

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 1808013518
)	Supreme Court No. 88, 2019
JOSHUA STEPHENSON,)	
)	
Defendant.)	

ORDER

By Order dated June 20, 2019, the Delaware Supreme Court remanded this case to Superior Court for an evidentiary hearing concerning Defendant's competency and his request to proceed *pro se*. As directed, this Court held an evidentiary hearing on July 29, 2019. The Court attempted to question the Defendant pursuant to the *Watson v. State*¹ factors, as enumerated in the Supreme Court's Order on remand. Following are the Court's findings as a result of those inquiries.

Defendant has not retained private counsel to represent him on appeal.

¹564 A.2d 1107 (Del. 1989).

Defendant is incarcerated and is indigent. Defendant's educational background is "Like seventh, ninth, eight grade, somewhere."² Defendant is not personally familiar with the rules of procedure or evidence.³

Defendant does not wish to proceed *pro se*. Throughout the evidentiary hearing, Defendant asserted his desire to be represented by a "Guardian at My Lighthouse."⁴ The Court asked Defendant's counsel if there were any other proceeding in which a guardian *ad litem* had been appointed. It appears that there is no guardian *ad litem*. Defendant was most insistent that the correct title is "Guardian at My Lighthouse."

Defendant asserted that the Guardian at My Lighthouse should represent him at his new trial. Defendant stated that he had a right to appointment of a Guardian at My Lighthouse pursuant to the 13th Amendment to the United States Constitution.⁵ However, Defendant was unable to provide the name or credentials of such a person.⁶ He requested that his new trial take place during the evidentiary hearing. The Court explained the purpose of the hearing, and that no trial was

²Competency Hearing Transcript ("Tr.") at 14, attached as Exhibit 1.

³Tr. at 14-15.

⁴Tr. at 6 (references to "Guardian at My Lighthouse continue throughout the transcript.).

⁵Tr. at 18-20.

⁶Tr. at 19-23.

scheduled. The Court also explained that only an attorney can represent Defendant in legal proceedings.⁷

Defendant further stated that he would need the assistance of the Guardian at My Lighthouse for purposes of appeal to the Supreme Court.⁸

With regard to the issue of competency, the Court considered the report of Douglas S. Roberts, Psy, D., Licensed Psychologist with Delaware Health and Social Services. Dr. Roberts concluded:

Ultimately, in my opinion, given Mr. Stephenson's current psychiatric stability, there is not a sufficient psychiatric or cognitive basis to determine that he is not competent to proceed (through the Court may have concerns about his ability to proceed *pro se* due to his lack of knowledge and experience in the appeals process). As such, in my opinion, the available psychiatric evidence suggests that Mr. Stephenson is **competent to proceed with post-trial proceedings.**⁹

This conclusion in Dr. Roberts' report regarding competency was not disputed.

It appears to the Court that Defendant is legally competent for purposes of his appeal to the Delaware Supreme Court. The Court also finds that Defendant has neither the educational background nor familiarity with the rules of procedure, substantive law or rules of evidence to proceed without assistance of counsel. Further, because Defendant stated that he does not wish to proceed with the appeal

⁷Tr. at 11-15, 17-18.

⁸Tr. at 15-28.

⁹June 17, 2019 Report, attached as Exhibit 2 (emphasis in original).

pro se, appellate counsel should prosecute the appeal. Should an individual be identified by Defendant as his Guardian at My Lighthouse, appellate counsel may exercise discretion to consult with that person, in addition to consultation with Defendant.

SO ORDERED.

8/7/19
Dated


The Honorable Mary M. Johnston

Original to Prothonotary

cc: Samuel B. Kenney, Esquire, Deputy Attorney General
Kevin P. Tray, Esquire

Exhibit 1

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IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,	:	Cr. ID No.
Plaintiff,	:	1808013518
	:	
	:	
v.	:	
	:	
JOSHUA STEPHENSON,	:	
Defendant.	:	

BEFORE: HONORABLE, J. MARY M. JOHNSTON

UNDER SEAL

APPEARANCES:

DEPARTMENT OF JUSTICE
SAMUEL B. KENNEY, ESQ.
Deputy Attorneys General
for the State

LAW OFFICE OF KEVIN TRAY
KEVIN P. TRAY, ESQ.
for the Defendant

COMPETENCY HEARING TRANSCRIPT
JULY 29, 2019

MARIE C. LYNAM, RPR, CCR
SUPERIOR COURT OFFICIAL REPORTERS
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10 COMPETENCY HEARING TRANSCRIPT
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1 JULY 29, 2019
2 Courtroom No. 6C
3 2:00 P.M.

4 PRESENT:

5 As noted.
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8

9 THE COURT: I apologize for keeping you all
10 waiting. I was in a meeting with the chief
11 justice, so this is the earliest I could get away
12 and I apologize. That is -- I believe you have the
13 file.

14 This is a competency hearing for Joshua
15 Stephenson. Are we ready to proceed?

16 MR. TRAY: Can I just address, Your Honor,
17 because I'm in a little bit of a weird spot here.
18 Well, I think Mr. Kenney and I received the
19 evaluation today because it was in the other file
20 for Mr. Stephenson. He has actually two post
21 conviction matters at this point. He has this and,
22 he also has a murder case before Judge Streett,
23 which has the same procedural posture. There was a

1 competency evaluation ordered. And it looks like
2 this was done in response to that order by Judge
3 Streett. And I'm talking about, for the record,
4 the June 17th report.

