



IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMEEL MUHAMMAD, )  
 )  
Defendant-Below, )  
Appellant, )  
 )  
v. ) No. 7, 2020  
 )  
 )  
STATE OF DELAWARE, )  
 )  
Plaintiff-Below, )  
Appellee. )

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

On April 10 and May 2, 2019, police arrested Jameel Muhammad in Criminal ID Nos. 1904007225 and 1905000605, respectively, for various drug offenses. A1 at Docket Item (“D.I.”) 1; A12 at D.I. 1. Muhammad was further charged with human trafficking-sexual servitude and trafficking an individual in a third case, Criminal ID No. 1905000911. A19 at D.I. 1.

Muhammad’s preliminary hearing in Criminal ID No. 1904007225 was continued so he could hire private counsel. A30. But in the human-trafficking case, an attorney with the Office of the Public Defender (“OPD”) (hereinafter referred to as “trial counsel”) represented Muhammad at his May 10, 2019 preliminary hearing. A40. The Court of Common Pleas found that the State had established probable cause for Muhammad to be bound over for trial in the Superior Court. A67.

Muhammad wanted to hire private counsel rather than be represented by trial counsel in his drug cases, so those preliminary hearings were rescheduled. A98. On May 28, 2019, a Court of Common Pleas judge released trial counsel from representing Muhammad and approved Muhammad’s request to proceed *pro se* at the preliminary hearings in his drug cases. A116. But Muhammad then requested a continuance to hire private counsel, which the court granted. A117. Muhammad subsequently argued with the judge and was held in contempt of court. A121.

On July 19, 2019, Muhammad appeared in the Court of Common Pleas, without private counsel, for preliminary hearings in his drug cases. Muhammad elected to proceed *pro se* rather than be represented by trial counsel. A128. Before Muhammad could complete a waiver-of-counsel form required by the presiding Commissioner, Muhammad was transported back to prison, and the preliminary hearings had to be rescheduled. A133-35. On June 26, 2019, the preliminary hearings were held in the Court of Common Pleas, and Muhammad was permitted to proceed *pro se* following a colloquy. A165, A169-71. The court found that the State had demonstrated probable cause. A192, A216.

Meanwhile, on June 26, 2019, Muhammad filed a *pro se* motion in the Superior Court to dismiss his human-trafficking case. A19 at D.I. 3. The Superior Court referred the motion to trial counsel and advised that it would not consider Muhammad's *pro se* filings because Muhammad was represented by counsel. A20 at D.I. 4, 5. Muhammad refiled a motion to dismiss through counsel. A20 at D.I. 6. He then also moved *pro se* to dismiss the drug cases. A1 at D.I. 2; A10 at D.I. 2.

On July 22, 2019, a New Castle County grand jury indicted Muhammad for two counts each of sexual servitude and trafficking an individual in Criminal ID No. 1905000911. A20 at D.I. 7; A230-31. Two days later, the Superior Court ruled that the motion to dismiss the human-trafficking case was moot. A20 at D.I. 7. It referred Muhammad's *pro se* motions to dismiss in the drug cases to trial counsel

and ordered responses by August 2, 2019. A1 at D.I. 3; A10 at D.I. 3. By letter, trial counsel advised that he did not represent Muhammad in the drug cases. A232.

On August 5, 2019, a New Castle County grand jury indicted Muhammad in Criminal ID No. 1904007225 for Tier 4 drug dealing (cocaine), aggravated possession (cocaine), illegal possession of a controlled substance or counterfeit controlled substance (heroin), and possession of drug paraphernalia. A2 at D.I. 5; A233-34. Within the same indictment, the grand jury charged Muhammad in Criminal ID No. 1905000605 with two counts of drug dealing without tier designations (methamphetamine and cocaine). A10 at D.I. 5; A235. The Superior Court thereafter denied Muhammad's motions to dismiss the drug cases as moot. A2 at D.I. 4; A10 at D.I. 4.

On the same day, trial counsel filed a motion to withdraw as counsel in the human-trafficking case, which the Superior Court granted after receiving a response from Muhammad and after conducting a colloquy with him on August 19, 2019. A20-21 at D.I. 8, 9, 11. Muhammad then moved *pro se* to dismiss the drug cases and the human-trafficking case. A2 at D.I. 7; A10-11 at D.I. 6; A21 at D.I. 12. One week later, Muhammad filed a *pro se* motion to compel discovery in the human-trafficking case. A21 at D.I. 16.

On August 29, 2019, the Superior Court Commissioner continued Muhammad's arraignment in all of his cases because the Superior Court "need[ed]

to do a colloquy with [Muhammad] for him to proceed *pro se*” and ordered that “[t]he colloquy and arraignment will both be held on [September 9, 2019].” A2 at D.I. 7; A10-11 at D.I. 6; A21 at D.I. 16. The arraignments were continued twice more, eventually to October 8, 2019. A2 at D.I. 8; A11 at D.I. 7; A21 at D.I. 15. On September 19, 2019, Muhammad filed a *pro se* lawsuit against trial counsel and others in the United States District Court for the District of Delaware alleging civil rights violations. B-12 at D.I. 2.

On September 16, 2019, trial counsel wrote to the Superior Court in Muhammad’s drug cases, stating that the OPD did not intend to declare a conflict of interest and that trial counsel could still represent Muhammad. A3 at D.I. 12; A11 at D.I. 10; A260. On September 24, 2019, Muhammad filed a letter in the drug cases complaining about trial counsel’s alleged lack of interest in the cases. A2 at D.I. 9; A11 at D.I. 8.

On October 8, 2019, Muhammad pled not guilty at arraignment to the charges in the indictments. A2-3 at D.I. 11; A11 at D.I. 9; A22 at D.I. 18. Notations entered by the Superior Court Commissioner on the dockets recited that the court had already permitted Muhammad to represent himself in the human-trafficking case. *Id.* After Muhammad stated that he did not want trial counsel to represent him in his other cases, the Commissioner informed Muhammad that the OPD would not provide



another attorney and that Muhammad “could continue to proceed *pro se* or hire private counsel.” *Id.*

On October 17, 2019, Muhammad filed a *pro se* motion to reconsider a Superior Court Commissioner’s order in his drug cases in which he objected to the August 5, 2019 indictment and requested that new counsel be appointed. A261-70; A3 at D.I. 16; A12 at D.I. 13. On October 18, 2019, he filed a *pro se* petition for a writ of habeas corpus. A3 at D.I. 17; A12 at D.I. 14. The Superior Court denied Muhammad’s petition and his motion to reconsider following a hearing on November 4, 2019. A4 at D.I. 20-21, 44; A12-13 at D.I. 17-18, 39; A22 at D.I. 19, 21, 43. Finally, at a status conference in all of his cases on December 2, 2019, the Superior Court ruled that Muhammad could not represent himself, trial counsel would represent Muhammad, and the State must provide discovery to trial counsel. A5 at D.I. 27; A14 at D.I. 24; A23 at D.I. 23; A24 at D.I. 29.

On December 30, 2019, Muhammad, through trial counsel, moved for leave to file an untimely suppression motion, along with a proposed suppression motion; the Superior Court granted leave. A7 at D.I. 35-37; A15 at D.I. 31-33; A25 at D.I. 32-34.

