

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0986**

State of Minnesota,
Respondent,

vs.

Javier Diaz Garza,
Appellant.

**Filed May 19, 2025
Affirmed
Larkin, Judge**

Redwood County District Court
File No. 64-CR-22-137

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Shannon Ness, Redwood County Attorney, Redwood Falls, Minnesota; and

Travis J. Smith, Special Assistant County Attorney, Slayton, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Kathryn J. Lockwood, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Larkin, Judge; and Reilly,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges his conviction of first-degree controlled-substance sale, arguing that the district court erred by failing to conduct a searching inquiry into his request for substitute counsel and by reasoning that it did not have discretion to appoint substitute counsel. We affirm.

FACTS

On March 14, 2022, respondent State of Minnesota charged appellant Javier Diaz Garza with first-degree sale of a controlled substance. Garza made his first appearance in district court on the same day. He was in custody and appeared via Zoom. The district court appointed a public defender to represent Garza.

On May 2, 2022, Garza appeared before the district court for an omnibus hearing. He was in custody and appeared via Zoom. His public defender informed the court that he had met with Garza in a Zoom breakout room before the hearing and that Garza demanded to be physically present in the Redwood County Courthouse for all hearings. Garza told the district court:

This is the first time I got ahold of [my public defender], since I've been . . . at DOC. He didn't get in contact with me, I did not get no discovery. Why am I going to plead something if I haven't seen no discovery either. That's how come, I want to be in Redwood County, that's because you're charging me, I got every right to be in Redwood County, and I request, I want to get my rights there in Redwood County.

The district court continued the omnibus hearing to June 26, 2023. At that hearing, Garza demanded execution of a stayed prison sentence in a different case, and his public

defender asked to continue the omnibus hearing a second time, so he could “be brought back up to speed on things.” The district court executed Garza’s sentence as demanded and granted the continuance request.

Garza appeared for the continued omnibus hearing on July 10, 2023. Garza informed the district court that he wanted to discharge his public defender and have a new public defender appointed to represent him. The following exchange ensued:

THE COURT: Okay. [D]o you understand that you, when you’re entitled to an attorney under Minnesota law from the public defender’s office, uh, you’re not entitled to discharge and pick and choose from the public defender’s office who represents you. Do you understand that?

GARZA: Yes.

THE COURT: Do you understand that if I do grant your request to discharge [your public defender], you are discharging the public defender’s office from representing you and you’d either need to hire an attorney, or represent yourself in this matter. Do you understand that[?]

GARZA: Yes, I do.

THE COURT: Okay. Um, understanding that, is it still your desire to discharge the public defender’s office from representing you?

GARZA: I only want to discharge [this public defender], that’s it, I do want a public defender, but I don’t care who else, I just don’t want [this public defender].

THE COURT: Okay, and I don’t have the authority to grant you what you’re requesting. The only thing I have authority to do is to discharge the public defender’s office, uh, I don’t have authority to appoint a different attorney from the public defender’s office to represent you, do you understand that?

GARZA: Well, yes.

THE COURT: Okay. So, if I grant what you're asking me to do, do you understand that you'll either need to hire an attorney, or represent yourself in this matter?

GARZA: Yes.

THE COURT: Alright. Do you want some additional time to think about that or are you ready to make that decision here today[?]

GARZA: I want to think about this.

THE COURT: Okay. . . . I'll grant you that. . . . I'm going to leave the issue alone and not bring it up again, unless you bring it up, okay? I'm not going to ask you every time you appear in front of me whether you want to discharge your attorney or not, I'm going to let you bring that up at future hearings, if you'd like to talk about this again.

Garza did not raise his request for substitute counsel again.

On January 17, 2024, the charge against Garza was tried to a jury. Garza was represented by his assigned public defender. The state presented evidence that Garza sold narcotics to a confidential informant during a controlled buy, which was audio recorded. The informant testified at trial, implicated Garza in the drug sale, identified Garza's voice on the recording of the controlled buy, and admitted that he set up the sale with Garza to obtain a reduction of his own criminal charges. The jury found Garza guilty as charged. The district court entered judgment of conviction and sentenced Garza to serve 95 months in prison.

Garza appeals.

DECISION

Garza contends that because he raised serious concerns regarding his public defender's lack of communication and preparedness, the district court erred by not conducting a searching inquiry to determine whether or not exceptional circumstances supported his request and by instead advising Garza that it lacked authority to appoint a different public defender. Garza requests a remand for an evidentiary hearing to determine whether his complaints about his public defender showed exceptional circumstances requiring the court to appoint a different public defender and order a new trial.

The relevant law is set forth in *State v. Munt* as follows:

The United States and Minnesota Constitutions guarantee a criminal defendant the right to the assistance of counsel for his defense. If the defendant cannot employ counsel, the defendant is entitled to appointed counsel. But the right of an indigent defendant to court-appointed defense counsel is not an unbridled right to be represented by counsel of the defendant's choosing.