5 In any event, I, as stand-by counsel, I
6 don't really know what my function should be today
7 because on the one hand, the report says at least
8 it's the authors opinion that Mr. Stephenson is
9 competent to stand trial, or at least there's not
10 enough to say he's not competent to stand trial.
11 But on the other hand, it also suggests that he may
12 -- that it's not of a determination of whether he
13 is competent to proceed pro se. At least the
14 procedure of the case was that he was pro se at
15 trial.

16 I helped him perfect his appeal just by
17 filing a notice of appeal. Mr. Stephenson and I
18 had subsequent conversation and it came to my
19 attention that he had this issue pending in his
20 other case and so we asked for a remand in this
21 case as well. So I spoke to Mr. Stephenson just
22 now about whether he still wanted to proceed pro
23 se. He indicated -- and I'm not trying to be funny

1 -- but in his words, he believes that guardian at
2 lighthouse was appointed and I could not disabuse
3 him of that view, number one, that it is a guardian
4 ad litem. I'm not aware of one that's been
5 appointed to Mr. Stephenson. But I will just say I
6 read the report, but today I am starting out with
7 my belief this is a delusion on the part of
8 Mr. Stephenson.

9 So I just wanted to put out that there
10 because, I, as standby counsel, I don't know really
11 know what is expected on that law, but that's all.

12 THE COURT: All right. Does the State have
13 an opinion?

14 MR. KENNEY: Your Honor, just to follow-up
15 on what Mr. Tray said, there does appear there are
16 two cases in post-conviction proceedings right now
17 that do appear to have the same procedural posture.
18 And it appears to the State that this psychiatric
19 opinion, and for that matter, almost all other
20 proceedings in these cases were docketed under
21 those cases, the 2012 case, which is referenced in
22 the report. And I think that's why neither the
23 State or Mr. Tray received a copy of the report

1 until today. The State would also like to note
2 that in that 2012 proceeding, Mr. Stephenson does
3 have post-conviction counsel that has been
4 appointed for him. And if the proceedings today
5 are contemplated to allow him to proceed pro se in
6 this matter, the 2018 case, as well as the other
7 matter, the 2012 case, I don't know that it's fair
8 or proper to his counsel in the 2012 case who has
9 not been noticed for these proceedings and is
10 therefore not present for these proceedings, if he
11 seeks to be relieved of counsel in both
12 proceedings.

13 THE COURT: Well, what does Mr. Stephenson
14 wish to do? Go ahead.

15 THE DEFENDANT: I would like the guardian at
16 my lighthouse and I want to take care of a trial
17 now.

18 THE COURT: I'm sorry, what was the second
19 thing you said?

20 THE DEFENDANT: I want to take of care
21 trial. This is my new trial. I want this to be my
22 new trial. I need to take care of it now.

23 THE COURT: Oh, you want a trial today?

1 THE DEFENDANT: Yes.

2 THE COURT: I am afraid that's not possible
3 because we schedule trials. This is a hearing to
4 decide whether or not you can proceed without
5 counsel.

6 THE DEFENDANT: Well, that would be a
7 conflict of interest.

8 THE COURT: Why would that be a conflict of
9 interest?

10 THE DEFENDANT: Because I have a right to my
11 guardian of my lighthouse and the right to a new
12 trial.

13 THE COURT: Who is the guardian?

14 THE DEFENDANT: It somebody that helps
15 represent me.

16 THE COURT: Do you know who that person is?

17 THE DEFENDANT: I haven't them, but when I
18 come to court I meet the lawyer and things like
19 that. It's the same difference. I don't talk to
20 them when I'm not here. But they should get my
21 paperwork and know everything about me.

22 THE COURT: But you don't know who that is
23 because I don't have a person entitled a guardian

1 involved in any of your cases that is a matter of
2 court record. How do you know that person is your
3 guardian?

4 THE DEFENDANT: Because I talked to staff
5 and I wanted to be introduced to my guardian at my
6 lighthouse to start my new trial today. That's
7 what I want to do.

8 THE COURT: All right. If you can have a
9 seat, I want to ask Mr. Tray a question.

10 It is possible there is another proceeding
11 pending in which a guardian ad litem would have
12 been appointed for Mr. Stephenson?

13 THE DEFENDANT: Excuse me, Miss, it's a
14 guardian at lighthouse.

15 THE COURT: All right. What Mr. Stephenson
16 is calling a guardian at lighthouse?

17 MR. TRAY: So I'm only aware on the criminal
18 side of things. I'm not only aware of two
19 proceedings.

20 THE COURT: So you don't know? There may --

21 MR. TRAY: No, I don't know. I know that
22 counsel has been appointed in his post-conviction
23 proceedings on the murder case.

1 THE COURT: You may have a seat? All right.
2 The State procedural concerns are noted, but I
3 think we can -- we have been directed by the
4 Supreme Court on remand to have an evidentiary
5 hearing about Mr. Stephenson's competence and
6 ability to proceed pro se. I think that this point
7 we should, at the very least -- do we have a
8 witness here with regard to the report?

9 MR. KENNEY: No, Your Honor, in large part
10 because the State did only receive this report
11 today.

12 THE COURT: I do not have a copy of the
13 report in my file. Do you have a copy? Does the
14 clerk have a copy?

15 THE CLERK: June 17th, Your Honor.

16 THE COURT: All right. I would like this
17 marked as Court Exhibit 1. This is the report
18 dated June 17, 2019.

19 Pause

20 THE COURT: Thank you.

21 I am including the report in its entirety as
22 part of the record.

23 The concluding opinion by Douglas R.

1 Roberts, who is a doctor of psychology and a
2 licensed psychologist, states as follows:
3 Ultimately in my opinion, given Mr. Stephenson's
4 current psychiatric stability, there is not a
5 sufficient psychiatric or cognitive basis to
6 determine that he is not competent to proceed.
7 Though the Court may have concerns about his
8 ability to proceed pro se due to his lack of
9 knowledge and experience in the appeals process.

