sprayed Mr. Terry to subdue him. Two other NBCI correctional officers—Jamey Durst and Glenn Hoover—witnessed the end of the attack and assisted in subduing Mr. Terry.

Officer Vinci sustained stab wounds to his forehead, chest, one eye, and both sides of his neck. He was transported to the University of Maryland Shock Trauma Center and was hospitalized for two days.

Status Hearing

At Mr. Terry's pre-trial status hearing, the State agreed to *nolle prosequi* Mr. Terry on two counts—attempted first-degree murder and attempted second-degree murder—in return for Mr. Terry's agreement to waive his right to a jury trial. Defense counsel questioned Mr. Terry on the record to establish his knowing and voluntary waiver of this right. During that exchange, Mr. Terry explained that he was electing a bench trial out of fear he couldn't get a fair trial from a jury. Mr. Terry based his concern on statements he attributed to the correctional officers who would be testifying against him "that [he wouldn't] get a fair trial in [Allegany C]ounty." Addressing defense counsel, Mr. Terry said, "[t]hat's why I was asking you could we get a change of venue motion and you told me no. You couldn't file it. And I asked for a change of venue, that's why I am electing to a jury trial, or I mean to a Judge trial."

The court interjected that if Mr. Terry wished to file a motion for change of venue, the court could "hear that right now, since everyone is here." The court asked Mr. Terry why he wanted his case transferred. Mr. Terry explained that the:

> majority of [the jury pool] may be friends with the correctional officers in that institution that is going to be witnesses and testifying in this case, and certain witnesses, which I can name a few if you want me to, that came to my cell door saying they can't wait for me to go to trial so I can get another life sentence, which I already have, life without parole, and probably not going anywhere, but I am still not going to let them say anything and give me another life sentence when I feel as though I wasn't in the wrong.

The court advised Mr. Terry that the "process for selection of jurors" was designed to "screen[] out for cause any jurors who would feel the way [Mr. Terry] [was]

describing" and therefore, Mr. Terry's rationale would not, in the court's view, be a proper basis to transfer the case to a different venue. The court asked Mr. Terry if he had any other reasons, such as "undue publicity[] that has affected the jury pool." Mr. Terry responded that he "wouldn't know if anything [had] been in the public or not" because he was on disciplinary segregation and was not permitted access to news broadcasts. There was no further discussion on that issue.[1]

The court then advised Mr. Terry further about his right to a jury trial, including his right to preemptory challenges, and the rights he would be relinquishing by electing a bench trial. Defense counsel conferred privately with Mr. Terry, Mr. Terry then waived his right to a jury trial, and the State entered a *nolle prosequi* on the two attempted murder charges.

Bench Trial and Sentencing

A bench trial was held in July 2018. The State presented five witnesses: the victim and four other correctional officers, including Officers Leasure, Durst, and Hoover. At the close of the State's case, defense counsel moved for a judgment of acquittal, which was denied. Mr. Terry then requested that his attorney be discharged and replaced, which the court also denied.

[1] Although Mr. Terry did not specifically move the court to change the venue, we believe that he viewed his request as a formal motion, and therefore we are treating his request as such. We are likewise treating the court's response to Mr. Terry as a denial of his request.

Mr. Terry testified in his own defense, and at the close of the case, the court found Mr. Terry guilty of first-degree assault of Officer Vinci, possession of a weapon in a place of confinement, and various lesser included offenses. The court sentenced Mr. Terry to 20 years imprisonment for the first-degree assault and a consecutive term of 5 years for possession of a weapon in a place of confinement, with the other crimes merging into those convictions.

DISCUSSION

Change of Venue

Mr. Terry contends that the trial court erred in denying his oral motion for a change of venue. The State counters that the motion was not properly before the court because Mr. Terry "never actually made a formal motion for a venue change as required by the Maryland Constitution and governing Rule."[2] We reject this argument because the State failed to object when, at the court's invitation, Mr. Terry raised the issue in open court. See Gross v. State, 186 Md. App. 320, 333 (2009) (State's argument was waived because it was not raised or decided at the trial level); see also Md. Rule 8-131(a). We will therefore review the court's denial of Mr. Terry's motion on the merits.

