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**DISTRICT III**

August 24, 2021

To:

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

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2020AP1370-CR                      State of Wisconsin v. Yee Leng Vang (L. C. No. 2016CF567)

Before Stark, P.J., Hruz and Nashold, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Yee Vang challenges the circuit court's exercise of discretion in denying his request to substitute counsel on the day of trial.<sup>1</sup> Based upon our review of the briefs and record, we

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<sup>1</sup> See *State v. Darby*, 2009 WI App 50, ¶¶28-29, 317 Wis. 2d 478, 766 N.W.2d 770 (circuit court's determination of whether to grant request for new counsel is reviewed for erroneous exercise of discretion). We note that Vang uses the phrase "abuse of discretion." Our supreme court replaced the phrase "abuse of discretion" with "erroneous exercise of discretion" in 1992. See *City of Brookfield v. Milwaukee Metro. Sewerage Dist.*, 171 Wis. 2d 400, 423, 491 N.W.2d 484 (1992).

conclude at conference that this case is appropriate for summary disposition, and we summarily affirm. *See* WIS. STAT. RULE 809.21 (2019-20).<sup>2</sup>

Vang was charged with four drug-related counts consisting of possession with intent to deliver methamphetamine; possession of tetrahydrocannabinols (THC); possession of cocaine; and possession of drug paraphernalia. Vang has been represented by four attorneys, three of whom have previously sought to withdraw. The circuit court declined to allow Vang's fourth attorney to withdraw and it specifically found that Vang was attempting to manipulate the trial proceedings. At trial, the jury convicted Vang on the methamphetamine, THC, and drug paraphernalia counts, and acquitted him of the fourth count involving cocaine. The court withheld sentence and imposed two years' probation on the methamphetamine charge and one year of probation on the THC and drug paraphernalia charges.

Vang argues the circuit court failed to adequately inquire into his request for new counsel on the day of trial. Courts are skeptical of "eleventh-hour" requests for new counsel, especially when there have been multiple adjournments. *See State v. McDowell*, 2004 WI 70, ¶74, 272 Wis. 2d 488, 681 N.W.2d 500. When a defendant requests new counsel, the trial court should conduct an inquiry to determine the basis for the request. *Id.*, ¶¶66, 71. In evaluating whether the trial court's denial of a motion for new counsel is an erroneous exercise of discretion, the reviewing court should consider the following factors: (1) the adequacy of the court's inquiry into a 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

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<sup>2</sup> All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

of communication that prevented an adequate defense and frustrated a fair presentation of the case. *See State v. Lomax*, 146 Wis. 2d 356, 359, 432 N.W.2d 89 (1988).

In addition, when substitution of counsel would require a continuance of the trial, the circuit court must balance the constitutional right of counsel against the societal interest in the prompt and efficient administration of justice. *Id.* at 360. Among the factors the court must consider in balancing these interests are: (1) the length of delay requested; (2) whether there is competent counsel presently available to try the case; (3) whether other continuances have been requested and received by the defendant; (4) the convenience and inconvenience to the parties; and (5) whether the delay seems to be for legitimate reasons or whether its purpose is dilatory. *Id.*

Here, the circuit court meaningfully inquired into Vang's reasons for requesting substitute counsel on the day of trial, which would necessarily have required a continuance. When the trial began, the court took appearances and addressed preliminary matters. The court then briefly went off the record, and when it returned, Vang's attorney stated, "At this time my client has informed me that he no longer wants me to represent him. He's asking the Court to have me withdraw because he's fired me." The court then engaged in a colloquy with Vang, specifically asking what he was requesting. Vang replied, "I want to hire a ... private attorney." When the court asked for the reason, Vang did not offer evidence of his attorney's incompetency, or point to any conflicts that would frustrate a fair representation of the case. Instead, Vang simply stated that his attorney was "not helping me as I thought he would." Vang's response did not indicate the "total lack of communication" that would render counsel's continued representation "untenable." *See State v. Boyd*, 2011 WI App 25, ¶13, 331 Wis. 2d 697, 797 N.W.2d 546 (citations and emphasis omitted). At best, the response reflected an

apparent disagreement over trial strategy, which does not constitute good cause to require substitution of counsel. *State v. Darby*, 2009 WI App 50, ¶29, 317 Wis. 2d 478, 766 N.W.2d 770.

