

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA)
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) 1:20CR209-1
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IVORY JOE TISDALE)

MEMORANDUM ORDER

This case came before the court on the motion of Thomas M. King, Defendant Ivory Joe Tisdale's third appointed attorney, to withdraw as counsel. (Doc. 84.) The court held a hearing on the motion on June 3, 2021, and orally denied it. (Doc. 87.) The issue of counsel had arisen at prior proceedings and was again raised at a subsequent hearing on June 9, 2021. This memorandum order explains and supplements the court's reasons for the denial.

I. BACKGROUND

Tisdale is named in a five-count indictment returned on June 22, 2020, charging possession with intent to distribute cocaine in violation of 21 U.S.C. §§ 841 (a) (1) and (b) (1) (C); maintenance of a place of business for the purpose of manufacturing, distributing, and using a controlled substance in violation of 21 U.S.C. §§ 856(a) (1) and (b) (2 counts); carry and use of a firearm, by discharging, during and in relation to drug trafficking crimes in violation of 18 U.S.C. § 924(c) (1) (A) (iii); and possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g) (1). The Government's proffer of evidence (set out in its trial brief)

is that Tisdale fired through the front door of his residence and struck one of three law enforcement officers who had announced themselves as they attempted to serve a search warrant for cocaine hydrochloride. (Doc. 91 at 2.)

A. First Appointed Counsel

Tisdale was arrested June 23, 2020, while in state custody. He was appointed attorney Jay Ferguson as counsel on September 4, 2020, and arraigned on federal charges on September 9, 2020. Mr. Ferguson is a senior, experienced member of the bar. The case was set for trial for the October 2020 term of court.

On September 23, 2020, Ferguson moved for additional time to prepare for trial, explaining his preparation and citing a need for additional time to review discovery. (Doc. 18.) The case was continued to the November 2020 term of court. (Doc. 21.) Ferguson filed a motion for specific discovery on October 21, noting that he had fully reviewed all discovery to date. (Doc. 23.) On October 27, Ferguson filed another motion to continue, citing additional discovery that was produced and his investigation into issues related to the search warrant issued for Tisdale's residence. (Doc. 24.) Two days later, however, on October 29, Ferguson moved to withdraw as counsel on the ground that Tisdale requested he do so. (Doc. 27 at 2.)

The court held a hearing on November 10, 2020, on Tisdale's request that Ferguson withdraw as counsel. Judge Catherine Eagles,

who presided over the November criminal term of court, asked why he wanted new counsel, and Tisdale said that "[w]hen I first talked to Mr. Ferguson he informed me that the DA sent him to talk to me, to represent me, so I feel like he's representing the DA also as well as myself." The court explained to Tisdale how that cannot be the case.¹ Tisdale then described (in an ex parte portion of the hearing) a disagreement with Ferguson over the filing of certain pretrial motions. When pressed regarding his request for new counsel, Tisdale said, "I feel like he is not for me," and explained his view that Ferguson's refusal to file pretrial motions was helping the "DA." Tisdale then accused Ferguson of giving him a "fake" police report. Ferguson addressed the court and disclosed that Tisdale had filed a bar complaint against him. Believing that the bar complaint may present a conflict of interest and finding that the client-counsel relationship had broken down, Judge Eagles granted the motion to withdraw. However, she noted that she had "no reason to believe Mr. Ferguson is doing anything wrong or ineffective," and found that he had been diligently preparing the case. Consequently, Judge Eagles continued the case to the January 2021 term of court. Judge Eagles did caution Tisdale: "if you don't get along . . . with your next lawyer any

¹ It is notable that Tisdale claimed this occurred on their first meeting, but he continued his relationship with Ferguson for almost two months before he sought to reject his appointed counsel on this basis.

better than you've gotten along with Mr. Ferguson, you don't get to just have a new lawyer after new lawyer." She advised him that he had an obligation to work with his lawyers and that if he refused, "[t]hat's up to you, you know, your choice."

