NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
DAIJOUR LAMARK STENNETT	:	
Appellant	:	No. 1318 MDA 2025

Appeal from the Judgment of Sentence Entered April 25, 2023
In the Court of Common Pleas of Lancaster County Criminal Division at
No(s): CP-36-CR-0005050-2021

BEFORE: LAZARUS, P.J., STABILE, J., and BENDER, P.J.E.

MEMORANDUM BY BENDER, P.J.E.: **FILED: NOVEMBER 5, 2026**

Appellant, Daijour Lamark Stennett, challenges the judgment of sentence imposed on his convictions for attempted homicide, aggravated assault, firearms not to be carried without a license, and recklessly endangering another person.[1] Appellant maintains that the trial court erred by not granting his oral request for a continuance. After careful review, we affirm.

The trial court set forth the facts of this case as follows:

> On the morning of November 4, 2021, [Appellant] dropped his sons off at school and drove around the corner to Hershey Avenue where Nicole Davis, the mother of his children, lived with her husband, Norman Davis. Norman was outside on the sidewalk when [Appellant] drove past. When [Appellant] saw Norman, he started recording a video on his cell phone. [Appellant] uttered an eerie laugh and pulled over to the curb. He got out of his car

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[1] 18 Pa.C.S. §§ 901(a), 2501(a), 2702(a)(1), 6106(a)(1), and 2705, respectively.

> holding his phone, which was still recording, and a gun. [Appellant] walked toward Norman and started shooting. [Appellant's] cell phone video recorded him firing three shots in succession followed by a four second pause. During these four seconds, [Appellant] walked up to Norman, who had fallen defenseless to the ground. The pause was broken by one last shot, which [Appellant] fired into the back of Norman's head as he laid face-down on the sidewalk.
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> Nicole, who had been watching from the window of the Davis home, ran from her residence and screamed for the help of a police officer that happened to be driving by. The officer, Christian Torres, saw [Appellant] holding a gun and immediately turned his cruiser around when he heard Nicole's screams. Officer Torres found Norman lying unresponsive on the ground with blood pooling around his chest and a bullet hole in the back of his skull. Norman was transported to the hospital and despite being shot in his chest, shoulder, and head, he miraculously survived.

Trial Court Opinion (TCO), 12/8/25 at 1-3 (citations to notes of testimony omitted, some capitalization altered).

Appellant was arrested on scene and charged with the crimes listed above. Soon after his arrest, Appellant hired Jack McMahon, Esquire, for his defense. Attorney McMahon represented Appellant throughout the year between Appellant's arrest and his trial, attending multiple status conferences on his behalf. On the morning of jury selection, the trial court first conducted a colloquy with Appellant to confirm the terms of the last plea offer made by the Commonwealth. During this colloquy, Appellant stated that he was uncomfortable with his attorney's representation and asked if he could obtain new counsel. N.T. Jury Trial, 12/5/22, at 4-8. The request for a new attorney was denied, and Appellant was ultimately convicted at a jury trial of all charges. Following receipt of a presentence investigation report, the trial

court sentenced Appellant to an aggregate term of 17½ to 35 years of incarceration. Sentencing Order, 4/25/23.

After his conviction, but before sentencing, Appellant began filing *pro se* motions, including multiple notices of appeal to this Court.[2] Following sentencing, Attorney McMahon also filed a motion to withdraw his appearance, which the trial court granted on May 10, 2023. Thereafter, Senior Assistant Public Defender Mary Jean Glick, Esquire, entered her appearance for Appellant, discontinued his *pro se* appeals, and filed a new, counseled, notice of appeal. Attorney Glick also filed a statement of errors pursuant to Pa.R.A.P. 1925(b). However, on August 23, 2023, Attorney Glick filed a motion for a hearing under ***Commonwealth v. Grazier***, 713 A.2d 81 (Pa. 1998), stating that Appellant had requested that she withdraw.

The trial court conducted the ***Grazier*** hearing on December 18, 2023, and Appellant indicated therein that he wished to represent himself. Thus, the court granted Attorney Glick's motion to withdraw, and ordered Appellant to file an amended statement of errors. Appellant complied with this order. After the record was sent to the Superior Court, current appellate counsel, Todd M. Mosser, Esquire, entered his appearance on behalf of Appellant. However, the appeal was dismissed due to counsel's failure to file a brief on August 27, 2024.

