

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

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| STATE OF DELAWARE, |) | |
| |) | |
| V. |) | I.D. No. 1408017638 |
| |) | |
| JERMAINE BOOKER, |) | |
| |) | |
| Defendant. |) | |

Submitted: June 16, 2016
Decided: August 4, 2016

FINDINGS OF FACTS AND
CONCLUSIONS OF LAW UPON REMAND

Jermaine Booker was tried before a jury and found guilty on multiple felony offenses including first degree robbery, home invasion, and weapons offenses on January 22, 2016. He was duly sentenced and timely filed an appeal to the Delaware Supreme Court.

Until this point, he has been represented by the Office of Defense Services. At trial, assigned counsel was Raymond Armstrong and James Turner. On appeal, assigned counsel was Bernard O'Donnell.

At some point in the appellate process, before briefing had been filed, Mr. Booker notified the Supreme Court know that he no longer wanted the services of appointed counsel and elected to represent himself. The Supreme Court remanded the matter while retaining jurisdiction in order for this Court to conduct a colloquy with Mr. Booker as to whether his waiver of counsel was "knowing and voluntary" and requested that this Court make specific inquiries required by the leading case on the issue, *Watson v. State*.¹

The Court conducted said colloquy with Mr. Booker on June 30, 2016. After the Court conducted the colloquy there was some discussion between Mr. Booker and Mr. O'Donnell as to whether Mr. Booker changed his mind. The Court held a second evidentiary hearing on August 4, 2016. The transcript of both hearings will be made part of the record sent back to the Supreme Court.

¹ 564 A.2d 1107 (Del. 1989).

Mr. Booker has not retained private counsel to represent him on appeal. He indicated that he completed the proper paperwork necessary to secure representation by the Office of Defense Services, both at trial and on appeal. The Court is satisfied that he is an indigent person.

Mr. Booker stated that he dropped out of high school in the eleventh grade. Mr. Booker has limited familiarity with the criminal justice system and trial process. He indicated that he pled guilty to two different misdemeanor charges as a juvenile. Mr. Booker's only trial experience comes from the trial in this case. Nevertheless, Mr. Booker stated he understands he is entitled to court-appointed counsel.

Mr. Booker understands that because he is an indigent person, he must either continue to accept representation on appeal by his present court-appointed counsel or proceed *pro se*. He wishes to proceed *pro se*.

Mr. Booker stated that he wants to waive assistance of his court-appointed counsel because he wants to raise arguments on appeal that his court-appointed counsel will not raise. He indicated that he spoke with some family members about his decision to waive the right to counsel. He has not consulted another attorney about his decision, but his trial counsel voiced their concerns about Mr. Booker proceeding *pro se* on appeal at the evidentiary hearing.

Mr. Booker understands that the appellate process involves the application of rules of procedure that may prove difficult for a nonlawyer to follow or understand. He understands that notwithstanding his lack of legal training, he will be required to comply with all pertinent rules of the Supreme Court and that noncompliance with those rules may delay or prejudice his appeal. Mr. Booker understands that the allowance of oral argument is discretionary with the Supreme Court and that the Supreme Court's practice is to not grant oral argument in *pro se* criminal matters. He also understands that if the waiver of counsel is accepted, he will not thereafter be permitted to interrupt or delay the appellate process to secure court-appointed counsel simply because he changed his mind.

The Court finds that Mr. Booker's waiver of counsel is "knowing and voluntary." To the extent necessary, the Court will add these comments. Mr. Booker and the Court had a long chat. The Court gave him time to think about his answers and then called him back to Court, along with his trial counsel and appellate counsel. We discussed the source of his difficulties with appellate counsel and the difficulties with self-representation at the appellate level. As the Court understood Mr. Booker's complaints, they generally aligned along the position that he wanted arguments made on appeal that his appellate attorney would not make. The Court did not delve further into exactly what the arguments were, as this would exceed the scope of the mandate from the Supreme Court and

arguably implicate issues that lie within the attorney-client privilege. But what little was discussed in connection with the specifics convinces the Court that Mr. Booker has only the dimmest perception of what issues are reviewable on appeal, how they are argued or the rules of the Delaware Supreme Court.

Nonetheless, all of this was explained to him in some detail, and he consistently reassured the Court that he understood the risks he was taking by doing this himself. The Court, as best it could, warned Mr. Booker that this was essentially a foolhardy choice he was making, even to the point of recessing without a specific finding so Mr. Booker could have some time to think it over in light of our conversation. But Mr. Booker remained firm in his decision to represent himself on appeal when we spoke again at the second evidentiary hearing.

The underlying offense for which Mr. Booker was convicted involves a brutal assault committed during a burglary that left the completely innocent victim blind and permanently disabled. He was sentenced to a term of imprisonment somewhere north of 40 years. The stakes for Mr. Booker's appeal could not be much higher—all of which was discussed with him, and all of which he forsakes in favor of self-representation on appeal. Alas, the issue for this Court is not whether this is a really, really bad idea—a finding the Court would make in a nanosecond.

The issue is, notwithstanding what a bad idea it is, is his waiver of appellate counsel “knowing” and “voluntary.” The answer to this question is “yes.”

The Court will make the transcript of the evidentiary hearing and its email correspondence with Mr. O’Donnell a part of the record to be transmitted back to the Supreme Court.

Respectfully submitted,



Charles E. Butler
Judge

cc: Mark Denney, Deputy Attorney General
Raymond D. Armstrong, Esquire
Bernard J. O’Donnell, Esquire
James O. Turner, Jr., Esquire