B. Second Appointed Counsel

That same day, November 10, 2020, the court appointed Robert Broadie as counsel for Tisdale. (Doc. 30.) Mr. Broadie is an experienced lawyer in the district. Eight days later, on November 18, Tisdale filed a pro se motion to suppress. (Doc. 31.)

On January 5, 2021, Broadie moved to withdraw as counsel, noting that Tisdale had directed him to do so. (Doc. 34 at 2.) The motion was heard on January 26, 2021, before Judge Loretta Biggs who presided over the January criminal term of court. When asked to explain the basis for his motion, Broadie said he felt he had reached "a conflict in terms of my representation," which he confessed had "been somewhat difficult." He added that "Mr. Tisdale had advised me that not following certain instructions was going to result in a Bar complaint." In response to the court's inquiry, Broadie acknowledged that he was Tisdale's second counsel and stated, "And I understand, Your Honor, that Mr. Ferguson also filed a motion to withdraw; and without speaking for Mr. Ferguson, I think it's under similar circumstances." Broadie reported he had met with Tisdale "no less than seven" times but, according to Broadie, they disagreed on strategy.

Tisdale, however, denied that his circumstances were the same as those with his prior counsel, stating:

These circumstances is that me and Mr. Broadie, we just don't see eye to eye. In fact, he wants to find somebody to commit perjury, and I told him I don't want to do that. He asked me [sic] I need to find somebody that is basically going to commit perjury and to lie for me, and I said we don't need to do that. But like I was trying to tell him, we just don't see eye to eye. If I say go, he says stop. If I say green, he says red. I just don't feel like I can get a fair trial with him. That's just my opinion.

Tisdale continued:

I asked Mr. Broadie can he just file a motion to suppress certain things, and he's not seeing that. He's seeing it the way he wants to see it, and I'm showing him it's not right in my case. He's not - I want him to file a motion to suppress, and then we can take it from there, but he's not - he seems like he just don't want to do that. It's like he wants me convicted and he gets paid and it's over. And that's how I feel.

Judge Biggs cautioned Tisdale that lawyers have duties as officers of the court and cannot be compelled to file frivolous motions. Though given the option, Tisdale disavowed any interest in hiring his own lawyer but requested yet a third appointed lawyer "because we're not getting along together. We're not seeing eye to eye on things. He hasn't told me why he won't file the thing. He won't even talk to me about it."

The court heard from Broadie who stated that he had been practicing over 20 years, a large part of which involved appointed cases in state and federal court, and he had never before had a client impugn his integrity by asserting that he suggested they

commit any violation of the law. Broadie explained how throughout several meetings with Tisdale he would explain the case, only to have Tisdale offer another theory of defense or another witness. But after Broadie pursued those theories and witnesses, he advised Tisdale that he did not believe they were important to his case. Broadie also reported that Tisdale had requested that he file "a ton of motions," including one seeking the DNA of the law enforcement officer collecting the evidence in the case. Broadie tried to explain to Tisdale how he could not file the motions. Two days later, Tisdale refused to meet with him at the jail, instead giving him a letter setting out "certain things" he wanted Broadie to do and warning that, if Broadie would not, he wanted Broadie to withdraw. Broadie also observed that Tisdale had "bar materials" on the other side of the glass at the jail which suggested that Tisdale was filing a complaint with the North Carolina State Bar.

Judge Biggs expressly rejected as not credible Tisdale's claim that Broadie asked him to do something illegal, refusing to credit the claim. She also warned Tisdale:

Sir, you are developing a history. Mr. Ferguson was in your case. You had a problem with him. Mr. Broadie - both of these are upstanding members of the legal community. You've got a problem with him. You don't get to pick and choose your attorney. That's not the way it works.

. . .

And, sir, what you need to understand is that no attorney is your bellhop. They're not going to do something just because you ask them. That is not their job. Their job is to give you the best representation they can give you based on their skills and knowledge, not yours, based on their skills and knowledge.