On January 6, 2020, Muhammad pled guilty during his final case review to one count of Tier 2 drug dealing (cocaine), in violation of 16 *Del. C.* § 4753 (as a lesser-included offense of Tier 4 drug dealing); one count of drug dealing

(methamphetamine with no tier level); and second-degree promoting prostitution (as a lesser-included offense of trafficking an individual). A405. In exchange for his guilty plea, the State agreed to enter a *nolle prosequi* on the remaining charges in Muhammad's cases. A405. The Superior Court immediately sentenced Muhammad: (1) for Tier 2 drug dealing (cocaine), to four years of Level V incarceration, suspended after sixteen months for six months of Level IV supervision and then one year of Level III probation; (2) for drug dealing (methamphetamine), to four years of Level V incarceration, suspended for one year of Level III probation; and (3) for promoting prostitution, to two years of Level V incarceration, suspended for one year of Level III probation. A408-09.

On January 7, 2020, Muhammad timely filed a Notice of Appeal, which he subsequently amended. Muhammad's trial counsel filed an application to withdraw under Delaware Supreme Court Rule 26(c). This Court appointed Muhammad new counsel to represent him in his direct appeal, and he filed an opening brief on July 13, 2021. This is the State's answering brief.

## SUMMARY OF THE ARGUMENT

I. Muhammad's argument is denied. Based on his valid guilty plea, Muhammad waived the claim that his constitutional right to self-representation was violated. Nevertheless, Muhammad's constitutional claim is meritless. The record overall does not evidence that Muhammad clearly and unequivocally asserted his right to self-representation. Rather, Muhammad's requests regarding his representation were unclear or unfocused, and the record reflects more that Muhammad was dissatisfied with appointed counsel and desired representation provided on his terms. Assuming Muhammad asserted his right to self-representation clearly and unequivocally, the Superior Court reasonably determined that Muhammad was incapable of representing himself based on its colloquy with him on December 2, 2019, in which Muhammad claimed that he did not understand the nature of the charges against him or that he had to adhere to the rules of evidence and criminal procedure. Even if Muhammad was fabricating his answers during the colloquy, the court properly concluded that Muhammad could not proceed *pro se* due to his serious and obstructionist misconduct. Muhammad's history of disrespectful behavior toward the courts further supported the Superior Court's decision to not allow him to proceed *pro se*. Finally, the Superior Court's appointment of trial counsel to represent Muhammad was not improper.

## STATEMENT OF THE FACTS

Evidence presented at Muhammad's preliminary hearings established that, around 12:30 a.m. on April 10, 2019, members of the Governor's Task Force ("GTF"), including State Police Detective Macauley, were surveilling a Red Roof Inn motel in Newark. A173-75. They observed suspected drug transactions and prostitution occurring at Rooms 314 and 335 and an individual, later identified as Muhammad, running to Room 335. A173-75. GTF team members learned upon further investigation that the motel rooms were registered to someone named N.L. A175.

Detective Macauley approached Room 335 and smelled burnt marijuana. A176. Detective Macauley knocked on the door of the room, and another GTF team member noticed that a man came to the door, looked through the peep hole, and ran toward the bathroom. A176. When a female, B.B., answered the door, Detective Macauley detected a stronger odor of burnt marijuana and saw, in plain view, glass pipes and copper foil on a nightstand and empty blue wax baggies in a trash can near the door. A176-77. When asked about the items, B.B. admitted that she smoked crack cocaine and that "there might be some more in the room." A177. B.B. consented to GTF team members searching the room and said that her boyfriend had run to the bathroom. A177. Detective Macauley entered the bathroom and saw Muhammad naked and wet, and a large amount of money wrapped in a rubber band

on the toilet seat. A177. Muhammad was arrested, and, because he was on probation, an administrative search was approved for the room and a Chevrolet Impala belonging to Muhammad. A178. GTF team members recovered \$3,164 in cash in multiple denominations and suspected marijuana, crack cocaine, cocaine, and heroin from the room. A180. GTF team members contacted N.L. in Room 314 and found a ledger containing the dates that N.L. had prostituted herself and numerous condoms in the room. A181. B.B. and N.L. told State Police Detective Lloyd that Muhammad made them provide sexual favors to men for money. A43-45.

In April 2019, a confidential informant (“C.I.”) contacted State Police Detective Radcliffe, a GTF team member, and advised that a black male, whom the C.I. identified as “Jaleel Muhammad” or “Kev,” was dealing methamphetamine, heroin, and crack cocaine. A197-99. The C.I. described Muhammad, said that Muhammad drove a white Hyundai sport utility vehicle, and identified Muhammad in a photo from the Delaware Criminal Justice Information System (“DELJIS”) database. A199-200. On May 2, 2019, the C.I. contacted Muhammad and arranged for a controlled purchase of methamphetamine at a certain location. A200. GTF team members surveilled Muhammad just before the transaction was to take place and observed him driving a white Hyundai SUV. A200. Police arrested Muhammad when he arrived at the location of the transaction in the SUV. A200-01. On

Muhammad's person, Detective Macauley found suspected methamphetamine, a large amount of cash in various denominations, and keys for two rooms at a Motel 6 in Newark. A201-02, A204. Officers also found suspected crack cocaine and small rubber bands in the SUV. A201-03.

An administrative search of the rooms at Motel 6 was approved, and officers found suspected crack cocaine, plastic bags, and other drug paraphernalia in the rooms, which were registered to N.L. A46, A204. State Police Detective Lloyd subsequently interviewed N.L. and B.B., who were staying at the motel. A45-46. N.L. advised that, following Muhammad's arrest on April 10, 2019, she returned to the Red Roof Inn, but Muhammad visited her after he was released on bail. A47. Muhammad promised N.L., who had no money, that he could make her money if she continued prostituting herself. A47. Although N.L. eventually traveled to Philadelphia for about a week, N.L. subsequently contacted Muhammad and returned to him because she wanted drugs. A48. Thereafter, N.L. stayed with Muhammad at various hotels in the area, and he also transported her to clients to engage in prostitution. A48-49.

B.B. told Detective Lloyd that Muhammad had stolen a large tax refund from her, and she went for days without food because she and N.L. did not have money and Muhammad would only feed them if they engaged in prostitution. A50-51. B.B.

advised that she was pregnant with Muhammad's child, and he had promised to pay for an abortion if she continued prostituting herself. A49-50.

**I. MUHAMMAD WAIVED THE CLAIM THAT HIS CONSTITUTIONAL RIGHT TO SELF-REPRESENTATION WAS VIOLATED BASED ON HIS KNOWING, INTELLIGENT, AND VOLUNTARY GUILTY PLEA, AND, IN ANY EVENT, THE SUPERIOR COURT DID NOT VIOLATE MUHAMMAD’S RIGHT TO SELF-REPRESENTATION.**

**Question Presented**

Whether Muhammad’s constitutional right to self-representation was violated.

