

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAFIKI EKUNDU DIXON,

Defendant-Appellant.

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UNPUBLISHED  
December 6, 1996

St. Clair County  
No. 186748  
LC No. 94-000241

Before: MacKenzie, P.J., and Jansen and T.R. Thomas\*, JJ.

PER CURIAM.

Defendant appeals as of right from his juvenile court jury trial conviction for fourth-degree criminal sexual conduct, MCL 750.520e; MSA 28.788(5). Pursuant to the conviction, defendant was made a temporary ward of the court to be supervised by the Department of Social Services. We affirm.

Defendant, a thirteen-year-old male, was charged with second-degree criminal sexual conduct after he touched the breast of a classmate in a school hallway. Attorney John Walke was originally appointed to represent defendant. Walke was subsequently allowed to withdraw from the case because defendant and his father were not cooperating with his representation. Marshall Barrymore was then appointed as defendant's attorney.

Defendant's case was scheduled for trial on April 25, 1995. On April 21, 1995, Barrymore filed a motion to be discharged from representing defendant. In his motion, Barrymore indicated that defendant's father, Herman Dixon, had been attempting to direct all aspects of the representation and had made threats of physical violence. The court denied Barrymore's motion and ordered the trial to begin as scheduled.

On appeal, defendant first contends that the trial court abused its discretion in denying Barrymore's motion to withdraw. We disagree. While an indigent defendant is constitutionally

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\* Circuit judge, sitting on the Court of Appeals by assignment.

guaranteed the right to counsel, the defendant is not entitled to appointment of counsel of his own choosing. *People v Mack*, 190 Mich App 7, 14; 475 NW2d 830 (1991); *People v Flores*, 176 Mich App 610, 613; 440 NW2d 47 (1989). However, a defendant is entitled to have his attorney removed on a showing of good cause, if the substitution will not unreasonably disrupt the judicial process. *Mack, supra*, p 14; *Flores, supra*, pp 613-614. Good cause is present where a legitimate difference of opinion arises between a defendant and his counsel over a fundamental trial tactic. *Mack, supra*, p 14. In this case, there appears to be no good cause for allowing a second substitution of counsel. It is clear that defendant's father was the cause of the difficulties with both attorneys, and it is reasonable to conclude, as the trial court did, that defendant's father's use of intimidation was an attempt to obtain a second adjournment and generally frustrate the judicial process. We find no abuse of discretion.

Defendant next argues that he was denied the effective assistance of counsel at trial. Again, we disagree. Effective assistance of counsel is presumed, and the defendant bears a heavy burden of proving otherwise. To establish ineffective assistance of counsel, a defendant must show that counsel's performance was below an objective standard of reasonableness under prevailing professional norms and there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different. *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994). In this case, defendant's claim that Barrymore was ineffective because he failed to procure a polygraph test is without merit; the examination was scheduled, but defendant failed to appear for it. Defendant's assertion that Barrymore's failure to file a motion to suppress constituted ineffective assistance is also without merit. The motion was made by defendant's first attorney and denied by the trial court, making another motion futile. See *People v Hernandez*, 443 Mich 1, 17 fn 26; 503 NW2d 629 (1993). Finally, we reject defendant's assertion that Barrymore was not prepared for trial. A claim of ineffective assistance of counsel based on unpreparedness requires that the defendant show prejudice resulting from the lack of preparation. *People v Caballero*, 184 Mich App 636, 640; 459 NW2d 80 (1990). Defendant has presented no evidence or argument to establish what, if any, prejudice may have occurred due to Barrymore's alleged unpreparedness. Having failed to establish that Barrymore's conduct of the defense was below an objective standard of reasonableness or that the outcome of the trial would probably have been different absent any of the alleged errors, defendant has failed to show that he received ineffective assistance of counsel. *Pickens, supra*.

Defendant's last claim is that his right to receive a polygraph under MCL 776.21(5); MSA 28.1274(2)(5) was violated. Because this issue was not raised before or considered by the trial court, it has not been preserved for review. *People v Connor*, 209 Mich App 419, 431; 531 NW2d 734 (1995). In any event, defendant is not entitled to relief since a polygraph was scheduled, his father was notified of the time and place of the examination, and defendant failed to appear. See *People v Buck*, 197 Mich App 404, 423; 496 NW2d 321 (1992), rev'd in part on other grounds sub nom *People v Holcomb*, 444 Mich 853; 508 NW2d 502 (1993).

Affirmed.

/s/ Barbara B. MacKenzie

/s/ Kathleen Jansen

/s/ Terrence R. Thomas