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IN THE
COURT OF APPEALS OF INDIANA

MYRON D. BROOKS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 48A02-0610-CR-891
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable David W. Hopper, Judge
Cause No. 48E01-0505-FD-250

SEPTEMBER 24, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARTEAU, Senior Judge

STATEMENT OF THE CASE

Defendant-Appellant Myron D. Brooks appeals his conviction of escape and his adjudication as an habitual offender. We affirm.

ISSUES

Brooks raises two issues for our review, which we restate as:

I. Whether the trial court abused its discretion when it refused to accept and consider Brooks' pro se motion for speedy trial.

II. Whether Brooks received ineffective assistance of counsel when his trial counsel did not file a motion for speedy trial at the same time as Brooks' pro se request.

FACTS AND PROCEDURAL HISTORY

In May of 2005, the State charged Brooks with escape and being a habitual offender. An initial hearing was held, and counsel was appointed upon Brooks' request. On September 21, 2005, Brooks' counsel filed a motion to withdraw; however, the motion was denied. On November 23, 2005, Brooks submitted a pro se appearance and pro se motion for a speedy trial, which the trial court deemed "not filed due to non-compliance with Trial Rule 11A."[1] (Appellant's App. at 2).

On April 3, 2006, Brooks filed a motion to dismiss, which was also deemed "not filed due to non-compliance with Trial Rule 11A." (Appellant's App. at 3). On June 13, 2006, Brooks again attempted to file pro se motions, and the trial court, after noting that

[1] T.R. 11A provides that every pleading or motion of a party represented by an attorney shall be signed by at least one attorney of record.

Brooks was represented by counsel, ordered that the motions "be shown as received but not filed." *Id*.

On August 24, 2006, Brooks' counsel filed a motion for speedy trial. After a continuance, a bench trial was held on September 21, 2006, and Brooks was found guilty of escape and adjudicated an habitual offender. This appeal followed.

DISCUSSION AND DECISION

I. TRIAL COURT'S DISCRETION

Brooks contends that the trial court abused its discretion by "accepting" his motion for speedy trial and not "responding" to it. Citing *Kindred v. State*, 521 N.E.2d 320, 325 (Ind. 1998), Brooks points out that it is within a trial court's discretion to accept and respond to or to strike a pro se motion filed by a defendant who is represented by counsel. Brooks reasons that the trial court erred in failing to respond to his motion after "accepting" it.

A defendant's right to a speedy trial is guaranteed by the Sixth Amendment to the United States Constitution and Article 1, § 12 of the Indiana Constitution. *See Crawford v. State*, 669 N.E.2d 141, 145 (Ind. 1996). The right to a speedy trial is "an important safeguard to prevent undue and oppressive incarceration prior to trial, to minimize anxiety and concern accompanying public accusation and to limit the possibility that long delay will impair the ability of an accused to defend himself." *United States v. Ewell*, 86 S.Ct. 773, 776, 383 U.S. 116, 15 L.Ed.2d 627 (1966).

Once counsel is appointed, a defendant speaks to the court through counsel. *Underwood v. State*, 722 N.E.2d 828, 832 (Ind. 2000). As a practical matter, a decision

to proceed with counsel "is necessarily a relinquishment of the pro se right." *Russell v. State*, 270 Ind. 55, 383 N.E.2d 309, 312 (1978). "To require the trial court to respond to both Defendant and counsel would effectively create a hybrid representation to which Defendant is not entitled." *Underwood, id*. Such hybrid representation is not a right guaranteed by either the United States or Indiana constitutions. *Bradberry v. State*, 266 Ind. 530, 364 N.E.2d 1183, 1187 (1977).

In *Broome v. State*, 687 N.E.2d 590 (Ind. Ct. App. 1997), *affirmed in part and vacated in part, Broome v. State,* 694 N.E.2d 280 (Ind. 1998) ("*Broome II"*), the defendant made a similar argument to the one that Brooks is now making. Broome, who was represented by counsel, made a pro se request for speedy trial, which the trial court ignored. *Id.* at 594. Broome cited *Kindred* for the proposition that the trial court's discretion was limited to either accepting and responding or striking of the motion. *Id*. We held that in order to properly effectuate its wide discretion in instances of hybrid representation, a trial court is not limited to the options listed in *Kindred*. *Id*. Therefore, a trial court may, in the exercise of its discretion, determine not to respond to the pro se request. *Id.*

Here, we first note that contrary to Brooks' assertion, the trial court did not "accept" his pro se motion for speedy trial. The trial court merely acknowledged receipt thereof and explicitly refused to file the motion. Indeed, as the trial court stated in its June 16, 2006, chronological case summary, which noted that another pro se motion was received but not filed, there was "[n]o action taken." (Appellant's App. at 3). In other

words, the trial court determined not to respond to the pro se request, an action that was determined in *Broome* to be within the trial court's discretion.