**Standard and Scope of Review**

This Court reviews constitutional questions *de novo*.<sup>1</sup>

**Merits of the Argument**

Muhammad argues that the Superior Court violated his rights under the Sixth Amendment to the United States Constitution and Article I, Section 7 of the Delaware Constitution when it forbid him from proceeding *pro se* and instead appointed trial counsel to represent him following a December 2, 2019 colloquy. Opening Br. at 38-51. Rather than relying on his answers during the colloquy, Muhammad contends that “[t]he trial court should have recognized [his] frustration—clear from the verbiage used by [him] during the proceeding—that the substance of those answers had unlikely changed merely four months [following a prior colloquy].” *Id.* at 46. Muhammad argues that the Superior Court’s “revisiting

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<sup>1</sup> *Stigars v. State*, 674 A.2d 477, 479 (Del. 1996).



of the issue was improper.” *Id.* at 48. Muhammad further alleges that his frustration “was not unnecessarily unwarranted” based on the “ninth time discussing issues related to his representation,” trial counsel continuing to attend hearings in Muhammad’s matters, allegedly “conflicting information from the [Superior] Court,” and the Superior Court supposedly not offering a sufficient explanation for denying his motions. *Id.* at 48-49. Muhammad denies engaging in “‘serious and obstructionist misconduct’ such that his self-representation should have been terminated,” arguing that “[w]hile he zealously advanced arguments in support of his motions—and sought clarification as to the legal rationale for their denial—he was ultimately respectful toward the Court during his presentation.” *Id.* at 49-50. Muhammad’s arguments are unavailing.

***Muhammad’s valid, counseled guilty plea constituted a waiver of his constitutional claim.***

As an initial matter, Muhammad waived the claim that his constitutional right to self-representation was violated by knowingly, intelligently, and voluntarily pleading guilty.<sup>2</sup> The Sixth Amendment to the United States Constitution and

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<sup>2</sup> In its order appointing substitute counsel to represent Muhammad on appeal, this Court mentioned that counsel “should brief Muhammad’s claim concerning the violation of his right to self-representation, including whether his guilty plea constituted a waiver of this claim, as well as any other issues presented by the record on appeal.” D.I. 40 at 5. However, it does not appear that counsel addressed in Muhammad’s opening brief whether his guilty plea waived his constitutional claim.

Article I, § 7 of the Delaware Constitution guarantee a defendant the right to self-representation.<sup>3</sup> Yet, this right is not unqualified.<sup>4</sup> “A voluntary guilty plea waives a defendant’s right to challenge any errors or defects before the plea, even those of constitutional dimension.”<sup>5</sup> With limited exceptions, the United States Supreme Court has concluded that “a guilty plea represents a break in the chain of events which has preceded it in the criminal process,” and a defendant who has admitted guilt “may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.”<sup>6</sup> It also makes case-related constitutional defects “irrelevant to the constitutional validity of the conviction” because “the defendant has admitted the charges against him.”<sup>7</sup>

It appears that this Court has not specifically stated that a valid guilty plea constitutes a waiver of a defendant’s right to self-representation; however, in addition to the general waiver principles outlined above, this Court’s decision in

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<sup>3</sup> *Stigars*, 674 A.2d at 479.

<sup>4</sup> *Id.*

<sup>5</sup> *Smith v. State*, 2004 WL 120530, at \*1 (Del. Jan. 15, 2004).

<sup>6</sup> *Tollett v. Henderson*, 411 U.S. 258, 267 (1973) (noting that a defendant who pleads guilty “may only attack the voluntary and intelligent character of the guilty plea by showing that the advice he received from counsel” was constitutionally ineffective); *see Class v. United States*, 138 S. Ct. 798, 804-05 (2018) (ruling that a guilty plea did not waive the claim challenging the constitutionality of the criminal statute under which the defendant was convicted)

<sup>7</sup> *Class*, 138 S. Ct. at 804-05.

*Christopher v. State*<sup>8</sup> is instructive. *Christopher* instructs that a defendant's subsequent conduct can waive claims that he was denied his right to self-representation.<sup>9</sup> The defendant had requested to proceed *pro se* in the middle of trial, and the Superior Court denied the request after a colloquy.<sup>10</sup> At the conclusion of the State's case-in-chief, the defendant confirmed during another colloquy that he had reconciled his differences with his counsel and was satisfied with his counsel's representation.<sup>11</sup> Nevertheless, on appeal the defendant argued that his Sixth Amendment right to self-representation was violated.<sup>12</sup> This Court noted that "[w]hile mere acquiescence to a trial judge's denial of a proper invocation of the right to self-representation is insufficient to constitute waiver, a subsequent assertion, on the record, that the defendant has reconciled his differences with defense counsel constitutes a waiver."<sup>13</sup> Regardless of whether the trial court's self-representation colloquy was deficient, Christopher had "revoked and waived his request to represent himself, when he subsequently told the trial judge that he was

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<sup>8</sup> 930 A.2d 894 (Del. 2007).

<sup>9</sup> *Id.* at 897-98.

<sup>10</sup> *Id.* at 896.

<sup>11</sup> *Id.* at 898.

<sup>12</sup> *Id.* at 896.

<sup>13</sup> *Id.* at 897.

absolutely satisfied with defense counsel’s representation.”<sup>14</sup>

*Christopher* relied on the Tenth Circuit’s decision in *United States v. Montgomery*.<sup>15</sup> In *Montgomery*, the defendant proclaimed at arraignment in “no uncertain terms that he wished to be represented by someone other than a public defender,” and when the trial court denied the request, the defendant sought to represent himself, which the court also denied.<sup>16</sup> The defendant subsequently pled guilty with the public defender’s assistance.<sup>17</sup> On appeal, the defendant argued that his right to self-representation was violated.<sup>18</sup> In rejecting the claim, the Tenth Circuit concluded that, by allowing the public defender to negotiate a plea bargain, the defendant “demonstrated that he was no longer asserting his right to represent himself.”<sup>19</sup> The Tenth Circuit determined that “[t]his is further evidenced by the fact that he accepted all of the benefits of the plea bargaining,” noting that the district court “determined that this plea was entered voluntarily.”<sup>20</sup> Based on his voluntary plea, the Tenth Circuit found that “he knowingly waived the right which he had

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<sup>14</sup> *Id.* at 898.

<sup>15</sup> *Id.* at 898 n.16 (citing *United States v. Montgomery*, 529 F.2d 1404 (10th Cir. 1976)).

<sup>16</sup> *Montgomery*, 529 F.2d at 1405.

<sup>17</sup> *Id.* at 1406.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

previously asserted to be his own attorney.”<sup>21</sup> It further noted that “[t]he voluntary plea of guilty is the independent intervening act which renders ineffectual the prior failure to allow appellant to represent himself at a trial,” concluding that to hold otherwise “would open the door to manipulations and gamesmanship.”<sup>22</sup> The Tenth Circuit’s conclusion is consistent with the majority of federal circuits that have reached the issue, which hold that a defendant “waives the right to bring a claim for a potential violation of the right to proceed pro se by pleading guilty.”<sup>23</sup>

Here, Muhammad waived his self-representation claim by allowing trial counsel to engage in plea negotiations, by pleading guilty, or both. During his plea colloquy, the Superior Court reviewed the terms of the Plea Agreement and Muhammad’s answers to the questions in the Truth-in-Sentencing Guilty Plea Form. A398-400. Muhammad confirmed that he “freely and voluntarily decided to plead guilty to the charges listed in [his] written Plea Agreement;” no one had promised him “anything that is not stated in [his] written Plea Agreement;” neither his lawyer nor the State “threatened or forced [him] to enter this plea;” he understood that “because [he was] pleading guilty and . . . will not have a trial, [he] will, therefore,

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 1407.