The circuit court also emphasized Vang's long history of employing delay tactics in his case, specifically noting that Vang had caused breakdowns in communication with his prior attorneys. The court found Vang's current counsel was "competent and able counsel" to assist with his trial, that counsel had been appointed over a year prior, and that despite attending several pretrial conferences, Vang had not previously expressed any problem with him. As his trial approached, however, there was "suddenly ... a breakdown in communication," consistent with Vang's past dilatory tactics. The record supports the court's findings that Vang would initially cooperate with counsel, but as his trial approached, he would refuse to maintain contact or cooperate with his attorneys. The court's understanding of Vang's history of causing breakdowns in communication as his trial dates drew near bolstered its finding that Vang was attempting to delay his trial in the present situation. We also note in this regard that there is no indication in the record on appeal that other competent counsel was presently available to try the case.

Moreover, the circuit court was aware that Vang had delayed a previous trial date by claiming "at the last minute" that he needed an interpreter, but it stated Vang "had lots of court appearances including I think pleas and sentencings in the past where he has never requested an interpreter." In addition, the court was aware that Vang had previously delayed his case by informing the court that he wanted to hire private counsel. Specifically, after Vang's second attorney was appointed, Vang told the court that he intended to hire a private attorney. More than two months later, however, Vang admitted that he lacked the resources to secure private

counsel. As the court correctly pointed out in denying Vang's current request for new counsel on the day of trial, Vang could have secured private counsel "months ago had he truly desired to do so."

The circuit court also addressed the inconvenience that further trial delay would cause. The court reiterated that Vang's request for new counsel was made on the day the trial was set to begin, and that his case had been pending for over three years. The court emphasized that multiple prior adjournments had already been granted to Vang for numerous reasons. The court noted further delay would not only inconvenience the court and the parties, but there were "10 witnesses subpoenaed by the State" who would also be inconvenienced.

Vang nevertheless argues that the circuit court's inquiry into his reasons for requesting a new attorney was inadequate, and that he "tried to raise this issue during the pretrial conference [one month prior] to trial, but the court would not let him." Vang also contends he "was not given the chance to explain [at trial] why he wanted a new lawyer, and clearly had more to say than he was allowed to." These contentions are not supported by the record.

The transcript of the final pretrial conference makes clear that Vang himself did not attempt to raise any issues regarding his current attorney. In fact, at trial his attorney stated on the record that "[t]oday is the first time that [Vang] has actually indicated he did not want me [to represent him]." Vang's attorney explained that although he had made previous requests to withdraw as Vang's counsel several months before trial, those requests were "my requests." At that point, the following discussion occurred with the court:

THE COURT: Okay, but today is the morning of trial, correct?  
So Attorney Kottke, you're telling me the first [time Vang stated

that he] wanted [you] to be fired is this morning as we are preparing to select a jury?

[Vang's attorney]: Yes.

Immediately prior to this discussion, the circuit court asked Vang, "I want to know what it is you want, [what] you're asking the Court to do here." When Vang replied that he wanted to hire a private attorney, the court then asked for the reason. Vang's vague response, coupled with the untimeliness of Vang's request and the court's knowledge of the totality of the circumstances, provided a reasonable basis to conclude there was no true conflict with his attorney that prevented an adequate defense and a fair presentation of the case. The court properly exercised its discretion by rejecting Vang's request for new counsel as "an attempt to manipulate the Court schedule and criminal proceedings to result in basically further delay."

Therefore,

IT IS ORDERED that the judgment is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*