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IN THE SUPREME COURT OF THE STATE OF DELAWARE

ALEX RYLE, Defendant-Below, Appellant, v. STATE OF DELAWARE, Plaintiff-Below, Appellee.	)))))))))))	No. 566, 2015

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

STATE'S ANSWERING BRIEF

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NATURE AND STAGE OF THE PROCEEDINGS

A New Castle County grand jury returned an indictment on July 7, 2014 charging Alex Ryle ("Ryle") with Possession of a Firearm by a Person Prohibited ("PFBPP") (3 counts), Possession of Ammunition by a Person Prohibited ("PABPP"), Carrying a Concealed Deadly Weapon ("CCDW"), and Illegal Possession of a Controlled Substance. A1 at DI 2.[1] An attorney from the Office of the Public Defender was appointed to represent Ryle. On October 27, 2014, Superior Court granted Ryle's request to proceed *pro se*. A3 at DI 12, 13; A44; B1-2. On December 22, 2014, a New Castle County grand jury returned a superseding indictment that modified the language in the above referenced charges but did not add or remove any charged offenses. A4 at DI 22. Ryle was arraigned on the superseding indictment on January 20, 2015 and confirmed that he wished to continue to proceed *pro se*. A5 at DI 24; B3-6.

Prior to trial on February 10, 2015, the State dismissed two counts of PFBPP and the single count of Illegal Possession of a Controlled Substance. On February 11, 2015, a Superior Court jury found Ryle guilty of the three remaining charges – PFBPP, PABPP, and CCDW. A7 at DI 36. Superior Court revoked Ryle's bail and committed him to the custody of the Department of Correction. A7 at DI 37. On

[1] "DI__" refers to item numbers on the Delaware Superior Court Criminal Docket in *State v. Alex Ryle*, I.D. No. 1404000692. (A1-A14).

February 16, 2015, the State moved to declare Ryle an habitual offender for sentencing purposes. A8 at DI 39.

On February 19, 2015, Ryle moved for a new trial. A8 at DI 40. Superior Court denied Ryle's motion on August 14, 2015. A10 at DI 56.[2] Thereafter, Superior Court reappointed Ryle's original attorney to serve as "standby counsel" for Ryle's sentencing. A10 at DI 57. On October 2, 2015, the court appointed that attorney to serve as Ryle's counsel. A12 at DI 66.

On October 8, 2015, Superior Court granted the State's motion to declare Ryle an habitual offender pursuant to Title 11, Section 4214(a) and ordered that he be sentenced accordingly for the charges of PFBPP and CCDW, sentencing him to a total of 23 years of incarceration for those charges. A12 at DI 67.[3] For the PABPP charge, the court sentenced Ryle to 8 years of incarceration suspended for decreasing levels of supervision. A12 at DI 67.

Ryle filed a timely opening brief; this is the State's answering brief.

[2] *State v. Ryle*, 2015 WL 5004903 (Del. Super., Aug. 14, 2015).

[3] Ex. 1 to Amend. Op. Brf.

SUMMARY OF THE ARGUMENT

I. Ryle's argument is denied. The Superior Court commissioner had the authority to address and rule upon Ryle's request to waive his right to counsel and proceed *pro se*. Pursuant to the enabling legislation that created the position of Superior Court commissioner, Superior Court Rule, and the Superior Court Case Management Plan, commissioners are empowered to address pretrial matters, including a defendant's election to proceed *pro se*.

II. Ryle's argument is denied. Ryle knowingly, intelligently, and voluntarily waived his right to counsel and chose to proceed *pro se*. Ryle executed a "Waiver of Counsel Form" documenting his desire to engage in self-representation. Then, a Superior Court commissioner engaged in a thorough and searching inquiry to confirm that Ryle was making a knowing, intelligent, and voluntary decision. Thereafter, the trial court honored Ryle's asserted request to represent himself.

STATEMENT OF FACTS

On April 1, 2014, Officer Ray Mullin saw Ryle, the subject of a Wilmington Police Department investigation,[4] walking away from 337 East 35th Street. B12. Detective Alexis Schupp was directed to stop Ryle. B13. Detective Schupp drove to Ryle's location, got out of his car, and "ordered him to the ground." B13. After handcuffing Ryle, Detective Schupp found a handgun concealed in his front right pocket. B13. The handgun, a 25 caliber Baretta, was loaded with nine bullets within the magazine housed in the "well of the handgun." B14.

