

**IN THE COURT OF APPEALS OF IOWA**

No. 9-1015 / 09-0641  
Filed February 10, 2010

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**VONGPHACHANH SIHARATH,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Polk County, Douglas F. Staskal (Pre-Trial Conference) and Scott D. Rosenberg (Trial and Sentencing), Judges.

A defendant appeals from his convictions and sentences for intimidation with a dangerous weapon and possession of a firearm by a felon, claiming the district court erred in failing to appoint substitute counsel. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Theresa R. Wilson, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Martha E. Trout, Assistant Attorney General, John P. Sarcone, County Attorney, and Joseph Crisp and Dan Voogt, Assistant County Attorneys, for appellee.

Considered by Sackett, C.J., and Vaitheswaran and Danilson, JJ.

**VAITHESWARAN, J.**

The State charged Vongphachanh Siharath with intimidation with a dangerous weapon and possession of a firearm by a felon in connection with a shooting directed at a car in downtown Des Moines. A public defender was appointed to represent Siharath.

At a pre-trial conference, Siharath's attorney informed the court that Siharath wanted new counsel. The district court proceeded to engage Siharath in the following colloquy:

Mr. Siharath, is that true what Mr. Dunn just said, you are seeking a different attorney?

THE DEFENDANT: Yes, sir.

THE COURT: Tell me why.

THE DEFENDANT: I feel that my life is not safe with him. He don't help me. He don't come see—he come to see me and he come down and cuss me out. I don't know what's wrong with him. I told him I need new lawyer.

THE COURT: Okay. What was the first thing you said? I didn't catch what you said, something about your right of—

THE DEFENDANT: I don't feel safe with him.

THE COURT: You don't feel safe with him?

THE DEFENDANT: Yes, sir. He is not helping me. He is no defending me.

THE COURT: Tell me specifically what you want him to do that he hasn't done.

THE DEFENDANT: He came visit me not even five, 10 minute. All he do is sit there and yell at me. He say I'm bullshitting him. He say I never see him.

THE COURT: Well, I am denying your request for a new attorney. You haven't told me anything that would cause me to not continue Mr. Dunn's appointment in your case. He is a competent lawyer.

I'm not going to get into his conversations with you. I'm sure that he is, based on his experience and knowledge, forceful in telling you what his opinions are about your case and things that should be done. But you're not telling me anything specific that would lead me to believe that he is not competently representing you.

You're obviously free to hire an attorney if you want, but as long as you have a court appointed attorney, it's going to be Mr. Dunn at this point.

The case proceeded to trial and a jury found Siharath guilty as charged.

On appeal, Siharath takes issue with the district court's denial of his request for substitute counsel. Our review is for an abuse of discretion. *State v. Martin*, 608 N.W.2d 445, 449 (Iowa 2000).

The Iowa Supreme Court has articulated several grounds supporting the appointment of substitute counsel, including a complete breakdown in communication between defendant and attorney. *State v. Boggs*, 741 N.W.2d 492, 506 (Iowa 2007); *State v. Tejada*, 677 N.W.2d 744, 749–50 (Iowa 2004). To prove a complete breakdown, “a defendant must put forth evidence of a severe and pervasive conflict with his attorney or evidence that he had such minimal contact with the attorney that meaningful communication was not possible.” *Tejada*, 677 N.W.2d at 752 (quoting *United States v. Lott*, 310 F.3d 1231, 1249 (10<sup>th</sup> Cir. 2002)).

Siharath raised only general complaints, such as “He don't help me. He don't come see—he come to see me and he come down and cuss me out,” and “He came visit me not even five, 10 minute. All he do is sit there and yell at me. He say I'm bullshitting him. He say I never see him.” When he raised these complaints, his attorney's adequacy as an advocate had yet to be tested. For these reasons, we conclude the district court did not abuse its discretion in denying Siharath's request for substitute counsel. See *Boggs*, 741 N.W.2d at 506 (“[G]eneral frustration and dissatisfaction with defense counsel expressed by a defendant does not alone render counsel unable to perform as a zealous and

effective advocate. The focus of the inquiry is . . . ‘the adequacy of counsel in the adversarial process.’” (quoting *United States v. Barrow*, 287 F.3d 733, 738 (8<sup>th</sup> Cir. 2002)).

**AFFIRMED.**

Danilson, J., concurs. Sackett, C.J., dissents.

**SACKETT, C.J.** (dissenting)

I respectfully dissent. I believe that the district court should have either appointed a new attorney for defendant or made further investigation. Defendant contended that his attorney never came to see him. While I acknowledge as the majority found that the defendant's complaints did not focus on specific complaints, the fact the defendant contends the attorney does not visit him or listen to him show a breakdown of the attorney client relationship.