10 As such, in my opinion, the available
11 psychiatric evidence suggests that Mr. Stephenson
12 is competent to proceed with post-trial
13 proceedings.

14 Is there anything else we should put on the
15 record either in support of this opinion or in
16 opposition to it?

17 MR. KENNEY: Your Honor, I do believe the
18 mandate from the Supreme Court contemplated the
19 Court conducting a colloquy with Mr. Stephenson
20 regarding the factors disseminated in the Watson
21 opinion.

22 THE COURT: All right. But that has to do
23 with whether he is going to proceed pro se?

1 MR. KENNEY: Yes.

2 THE COURT: So it's two separate issues.

3 MR. KENNEY: Yes, Your Honor.

4 THE COURT: That was going to be my next
5 question. All right. I think I can question --
6 you may stay seated for this, Mr. Stephenson, so
7 you don't have to stand up for this.

8 All right. I have a number of questions to
9 ask you. So you say that a guardian at lighthouse
10 has been retained. Is that an attorney, do you
11 think?

12 THE DEFENDANT: I don't know.

13 THE COURT: You don't know?

14 THE DEFENDANT: I know they're here to help
15 represent me, that's all I know.

16 THE COURT: So at this point it does not
17 appear that private counsel has been appointed to
18 represent Mr. Stephenson on appeal. And so my next
19 question to you is, you do have the right to an
20 attorney, to represent you on appeal. Would you
21 like to have an attorney represent you on appeal?

22 THE DEFENDANT: I want the guardian at my
23 lighthouse and I want my new trial.

1 THE COURT: Okay. We're talking about an
2 appeal before the Supreme Court, not in this court.
3 So we will talk about your new trial in this court
4 in a minute. Let's just talk about the case that's
5 on appeal before the Supreme Court.

6 Would you like to have an attorney represent
7 you in that appeal?

8 THE DEFENDANT: No.

9 THE COURT: And tell me why not?

10 THE DEFENDANT: Because it's a conflict of
11 interest.

12 THE COURT: Tell me what the conflict of
13 interest is.

14 THE DEFENDANT: They don't do what I say.
15 They keep going against the grain of my intentions.
16 And that's not what I'm here to do. I'm not here
17 to tell my attorney to do something and him tell me
18 what he wants to do for the State. I need somebody
19 to represent me for my best interest, what my
20 interests are. And I like to be in the driver's
21 seat at trial so I be the main mouthpiece and I can
22 ask somebody for assistance. And when they get --
23 when I need assistance, they give it to me.

1 THE COURT: So if you're doing that -- now,
2 if this guardian at lighthouse is not an attorney,
3 they cannot represent you in trial. Only an
4 attorney can represent you.

5 THE DEFENDANT: I want my guardian at my
6 lighthouse.

7 THE COURT: That's not possible unless
8 they're an attorney, but you don't know whether
9 they're an attorney?

10 THE DEFENDANT: I don't know.

11 THE COURT: You don't know. So let's assume
12 they are not an attorney. I have some other
13 questions for you, so let's put that aside.

14 THE DEFENDANT: Excuse me.

15 THE COURT: Do you want to proceed by
16 yourself?

17 THE DEFENDANT: I want to proceed with
18 myself and my guardian at my lighthouse. I don't
19 like you bamboozling me because I have 13th
20 Amendment Right to my guardian at my lighthouse.
21 So being that I have that right, I like to secure
22 that right and I like to take care of trial.

23 THE COURT: So would it be fair to say that

1 you don't want to go -- let's talk about trial for
2 a minute. You don't want to go to trial by
3 yourself? You want somebody with you?

4 THE DEFENDANT: I want somebody there I can
5 ask for legal advice and expertise and stuff. But
6 I'm the main mouthpiece. I'm doing the same I've
7 been always doing. I'm representing myself, but I
8 want somebody there in case I have issues to help
9 me.

10 THE COURT: So you're talking about standby
11 counsel; is that right?

12 THE DEFENDANT: No. No, counsel. No
13 counsel. I want the guardian at my lighthouse.

14 THE COURT: Well, in order for you to, as
15 you say be your own mouthpiece, I have a few
16 questions I need to ask you. What is your
17 educational background?

18 THE DEFENDANT: Like seventh, ninth, eighth
19 grade, somewhere.

20 THE COURT: Are you able to read and
21 understand the rules of procedure and anything else
22 that's in a book that you might need to know about
23 how to conduct a trial?

1 THE DEFENDANT: That's what my guardian at
2 lighthouse would be there for.

3 THE COURT: So is the answer to that
4 question, it would be hard for you to do that
5 yourself?

6 THE DEFENDANT: It's confusing at times.

7 THE COURT: And how familiar are you with
8 the criminal justice system?

9 THE DEFENDANT: I have been coming back and
10 forth to court for a long time, and I know
11 everything else I tried isn't worked.

12 THE COURT: Has not worked?

13 THE DEFENDANT: Has not worked.

14 THE COURT: Do you know anything about the
15 rules of evidence, what is admissible and what is
16 not?

17 THE DEFENDANT: My guardian at my lighthouse
18 would explain that to me.

19 THE COURT: So would it be fair to say, you
20 don't have that knowledge yourself? You would need
21 some assistance with that; is that correct?