Judge Biggs found that Broadie "made a genuine effort to counsel" Tisdale and met with him "at least on seven occasions." But she concluded that the communication and trust between Broadie and Tisdale had broken down, so she agreed to appoint another attorney.

C. Third Appointed Counsel

That same day, January 26, 2021, Thomas M. King was appointed as Tisdale's third counsel. (Doc. 40.) King moved for additional time to prepare the case for trial (Doc. 44), and the court continued the case to the April 2021 term of court for trial. (Doc. 45.) Undeterred, Tisdale had filed, and continued to file, a host of pro se motions.²

² As of June 11, 2021, Tisdale's pro se filings numbered twenty-seven: motion for home confinement (Doc. 4); motion to dismiss (Doc. 15); motion to suppress statements made on 12/10/19 (Doc. 17); amended motion to suppress statements made on 12/10/19 (Doc. 31); motion to dismiss felon in possession of a firearm charge (Doc. 41); "motion to have 5th, 13th section 1, and 14th section 1 invoked" (Doc. 43); motion to suppress DNA evidence (Doc. 46); motion to have evidence (12/10/19 interrogation video) disclosed to defendant (Doc. 47); motion to have evidence disclosed to defendant (Doc. 48); motion to suppress (Doc. 49); motion to suppress search warrant for 3700 Spring Garden St. Ste. B (Doc. 50); motion to suppress search warrant for 1017 Moody St. (Doc. 52); request for a Franks hearing (Doc. 54); request for a taint hearing (Doc. 55); motion to have evidence disclosed to defendant (Doc. 56); motion to dismiss cocaine trafficking charge (Doc. 59); "motion to invoke defendant's 4th and 5th amendment rights" (Doc. 60); amended motion to suppress search warrant for 1017 Moody St. (Doc. 66); letter request to

On April 13, 2021, Tisdale, represented by King, came before the undersigned, who presided over the April criminal term of court, for a hearing on a motion to suppress that King filed on Tisdale's behalf. Instead of proceeding on the motion, however, Tisdale reported that he wanted new counsel and that his family would hire counsel for him. Despite the delays in the case occasioned by Tisdale's refusal to work with his counsel, the court granted Tisdale seven days to hire new counsel and continued the hearing on the motion to suppress three weeks, to May 4, 2021. (Doc. 64.) No counsel made an appearance for Tisdale within the time allotted.

D. Request for Self-Representation

By letter dated April 23, 2021, Tisdale represented to the court that "due to the overwhelming caseloads caused by the pandemic" he was advised it would take "2 to 3 weeks" before his family could make an appointment to retain counsel. (Doc. 69.) He therefore requested to proceed pro se, stated "I don't want Mr.

have evidence disclosed (Doc. 69); "motion to invoke 6th amendment and discovery of witness CI #1" (Doc. 71); "requesting a Franks hearing and defendant's 6th amendment be invoked" (Doc. 73); request not to proceed pro se (Doc. 74); "motion to suppress maintain-place [sic] cocaine PWID cocaine" (Doc. 77); requesting disclosure of informant and evidence of the ten controlled purchases of cocaine (Doc. 78); letter request for the disclosure of informant's identity and "6th amendment be invoked" (Doc. 80); letter invoking Due Process Protection Act (Doc. 94); letter request for disclosure of informant's identity (Doc. 104). Five of these filings were made during the brief period in which Tisdale proceeded pro se. (See Docs. 73, 74, 77, 78, 80.) All other filings were made while he was represented by counsel.

Thomas King or any other public Defender representing me," and made demands relating to evidence. (Id.)

