

Note: In the case title, an asterisk () indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

ENTRY ORDER

SUPREME COURT DOCKET NO. 2019-059

OCTOBER TERM, 2019

State of Vermont v. Robert Austin*	}	APPEALED FROM:
	}	
	}	Superior Court, Bennington Unit,
	}	Criminal Division
	}	
	}	DOCKET NO. 141-2-17 Bncr
		Trial Judge: William D. Cohen

In the above-entitled cause, the Clerk will enter:

Defendant was convicted of domestic assault following a jury trial. He argues that the court erroneously denied his attorney’s motion to withdraw on the morning of trial. We affirm.

Defendant was charged with first-degree aggravated domestic assault, domestic assault, and illegal possession of a firearm in February 2017 after allegedly headbutting his female roommate and brandishing a gun during an argument. A one-day jury trial was held in December 2018. Before the jury entered the courtroom, defense counsel moved to withdraw. She advised the court that defendant no longer wanted her as counsel and that there had been a breakdown in the attorney-client relationship. The court explained to defendant that defense counsel was prepared to go forward with the trial that day and asked defendant what he was requesting from the court. Defendant stated that counsel had represented him for six months and that he had spoken with her about six times. He complained that counsel did not respond to all his telephone calls and emails. Defendant further complained that counsel would not allow him to bring in certain witnesses. Defendant stated that he felt like he was “up against the wall.” The court responded that the case was ready to go to trial that day, that the jury had been drawn, and was present. It determined that the case should go forward and informed defendant that he could make a record of what witnesses, if any, he would have liked to call. The jury convicted defendant of domestic assault and acquitted him of the remaining charges. This appeal followed.

Defendant argues that the court abused its discretion by failing to appoint substitute counsel. According to defendant, the court should have further explored the “breakdown in communication” he described, and it should have directed him to identify the witnesses he would have liked to call.* Defendant contends that it was not apparent that the case was ready to go forward that day and that there were alternatives to doing so.

* We see no connection between the claimed failure by the trial court to obtain the names of witnesses that defendant would have liked to call and the court’s ruling on counsel’s motion to withdraw. The question of which witnesses to call is one of trial strategy, committed to counsel. See In re Dunbar, 162 Vt. 209, 212 (1994) (recognizing that “[t]rial counsel are permitted a great

We review the court’s decision for abuse of discretion and will uphold its denial of the request for substitute counsel “absent unusual circumstances.” State v. Bryan, 2016 VT 16, ¶ 27, 201 Vt. 298 (quotation and alteration omitted). Defendant fails to show an abuse of discretion here.

As we have explained, an indigent defendant seeking replacement counsel after a status conference has been held or, if none, more than twenty-eight days following arraignment must demonstrate “good cause” for counsel’s withdrawal. Id. ¶ 28 (quotation omitted); V.R.Cr.P. 44.2(c). “A mere expression of dissatisfaction with assigned counsel does not necessarily constitute good cause nor obligate the court to substitute new counsel.” State v. Ahearn, 137 Vt. 253, 264 (1979). Instead, “to establish good cause the defendant must show: (1) a conflict of interest; (2) a complete breakdown in communication with his counsel after exhaustion of good faith efforts to work with counsel; (3) incompetence; or (4) other good reason to conclude that appointed counsel is unable to furnish effective assistance.” Id. We have noted that “if defendant’s dissatisfaction with counsel is not the result of counsel’s incompetency or a conflict of interest, this Court is likely to find that the trial court properly exercised discretion in denying the motion to withdraw.” Bryan, 2016 VT 16, ¶ 30 (affirming court’s denial of motion to withdraw filed on morning of violation-of-probation merits hearing).

As reflected above, defendant here described ongoing communication with counsel over the course of her representation. While he would have preferred to speak with counsel more frequently, there was no evidence of “a complete breakdown in communication.” Ahearn, 137 Vt. at 264. The record shows that the court sufficiently inquired into defendant’s concerns. The court reasonably concluded that counsel was prepared to go forward with the trial as scheduled, particularly as she only learned of defendant’s request for her withdrawal that morning. Finally, the court did not fail to exercise its discretion, as defendant asserts. Defendant simply disagrees with the way in which the discretion was exercised. The court provided a reasonable basis for its decision denying counsel’s motion to withdraw, and we find no error. See Bryan, 2016 VT 16, ¶ 27 (“This Court will not interfere if there is a reasonable basis for the court’s discretionary action.” (quotation omitted)).

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

deal of discretion in decisions regarding trial strategy”). Knowing the names of defendant’s hoped-for witnesses would not alter our analysis of whether the trial court abused its discretion in concluding that defendant failed to show a complete breakdown in communication with counsel.