II. ASSISTANCE OF COUNSEL

Brooks contends that he received ineffective assistance of counsel because his attorney did not join his pro se motion for speedy trial, but instead filed a speedy trial motion at a later date.

In order to show ineffective assistance of counsel, an appellant must establish (1) that counsel's performance was deficient and (2) that such deficiency prejudiced his case. An appellant must show that in light of the circumstances, the identified acts or omissions of counsel "were outside the wide range of professionally competent assistance consistent with elaborated prevailing norms." *Haggenjos v. State*, 493 N.E.2d 448, 451 (Ind. 1986). An appellant must further show "there is a reasonable probability but for counsel's unprofessional error the result of the proceedings would have been different." *Id*. "It shall be strongly presumed that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Steele v. State*, 536 N.E.2d 292, 293 (Ind. 1989).

In *Broome*, the appellant, who was represented by counsel, attempted to make a pro se motion for speedy trial at a pretrial hearing. The trial court ignored the motion after trial counsel informed the court that he could not properly prepare within the seventy days prescribed by Indiana Criminal Rule 4(B). *Broome II*, 694 N.E.2d at 281. Broome argued that trial counsel was ineffective because he exhibited performance which was inconsistent with prevailing professional norms and which was therefore

deficient. *Broome,* 687 N.E.2d at 595. Broome further argued that "to execute a speedy trial motion at his pretrial hearing was an objective of the representation which his attorney was required to, but did not, abide by." *Id.*

In resolving the issue, our supreme court first noted that "when counsel's action or inaction is premised upon matters relating to trial preparation, such decisions are matters of trial strategy and the power to make binding decisions of trial strategy is generally allocated to defense counsel." *Broome II,* 694 N.E.2d at 281. The court then noted that there is a strong presumption on appeal that counsel rendered adequate assistance and made all significant decisions in exercise of reasonable professional judgment. *Id.* The court further noted that to overcome this presumption, a challenger must present strong and convincing evidence. *Id*.

Here, Brooks emphasizes that his attorney had attempted to withdraw, and he intimates that his attorney chose to do nothing after the trial court refused to allow withdrawal. Brooks' sole "evidence" is the trial court's chronological case summary, which indicates that Brooks' trial counsel filed no motions prior to the filing of his speedy trial motion. Brooks speculates that the charges would have been dismissed if his counsel had joined in his pro se speedy trial motion. Specifically, Brooks alleges, "There is nothing in the records to indicate why counsel waited nine (9) months to join Brooks in his request for a speedy trial. In fact, the record shows that counsel did nothing in this matter from September 21, 2005 until August 24, 2006." (Appellant's Brief at 9).

We cannot conclude that the absence of notations in the chronological case summary constitutes strong and convincing evidence that no trial preparation had been

conducted. Indeed, there are many types of trial preparation that would not come to the trial court's attention, let alone result in an entry. Furthermore, Brooks' admits that the evidence does not reveal the reason for trial counsel's refusal to join in his pro se speedy trial motion, whether that reason be ineffective assistance or trial strategy. Brooks' speculation about his trial counsel's preparation and exercise of discretion is insufficient to overcome the strong presumption that counsel rendered effective assistance of counsel. In denying the motion to withdraw, the trial court obviously believed that trial counsel was capable of rendering effective assistance of counsel, and there is no evidence to indicate that the trial court's belief was erroneous.[2]

CONCLUSION

Brooks has failed to establish that the trial court abused its discretion in not specifically denying his pro se motion. Furthermore, he has failed to show that his trial attorney rendered ineffective assistance of counsel.

Affirmed.

RILEY, J., and ROBB, J., concur.

[2] Brooks contends that it is apparent that he wanted to proceed pro se and not depend on counsel. His entry of appearance states, however, that he was seeking to proceed pro se "for the limited purpose of filing a Motion for Early Trial." (Appellant's App. at 12).