The case came on for hearing on May 4, 2021, as scheduled, on King's motion to suppress (Doc. 57) and Tisdale's April 23 letter seeking self-representation (Doc. 69). Tisdale claimed that he could not hire new counsel because he needed two to three weeks to do so and the court's deadline of seven days was insufficient. The court pointed out that it had been three weeks since his last hearing, yet no counsel had made an appearance. The court refused to delay the case any further, noting that it did not believe Tisdale's account of the reasons for his delay.³ The court then turned to Tisdale's motion to proceed pro se. After an extensive colloquy with Tisdale, warning him of the penalties he was facing and the pitfalls of self-representation, the court granted his request – against the court's advice – and ordered King to act as stand-by counsel.

Tisdale declined to proceed on King's scheduled motion to suppress, instead wishing to proceed on his pro se motion to suppress, as supplemented. (Docs. 52, 66.) The Government indicated it was prepared to proceed as to those motions, so the court gave Tisdale the opportunity to present evidence and make an

³ The court has continued to advise Tisdale that he is free to hire his own attorney. Although Tisdale stated that he was delayed in finding counsel due to the COVID-19 pandemic, several months have passed at this point and still no counsel has been retained.

argument. However, he rested on his papers. For the reasons expressed extensively on the record, the court denied the motion to suppress. The court then directed the Government to file a response to each of Tisdale's multiple pro se motions by May 18, 2021. The case was continued to the June term of court, which is assigned to the undersigned, and a copy of the Scheduling Order for that term (Doc. 70), with pretrial deadlines, was provided to Tisdale.

E. Request to Discontinue Self-Representation

On May 17, 2021, Tisdale filed a letter, which the court construed as a motion, seeking not to proceed pro se any further. (Doc. 74.) The court set the motion for hearing, which occurred on May 25, 2021. At the hearing, Tisdale claimed that he had wanted to proceed pro se only as to his motions, but not for trial. The court advised him that that was contrary to the court's prior proceedings. However, in light of Tisdale's lack of legal knowledge and with his trial date still one month away, the court granted the motion. Consequently, King was reinstated as counsel. This rendered Tisdale's pending pro se motions moot.

Tisdale was reminded that his case was set for trial beginning June 14, 2021, and the court strongly encouraged him to work with his counsel. However, Tisdale again said he did not want King as his lawyer and expressed his desire to have yet another new lawyer appointed. Tisdale claimed that King allegedly told him that his

rights "went out the window because [he] was a black man who shot a white man." He further accused King of actively dissuading a witness to testify for him. King denied both charges. King reported that it was Tisdale who asked King whether his rights went out the window because he is a black man who shot a white man, and King responded that he did not believe race was an issue in the case. King also provided the court (for ex parte review) a copy of a letter he had written Tisdale that responded to these claims and which noted that King indeed interviewed the witness in question by phone. During that interview, King reported that the witness inquired whether she would have to testify, and King acknowledged that as a possibility. King further told her that he would need for her to provide a written statement, but she never did. After inquiring of King about the matter, the court rejected Tisdale's charges, finding both claims incredible and finding King's account credible. At the conclusion of the hearing, the court encouraged King to continue trying to work with Tisdale. However, Tisdale stated that he "can't and won't" work with King.

On June 1, King moved to withdraw as counsel, citing Tisdale's refusal to meet with him at the Guilford County Detention Center, where he was housed, on May 27, 2021. (Doc. 84.)⁴

The court held a hearing on King's motion to withdraw on June

⁴ King clarified at a subsequent hearing that the motion's reference to April 27 was a typographical error.

3. At the start of the hearing, the court inquired of King as to the source of the conflict between himself and Tisdale. King indicated that the majority of the conflict centered on trial strategy and interpretation of the law. The court then asked King whether his interpretation of the law was consistent with that of Tisdale's prior two attorneys, which King confirmed. King further indicated, in response to the court's questioning, that he believed that a new attorney, if appointed, would be unlikely to have any different view than that expressed by King and his predecessor counsel. King offered, candidly, that his legal analysis was probably more favorable to Tisdale on at least one point than that of most other attorneys.

