COURT OF APPEALS
DECISION
DATED AND FILED

October 9, 2015

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2015AP45-CR **Cir. Ct. No. 2013CF2958**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JULIO QUILES-GUZMAN,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: JEFFREY A. WAGNER, Judge. *Affirmed.*

Before Kessler, Brennan and Bradley, JJ.

¶1 PER CURIAM. Julio Quiles-Guzman appeals from an amended judgment of conviction for one count of first-degree sexual assault with use of a dangerous weapon and one count of robbery with threat of force, both as a party to a crime, contrary to WIS. STAT. §§ 940.225(1)(b), 943.32(1)(b), and 939.05 (2013-

14).[1] Quiles-Guzman also appeals from an order denying his postconviction motion. He raises a single issue on appeal: whether the trial court erroneously exercised its discretion when it denied Quiles-Guzman's request to have new counsel appointed for him prior to the sentencing hearing. We affirm.

BACKGROUND

¶2 Quiles-Guzman was charged with four felonies in connection with a home invasion in which a woman was sexually assaulted and property was taken from the home. He was also charged with a drug-related felony after police officers found heroin in his room. After Quiles-Guzman's competency was called into question, he underwent a number of examinations. Ultimately, the trial court found him competent to stand trial.

¶3 Quiles-Guzman subsequently entered a plea agreement with the State pursuant to which the State agreed to dismiss three of the felonies in exchange for Quiles-Guzman's guilty pleas to first-degree sexual assault with use of a dangerous weapon and robbery with threat of force, both as a party to a crime. The State further agreed to recommend "substantial prison at the court's discretion."

¶4 The trial court conducted a plea colloquy with Quiles-Guzman. That colloquy, as well as all previous hearings, was conducted with the use of a Spanish

[1] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

translator, because Quiles-Guzman's primary language is Spanish.[2] The trial court found Quiles-Guzman guilty and ordered a presentence investigation.

¶5 Three days before the sentencing hearing, Quiles-Guzman personally filed a letter with the trial court that was handwritten in English by another individual on Quiles-Guzman's behalf.[3] In that letter, Quiles-Guzman asked the trial court to assign a new attorney for him because Quiles-Guzman had "not had full, and adequate representation" and had "deep concerns." The letter further stated:

> I am very [illiterate] to the English language, and barely get a full understanding from the assigned inter[preter]. All throug[h]out my case I have been trying to make a better understanding from it, instead I felt co[]erced into [a]ccepting and agreeing to things I never fully, clearly underst[oo]d in the courtroom.

¶6 At the sentencing hearing, trial counsel told the trial court that he met with Quiles-Guzman and an interpreter to go through the presentence investigation report "in detail" the day before the sentencing hearing. Trial counsel said that when they met, Quiles-Guzman said that "he wanted a new attorney" and that he had written the trial court a letter. Trial counsel reviewed that letter in the court file on the morning of the sentencing. Trial counsel told the trial court:

> There's some issues here. I can tell the court that he's not taking my counsel at this time and basically, you know, shutting me out.

[2] Trial counsel also explained that although he speaks some Spanish, he used an interpreter every time he met with Quiles-Guzman to discuss the case.

[3] In this opinion we have adjusted the capitalization of some words quoted from that letter.

> I know in his letter he raises issues about language … [but] every time I saw him I was with an interpreter.
>
> And he seems to have issues with the advice I gave him after he's read the police reports. He's asked me for some more reports, DNA reports.

¶7 The trial court spoke directly to Quiles-Guzman to ascertain his concerns. Quiles-Guzman said that although there was an interpreter, Quiles-Guzman "didn't understand" what was occurring. The trial court then asked the State for its position. The State said that nothing in the record suggested Quiles-Guzman did not understand the proceedings. It also noted that one of the doctors who examined Quiles-Guzman said that Quiles-Guzman claimed he did not understand English, but he was seen watching television programs in English and he had conversations in English with some people. The State opined that Quiles-Guzman was "attempting to avoid sentencing by feigning that he didn't understand."

¶8 Subsequently, the trial court spoke at length with Quiles-Guzman about his concerns with trial counsel. It also stopped the proceedings so that it could review the transcript of the plea hearing. The trial court asked Quiles-Guzman several times what precisely trial counsel had not adequately explained and what Quiles-Guzman had learned from reviewing discovery that caused him concern with trial counsel's advice. Each time, Quiles-Guzman could not identify any specific information that was not provided or issues that he misunderstood.

