

NOTICE

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April 11, 2017
Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 160235-U

NO. 4-16-0235

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Vermilion County
MICHAEL C. ROUSE,)	No. 14CF241
Defendant-Appellant.)	
)	Honorable
)	Nancy S. Fahey,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Presiding Justice Turner and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's claim was insufficient to require the trial court to conduct further inquiry to ensure the case presented no conflict of interest.

¶ 2 In August 2014, defendant, Michael C. Rouse, appeared with the Vermilion County deputy chief public defender and pleaded guilty to attempt (first degree murder of a peace officer) pursuant to a fully negotiated plea agreement. The trial court sentenced defendant to 45 years in prison. In November 2014, defendant, with the assistance of the Vermilion County chief public defender, filed a motion to withdraw his guilty plea, alleging ineffective assistance of counsel. Following a hearing in March 2015, the court denied defendant's motion. Defendant appeals, arguing the trial court erred by failing to inquire into a potential conflict of interest between the Vermilion County chief public defender and the Vermilion County deputy chief public defender. We affirm.

¶ 3

I. BACKGROUND

¶ 4 In June 2014, the State charged defendant by information with attempt (first degree murder of a peace officer) (count I) (720 ILCS 5/8-4(a), 9-1(b)(1) (West 2014)), aggravated battery of a peace officer (count II) (720 ILCS 5/12-3.05(e)(2) (West 2014)), and four counts of aggravated discharge of a firearm (counts III, IV, V, VI) (720 ILCS 5/24-1.2(a)(2), (3), (4) (West 2014)). That same day, the trial court appointed the public defender to represent defendant.

¶ 5 In August 2014, defendant appeared in court and was represented by Vermilion County Deputy Chief Public Defender Gloria Morris. Defendant entered a fully negotiated plea of guilty to count I. In exchange for the plea, the State dismissed the remaining charges; and the charges in Vermilion County case No. 14-CF-246. The trial court accepted the guilty plea and sentenced defendant to the agreed-upon 45-year sentence.

¶ 6 In September 2014, defendant filed a *pro se* motion to withdraw his guilty plea, asserting Morris provided ineffective assistance of counsel. In November 2014, Vermilion County Chief Public Defender Jacqueline Lacy filed a motion to withdraw defendant's guilty plea, which incorporated defendant's ineffective assistance of counsel argument. In January 2015, the trial court held a hearing on defendant's motion. Defendant was present in the courtroom with defense counsel Lacy and an assistant State's Attorney. The court stated it "read the motion and supporting affidavit, and before taking the bench, counsel and I had discussed the issue of the –Ms. Lacy, the Public Defender, bringing this motion on behalf of [defendant] in light of the allegations against someone in her own office, and the Court had some concerns about that, and I've been tendered case law by Ms. Lacy, which seems to support the proposition that she is the appropriate person to bring the motion, however, I would like an opportunity to

read the case law and do some of my own research before we actually proceed on the motion itself." Lacy stated for the record she had provided the court with *People v. Banks*, 121 Ill. 2d 36, 520 N.E.2d 617 (1987), and would provide a copy to opposing counsel as well. The court continued the hearing on its own motion without objection. In March 2015, the trial court held a hearing on a motion for additional discovery filed by the State. At the hearing, Lacy sought clarification from the court regarding her representation of defendant. The court stated it had reviewed the case law and Lacy would "remain on the case pursuant to case law."

¶ 7 After a hearing on March 19, 2015, the trial court denied defendant's motion to withdraw his guilty plea. Defendant appealed, and upon the parties' agreed motion, this court remanded the cause for a new proceeding in strict compliance with Illinois Supreme Court Rule 604(d) (eff. Dec. 11, 2014). *People v. Rouse*, No. 4-15-0213 (Feb. 3, 2016) (unpublished summary order under Supreme Court Rule 23(c)(2)).

¶ 8 Following remand, Lacy filed a "Motion to Withdraw as Counsel for *Per Se* Conflict, or in the Alternative, Motion for Court's Inquiry." Lacy maintained that although the case presented no conflict of interest "early on in the proceedings," the law had changed and there was now a *per se* conflict of interest. At a hearing on March 29, 2016, Lacy withdrew her "Motion to Withdraw as Counsel for *Per Se* Conflict, or in the Alternative, Motion for Court's Inquiry," stating only that the issue was not ripe. Ultimately, the trial court granted Lacy leave to file a "corrected" Rule 604(d) certificate indicating defendant's claim of error in the entry of the plea of guilty and sentence, and again denied defendant's motion to withdraw his guilty plea.

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 Defendant argues the trial court erred when it failed to conduct an adequate inquiry into a potential conflict of interest between the Vermilion County chief public defender and the Vermilion County deputy chief public defender. The question of whether the trial court was required to make an inquiry is one of procedure. Whether the court followed the applicable procedure is a question of law, which we review *de novo*. *People v. Hardin*, 217 Ill. 2d 289, 299, 840 N.E.2d 1205, 1212 (2005).

¶ 12 The sixth amendment right to effective assistance of counsel includes the right to conflict-free counsel. *People v. Taylor*, 237 Ill. 2d 356, 374, 930 N.E.2d 959, 970 (2010). Our supreme court has identified two categories of conflicts of interest: *per se* and actual. *Taylor*, 237 Ill. 2d at 374, 930 N.E.2d at 971. *Per se* conflicts are created by defense counsel's prior or current association with either the prosecution or the victim. *Taylor*, 237 Ill. 2d at 374, 930 N.E.2d at 971. Here, defendant does not argue the case presented a *per se* conflict.