22 THE DEFENDANT: Somewhat.

23 THE COURT: All right.

1 THE DEFENDANT: I just want -- I just want
2 my guardian at my lighthouse in place and then I'll
3 work from there.

4 THE COURT: So have you talked to any other
5 person about whether or not you should have an
6 attorney?

7 THE DEFENDANT: No.

8 THE COURT: Do you understand that for you
9 to continue your appeal in the Supreme Court -- now
10 this isn't a trial, this is appealing your case,
11 you have to follow the rules of procedure in that
12 court; do you understand that?

13 THE DEFENDANT: There's rules everywhere.

14 THE COURT: Do you think you can figure out
15 those rules --

16 THE DEFENDANT: I -- I -- I -- I'm going at
17 this long, but I need a little help and that's
18 where the guardian at my lighthouse comes in. And
19 any questions I refer to them like I would refer to
20 my lawyer or anything of that nature, my legal
21 issues, and my mental health issues, whatever
22 questions I have to ask as long I can call them
23 and they'll be there when I'm ready to go to trial

1 and we should be all right -- or I should be all
2 right.

3 THE COURT: It would really be helpful to
4 know who this person is for us to be able to
5 evaluate whether that person is going to be someone
6 that may be able to assist you.

7 THE DEFENDANT: So let me ask you this: You
8 give me a lawyer, but you can't give me a guardian
9 at lighthouse.

10 THE COURT: Well, the reason for that is,
11 that only lawyers, people who have gone to law
12 school and have taken the bar examine and are
13 learned in the law can practice law in front of
14 this Court. So if someone has not been trained in
15 that way, they're simply not allowed to come in and
16 represent somebody else. That's just --

17 THE DEFENDANT: I feel like I'm being lied
18 to.

19 THE COURT: Do you think what I just told
20 you is not accurate?

21 THE DEFENDANT: No.

22 THE COURT: Well, even if that rule seems
23 unfair to you or seems like something that you are

1 unhappy with, that's the rule. So in other

2 words --

3 THE DEFENDANT: But I have a right to a
4 guardian at my lighthouse. I have that right.

5 THE COURT: Okay. So you're saying that's
6 under the 13th Amendment of the --

7 THE DEFENDANT: Yes.

8 THE COURT: -- U.S. Constitution or the
9 Delaware Constitution?

10 THE DEFENDANT: U.S.

11 THE COURT: Well, let's take a look at that.

12 Pause

13 THE DEFENDANT: I know it's been explained
14 to me as my right by somebody that works for the
15 prison.

16 THE COURT: Well, the 13th Amendment talks
17 about the fact that there can never be any slavery
18 or involuntary servitude and that congress shall
19 have the power to enforce this article by
20 legislation. There's nothing in the 13th Amendment
21 about a guardian --

22 THE DEFENDANT: Of my lighthouse.

23 THE COURT: Of the lighthouse.

1 THE DEFENDANT: Let me ask you something.
2 They say involuntary. Isn't this involuntary?

3 THE COURT: You mean the fact that you're in
4 prison or to what are you referring?

5 THE DEFENDANT: I'm referring to right now
6 the whole guardian at the lighthouse and my new
7 trial happening here today. If I want those to
8 happen today, this is my case. This is not nobody
9 else's case in this courtroom. This is my case.

10 THE COURT: I agree with you that that's
11 involuntary because you don't want that to
12 happen --

13 THE DEFENDANT: I want it to happen. I want
14 to have my new trial today. I want my new guardian
15 at my lighthouse to be here today. That's what I
16 want. I want to take care of everything today.

17 THE COURT: Well, it's awfully hard for him
18 to be here if we don't know who he is.

19 THE DEFENDANT: I didn't go through a
20 phonebook and call my lawyer and say, hello, would
21 represent me. He was already assigned to me. So
22 why can't I have the guardian at lighthouse
23 assigned to me the same way?

1 THE COURT: There aren't any rules or
2 procedures in this court for appointment of the
3 guardian of the lighthouse. There's nothing in
4 this court that there is a position called that, so
5 that's why I can't appoint that person.

6 THE DEFENDANT: Well, can I appoint them?

7 THE COURT: There is no role for them in
8 this court. As I said, the only people that can
9 assist you are lawyers.

10 THE DEFENDANT: I just want you to see if
11 you can go out of your way to make sure that I have
12 someone like a guardian -- not like them, I need
13 them to, the guardian at lighthouse to be here in
14 my new trial. I'm ready.

15 THE COURT: Let me go over a few of these
16 other questions.

17 THE DEFENDANT: Excuse me, Your Honor. I'm
18 not really interested. I feel like I'm getting the
19 short end of the stick and there's nobody there to
20 -- that's why I said the conflict of interest
21 because I feel like I'm in the corner all by
22 myself, and basically all these walls is closing in
23 around me. I'm not having a fair chance to fight

1 for myself.

2 THE COURT: I really am listening carefully
3 to what you're saying. I have been at this for
4 many years and I know this is not what you want to
5 hear, but I do think you would be best served by
6 having a competent attorney represent you.

