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U.S. COURT OF APPEALS

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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GUILLERMO ELOY ALAMOS,

Defendant-Appellant.

No. 10-50304

D.C. No. 2:10-cr-0056-RGK-1

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
R. Gary Klausner, District Judge, Presiding

Argued and Submitted October 11, 2011+  
Pasadena, California

Before: PREGERSON and D.W. NELSON, Circuit Judges, and LYNN, District  
Judge.\*\*

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\* This disposition is not appropriate for publication and is not precedent  
except as provided by 9th Cir. R. 36-3.

\*\* The Honorable Barbara M. G. Lynn, District Judge for the U.S.  
District Court for Northern Texas, Dallas, sitting by designation.

Guillermo Eloy Alamos appeals his conviction and the district court's denial of his motions to substitute counsel. We have jurisdiction pursuant to 28 U.S.C. § 1291.

A district court's denial of a motion to substitute counsel is reviewed for abuse of discretion. *United States v. Lindsey*, 634 F. 3d 541, 554 (9th Cir. 2011). When reviewing whether a district court abused its discretion in denying a motion to substitute counsel, we consider three factors: (1) the adequacy of the inquiry into the defendant's complaint, (2) the extent of the conflict between the defendant and trial counsel, and (3) the timeliness of the motion and the extent of resulting inconvenience and delay. *United States v. McKenna*, 327 F.3d 830, 843 (9th Cir. 2003).

For an inquiry regarding a motion to substitute counsel to be sufficient, "the trial court should question the attorney or defendant 'privately and in depth.'" *United States v. Nguyen*, 262 F.3d 998, 1004 (9th Cir. 2001) (quoting *United States v. Moore*, 159 F.3d 1154, 1160 (9th Cir. 1998)). Further, the district court "must conduct such necessary inquiry as might ease the defendant's dissatisfaction, distrust, and concern. . . . and give the court a sufficient basis for reaching an informed decision." *United States v. Reyes-Bosque*, 596 F.3d 1017, 1033 (9th Cir. 2010) (citations omitted).

Here, the district court conducted two hearings in response to Alamos's

requests to substitute trial counsel. The trial court did not conduct during either hearing an inquiry that provided a sufficient basis for it to reach an informed decision. Despite Alamos stating that counsel was lying to him and that he and counsel lacked communication and were not getting along, the district court did not inquire as to what Alamos meant by these statements and did not ask any specific questions about the nature of Alamos's concerns. Rather, the district court explained to Alamos the obligations and role of his attorney and the Assistant United States Attorney, and then assumed, but did not confirm, that the conflict was only a result of Alamos wanting a better deal than the "fast track" offer that he rejected. *Cf. United States v. Prime*, 431 F.3d 1147, 1155 (9th Cir. 2005) (finding adequate inquiry where district court confirmed the extent of the conflict by asking defendant if he agreed with the court's summary of his position).

It does not suffice that at the second hearing the district court asked Alamos "[W]hy don't you tell me what happened since the last time we met?" and "[W]hat would you like to have [your attorney] tell you?" because such open-ended questions make it difficult to ascertain the extent of the conflict and place an unfair onus on the defendant. *See United States v. Adelzo-Gonzalez*, 268 F.3d 772, 777–78 (9th Cir. 2001) (finding "in most circumstances a court can only ascertain the extent of a breakdown in communication by asking specific and targeted

questions”). As to the single question Alamos asked his own counsel, “Am I right, John? Did you say that to me?” counsel curiously invoked the attorney-client privilege against his own client, and the court did not follow-up.

Accordingly, we find that the district court did not sufficiently inquire into Alamos’s concerns, and the lack of inquiry makes it impossible to discern the extent of the conflict between Alamos and his counsel. Therefore, the denials of Alamos’s motions to substitute counsel and his conviction are reversed,<sup>1</sup> and the case is remanded to the district court for a new trial. We assume that the Federal Public Defender for the Central District of California will represent Alamos on remand, but if that is not the case, the district court is directed to appoint new counsel for Alamos.

**REVERSED AND REMANDED.**

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<sup>1</sup>Failure to substitute counsel is a structural defect not subject to harmless error analysis. *Rice v. Wood*, 44 F.3d 1396, 1401 (9th Cir. 1995), *vacated in part on reh’g en banc*, 77 F.3d 1138 (9th Cir. 1996); *see also Adelzo-Gonzalez*, 268 F.3d at 781 (reversing denials of motions to substitute counsel and vacating conviction and sentence); *United States v. Nguyen*, 262 F.3d 998, 1005 (9th Cir. 2001) (reversing judgment of conviction after finding, *inter alia*, denial of motion to substitute counsel violated defendant’s Sixth Amendment right).