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[2] Appellant's prior *pro se* appeals were docketed at 138 MDA 2023, 637 MDA 2023, 674 MDA 2023, 1024 MDA 2023, and 1032 MDA 2023. Each was subsequently withdrawn by defense counsel.

Appellant subsequently filed a *pro se* petition under the Post Conviction Relief Act (PCRA), 42 Pa.C.S. §§ 9541-9546. Attorney Kristen Weisenberger, Esquire, was appointed to represent Appellant. Attorney Weisenberger filed an amended petition and requested the reinstatement of Appellant's right to appeal. The trial court reinstated Appellant's direct appeal rights *nunc pro tunc* on September 17, 2025.

Two days later, Attorney Mosser filed a new entry of appearance on Appellant's behalf. On September 22, 2025, Attorney Mosser filed the instant notice of appeal. As Appellant and the trial court have complied with Pa.R.A.P. 1925, this appeal is now ripe for our review.

Appellant phrases his issue on appeal as follows:

> 1. Did the trial court err by denying [Appellant's] request for a continuance and new counsel?

Brief for Appellant at 2.

In addressing Appellant's claim, we note that "the decision to grant or deny a continuance request rests with the sound discretion of the trial court and we will not reverse the decision absent a clear abuse of discretion." ***Commonwealth v. Broitman***, 217 A.3d 297, 299 (Pa. Super. 2019). Further, "an abuse of discretion is not merely an error of judgment. Rather, discretion is abused when the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias, or ill-will, as shown by the evidence or the record[.]" ***Commonwealth v. Brooks***, 104 A.3d 466, 469 (Pa. 2014).

This Court has observed that trial courts "necessarily require a great deal of latitude in scheduling trials. Not the least of their problems is that of assembling the witnesses, lawyers, and jurors at the same place at the same time, and this burden counsels against continuances except for compelling reasons." ***Commonwealth v. Norton***, 144 A.3d 139, 143 (Pa. Super. 2016). A trial court exceeds "the bounds of its discretion when it denies a continuance on the basis of an unreasonable and arbitrary insistence upon expeditiousness in the face of a justifiable request for delay." ***Id.*** Accordingly, on review, we must examine the reasons presented to the trial court for the continuance, as well as the trial court's reasons for denying the request. ***Id.***

Appellant requested a continuance to obtain new counsel as the parties began selecting a jury. Initially, the trial court asked the Commonwealth whether a plea offer had been made in this case. The following transpired:

> [THE COMMONWEALTH]: Judge, there was an offer in October. It was rejected. There was not a counter – I don't think the defendant ever asked counsel to counter it at all.
>
> THE COURT: What was the offer?
>
> [THE COMMONWEALTH]: 20 to 40.
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> THE COURT: 20 to 40. [Appellant], if you would stand up for a moment. Do you understand what the offer is in this case?
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> [APPELLANT]: Yes, I do, Your Honor. And I did ask my counselor to talk to the District Attorney about an offer, and he never – he doesn't communicate with me at all.
>
> [THE COMMONWEALTH]: Judge, let me be, actually, clear. I don't mean [defense counsel] and I didn't have conversations about the case. There was no offer the defendant would take that was ever communicated to me.

THE COURT: That is a different situation. Okay. And so you understand, trial starts later this morning, [Appellant].

[APPELLANT]: I'm honestly not comfortable with my counselor anymore, and I'm trying to –

THE COURT: Okay. Let me ask you, again, [Appellant], do you understand the trial for this case starts later this morning? Do you understand that?

[APPELLANT]: I'm trying to see if there is any way that I can get new counsel to represent me because my counsel only met with me two times in the past year. He hasn't strategized with me about trial. He hasn't subpoenaed witnesses on my behalf. He just – he doesn't communicate with me. He doesn't do anything I ask him to do. I don't think he is in my best interest at all to represent me.

THE COURT: My understanding was he spent a considerable amount of time in the prison with you this weekend.

[APPELLANT]: This weekend he came to see me for an hour. That is the only time he came to talk to me about my case since I had him.

THE COURT: [Appellant], let me, again, explain this to you. Today is the day the trial begins. Okay. And what that means is within about 45 minutes I'm going to have a group of people in here, potential jurors, and we will go through jury selection. So the result of that is [defense counsel], who is an extremely competent attorney, would be representing you. Or if, of course, you would like to pursue defending yourself, you can go through a question-and-answer session to see if you want to represent yourself in the trial. So would you like to do that question and answer on representing yourself, or would you like to have [defense counsel] represent you?