7 THE DEFENDANT: Well, right now I just want
8 to go back because any questions that I have I take
9 up with the law library or the counselor or the
10 mental health person or whoever I got to talk to.
11 I really don't feel like having this hearing and it
12 seem like things are here for my interest. But it
13 seems like it's in the interest of the State or
14 some other interest. I don't want to partake in
15 none of that because it's confusing and I feel like
16 I'm being stripped of my rights instead of my
17 rights being advocated for. I don't know what's
18 going on and I need to do my homework or I need
19 somebody like a guardian at lighthouse to come see
20 me and we'll talk then.

21 But as far as this stuff, this feels like
22 this is just stripping me of my rights and pushing
23 me into a corner where I can't fight for myself.

1 THE COURT: Would you like to leave the
2 courtroom at this point or would like to stay and
3 hear my decision? It's up to you. You can do
4 whatever you feel.

5 THE DEFENDANT: Can you arrange for them to
6 be here tomorrow and we take care of this thing
7 tomorrow.

8 THE COURT: I cannot arrange for anything to
9 happen tomorrow. It takes longer than --

10 THE DEFENDANT: Well, I needed them today.
11 I needed them today, and I already talked about
12 this.

13 THE COURT: Well, we don't know who they
14 are. So it's helpful to us to have them here. We
15 need to know who they are. So I think probably the
16 best thing to do is for you to, you know, write me
17 a letter or whatever and tell me who this person is
18 because that would be very helpful. And it would
19 help me make a decision as to what to do and it
20 would be also helpful to get them here if we knew
21 who they were.

22 THE DEFENDANT: So I'll take care of my end
23 and you take care of your end and I will have

1 everything situated in court.

2 THE COURT: Well, I still have to decide
3 whether they are going be allowed to represent you.
4 And if they're not an attorney, I don't want to
5 mislead you, they are not going to be able to
6 represent you. They might be able to be present in
7 the court. But if they are not an attorney, they
8 cannot represent you. And I didn't make that rule
9 or that law up, but that is the law and there is
10 nothing I can do about that.

11 I also, again, I know that you don't want to
12 hear this, but that is really who is going to be
13 most helpful to you is an attorney. But if you
14 don't want an attorney, then that is something we
15 will have to deal with, but I know this is
16 frustrating for you.

17 THE DEFENDANT: Well, I need the transcripts
18 to this hearing, please, and I need a copy of
19 the --

20 THE COURT: The psychiatric report?

21 THE DEFENDANT: Yes.

22 THE COURT: All right. We can arrange for
23 that.

1 THE DEFENDANT: And I will correspond with
2 you and write to tell you what is going on, or I
3 can call somebody to let you know what is going on.

4 THE COURT: All right. We can certainly do
5 that. Do you want to stay in this room long enough
6 for me to issue a decision today or do you want to
7 go back in the lockup right now? It's your
8 decision.

9 THE DEFENDANT: Will the decision be issued
10 either way?

11 THE COURT: Yes.

12 THE DEFENDANT: Well, I want to hear what
13 you got to say.

14 THE COURT: All right. There are two issues
15 that have been on remand from the Supreme Court.
16 The first issue is Mr. Stephenson's competency to
17 stand trial and the second is his request to
18 proceed pro se. So that's what we have been
19 directed to address today.

20 With regard to the first issue, I have in
21 front of me an undisputed psychiatric report. It
22 does certainly go into great detail and outlines
23 certain issues that Mr. Stephenson has. But the

1 ultimate conclusion is that he is indeed competent
2 to stand trial. I find that -- yes.

3 THE DEFENDANT: I talked to Dr. Robin Timme
4 and he agreed with me on some of the points that I
5 touched base with him on. I don't know exactly
6 what his, um -- what he would say right now. But
7 if you can contact him for me also. I haven't seen
8 him in a while, but I know he's helpful. And I
9 talked to him. I just talked to him one time. I
10 think it's my second time I ever spoken to him.

11 THE COURT: Dr. Timme?

12 THE DEFENDANT: Dr. Robin Timme. He's the
13 chief psychiatrist at James T. Vaughn. And he
14 agreed with some of the things I was touching bases
15 with him on. And he do the same thing like -- um
16 -- Roberts, like Dr. Roberts, and he supports me.
17 He supports me.

18 THE COURT: Do you think that you are
19 competent to stand trial?

20 THE DEFENDANT: I can't answer that question
21 because every time I do, you all do want you want
22 to do anyway.

23 THE COURT: You haven't seen the report,

1 have you?

2 THE DEFENDANT: He tried to, but I wasn't
3 going to read it all that in this little bit amount
4 of time.

5 THE COURT: Well, for purposes of this
6 hearing today, this report is undisputed. So I'm
7 answering the first question in the affirmative.

8 The second question is whether or not
9 Mr. Stephenson should be permitted to proceed pro
10 se. And I have gone through as many of the
11 questions that the Supreme Court outlined in its
12 June 20, 2019 order as possible. And the record
13 will reflect what the answers were to those
14 questions such as I was able to ask. At some point
15 Mr. Stephenson indicated that he didn't want to
16 answer anymore questions.

17 It is very clear that what Mr. Stephenson
18 wants to do is not to proceed pro se, but to
19 proceed with the assistance of a guardian at
20 lighthouse. And, therefore, based upon that and
21 also, as the record will reflect, the interchange
22 between Mr. Stephenson and myself concerning these
23 questions, I must find that, first of all,

1 Mr. Stephenson is really not requesting to proceed
2 pro se, as we understand it, because he is
3 requesting to proceed with assistance. But even if
4 he were making that request, I must say that I find
5 -- I must answer that question in the negative,
6 that Mr. Stephenson at this point has neither the
7 educational background or familiarity with the
8 system or the ability to follow the rules and
9 procedures without the assistance of legal counsel.
10 Therefore, my determination is that he is not -- he
11 should not be permitted to proceed pro se.

