

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 7, 2017

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2016AP796-CR

Cir. Ct. No. 2013CM1611

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MICHAEL STEEL, JR.,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Outagamie County: VINCENT R. BISKUPIC, Judge. *Affirmed.*

¶1 SEIDL, J.¹ Michael Steel, Jr., appeals a judgment of conviction for obstructing an officer as a repeat offender. On appeal, Steel argues the circuit court erroneously exercised its discretion by denying Steel's requests for substitute

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

court-appointed trial counsel and to reschedule the trial date. We disagree and affirm.

¶2 Steel was charged under WIS. STAT. § 946.41, as a repeat offender, following an incident in which Steel provided a false name to an officer while he was a passenger in the back seat of a stopped vehicle. Steel was not present for his initial appearance on January 28, 2014, but he was present on March 27, 2014, to enter a not guilty plea. Steel then failed to appear for court proceedings on December 2 and 9, 2014, and could not be contacted by his then-appointed counsel. After a bench warrant was issued for his arrest, Steel appeared for a hearing on June 30, 2015. Steel reentered his not guilty plea, and a jury trial was scheduled for August 11, 2015.

¶3 Attorney Mark Ditter was appointed counsel for Steel on July 2, 2015, after Steel's prior court-appointed counsel petitioned to withdraw from representation due to a lack of communication with Steel. On August 5, the State requested that the trial be rescheduled because the investigating officer was unavailable on August 11. The trial was moved to August 18. Then, on August 13, Ditter wrote a letter to the circuit court requesting a new trial date because he had a "pending JIPS matter" scheduled for trial on August 18. The court denied this request. Ditter represented Steel at trial.

¶4 On the day of trial, Steel personally expressed to the court that he was not comfortable going to trial and desired to "fire" attorney Ditter due to a disagreement with Ditter over calling other occupants of the vehicle as witnesses.²

² Steel did not specifically state he wanted another court-appointed attorney, nor did he state he wanted to hire private counsel or proceed pro se. However, based on the record and upon

(continued)

The circuit court responded that Steel's case had been pending for about two years and that Ditter was capable of handling the issue being tried. After the State presented its case, Ditter presented the circuit court with a plea questionnaire in which Steel indicated his intent to plead guilty. The court conducted a colloquy with Steel and ultimately rejected the plea as not entered freely, voluntarily, and intelligently due to the timing of its entry and Steel's desire to contest the charge. The jury found Steel guilty. Steel now challenges the denial of Ditter's request to reschedule the trial and Steel's request to be represented by new appointed counsel.

¶5 Requests for substitution of counsel and continuances or adjournments are matters left to the circuit court's discretion and are reviewed for erroneous exercise of discretion. *State v. Lomax*, 146 Wis. 2d 356, 359, 432 N.W.2d 89 (1988); *State v. Leighton*, 2000 WI App 156, ¶27, 237 Wis. 2d 709, 616 N.W.2d 126. An erroneous exercise of discretion occurs "if the record shows that the [circuit] court failed to exercise its discretion, the facts fail to support the [circuit] court's decision, or [an appellate] court finds that the [circuit] court applied the wrong legal standard." *State v. Black*, 2001 WI 31, ¶9, 242 Wis. 2d 126, 624 N.W.2d 363 (citation omitted).

¶6 Steel initially argues *United States v. Gonzalez-Lopez*, 548 U.S. 140, 148 (2006), grants him the right to counsel of his own choosing, and, under this standard, the court erred by denying his request made immediately prior to trial to "fire" Ditter, and provide him "other representation." Steel is wrong. The

Steel already having obtained two court-appointed attorneys, we construe his statements as requesting yet another request for a court-appointed attorney.

circuit court properly exercised its discretion by denying Steel’s request for substitution of appointed counsel because “the right to counsel of choice does not extend to defendants who require counsel to be appointed for them.” *State v. Jones*, 2010 WI 72, ¶38, 326 Wis. 2d 380, 797 N.W.2d 378 (quoting *Gonzalez-Lopez*, 548 U.S. at 151). Based upon that rule, the State argues the circuit court properly exercised its discretion by denying Steel’s request for substitution of appointed counsel. See *id.*, ¶25 (citing *Lomax*, 146 Wis. 2d at 359). We do not address the issue further because Steel fails to cite relevant law and develop an argument. See *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992). In addition, Steel concedes the State’s argument by failing to respond to it in his reply brief. See *Hoffman v. Economy Preferred Ins. Co.*, 2000 WI App 22, ¶9, 232 Wis. 2d 53, 606 N.W.2d 590 (1999).

