



IN THE SUPREME COURT OF THE STATE OF DELAWARE

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

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

APPELLANT'S OPENING BRIEF

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NATURE OF THE PROCEEDINGS

Mr. Muhammad is Arrested and Scheduled for Preliminary Hearings.

Mr. Muhammad was arrested on April 10, 2019, and charged with six drug offenses in case number 1904007225.¹ On April 29, 2019, Appellant appeared in the Court of Common Pleas for his Preliminary Hearing.² The defendant appeared *pro se* and requested a continuance to seek private counsel.³ The hearing was subsequently continued to May 15, 2019.⁴

In the interim, Mr. Muhammad was arrested again and charged with ten additional offenses spread over two separate cases: (1) two additional drug offenses in case number 1905000605, and (2) eight offenses relating to human trafficking in case number 1905000911 (hereinafter “the Trafficking Case”).⁵

Mr. Muhammad’s two new cases were scheduled for Preliminary Hearing on May 10, 2019.⁶ Since the defendant’s court appearance two weeks earlier, Elliot Margules, Esquire, of the Office of Defense Services (hereinafter “Trial Counsel”)

¹ A001.

² A028.

³ A030-31.

⁴ A030.

⁵ A010; A019.

⁶ A033.

had entered his appearance as counsel for Mr. Muhammad.⁷ The second drug case was continued to May 15, 2019 to be heard with his first case stemming from his April arrest.⁸ The Trafficking Case proceeded to a hearing as scheduled on May 10, 2019 and was subsequently bound over to Superior Court after a finding of probable cause.⁹

Mr. Muhammad Attempts to Discharge Trial Counsel and Proceed Pro Se in the Drug Cases.

On May 15, 2019, the parties appeared back in the Court of Common Pleas for Mr. Muhammad's Preliminary Hearings in cases 1904007225 and 1905000605 (hereinafter "the Drug cases").¹⁰ During that proceeding, Trial Counsel informed the Court that Mr. Muhammad no longer desired his services, and that Appellant instead wanted to proceed *pro se*.¹¹ When Mr. Muhammad entered the courtroom, he disputed that he had stated he wished to represent himself, instead expressing confusion as to how his arrest on May 2, 2019, could give rise to two separate sets of charges instead on one case encompassing all of his charges.¹²

⁷ See A033-67.

⁸ A035.

⁹ A019; A040-67.

¹⁰ A069.

¹¹ A071-74.

¹² A078-88.

After explaining to Mr. Muhammad why he faced two separate cases stemming from one arrest, the Court asked Appellant whether he wanted Trial Counsel to represent him during his Preliminary Hearings.¹³ Mr. Muhammad stated that while he did not necessarily want to represent himself, he also did not want representation from Trial Counsel.¹⁴ Appellant then stated that if he did not have a choice as to who his attorney was, his preference was to proceed *pro se*.¹⁵

In response, the Court of Common Pleas Commissioner explained to the Mr. Muhammad that he had three options going forward: (1) continue being represented by Trial Counsel, (2) hire a private defense attorney, or (3) waive his constitutional right to counsel and represent himself.¹⁶ The Court explained that Appellant needed to review and execute a form confirming that he understood the potential hazards of self-representation and, despite those risks, was knowingly, intelligently, and voluntarily waiving his right to counsel.¹⁷ The Court also verbally cautioned Mr. Muhammad as to potential pitfalls associated with

¹³ A088.

¹⁴ A088.

¹⁵ A088-89.

¹⁶ A089.

¹⁷ A089-92.

proceeding *pro se*.¹⁸ Finally, the Commissioner explained that if Mr. Muhammad did choose to proceed *pro se*, the Court would appoint Trial Counsel to act as standby counsel.¹⁹ The Court then asked that Appellant be taken back into a holding cell so that he could finish filling out the waiver of counsel form.²⁰

When Mr. Muhammad was brought back into the courtroom approximately an hour later, he confirmed that he had fully reviewed the waiver of counsel form.²¹ The defendant then requested a continuance to again attempt to secure private counsel, and the matter was continued to May 28, 2019.²²

On May 28, 2019, Trial Counsel informed the Court that Mr. Muhammad wished to proceed *pro se* as he had not been able to hire private counsel.²³ The judge informed Trial Counsel to make sure he was available when Mr. Muhammad was brought into the courtroom by the Department of Correction because the Court needed to engage in a colloquy with Appellant before he could represent himself.²⁴

¹⁸ A091-97.

¹⁹ A096.

²⁰ A096-97.

²¹ A097-98.

²² A098-109.

²³ A113.

²⁴ A113.

When Mr. Muhammad came into the courtroom, however, the Court of Common Pleas did not engage in a colloquy with the defendant.²⁵ The Court confirmed that Mr. Muhammad did not wish to be represented by Trial Counsel, and explained that the defendant would either have to hire private counsel or represent himself in Superior Court.²⁶ Mr. Muhammad explained that he had difficulty hiring a lawyer because of the Memorial Day holiday and ultimately requested another continuance to secure counsel.²⁷ Despite that the Court had not engaged in a colloquy with the defendant, the judge informed Trial Counsel that because Mr. Muhammad did not want his services, the attorney was released from the Drug Cases on the calendar.²⁸ Minutes later, Appellant sought to confirm that Trial Counsel was no longer his attorney:

THE COURT: Any other requests for me, Mr. Muhammad?

APPELLANT: Just as long as that counselor is off my case for good. If he's still on there, I would like to contest the contract at that time. I don't want to see that guy anymore ever.

²⁵ A115-21.

²⁶ A115.

²⁷ A116-17.

²⁸ A116.