<sup>23</sup> *United States v. Dewberry*, 936 F.3d 803, 806 (8th Cir. 2019) (citing *United States v. Moussaoui*, 591 F.3d 263, 280 (4th Cir. 2010); *Werth v. Bell*, 692 F.3d 486, 497 (6th Cir. 2012); *Gomez v. Berge*, 434 F.3d 940, 942-43 (7th Cir. 2006); *Montgomery*, 529 F.2d at 1406-07).

waive or give up certain Constitutional rights;” no one “promised [him] what [his] sentence will be;” and he was “satisfied with [his] lawyer’s representation of [him] and that [his] lawyer ha[d] fully advised [him] of [his] rights.” A399-400. Muhammad admitted his guilt to the charges in the Plea Agreement, and the Superior Court was “satisfied that [his] plea [wa]s made knowingly, intelligently and voluntarily and that there’s a factual basis for it.” A400-01. Muhammad’s trial counsel emphasized that this was a “heavily-negotiated plea with an outstanding Motion to Suppress.” A401-02. By permitting trial counsel to negotiate a plea bargain, and stating that he was satisfied with trial counsel’s representation of him, Muhammad demonstrated that he no longer desired self-representation and had abandoned his request to proceed *pro se*.<sup>24</sup> By doing so, he waived his self-representation claim under *Christopher*.<sup>25</sup> Moreover, the act of pleading guilty itself waived Muhammad’s constitutional claim, which preceded the entry of the guilty plea.<sup>26</sup>

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<sup>24</sup> *Montgomery*, 529 F.2d at 1406; *Walker v. State*, 2007 WL 481957, at \*2 (Del. Feb. 15, 2007) (finding no violation of right to self-representation where defendant failed to renew *pro se* request to discharge attorneys at critical junctures before trial and permitted them to continue representing him until renewing the request on the eighth day of trial).

<sup>25</sup> *See* 930 A.2d at 898.

<sup>26</sup> *See Smith*, 2004 WL 120530, at \*1.

***The Superior Court did not violate Muhammad’s constitutional right to self-representation.***

Even if this Court reaches the merits of Muhammad’s constitutional claim, Muhammad has not demonstrated that his right to self-representation was violated. Muhammad makes only a passing reference to the Delaware Constitution, and “[t]his Court has held that conclusory assertions that the Delaware Constitution has been violated will be waived on appeal.”<sup>27</sup> And Muhammad’s claim of a violation of his right to self-representation under the Sixth Amendment is meritless.

Criminal Rule 44 provides a defendant with the right to appointed counsel “at every stage of the proceeding,” and, “unlike the right of self-representation which does not attach until it is *asserted*, the right . . . exists until it is *waived*.”<sup>28</sup> A defendant who wishes to represent himself must “clearly and unequivocally invoke his right to self-representation.”<sup>29</sup> Thereafter, the court must: (1) determine that the defendant has made a knowing and voluntary waiver of his constitutional right to counsel; and (2) inform the defendant of the risks inherent in going forward in a criminal trial without the assistances of legal counsel.”<sup>30</sup> In *Briscoe*, this Court

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<sup>27</sup> *Wallace v. State*, 956 A.2d 630, 637 (Del. 2008).

<sup>28</sup> Ct. Com. Pl. Crim. R. 44(a); Super. Ct. Crim. R. 44(a); *Potter v. State*, 547 A.2d 595, 602 (Del. 1988) (emphasis in original).

<sup>29</sup> *Merritt v. State*, 2011 WL 285097, at \*3 (Del. Jan. 27, 2011).

<sup>30</sup> *Id.* (citing *Faretta v. California*, 422 U.S. 806, 835 (1975); *Hooks v. State*, 416 A.2d 189, 197 (1980)).

adopted the Third Circuit’s guidance in *United States v. Welty*.<sup>31</sup> Before ruling on the defendant’s application, a trial court should advise the defendant:

- (1) that the defendant 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 the defendant may be hampered in presenting his best defense by his lack of knowledge of the law;
- (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.<sup>32</sup>

The court may decide whether a waiver is knowing, intelligent, and voluntary without “mechanically go[ing] through each of the *Welty* factors.”<sup>33</sup>

The court may also terminate a defendant’s self-representation or appoint standby counsel over the defendant’s objection to preserve the integrity or efficiency

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<sup>31</sup> *Briscoe v. State*, 606 A.2d 103, 108 (Del. 1992) (citing *United States v. Welty*, 674 F.2d 185, 188-89 (3d Cir. 1982)).

<sup>32</sup> *Id.* (citing *Welty*, 674 F.2d at 188-89).

<sup>33</sup> *Holland v. State*, 158 A.3d 452, 470 (Del. 2017).



of the proceedings.<sup>34</sup> The right to self-representation “is not a license to abuse the dignity of the courtroom.”<sup>35</sup> “The Superior Court ‘may terminate self-representation by a defendant who deliberately engages in serious and obstructive misconduct.’”<sup>36</sup>

As explained below, Muhammad did not clearly and unequivocally assert his right to proceed *pro se*. Assuming he did, the Superior Court properly determined that Muhammad could not represent himself based on his answers during its colloquy with him on December 2, 2019. If Muhammad fabricated his answers during the colloquy, then the Superior Court appropriately denied him the right to self-representation based on his misconduct, which would have added to his history of showing disrespect to the courts. This Court should therefore reject Muhammad’s claim of a constitutional violation.

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<sup>34</sup> *Cooke v. State*, 97 A.3d 513, 531 n.104 (Del. 2014) (citing *Martinez v. Court of Appeals of California, Fourth Appellate Dist.*, 528 U.S. 152, 162 (2000)).

<sup>35</sup> *Id.* (quoting *Clark v. Perez*, 510 F.3d 382, 395 (2d Cir. 2008)).

<sup>36</sup> *Id.* (quoting *Payne v. State*, 367 A.2d 1010, 1017 (Del. 1976)).

*Muhammad's Representation Issues and Misbehavior in the Court of Common Pleas*

On April 29, 2019, while in the Court of Common Pleas for a preliminary hearing on his drug charges in Criminal ID No. 1904007225, Muhammad did not express any desire to proceed *pro se*. A28, A30-31. To the contrary, Muhammad requested a continuance so he could hire private counsel, which the court granted. A30.

Muhammad was subsequently arrested on new drug charges in Criminal ID 1905000605, along with human trafficking and related charges in Criminal ID 1905000911. Trial counsel from the OPD represented Muhammad at his preliminary hearings in the Court of Common Pleas on May 10, 2019. A33, A40. The court only heard evidence concerning the human-trafficking case, finding that the State had established probable cause. *See* A35, A40-41, A67.