[APPELLANT]: My best bet, I think, would be to get new counsel, but I don't think you are trying to give me that opportunity.

THE COURT: No, sir. Today is the day the trial is scheduled to begin. You already filed motions seeking to be released because of the delay of trial, so I'm going to go ahead and proceed with this case so your constitutional rights are protected. So with that understanding, do you want to look at an option of proceeding

without a lawyer, or would you like to have [defense counsel] represent you?

[APPELLANT]: He told me he is not prepared to represent me.

THE COURT: [Defense counsel], are you prepared to go to trial?

[DEFENSE COUNSEL]: Totally prepared, Your Honor. I never made such a statement ever in my life to him.

THE COURT: Okay. He is prepared to go to trial, [Appellant].

[APPELLANT]: You are not giving me a fair chance at trial. He is not prepared. He even told my mom yesterday, I am not prepared.

[DEFENSE COUNSEL]: That is totally not true. I never said that. I had conversations with the mother. I never, ever, ever said that, ever. At no time did I ever say such a thing. That is just not true.

THE COURT: Okay. [Appellant], how would you like to proceed, sir?

[APPELLANT]: I honestly don't know. I'm not given any good options here.

THE COURT: Well, right now the options as I see it are you could plead guilty to the Commonwealth's offer or –

[DEFENSE COUNSEL]: Or he could plead open.

THE COURT: -- or you could plead open. That would be to whatever the Commonwealth's offer was. And frankly, I don't know what that is, and I don't need to know.

The second option is you could plead guilty to me, and then I would delay sentencing [for] something called a presentence investigation that looks into your background, employment, education, things like that. And then using guidelines the State gives, I would determine on my own what I think the appropriate sentence is.

The third option would be to go to trial with [defense counsel] representing you.

And the fourth option would be for you to waive the right to have [defense counsel] represent you and represent yourself.

So you see what the four options are at this point. Okay. Would like a little bit of time to figure out which option you want to pursue?

[APPELLANT]: Yes.

THE COURT: Okay. Well, we have a bit of time because the jury won't be up until about a half an hour from now. Okay. So you feel free to think about it. Talk to [defense counsel]. And when you've made a final decision, simply notify us. Okay. Very good. That is it.

(A recess was taken.)

THE COURT: Very good. Now, sir, [Appellant], sir, if you would please stand. As I've explained previously, the option we have as of this morning is, accept the Commonwealth's plea offer; plead open, and I would then get a background check on criminal history, education, things like that and then sentence you pursuant to whatever the guidelines might be. The third option would be to go to trial. We have the jury lined up and ready to go at any minute with [defense counsel] as your attorney. And the fourth option is representing yourself, after appropriate questioning by me to make sure that it is a knowing, voluntary, and intelligent waiver of counsel.

I've given you well over an hour to discuss the matter with your attorney in private, with your family, who is present here today, and the like, and so the time has come now, [Appellant], to make your final decision. What is your final decision?

[APPELLANT]: I'm not comfortable with any of the options.

THE COURT: That may be the case, but you have to pick one.

[Appellant], what is your choice?

[Appellant], I'll ask you one last time, what is your decision?

[APPELLANT]: I don't know.

THE COURT: Okay, very good. Then in the absence of any decision, I'm going to have the jury brought up, and we will allow [Appellant] to exercise his constitutional right to a jury of his peers. Very good. Thank you.

N.T. Jury Trial, 12/5/22, at 4-10 (some formatting altered).

In its Rule 1925(a) opinion in this appeal, the trial court explained in more detail why it denied Appellant's request for a continuance:

> Here, [defense counsel] represented [Appellant] for a full year prior to trial. [Defense counsel] attended numerous status conferences and calls of the list and filed two bail modification requests on [Appellant's] behalf. [Defense counsel] was ordered attached for trial on November 22, 2022. Therefore, [Appellant] had notice of the date-certain trial and had almost two weeks to alert the [c]ourt of his desire to secure new counsel. Instead, [Appellant] waited until just prior to jury selection on the morning of trial to request time to secure a new attorney. He did so by lodging accusations of counsel's unpreparedness, which I sufficiently entertained by probing into the truth of the assertion. After a thorough colloquy, [defense counsel] dispelled [Appellant's] claims and assured the [c]ourt of his readiness for trial.
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> [Appellant] undoubtedly had an actual opportunity to obtain counsel of his own choice. He did so immediately after charges were filed in December 2021 and continued to have the opportunity to select new counsel throughout the pre-trial process. [The court's] questioning of [defense counsel's] preparedness revealed that [Appellant's] claims of neglect and lack of readiness were, at best, unfounded and likely dilatory and fabricated. Because [Appellant's] case had already been continued on numerous occasions and [Appellant] had filed counseled and *pro se* requests for bail hearings and modifications, any further delay would have compromised the efficient administration of justice. Further, case law is clear that requiring a judge to grant a defendant's day-of request for additional time to secure new private counsel when current counsel is ready and prepared for trial would be a wholly unreasonable interpretation of a defendant's [c]onstitutional rights. Thus, [the court] did not err in denying [Appellant's] continuance request so that he could begin the process of looking for a new attorney when a highly experienced attorney was present and prepared to represent him.

TCO at 12-13.

When reviewing a trial court's ruling on a motion for a continuance to obtain private representation, we consider: (1) whether the court conducted an extensive inquiry into the underlying causes of the defendant's dissatisfaction with current counsel; (2) whether the defendant's dissatisfaction constituted irreconcilable differences; (3) the number of prior continuances; (4) the timing of the motion; (5) whether private counsel had actually been retained; and (6) the readiness of private counsel to proceed within a reasonable amount of time. ***Broitman***, ***supra***, 217 A.3d at 300. While a defendant's right to counsel of his choosing is constitutionally protected, such a right "must be exercised at a reasonable time and in a reasonable manner." ***Id.*** (citation omitted).

In his brief to this Court, Appellant primarily relies upon ***Commonwealth v. Prysock***, 972 A.2d 539 (Pa. Super. 2009) in support of his claim that the trial court abused its discretion by failing to conduct an extensive inquiry into Appellant's reasons for requesting a continuance. We thus consider that case in some detail.

Defendant Prysock was charged with, *inter alia*, possessing narcotics with the intent to deliver. Prysock was appointed counsel from the Public Defender's Office, who asked for a continuance and filed a motion to suppress evidence in the case. As jury selection was about to begin, however, the public defender informed the court that Prysock was dissatisfied with his representation and wished to retain private counsel. After discussion, the request was denied and the parties began jury selection.

The next morning, a member of the defense bar entered the courtroom, attempted to enter his appearance on Prysock's behalf, and informed the trial court that he had just been retained by Prysock's family. The new attorney was unaware that jury selection had begun, however, and he informed the court that he was not prepared to proceed that day. Thereafter, the trial court denied Prysock's request for a continuance and jury selection resumed with the public defender attorney representing Prysock. Appellant expressed dissatisfaction with his counsel multiple times during trial such that the court was required to intervene.

After his conviction, Prysock challenged the denial of his motion for a continuance. On appeal, this Court awarded him a new trial, finding that the trial court's inquiry was insufficient to protect Prysock's right to representation by the counsel of his choice. ***Prysock***, ***supra***, 972 A.2d at 545. Specifically, the Court noted that the public defender attorney had been appointed to represent Prysock about 30 days before trial, he had sought and received one continuance of the trial date already, and he submitted a suppression motion on Prysock's behalf. In addition, Prysock's family had retained counsel who entered his appearance; thus, the request for new counsel did not seem to be a mere attempt at unreasonable and indefinite delay. The trial court did not make any serious inquiry into the nature of any disputes between Prysock and his attorney, and did not ask substitute counsel how much time he would need to get ready for the trial. Moreover, the Commonwealth did not object to Prysock's request for a continuance, merely indicating that it was ready to

proceed. Considering all of these factors, this Court concluded that Prysock's difficulties with his appointed counsel pervaded every aspect of his trial. Thus, we found that the trial court had abused its discretion in denying the continuance. ***Id.***

Appellant's reliance on ***Prysock*** is misplaced. Even assuming Appellant clearly requested a continuance to obtain new counsel,[3] the relevant considerations support the court's decision to deny his request. Appellant complained that counsel had met with him only twice, had not discussed trial strategy with him, had not subpoenaed witnesses on his behalf, and did not adequately communicate with him. N.T., 12/5/22, at 4-5. He also alleged that counsel had told him and his mother that he was unprepared for trial. ***Id.*** at 6. However, there is no indication that the difficulties Appellant experienced pervaded every aspect of his case.