THE COURT: I've already granted his release. You already heard me grant his release. He's no longer your attorney.²⁹

Mr. Muhammad's cases were once again continued to June 19, 2019.³⁰

On June 19, 2019, Mr. Muhammad appeared again in the Court of Common Pleas for Preliminary Hearings in the Drug Cases.³¹ Despite that the trial judge had released Trial Counsel as attorney-of-record in the Drug Cases on May 28, Trial Counsel nevertheless appeared with Mr. Muhammad on June 19.³² The Court asked Appellant whether he wished to be represented by Trial Counsel, and Mr. Muhammad responded in the negative.³³ When asked how he wished to proceed in terms of legal representation, Mr. Muhammad stated that he wished to appear *pro se*.³⁴ Appellant then reminded the Commissioner that she had previously explained to him the rights he was waiving by invoking his right of self-representation.³⁵

²⁹ A119.

³⁰ A119.

³¹ A124.

³² See A128 ("It looks like [Trial Counsel] is sitting next to you[,] who is an experienced criminal defense attorney, has been assigned to represent you in both cases I believe.").

³³ A128.

³⁴ A128.

³⁵ A129.

Trial Counsel then interjected to inform the Commissioner that another judge in the Court of Common Pleas removed Trial Counsel from Mr. Muhammad's case the last time the parties appeared before the Court.³⁶ Trial Counsel mistakenly informed the Court that the defendant had already completed the necessary colloquy to proceed *pro se* as well.³⁷ The Court stated that regardless of what had occurred at the last proceeding, she wanted Mr. Muhammad to execute the waiver of counsel form before proceeding *pro se* in his Preliminary Hearings.³⁸ The Court also informed the parties that she would be appointing Trial Counsel as standby counsel.³⁹ In response, Trial Counsel reiterated that the Court had already released him from the case and that Mr. Muhammad did not want his assistance filling out the form.⁴⁰ Mr. Muhammad was then removed from the courtroom so as to execute the waiver of counsel form.⁴¹

Approximately an hour later, Trial Counsel, having concluded his other matters on the calendar, requested permission to be excused.⁴² The Court

³⁶ A129.

³⁷ A129.

³⁸ A131.

³⁹ A132.

⁴⁰ A132.

⁴¹ A134.

⁴² A134.

reminded Trial Counsel that his appearance was still necessary to serve as stand-by counsel for Appellant, and denied his request to be excused.⁴³ Minutes later, Trial Counsel informed the Court that he had just learned that the Department of Correction had transported Mr. Muhammad from the courthouse back to a Level V facility, and again asked if he could be excused.⁴⁴ The trial judge expressed confusion and astonishment that the defendant was removed from the building before appearing back in front of the Court, and requested a sidebar with Trial Counsel, the prosecutor, and the Department of Correction.⁴⁵

At sidebar, a correctional officer informed the Court that it “may have been” him who authorized Mr. Muhammad’s release from the building.⁴⁶ When asked by the Court about the waiver of counsel form, Trial Counsel stated that he was confused about what was previously happening in the courtroom in regard to Mr. Muhammad.⁴⁷ The Commissioner quickly summarized what had happened earlier, explaining that Mr. Muhammad simply needed to execute the waiver of counsel

⁴³ A134-35.

⁴⁴ A135.

⁴⁵ A135-36.

⁴⁶ A137-38.

⁴⁷ A138.

form prior to proceeding to a hearing.⁴⁸ The correctional officer stated that Mr. Muhammad was not filling out the form in the holding cell.⁴⁹ Trial Counsel stated that he believed Appellant was confused as to why the form needed to be executed when he had already been permitted to proceed *pro se* three weeks earlier.⁵⁰ The Court reminded Trial Counsel that she said the form must be filled out prior to any hearing, and that she had asked the Public Defender to remain available to help Appellant in filling out the portions of the form dealing with the nature of the charges and potential penalties.⁵¹ Trial Counsel responded that he “[is] and was available,” but had not gone to see Mr. Muhammad in the holding cell to assist him.⁵²

Because Mr. Muhammad was no longer present, the Court began to discuss when the matters could be rescheduled.⁵³ After finding a potential date, the following exchange occurred:

THE COURT: Wednesday. Does that work with the parties?

⁴⁸ A138-39.

⁴⁹ A139-40.

⁵⁰ A140.

⁵¹ A141.

⁵² A141.

⁵³ A144.

COUNSEL: Again, I'm not a party to this case. I'll be here on Wednesday for another preliminary hearing though.

THE COURT: Well, you're not a -- counsel parties. I've already indicated, [Trial Counsel], that I would be appointing you as standby counsel.

COUNSEL: If it was scheduled Monday my office would provide someone else, unless Your Honor specifically wants me to be standby counsel.

THE COURT: No. I just want a member of the public defenders office to be standby counsel.

COUNSEL: There will be a member of the public defenders office here on either date.⁵⁴

The matter was ultimately rescheduled to June 26, 2019.⁵⁵

On June 24, 2019, the Court sent an email to Trial Counsel reminding him that the Court wanted an attorney from the Office of Defense Services present at Mr. Muhammad's Preliminary Hearing on June 26.⁵⁶ Trial Counsel confirmed that he was available to serve as standby counsel before adding the following:

That being said, Mr. Muhammad has made clear that as part of his desire to represent his self [*sic*], he does not want my assistance in filling out any forms. To the degree that the Court anticipates Mr. Muhammad consenting to, or asking me for my help, I want to make clear that I think that is extremely unlikely to happen. Therefore, if he

⁵⁴ A144-45.

⁵⁵ A145.

⁵⁶ A147.

is not allowed to have the hearing unless the form is filled out, I would respectfully ask that he be brought in to make that clear.⁵⁷

Mr. Muhammad appeared in the Court of Common Pleas for the last time on June 26, 2019.⁵⁸ On that date, Appellant again informed the Court that he did not want Trial Counsel to represent him, and that he wanted to proceed *pro se*.⁵⁹ After discussion about Trial Counsel serving as standby counsel, Mr. Muhammad informed the Court:

I don't want this guy. Please get him away from me. Do anybody hear me? That's all I'm saying. You keep attaching him to me. I don't want this guy next to me. He hasn't done anything but talk about this paper in seven weeks. He hasn't even reviewed my case. He hasn't even talked to me about a strategy but you want me to go forward with this guy next to me. It's not happening. *Pro se* means by self [*sic*]. I don't want this guy next to me. Thank you.⁶⁰

The Commissioner informed Mr. Muhammad that given his objection, she would not appoint Trial Counsel as standby counsel.⁶¹ The Court then moved onto other cases on the calendar after directing that Appellant execute the waiver of counsel form in a holding cell.⁶²

⁵⁷ A147.