On May 15, 2019, the Court of Common Pleas held preliminary hearings in Muhammad's drug cases. A69. Muhammad indicated that he wanted to proceed *pro se* at the hearings. A71. The Commissioner presiding over the hearings advised that Muhammad had to complete a waiver-of-counsel form and that, once he did, she would conduct a colloquy with him. A72-73. The Commissioner adjourned the hearings so trial counsel could meet with Muhammad about the form. A73-74. When the hearings resumed, trial counsel advised that Muhammad did not want his assistance. A74. When the Commissioner asked Muhammad if he wanted to

represent himself, Muhammad said no, but he also did not want to be represented by trial counsel. A88. Muhammad stated that he would rather proceed *pro se* than have trial counsel represent him. A88-89. The Commissioner advised Muhammad that he could either be represented by trial counsel or a private attorney, or he could proceed *pro se*. A88-89. Muhammad advised the Commissioner that he had reserved his rights on the form and that he had told trial counsel that he was not waiving but did not want trial counsel to serve as his attorney. A93-94. The Commissioner advised Muhammad that he could not choose who represented him from the OPD and that she planned to appoint trial counsel as standby counsel. A94, A96. The Commissioner adjourned the hearings again. A97. When the hearings resumed, Muhammad requested a continuance to hire private counsel, which was granted. A98, A104.

On May 28, 2019, a Court of Common Pleas judge presided over the rescheduled preliminary hearings in the drug cases. A111. Trial counsel advised that Muhammad had planned to hire private counsel, but he had not done so, and he preferred to proceed *pro se* rather than with trial counsel's representation. A113. When Muhammad entered the courtroom, the judge advised Muhammad that he was "a little bit confused about what it is that [he's] looking for." A115. Muhammad confirmed that he did not want trial counsel to represent him and proceeded to explain "the private attorney situation" in which his ability to hire private counsel

was hampered because the attorney he had contacted was on vacation for a week. A116. The judge responded that trial counsel was released, and he would approve Muhammad's request to proceed *pro se* "at least for today's proceedings." A116. The judge noted that Muhammad could address the issue of representation "further in Superior Court if he wishes." A116. The judge then confirmed that Muhammad wanted preliminary hearings, and that, if he could not obtain a continuance, he would proceed *pro se*. A116. However, the judge granted another continuance so Muhammad could hire private counsel. A118. Despite the judge's favorable rulings, Muhammad became argumentative:

MR. MUHAMMAD: You asked me do I want to ask you a question, right? I just asked you a question I think. Railroaded me. I'm going to say what I want.

THE COURT: Do you have something else you'd like to—you're talking to me, not to somebody in the back of the courtroom and you're about—

MR. MUHAMMAD: Is this about me, because every time I talk it seem like it's a problem. If this is about me, then I'm going to talk regardless.

THE COURT: You're acting like a fool.

MR. MUHAMMAD: It don't matter. I've been here 5 times dealing with the same thing. The same thing.

A119-20. After reminding Muhammad that the court had released trial counsel, Muhammad continued to argue with the judge:

MR. MUHAMMAD: Can I go? I'd appreciate it.

THE COURT: I'm about ready to hold you in contempt of court and sentence you to another period of jail time.

MR. MUHAMMAD: I'm already in jail.

THE COURT: Yeah, great, and none of the time that I sentence

you to will count against these sentences if you continue to act a fool.

MR. MUHAMMAD: It doesn't really matter to me.

A120-21. The hearings ended after the court held Muhammad in contempt and sentenced him to serve thirty days of Level V incarceration. A121.

On June 19, 2019, the Court of Common Pleas held preliminarys hearing in Muhammad's drug cases. A124. Because Muhammad had other pending matters, the prosecutor felt it was necessary for Muhammad to "come up and speak to [the Commissioner] about his right to counsel and what he wants to do with his cases."

A126. When Muhammad was brought into the courtroom, he told the Commissioner that he wanted to proceed *pro se*. A128. Trial counsel advised the Commissioner that he did not represent Muhammad because the judge had removed him from the case. A129. The Commissioner asked Muhammad if he had completed the waiver-of-counsel form she had previously provided to him; Muhammad said he had not.

A130-31. When trial counsel reminded the Commissioner about his removal from the case and that Muhammad "doesn't want my help," the Commissioner responded that she would appoint standby counsel, and she later said that trial counsel would serve in that role. A132-35. The Commissioner also said that she had "not changed [her] position, as [she] indicated at the outset, [she] would want this form completed and signed by Mr. Muhammad." A133. The Commissioner adjourned the hearing so Muhammad could complete the form. A133. Muhammad was mistakenly transported back to prison, and his preliminary hearings had to be rescheduled.

A135, A145.

Muhammad's rescheduled preliminary hearings in his drug cases occurred on June 26, 2019. A148, A195. The Commissioner asked Muhammad if he had hired private counsel; Muhammad responded that he had not and added that "[e]very time I let the Court know I want to go *pro se* y'all give me a whole do over, me and you go back and forth, y'all give me contempts, y'all keep attaching somebody's recused off my case and we don't get anywhere." A153. Muhammad then said he "want[ed] to go *pro se*." A153. The Commissioner noted that Muhammad had previously mentioned to a judge that he had intended to hire private counsel and requested that Muhammad confirm that he did not want representation by private counsel. A153-54. After acknowledging that he would "rather go *pro se*," the Commissioner confirmed that Muhammad had a waiver-of-counsel form. A154. Muhammad then asked the Commissioner what type of court he was in, including if it was an equity, civil, or criminal court. A156-57. After an explanation, the Commissioner asked Muhammad if he had any other questions; Muhammad replied, "That's it. That'll be all." A157. Seemingly shocked, the Commissioner asked, "Pardon me?" A157. Muhammad reiterated, "That will be all." A157.

The Commissioner then asked Muhammad to complete the waiver-of-counsel form and advised that trial counsel, "an experienced criminal defense attorney," could assist him with the form. A157-58. Muhammad then argued with the

Commissioner about trial counsel not being an experienced attorney:

THE COMMISSIONER: Sir, I'm just stating a fact that he is an experienced criminal—

MR. MUHAMMAD: No, he's not.

THE COMMISSIONER: Well, he's an experienced criminal defense attorney. That's a fact.

MR. MUHAMMAD: I just gave you facts. I'm not lying.

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MR. MUHAMMAD: No, I'm not shhh. This is about me, right. So can I talk because I got him shooing me.

THE COMMISSIONER: But you can't interrupt.

MR. MUHAMMAD: I understand that, Your Honor.

THE COMMISSIONER: You can't interrupt.

MR. MUHAMMAD: But listen, I got him talking to me like a child out there. I got him shushing me. You cutting me off when I talk. But this is all about me. So if I can talk let me talk. If I can't talk, then tell me I can't talk. This don't make no sense.

THE COMMISSIONER: I believe—

MR. MUHAMMAD: You're telling me something that's not true and I'm reiterating that it's not true.

THE COMMISSIONER: I believe you actually interrupted me. So let me finish my thought.

MR. MUHAMMAD: Who is this about? Who is this about?

THE COMMISSIONER: And then it will be your turn. And we really don't want to go down any contempt road again, Mr. Muhammad.

MR. MUHAMMAD: I've already been there.

A159-60. The Commissioner asked the bailiff to provide an extra waiver-of-counsel form to Muhammad and for Muhammad to complete it “as soon as possible.” A161. Muhammad responded that he’s “not going through with this if [trial counsel is] attached to my case” and proclaimed that he did not “want this guy no where near [his] case.” A161. Reminding Muhammad that he is not able to choose which

attorney from the OPD represented him, the Commissioner tried to explain why she normally appoints standby counsel. A162-63. The Commissioner relented and agreed to allow Muhammad to represent himself without standby counsel if he completed the form. A165. The hearings were adjourned so Muhammad could complete the form. A166.