When a defendant raises complaints about the effectiveness of appointed counsel's representation and requests substitute counsel, the district court must grant such a request only if exceptional circumstances exist and the demand is timely and reasonably made. Exceptional circumstances are those that affect appointed counsel's ability or competence to represent the client. But a defendant's general dissatisfaction with appointed counsel does not amount to an exceptional circumstance. *When the defendant voices serious allegations of inadequate representation, the district court should conduct a searching inquiry before determining whether the defendant's complaints warrant the appointment of substitute counsel.*

831 N.W.2d 569, 586 (Minn. 2013) (emphasis added) (quotations and citations omitted).

We review the district court's decision whether to appoint substitute defense counsel for an abuse of discretion. *Id.*

As to whether Garza voiced “serious allegations of inadequate representation” at his initial omnibus hearing in May 2022, Garza complained that his public defender had not provided him with discovery and had not communicated with him prior to that day. But Garza did not request a new public defender at that time. Instead, in July 2023—over a year later—Garza informed the district court that he wanted to discharge his assigned public defender and be appointed a different public defender. The district court did not inquire regarding the basis for Garza’s request. Instead, the district court told Garza that it had no authority to appoint a different public defender to represent him.

Based on our review of the caselaw, we cannot say that Garza raised serious allegations of inadequate representation at any point in the proceeding. However, the district court erred by telling Garza that it was without authority to appoint a different public defender to represent him. *See State v. Lamar*, 474 N.W.2d 1, 3 (Minn. App. 1991) (“While the trial court told Lamar he could not have a different public defender under any circumstances, this is not an accurate statement of the law.”), *rev. denied* (Minn. Sept. 13, 1991); *see also State v. Vance*, 254 N.W.2d 353, 358 (Minn. 1977) (noting that an indigent defendant may request substitute counsel, but the “request will be granted only if exceptional circumstances exist and the demand is timely and reasonably made”).

Although we recognize that the district court’s inaccurate statement that it lacked authority to appoint substitute counsel may have discouraged Garza from voicing allegations of inadequate representation, we nonetheless conclude that Garza is not entitled to relief because “[a]ny error that does not affect substantial rights must be disregarded.” Minn. R. Crim. P. 31.01.

“Generally, most constitutional errors are reviewed for harmless error.” *State v. Kuhlmann*, 806 N.W.2d 844, 850 (Minn. 2011). Thus, to prevail on appeal, a party usually must show error and prejudice resulting from that error. *See State v. Loebach*, 310 N.W.2d 58, 64 (Minn. 1981). As is relevant here, “[a] defendant is not entitled to a new trial if no harm results from the [district] court’s failure to ascertain whether there is good cause for substitution of appointed counsel.” *Lamar*, 474 N.W.2d at 1.

In *Lamar*, “there was no explicit request for a change in counsel and no showing of improper representation,” and “[a]ny error, therefore, was harmless.” *Id.* at 3; *see McKee v. Harris*, 649 F.2d 927, 933 (2d Cir. 1981) (stating that if the district court’s failure to ascertain whether good cause exists for substitution of appointed counsel causes no harm, it is not reversible error). Garza argues that this case is factually distinguishable from *Lamar* because he explicitly requested a change in counsel. Although that is a factual difference, the rule of law articulated in *Lamar* is nonetheless applicable: the district court’s failure to correctly apply the law when deciding a request for substitute appointed counsel is subject to harmless-error analysis.

In short, as argued by the state, Garza must show prejudice to obtain relief. Yet Garza’s appellate briefs do not identify any prejudice resulting from the asserted errors, other than suggesting that his public defender “conceded” probable cause. In fact, his public defender submitted the issue of probable cause for a determination on the record. Garza does not argue that a different approach would have resulted in dismissal. Moreover, a probable-cause determination generally is “irrelevant” once a defendant has been found guilty of a crime beyond a reasonable doubt because “[t]he standard for the sufficiency of

the evidence to support a conviction is much higher than probable cause.” *State v. Holmberg*, 527 N.W.2d 100, 103 (Minn. App. 1995), *rev. denied* (Minn. Mar. 21, 1995). And, Garza does not allege that he received improper representation at trial.

On this record, assuming without deciding that the district court erred by failing to question Garza regarding why he wanted a different public defender, and recognizing that the district court erroneously informed Garza that it had no authority to appoint a different public defender, we hold that Garza has not met his burden to show that he was prejudiced.¹ He therefore is not entitled to relief.

Affirmed.

¹ At oral argument to this court, Garza’s attorney argued that we cannot consider the issue of prejudice without first remanding for an evidentiary hearing in district court to determine if there were exceptional circumstances justifying appointment of substitute counsel. Counsel does not cite precedential authority as support.