⁵⁸ A148.

⁵⁹ A151-54; A161-62.

⁶⁰ A162.

⁶¹ A165.

⁶² A164-66.

Mr. Muhammad executed the form and subsequently requested that his Preliminary Hearing be handled by a judge rather than the Commissioner.⁶³ Accordingly, a different judicial officer next addressed Appellant, again discussing with him his decision to represent himself:

THE COURT: I see you did sign the waiver of counsel form for preliminary hearing. I'm not going to go into this in too much detail but you understand that you have a right to have a lawyer appointed to represent you for this hearing here today?

APPELLANT: Yes.

THE COURT: And you understand that the lawyer, [Trial Counsel], who's been practicing for a number of years has the knowledge, skill, education and training to probably best represent you. You understand that, right?

APPELLANT: Yes.

THE COURT: I'm perfectly fine letting you represent yourself at the preliminary hearing if that's what you want to do. I just want you to understand that you're not required to do that and that, you know, [Trial Counsel] is ready, willing and able to represent you to the best of his abilities, okay?

APPELLANT: Yes.

THE COURT: And you wish to waive that and go forward and represent yourself?

⁶³ A166; A170.

APPELLANT: Yes.⁶⁴

Mr. Muhammad proceeded to represent himself in his two Preliminary Hearings related to the Drug Cases, and both were bound over for Superior Court after a finding of probable cause.⁶⁵

Mr. Muhammad Files Motions to Dismiss.

On the same day as his Preliminary Hearings in the Drug Cases—June 26, 2019—Mr. Muhammad filed a *pro se* Motion to Dismiss in Superior Court as to the Trafficking Case.⁶⁶ On July 3, the Superior Court sent a copy of the motion to Trial Counsel, stating that pursuant to Superior Court Criminal Rule of Procedure 47, the Court would not consider the *pro se* filing.⁶⁷ On July 9, 2019, Trial Counsel filed a Motion to Dismiss for failure to indict on Appellant’s behalf in the Trafficking case.⁶⁸ That motion was deemed moot after the State presented the Trafficking case to the Grand Jury on July 22, 2019.⁶⁹

⁶⁴ A170-71.

⁶⁵ A171-224.

⁶⁶ A019-20.

⁶⁷ A020.

⁶⁸ A020; A226.

⁶⁹ A020.

On July 19, 2019, Mr. Muhammad filed another *pro se* Motion to Dismiss, this time in reference to the Drug Cases.⁷⁰ On July 24, 2019, the Court sent a letter to Trial Counsel and the Department of Justice seeking the parties' "individual responses" to Appellant's motion.⁷¹ On July 26, 2019, Trial Counsel sent a letter to the Court which read as follows:

I write in response to the Court's July 24, 2019 letter regarding Motions to Dismiss filed by the defendant in the above captioned cases. The Court's letter asks for a response to the motions. I do not represent the defendant in either of these cases, so I understand the Court's request to be directed towards the State; however, I did want to write and confirm that to be the case.⁷²

The State also wrote to the Court, advising that both matters would be presented for Indictment on August 5, 2019.⁷³ The Grand Jury returned an Indictment against Mr. Muhammad on that date.⁷⁴

Trial Counsel Withdraws from the Trafficking Case.

On August 7, 2019, Trial Counsel filed a Motion to Withdraw as Counsel in reference to the Trafficking Case.⁷⁵ Therein, Trial Counsel requested that a

⁷⁰ A001; A010.

⁷¹ A001; A010.

⁷² A232.

⁷³ A001-2.

⁷⁴ A002; A010; A233-35.

⁷⁵ A020; A236.

hearing be scheduled so that the trial court could engage in a colloquy with the defendant as required by *Faretta v. California*⁷⁶ and *Briscoe v. State*.⁷⁷ The motion was scheduled for a hearing in Superior Court on August 19, 2019.⁷⁸ At that hearing, Trial Counsel informed the Court:

Your Honor, this is Jameel to my left. Mr. Muhammad and I have been working together on this case and previously on two others over the past few months. He has expressed on numerous occasions his desire that I be removed from this case. We have discussed that decision. He's also discussed it with I think two of the supervising attorneys in my office. I believe that he understands that there are significant risks associated with that and that there will be expectations of him in terms of how he represents himself in accordance with the rules of evidence and other pertinent law.

With that[,] I believe his waiver of his right to counsel is knowingly, voluntarily, and intelligently offered. He also understands that if the Court does remove me, he will not be appointed another attorney.⁷⁹

After initially informing the Court that he did not necessarily want to represent himself, but rather he did not wish Trial Counsel to represent him,⁸⁰ Mr.

Muhammad then unequivocally stated that he wished to proceed *pro se*:

I'll go *pro se*. There's no way I want him attached to my case. He has other interests and desires. As long as it's on record that we have a

⁷⁶ 422 U.S. 806 (1975).

⁷⁷ 606 A.2d 103 (Del. 1992); A238.

⁷⁸ A020.

⁷⁹ A241-242.

