

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR12-320

CAMERON L. SMITH

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered October 31, 2012

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT, FORT
SMITH DISTRICT
[NO. CR2006-1091, CR2006-1092]

HONORABLE JAMES O. COX, JUDGE

AFFIRMED

RAYMOND R. ABRAMSON, Judge

Appellant Cameron L. Smith appeals from the revocation of his suspended imposition of sentence, arguing that the trial court abused its discretion when it denied his motion for a continuance to obtain new counsel. Because Smith failed to properly preserve this issue for appeal, we affirm.

On June 15, 2007, Smith pled guilty to two counts of delivery of cocaine and was sentenced to seventeen years in the Arkansas Department of Correction with an additional ten years suspended. One of the conditions of his suspended sentence was that he not violate any federal, state, or municipal law.

On January 29, 2012, following a high-speed chase involving three patrol cars, Smith was arrested for fleeing by means of a vehicle, first-offense driving while intoxicated, reckless driving, and refusal to submit to a breath test. On February 8, 2012, the State filed a petition



to revoke Smith's suspended imposition of sentence on the basis that the above conduct violated the terms of his suspended sentence.

A public defender was appointed to represent Smith in the revocation proceedings. On the day of the hearing on the petition to revoke, Smith moved for a continuance to obtain paid counsel. Smith complained that he was dissatisfied with the representation of his attorney because she had not been responsive to his attempts to contact her and had failed to negotiate an acceptable plea deal. He stated that his fiancée had contacted an attorney who would be willing to represent him if he obtained a continuance.

However, after a discussion with the trial court about the nature of his dissatisfaction with his current counsel and whether paid counsel could obtain a more advantageous plea deal, Smith conferred with counsel and stated, "I'm satisfied with it then." The following colloquy then occurred:

THE COURT: Are you ready, Ms. Watkins?

MS. WATKINS: Yeah, I've been ready.

MR. SMITH: I'm sorry, Your Honor.

THE COURT: You need to go talk with Ms. Watkins a few minutes.

MS. WATKINS: I spent significant amount of time with him yesterday at the jail. We're ready. We are ready for a hearing.

THE COURT: I thought you were saying—so you want a hearing right now?

MS. WATKINS: Yes, sir.

Thus, despite Smith's arguments to the contrary, it is apparent from this record that Smith abandoned his request for a continuance and announced he was ready to proceed to



the hearing. At the very least, he failed to obtain a ruling on his motion, because the trial court never denied his motion for continuance. The failure to obtain a ruling precludes our review on appeal. *Strain v. State*, 2012 Ark. 42, 394 S.W.3d 294; *see also Gwin v. Daniels*, 357 Ark. 623, 184 S.W.3d 28 (2004) (holding that failure to obtain a ruling precludes review of the issue because, under appellate jurisdiction, this court is limited to reviewing an order or decree of a lower court).

Furthermore, Smith's argument fails because he has not shown prejudice from the trial court's alleged denial of his motion for a continuance. We review the grant or denial of a motion for continuance under an abuse-of-discretion standard. *Smith v. State*, 352 Ark. 92, 98 S.W.3d 433 (2003). An appellant must not only demonstrate that the trial court abused its discretion by denying the motion for continuance, but must also show prejudice that amounts to a denial of justice. *Id.* When a motion for continuance has been denied and there is an issue of denial of the right to counsel, the issue must be decided on a case-by-case basis. *See Thorne v. State*, 269 Ark. 556, 601 S.W.2d 886 (1980). Factors that a trial court may consider when ruling on a request for a continuance to obtain a new attorney include the reasons for the change, whether counsel has been identified, whether the defendant has been diligent in seeking the change, and whether any prejudice is likely to result to the defendant if the motion is denied. *Roseby v. State*, 329 Ark. 554, 953 S.W.2d 32, 35 (1997), *overruled on other grounds by MacKintrush v. State*, 334 Ark. 390, 978 S.W.2d 293, 298 (1998).

Here, Smith argues that he was prejudiced because he was forced to proceed with counsel who had met with him only one time, on the eve of trial, after he had expressed



dissatisfaction with appointed counsel's level of preparation. He claims that counsel had done little but advise him to take a plea offer for the sentence he ultimately received. And, while he notes that his counsel did not make a single objection to the State's evidence during the hearing or call any witnesses other than himself, he fails to note any specific objections except a motion for directed verdict that he claims should have been made, nor did he identify any witnesses or evidence that should have been called or introduced but were not. He further complains that appointed counsel had not reviewed a video of the police chase prior to the hearing. However, the trial court granted a continuance for counsel to do so, and the hearing was reconvened at a later date; thus, any potential prejudice was averted. As for counsel's failure to move for a directed verdict, such motions are not necessary in revocation proceedings. In any event, there was sufficient evidence submitted to support the revocation as the State presented the testimony of the officers and a video of the high-speed chase that clearly indicated that Smith had violated the law. Moreover, Smith took the stand and admitted that he had violated the law. Consequently, even if the trial court effectively denied Smith's motion for a continuance, Smith cannot show prejudice.

Affirmed.

PITTMAN and MARTIN, JJ., agree.

Jordan B. Tinsley, for appellant.

Dustin McDaniel, Att'y Gen., by: *Kent G. Holt*, Ass't Att'y Gen., for appellee.