Muhammad then requested that a judge preside over the hearings. A166-67. Once the judge arrived, the judge confirmed that Muhammad wanted “to represent [himself] for the purposes of these preliminary hearings.” A169. The judge also reviewed the form with Muhammad, confirming that Muhammad understood that he had a right to representation by counsel “for this hearing here today;” trial counsel had the “knowledge, skill, education, and training to probably best represent” Muhammad; there was no requirement for Muhammad to proceed *pro se*; trial counsel was “ready, willing, and able to represent” Muhammad; and Muhammad nevertheless wished to waive his right to counsel. A170-71. The judge permitted Muhammad to represent himself. A170. The judge found that the State had established probable cause in each of the drug cases. A192, A216-17.

*Muhammad’s Representation Issues and Misbehavior in the Superior Court*

In the Superior Court, trial counsel moved to withdraw his representation of Muhammad in the human-trafficking case (Criminal ID 1905000911). Trial counsel stated in the motion that Muhammad had “expressed to the Court of Common Pleas,



to Counsel, and to Counsel’s supervisors that he wishes Counsel to be removed from this case.” A237. Although trial counsel had “informed [Muhammad] of the numerous risks and downsides of that decision, and further, that if Counsel were removed, [Muhammad] would not be appointed another attorney,” Muhammad still wanted trial counsel removed from the case. A237-38.

At the August 19, 2019 hearing on the motion in the human-trafficking case, trial counsel advised that he and Muhammad “have been working together on this case and previously on two others over the past few months.” A241. The judge asked Muhammad if he was sure about his desire to terminate trial counsel’s representation; Muhammad said, “Yes.” A242. The judge then asked if Muhammad was sure because Muhammad had paused and looked to the right. A242. Muhammad claimed that he “never stated that [he] want[ed] to go *pro se* in [his] preliminary hearing phase,” but that he “would go *pro se* if [he] couldn’t get proper representation or whatever.” A243. When Muhammad suggested that the court appoint him different counsel, the court told him that he could either continue with trial counsel, hire private counsel, or proceed *pro se*. A246-47. Muhammad stated that he wished to proceed *pro se* and that trial counsel was “named in the civil action I got under the federal jurisdiction.” A247.<sup>37</sup> Seemingly surprised about the lawsuit,

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<sup>37</sup> Based on the District Court docket, Muhammad signed the complaint nearly a month after the hearing, on September 16, 2019, and did not file it until September

the judge concluded that he needed to have a colloquy with Muhammad, and he proceeded to conduct the colloquy with Muhammad regarding the charges in the human-trafficking case. A247-58. The judge also appeared to conclude that the prior determination that Muhammad had validly waived his Sixth Amendment right to self-representation by another judicial officer in his other cases was binding, although noting that “out of an abundance of caution” he could conduct another colloquy nevertheless. A250-51. During the colloquy, Muhammad represented that he understood the possible penalties for the charges in the human-trafficking case, that he must adhere to the rules of evidence and criminal procedure, his defense may be hampered by proceeding *pro se*, the nature of the charges, “what circumstances might mitigate [his] charges,” and sufficient facts to have a “basic general understanding of this entire matter.” A253-56. The judge contemplated having trial counsel serve as standby counsel, but he was unsure because he believed that trial counsel had a direct conflict. A257. The judge found Muhammad’s waiver knowing, intelligent, and voluntary, and he granted trial counsel’s motion to withdraw. A258.

On August 29, 2019, Muhammad appeared in the Superior Court for an arraignment in all of his cases. A2 at D.I. 7; A11 at D.I. 6; A21 at D.I. 16. The

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19, 2019. B-12 at D.I. 2; B-10. The District Court dismissed the case on May 21, 2020, because Muhammad did not pay a partial filing fee. B-13 at D.I. 10.

arraignment was rescheduled at the defense's request so the court could conduct a colloquy with Muhammad to proceed *pro se*. A11 at D.I. 6; A21 at D.I. 16. On September 16, 2019, trial counsel wrote to the Superior Court in Muhammad's drug cases and advised that, following a discussion with the Commissioner during the September 12, 2019 arraignment regarding whether Muhammad's federal lawsuit precluded his representation of Muhammad, he and his supervisor had "reviewed the pertinent rules of professional responsibility, and determined that the law suit [sic] does not create a de facto conflict." A260.<sup>38</sup> He and the OPD were "confident in [his] ability to zealously represent Mr. Muhammad, and therefore it [wa]s not [their] intention to reassign or declare a conflict." A260 Trial counsel also advised Muhammad that "he will likely need to choose between [his] representation, hiring a private attorney, and proceeding *pro se*." A260. On October 8, 2019, Muhammad advised the Superior Court Commissioner that he did not want trial counsel's representation, and he pleaded not guilty to the charges. A11 at D.I. 9; A22 at D.I. 18. Muhammad was informed that the OPD would not provide any other attorney and that he could proceed *pro se* or hire private counsel. A11 at D.I. 9; A22 at D.I. 18.

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<sup>38</sup> Trial counsel had indicated in his July 26, 2019 letter to the Superior Court and at the August 19, 2019 hearing that he had previously represented Muhammad in his drug cases. A232, A241. However, it appears that trial counsel's representation of Muhammad in these cases was contemplated at Muhammad's arraignment.

At Muhammad's November 4, 2019 hearing, the Superior Court addressed his *pro se* motion to reconsider a Commissioner's order in which he, among other things, requested the appointment of different counsel; his petition for a writ of habeas corpus; and his request for grand jury transcripts. A261-70, A277-78. Muhammad argued that, under Superior Court Criminal Rules 7(a)(2) and (a)(3), the State was estopped from changing or adding charges after a preliminary hearing. A285-86. The court then spent considerable time with the parties comparing Muhammad's charges from his arrests with those presented to the grand jury. A297-327. Muhammad complained that he was arraigned on new charges, but did not understand what had happened to the old charges under the same case number in an arrest warrant. *See* A309, A315. Muhammad also contended that the grand jury had dismissed one of his cases. A316. The State believed some of the "confusion comes from . . . [Muhammad being] originally charged with a lower tier of a drug amount, and then the grand jury came back with a higher tier . . . . [T]hat is because the day after Mr. Muhammad was arrested they found an additional 50 grams of cocaine in the room under the bed." A326. The State acknowledged that "certain charges [it] decided not to proceed to grand jury on." A327. The judge rejected Muhammad's interpretation of the criminal rules. A327. After an additional exchange with the judge, Muhammad said, "I am here for justice . . . . [I]t's like you being partial for the State. I need you to be impartial for everybody." A329.