The court then inquired of Tisdale as to why he would not work with his appointed counsel. Tisdale again indicated that it was because King allegedly told him his rights "went out the window because [he] was a black man who shot a white man," a claim the court already found incredible in its hearing on May 25, and because King had not investigated his case. Tisdale further indicated that he felt that King was not "fighting for [him] or [his] rights" and that he was "not working for him." When asked by the court, Tisdale indicated that he disagreed with King's view of the law. The court cautioned Tisdale that it would not allow him to obstruct the case through baseless charges against his lawyers or his disagreement with them on his interpretation of the

law.

The court then inquired of King's trial preparation to date. According to King, he has met with Tisdale on approximately ten occasions for a total of close to twenty hours, and both got along well during the first five or six meetings. By that time, King had spent more than eighty hours (including travel) preparing the case⁵ and had conducted a significant investigation into the charges against Tisdale. He reported that he had reviewed hundreds of pages of discovery, watched interrogation and police body camera footage, listened to recorded jail calls, researched the legal issues and reviewed forty to fifty relevant cases, met with witnesses, listened to interviews with officers, drafted and filed a motion to suppress, met with the Assistant U.S. Attorney at least once, read all of Tisdale's pro se motions, and sent Tisdale numerous letters detailing his position on the case. Persuaded that Tisdale's claim that King had not investigated and prepared the case was not meritorious, the court advised Tisdale that he had three options: proceed with King as his appointed attorney, hire his own attorney, or proceed pro se.

The case was set for a pretrial conference on June 9, and the court advised King to be prepared to report on whether Tisdale was cooperative with him as counsel.

⁵ At the pretrial conference on June 9, King advised the court that that number had increased to almost one hundred hours.

On June 9, 2021, the court held a pretrial conference. King detailed how he made daily attempts to meet with Tisdale at the jail from June 4 through the morning of June 9. On each occasion, deputies at the jail reported to King that Tisdale refused to meet with him. On June 9, King arrived early at the courthouse to meet with Tisdale in the lockup at the U.S. Marshal Service. The deputy marshal reported that Tisdale agreed to speak with him, only to have Tisdale advise King that he had filed a grievance against him with the North Carolina State Bar. The court inquired of Tisdale whether King's account was all true, and he confirmed it.

Without objection, the court then held an ex parte hearing with Tisdale and King to learn of the substance of the bar grievance to determine whether it alleged grounds that would suggest an insurmountable conflict of interest. Tisdale responded that it was based on his claim that King told him that his rights "went out the window" because he was a black man who shot a white man and the other accusations Tisdale had made in open court against King.

Based on the record, Tisdale's pattern of obstruction, his false claims against each of the three appointed counsel, and King's representation to the court that, in his view, Tisdale's disagreements stem from a misreading of the law which is unlikely to change if additional counsel were appointed, the court refused to remove King as appointed counsel. The court again strongly

advised Tisdale to work with his lawyer, but Tisdale stated, "I won't."

II. ANALYSIS

The Sixth Amendment guarantees that "[i]n all criminal prosecutions, the accused shall enjoy the right to . . . have the Assistance of Counsel for his defence." U.S. CONST. amend. VI. "An essential element of the Sixth Amendment's protection of right to counsel is that a defendant must be afforded a reasonable opportunity to secure counsel of his own choosing." United States v. Gallop, 838 F.2d 105, 107 (4th Cir. 1988), abrogated on other grounds by Fields v. Murray, 49 F.3d 1024 (4th Cir. 1995), as recognized in United States v. Ductan, 800 F.3d 642, 652 (4th Cir. 2015)). However, the right to counsel of a defendant's choosing is not absolute. United States v. Mullen, 32 F.3d 891, 895 (4th Cir. 1994). "Such right must not obstruct orderly judicial procedure and deprive courts of the exercise of their inherent power to control the administration of justice." Gallop, 838 F.2d at 108. Correspondingly, defendants do not have an absolute right to substitution of counsel. Mullen, 32 F.3d at 895. Rather, good cause for substitution must be shown. Id.

