

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID PHILLIP TRAYLOR,

Defendant-Appellant.

UNPUBLISHED

September 25, 2001

No. 222612

St. Clair Circuit Court

LC No. 92-002536-FH

Before: Collins, P.J., and Murphy and Jansen, JJ.

PER CURIAM.

Defendant was convicted of violating his probation following a hearing because he used marijuana in violation of the terms of his probation. Defendant was sentenced to twenty-four to forty-eight months' imprisonment with credit for seventy-five days served for his underlying conviction of delivery or manufacture of marijuana, MCL 333.7401(2)(c). Defendant appeals as of right and we affirm.

Defendant first argues that the trial court abused its discretion in denying defendant's request for a continuance. See *People v Charles O Williams*, 386 Mich 565, 575; 194 NW2d 337 (1972). Four factors should be considered when determining if a trial court's denial of a continuance was an abuse of discretion: (1) whether the defendant asserted a constitutional right, (2) whether the defendant had a legitimate reason for asserting that right, (3) whether the defendant was negligent in asserting that right, and (4) whether the defendant requested previous adjournments. *People v Wilson*, 397 Mich 76, 81; 243 NW2d 257 (1976). A defendant must also demonstrate that the trial court's abuse of discretion resulted in prejudice. *Id.*, citing MCL 769.26.

Here, defendant faced two probation violation charges at the hearing: (1) participating in a residential breaking and entering, and (2) using marijuana. Defendant requested a continuance because he had retained counsel the morning of the hearing, and defense counsel wished to subpoena the codefendant involved in the breaking and entering to testify about defendant's involvement. Regardless of the reason for requesting this witness, defendant was clearly not prejudiced by the trial court's ruling because it ultimately dismissed this charge.

Moreover, defendant was negligent in asserting his right to effective assistance of counsel as a ground for a continuance. At his arraignment, defendant informed the trial court that he had retained counsel. Defendant neither argued nor produced evidence that an irreconcilable

difference arose between him and counsel during the nine days between the arraignment and sentencing. Likewise, defendant neither argued nor produced evidence that intervening circumstances prevented him from contacting or retaining substitute counsel during that nine-day period. Accordingly, the trial court did not abuse its discretion in denying defendant's request for a continuance.

Defendant's second issue attacking his sentence is moot because, according to the Department of Corrections' offender tracking information system, defendant has been released on parole, making it impossible for this Court to fashion a remedy. *People v Briseno*, 211 Mich App 11, 17; 535 NW2d 559 (1995).

Affirmed.

/s/ Jeffrey G. Collins
/s/ William B. Murphy
/s/ Kathleen Jansen