12 Now, Mr. Stephenson, I will be happy to
13 review anything you send to me. Again, the
14 guardian at lighthouse information would be very
15 helpful. But today there is nothing more that we
16 can do.

17 THE DEFENDANT: I need you to talk to
18 doctor --

19 THE COURT: Dr. Timme?

20 THE DEFENDANT: Yes.

21 THE COURT: What would be helpful to me is
22 if you can send me a letter telling me what you
23 think Dr. Timme would say?

1 THE DEFENDANT: I can't tell you what that
2 man think he say. I want you to talk to that man.

3 THE COURT: Well, I'm not allowed to have
4 conversations with people privately. I have to do
5 everything in a courtroom.

6 THE DEFENDANT: Well, can you order him to
7 submit a report on me because I talked to him? I
8 talked to him twice. And at the same time I talked
9 to him was the last time I talked to him. I don't
10 know. It wasn't -- it wasn't that long ago because
11 I remember.

12 THE COURT: What do you think he will say?

13 THE DEFENDANT: I don't know what he will
14 say, but he agreed with me, and he touched bases on
15 the things with me and he agreed with me.

16 THE COURT: You will have to ask him to
17 submit something to the Court. I cannot.

18 THE DEFENDANT: Oh, okay.

19 THE COURT: So I think you can take
20 Mr. Stephenson into custody.

21 THE DEFENDANT: Can I get copy of --

22 (The defendant leaves the courtroom)

23 THE COURT: As I'm looking at page 4 of the

1 order, I am required to make findings of fact and
2 conclusions of law and transmit the same to this
3 Court.

4 So at this point what I'm going to do is ask
5 for a copy of the transcript and I will convert
6 that into the findings of fact and conclusions of
7 law. And I assume that means that the Supreme
8 Court will determine how the appeal should proceed.

9 I have a procedural question. Is there
10 another trial pending or was Mr. Stephenson talking
11 about a potential re-trial for this case?

12 MR. TRAY: My understanding was that it is a
13 re-trial in this case.

14 THE COURT: So I don't have another pending
15 proceeding that I need to decide about?

16 MR. TRAY: Not that I'm aware of.

17 THE COURT: All right. Very well.

18 MR. KENNEY: Just a couple points for the
19 record that the State would like to clarify.

20 THE COURT: I don't want to do anything
21 substantive without the defendant here. Is this
22 procedural?

23 MR. KENNEY: Yes.

1 THE COURT: All right.

2 MR. KENNEY: The State would like to clarify
3 that there are in fact two appeals pending. We
4 would like the record to reflect that there are in
5 fact two separate appeals pending from two separate
6 cases.

7 THE COURT: And I do recognize that. And I
8 have -- this has been remanded to me for the
9 purpose of making determinations for only the '18
10 appeal.

11 MR. KENNEY: Yes.

12 THE COURT: So I'm assuming the other appeal
13 will proceed as it's already -- I don't know.
14 That's a decision for the Supreme Court to make. I
15 was not asked to make any rulings with regard to
16 that.

17 MR. KENNEY: And then, Your Honor, just one
18 other -- I don't believe it's substantive -- the
19 State noted that it hadn't received the report
20 until today. I can only speak as to the 2018 case.
21 I don't know whether the deputies or his assigned
22 counsel in the 2012 case, that is the murder case,
23 which Mr. Tray was referring to, had previously

1 received the report. But for purposes of the 2018
2 case, the State only received -- me personally, I
3 only received that report today.

4 THE COURT: All right. Did you wish to have
5 time to review it and decide whether or not you
6 object to any portions of the report?

7 MR. KENNEY: No, Your Honor, the report
8 seems fairly clear on its face.

9 THE COURT: Anything procedural to add?

10 MR. TRAY: No, Your Honor, not at this time.

11 THE COURT: All right. Very well.

12 Can I take this file with me? Do you need
13 it?

14 THE CLERK: No, I can make a note that it's
15 in your chambers.

16 THE COURT: Thank you.

17 (The proceedings concluded at 2:22 p.m.)
18
19
20
21
22
23

1 STATE OF DELAWARE:

2 NEW CASTLE COUNTY:

3 I, Marie C. Lynam, Official Court Reporter
4 of the Superior Court, State of Delaware, do hereby
5 certify that the foregoing is an accurate
6 transcript of the proceedings had, as reported by
7 me in the Superior Court of the State of Delaware,
8 in and for New Castle County, in the case therein
9 stated, as the same remains of record in the Office
10 of the Prothonotary at Wilmington, Delaware, and
11 that I am neither counsel nor kin to any party or
12 participant in said action nor interested in the
13 outcome thereof.

14 This certification shall be considered null
15 and void if this transcript is disassembled in any
16 manner by any party without authorization of the
17 signatory below.

18
19 WITNESS my hand this 2nd day of
20 August, 2019.