¶9 The trial court said that it had not "heard anything that would preclude us from going forward with sentencing." It asked trial counsel whether he was ready to proceed. Trial counsel indicated that he was ready and he said that nothing that had been said during the hearing "would prevent me from doing what I feel is the best job I can on the sentencing."

¶10 The trial court said that it would proceed with sentencing. After hearing arguments from the parties, it sentenced Quiles-Guzman to a total of forty-seven years of initial confinement and twenty-three years of extended supervision. The sentence was later reduced to forty-two years of initial confinement and eighteen years of extended supervision after the Department of Corrections notified the trial court that the sentence on one count exceeded the maximum possible sentence.

¶11 With the assistance of postconviction counsel, Quiles-Guzman filed a postconviction motion. He argued that the trial court erroneously exercised its discretion when it did not appoint new counsel for Quiles-Guzman when Quiles-Guzman requested it.[4] Quiles-Guzman acknowledged that the trial counsel had "delved into an inquiry of Mr. Quiles-Guzman's complaint," but nonetheless argued that the trial court should appoint new counsel for him and allow him to be resentenced with the assistance of that new counsel. In support, Quiles-Guzman emphasized that his request for a new attorney had been timely and noted that if the hearing had been adjourned for him to get new counsel, it would have been the first adjournment of the sentencing hearing. Quiles-Guzman also asserted that the conflict between him and trial counsel "was so great that it resulted in [a] total lack of communication."

[4] The postconviction motion also asserted that the trial court had erroneously exercised its sentencing discretion by imposing a sentence that "was harsh and excessive." The trial court rejected this argument. Quiles-Guzman has not pursued this issue on appeal and, therefore, we do not consider it. *See* ***Reiman Assocs., Inc. v. R/A Adver., Inc.***, 102 Wis. 2d 305, 306 n.1, 306 N.W.2d 292 (Ct. App. 1981) (Issues not briefed are deemed abandoned.).

¶12 The trial court denied the postconviction motion in a written order. The trial court stated the following with respect to Quiles-Guzman's request for resentencing after the appointment of new counsel:

> Nothing different is presented in his motion to warrant such relief. Still missing is any cogent reason as to why a new attorney should have been appointed, what specifically trial counsel did not explain to him with regard to the law, or what he did not understand about what he was told. The motion is conclusory at best, and the court denies the defendant's request for a new attorney and a new sentencing hearing for the same reasons. The court rejects the notion that there was total lack of communication between counsel and the defendant that frustrated a fair presentation of the case. Counsel stated he had been to see the defendant approximately a dozen times. Counsel always took a Spanish interpreter with him when he went to see the defendant. The defendant stated that he understood the elements of the offenses, the complaint, and the plea questionnaire form when he entered his guilty plea.

(Record citations omitted.) This appeal follows.

DISCUSSION

¶13 Quiles-Guzman argues that the trial court erroneously exercised its discretion when it did not grant Quiles-Guzman's request to have a new attorney appointed for him.[5] We begin our analysis with the applicable legal standards, which our supreme court summarized in ***State v. Jones***, 2010 WI 72, 326 Wis. 2d 380, 797 N.W.2d 378:

[5] Quiles-Guzman phrases his argument several ways. He asserts that the trial court "did not allow Quiles-Guzman to retain a new attorney" or "to fire his appointed attorney." He also complains that the trial court "forced [Quiles-Guzman] to proceed with an attorney that he could not communicate fully with." It is clear from the transcript that Quiles-Guzman was seeking the appointment of a new attorney at public expense, rather than seeking to hire an attorney or proceed *pro se*.

> Whether trial counsel should be relieved and a new attorney appointed is a matter within the circuit court's discretion. Absent an erroneous exercise of discretion, the circuit court's judgment "will not be disturbed." This court will sustain the circuit court's decision if the court "examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach."

Id., ¶23 (citations omitted). On appeal of a decision denying a defendant's request to substitute counsel,

> "[a] reviewing court must consider a number of factors including: (1) the adequacy of the court's inquiry into the defendant's complaint; (2) the timeliness of the motion; and (3) whether the alleged conflict between the defendant and the attorney was so great that it likely resulted in a total lack of communication that prevented an adequate defense and frustrated a fair presentation of the case."