⁸⁰ A242-43.

conflict of interest, he's named in the civil action I got under the federal jurisdiction, that's a conflict right there.⁸¹

The Court stated that it would need to engage in a colloquy with Mr. Muhammad, who responded that the same colloquy had already occurred multiple times.⁸² Trial Counsel explained that multiple colloquies had occurred in the Court of Common Plea, but only in reference to the Drug Cases, not the Trafficking Case that was the subject of the instant Motion to Withdraw as Counsel.⁸³

The trial judge then proceeded to engage in a colloquy with Mr. Muhammad as follows:

THE COURT: So now we have this case ending 0911 where Mr. Muhammad is indicating to the Court that he seeks to proceed *pro se* for the reason that you just stated on the record. So I'm going to have to go through another colloquy to make sure you're understanding. I just want you to understand the reason we have to do this is because for each case that you say I want to proceed *pro se*, we need to make sure that your waiver of that right, which is a critical right, that's probably the most important right that any defendant has in proceeding to trial, the right to representation by counsel, so if you are saying I'm waiving that and I'm going on my own, I need to make sure that the waiver is knowing, intelligent and not coerced, voluntary. Understood?

⁸¹ A247. The federal lawsuit against Trial Counsel, as well as various other parties, was filed in the District Court of Delaware on September 19, 2019, approximately a month after this proceeding. See Exhibit B. It is unclear why it is being discussed as though it already exists at this hearing.

⁸² A248-49.

⁸³ A249-51

APPELLANT: Yes.

THE COURT: So again, before I go through with this colloquy, this is how you want to proceed?

APPELLANT: Yes.

THE COURT: *Pro se?* Okay.

So here you are charged by indictment in Case 1905000911 by indictment [*sic*] with four counts: one sexual servitude, trafficking an individual, another count of sexual servitude and another count of trafficking an individual. These are felony offenses. And you are facing -- do either of the attorneys know exactly what the maximums are?

COUNSEL: They're all Class C felonies. Zero to 15. The only count I'm unsure about, it's a little unclear to me whether there are four or eight counts. The calendar lists eight counts, but the indictment that I have seen is four counts.

THE CLERK: The four are going to be dismissed at arraignment, the four that are not indicted.

THE COURT: So we have four indicted cases for that. You're looking at a maximum of zero to 60. Range of zero to 60 if you were to be convicted of all these counts. Do you understand that?

APPELLANT: Yes.

THE COURT: You understand that serving as your own attorney[,] you have to conduct your defense under the rules of evidence even though you're not an attorney? You'd be expected to adhere to the rules of evidence. Do you understand that?

APPELLANT: Yes.

THE COURT: All right. The rules of criminal procedure. Do you understand that?

APPELLANT: Yes.

THE COURT: All right. And you understand that by proceeding *pro se*[,] you may be hampered by your inability to understand the law? I presume you didn't go to law school if you're not a lawyer, but you don't know the law but you're going to be expected to adhere to the law, proceed against trained attorneys on the other side and put up a defense and understand the rules of evidence, criminal procedure, *et cetera*. Do you understand that?

APPELLANT: Yes.

THE COURT: All right. And you understand that your effectiveness may be diminished by your role in this case which is critical as both serving in effect as your own attorney and the accused? For instance, if you're asking questions, you have to know how to ask questions, you have to know when to lead, when not to lead because there will be objections raised, and you can't testify from the stand, which typically happens when someone's proceeding *pro se*, they have a tendency to start testifying when they're asking questions. Understanding that dynamic, you understand that your presentation, your actual defense may be significantly hampered?

APPELLANT: Yes.

THE COURT: All right. Do you understand the nature of the charges against you as set forth in the indictment that I just articulated the various charges?

APPELLANT: Yes.

THE COURT: You had a chance to read and review that indictment?

APPELLANT: Yes. But it's not signed, so if you brought that up today, my copy is not signed, so it seemed like it's an information rather than indictment.

THE COURT: That's an argument for another time. Right now I want to make sure you understand.

APPELLANT: Yes, I understand.

THE COURT: And you understand the statutory offenses set forth in those charges?

APPELLANT: Yes.

THE COURT: All right. And we just discussed the range of allowable penalties, so you're looking at zero to 60 years if you make it on all four counts.

APPELLANT: Yes.

THE COURT: Do you understand the possible defenses that you may have to those charges?

APPELLANT: Yes.

THE COURT: All right. And do you know what mitigation is?

APPELLANT: Yes.

THE COURT: So you understand -- what is mitigation?

APPELLANT: This mitigating factors.

THE COURT: Right.

APPELLANT: That can go in my favor.

THE COURT: Good. You understand what circumstances might mitigate your charges?

APPELLANT: Yes.

THE COURT: All right. And do you have an understanding of the facts essentially to have a basic general understanding of this entire matter?

APPELLANT: Yes.

THE COURT: So you believe you will be able to proceed *pro se* notwithstanding those risks?

APPELLANT: Yes.

THE COURT: All right. And do you feel as though based on your -- maybe that's a moot issue because you actually filed an action naming [Trial Counsel] as a defendant. So that's like a direct conflict.

From either side, is there any reason by -- I mean, I do find that his understanding of the process, the term, the terminologies that I just threw out seem to be well-versed in those phrases and obviously he's not an attorney and I don't expect that he will be able to necessarily operate in the full capacity of an attorney, but I think under his constitutional right to serve as his own counsel, his waiver is knowingly, voluntarily, and intelligently offered.⁸⁴

The Court then stated that it had considered appointing Trial Counsel to serve as standby counsel, but was unsure whether that was appropriate given that the

⁸⁴ A251-57.

lawsuit referenced by Mr. Muhammad created a “direct conflict.”⁸⁵ Trial Counsel stated he too was uncertain whether he could serve as standby counsel, adding that “I guess my concern with that is I think that might be detrimental to Mr. Muhammad to have me associated whatsoever.”⁸⁶

The Court, having found that Appellant knowingly, voluntarily, and intelligently waived his right to counsel, inquired as to whether Mr. Muhammad had any further questions for the Court.⁸⁷ Mr. Muhammad sought clarification:

APPELLANT: Yeah. Just as long as -- I mean, the whole point so that he’s not attached to my case.

THE COURT: He’s extricated from your case. You are on your own at this point. That’s fine?

APPELLANT: Yeah.

