

The Supreme Court of the State of Louisiana

STATE OF LOUISIANA

No. 2022-KD-00387

VS.

COREY MAJOR, ET AL.

IN RE: State of Louisiana - Applicant Plaintiff; Applying For Supervisory Writ,
Parish of Orleans Criminal, Criminal District Court Number(s) 541-690, Court of
Appeal, Fourth Circuit, Number(s) 2022-K-0139;

March 09, 2022

Writ application granted. See per curiam.

JDH
JLW
SJC
JTG
WJC
JBM
PDG

Supreme Court of Louisiana
March 09, 2022

Katie Marjanovic
Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

No. 2022-KD-00387

STATE OF LOUISIANA

VS.

COREY MAJOR ET AL.

On Supervisory Writ to the Criminal District Court, Parish of Orleans

PER CURIAM:

Code of Criminal Procedure article 704, governing severance, provides:

Jointly indicted defendants shall be tried jointly unless:

- (1) The state elects to try them separately; or
- (2) The court, on motion of the defendant, and after contradictory hearing with the district attorney, is satisfied that justice requires a severance.

Here, the trial court found that justice requires severance of one jointly indicted defendant of three so that his counsel of choice, who by the trial date had been suspended from the practice of law, could represent him. Therefore, the trial court granted defendant's motion to sever and then continued his trial until counsel should become eligible to resume the representation, while ordering the trial of the remaining defendants to proceed. The trial court erred.

Article 704 is based upon the general principle that the State decides when, how, and whom to prosecute. *See* La.C.Cr.P. art. 704 cmt. (a); *see also State v. Phillips*, 164 La. 597, 603–04, 114 So. 171, 173 (1927). Thus, “[j]ointly indicted defendants shall be tried jointly, unless the State elects to try them separately, or the court, on motion of the defendant, and after contradictory hearing with the district attorney, is satisfied that justice requires a severance.” *State v. Tennant*, 352 So.2d 629, 634 (La. 1977). This “justice” standard provided in Part (2) of the article envisions that the trial court will only grant a severance on motion of a defendant

when joint trial will result in prejudice to the defendant. *See* La.C.Cr.P. art. 704 cmt. (d). Here, the trial court appeared to find prejudice in the denial of defendant's right to counsel of choice and in the potential denial of his co-defendant's right to a speedy trial if the trials of the jointly indicted defendants were not severed.

An element of the right to counsel under the Sixth Amendment is "the right of a defendant who does not require appointed counsel to choose who will represent him." *United States v. Gonzalez-Lopez*, 548 U.S. 140, 144, 126 S.Ct. 2557, 2561, 165 L.Ed.2d 409 (2006), citing *Wheat v. United States*, 486 U.S. 153, 108 S.Ct. 1692, 100 L.Ed.2d 140 (1988). The right is not unlimited. A defendant may not "insist on representation by a person who is not a member of the bar, or demand that a court honor his waiver of conflict-free representation." *Id.* at 152. Although a denial of the Sixth Amendment right to counsel of choice is a structural error not susceptible to analysis for its prejudicial effect on the outcome of trial, there can be no violation of the right if the defendant's "counsel" of choice is not licensed to practice law. *See id.* at 152. In the present case, defense counsel was suspended from the practice of law in December 2021. He is not eligible to practice at this time. For purposes of a Sixth Amendment right to counsel analysis, he cannot be "counsel" of choice.

Furthermore, this Court has consistently held that this right cannot be manipulated to obstruct the orderly procedure of the courts and cannot be used to interfere with the fair administration of justice. *See, e.g., State v. Bridgewater*, 2000-1529, p. 20 (La. 1/15/02), 823 So.2d 877, 896. Thus, "[d]efendant must exercise his right to counsel of his choice at a reasonable time, in a reasonable manner and at an appropriate state of the proceedings." *State v. Seiss*, 428 So.2d 444, 447 (La. 1983). Defendant's motion to sever his trial from that of his co-defendants, and then continue his trial until his preferred counsel of choice is reinstated to the practice of law, was made on the week before trial and long after counsel was suspended. It came too late and without explanation for the delay. Furthermore, present defense

counsel expressed his readiness for trial (but for defendant's preference for the suspended attorney) at the motion hearing. Therefore, the trial court erred and abused its discretion in finding justice required severing the trials and granting defendant's motion to continue.

We note that a co-defendant has indicated his desire for a speedy trial. The State contends that the speedy trial motion is deficient in form and, regardless, it lacks merit because of court closures during COVID. That issue is not before us at this time. However, the trial court should be mindful of the request when resetting the trial of these three jointly indicted defendants. We nevertheless recognize that joinder when a crime involves more than one actor "expedites the administration of justice, reduces the congestion of the trial dockets, conserves judicial time, lessens the burden upon citizens who must sacrifice both time and money to serve on juries, and avoids the necessity of recalling witnesses who would otherwise to be called upon to testify only once." *State v. Bradford*, 367 So.2d 745, 747 (La. 1978). The trial court here erred in its application of La.C.Cr.P. art. 701(2) to elevate a late expressed preference for continued representation by a suspended attorney over those concerns.

For the reasons above, we reverse the rulings of the trial court, which granted defendant's motion to sever and to continue the trial, and remand for an expeditious trial of these three jointly indicted defendants. The stay of the proceedings previously issued is hereby lifted.

REVERSED AND REMANDED