Id., ¶25 (quoting ***State v. Lomax***, 146 Wis. 2d 356, 359, 432 N.W.2d 89 (1988)).

¶14 ***Lomax*** recognized that when considering the timeliness of a motion to substitute counsel and the associated request for a continuance, trial courts may consider the following factors:

> 1. The length of the delay requested;
>
> 2. Whether the "lead" counsel has associates prepared to try the case in his absence [whether there is competent counsel presently available to try the case];
>
> 3. Whether other continuances had been requested and received by the defendant;
>
> 4. The convenience or inconvenience to the parties, witnesses and the court;
>
> 5. Whether the delay seems to be for legitimate reasons; or whether its purpose is dilatory;
>
> 6. Other relevant factors.

Lomax, 146 Wis. 2d at 360 (quoting ***Phifer v. State***, 64 Wis. 2d 24, 31, 218 N.W.2d 354 (1974) (citations and internal quotation marks omitted, brackets in ***Lomax***). With these standards in mind, we consider the trial court's decision.

¶15 We begin with "'the adequacy of the court's inquiry into the defendant's complaint.'" *See* ***Jones***, 326 Wis. 2d 380, ¶25 (quoting ***Lomax***, 146 Wis. 2d at 359). At the outset, we note that Quiles-Guzman's postconviction motion did not assert that the trial court's inquiry was deficient. This alone provides a basis to reject Quiles-Guzman's argument on appeal concerning this factor. *See* ***Brooks v. Hayes***, 133 Wis. 2d 228, 241, 395 N.W.2d 167 (1986) ("The general rule is that this court will not consider arguments raised for the first time on appeal."). Nonetheless, we will briefly address this factor.

¶16 Quiles-Guzman argues that the trial court's "inquiry was not adequate." He explains:

> Quiles-Guzman repeatedly told the court that he did not believe that his attorney was explaining things in enough detail to him. He did not realize this until a bilingual inmate helped him go through his discovery. Quiles-Guzman told the court that he did not understand what the laws and processes were because his attorney did not completely explain things to him. He expressed this to the court, but the court discounted this.

¶17 We are not convinced that the trial court's inquiry was inadequate. As noted, the trial engaged in a lengthy discussion with Quiles-Guzman regarding his concerns about trial counsel and his desire to have a new attorney. The trial court repeatedly asked Quiles-Guzman to explain what he did not know and how he came to learn that information. The trial court also took a break during the hearing to review the plea hearing transcript. Even on appeal, Quiles-Guzman "does not argue that the circuit court should have inquired further into his

complaints," *see* ***Jones***, 326 Wis. 2d 380, ¶31, focusing instead on the trial court's rejection of Quiles-Guzman's explanations. As in ***Jones***, "[i]t is clear to us that the inquiry was certainly adequate." *See* ***id.***

¶18 The second factor we must consider is the timeliness of Quiles-Guzman's request to have new counsel appointed. *See* ***id.***, ¶25. Quiles-Guzman's trial counsel represented him beginning with Quiles-Guzman's arraignment in August 2013. Quiles-Guzman entered his guilty pleas on January 8, 2014. On February 25, 2014, the trial court received Quiles-Guzman's letter asking for the first time that a new attorney be appointed for him. On February 28, 2014, at the sentencing hearing, the trial court considered Quiles-Guzman's request.

¶19 Quiles-Guzman argues that his motion was timely because Quiles-Guzman filed his letter with the trial court three days before the sentencing hearing and renewed his request at the sentencing hearing. He adds:

> This was the first time the sentencing hearing had been scheduled, and the victims had not come to any prior hearings. As a whole, the case moved rather quickly, considering that there were mental health evaluations for competency and [a potential not-guilty-by-reason-of-insanity plea]. None of the delays can be attributed to Quiles-Guzman. Further, he asked the court for a new attorney as soon as he realized that he did not understand several things that his trial attorney had told him. He could not ask for a new attorney before that point because he did not know there was a lack of communication between them because he did not speak the same language as what the police reports were written in.
>
> ….
>
> Further, the court did not properly consider the ***Phifer*** considerations. First, the length of delay requested was not long. Had the court allowed Quiles-Guzman's attorney to withdraw, the public defender's office would have appointed a new attorney for Quiles-Guzman immediately because Quiles-Guzman had not had any other prior attorneys. In addition, the case was only pending for

> 7 months from start to finish, and the only delays were due to competency issues.
>
> Further, it would not have inconvenienced the parties to reschedule the sentencing. The victims would have had to come back to another court date, but there had been no other adjournments that they had been forced to sit through. Additionally, the delay was for legitimate reasons; Quiles-Guzman knew that his plea was entered and there was no way to avoid going to prison. However, he wanted to fully understand everything before he continued forward with the case, and wanted to communicate effectively with his attorney to prepare for sentencing.