At the time of his apprehension, on April 1, 2014, Ryle was a "person prohibited by Delaware law from possessing, owning or controlling a deadly weapon as defined under 11 Delaware Code Section 222. Under law, a firearm is a deadly weapon." B15. Ryle was similarly "prohibited by Delaware law from possessing, owning or controlling ammunition for a firearm." B15. Ryle testified that he possessed the firearm and accompanying ammunition within his pants pocket for personal protection. B16.

[4] "Ryle, at the time he was arrested, was a fugitive. There was a warrant outstanding for him in connection with a violation of probation. Accordingly, the police were free to arrest him on [sight.]" B11.

I. THE SUPERIOR COURT COMMISSIONER HAD THE AUTHORITY TO CONSIDER RYLE'S REQUEST TO WAIVE HIS RIGHT TO COUNSEL AND PROCEED *PRO SE*.

Question Presented

Whether the Superior Court Commissioner had the authority to address Ryle's request to wave his right to counsel and proceed *pro se.*

Standard and Scope of Review

The scope of authority provided by statute to a Superior Court commissioner is a question of law that this Court reviews *de novo.*[5]

Merits of the Argument

Ryle questions the authority of the Superior Court commissioner who addressed his waiver of right to counsel and decision to proceed *pro se* stating that the commissioner "did not have subject matter jurisdiction to permit [him] to waive counsel and proceed *pro se* at trial."[6] Ryle's argument is supported only by a myopic reading of the Superior Court Criminal Case Management Plan for New Castle County and fails to consider the statutory authority granted to a Superior Court commissioner.

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[5] *Zebroski v. State*, 12 A.3d 1115, 1119 (Del. 2010) (questions of law reviewed *de novo*); *LeVan v. Independence Mall, Inc.*, 940 A.2d 929, 932 (Del. 2007) (questions of law, such as the construction of a statute, are reviewed *de novo*); *see also Johnson v. State*, 884 A.2d 475 (Del. 2005) (evaluating authority of Superior Court commissioner to conduct a violation of probation hearing).

[6] Amend. Op. Brf. at 15.

The position of commissioner of the Superior Court of the State of Delaware, as codified in Sections 511 and 512 of Title 10 of the Delaware Code was "created by passage of House Bill No. 477 on May 4, 1994."[7] Section 511 established the position of commissioner of Superior Court, the method by which that position is filled, the term, and compensation.[8] Section 512 defined the jurisdiction and powers of Superior Court commissioners.[9]

Superior Court commissioners have all powers as conferred upon them by law or by the Superior Court rule.[10] A Superior Court judge may designate additional responsibilities to a commissioner with respect to pretrial hearings.[11] Section 512 specifically authorizes a commissioner to "appoint counsel to represent indigent defendants."[12] While there are certain pretrial matters "specifically excepted from the relatively broad authority"[13] of Section 512(b)(1), none of those exceptions are applicable in Ryle's case.

"In order to implement the Court Commissioner legislation, the Superior Court adopted Criminal Rule 62 on October 21, 1994," which "further defines the

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[7] *State v. Grivas*, 1997 WL 127005, *1 (Del. Feb. 3, 1997).

[8] 10 *Del. C.* § 511.

[9] 10 *Del. C.* § 512.

[10] 10 *Del. C.* § 512(a)(1).

[11] 10 *Del. C.* § 512(b).

[12] 10 *Del. C.* § 512(a)(3).

[13] *Grivas*, 1997 WL 127005 at *1.

procedures appropriate for pretrial matters referred to Commissioners."[14] Commissioners have "[t]he power to conduct non case-dispositive hearings . . . and the power to hear and determine any pretrial or other non-case-dispositive matter pending before the Court."[15] Superior Court deems issues surrounding a defendant's legal representation to be "non case-dispositive criminal matters" that may be assigned to a commissioner.[16] When a commissioner addresses such matters, they shall "file an order . . with the Prothonotary and shall mail copies forthwith to all parties."[17] Nonetheless, orders entered under Rule 62(a)(4) "shall be effective immediately."[18]

Ryle's argument that this "authority appears to be reserved to the Office Judge" is unavailing.[19] The Superior Court Criminal Case Management Plan for New Castle County provides that the Office Judge shall "handle certain civil and criminal duties."[20] These duties include "[r]eview of *pro se* applications where applicant has not been sentenced."[21] The plan thus delegates to the Office Judge the

[14] *Grivas*, 1997 WL 127005 at *1.

