FILED
DEC 27 1979
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)

Plaintiff-Appellee,) Filed December 27, 1979

vs.)

DWIGHT CHARLES REED,) 336
63191

Defendant-Appellant.)

Appeal from Black Hawk District Court - C. W. Antes, Judge.

Defendant appeals conviction of assault with intent to inflict serious injury in violation of section 708.1, Supplement to the Code 1977, and carrying weapons in violation of section 724.4, Supplement to the Code 1977, alleging he was denied fair trial because defense counsel was denied permission to withdraw after he had stated he could not effectively represent defendant. - Affirmed.

Paul Gordon, of Parish & DelGallo, Des Moines, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Shirley Ann Steffe, Assistant Attorney General, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendant, Dwight Charles Reed, appeals conviction of assault with intent to inflict serious injury in violation of section 708.1, Supplement to the Code 1977, and carrying weapons in violation of section 724.4, Supplement to the Code 1977, alleging he was denied fair trial because defense counsel was denied permission to withdraw after he had stated he could not effectively represent defendant. Affirmed.

On the day before trial, trial court sustained the State's motion in limine to prevent inquiry on the alleged victim's unrelated arrest on a weapons charge. As a result of the motion in limine, defendant sought additional counsel. He did not, however, voice dissatisfaction with his appointed trial counsel. Nevertheless, trial counsel attempted to withdraw on grounds he could not represent defendant effectively. His request was denied and since defendant's additional counsel could not then appear, trial was held with defendant represented only by original counsel. Defendant was convicted as charged and on appeal asserts he was denied a fair trial because the trial court failed to allow counsel to withdraw.

Trial courts have the duty to see that an accused person receives a fair trial and is represented effectively by counsel. State v. Lowder, 256 Iowa 853, 860, 129 N.W.2d 11, 15, cert. denied, 380 U.S. 965, 85 S. Ct. 1110, 14 L. Ed.2d 155 (1964). As stated in State v. Taylor, 211 N.W.2d 264, 267 (Iowa 1973) (quoting Roberts v. Bennett, 258 Iowa 1101, 1107, 141 N.W.2d 628, 632 (1968)): "In the event the indigent defendant is dissatisfied with court appointed counsel, he has the right to ask appointment of new counsel stating the reasons for his dissatisfaction. The court then determines the propriety of appointment of new counsel." Here, defendant was not dissatisfied with his appointed counsel; he only desired additional counsel and this desire brought about the withdrawal request. But, as stated in Taylor:

> Another rule is that a defendant cannot proceed "in a manner that will obstruct an orderly procedure in courts of justice, and deprive such courts of the exercise of their inherent powers to control the same." Smith v. United States, 53 App.D.C. 53, 55, 288 F. 259, 261. See also United States v. Bentvena, 319 F.2d 916 (2 Cir.); Releford v. United States, 288 F.2d 298 (9 Cir.); Lee v. United States, 98 U.S.App.D.C. 272, 235 F.2d 219. Defense counsel asked to withdraw during the hearing on sentence after some adverse rulings by the trial court. Surely such rulings are not a ground for changing counsel in the midst of a hearing. Otherwise hearings could be continually interrupted.

Id.

Here, the change was sought on the eve of trial. Defense counsel stated to the trial court: "Your Honor, for the record, I am ready to proceed in the defense of Mr. Reed; however, I would feel awkward doing that, if he is requesting the presence of another attorney on his behalf, but I am ready to proceed." We cannot conclude the trial court abused its discretion by refusing to allow defense counsel to withdraw. Counsel was prepared to give effective assistance and his move to withdraw came the morning of trial, after an adverse ruling the previous day. As in Taylor, id., "We hold the trial court was well within its discretion in refusing to permit counsel to withdraw." Id.

AFFIRMED.