The decision whether to change venue "rests within the sound discretion of the trial court." Pantazes v. State, 376 Md. 661, 675 (2003) (citation omitted). Consequently, a trial court's decision "will not be reversed absent a showing that that discretion was

[2] A motion for a change in venue must be made in writing and under oath. Article IV, Part I, Section 8(c) of the Maryland Constitution; Md. Rule 4-254(b)(1). Mr. Terry made no written motion and his request to change venue was not under oath.

abused." Garland v. State, 34 Md. App. 258, 260 (1976). Under an abuse of discretion standard, an appellate court will not disturb the trial court's ruling "unless it is 'well removed from any center mark imagined by the reviewing court and beyond the fringe of what the court deems minimally acceptable.'" Patterson v. State, 229 Md. App. 630, 639 (2016) (quoting McGhie v. State, 224 Md. App. 286, 298 (2015)); see also Aventis Pasteur, Inc. v. Skevofilax, 396 Md. 405, 418 (2007) (citations omitted) (cleaned up) (court abuses its discretion "where no reasonable person would take the view adopted by the trial court or when the court acts without reference to any guiding principles").

To obtain a change in venue, the defendant must show that "he or she had been prejudiced by adverse publicity and that the *voir dire* examination of the prospective jurors, available to him or her, would not be adequate to assure him or her a fair and impartial trial." Stouffer v. State, 118 Md. App. 590, 631 (1997), aff'd in part, rev'd in part, on other grounds, 352 Md. 97 (1998).

Mr. Terry admitted that he was unaware of any adverse publicity about his case, and he neither argued nor established that *voir dire* would not have screened out biased jurors. See Stouffer, 118 Md. App. at 631. At bottom, Mr. Terry's request for a change in venue rested on his speculation that the jurors would be "friends with the correctional officers" who would be witnesses. Denying a change of venue motion that was based solely on such speculation was not an abuse of the court's discretion.

Motion to Discharge Counsel

Mr. Terry contends that the trial court abused its discretion in denying his request to discharge and replace his attorney. According to Mr. Terry, the trial court failed to consider his argument that there had been "a complete breakdown in communications with his attorney" and erroneously found that discharging counsel would have a "significant" disruptive effect on his trial. We disagree.

Mr. Terry made his request after the State rested its case-in-chief, when he was being advised of his right to testify in his own defense. The following exchange occurred:

> THE COURT: Alright. What do you want to raise, Mr. Terry?
>
> MR. TERRY: My Sixth Amendment right to effective assistant counsel, cause I only saw my attorney for 10 minutes out of my past two times of being here. I wanted to have a sit-down so we could discuss a lot of questions and things that what we was going to actually ask them witnesses, but we never got a chance to.
>
> THE COURT: Alright, and what relief are you looking for Mr. Terry?
>
> MR. TERRY: As far as questioning them.
>
> THE COURT: With, you have raised an issue of whether you've had effective assistance of counsel, and my question to you is what remedy, what are you, what is it that you want the Court to do?
>
> MR. TERRY: I want a new representative?
>
> THE COURT: You want to terminate the services of Mr. Schram, is that …
>
> MR. TERRY: Yes.
>
> . . . [the court took recess]

[the court resumed] . . .

THE COURT: . . . Okay, before we took our break uh, Mr. Terry had made a request to um, replace Mr. Schram as his counsel . . . . now Mr. Terry . . . you . . . have made that request. We are in the middle of trial. . . [W]ould you review for me why you think um, you have uh, good cause in order to um, ask for Mr. Schram to be uh, excused from this matter?

MR. TERRY: Second, though, one of the reasons is when my last court date was here, right, I asked Mr. Schram to come visit me so we can go over all the details thoroughly as far as my defense, and today was the first day I seen him, and each time it's only been a five minute review of my case, so for us to go over, and that 10 minutes total was not enough time for me to understand his whole defense.

THE COURT: Alright. Anything else?

MR. TERRY: And I asked a few questions that I needed answered, but they [weren't asked] to the witnesses.

THE COURT: Alright. In, in considering a request that is made by the Defendant . . . during the course of trial to um, relieve his attorney -- and I note [defense counsel] is appointed counsel through the Office of the Public Defender -- . . . the Court is required to evaluate whether or not the Defendant has good cause um, that, such that . . . it would be a reason that would've compelled granting such a request if it was made prior to trial. Uh, in determining the . . . Defendant's reasons for discharging counsel uh, that would justify the disruption that would flow from such an action, the Court's to consider the merits of the reason for the discharge. . . . I do not find anything in [defense counsel's] conduct of this matter that would suggest that he is in any way unprepared; uh he has . . . reviewed documents uh; and uh, the Court is not um, satisfied that . . . he is in any way unprepared or . . . has uh, failed to address the representation of the Defendant.

. . . [T]he Court further finds that uh, notes that we are now at the point in this case where the State's case has closed. The disruptive effect of a discharge . . . in this proceeding would be significant uh, and . . . based upon those considerations, the Court finds that there is not good cause to replace Mr. Schram, and the Defendant's request will be denied.