[15] Super. Ct. Crim. R. 62(a)(4).

[16] Admin. Directive No. 2007-5, Superior Court of Delaware (Dec. 6, 2007) at ¶ 6.d. at A-27 (commissioners may be assigned to matters involving "control for representation").

[17] Super. Ct. Crim. R. 62(a)(4)(i).

[18] Super. Ct. Crim. R. 62(a)(4)(v).

[19] Amend. Op. Brf. at 15.

[20] A23.

[21] A23.

responsibility of simply reviewing applications made by *pro se* defendants. Commissioners are, however, empowered to address applications of individuals to proceed *pro se.* The commissioner here had the authority to address Ryle's waiver of his right to counsel and his knowing, voluntary, and intelligent decision to proceed *pro se*. By statute, rule, and court administrative directive, Ryle's request was a non case dispositive matter that fell squarely within the authority of the commissioner.

Ryle argues that "[e]ven if the Commissioner did have authority to act in this matter, the Order is not valid because the procedure under Criminal Rule 62(a)(4)(i) was not followed."[22] Not so. While the record is unclear as to whether a copy of Ryle's executed "Waiver of Counsel Form"[23] was mailed to him, it is clear that he participated in, and was provided notice of, the commissioner's order on October 27, 2014.[24] His knowledge of his own waiver was confirmed in subsequent pre-trial proceedings. Nonetheless, this argument as to form fails as Rule 62(a)(4)(v) specifically provides that orders on non case-dispositive matters are effective immediately. Ryle was properly afforded his constitutional right to self-representation.

[22] Amend. Op. Brf. at 17.

[23] B1-2.

[24] A30-45.

II. RYLE KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY WAIVED HIS RIGHT TO COUNSEL.

Question Presented

Whether Ryle knowingly, intelligently, and voluntarily waived his right to counsel before a Superior Court commissioner.

Standard and Scope of Review

This Court reviews *de novo* claims concerning the denial of the right to waive counsel and proceed *pro se*.[25] "Whether a defendant has intelligently waived the right to counsel depends upon the particular facts and circumstances of the case, including the defendant's background, experience, and conduct of the defendant."[26]

Merits of the Argument

A defendant's right to self-representation is fundamental, protected by both the United States and Delaware constitutions.[27] The exercise of the right to self-representation, however, necessarily involves the waiver of the equally fundamental right to counsel. Therefore, not only must a defendant make a voluntary, knowing, and intelligent waiver of the Constitutional right to the assistance of counsel, but the trial court must conduct "a comprehensive evidentiary hearing to explore and

[25] *Drummond v. State*, 2011 WL 761522, *2 (Del. Mar. 3, 2011)

[26] *Id.*

[27] U.S. Const. amend. VI; Del. Const. art I, §7. *See Faretta v. California*, 422 U.S. 806, 819 (1975); *Williams v. State*, 56 A.3d 1053, 1055 (Del. 2012).

explain the defendant's options."[28] "It is undisputed that conducting a 'searching inquiry' into waiver of counsel poses 'a difficult task' for the trial court, particularly when the defendant appears 'experienced in the litigation process and [when] friction has arisen between the defendant and his then-counsel.'"[29] The trial court "entrusted with the responsibility of ensuring that the decision by a defendant to represent himself is made intelligently and competently,"[30] must make a thorough inquiry to protect the defendant's constitutional rights.[31]

In *Briscoe v. State,* this Court followed the guidelines set forth by the Third Circuit Court of Appeals in *United States v. Welty* to determine whether a defendant's waiver of counsel was knowing, intelligent, and voluntary.[32] These guidelines, referred to as "the *Briscoe* factors,"[33] include advising the defendant:

> (1) that [he] will have to conduct his defense in accordance with the rules of evidence and criminal procedure, rules with which he may not be familiar;
>
> (2) that [he] may be hampered in presenting the best defense by his lack of knowledge of the law;

[28] *Smith v. State,* 996 A.2d 786, 791 (Del. 2010).

