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APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3978-21

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

CORTNEY L. PARNELL,
a/k/a CORTNEY L. BELL,
ANTWAN JOHNSON,
CARLTON W. MINOR, and
COURTNEY L. PARNELL,

Defendant-Appellant.

Argued May 6, 2024 – Decided June 28, 2024

Before Judges Chase and Vinci.

On appeal from the Superior Court of New Jersey, Law Division, Burlington County, Indictment No. 20-02-0187.

Lauren Stephanie Michaels, Assistant Deputy Public Defender, argued the cause for appellant (Jennifer Nicole Sellitti, Public Defender, attorney; Lauren Stephanie Michaels, of counsel and on the briefs).

Nicole Handy, Assistant Prosecutor, argued the cause for respondent (LaChia L. Bradshaw, Burlington County Prosecutor, attorney; Alexis R. Agre, of counsel and on the brief).

PER CURIAM

Defendant Cortney L. Parnell appeals from the April 16, 2021 order denying his motion to withdraw his guilty plea and January 19, 2022 judgment of conviction. Defendant, represented by counsel assigned by the Office of the Public Defender ("OPD") in the trial court and on appeal, contends he was denied the opportunity to establish he was entitled to a change of assigned trial counsel based on an alleged conflict of interest. Because the trial court did not consider defendant's claim of substantial cause to change assigned counsel, we are constrained based on the specific facts and circumstances of this case to remand for an evidentiary hearing on that issue.

The State alleges on November 18, 2019, during an attempted shoplifting from a Wegmans grocery store in Mount Laurel Township, defendant threatened a Wegmans employee with a liquor bottle raised over his head inside the store and threatened a Wegmans loss-prevention officer after exiting the store. He was indicted for first-degree robbery, N.J.S.A. 2C:15-1(a)(2); third-degree aggravated assault, N.J.S.A. 2C:12-1(b)(12); third-degree terroristic threats, N.J.S.A. 2C:12-3(a); third-degree possession of a weapon for an unlawful

purpose, N.J.S.A. 2C:39-4(d); and third-degree receiving stolen property, N.J.S.A. 2C:20-7(a).

Trial was scheduled for November 2020. On October 13, 2020, defendant wrote to the trial court that he was "enduring multiple problems with [his] attorney adequately preparing [his] defense for trial." Defendant contended he and his attorney "appear to be at odds, one moment he will inform [defendant] that he is submitting a motion to dismiss on [defendant's] behalf (overcharging by the prosecution), he will disappear for a few months only to . . . inform [defendant] that he is not submitting any motions." Defendant also claimed trial counsel sent him a "blank [DVD] of [the incident] and shortly thereafter confiscated the tape" and the discovery he received "was incomplete and insufficient to enable [him] to adequately prepare a defense."

On November 10, 2020, during the second day of jury selection, defendant pleaded guilty to first-degree robbery, N.J.S.A. 2C:15-1(a)(2), in exchange for the State's agreement to recommend a sentence of ten years in prison subject to the No Early Release Act, N.J.S.A. 2C:43-7.2, and dismissal of all other charges. Sentencing was scheduled for December 11.

On November 20, 2020, defendant wrote to the trial court seeking to withdraw his plea and have new counsel assigned, contending he "had no choice

but to plead guilty because [he] felt [he] did not have an [a]ttorney who would represent [him]." Defendant claimed he "did not feel [assigned trial counsel] was going to do anything to represent [him], including but not limited to . . . [c]onduct[ing] necessary [p]re-[t]rial investigations on [his] behalf."

On December 11, 2020, the trial court ordered defendant's assigned trial counsel to file a formal motion to withdraw defendant's plea consistent with his November 20 letter. On January 3, 2021, defense counsel filed a brief in support of that motion arguing defendant "felt compelled to plead guilty because he felt [defense counsel] would not 'represent him.'" Counsel argued defendant "could not [have] knowingly and voluntarily enter[ed] his guilty plea as he felt coerced to do so based on his lack of confidence in [defense counsel's] ability to effectively represent him." On February 19, 2021, defendant wrote to the trial court contending he was "innocent of [the] charges, . . . [had] a trial strategy; and [he] need[ed] an attorney to effect [p]re-[t]rial investigations, in order to effectively represent [him]."

On March 22, 2021, the court heard oral argument on defendant's motion to represent himself.¹ The court began by asking defendant if he still desired to

¹ There is no evidence in the record that defendant filed a formal motion to represent himself. It is our understanding the court deemed his November 20, 2020 and February 19, 2021 letters to constitute such a motion.

represent himself, to which defendant responded "Yes, sir. Or that a new attorney be appointed." The court advised defendant,

[t]here is case law that guides the [c]ourt with regard to an indigent defendant who previously has been assigned counsel through the [OPD]. And the policy, as far as I understand it from the [OPD], is that upon the request of a defendant they will not change attorneys. . . .

And so if you[are] asking me to order that [assigned defense counsel] not represent you and some other attorney from the [OPD] do that, I cannot do that, and I will not do that You have choices for representation. You can represent yourself, you can hire counsel to represent you. And if you[are] indigent, which is evidently what you[have] been determined to be previously, it is within the purview of the [OPD] and not the [c]ourt to assign a specific attorney.

Following oral argument, the court granted defendant's motion to represent himself and designated assigned trial counsel as standby counsel.