THE COURT: Thank you. So the motion to withdraw is granted.⁸⁸

Having granted Trial Counsel’s motion to withdraw, the trial court concluded the hearing.⁸⁹

⁸⁵ A257.

⁸⁶ A257-58.

⁸⁷ A258.

⁸⁸ A258.

⁸⁹ A258.

Mr. Muhammad Appears for Arraignment.

On August 29, 2019, Mr. Muhammad appeared for arraignment in the Superior Court in reference to all three of his cases.⁹⁰ The docket reflects that the matter was postponed, however, as “the Court needs to do a colloquy with the [defendant] for him to proceed *pro se*. The colloquy and arraignment will both be held on [September 9, 2019].”⁹¹ Thus, despite that the trial court had engaged in such a colloquy with the defendant ten days earlier in the Trafficking Case—and despite Trial Counsel’s letter to the Court on July 26, 2019 stating that he did not represent Mr. Muhammad in the Drug Cases—the arraignment was continued to determine the status of Appellant’s representation.⁹²

The September 9, 2019 arraignment date was once again continued.⁹³ Other than indicating that the continuance was at the request of the court, the docket is silent as to the reason for the delay.⁹⁴ The third arraignment date, September 12,

⁹⁰ A002; A011; A021. Appellate Counsel sought to have Mr. Muhammad’s appearances before the Superior Court on the arraignment calendar transcribed for the benefit of his pending appeal. Unfortunately, the Superior Court Court Reporter determined that the recorded audio of those proceedings are inaudible and cannot be transcribed. *See* A414.

⁹¹ A002; A011; A021.

⁹² A002; A011; A021.

⁹³ A002; A011; A021.

⁹⁴ *See generally* A002; A011; A021.

2019, also resulted in a continuance.⁹⁵ While the docket does not reflect the reason for the continuance, a letter from Trial Counsel to the Court dated September 16, 2019 suggests the matter was continued to determine whether Mr. Muhammad's pending federal lawsuit against Trial Counsel created a conflict preventing Trial Counsel from representing Appellant.⁹⁶ Trial Counsel concluded that the lawsuit did not create a *de facto* conflict, and stated he was confident in his ability to zealously defend Mr. Muhammad.⁹⁷ On September 24, 2019, Mr. Muhammad wrote the Superior Court to explain that Trial Counsel had not shown interest in his cases.⁹⁸

Finally, the docket reflects the following entry on October 8, 2019:

And now, to with, this 8th day of October, 2019, Defendant had already been permitted to proceed *pro se* in Criminal ID No. 1905000911 because he did not want [Trial Counsel] from the [Public Defenders'] Office to represent him. Defendant likewise does not want [Trial Counsel] to represent him in the [two] above-captioned Drug Cases. Defendant was arraigned on [October 8, 2019], after advising that he did not want [Trial Counsel] to represent him, in which he pled not guilty to the charges, demanded a jury trial and bail was addressed. Mr. Muhammad was advised that the [Public Defender's] Office would not provide any other attorney. He could continue to proceed *pro se* or hire private counsel.⁹⁹

⁹⁵ A002; A011; A021.

⁹⁶ A011; A260.

⁹⁷ A260.

⁹⁸ A002.

⁹⁹ A002-03; A011; A022.

Thus, Mr. Muhammad was given permission to proceed *pro se* yet again.

Mr. Muhammad Files a Motion for Reconsideration of Commissioner’s Order and a Petition for a Writ of Habeas Corpus.

On October 17, 2019, the Superior Court docketed a *pro se* Motion for Reconsideration of Commissioner’s Order in the Drug Cases.¹⁰⁰ Therein, he seeks review of the Commissioner’s decision at the October 8, 2019 arraignment calendar not to appoint conflict counsel in place of Trial Counsel, relying upon the trial judge’s statement on August 19, 2019 that Appellant’s pending lawsuit against Trial Counsel created a “direct conflict.”¹⁰¹ Additionally, relying upon his interpretation of Superior Court Criminal Rules 4 and 7, Mr. Muhammad contended that the Commissioner erred when she failed to dismiss various charges lodged against him in the indictment returned by the Grand Jury.¹⁰²

Mr. Muhammad next filed a Petition for a Writ of *Habeas Corpus* on October 18, 2019.¹⁰³ Therein, he raised the same claim as in his Motion for

¹⁰⁰ A003; A012; A261.

¹⁰¹ See A261-64.

¹⁰² See A264-67.

¹⁰³ A003; A012; A271.

Reconsideration of a Commissioner's Order, contending that Criminal Rules 4 and 7 mandated the dismissal of various charges in the Drug Cases.¹⁰⁴

The Superior Court scheduled a hearing on Mr. Muhammad's two motions for November 4, 2019.¹⁰⁵ On that date, Appellant appeared before the same judicial officer who engaged in the colloquy with Mr. Muhammad on August 7, 2019.¹⁰⁶ Trial Counsel, despite having been released by the Court as attorney of record and not having been appointed standby counsel, was also present at the proceeding.¹⁰⁷

During the November 4 hearing, Mr. Muhammad represented himself and continued to rely upon Criminal Rules 4 and 7 as the basis for why his charges should be dismissed.¹⁰⁸ The State argued why those rules were inapplicable to the indictment process.¹⁰⁹ The trial judge did not substantively address Mr. Muhammad's claims, instead stating: "I know your position on the rules. I disagree with you on that."¹¹⁰ When Mr. Muhammad asked if he was reading the

¹⁰⁴ See A271-72.

¹⁰⁵ A004; A012; A022.

¹⁰⁶ See A274-348.

¹⁰⁷ See A274-348.

¹⁰⁸ A274-328.

¹⁰⁹ A274-328.