21
22 /s/Marie C. Lynam
23 Marie C. Lynam, CCR, RPR
Official Court Reporter

Exhibit 2



DELAWARE HEALTH AND SOCIAL SERVICES

DIVISION OF SUBSTANCE ABUSE AND MENTAL HEALTH

DELAWARE PSYCHIATRIC CENTER

June 17, 2019

The Honorable Diane Clarke Streett
Superior Court Judges' Chambers
500 N King St
Wilmington, DE 19801



FILED
HCC PROTHONOTARY
2019 JUN 21 P 2:15

Dear Judge Streett:

I am writing to you in reference to Mr. Joshua Stephenson, a criminal defendant under Case Numbers 1212015998A and 1212015998B. In an Order dated May 14 2019, the Court requested a mental health evaluation of Mr. Stephenson in order to assist the Court in determining Mr. Stephenson's competency to proceed with post-trial proceedings. Mr. Stephenson informed me that he would like to proceed *pro se*, due to his lack of faith in public defenders based on his past experience, which I presume is part of the question related to his competency.

Mr. Stephenson was transported from James T. Vaughn Correctional Center to the Jane E. Mitchell forensic unit of the Delaware Psychiatric Center today for his evaluation. I met with him for approximately one hour for his evaluation. As part of my evaluation, I also had the opportunity to review several previous forensic evaluation of Mr. Stephenson performed by myself and other clinicians here at the Delaware Psychiatric Center. I was also able to review recent progress notes from Mr. Stephenson's mental health treatment at the Department of Correction, as well as letters he has sent to DPC to Dr. Charlotte Selig (one of the psychologists here at the Mitchell building who assisted Mr. Stephenson with legal/competency-related issues in the past). In these letters, he requested assistance and advice regarding his current appeals related to "judicial misconduct" and "ineffect assistant of counsel." He also requested to be admitted to the Mitchell building, as he has been in the past, in order to get assistance from Dr. Selig in the present proceedings.

Mr. Stephenson is well-known to the staff at the Delaware Psychiatric Center, as he has been evaluated and hospitalized here on several occasions over the past decade or so. I personally performed a comprehensive mental health evaluation of Mr. Stephenson to assess his competency to stand trial and mental state at the time of the alleged offense under this case in July of 2013. He has consistently carried a diagnosis of **Schizoaffective Disorder**, which is characterized by a combination of psychotic symptoms (e.g., hallucinations, delusions), as well as clinically-significant mood episodes (e.g., manic episodes, depressive episodes).

Throughout Mr. Stephenson's history of assessment and treatment at DPC, it has been consistent that when he is not taking antipsychotic medication as prescribed, he can become quite disorganized and agitated, even violent. However, when he takes his medication as prescribed, he tends to show a much brighter affect and his psychotic symptoms stabilize. Consistent with his diagnosis of Schizoaffective Disorder, in addition to psychosis, Mr. Stephenson can have mood episodes (e.g., manic or hypomanic

symptoms, depressive symptoms), though these symptoms tend to be relatively well-managed by medication.

From my review of Mr. Stephenson's recent mental health records from the Department of Correction, it appears that he has been compliant with his prescribed medications. He is currently given a daily injection of Haldol (an antipsychotic), which is supplemented with oral Haldol (in liquid form, so it cannot be "cheeked"). Mr. Stephenson also takes Cogentin, which is commonly prescribed to help manage the side effects that can come from antipsychotic medication. Recent progress notes indicate that his emotional expression has been appropriate (though sometimes described as bright and "bubbly"), and he has not displayed signs of hallucinations, delusions, or significant disorganization. In other words, according to DOC progress notes, Mr. Stephenson appears to have been at his psychiatric baseline level of functioning.

Mr. Stephenson's presentation when I met with him also matched what I have observed in the past to be his psychiatric baseline level of functioning. Consistent with what has been described in recent DOC progress notes, Mr. Stephenson greeted me with a bright smile when I first walked into the room. He recognized me from his last inpatient hospitalization here, but he could not recall my name. He was clear and rational in his speech; he did not display signs of disorganization, nor did he express any delusional or bizarre ideas. Mr. Stephenson did not report any hallucinations, nor did I observe any indications that he was experiencing or responding to things that I could not see or hear. He was able to maintain his focus and respond to my questions appropriately.

After I reminded him of my name and explained the purpose and nature of the evaluation, Mr. Stephenson began to talk about the perceived errors in his legal case and appeals to date, and how he feels that his previous legal representation has been inadequate and given him advice that he feels resulted in his current sentence. I spoke with Mr. Stephenson at length about what errors he feels were made in his original trial and recent appeals, as well as his strategy for how he might proceed representing himself, which he said is his intended goal.

In discussing this with Mr. Stephenson, it was clear that he feels he was given poor advice by defense counsel at trial, which was that he should not testify on his own behalf. He said that defense counsel instructed him that if he were to testify, the prosecutor could ask him questions about his past record, which could be potentially damning to the jury. Mr. Stephenson feels strongly that if he had decided to testify, his testimony would have been so compelling that it could have resulted in a different outcome or more lenient sentence. When I tried to provide an alternate perspective (i.e., that defense counsel likely was obligated to give legal advice as to the potential benefit and/or harm of testimony, and that Mr. Stephenson's testimony may not have been as beneficial as he seems to believe), Mr. Stephenson became upset, as he seemed to perceive that I was not on his side. However, I should note that, while he seems fairly set in his mind of how his testimony could have helped him, his beliefs were not delusional in nature. Rather, he seems merely overly optimistic about how things could have turned out differently.

Another component of Mr. Stephenson's desire to proceed *pro se* is that he feels his previous attorneys have either not provided good advice to him, or that they have failed to act or speak up when he thought they should. For instance, he gave an example of an attorney who was assigned to him in a previous appeal hearing, whom Mr. Stephenson said merely sat at the table and occasionally whispered to him, but did not speak up to the judge when Mr. Stephenson felt that counsel should have. However, Mr. Stephenson also told me that he was trying to represent himself at that point, so it seems that his assigned counsel was engaging in appropriate behavior in letting Mr. Stephenson take the lead. When I tried to

reflect this perspective to Mr. Stephenson, he again became upset (but not irate or overly agitated) that I was not taking his side.