In the vast majority of cases, defendants understand and respect the role of learned counsel and work with them in good faith to defend their cases, as the system is designed to work. However, on occasion, a defendant may seek to disrupt and delay

the proceedings through his or her misconduct. In such situations, the Fourth Circuit has repeatedly indicated that a “district court is not compelled to substitute counsel when the defendant’s own behavior creates a conflict.” United States v. Morsley, 64 F.3d 907, 918 (4th Cir. 1995); see also United States v. DeTemple, 162 F.3d 279, 283 (4th Cir. 1998); United States v. Muslim, 944 F.3d 154, 166-67 (4th Cir. 2019). Further, the court need not grant substitution of counsel where the request is not meritorious and instead is a “transparent plot to bring about delay.” United States v. Hanley, 974 F.2d 14, 17 (4th Cir. 1992) (quoting Gallop, 838 F.2d at 105).

In evaluating a district court’s consideration of a motion to withdraw or appoint substitute counsel, the Fourth Circuit has set out a three-part test, examining (1) the timeliness of the motion, (2) the adequacy of the court’s inquiry into the defendant’s complaint, and (3) whether the attorney/client conflict is so great that it results in a total lack of communication preventing an adequate defense. United States v. Smith, 640 F.3d 580, 588 (4th Cir. 2011). As to the last factor, “[a] total lack of communication is not required[;] [r]ather,” the necessary inquiry is “whether the extent of the breakdown prevents the ability to conduct an adequate defense.” Id. (internal quotations and citations omitted).

As to the timeliness of the motion, a significant period of

time has elapsed since Tisdale's initial indictment in June 2020, driven largely by Tisdale's repeated refusals to work with his appointed counsel, his false claims against counsel made to mask his dissatisfaction with them for not filing frivolous motions, and his frequent insistence for new counsel - and then for self-representation - and then for retained counsel who was never retained. Tisdale has sought to remove and replace counsel only days before each trial setting.⁶ While Tisdale's May 17, 2021 request to end self-representation and to substitute King was not clearly untimely, that is only because the court had continued the trial date to June to accommodate Tisdale's assertion of his right to proceed pro se, which Tisdale soon thereafter asked the court to reverse.

The court has conducted multiple hearings related to Tisdale's requests for new counsel, including five hearings by the undersigned judge alone, consuming a disproportionate amount of this court's resources. Tisdale's primary argument as to why he seeks new counsel is that King allegedly told him that "his rights went out the window" because he is a black man who shot a white man. King represents, as an officer of the court, that he never made such a statement, and the court has found King's denial credible. Based on the record, the court has found that Tisdale

⁶ Trials are held beginning the second week of each monthly criminal term, while changes of plea are held during the first week of the term.

asked King whether his rights went out the window because he is a black man who shot a white man, and King responded that he did not believe race was an issue in the case. Tisdale's statements to the contrary are false and pretextual.

Tisdale's allegations against King closely resemble those Tisdale made against his two prior attorneys. In the hearing before Judge Eagles in November 2020, Tisdale alleged that his first attorney, Ferguson, gave him a false police report and told him that he was sent by the "DA" to represent Tisdale. He also filed a complaint against Ferguson with the North Carolina State Bar. Then, before Judge Biggs in January 2021, Tisdale alleged that his second attorney, Broadie, directed him to suborn perjury, a criminal offense, and Broadie observed materials related to a bar complaint. Both Judge Eagles and Judge Biggs found Tisdale's allegations to be incredible and warned Tisdale that he could not endlessly substitute counsel by making false allegations against his appointed attorneys until he found someone willing to adopt his frivolous litigation tactics. Yet Tisdale came before the court again with another incredible allegation against his third attorney in an attempt to shop for another lawyer who might pursue his baseless motions and theory of the case. When the court denied that request, Tisdale stated that he would not work with King and has subsequently refused to meet with him, leading King to file the present motion to withdraw. Tisdale's repeated requests for

new counsel and obstructive behavior are plainly dilatory tactics to avoid resolving his case.