On April 13, 2021, the court heard oral argument on defendant's motion to withdraw his guilty plea. Defendant argued he "was lied to and pressured into taking the plea" and was told by assigned counsel that he "would lose if [he] [went] to trial." Defendant contended his assigned counsel told him he was facing "a first[-]degree and a second[-]degree charge," which was not correct, and had him "thinking, even if [he] beat the first[-]degree charge, [the jury would] find [him] guilty of a second[-]degree charge and [he would] get [fifteen]

years for the second[-]degree charge . . . which [was] more than . . . ten years for the first-degree so [he] felt [he] had no choice but to plead guilty." Defendant also argued assigned counsel "refused to file any motions on [his] behalf when [he] asked him to . . . several times."

Defendant argued further he was "innocent of a first[-]degree robbery. [He] did not plan a robbery. [He] did not enter any store with a weapon. And [he] was so intoxicated to being gone for days doing drugs." He claimed he told assigned counsel he "had a drug problem and [he] need[ed] help." According to defendant, "if [he] [had] known of the [intoxication] defense . . . [he] would never have taken the plea."

Assigned counsel argued defendant should have been permitted to withdraw his plea because "he could not have knowingly and voluntarily entered a plea since he felt coerced to do so based on [assigned counsel's] representation of him. He did not believe that [assigned counsel] would provide proper representation at trial and felt as if he had no choice but to plead guilty." Counsel also argued it was significant that "his plea took place in the middle of jury selection which is the point in which he felt he had no choice but to take the State's offer based on his lack of faith and confidence in [defense counsel]."

On April 16, 2021, the court entered an order denying defendant's motion to withdraw his guilty plea supported by a written opinion. On January 7, 2022, defendant was sentenced in accordance with the plea agreement.²

Defendant raises the following issues on appeal:

POINT I: [DEFENDANT] MUST BE ASSIGNED NEW COUNSEL AND AFFORDED A NEW PLEA-WITHDRAWAL HEARING.

- A. [Defendant] was denied his right to the assistance of counsel first when the court denied his request for a new, unconflicted attorney, and again, when it permitted him to proceed pro se without engaging in the required colloquy.
- B. Even if [Defendant's] waiver of his right to counsel was valid, he was denied his rights to self-representation and to effective assistance of counsel when the court appointed conflicted counsel as standby counsel, and then permitted him to essentially act as defense counsel.

POINT II: IN THE ALTERNATIVE, THE COURT SHOULD HAVE GRANTED THE PLEA-WITHDRAWAL MOTION.

- A. [Defendant] asserted a colorable claim of innocence by presenting "specific,

² The court entered an amended judgment of conviction on January 19, 2022.

potentially plausible facts, and not simply a bald assertion."

- B. [Defendant] asserted strong reasons for withdrawal.
- C. The existence of a plea bargain should not outweigh the other factors.
- D. Withdrawal would not result in unfair prejudice to the State or advantage to the defendant.
- E. The trial judge's refusal to honor [defendant's] request to withdraw his guilty plea was an error requiring reversal.

We conclude, under the specific facts and circumstances of this case, defendant should have been afforded the opportunity to establish substantial cause for a change of assigned counsel to represent him in connection with the plea withdrawal motion and subsequent proceedings. It has long been the rule that "a court may not require the [OPD] to assign new counsel to a defendant who [is] dissatisfied with the attorney assigned to represent him, absent a showing of 'substantial cause.'" State v. Coon, 314 N.J. Super. 426, 438 (App. Div. 1998) (citations omitted). An "irreconcilable conflict" would represent substantial cause for a change of assigned counsel. State v. Coclough, 459 N.J. Super. 45, 55 (App. Div. 2019).

Establishing substantial cause is a high bar. "[A] defendant does not have the right to accept or reject assigned counsel, as whim or scheme dictates." Coon, 314 N.J. Super. at 438 (citation omitted). A defendant seeking a change of assigned counsel must do more than show a disagreement or conflict over defense strategy. See ibid.; Coclough, 459 N.J. Super. at 56. "Assigned counsel is not required to dance to the [defendant's] tune." Coon, 314 N.J. Super. at 438 (citing State v. Rinaldi, 58 N.J. Super. 209, 214 (App. Div. 1959)). Moreover, a defendant cannot establish substantial cause by manufacturing a conflict through "abusive and uncooperative behavior." Coclough, 459 N.J. Super. at 55.

In this case, defendant requested a change of assigned counsel to represent him in connection with his plea withdrawal motion because the primary argument raised in that motion was assigned counsel's allegedly deficient performance. The trial court correctly identified the general rule that defendants cannot choose their assigned counsel but did not evaluate whether defendant established substantial cause for a change of counsel under the facts and circumstances of this case.³ Because defendant did not have an opportunity to


³ It is noteworthy that on appeal counsel also assigned by the OPD argues defendant should have been afforded a change of assigned trial counsel. There

establish substantial cause for a change of counsel, we are constrained to remand for an evidentiary hearing on that issue at which defendant and any other appropriate witnesses should testify.

We do not reach the other issues raised on appeal because they are largely dependent on defendant's claim that he should have been afforded a change of assigned counsel. We do not express any opinion on the merits or appropriate resolution of defendant's claims, including his claims that he should have been assigned new counsel or permitted to withdraw his plea.

Remanded. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION

is no indication in the record whether the OPD considered defendant's request for a change of counsel at the time it was made below.