¹¹⁰ A327.

rules incorrectly, and continued to advocate that his interpretation was correct, the Superior Court simply stated, “I will let you take me up on that, okay?”¹¹¹

Next, the Court moved to Mr. Muhammad’s claim that he was entitled to conflict counsel because of the alleged conflict created by his lawsuit against Trial Counsel.¹¹² The trial court explained that the lawsuit did not, in fact, create a conflict of interest, and that Trial Counsel was eligible to represent Mr. Muhammad, but that Appellant nevertheless had opted to proceed *pro se*.¹¹³ Mr. Muhammad continued to argue that the pending lawsuit resulted in a conflict of interest and that, under Criminal Rule 44, he was entitled to the appointment of conflict counsel.¹¹⁴ The Court stated that he was going to reschedule the matter to give the defendant an opportunity to speak with Trial Counsel to determine whether he wished to be represented by the Public Defender.¹¹⁵ The trial judge informed Mr. Muhammad that he would bring him back into Court in the

¹¹¹ A328.

¹¹² A331.

¹¹³ A332-34.

¹¹⁴ A336.

¹¹⁵ A342.

beginning of December and “do a full colloquy so there is [*sic*] no issues.”¹¹⁶ The trial court then denied Mr. Muhammad’s two motions.¹¹⁷

In the interim, Trial Counsel informed the Superior Court on November 15, 2019 that Mr. Muhammad declined the opportunity to speak with him as offered by the Court.¹¹⁸

On November 18, 2019, Mr. Muhammad appeared for a case review in the Trafficking case.¹¹⁹ Despite that his Motion to Withdraw as Counsel had been granted months earlier in the Trafficking Case, Trial Counsel was also present.¹²⁰ During that proceeding, the judge—a different judicial officer than who previously engaged in the colloquy with Appellant—asked whether Mr. Muhammad was *pro se* in the Drug Cases as well as the Trafficking case.¹²¹ Appellant explained that he filed a lawsuit against Trial Counsel and that he believed a conflict existed.¹²²

¹¹⁶ A342.

¹¹⁷ A343.

¹¹⁸ A359.

¹¹⁹ A361.

¹²⁰ *See* A361-76.

¹²¹ A366.

¹²² A366.

After some back and forth between the Court and Appellant, the judge stated as follows:

Let's talk about representation first, okay? You may have a problem with [Trial Counsel]. I understand that, but this -- the public defender provides you the opportunity to have a single lawyer. . . . If you don't get along with that lawyer and, in fact, if you file actions against that lawyer, *that lawyer can now no longer represent you*, and you don't get another lawyer appointed by anybody.

So your choices are always now -- have been either you represent yourself or you hire somebody, but the public defender is not going to provide you another lawyer. All right? So I just wanted to be clear about that: It's either [Trial Counsel] or it's no one unless you hire somebody. All right? So that's the process.¹²³

After the trial court discussed discovery and scheduling issues with the prosecutor and Mr. Muhammad, the case review concluded.¹²⁴

The Superior Court Rules that Mr. Muhammad May Not Proceed Pro Se and Orders Trial Counsel to Represent Appellant.

On December 2, 2019, Mr. Muhammad appeared in the Superior Court in reference to the status of his representation for the final time.¹²⁵ Appellant appeared frustrated that he was once again before the court, inquiring as to the purpose of the hearing.¹²⁶ He also asked why, if Trial Counsel had been permitted

¹²³ A368-69.

¹²⁴ A369-76.

¹²⁵ A005; A014, A024.

¹²⁶ A380.

to withdraw as attorney of record in August, he had continually been brought back before the Superior Court to discuss representation and engage in colloquies as to whether he wished to proceed *pro se*.¹²⁷ He pointed to the trial court’s comments during his case review two weeks prior, in which the Court informed Appellant that the lawsuit against Trial Counsel created a conflict, and that his two choices were to proceed *pro se* or hire private counsel.¹²⁸ Mr. Muhammad reminded the Court that his preference was not to proceed *pro se*—as articulated during his August 19 hearing¹²⁹—but that he would choose to do so if his only other option for court-appointed counsel was Trial Counsel.¹³⁰

The trial court stated that “what we’re going to do now is determine whether you’re going to represent yourself or not, all right?”¹³¹ Mr. Muhammad asked if, before the Court addressed that, they could discuss the disposition of his prior motions, as the Superior Court had either not ruled on the motions, or Appellant had not heard the rulings.¹³² The Court reiterated its prior rulings that both

¹²⁷ A383.

¹²⁸ A384.

¹²⁹ See A242-433 (“This is my first time being heard, and I never stated that I want to go *pro se* in my preliminary hearing phase under another jurisdiction. I stated that I would go *pro se* if I couldn’t get proper representation or whatever.”).

¹³⁰ A385.

¹³¹ A387.

¹³² A387.

motions were denied.¹³³ The judge then changed course back to the colloquy, but Mr. Muhammad's palpable frustration once again began to manifest:

THE COURT: So what we're going to do today, right now in the next five minutes, I'm not planning to take much more time than that because we're not re-hashing any of the issues we went through before.

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?

APPELLANT: 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.

APPELLANT: No, I don't understand.

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

APPELLANT: No. I don't even know what charges I have, nobody --

THE COURT: All right. So this is what we're going to do--

APPELLANT: You probably can explain it to me, Judge Rennie, 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

¹³³ A388.

48(b) motion for a case number, I put it 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 do not know 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.

APPELLANT: 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 --

APPELLANT: Explain the charges to me.

THE COURT: No.

APPELLANT: I'm being honest with you, I'm not playing games.

THE COURT: No. No, no, no, no. Listen. So what we're going to do -- [Trial Counsel], can you stand up please?

COUNSEL: Yes, Your Honor.

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

COUNSEL: Understood.