The root of the conflict between Tisdale and his attorneys, as reflected by King's statements to the court in the June 3 hearing, centers on litigation strategy and arises from Tisdale's misapplication of the law. This is apparent in Tisdale's numerous pro se motions – none of which has ever been adopted by counsel – which do not accord with the law as understood by all three of his appointed counsel. Multiple times, Tisdale has claimed dissatisfaction with his attorneys because they do not file the motions or make the arguments that he desires. However, decisions regarding trial strategy and tactics are the province of the attorney, see Sexton v. French, 163 F.3d 874, 885 (4th Cir. 1998), and mere disagreement over trial strategy does not demand substitution of counsel, United States v. Johnson, 114 F.3d 435, 443 (4th Cir. 1997), accord United States v. Frazier, 313 F. App'x 587, 588 (4th Cir. 2008).

Tisdale has attempted to up the ante by reporting that he has filed a bar grievance against King. Assuming that to be true,⁷ the court has an independent obligation to determine whether such a complaint would pose an insurmountable conflict under these

⁷ At the time of the June 9 hearing, King had not been notified that a bar complaint had been filed against him. Tisdale could not produce a copy of the alleged grievance as he represented that he did not retain one – even though he claimed to have sent a copy to the NAACP.

circumstances. See United States v. Blackledge, 751 F.3d 188, 195 (4th Cir. 2014). Having made an extensive inquiry as to the basis of the alleged grievance, and based on the complete record and the court's assessment of the credibility of Tisdale and King, the court finds Tisdale's grievance claims of wrongdoing not credible for purposes of the present case. See also id. at 196 ("[N]ot every bar complaint against an attorney by her client will result in a conflict of interest, and we have previously expressed our unwillingness to invite [those] anxious to rid themselves of unwanted lawyers to queue up at the doors of bar disciplinary committees on the eve of trial." (internal quotation marks omitted) (some alterations in original)).

King is no doubt in a challenging situation, as Tisdale's litigation strategy, contrary to common sense, is to obstruct the proceeding. However, the court made inquiry of King's preparation, and there is no indication he is prevented from presenting an adequate defense for Tisdale. In fact, until Tisdale's recent refusal to meet with King altogether, King was able to work reasonably effectively on the case. King has met with Tisdale on approximately ten occasions for a total of close to twenty hours, and both King and Tisdale agree that they got along well during the first five or six meetings. King has spent close to one hundred hours preparing the case and has conducted a significant investigation into the charges against Tisdale. He has reviewed

hundreds of pages of discovery, watched interrogation and police body camera footage, researched the legal issues and reviewed forty to fifty relevant cases, met with witnesses, listened to interviews with officers, drafted and filed a motion to suppress, and sent Tisdale numerous letters detailing his position on the case. He further reviewed all of Tisdale's pro se motions, of which there are upwards of twenty-five. King is an experienced trial attorney who has been practicing for over forty years as a prosecutor and criminal defense attorney. He has handled over one thousand felony cases, with two dozen or more of those cases pending in federal court, has tried over one hundred criminal trials, with the majority being felonies, and has tried six capital cases as a defense lawyer.

The court acknowledges King's concern about his ability to effectively perform as counsel so long as Tisdale refuses to meet with him. (See Doc. 84.) However, counsel's own evaluation of his ability to present an adequate defense is not determinative "where other facts show that [defendant] and counsel were able to communicate well enough" to present an adequate defense. See Smith, 640 F.3d at 597. King's concern centered on the need for Tisdale to decide whether to testify. The court, however, can advise Tisdale of his right to testify, and Tisdale's refusal to discuss his right with his lawyer stems solely from his obstinance. King's experience and work on the case to date indicate that he is

able to present an adequate defense, and King himself has advised the court that he is willing and able to continue serving as counsel.