(Bolding added.)

¶20 In response, the State emphasizes the trial court's observation that "in fifteen prior appearances in the case, Quiles-Guzman never raised that he did not understand anything that was said." The State also recognizes that the trial court had ascertained that trial counsel "was ready to proceed with sentencing and [had] noted that both victims were present," implying they could be re-victimized by a delay. The State adds that "[i]n any event, 'the timeliness factor is by itself not dispositive in regard to the analysis.'" *See* ***Jones***, 326 Wis. 2d 380, ¶32.

¶21 We share the trial court's concern with the fact that Quiles-Guzman failed to raise any concerns about his desire to have new counsel until days before sentencing. However, even if we were to assume that Quiles-Guzman's request was timely and would not have created a significant inconvenience to the trial court, the State, or the victims, we are not convinced that the trial court erroneously exercised its discretion when it denied Quiles-Guzman's request to have new counsel appointed. As the State points out, the timeliness factor is not dispositive. *See* ***id.*** In this case, the third factor—concerning the alleged conflict

between Quiles-Guzman and his trial counsel—was the factor the trial court found most compelling, and the record supports the trial court's analysis of that factor.

¶22 Specifically, when we consider "'whether the alleged conflict between the defendant and the attorney was so great that it likely resulted in a total lack of communication that prevented an adequate defense and frustrated a fair presentation of the case,'" *see* ***id.***, ¶25 (quoting ***Lomax***, 146 Wis. 2d at 359), the record supports the trial court's finding that Quiles-Guzman did not establish the requisite lack of communication. The trial court asked Quiles-Guzman numerous times to explain what it was that trial counsel had failed to explain and what Quiles-Guzman did not understand. In each instance, Quiles-Guzman was unable to provide a specific answer, leading the trial court to conclude that there was no reason to provide a different attorney for Quiles-Guzman. The trial court also noted that trial counsel was prepared to proceed with sentencing and "know[s] this case backwards and forwards." Further, the trial court confirmed that trial counsel had gone over the presentence investigation report with Quiles-Guzman "in detail." This preparation was confirmed during the sentencing arguments when trial counsel offered a correction to the presentence investigation report, stating: "Mr. Quiles-Guzman just wants to make it clear … he did not serve any time in jail in Puerto Rico."[6]

[6] Quiles-Guzman argues that because he and his trial counsel were not communicating well, trial counsel:

(continued)

¶23 Having considered the three factors discussed in ***Jones*** and ***Lomax***, we conclude that the trial court did not erroneously exercise its discretion when it denied Quiles-Guzman's request to have new counsel appointed for the sentencing hearing. The trial court "'examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach.'" *See* ***Jones***, 326 Wis. 2d 380, ¶23 (citation omitted). For the foregoing reasons, we affirm the amended judgment and the order denying Quiles-Guzman's postconviction motion.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

> went into the sentencing hearing without discussing the hearing with Quiles-Guzman in as much detail as he should have. Quiles-Guzman was not properly prepared for allocution because of the lack of communication with his attorney. He was unable to discuss the [presentence investigation report] in detail with his attorney due to the lack of communication and distrust; obviously, much of what is in a [presentence investigation report] is subjective, and Quiles-Guzman needed to rebut the allegations in the [presentence investigation report] so the court did not see him in such a horrible light.

We are not convinced that this provides a basis to overturn the trial court's decision to deny Quiles-Guzman's request for new counsel. Neither his trial counsel nor Quiles-Guzman requested additional time to discuss their sentencing argument before proceeding. Further, Quiles-Guzman has not identified what he would have said differently during his allocution or what corrections or additions to the presentence investigation report he would have offered. In short, Quiles-Guzman's assertions do not undermine the trial court's finding that there was not a total lack of communication between Quiles-Guzman and trial counsel.