

IN THE COURT OF APPEALS OF IOWA

No. 6-234 / 05-0778

Filed April 26, 2006

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DAVID DESHAWN BRADFORD,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, K.D. Briner
(motion) and Stephen C. Clarke (trial), Judges.

The defendant appeals from his conviction and sentence for possession of
a controlled substance with intent to deliver. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Theresa R. Wilson,
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney
General, Thomas J. Ferguson, County Attorney, and Brad Walz, Assistant
County Attorney, for appellee.

Considered by Sackett, C.J., and Vogel and Mahan, JJ.

SACKETT, C.J.

The defendant-appellant, David Bradford, appeals from his conviction and sentence for possession of a controlled substance with intent to deliver, enhanced as a second or subsequent offense and an habitual offender. He contends the district court erred in not thoroughly inquiring into his allegation of a conflict with his defense attorney. He requests we remand for a hearing on his allegation. We affirm his conviction and preserve this claim for possible postconviction proceedings.

The defendant was charged with six offenses. The court granted his motion to sever, ordering separate trials on all but two related charges. On January 25, about two weeks before the trial appealed from, the defendant filed a pro se “Motion of Counsel to Withdraw and Appointed of New Counsel.” It alleged he and his retained counsel, John Standafer, “has arising conflicts of interest in the facts of the direction of the defendant multiple cases and upcoming trials.” It asked (1) that attorney Standafer withdraw and (2) that the district court appoint a specific attorney to replace Standafer. Attorney Standafer advised the court the retainer he received was not adequate to cover multiple trials.

The court issued two orders on January 27. The first order noted the defendant was eligible for court-appointed counsel and that allowing attorney Standafer to continue would minimize overall costs to the state. It appointed Standafer to represent the defendant and ordered that the retainer paid be shown as a credit against a fee request. The second order noted the defendant’s “pro se pleading asking the court to excuse attorney John Standafer from his

case, . . . and appoint attorney Raphael Scheetz.” The order advised the defendant in pertinent part:

2. The court appointed attorney Standafer after being advised that Mr. Bradford's family was unable to pay further fees and that the case would require several trials. The court appointed attorney Standafer because he has already done considerable work on the case and is familiar with it.

3. If the defendant wishes to hire another lawyer, he is free to hire any lawyer licensed to practice in the State of Iowa. If he wishes to proceed with court-appointed counsel, he is entitled to have a competent lawyer, but he is not entitled to have a lawyer of his own choosing to represent him.

The court did not hold a hearing on the pro se motion or otherwise inquire into the alleged conflict. Attorney Standafer represented the defendant in the jury trial from which he appeals.

On appeal, the defendant argues:

Bradford's motion for new counsel was sufficient to alert the court to a problem with counsel. The district court failed to make any inquiry into Bradford's concerns or complaints, therefore the nature of the problem is not in the record. The present record is completely silent on whether there was a complete breakdown in communication or irreconcilable conflict, the causes, or the length of the problem. Having received a colorable complaint, the district court should have inquired into whether there was a complete breakdown in communication or such an irreconcilable conflict that Bradford's Sixth Amendment right to counsel was violated. Additionally, the district court could have also conducted an inquiry whether, in fact, Bradford truly wished to proceed pro se if new counsel would not be appointed.

He correctly cites *State v. Tejeda*, 677 N.W.2d 744, 753 (Iowa 2004), noting that the appropriate remedy when the district court fails to inquire into an alleged conflict or breakdown in communication is preservation of the issue for postconviction proceedings where a hearing may be held and a record developed, but asks instead for a remand for a hearing. *Tejeda* guides our

decision; we affirm the defendant's conviction and preserve his claim of conflict for possible postconviction proceedings. See *Tejeda*, 677 N.W.2d at 753. Preservation of this claim for postconviction proceedings is warranted also because the defendant "has several complaints of ineffective assistance of counsel he may choose to raise directly in a postconviction relief application pursuant to Iowa Code section 814.7 (2005)." *Id.*

AFFIRMED.