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January 15, 2016

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You are hereby notified that the Court has entered the following opinion and order:

2015AP1036-CR State of Wisconsin v. Kevin D. Whitaker-Bradford
(L.C. # 2013CF2898)

Before Kloppenburg, P.J., Lundsten and Higginbotham, JJ.

Kevin Whitaker-Bradford appeals a judgment of conviction, entered on a jury verdict, for armed robbery and first-degree reckless injury. He argues that he is entitled to a new trial on the grounds that the circuit court erred when it denied Whitaker-Bradford's request to discharge his attorney and have new counsel appointed. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We affirm the judgment of conviction.

As prospective jurors were being brought to the courtroom for voir dire on the day of trial, Whitaker-Bradford's counsel told the court that Whitaker-Bradford wanted the court to permit him to withdraw as counsel because Whitaker-Bradford was "unsatisfied" with counsel's work. When the court asked Whitaker-Bradford to explain, he stated that trial counsel was not representing him right, that he had been waiting "too long" for trial, that trial counsel wanted him to take a plea, and that the jury trial had previously been adjourned to allow the State to locate witnesses. The circuit court refused to allow counsel to withdraw.

"Whether counsel should be relieved and a new attorney appointed in his or her place is a matter within the trial court's discretion." *State v. Lomax*, 146 Wis. 2d 356, 359, 432 N.W.2d 89 (1988). In evaluating whether a circuit court's denial of a motion for substitution of counsel is an erroneous exercise of discretion,

a reviewing court must consider a number of factors including: (1) the adequacy of the court's inquiry into the defendant's complaint; (2) the timeliness of the motion; and (3) whether the alleged conflict between the defendant and the attorney was so great that it likely resulted in a total lack of communication that prevented an adequate defense and frustrated a fair presentation of the case.

Id. at 360. Relevant factors for the circuit court's consideration are: "[t]he length of the delay requested"; "[w]hether there is competent counsel presently available to try the case"; "[w]hether other continuances had been requested and received by the defendant"; "[t]he convenience or inconvenience to the parties, witnesses and the court"; and "[w]hether the delay seems to be for legitimate reasons; or whether its purpose is dilatory[.]" *Id.* at 360. Though it is conceivable that conflicts can arise between counsel and defendant on the day of trial, "[e]venth-hour requests are generally frowned upon as a mere tactic to delay the trial." *Id.* at 362.

In response to the circuit court's inquiry, Whitaker-Bradford identified no specific example of how a lack of communication prevented an adequate defense and frustrated a fair presentation of the case. There is nothing in the record¹ that indicates any conflict between the defendant and the attorney.

In light of the record and Whitaker-Bradford's failure to set forth anything but general allegations, it was a proper exercise of the circuit court's discretion to deny Whitaker-Bradford's request to discharge counsel on the day of trial.

Upon the foregoing reasons,

IT IS ORDERED that the judgment is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals

¹ As the circuit court noted at the June 2, 2014 trial, a trial date set six months earlier, in December 2013, had been cancelled at Whitaker-Bradford's request because he stated that he wished to plead guilty instead. At the scheduled plea hearing in January 2014, he reversed course and again requested a jury trial, which was then set for March. In March 2014, the State was granted one adjournment until June 2, 2014, over Whitaker-Bradford's trial counsel's vigorous objection, to locate a key witness.