THE COURT: Okay. I find that Mr. Muhammad is not capable of representing himself in this case. And you're going to explain to him whatever legal strategy, I can't

give him legal advice, as you could appreciate, so you're going to explain to him what he needs to understand about the nature of the charges against him, the defenses that he may have or may not have in this case, the range of allowable punishments, possible defenses, and other facts essential to a broad understanding of this matter.¹³⁴

After a discussion between the Court and Counsel regarding discovery and scheduling, Mr. Muhammad asked whether he was still able to be assist in his defense.¹³⁵ The Court stated that a defendant "is always able to assist in his defense," but that Mr. Muhammad could not represent himself.¹³⁶ Appellant then asked whether he could file motions on his own behalf:

APPELLANT: So I can still file my motions?

THE COURT: No. You cannot file anything unless you go through [Trial Counsel].

APPELLANT: This is, this is -- come on, Judge Rennie.

THE COURT: All right. Anything else?¹³⁷

The Court then concluded the hearing.¹³⁸

¹³⁴ A388-91.

¹³⁵ A394.

¹³⁶ A394.

¹³⁷ A395.

¹³⁸ A395.

Despite the Court's ruling that Mr. Muhammad must be represented by Trial Counsel, Appellant continued to attempt to represent himself, filing a Motion to Dismiss on December 6, 2019; and a request that the judge rule on his motion to dismiss on December 10, 2019.¹³⁹

Mr. Muhammad Pleads Guilty with the Assistance of Trial Counsel.

On January 6, 2020, Mr. Muhammad appeared before the Superior Court, with the assistance of Trial Counsel, to enter a guilty plea.¹⁴⁰ Appellant pled guilty to three offenses: two counts of Drug Dealing and one count of Promoting Prostitution in the Second Degree.¹⁴¹ The Court imposed its sentence the same day as follows: (1) as to Drug Dealing in a Tier 2 Quantity, four years of Level V incarceration, with credit for 250 days served, suspended after sixteen months for six months of Level IV supervision, followed by one year of Level III probation; (2) as to Drug Dealing, four years of Level V incarceration, suspended immediately for one year of Level III probation; and (3) as to Promoting Prostitution, two years of Level V incarceration, suspended immediately for one year of Level III probation.¹⁴²

¹³⁹ A006.

¹⁴⁰ A007; A015; A025; A397; A405.

¹⁴¹ See A405.

¹⁴² A408-09.

Mr. Muhammad filed a timely notice of appeal. This is his Opening Brief.

SUMMARY OF ARGUMENT

The Superior Court erred in refusing to allow Mr. Muhammad to proceed *pro se*. Mr. Muhammad unequivocally stated that he preferred to represent himself rather than be represented by Trial Counsel. Appellant engaged in multiple colloquies with the Court and demonstrated that he understood the dangers of representing himself. At no point did Mr. Muhammad deliberately engage in serious and obstructionist misconduct warranting termination of his right to self-representation.

STATEMENT OF FACTS

On April 10, 2019, officers with the Delaware State Police were conducting surveillance at the Red Rood Inn in Newark Delaware, a location known for drug activity and prostitution.¹⁴³ The police eventually searched a room in which Mr. Muhammad was present with other occupants, and found what they suspected to be marijuana, cocaine, and heroin, as well as drug paraphernalia.¹⁴⁴ The two female occupants of the room informed the police that Appellant provided them with drugs, money, and other items in exchange for them prostituting themselves to other men.¹⁴⁵

Approximately a month later, a confidential informant, in the presence of police, contacted Mr. Muhammad and arranged to purchase methamphetamine.¹⁴⁶ Police went to the predetermined meet location, where Mr. Muhammad was removed from his vehicle and detained.¹⁴⁷ Methamphetamine and cocaine was located in the vehicle.¹⁴⁸ Based on both incidents, Mr. Muhammad was arrested

¹⁴³ A175.

¹⁴⁴ A176-82.

¹⁴⁵ A043-44; A181.

¹⁴⁶ A200-01.

¹⁴⁷ A200-01.

¹⁴⁸ A201.

and charged with various drug offenses, as well as offenses relating to Human Trafficking.

ARGUMENT

CLAIM I. THE SUPERIOR COURT VIOLATED MR. MUHAMMAD’S CONSTITUTIONAL RIGHT TO SELF-REPRESENTATION BY FORCING HIM TO UTILIZE THE SERVICES OF THE OFFICE OF THE PUBLIC DEFENDER, DESPITE THAT MR. MUHAMMAD KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY WAIVED HIS RIGHT TO COUNSEL, FILED AND ARGUED MOTIONS IN HIS DEFENSE, AND ADAMANTLY EXPRESSED THAT HE DID NOT WANT THE PUBLIC DEFENDER’S REPRESENTATION.

A. Question Presented

Whether the Superior Court erred when it terminated Mr. Muhammad’s self-representation, despite that Mr. Muhammad knowingly, intelligently, and voluntarily waived his right to counsel, was appropriately participating in his defense, and expressed multiple times that he did not want Trial Counsel associated with his cases in any capacity. This issue was preserved via Appellant’s repeated requests to represent himself at trial.¹⁴⁹

B. Standard and Scope of Review

This Court reviews questions of law *de novo*.¹⁵⁰ Claims of a constitutional violation are also reviewed *de novo*.¹⁵¹

¹⁴⁹ See A002-03; A011; A021-22; A088-89; A116-17; A119; A128; A151-54; A161-62; A170-71; A247; A251-58.

¹⁵⁰ *Dawson v. State*, 673 A.2d 1186, 1190 (Del. 1996).

¹⁵¹ *Holland v. State*, 158 A.3d 452, 469 (Del. 2017).

C. Merits of Argument

Pursuant to the Sixth Amendment of the United States Constitution¹⁵² and Article I, Section 7 of the Delaware Constitution¹⁵³, a criminal defendant enjoys the right to be represented by counsel at trial. Those same provisions also guarantee a defendant's right to self-representation.¹⁵⁴ "The right to represent oneself in a criminal proceeding is fundamental."¹⁵⁵ The Supreme Court of the United States has held that a defendant in a criminal proceeding may proceed without counsel and represent himself *pro se* if the defendant knowingly, intelligently, and voluntarily waives the right to counsel after a thorough colloquy advising the accused of the dangers of self-representation at trial.¹⁵⁶ As the right to counsel automatically attaches, the importance of a proper waiver is critical.¹⁵⁷

¹⁵² "In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense." U.S. CONST. amend. VI; *see also Gideon v. Wainwright*, 372 U.S. 335, 342 (1963) (holding that the Sixth Amendment right to counsel in criminal proceedings applies to the States through the Fourteenth Amendment).