[29] *Briscoe v. State,* 606 A.2d 103, 107 (1992) (quoting *United States v. Welty*, 674 F.2d 185, 191 (3d Cir. 1982)).

[30] *Briscoe*, 606 A.2d at 107 (citing *Johnson v. Zerbst*, 304 U.S. 458, 465 (1038)).

[31] *Morrison v. State*, 2016 WL 757575, *4 (Del. Feb. 25, 2016).

[32] *Briscoe*, 606 A.2d at 108 (citing *Welty*, 674 F.2d at 188-89).

[33] *Drummond,* 2011 WL 761522 at *2.

(3) that the effectiveness of his defense may well be diminished by his dual role as attorney and accused.

(4) the nature of the charges,

(5) the statutory offenses included within them,

(6) the range of allowable punishments thereunder,

(7) possible defenses to the charges and circumstances in mitigation thereof, and

(8) all other facts essential to a broad understanding of the whole matter.[34]

Here, the commissioner, did not address the *Briscoe* factors *seriatim*. However, "[a] defendant can knowingly and intelligently waive his Sixth Amendment right to counsel even if the judge does not review each of the *Briscoe* factors *in haec verba*."[35] The record reflects that the court conducted a "searching inquiry" and properly determined that Ryle made a voluntary, knowing, and intelligent waiver of his right to counsel.

On October 27, 2014, Superior Court addressed a motion to withdraw as counsel presented by Ryle's then assigned attorney. A30. During this proceeding, Ryle advised the Court that he wanted to "go *pro se*." A32. Ryle documented his desire to proceed *pro se* by completing a "Waiver of Counsel Form."[36] This form,

[34] *Briscoe*, 606 A.2d at 108.

[35] *Drummond*, 2011 WL 761522 at *2.

[36] B1-2.

signed by Ryle and approved by Superior Court, confirmed that Ryle was aware of the risks of self-representation, the penalties to which he was exposed, and the procedural and evidentiary parameters that would be imposed by the Court. A Superior Court commissioner reviewed Ryle's written waiver, engaged in a comprehensive colloquy, and found Ryle's waiver to be knowing, intelligent, and voluntary. "The record [made] clear that [Ryle] knowingly, intelligently, and voluntarily waived his right to counsel at his first colloquy on October 27, 2014."[37] During his colloquy, he acknowledged:

> that he would have to conduct his defense in accordance with court rules and procedures, and that there are definite hazards to representing himself. The Court also discussed: the nature of the charges and their corresponding punishments; Mr. Ryle's high school graduate level education; and Mr. Ryle's experience with the criminal justice system. It found Mr. Ryle knowingly, intelligently, and voluntarily waived his right to counsel.[38]

Thereafter, Ryle engaged in "prolific motion practice," and represented himself capably in various court proceedings.[39] Following his waiver, and after engaging in pre-trial self-representation, Ryle was asked whether he wished to

[37] *Ryle*, 2015 WL 5004903 at *2.

[38] *Id.* at n.6.

[39] *Id*.

continue to represent himself at trial. He consistently declined counsel and maintained his waiver.[40]

Ryle now argues that the trial court engaged in a "perfunctory inquiry" that was "insufficient to support a finding of a knowing and intelligent waiver of counsel at trial."[41] This claim is belied by the record. First, Ryle ignores his comprehensive "Waiver of Counsel Form" that addressed the *Briscoe* factors.[42] With this form in hand, the Court engaged in a thorough colloquy with Ryle.[43] Ryle confirmed that he understood that five of the six charges against him were felonies and acknowledged that he was facing "a lot of time" if convicted of the six charged offenses,[44] and the possibility that, based upon his prior record, he may be found to be an habitual offender and "could be facing . . . life imprisonment."[45] Ryle further explained that he graduated from high school and has had experience in criminal matters in both Superior Court and the Court of Common Pleas; in fact, he "had a

[40] On January 20, 2016, during in arraignment on the amended indictment, the court inquired, "Mr. Ryle, can I talk you into counsel," to which Ryle responded, "No, ma'am. I'm all right going *pro se*." A48. Additionally, on January 26, 2015, during a hearing on Ryle's motion to dismiss, the court commented, "You're going to be representing yourself. That's something you still want to do; right?" B7. Ryle emphatically responded, "Absolutely." B8.

