

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHNNIE BENJAMIN JORDAN, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56181

FILED

MAR 17 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF REMAND

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of lewdness with a child under the age of 14. Eighth Judicial District Court, Clark County; Doug Smith, Judge. It appears from the record that as part of the plea negotiations, appellant Johnnie Benjamin Jordan, Jr., agreed to plead guilty to lewdness with a child under the age of 14 although the victim was 14 at the time of the offense and waived the defect in the information relating to the victim's age.


Jordan's sole issue on appeal is that the district court erred by denying his motion to appoint substitute counsel. Approximately six weeks after pleading guilty and three weeks before sentencing, Jordan filed a proper person motion to dismiss his counsel and appoint alternate counsel, alleging that his counsel refused to: (1) file a motion to withdraw his guilty plea; (2) adequately explain the plea agreement to which he was forced to agree; and (3) provide him with discovery, including an

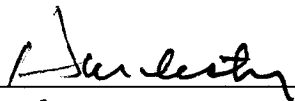
audiotape. He further claimed that counsel had no interest in defending him and a conflict of interest existed.

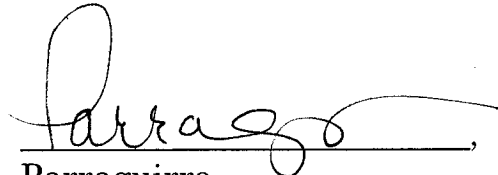
In reviewing the denial of a motion to appoint substitute counsel, we consider: “(1) the extent of the conflict; (2) the adequacy of the inquiry; and (3) the timeliness of the motion.” Young v. State, 120 Nev. 963, 968, 102 P.3d 572, 576 (2004) (quoting U.S. v. Moore, 159 F.3d 1154, 1158-59 (9th Cir. 1998)). At a hearing on the motion, the district court made little inquiry into the nature of Jordan’s complaints other than to advise Jordan that he would not order counsel to provide him discovery and counsel “can’t file a motion [to withdraw] that’s frivolous.” At sentencing, Jordan stated to the district court that he had not waived the age defect in the information and further reiterated that he “tried to get my attorney to take back my pleas and turn over my discovery due to a conflict.” The district court made no further inquiry into Jordan’s complaints. We conclude that the district court’s inquiry into the substance of the motion was inadequate. See id., at 971, 102 P.3d at 578 (“[T]he adequacy of the district court’s inquiry [is] a crucial component and one we will not overlook on appeal.”). And, under the circumstances here, we conclude that Jordan’s motion was timely filed. See Moore, 159 F.3d at 1161 (motion for substitute counsel filed over one month before trial commenced was timely filed). Consequently, we conclude the district court abused its discretion by denying Jordan’s motion to appoint substitute counsel. Young, 120 Nev. at 968, 102 P.3d at 576.

Accordingly, we

ORDER this matter REMANDED to the district court for further proceedings.¹


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Doug Smith, District Judge
Palm Law Firm, Ltd.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.