Trial counsel also attended the hearing, and the judge seemed to indicate that counsel had appeared at the court's behest after the judge reviewed Muhammad's claim that he was being forced to represent himself in violation of the Sixth Amendment. *See* A331-32. Noting the prior colloquy and the federal lawsuit, the judge mentioned that trial counsel had subsequently concluded that he could still represent Muhammad, and the judge had also reviewed *Hester v. State*<sup>39</sup> and determined that there was not a debilitating conflict of interest simply due to the lawsuit. A332-34. The judge believed that Muhammad was "asking for representation somewhere else. In other words, I don't want the Public Defender's Office, . . . or I want another Public Defender, just not [trial counsel], or Conflicts Counsel." A335. Muhammad complained that the court did not consider appointing him conflict counsel under Criminal Rule 44(d). A336.<sup>40</sup> The judge decided to give Muhammad, "with respect to all of these cases," a "cooling-off period, . . . to think about this." A337. The judge reiterated Muhammad's three options, including proceeding with trial counsel, *pro se*, or private counsel. A337. Muhammad accused the judge of railroading him. A341-42. The judge said he would afford Muhammad

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<sup>39</sup> 2011 WL 3717051 (Del. Aug. 23, 2011).

<sup>40</sup> Superior Court Criminal Rule 44(d) provides that "[w]hen the court rules that the public defender is disqualified, the court shall assign other counsel. The court may contract with attorneys to serve as assigned counsel when the public defender is disqualified."

an opportunity to meet with trial counsel “to hash out all of the issues of cases, of motions, or whatever you asked him to file,” and he would have another hearing in December. A342. The judge said that he would conduct a full colloquy and either “we will move forward with [trial counsel] . . . or [Muhammad is] representing [himself] *pro se*, or [the judge] may make a determination that [trial counsel] is going to serve as standby counsel.” A342. The judge denied Muhammad’s motion to reconsider the Commissioner’s order and his habeas corpus petition. A343.

On November 18, 2019, a different Superior Court judge presided over Muhammad’s case review in his human-trafficking case. A361. When the judge asked if Muhammad was representing himself in his other cases, Muhammad said that he “always stated that [he] wanted representation, but nobody invoked [Criminal] Rule 44, so everybody is moving around me doing what they want to do.” A366. Muhammad asserted that he had “a conflict with [trial counsel] concerning my federal civil rights and [he] expressed that to the Court over and over again.” A366. The judge told Muhammad to stop and reminded him that he did not “run the place.” A366. Muhammad later responded that “the way you’re coming off at me, please, just—just address me like a grown man. Don’t disrespect me, treat me like a—like an inmate. Come on, man. I didn’t do anything to you, sir.” A367. Although the judge indicated that a lawyer being sued by a client has a disqualifying conflict of interest, the judge also told Muhammad that he could either “represent

[himself] or . . . hire somebody, but the public defender is not going to provide [him] another lawyer.” A369. When the judge asked Muhammad if he wanted to continue to represent himself, Muhammad complained that “nobody invoked Rule 44(d), there’s a conflict, I got somebody disqualified, they shall appoint counsel.” A369. Muhammad then claimed he “never said nothing about *pro se*.” A370. Because Muhammad had not received discovery, the Superior Court continued the case review until December 2, 2019. A373.

At Muhammad’s status conference on December 2, 2019, the Superior Court judge, who had also presided over the November 4 hearing, referred to the “two week cooling off period by which [trial counsel] would come down, after that time or at some point during that time to talk to [Muhammad] about representing [him].” A379. The judge mentioned that “[d]epending on what happened there, we would have a colloquy and see how we were moving forward, either proceeding with one of the three options we discussed, which is [trial counsel] is [Muhammad’s] counsel, private counsel, or *pro se*.” A379. Trial counsel represented that he had scheduled an appointment to meet with Muhammad, but Muhammad refused to meet with him. A379-80. Acknowledging that “we’ve been through this before,” the judge still “wanted to make sure that the record is crystal clear.” A381. The judge advised Muhammad that “[w]e’re going to move forward with trial in the three cases that [he] ha[d] pending” and that “[w]e’ve been down this road before as far as the

colloquy, but for the record [the judge] ha[s] to do this again.” A381-82. After the judge confirmed that Muhammad had not retained private counsel, Muhammad challenged the judge about “why are we here to the point that we’ve been doing this for seven months?” A383. Muhammad complained that trial counsel “put in a motion to get off my case, which hampered my defense, it was granted, why am I going through my eleventh colloquy with the courts? Why am I constantly keep having to sit in the bullpens for 200 hours?” A383.

The judge recalled that, at the time he heard the motion to withdraw, the lawsuit “sound[ed] like it could be a conflict.” A385. The judge “went through the colloquy with [Muhammad] and [he] said [he] w[as] willing to represent [himself].” A385. The judge noted that trial counsel subsequently advised the court that he could still represent Muhammad notwithstanding the lawsuit. A386. The judge then “came back, we had our long hearing, and [the judge] said your options are, at this point, [the judge was] not forcing [Muhammad], but [trial counsel], private, or [himself].” A386. Muhammad retorted that “nobody looked in the Rule 44(d) . . . after looking at all this case law, and ethics.” A386-87. Muhammad complained that the judge had never ruled on his motion to reconsider and his habeas corpus petition. A387. After the judge advised that he had ruled on these matters, Muhammad accused the judge of not wanting to deal with his motions. *See* A388. The judge said, “Here’s a definitive answer—are you ready? The motion, again, the



motion to reconsider Commissioner . . . denied. Again, the . . . writ of habeas corpus denied.” A388.

The judge then addressed Muhammad’s representation:

THE COURT: You understand in the three cases, case numbers ending 7225, 0605, and 0911, that you’ll have to conduct your defense in accordance with the rules of evidence and criminal procedure, correct?

MR. MUHAMMAD: I don’t understand.

THE COURT: Okay. If you were to represent yourself, you’d have to adhere to the rules of evidence, you understand that? Yes or no?

MR. MUHAMMAD: No, I don’t understand.

THE COURT: Okay. The nature of the charges against you, do you understand those?

MR. MUHAMMAD: No. I don’t even know what charges I have, nobody—

THE COURT: All right. So this is what we’re going to do—

MR. MUHAMMAD: You probably can explain it to me, Judge . . . , I would understand those. But if you just listen to me and stop trying to rush through this whole thing, you will understand that my charges keep switching. I had eight original charges and they was held in moot, they was never decided. The only thing was decided was the case number, I didn’t put in the 48(b) motion for a case number, I put in for the charges, that’s what 48(b) deals with, charges. So that was never dealt with. Then the charges switch, and then they have fake case numbers that I never seen before, so I honestly what charges I’m here for.

THE COURT: All right. So this is what we’re going to do, all right, we’re not going to play this game.

MR. MUHAMMAD: I’m not playing—

THE COURT: I'm trying to be straight with you, but apparently you don't want to be straight.

So it sounds to me, like you're telling me, you don't understand the nature of the charges against you, you don't understand the rules of evidence that you would have to adhere to, etc., so I in good conscience cannot find that you are competent to represent yourself in these three matters—

MR. MUHAMMAD: Explain the charges to me.

THE COURT: No.

MR. MUHAMMAD: I'm being honest with you, I'm not playing any games.

THE COURT: No. No, no, no, no. Listen. So what we're going to do—[trial counsel], can you stand up, please.

[TRIAL COUNSEL]: Yes, your Honor.

THE COURT: You're going to represent him in this case.

[TRIAL COUNSEL]: Understood.