Admittedly, the court did not *extensively* inquire into Appellant's complaints concerning counsel's representation. It did, however, directly address Appellant's immediate allegation that counsel was unprepared. When questioned by the court, counsel stated that he was "[t]otally prepared" for trial and emphatically denied telling either Appellant or his mother otherwise. ***Id.*** at 6. The court credited counsel's representation that he was prepared to proceed. Where the defendant and counsel offer competing accounts of counsel's preparedness, the trial court is entitled to determine which account

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[3] We note that Appellant never *directly* stated his request, merely stating that he was "not comfortable" with his attorney and that he lacked "good options."

is credible. ***See Brooks***, 104 A.3d at 478-79 (holding that a trial court is not required to establish "compelling reasons" for denying a continuance on the record as long as the denial is reasonable under the totality of the circumstances and not evidence of a myopic insistence on moving forward with trial). Moreover, the court did not summarily reject Appellant's concerns. Instead, it explained Appellant's options and afforded him more than an hour to confer privately with counsel and his family before again asking how he wished to proceed. N.T. at 7-9.

Further, the trial court appropriately cited the timing of Appellant's request. Counsel had represented Appellant for approximately one year, attended numerous pretrial proceedings on his behalf, and informed the court that he was fully prepared to try the case. Appellant did not seek new counsel until the morning scheduled for jury selection, despite having been represented by counsel for approximately one year. Moreover, unlike the defendant in ***Prysock,*** he had not retained substitute counsel, failed to identify an attorney willing to undertake his representation, or indicated how much additional time would be necessary to obtain and prepare new counsel. This circumstance sharply distinguishes ***Prysock***, where the defendant's family had already retained substitute counsel, that attorney personally appeared before the trial court, and the court nevertheless denied a continuance without determining how much time substitute counsel would need to prepare. ***Prysock***, 972 A.2d at 544-45.

The lateness of Appellant's request is also significant under Pa.R.Crim.P. 106(D), which generally requires a defendant to move for a continuance no later than 48 hours before the scheduled proceeding. Although the Rule permits a later request where the opportunity to seek a continuance did not previously exist, the defendant was previously unaware of the grounds for the motion, or the interests of justice otherwise require consideration of the request, Appellant established none of those circumstances. His complaints regarding counsel's alleged lack of communication, failure to discuss trial strategy, and failure to subpoena witnesses concerned matters of which Appellant necessarily was aware before the morning of trial. Nevertheless, he took no action to obtain substitute counsel before jury selection was about to begin.

We find the ***Brooks*** case to be instructive. In ***Brooks***, our Supreme Court emphasized that a trial court's failure to conduct the type of extensive inquiry discussed in ***Prysock*** does not, standing alone, establish an abuse of discretion. Rather, the appellate court must consider the entire record and the circumstances confronting the trial judge, who possesses both familiarity with the case and the opportunity to observe both the defendant and counsel firsthand. ***Brooks***, 104 A.3d at 478-79. Here, counsel had represented Appellant for approximately one year and unequivocally stated that he was prepared for trial; Appellant waited until the morning of jury selection to request substitute counsel; no replacement attorney had been retained or

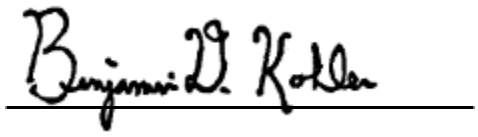
even identified; and Appellant offered no explanation for his failure to raise his longstanding concerns at an earlier time.

Accordingly, although the trial court did not extensively explore every aspect of Appellant's dissatisfaction with counsel, we find that its denial of a continuance was not the product of an unreasonable or arbitrary insistence upon expeditiousness in the face of a justifiable request for delay. Rather, the court reasonably balanced Appellant's interest in obtaining counsel of his choice against the orderly and efficient administration of justice. ***See Broitman***, 217 A.3d at 300. We therefore discern no abuse of discretion in the denial of Appellant's request for a continuance.

Finding no merit to Appellant's sole issue on appeal, we affirm his judgment of sentence.

Judgment of sentence affirmed.

Judgment Entered.



Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/05/2026