When a criminal defendant seeks to discharge counsel and obtain a continuance to retain new counsel, the timing of the request dictates the analysis that must be undertaken by the court. If the request is made before the trial begins, the trial court must comply with Rule 4-215, which obligates the court to take an active role in ascertaining the defendant's reasons for the request.[3]

A different standard applies where, as here, the request is made after "meaningful trial proceedings" have begun. See State v. Campbell, 385 Md. 616, 634 (2005). When that happens, Rule 4-215 does not apply, and "the right to substitute counsel and the right to defend pro se are curtailed to prevent undue interference with the administration of justice." State v. Brown, 342 Md. 404, 412 (1996) (citations omitted). And, we review the trial court's ruling under the far more lenient "abuse of discretion standard." Id. at 429.

In deciding a mid-trial motion to discharge counsel, "[t]he court must conduct an inquiry to assess whether the defendant's reason for dismissal of counsel justifies any resulting disruption," focusing on the following factors:

> (1) the merit of the reason for discharge; (2) the quality of counsel's representation prior to the request; (3) the disruptive effect, if any, that discharge would have on the proceedings; (4) the timing of the request; (5) the complexity and stage of the proceedings; and (6) any prior requests by the defendant to discharge counsel.

[3] Rule 4-215(e) permits the discharge of defense counsel "[i]f the court finds that there is a meritorious reason for the defendant's request," and the failure to comply with this rule constitutes reversible error. Marshall v. State, 428 Md. 363, 367, 372 (2012) (quotations omitted).

Id. at 428. The defendant must demonstrate good cause, such as a conflict of interest, a complete breakdown of communications, or an irreconcilable conflict. Brown, 342 Md. at 415 (citing McKee v. Harris, 649 F.2d 927, 931 (2d. Cir. 1981)). The court "need not do any more than supply the forum in which the defendant may tender [his] explanation." State v. Hardy, 415 Md. 612, 628 (2010); see also Campbell, 385 Md. at 635 (the trial court is not obligated to make further inquiry beyond the reasons offered by the defendant if the alleged problems are apparent based on defendant's statements).

With respect to the factors identified above, we make several observations. First, the trial court gave Mr. Terry two opportunities to explain the basis for his request—one before the break and one after. Thus, the court "fulfilled [its] duty to provide" Mr. Terry with an "opportunity to explain his request." See Hardy, 415 Md. at 630.

Second, the reasons offered by Mr. Terry related to his counsel's alleged pre-trial communication failures, as opposed to, for example, an irreconcilable difference that arose only after the trial began. Mr. Terry complained that before the trial, he did not have the chance to go over the questions he wanted his counsel to ask the State's witnesses. But given that the State had concluded its case, Mr. Terry did not explain how completing the trial at a future date with a new attorney would have remedied that alleged problem.[4] Further, Mr. Terry did not complain of a complete breakdown of

[4] Moreover, we are mindful, and we presume the trial court was too, of the opportunistic timing of Mr. Terry's motion. That is, Mr. Terry rolled the dice to see if the prosecution could survive a motion for judgment of acquittal, and then moved to discharge only after his motion was denied.

communications or irreconcilable conflicts with his attorney. See Brown, 342 Md. at 415.

Third, because the State had already rested when Mr. Terry raised this issue, the court was well-positioned to have assessed the overall performance and preparedness of his counsel, his interactions with his attorney during the State's case-in-chief, and the effectiveness of his defense counsel's examination of the State's witnesses. Informed by these observations, the court had an adequate basis to favorably assess the quality of Mr. Terry's counsel's representation and whether his counsel was sufficiently prepared and able to effectively represent him for the remainder of the trial. See Henry v. State, 184 Md. App. 146, 174 (2009). The trial court had ample basis, therefore, to conclude that Mr. Terry had not established good cause to suspend the trial so that new counsel could be appointed. See Brown, 342 Md. at 416 ("tactical disagreements short of a total breakdown in communication between attorney and client generally do not warrant mid-trial substitution of counsel").

Finally, the court considered the disruptive effect that a discharge of Mr. Terry's counsel at that point of the trial would have had on the proceedings and found that a discharge at that time would cause a "significant" disruption in the proceedings. A trial judge is uniquely situated to evaluate the disruption and weigh it against the potential benefit that would result from discharging defense counsel.

Mr. Terry tries to minimize this disruption, emphasizing that it was a bench trial that had taken up less than a day of the court's time and contending that the completion

of the trial could have easily been rescheduled. This argument inadequately takes into consideration the time constraints and demands imposed on trial judges and the court, which the trial judge was in the best position to assess. And because the record shows that the trial judge did, in fact, consider the disruption factor, there was no abuse of discretion.

We therefore affirm.

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