¶7 Steel next argues the circuit court erroneously exercised its discretion by denying Ditter’s request for a new trial date. The denial of a continuance implicates the right to counsel and due process, and the decision requires “balancing of the defendant’s constitutional right to adequate representation by counsel against the public interest and the prompt and efficient administration of justice.” *State v. Wollman*, 86 Wis. 2d 459, 468, 273 N.W.2d 225 (1979). *Wollman* provides a non-exclusive list of six factors as guidelines for how those interests should be balanced:

1. The length of the delay requested;
2. Whether the “lead” counsel has associates prepared to try the case in his [or her] absence;
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; [and]
6. Other relevant factors.

Id. at 470 (citation omitted; formatting altered); *see also Lomax*, 146 Wis. 2d at 361.

¶8 Ditter failed to indicate the length of delay he was requesting. That indeterminate request is problematic since Steel may be seeking a long delay and the circuit court could not assess the reasonableness of the request. Therefore, the first factor weighs against Steel. Second, whether Ditter had an associate who could try the case to ameliorate Ditter’s calendar conflict is a moot issue and a consideration inapplicable for the reasons provided below. *See infra* ¶9. The third factor favors Steel’s argument as he had not filed a previous rescheduling request. Fourth, Steel states that there was only one witness at trial—the law enforcement officer who arrested Steel—and he argues inconvenience to one officer and the court “is minimal.” That may be true, but Steel does not develop any argument as to why the inconvenience was minimal, and we do not address it further. *See Pettit*, 171 Wis. 2d at 646-47.

¶9 As to the fifth factor, Steel first argues the circuit court improperly disregarded Ditter’s legitimate reason for rescheduling—Ditter’s schedule conflict. However, Ditter was ultimately able to appear for Steel’s trial, which rendered the scheduling conflict moot. Although Steel also argues that a legitimate reason for an adjournment was to allow Ditter to review discovery and Steel to discuss the case with his attorney, Ditter did not offer lack of preparation or need to review discovery as a basis for the motion to adjourn.³ In addition, the circuit court

³ Steel’s initially appointed counsel filed a demand for discovery and inspection on April 4, 2014. While the record is devoid of any indication when Steel received discovery from the State, it was up to Steel to develop the argument that there was insufficient time between receipt of the State’s discovery and the August 18, 2015 trial for he and his attorney to review discovery. Steel’s argument is therefore undeveloped and we will not consider it further. *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

observed that “[t]he scope of this trial is very limited.” The sole issue was whether Steel gave a false name to the law enforcement officer. The court impliedly concluded that more preparation time and discovery review were not legitimate reasons for delay.

¶10 Steel points out that the State was granted a request to reschedule the trial date, while Ditter was not. That apparent fairness argument might weigh in favor of an adjournment, but Steel ignores that he delayed the legal proceedings, as the circuit court noted before trial, for nearly two years to that point.

¶11 Finally, Steel argues that “[a]llowing the trial to be rescheduled, even for a short period of time, may well have provided enough time for Attorney Ditter to work with Steel in such a fashion that trial could have been avoided altogether.” It appears Steel means a plea agreement might have been achieved. However, that argument ignores the fact that the circuit court rejected Steel’s attempted plea during the trial as not entered freely, voluntarily, and intelligently due, in part, to Steel’s express desire to contest the charge. Steel fails to provide information on how a delay would have affected his desire to contest the charge, and therefore, this argument is undeveloped and we do not accept it as a factor supporting Steel’s argument. *See id.* The *Wollman* factors support the circuit court’s decision not to reschedule the trial.

¶12 We therefore conclude the circuit court properly exercised its discretion by denying Steel’s request for substitution of appointed counsel, and declining to grant a continuance or rescheduling of the trial.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE
809.23(1)(b)4.

