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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Du Page County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 10-CF-2190
	)	
TITUS T. PHANORD,	)	Honorable
	)	George J. Bakalis,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE McLAREN delivered the judgment of the court.  
Justices Hutchinson and Schostok concurred in the judgment.

**ORDER**

¶ 1 *Held:* (1) The trial court did not abuse its discretion in denying defendant's motion to continue the trial, which was about to begin, so that he could engage a private attorney: substitute counsel was not ready, willing, and able to enter an unconditional appearance; (2) the trial court did not deny defendant the right to represent himself, as he dropped his request and acquiesced in representation by counsel.

¶ 2 Defendant, Titus T. Phanord, appeals from his conviction of unlawful possession of a controlled substance with intent to deliver (720 ILCS 570/401(c)(1) (West 2010)). He contends that the trial court erred when, on the day of trial, it denied his request for a continuance in order to obtain new counsel. He also contends that it denied his right to self-representation. We affirm.

¶ 3

### I. BACKGROUND

¶ 4 On September 29, 2010, defendant was charged by indictment with unlawful possession of a controlled substance with intent to deliver. The public defender's office was appointed to represent him. On October 21, 2010, the State was allowed a continuance over defendant's objection until November 30, 2010. On November 30, defense counsel moved to continue based on counsel's desire to interview a witness whom the State informed him of the day before. Defendant stated that he wanted a speedy trial and that the continuance was against his will. The court granted the continuance and set trial for January 4, 2011.

¶ 5 On January 4, 2011, just before jury selection was to start, defendant asked for a continuance to obtain new counsel, stating that his mother "might" be able to afford to hire an attorney when she received an "income tax check." Defendant said that he and his current counsel were constantly in conflict with each other. Defendant said that the earlier continuance was against his will and that his counsel did not seek out evidence that could help his case. He was also concerned that his counsel had a "cozy relationship" with the State. Defendant said he felt that he could do a better job representing himself.

¶ 6 The court told defendant that it would not grant a continuance and that, while it would be unwise for defendant to represent himself, he could do so. Defendant then asked to represent himself. The court told defendant that they were about to select a jury and that it would not be able to give defendant guidance. The court repeated that defendant had the right to represent himself, but that it would be a bad idea for defendant to do so. Defendant again asked if he could get other counsel, and the court repeated that it was not going to continue the case when it was about to begin trial. The matter was not discussed further and defendant proceeded with counsel.

¶ 7 The jury found defendant guilty, and he moved for a new trial. Defendant later sent a letter to the court that included a complaint that he was forced to go to trial with counsel who was ineffective. A hearing was held, and the court stated that it had the discretion to deny defendant's request for a continuance to find new counsel, because the matter had been pending for some time, and defendant did not have new counsel ready at the time of the request. The motion for a new trial was denied, and defendant was sentenced to eight years' incarceration. A motion to reconsider sentence was denied, and defendant appeals.

¶ 8 II. ANALYSIS

¶ 9 Defendant first contends that the trial court denied his right to counsel when it denied his request for a continuance to find new counsel.

¶ 10 “[T]he constitutional right to counsel includes the right to be represented by retained counsel of one’s own choosing.” *People v. Abernathy*, 399 Ill. App. 3d 420, 426 (2010). “A determination of whether to grant a defendant’s request for a continuance to allow time for retained counsel to appear requires balancing the defendant’s fundamental right to counsel of his or her choice against the interests of the State, the courts, and the witnesses in the efficient disposition of cases without unreasonable delay.” *Id.* (citing *People v. Little*, 207 Ill. App. 3d 720, 723 (1990)). The denial of a motion to continue is within the sound discretion of the trial court, and its ruling will not be disturbed unless that decision is an abuse of discretion. *Little*, 207 Ill. App. 3d at 724. The determination of the issue turns on the particular facts of each case. *Id.*

¶ 11 “‘In balancing the judicial interest of trying the case with due diligence and the defendant’s constitutional right to counsel of choice, the court must inquire into the actual request to determine whether it is being used merely as a delaying tactic.’” *People v. Tucker*, 382 Ill. App. 3d 916, 920