[41] Amend. Op. Brf. at 24.

[42] B1-2.

[43] A32-39.

[44] A32-33.

[45] A35.

Court of Common Pleas trial for some misdemeanors"[46] in which he had been represented by counsel.

The colloquy demonstrates that Ryle understood "that most persons who are charged with criminal offenses choose to be represented by a lawyer and that the Constitution guarantees [him], as an accused person, the right to a lawyer."[47] He further understood "that a competent lawyer would be knowledgeable to court proceedings, Rules of Evidence and the law that governed [his] trial" and that if his case went to trial "there may be technical issues that would make it very difficult for [him] as a non-lawyer to assess."[48] He also understood that a trial would follow "established laws and rules of the Court, and that [he] does not have a Constitutional right to receive instruction from the trial judge on courtroom procedure."[49] Ryle was aware that the trial judge would not assist him in his case and that his frustration or confusion with the process would not be a basis to interrupt trial.[50] The trial court then flatly asked Ryle whether he understood the "definite hazards" of self-representation; Ryle responded that he did.[51]

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[46] A34.

[47] A36.

[48] A36.

[49] A37.

[50] A37.

[51] A38.

Ryle argues that "[l]ike the trial judge in *Morrison v. State*, the Commissioner in Ryle's case failed to conduct 'a penetrating and comprehensive examination of all the circumstances' in order to find a proper waiver."[52] But, in *Morrison*, this Court found the waiver colloquy lacking because "the Trial Judge failed to inform Morrison of the nature of the charges, the statutory offenses included within them, the range of allowable punishments, possible defenses, possible circumstances in mitigation, and the dangers of the dual roes of being an attorney and the accused."[53] Here, as set forth above, the trial court conducted "'a penetrating and comprehensive examination of all of the circumstances' in order to find a proper waiver."[54] Ryle's reliance on *Morrison* is misplaced. His wavier was knowing, voluntary, and intelligent.

Ryle next argues that his reindictment mandates "an additional, separate colloquy."[55] He is wrong. As this Court explained in *Stigars*, "once a defendant has invoked the right to self-representation that decision must be honored unless, after discussing his request with the trial judge, the defendant expresses a contrary desire."[56] "[T]he right of self-representation is central to our adversarial system of

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[52] Amend. Op. Brf. at 23; *Morrison*, 2016 WL 757575.

[53] *Id.* at *5.

[54] *Id.* (citing *Welty*, 674 F.2d at 189).

[55] Amend. Op. Brf. at 24.

[56] *Stigars v. State*, 674 A.2d 477, 480 (citing *Snowden v. State*, 672 A.2d 1017 (Del. 1996)).

justice and is specifically guaranteed by the Delaware Constitution."[57] "The importance of that right to self-representation requires that once a defendant effectively invokes his right to proceed *pro se*, a later revocation of that request must appear on the record."[58] Put simply, once a defendant knowingly, voluntarily, and intelligently waives their right to counsel and declares their right to self-representation, the trial court may not independently pursue what it believes to be his best interest.[59]

Here, Superior Court, after a thorough colloquy, accepted Ryle's waiver of his right to counsel. Following his reindictment, Ryle completed a second "Waiver of Counsel Form" and faxed it to the court.[60] Even so, the trial court asked, "Mr. Ryle, can I talk you into counsel?"[61] Ryle responded, "No, ma'am. I'm all right going *pro se*."[62] Any further inquiry, as Ryle argues was necessary, could have violated Ryle's constitutional right to self-representation.[63] Here, the trial court

[57] *Id*.

[58] *Id.* at 480-81.

[59] *See Id.* at 480.

[60] A48; B3-4.

[61] A48.

[62] A48.

[63] *Stigars*, 674 A.2d at 480.

properly declined further inquiry on the subject and accepted his "previously asserted request to represent himself."[64]

[64] *Id*.

CONCLUSION

For the foregoing reasons, the Court should affirm the judgment below.

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Dated: April 18, 2016

CERTIFICATE OF SERVICE

I, Sean P. Lugg, Esq., do hereby certify that on April 18, 2016, I caused a copy of the State's Answering Brief to be served electronically upon the following:

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