A388-89. The judge found that Muhammad was “not capable of representing himself in this case.” A389. The judge directed trial counsel to “explain to him whatever legal strategy” and “what he needs to understand about the nature of the charges against him, the defenses that he may have or not have in this case, the range of allowable punishments, possible defenses, and other facts essential to a broad understanding of this matter.” A390-91. Later, Muhammad asked if he could assist in his own defense and told the judge he was “sorry about that.” A394. The judge ruled that Muhammad could assist in his own defense but could not “act as [his] own

attorney. Because [he] failed to answer the questions [the judge] was asking, [he] ha[s] demonstrated that [he] cannot represent [himself].” A394. Muhammad then requested permission to file *pro se* motions. A395. When the judge told Muhammad that he could not file such motions, Muhammad answered, “This is, this is—come on, Judge.” A395.

*Muhammad did not clearly and unequivocally assert his right to self-representation.*

Notwithstanding the August 2019 colloquy in Muhammad’s human-trafficking case and his prior self-representation in the Court of Common Pleas during the preliminary hearings in his drug cases, the record overall does not evidence that Muhammad clearly and unequivocally asserted his right to self-representation. Muhammad’s requests concerning his representation were often unclear or unfocused. The record generally evidences more that Muhammad was dissatisfied with his appointed counsel and desired representation provided on his terms. He repeatedly stated that he wanted private counsel. *See* A30, A98, A117. On various occasions, Muhammad also invoked Rule 44 and argued that he was entitled to conflict counsel, or he denied wishing to proceed *pro se* at all. *See* A243, A336, A366, A369, A386-87. The Superior Court ultimately felt compelled to attempt the colloquy on December 2, 2019 to clarify Muhammad’s wishes regarding

his representation. *See* A381-82. Muhammad did not effectively assert his right to self-representation.<sup>41</sup>

*The Superior Court properly denied Muhammad the right to represent himself based on the colloquy on December 2, 2019.*

Even if Muhammad had clearly and unequivocally asserted his right to self-representation, the Superior Court reasonably determined that Muhammad was not capable of representing himself based on the colloquy on December 2, 2019. Muhammad owed the Superior Court the same duty of candor as an attorney.<sup>42</sup> Taking Muhammad at his word, he advised during the colloquy that he did not understand the nature of his charges or that he would have to adhere to the rules of evidence and criminal procedure if he proceeded *pro se*. A388-89. Further, during the November 4 hearing, which the same judge had presided over, Muhammad seemed confused about how the charging process had resulted in the charges in his indictment, and he asked the judge to explain the charges to during the December 2 colloquy. *See* A282-83, A287-88, A389. The Superior Court appropriately concluded that Muhammad was unable to represent himself.

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<sup>41</sup> *Merritt*, 2011 WL 285097, at \*3.

<sup>42</sup> *Taylor v. Taylor*, 102 A.3d 151, 154 (Del. 2014) (“Just like attorneys have duties of candor to the tribunal, so too do parties themselves.”).

*The Superior Court's decision to forbid Muhammad from proceeding pro se was appropriate if Muhammad was feigning during the colloquy.*

Alternatively, if Muhammad was fabricating his answers during the December 2 colloquy, then the Superior Court properly concluded that he could not proceed *pro se*. Assuming that Muhammad was feigning during the colloquy, his serious obstructionist behavior supported the court's decision to not allow him to represent himself. Muhammad had a duty to answer the colloquy's questions truthfully, and he cannot justify any fabrication by claiming that he was merely frustrated. Such misconduct would have added to Muhammad's history of disrespectful behavior toward the courts, which included interrupting judicial officers while they were speaking, engaging in back talk, and making unsupported allegations of judicial bias.<sup>43</sup> In the very least, Muhammad demonstrated dilatory tactics by his unwillingness to cooperate with the Superior Court in conducting a basic colloquy, which the court viewed as necessary to determine if Muhammad could proceed *pro se*. It was within the Superior Court's purview to determine the measures necessary to ensure that Muhammad's constitutional rights were protected

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<sup>43</sup> *Cooke*, 97 A.3d at 530-37 (upholding Superior Court's termination of self-representation where, among other things, defendant "did not behave in a civil and courteous manner"); see *Kostyshyn v. State*, 2004 WL 220321, at \*1 (Del. Jan. 30, 2004) (upholding denial of self-representation where defendant engaged in dilatory tactics by making no genuine request to proceed *pro se*, repeatedly speaking out during trial, and attacking his attorney's competency).

by creating an unambiguous record.<sup>44</sup> Muhammad also disregarded the Superior Court's suggestion to meet with trial counsel about their differences. Muhammad's attempt to blame others for his actions evidences an undue depreciation of his misconduct.

***Trial counsel's appointment to represent Muhammad was not improper.***

Finally, the Superior Court's decision to appoint trial counsel to represent Muhammad was not improper. There was no disabling conflict of interest. "Although being named as a defendant in a collateral lawsuit by one's client may place an attorney in a situation in which his or her loyalties are divided, a criminal defendant's decision to file such an action against appointed counsel does not require disqualification unless the circumstances demonstrate an actual conflict of interest."<sup>45</sup> "A contrary holding would enable an indigent criminal defendant to challenge each successive appointment of counsel, delaying indefinitely the criminal prosecution."<sup>46</sup>

In *Hester*, the defendant withdrew a motion to appoint substitute counsel the week before trial and only raised the issue again during trial when he informed the

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<sup>44</sup> See, e.g., *Czech v. State*, 945 A.2d 1088, 1095 (Del. 2008) ("It is well-settled that a trial judge is responsible for the management of the trial and is vested with broad discretion to promote that function.").

<sup>45</sup> *People v. Horton*, 906 P.2d 478, 502 (Cal. 1995).

<sup>46</sup> *Id.*

judge that he had filed a federal lawsuit against his attorney and the OPD.<sup>47</sup> The trial judge concluded that “the filing of a complaint without more did not create a per se conflict of interest requiring the appointment of new counsel.”<sup>48</sup> This Court found “no error in the Superior Court’s denial of Hester’s untimely and ambiguous attempt to exercise his right to self-representation.”<sup>49</sup>

Here, as the Superior Court reasonably determined, under *Hester*, trial counsel did not have a disqualifying conflict of interest despite the federal lawsuit. A332-34. The Superior Court noted that trial counsel independently determined that he could still represent Muhammad. A334. Muhammad has not demonstrated that trial counsel actively represented conflicting interests or that his representation of Muhammad was adversely affected by any alleged conflict of interest. Trial counsel zealously advocated for Muhammad by moving to suppress evidence in Muhammad’s cases and obtaining a favorable plea agreement for him. In sum, Muhammad has not established that his right to self-representation was violated.

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<sup>47</sup> *Hester*, 2011 WL 3717051, at \*2.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

**CONCLUSION**

The State respectfully requests that this Court affirm the judgment below without further proceedings.

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Dated: August 16, 2021



IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMEEL MUHAMMAD, )  
 )  
 Defendant-Below, )  
 Appellant, )  
 )  
 v. ) No. 7, 2020  
 )  
 )  
 STATE OF DELAWARE, )  
 )  
 Plaintiff-Below, )  
 Appellee. )

**CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENT  
AND TYPE-VOLUME LIMITATION**

1. This brief complies with the typeface requirement of Rule 13(a)(i) because it has been prepared in Times New Roman 14-point typeface using MS Word.

2. This brief complies with the type-volume requirement of Rule 14(d)(i) because it contains 9,910 words, which were counted by MS Word.

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DATE: August 16, 2021