

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH OF PA**

**vs.**

**RYAN HAMILTON,  
Defendant**

**:**

**: No. CR-447-2013**

**:**

**: Motion for Pro Se Motion**

**: for Change of Appointed Counsel**

**OPINION AND ORDER**

Before the Court is Defendant's pro se Motion for Change of Appointed Counsel.

By Information filed on April 18, 2013, Defendant is charged with Criminal Attempt to Commit a Robbery, a felony of the first degree; Criminal Conspiracy to Commit Robbery, a felony of the first degree; Criminal Attempt to Commit Theft, a felony of the second degree; Persons not to Possess Firearms, a felony of the second degree; Possessing Instruments of a Crime, a misdemeanor of the first degree; and Criminal Conspiracy to Commit Simple Assault, a misdemeanor of the second degree.

On May 10, 2013, the Commonwealth filed a Motion to Consolidate this case with Commonwealth v. Michael Smith at Information No. 2019-2012. By Order of Court dated August 1, 2013 and "agreement of the parties", the Commonwealth's Motion to Consolidate was granted. The cases were joined for trial and were placed on the August pretrial list.

Previously, on July 22, 2013, the Defendant filed a pro se Motion for Change of Appointed Counsel. The motion alleges that the Lycoming County Public Defender's office was appointed to represent Defendant and that Defendant first met his attorney at his preliminary hearing on March 20, 2013.

The Motion further alleges that after the preliminary hearing, the attorney refused to discuss "anything else about" the case. Since March 20, 2013, Defendant allegedly

has written to his attorney nine times and his mother has called the attorney numerous times. According to the Defendant's motion, his attorney never discussed with him "any kind of defense" and is not investigating the case.

Defendant alleges that as a result, there is an "irreconcilable personality conflict" and "difference of opinion in the manner in which the case should be litigated." Defendant asserts that because of this conflict, he is entitled to new counsel.

The hearing on Defendant's motion was held on October 8, 2013. Defendant testified that his primary complaint is that his attorney is not "coming up with a defense" for his case. He testified that when he previously spoke with his attorney in July of 2013, that he inquired as to what his attorney was doing to prepare a defense. In response she indicated that she could not think of a defense and that he did not stand a good chance at trial.

Defendant also testified that he was not aware of the Motion to Consolidate, not aware that there was a hearing held in connection with such and not transferred back to attend such. He also testified that he was told by his attorney that if he was not happy with her representation of him, he could either hire a private attorney or proceed pro se. He was told by his attorney that otherwise, she would continue to represent him.

In response to questioning by the Court, Defendant conceded that his counsel addressed his concerns, answered his specific questions and in general was available to him. Again, Defendant's major concern is that his attorney should conceive of a defense and pursue such on the Defendant's behalf instead of the Defendant having to raise a defense on his own. Defendant remarked that his attorney is a lawyer and experienced and that is her job to "come up with a defense."

While an indigent defendant is entitled to appointed counsel, he is not entitled to counsel of his own 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 or 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. It is not incumbent upon defense counsel to “create” a defense, especially when she does not believe one exists based upon the facts of the case or the applicable law. In fact, the Pennsylvania Rules of Professional Conduct preclude her from doing so. Rules of Prof. Conduct, Rule 3.1, 42 Pa.C.S.A. Instead, in such a situation, defense counsel can only defend the case by “testing” the Commonwealth’s burden of proof to establish every element of its case beyond a reasonable doubt.

While defense counsel certainly could have been more delicate in responding to Defendant's concern, her blunt responses are insufficient to warrant the appointment of new counsel.

The Court will deny Defendant's motion. Appointed counsel shall continue to represent Defendant. Defendant is reminded that if he fails to cooperate with his counsel or he engages in conduct which sabotages the attorney/client relationship, he may forfeit his right to counsel.

**ORDER**

AND NOW, this 18<sup>th</sup> day of October 2013, following a hearing and argument, Defendant's pro se Motion for Change of Appointed Counsel is **DENIED**.

BY THE COURT,

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Marc F. Lovecchio, Judge

cc: DA  
PD (KG)  
Gary Weber, Esquire (Lycoming Reporter)  
Work File