



IN THE SUPREME COURT OF THE STATE OF DELAWARE

ALEX RYLE,)	
)	
Defendant Below,)	I.D. No. 566, 2015
Appellant,)	
)	
v.)	
)	
STATE OF DELAWARE,)	On appeal from Superior Court
)	I.D. No. 1404000692
Plaintiff Below,)	
Appellee.)	

APPELLANT'S REPLY BRIEF

/s/ Michael W. Modica
MICHAEL W. MODICA, ESQUIRE
Bar ID # 2169
Attorney for Alex Ryle
P.O. Box 437
Wilmington, DE 19899
(302) 425-3600

Date: May 3, 2016

TABLE OF CONTENTS

Table of Citations..... ii

Summary of Reply Argument 1

Reply Arguments

 I. THE SUPERIOR COURT COMMISSIONER DID
 NOT HAVE AUTHORITY TO CONSIDER RYLE’S
 REQUEST TO WAIVE HIS RIGHT TO COUNSEL
 AND PROCEED *PRO SE*..... 2

 II. RYLE DID NOT KNOWINGLY, INTELLIGENTLY,
 AND VOLUNTARILY WAIVE HIS RIGHT TO
 COUNSEL..... 5

Conclusion 8

TABLE OF CITATIONS

Stigars v. State, 674 A. 2d 477, 480 (Del. 1996)..... 6

SUMMARY OF REPLY ARGUMENT

- I. The Superior Court Commissioner did not have authority to consider Ryle's request to waive his right to counsel and proceed *pro se*.
- II. Ryle did not knowingly, intelligently, and voluntarily waive his right to counsel.

REPLY ARGUMENT

- I. THE SUPERIOR COURT COMMISSIONER DID NOT HAVE AUTHORITY TO CONSIDER RYLE'S REQUEST TO WAIVE HIS RIGHT TO COUNSEL AND PROCEED *PRO SE*.

MERITS

The State argues that the Superior Court Commissioner is authorized to consider a defendant's request to waive counsel and proceed *pro se* at trial based upon a broad reading of 11 Delaware Code Section 512, Superior Court Criminal Rule 62 and Superior Court administrative directives.

Defendant has already addressed how the Delaware Superior Court Criminal Case Management Plan for New Castle County indicates that it is the office judge who "shall handle certain.... criminal duties," including the duty to conduct the "[r]eview of *pro se* applications where the applicant has not been sentenced." (A-21-23). That reservation of power encompasses a *pro se* request to waive counsel and proceed *pro se* at trial.

The State counters that the provision of Superior Court Administrative Directive No. 2007-5, which provides that commissioners may be assigned to matters involving "control for representation," should be interpreted to mean that a commissioner has authority to address any matter dealing with legal representation.

That is an overly broad reading of the phrase “control for representation.” The phrase “control for representation” simply means to determine the status of a defendant’s legal representation. It does not provide authority for the commissioner to engage in the process leading to a defendant’s waiver of important constitutional rights in order to proceed *pro se* at trial.

Defendant’s execution of “Waiver of Counsel” forms does not cure the procedural deficiency stemming from the failure to mail a copy of the court order(s) to him as required under Superior Court Criminal Rule 62(a)(4)(i). The State’s reliance upon Superior Court Criminal Rule 62(a)(4)(v) to avoid the mailing requirement is misplaced. Rule 62(a)(4)(v) only applies after the provisions of Rule 62(a)(4)(i) have been satisfied. Any other reading of the rule is illogical.

Finally, the State did not address the significant policy reasons why a judge, and not a commissioner, should have exclusive authority to permit a defendant to waive his important constitutional right to counsel in order to proceed *pro se*. The body of law which has developed for determining the legal sufficiency of the waiver of the right to counsel is significant. This Court has determined that great care must be taken to determine if a defendant makes a knowing, intelligent and voluntary waiver of his constitutional right to counsel. Similar to the waiver of constitutional trial rights in conjunction with the entry of a guilty plea, the waiver

of a defendant's constitutional right to counsel is the type of decision that should be reserved to the exclusive authority of a judge.

II. RYLE DID NOT KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY WAIVE HIS RIGHT TO COUNSEL.

MERITS

The State's emphasis on the two "Waiver of Counsel" forms executed by Ryle is misplaced. This situation is similar to when a defendant executes a guilty plea form in order to enter a plea agreement with the court. A defendant's guilty plea is not accepted upon the mere completion of the guilty plea form. The guilty plea is not accepted until after a judge conducts a thorough colloquy with the defendant relating to the waiver of his constitutional trial rights, in addition to other factors.

The same process applies before a defendant is permitted to waive his constitutional right to counsel and proceed *pro se*. The court is required to engage in a "searching inquiry" involving a "penetrating and comprehensive examination of all of the circumstances" behind a defendant's desire to waive counsel at trial. That did not happen in this case. Defendant has outlined the deficiencies in each colloquy conducted by the Commissioner on October 27, 2014, and at his arraignment following his re-indictment on January 20, 2015. Neither colloquy met the standards of a "searching inquiry" as set by this Court.

In response to Defendant's position that the arraignment on the re-indictment required a de novo *Briscoe* colloquy, the State argues that "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.”¹ The State is taking this portion of the *Stigars* ruling out of context as it only applies to the subsequent phases of the same legal proceeding.

The situation in this case is different because the re-indictment began a new legal proceeding. Since the re-indictment in this case involved new charges, any previous action in this case did not apply to those new charges. Otherwise, why would the Court conduct a new arraignment once an arraignment had already been conducted in this case? In other words, applying the State’s logic would relieve the court from conducting a new arraignment on a re-indictment involving new charges since the Defendant already had an arraignment for the original indictment. Of course, the court was required to provide a new arraignment on the re-indictment involving new charges. It logically follows that the court was required to conduct another colloquy on this issue since the re-indictment involved new charges that were not covered by the previous colloquy. The previous colloquy did not apply to the new charges, just as the Defendant’s plea at arraignment on the original indictment did not apply to the charges in the re-indictment.

¹ *Stigars v. State*, 674 A. 2d 477, 480 (Del. 1996).

The Commissioner did not conduct an adequate inquiry before granting Defendant's request to waive his right to counsel and proceed *pro se* at either proceeding. Therefore, the order authorizing the Defendant to proceed *pro se* was invalid.

CONCLUSION

Based upon the facts and authorities herein, Defendant respectfully urges this Court to reverse his convictions and remand his case to the Superior Court for a new trial.

By: /s/ Michael W. Modica
MICHAEL W. MODICA, ESQUIRE
Bar ID # 2169
Attorney for Alex Ryle
P.O. Box 437
Wilmington, DE 19899
(302) 425-3600