

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

STATE OF OHIO)	CASE NO. CR 12 566449
)	
Plaintiff,)	JUDGE JOHN P. O'DONNELL
)	
vs.)	
)	
LONNIE CAGE)	<u>JOURNAL ENTRY DENYING</u>
)	<u>THE DEFENDANT'S MOTION TO</u>
Defendant.)	<u>DISQUALIFY ASSIGNED COUNSEL</u>

John P. O'Donnell, J.:

Lonnie Cage is accused of kidnapping and raping Lakesha Williams, then killing her just over a year later. Trial is set for August 26, 2013, and he has moved to disqualify his assigned trial counsel. This entry follows.

Cage was first indicted on December 10, 2010, in case number 544738. The charges there included rape, kidnapping, felonious assault, domestic violence and child endangering. All the crimes in case number 544738 were alleged to have been committed on October 28, 2010. Cage failed to appear for arraignment in that case and the police were unable to find and arrest him on the warrant issued upon the indictment until January 9, 2012.

He was then arraigned in case number 544738 and that case proceeded toward a trial.

In the meantime, on May 18, 2012, another grand jury returned a seven-count indictment in case number 560406. Cage was charged there with, among other crimes, the January 8, 2012, aggravated murder of Williams. The aggravated murder charges carried separate death penalty specifications alleging murder to escape, felony murder, and retaliation for testimony.¹ At the May 23, 2012, arraignment in case number 560406 the defendant was

¹ See, generally, section 2929.04(A)(1) - (10) of the Ohio Revised Code.

found to be indigent and attorneys Tom Rein and Kevin Spellacy were assigned to represent him at the state's expense and discovery proceeded.

A third indictment was returned as case number 566449 on August 31, 2012. That indictment is a combination of every charge from the first two indictments. Counts one through eight duplicate the indictment in case number 544738 and counts nine through fifteen are the same as counts one through seven of case number 560406. Rein and Spellacy were again assigned to represent Cage when he was arraigned on September 5, 2012.

The first two cases have since been dismissed as redundant of the charges here. Only this case remains, albeit without the death penalty specifications, which were dismissed upon motion by the prosecutor.

At a June 4, 2013, pre-trial conference a jury trial was set for August 26, 2013.

On July 16, Cage filed a *pro se* motion to disqualify his appointed lawyers. The motion presented a quandary for his assigned counsel. If they prosecuted the motion for Cage they might have to advance a position that, by virtue of their own interactions with Cage, they know is factually unsupported or that might not be in his best interest or that might be an admission, implicit or explicit, of their own lapses. On the other hand, if they left him to his own devices on the motion, or even actively opposed it, they might be failing in their professional duty to him. Therefore, the court separately appointed attorney Russell Bensing to represent Cage in the prosecution of the motion to disqualify and a hearing was held on August 7.

At the hearing, the defendant complained that his lawyers have not visited him in jail as often as he would like and that he does not believe their investigation and preparation for trial has been sufficient. Because of that, he claims that there is a complete breakdown of the attorney-client relationship to the point that going to trial with Rein and Spellacy as his lawyers

would result in a proceeding that is constitutionally infirm by denying him the effective assistance of counsel.

LAW AND ANALYSIS

The Sixth Amendment to the United States Constitution provides that an accused in a criminal prosecution has the right to the assistance of counsel. That right has been extended to the states through the Fourteenth Amendment's due process clause so that indigent defendants in state court are entitled to representation at the expense of the state. *Gideon v. Wainwright*, 372 U.S. 335. Moreover, the right to assistance of counsel has been held to mean the right to effective assistance of counsel. *Reece v. Georgia*, 350 U.S. 85, 90. However, an indigent defendant does not have the right to counsel of his choice. *Thurston v. Maxwell*, 3 Ohio St. 2d 92, 93 (1965). When a defendant requests the appointment of new counsel, the court must inquire into the basis for the request and determine whether the accused has shown a breakdown in the attorney-client relationship of such magnitude as to jeopardize the defendant's right to effective assistance of counsel. *State v. Coleman*, 37 Ohio St.3d 286, (1988), syllabus four.

That inquiry in this case revealed only vague assertions about the lawyers' deficiencies. The broad, unspecific claims proffered at the hearing are insufficient to support a finding that Rein and Spellacy cannot provide effective assistance of counsel. Indeed, the record and the court's observations of the lawyers' conduct to date contradict Cage's claim. First, these two lawyers have represented him on the aggravated murder and related charges for over 14 months and on the rape and related charges for almost a year. Not only is that undoubtedly sufficient time to adequately prepare for even a complex case, but the timing of the motion suggests Cage's reasons in support of it are not sincere: that his lawyers have advised him for all that

time, yet he waited until only a month before trial to claim their relationship with him is dysfunctional to the point of requiring their disqualification, allows an inference that his motive is not to disqualify ineffective counsel but to delay a trial. Second, their efforts resulted in the dismissal of the death penalty specifications. That dismissal eliminated the chance that Cage could be sentenced to death. Additionally, by taking the possibility of capital punishment out of the case, Cage and his lawyers can focus all of their efforts on the defense of the charges instead of spending time and attention litigating issues attendant to the capital specifications, including a possible eventual mitigation phase. Third, at a previous hearing on the record the state described a proposed plea bargain that would result in a sentence of 30 years to life in prison. While acknowledging that the defendant is presumed innocent, if he is convicted of all or most of the offenses in the indictment he will be exposed to the possibility of a sentence much longer than that. This relatively favorable plea bargain would not have been offered by the state if Cage's counsel had been unable to present the prosecutor with evidence and arguments in support of it. Last, I am aware by personal observation and their reputations of Rein and Spellacy's abilities as criminal defense trial counsel. Neither of them are prone to let a client's frustration with them – or their own frustration with a client's strategic choices – interfere with their advocacy on behalf of that client. Their professional disposition was shown at the hearing when they both acknowledged their continued willingness to represent the defendant zealously at trial even after Cage, in essence, accused them of incompetence.

In short, Cage has not demonstrated by the evidence that he will be denied the effective assistance of counsel if he is represented at trial by Rein and Spellacy. Therefore, his July 16, 2013, motion to disqualify them as counsel is denied.

IT IS SO ORDERED:

Judge John P. O'Donnell

Date: _____

SERVICE

A copy of this journal entry was sent by email this 13th day of August, 2013, to the following:

Kevin R. Filiatraut, Esq.
kfiliatraut@cuyahogacounty.us
Attorney for the state of Ohio

Kevin M. Spellacy, Esq.
KSpell@mgslaw.com

Thomas A. Rein, Esq.
Razort@aol.com
Trial attorneys for defendant Lonnie Cage

Russell S. Bensing, Esq.
rbensing@sbcglobal.net
Motion attorney for defendant Lonnie Cage

Judge John P. O'Donnell