¶ 13 In the second category of conflicts of interest, actual conflicts, we examine whether the trial court was ever apprised of the possible or potential conflict. See *People v. Spreitzer*, 123 Ill. 2d 1, 17-18, 525 N.E.2d 30, 36 (1988). "If counsel brings the potential conflict to the attention of the trial court at an early stage, a duty devolves upon the trial court to either appoint separate counsel or to take adequate steps to ascertain whether the risk of conflict was too remote to warrant separate counsel." *Spreitzer*, 123 Ill. 2d at 18, 525 N.E.2d at 36 (citing *Holloway v. Arkansas*, 435 U.S. 475, 484 (1978)). "However, if the trial court is not apprised of the potential conflict, then reversal of the conviction will only be had upon a showing that an actual conflict of interest adversely affected counsel's performance." (Internal quotation marks omitted.) *Spreitzer*, 123 Ill. 2d at 18, 525 N.E.2d at 36. A defendant must point to some specific defect in his counsel's strategy, tactics, or decision making attributable to the actual conflict of

interest. *Spreitzer*, 123 Ill. 2d at 18, 525 N.E.2d at 36. The reference to "counsel" bringing the potential conflict to the attention of the court refers only to defense counsel. See *People v. Morales*, 209 Ill. 2d 340, 348, 808 N.E.2d 510, 514 (2004).

¶ 14 In this case, neither defendant nor defense counsel brought to the attention of the trial court a possible conflict arising from Lacy's representation of defendant. Defendant did not raise a conflict of interest issue in his motion to withdraw his guilty plea and never alluded to a conflict of interest. The record shows the court itself expressed concern at an early stage as to whether Lacy was the appropriate individual to represent defendant on his motion to withdraw his guilty plea. Defendant's motion alleged Lacy's deputy chief public defender provided ineffective assistance of counsel to defendant. Not only did Lacy not raise a potential conflict, but she provided to the court case law in support of her position that the case presented no conflict. See *Banks*, 121 Ill. 2d at 44, 520 N.E.2d at 621 (no *per se* conflict of interest when one public defender must argue the ineffective assistance of another public defender). Even though the court had no duty to inquire into the potential conflict of interest, it continued the hearing on its own motion to perform additional research and ultimately found no conflict of interest existed. Thus, we find the trial court was not required to conduct an inquiry where neither defendant nor defense counsel raised a potential conflict of interest issue.

¶ 15 We next determine whether defendant has shown an actual conflict of interest. Defendant does not allege defense counsel Lacy labored under an actual conflict of interest that adversely affected her performance. Nothing in this record warrants an inquiry into Lacy's diligence. Her Rule 604(d) certificate indicates she consulted with defendant and reviewed the record before amending defendant's *pro se* motion to withdraw his guilty plea. Lacy filed an amended motion for defendant in which she added substance and detail regarding defendant's

ineffective assistance of counsel claims against Morris, and added additional claims to the motion. During the hearing on the motion, she zealously examined Morris and vigorously argued in favor of defendant's motion. Defendant has not alleged, and the record does not disclose, any specific defect in counsel's strategy, tactics or decision making attributable to any actual conflict of interest. See *Spreitzer*, 123 Ill. 2d at 18, 525 N.E.2d at 36. Accordingly, we find defendant has not shown Lacy labored under an actual conflict of interest adversely affecting her performance.

¶ 16 Defendant next asks this court to consider, in support of his request for remand, a motion filed and then withdrawn by Lacy in March 2016. In her motion, Lacy maintained although the case presented no conflict of interest "early on in the proceedings[,] *** subsequent case law *** changed the standard from *Banks*," resulting in a *per se* conflict of interest. Defendant argues Lacy's withdrawn motion mandates remand for the limited purpose of conducting an inquiry into a potential conflict between Lacy and Morris. We first note defendant has never argued a *per se* conflict existed. Second, a trial court is not obligated to conduct an inquiry into a potential conflict if it is not brought to the court's attention "early on in the proceedings." See *Spreitzer*, 123 Ill. 2d at 18, 525 N.E.2d at 36, citing *Holloway*, 435 U.S. at 484. Lacy stated in her motion the case presented no conflict of interest "early on in the proceedings."

¶ 17 Here, Lacy voluntarily withdrew her motion before it could be considered by the trial court. Defendant was present during the exchange between Lacy and the court. Lacy informed the court she was withdrawing the motion. Defendant said nothing when Lacy conveyed to the court her decision to withdraw the motion. Defendant now attempts to resurrect the motion Lacy withdrew.

¶ 18 A defendant cannot request to proceed in a certain manner and then contend on appeal the trial court's action was not proper. See *In re Detention of Swope*, 213 Ill. 2d 210, 218, 821 N.E.2d 283,288 (2004) (appellate court erred in reaching merits of constitutional issue where the defendant acquiesced in the challenged procedure).

¶ 19 Defendant does not argue the trial court erred in denying his motion to withdraw guilty plea, and does not argue Lacy was ineffective. Moreover, defendant has not shown Lacy labored under an actual conflict of interest adversely affecting her performance. We find no violation of defendant's sixth amendment right to conflict-free counsel. Accordingly, we deny defendant's request to remand this cause to the trial court.

¶ 20 III. CONCLUSION

¶ 21 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002(a) (West 2014).

¶ 22 Affirmed.