Though Tisdale has attempted to manufacture a breakdown in communication with his counsel, his failure to communicate is not determinative. The Fourth Circuit has stated that even if a breakdown of communication between an attorney and client is genuine, "after granting one or more substitution motions a court may well decline to grant further motions if it finds that yet another substitution would not remedy the problem." Id. at 591. Here, the court finds that a fourth attorney would not fare any better than the prior three. Tisdale has established a pattern of non-cooperation with attorneys once he learns that they will not bend their interpretation of the law to his. For each counsel that has been appointed, Tisdale has invented false and incredible allegations against them, including filing bar complaints against them, in an effort to force withdrawal. On this record, there is no basis to believe that another attorney substitution would remedy the problem.

While the relationship between Tisdale and King is presently fraught with Tisdale's intransigence, substitution is not appropriate. Multiple courts have found that a defendant is not entitled to substitute counsel where the defendant elects to stonewall his appointed attorney. See United States v. Amede, 977

F.3d 1086, 1106 (11th Cir. 2020) (“[Defendant] was not entitled to unilaterally refuse to communicate with his appointed counsel and then seek new appointed counsel.”); United States v. Delacruz, 865 F.3d 1000, 1008 (8th Cir. 2017) (“Where a lack of communication results from a defendant's refusal to speak with counsel, rather than counsel's ineffectiveness, the defendant's stonewalling does not entitle him to new counsel.”); United States v. Simpson, 645 F.3d 300, 308 (5th Cir. 2011) (finding no good cause for substitution where defendant refused to speak with attorneys as a “ruse” to demand a different appointed lawyer); United States v. Valerdi-Melgarejo, 11 F. App'x 796, 797 (9th Cir. 2001) (finding unilateral refusal to communicate with counsel does not justify substitution of counsel where the refusal is “frivolous or manipulative, or arises out of general unreasonableness or manufactured discontent” (internal quotation marks omitted)); United States v. Ganeous, No. 1:09CR56, 2009 WL 10702139, at *2 (N.D. W. Va. June 22, 2009) (finding substitution inappropriate where despite counsel's best efforts, defendant refused to communicate in any meaningful way); Broom v. Mitchell, No. 99-CV-30, 2011 WL 5361270, at *4 (N.D. Ohio Oct. 28, 2011) (“[Defendant]'s refusal to communicate does not create an irreconcilable conflict and does not justify appointment of new counsel.”). The Fourth Circuit has repeatedly held that substitution is not required where the source of conflict is the

defendant's own behavior. See Morsley, 64 F.3d at 918 (denying substitution of second attorney where communication broke down due to client's belligerence); DeTemple, 162 F.3d at 283 (denying substitution of fourth court-appointed attorney where conflict arose due to defendant stealing prosecution documents); Muslim, 944 F.3d at 166-67 (denying substitution of fourth attorney where defendant repeatedly filed allegations against his attorneys, refused to cooperate with them, and filed State Bar complaints against them); United States v. Wells, 82 F.3d 411 (4th Cir. 1996) (unpublished table decision) (finding substitution of first attorney not required where defendant's failure to communicate with attorney was based in his own misunderstanding of the discovery system and the problem would continue to exist with any substituted attorney).

Here, King is willing to continue to serve as counsel, despite Tisdale's obstinance. And despite Tisdale's claim that King has not done anything on his case, the record reveals otherwise and fails to demonstrate anything clearly inadequate about King's performance. Rather, it is Tisdale - who has subjected his prior two attorneys to similar mistreatment - who is creating conflict and delay.

III. CONCLUSION

In accordance with this court's oral ruling on June 3, 2021, King's motion to withdraw (Doc. 84) is DENIED.

/s/ Thomas D. Schroeder
United States District Judge

June 14, 2021