(2008) (quoting *People v. Burrell*, 228 Ill. App. 3d 133, 142 (1992)). “Factors to be considered include: whether defendant articulates an acceptable reason for desiring new counsel; whether the defendant has continuously been in custody; whether he has informed the trial court of his efforts to obtain counsel; whether he has cooperated with current counsel; and the length of time defendant has been represented by current counsel.” *Id.*

¶ 12 Our supreme court has made clear that “a trial court will not be found to have abused its discretion in denying a motion for substitution of counsel in the absence of ready and willing substitute counsel.” *People v. Segoviano*, 189 Ill. 2d 228, 245 (2000). Thus, if new counsel is specifically identified and stands ready, willing, and able to enter an unconditional appearance, a motion for continuance should be allowed. However, if any of those requirements is lacking, a denial of the motion is not an abuse of discretion. See *People v. Koss*, 52 Ill. App. 3d 605, 607-08 (1977).

¶ 13 Here, defendant failed to show that substitute counsel was ready, willing, and able to enter an unconditional appearance. Indeed, nothing shows that defendant had even attempted to seek new counsel before he made his request. Instead, he said that his mother “might” be able to afford to retain counsel for him when an “income tax check” arrived. Further, the court noted the length of time the case had been pending and that jury selection was about to begin. Thus, under *Segoviano*, the denial of defendant’s motion to continue was not an abuse of discretion.

¶ 14 Defendant next argues that the court denied him his right to self-representation.

¶ 15 The state and federal constitutions guarantee a defendant the right to self-representation in the trial court. U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, § 8. The right of self-

representation, when knowingly and intelligently exercised, is a basic and fundamental right. *People v. Davis*, 169 Ill. App. 3d 1, 5-6 (1988).

¶ 16 “It is well settled that waiver of counsel must be clear and unequivocal, not ambiguous.” *People v. Burton*, 184 Ill. 2d 1, 21(1998). “A defendant waives his right to self-representation unless he ‘articulately and unmistakably demands to proceed *pro se*.’ ” *Id.* at 22 (quoting *United States v. Weisz*, 718 F. 2d 413, 426 (D. C. Cir. 1983). “A defendant must explicitly inform the trial court he wants to proceed *pro se* because ‘[a]nything else is an effort to sandbag the court and the opposition, to seek an acquittal with an ace up the sleeve to be whipped out in the event of conviction.’ ” *Id.* (quoting *Cain v. Peters*, 972 F. 2d 748, 750 (7th Cir. 1992)). “In determining whether a defendant’s statement is clear and unequivocal, courts have looked at the overall context of the proceedings.” *Id.* “A court must determine whether the defendant truly desires to represent himself and has definitively invoked his right of self-representation.” *Id.*

¶ 17 “Even if a defendant gives some indication that he wants to proceed *pro se*, he may later acquiesce in representation by counsel.” *Id.* at 23-24. “Under certain circumstances, defendant may acquiesce by vacillating or abandoning an earlier request to proceed *pro se*.” *Id.* “In determining whether a defendant seeks to relinquish counsel, courts may look at the defendant’s conduct following the defendant’s request to represent himself.” *Id.* “A defendant may forfeit self-representation by remaining silent at critical junctures of the proceedings.” *Id.* at 24.

¶ 18 Here, the court did not deny defendant the right of self-representation. To the contrary, the court repeatedly told defendant that he could represent himself, but appropriately counseled defendant that it would not be a good idea. Defendant then asked again for a continuance to find

new counsel and, when told no, he dropped the request and did not ask again. Thus, he acquiesced in representation by counsel. Accordingly, defendant was not denied his right to self-representation.

¶ 19 Defendant also argues that the court failed to admonish him under Illinois Supreme Court Rule 401(a) (eff. July 1, 1984), which requires various admonitions before a defendant is allowed to waive counsel. But here, Rule 401(a) never came into play, as defendant abandoned his request to proceed without counsel.

¶ 20

### III. CONCLUSION

¶ 21 Defendant was not denied his right to counsel or his right to self-representation. Accordingly, the judgment of the circuit court of Du Page County is affirmed.

¶ 22 Affirmed.