

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-2073-2012; CR-2076-2012
 :
 DAMIEN MOTTER, : Opinion and Order re Motion for New Attorney
 Defendant :
 OPINION AND ORDER

This matter came before the Court on October 15, 2013 for a hearing and argument on Defendant's motion to relieve public defender and appoint a new defense attorney, which was filed on September 30, 2013. The relevant facts follow.

In both cases, Defendant was arrested and charged with burglary and related offenses. Defendant was already incarcerated in another county on other pending charges. Defendant was represented by Nicole Ippolito at his preliminary hearing on December 5, 2012. Ms. Ippolito sent paperwork and a copy the preliminary hearing transcript to Defendant by mailing it to his wife at an address in Dalmatia, Pennsylvania. Ms. Ippolito, however, left the Public Defender's office for a position in the District Attorney's office, and Jeana Longo was assigned Defendant's case in March 2013. Ms. Longo wrote a letter to Defendant and addressed it to the county prison where he had been, and she believed he still was, incarcerated. She did not receive a response to the letter, but that was not unusual. Unbeknownst to Ms. Longo, Defendant was no longer in that county prison. He was sentenced on April 11, 2013 on a Bradford County case to state incarceration and was moved from Bradford county prison to SCI-Camp Hill for classification and then he was transferred to SCI-Houtzdale.

According to Defendant, his Lycoming County cases were not showing up as

active when he was sentenced in Bradford County and they did not appear on the status sheet he received from the state. As a result, he mistakenly believed these cases had been dropped, so he didn't write any correspondence to his attorney between April 11, 2013 and September 1, 2013.

In late August 2013, Defendant was transported to Lycoming County prison so he would be available for a pre-trial conference and possible jury selection on the above-captioned cases. Defendant did not know that Ms. Ippolito was no longer his attorney until August 23, 2013. On five occasions in September (Sept. 1, Sept. 4, Sept. 9, Sept. 15 and Sept. 23), Defendant wrote to the Public Defender's office to request discovery and inquire about the status of his case. Ms. Longo wrote three letters in response. The first letter dated September 10, 2013 enclosed copies of Defendant's discovery materials, advised Defendant of the plea offer in his case, and asked Defendant how he wished to proceed. In the second letter dated September 17, 2013, Ms. Longo enclosed copies of her prior letters, advised Defendant that she did not believe there were any suppression issues, and told Defendant that the case was not called for trial but likely would be called the next term. In the third letter which was dated October 2, 2013, Ms. Longo responded to Defendant's motion for a new attorney by advising Defendant that while he had a right to a court-appointed attorney, he did not have the right to an attorney of his choice and she would remain his attorney unless Defendant hired his own attorney or elected to represent himself.

At the hearing on his motion, Defendant stated that he wanted a new attorney because: (1) he did not have any contact with his attorney from March 2013 until he received

the letters in September; (2) this hearing was the first time he met Ms. Longo or spoke to her in person; (3) Ms. Longo was opposed to filing a suppression motion; and (4) he felt that there was no attorney-client relationship.

While an indigent defendant is entitled to appointed counsel, he is not entitled to counsel of his choosing. Commonwealth v. Cook, 597 Pa. 572, 952 A.2d 594, 617 (2008). “A motion for change of counsel by a defendant for whom counsel has been appointed shall not be granted except for substantial reasons.” Pa.R.Cr.P. 122(C). The decision whether to grant such a motion is left to the sound discretion of the trial court. Commonwealth v. Grazier, 391 Pa. Super. 202, 570 A.2d 1054, 1055 (1990)(citations omitted). “As a general rule, however, a defendant must show irreconcilable differences between himself and his court appointed counsel before a trial court will be reversed for abuse of discretion in refusing to appoint new counsel.” Id. A defendant does not establish “substantial reasons” or “irreconcilable differences” where he “merely alleges a strained relationship with counsel, where there is a difference of opinion in trial strategy, where the defendant lacks confidence in counsel’s ability, or where there is brevity of pretrial communications.” Commonwealth v. Floyd, 937 A.2d 494, 497 (Pa. Super. 2007)(citations omitted).

The Court finds that Defendant has failed to show substantial reasons or irreconcilable differences to justify a change in counsel. Defendant seeks new counsel because his attorney will not file a motion to suppress on his behalf and Defendant is unhappy about the amount of pretrial communication he has had with counsel. These are not substantial reasons.

At this late date any motion to suppress would be untimely. Defendant's arraignment occurred on or about January 7, 2013. The Pennsylvania Rules of Criminal Procedure generally require a suppression motion to be contained in an omnibus pretrial motion and filed within 30 days after arraignment. See Pa.R.Cr.P. 579; Pa.R.Cr.P. 580. Therefore, any motion to suppress should have been filed by February 6, 2013, which was before Ms. Longo was assigned to his case. Finally, and determinatively, Ms. Longo reviewed the criminal complaint, affidavit, Defendant's correspondence, and the discovery and is of the opinion that a motion to suppress is not warranted.

Furthermore, the limited pretrial communications between Defendant and his attorney were due primarily to the fact that Defendant's place of incarceration changed three times between March and August of 2013 and Defendant was under the mistaken belief that these cases had been dropped or closed. In March and early April 2013, Defendant was incarcerated in the Bradford County jail. After Defendant was sentenced on April 11, 2013 to state incarceration, he was transferred to SCI-Camp Hill for classification where he remained until he was transferred to his permanent institution, SCI-Houtzdale, in early July. Since Defendant was brought to Lycoming County in late August, defense counsel has provided Defendant with discovery, advised him of the plea offer for his cases, and responded to his inquiries. Defense counsel is ready and willing to represent Defendant in these matters. These are not complex cases. Defense counsel could, and has represented that she will, be ready to try these cases when and if they are called for trial during the next trial term.

For the foregoing reasons, the Court finds that Defendant's lack of confidence

in his counsel due to her refusal to file a suppression motion and limited pretrial communications with him do not constitute substantial reasons for a change of counsel. Accordingly, the Court will deny Defendant's motion.

ORDER

AND NOW, this ____ day of October 2013, the Court DENIES Defendant's motion to relieve public defender and appoint a new defense attorney.

By The Court,

Marc F. Lovecchio, Judge

cc: Jeana Longo, Esquire (APD)
A. Melissa Kalas, Esquire (ADA)
Damien Motter, c/o Lycoming County Prison
Gary Weber, Esquire (Lycoming Reporter)
Work file