My impression from these two interactions with Mr. Stephenson is that he strongly desires to have a different outcome and believes he should have received a lighter sentence. He gave abstract examples of hearing about other defendants with similar types of charges who received lighter sentences. However, when I tried to explain that he needed to provide specific examples of legal errors that were made in his case in order to have grounds for an appeal, he struggled to come up with specific, concrete examples, stating that he did not know all of the ins and outs of the appeals process. Mr. Stephenson told me that he asks a lot of questions of other inmates who have helped guide him to relevant materials in the law library, and he is trying to learn all that he can, but his lack of legal experience in this area seems to be the main obstacle. In other words, the reason he does not seem to know enough about the appeals process is not due to a psychiatric or cognitive impairment; he simply does not have the legal experience or training to be familiar with it. Still, Mr. Stephenson strongly opposes being represented by counsel because of his perception of how they failed to help him in the past.

When I asked Mr. Stephenson to tell me more specifically how his defense counsel failed him in the past, he made vague references to how the judge, the prosecutor, and defense counsel seemed to be “in cahoots” or “conspiring” against him. I asked why they would want to conspire against him (in order to determine if this was a true delusion, or simply a commonly-held belief among criminal defendants that since Delaware is so small, everyone works together). Mr. Stephenson gave an example of how his original public defender (Ms. van Amerongen) has a husband who was allegedly working in the Attorney General’s office. He said that he thinks the judge and the attorneys work together to incarcerate people in order to make the State money.

What seemed to be a crucial point here (in determining whether this is a delusion or simply an extension of distrusting beliefs that many criminal defendants have about working with public defenders) is that Mr. Stephenson expressed that there was nothing in particular about him that made him a target. He did not believe that the judge or attorneys in his case in particular targeted him or wanted to put him away to keep him quiet. Rather, he believes that this is commonplace among many cases in which defendants are represented by public defenders. He also explicitly told me that this would not be happening if he had a “paid lawyer.” As such, this led me to conclude that while Mr. Stephenson is very distrusting of working with a public defender or appointed attorney, it does not appear to be the result of a paranoid delusion. Rather, he has suspicions – as many criminal defendants do – about how hard public defenders will work for them, or whether they can be trusted because they are working for the State.

Thus, while Mr. Stephenson is adamant about representing himself because, in his words, “If I lose, at least I lose on my own terms,” his decision-making does not appear to be unduly influenced by mental health symptoms. It is true that he is likely over-estimating how successful he could have been in the past (and will be in the pending appeal) if he were to be representing himself, but his over-estimation is not due to psychosis or active delusions. Like many criminal defendants, Mr. Stephenson appears set in how he views his case and what he believes to be a fair outcome, and advice to the contrary is unlikely to be successful. However, his stubbornness (for lack of a better term) is not part of his mental illness. In other words, he is not set in his view of his case because he has a mental illness, and it does not appear to be true that, if not for his mental illness, he would be more amenable to representation by counsel.

I understand that there may be concern about how Mr. Stephenson is viewing his case and his likelihood of success, but from my interview with him, and my knowledge of him from his past DPC hospitalizations,

his decision-making does not appear to be unduly influenced by mental health symptoms. While his decisions may be questionable in terms of the likelihood of success, he is not making these decisions because he is delusionally paranoid. He is suspicious of attorneys and judges because of how he feels he has been treated in the past, but he is not delusional.

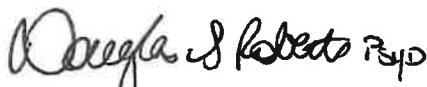
In my opinion, Mr. Stephenson is currently at his psychiatric baseline level of functioning, and his rational capacities do not appear to be unduly influenced by delusions or other psychotic symptoms. Thus, his mental health does not appear to be a barrier to his competency to proceed at this point. His psychiatric symptoms are stable and well-managed on his current treatment regiment.

Factually, Mr. Stephenson does not appear to have a firm grasp on the appeals procedure or how to frame his arguments to have the highest likelihood of success. However, his lack of factual knowledge is not due to psychiatric or cognitive impairments, and thus, from my understanding of the statute, is not a basis for a finding of incompetency to proceed. His lack of knowledge is due to lack of experience and legal training in this area, not due to a mental health reason. If allowed to proceed *pro se*, I highly recommend that Mr. Stephenson still utilize a second-chair counsel for advice and legal strategy, though I recognize that he is highly unlikely to do so with a public defender. It may be possible that he is more amenable to a court-appointed "private attorney," though he may still view this arrangement as against his interests.

Ultimately, in my opinion, given Mr. Stephenson's current psychiatric stability, there is not a sufficient psychiatric or cognitive basis to determine that he is not competent to proceed (though the Court may have concerns about his ability to proceed *pro se* due to his lack of knowledge and experience in the appeals process). As such, in my opinion, the available psychiatric evidence suggests that Mr. Stephenson is **competent to proceed with post-trial proceedings**.

If you have any questions or would like to provide DPC with any further direction on how you would like us to proceed in this matter, please feel free to contact me at 255-9704.

Respectfully submitted,



Douglas S. Roberts, Psy.D.
Licensed Psychologist

FILED
NSC PROTHONOTARY
JUN 21 P 2:15