¹⁵³ Article I, Section 7 states, in relevant part, that a defendant "has the right to be heard by himself and counsel"; *see also Hooks v. State*, 416 A.2d 189, 199 (Del. 1980) (setting forth the history of Delaware's constitutional right to counsel).

¹⁵⁴ *Hooks v. State*, 416 A.2d 189, 197 (Del. 1980) (citing *Faretta v. California*, 422 U.S. 806, 807 (1975)).

¹⁵⁵ *Stigars v. State*, 674 A.2d 477, 479 (Del. 1996).

¹⁵⁶ *Faretta*, 422 U.S. at 835; *see also Edwards v. Arizona*, 451 U.S. 477, 482 (1981).

¹⁵⁷ *See Faretta*, 422 U.S. at 835.

Once a criminal defendant clearly and unequivocally asserts his right to represent himself at trial *pro se*, a trial court must conduct a pretrial hearing to ascertain whether the defendant is knowingly, intelligently, and voluntarily waiving his right to be represented by counsel.¹⁵⁸ Such waiver “depends in each case upon the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused.”¹⁵⁹

In order to accept a waiver of counsel and grant a defendant’s request to proceed *pro se*, a trial court must consider the guidelines established by the Third Circuit in *United States v. Welty*—and adopted by this Court in *Briscoe v. State*—wherein the Circuit Court held that, “at a minimum, to be valid, a [defendant’s] waiver must be made with an apprehension of the nature of the charges, the statutory offenses included within them, the range of allowable punishments thereunder, possible defenses to the charges and circumstances in mitigation and all other facts essential to a broad understanding of the whole matter.”¹⁶⁰ The *Welty* Court noted that a “judge can make certain that an accused’s professed waiver of counsel is understandingly and wisely made only from a penetrating and

¹⁵⁸ *Id.* at 826-32; *Smith v. State*, 996 A.2d 786 (Del. 2010); *Briscoe v. State*, 606 A.2 103 (Del. 1992).

¹⁵⁹ *Edwards*, 415 U.S. at 482 (quoting *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)).

¹⁶⁰ *United States v. Welty*, 674 F.2d 185, 188-89 (3d Cir. 1982) ; *see also Briscoe*, 606 A.2d at 108.

comprehensive examination of all the circumstances, and only after bringing home to the defendant the perils he faces in dispensing with legal representation.”¹⁶¹ The Circuit Court enunciated a number of guidelines a trial court should use in assessing whether a defendant’s waiver of counsel is knowing, intelligent, and voluntary.¹⁶²

As *Briscoe* adopted *Welty*, a trial court in the State of Delaware should advise the defendant:

- (1) That he will have to conduct his defense in accordance with the rules of evidence and criminal procedure, rules with which he may not be familiar;
- (2) That he may be hampered in presenting 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.¹⁶³

¹⁶¹ *Id.* at 189 (quoting *Johnson*, 304 U.S. at 465) (internal quotations omitted).

¹⁶² *Id.* at 185.

¹⁶³ *Briscoe*, 606 A.2d at 108 (quoting *Welty*, 674 F.2d at 188-89).

Only after undertaking such an inquiry should the trial court determine, on the record, whether the waiver is proper.¹⁶⁴

Even once properly waived, however, the right to self-representation is not absolute, and a trial court “may terminate self-representation by a defendant who deliberately engages in serious and obstructionist misconduct.”¹⁶⁵ Such is the case because *pro se* defendants “may use the courtroom for deliberate disruption of their trials.”¹⁶⁶ Nevertheless, the Supreme Court of the United States has emphasized the importance of honoring a defendant’s decision to represent himself:

It is undeniable that in most criminal prosecutions defendants could better defend with counsel's guidance than by their own unskilled efforts. But where the defendant will not voluntarily accept representation by counsel, the potential advantage of a lawyer's training and experience can be realized, if at all, only imperfectly. To force a lawyer on a defendant can only lead him to believe that the law contrives against him. Moreover, it is not inconceivable that in some rare instances, the defendant might in fact present his case more effectively by conducting his own defense. Personal liberties are not rooted in the law of averages. The right to defend is personal. The defendant, and not his lawyer or the State, will bear the personal consequences of a conviction. It is the defendant, therefore, who must be free personally to decide whether in his particular case counsel is to his advantage. And although he may conduct his own defense

¹⁶⁴ *Briscoe*, 606 A.2d at 108 (quoting *Johnson*, 304 U.S. at 465).

¹⁶⁵ *Payne v. State*, 367 A.2d 1010, 1017 (Del. 1976) (quoting *Faretta*, 422 U.S. at 834 n.46).

¹⁶⁶ *Faretta*, 422 U.S. at 834 n.46.

ultimately to his own detriment, his choice must be honored out of that respect for the individual which is the lifeblood of the law.¹⁶⁷

Thus, only in extraordinary circumstances must a defendant's right to self-representation be terminated after properly invoked.

The Trial Court Erred in Terminating Mr. Muhammad's Self-Representation and Ordering Representation by Trial Counsel More than a Month Before Trial.

The Superior Court violated Mr. Muhammad's right to self-representation when it forced Appellant to utilize the services of Trial Counsel, despite the defendant's insistence since the early stages of his cases that he wished to proceed *pro se*.

From the time Mr. Muhammad was first arrested on April 10, 2019, through December 2, 2019, Appellant appeared before the Court of Common Pleas and Superior Court a total of fourteen times. Out of those fourteen appearances, Mr. Muhammad explicitly informed the Court that he wished to proceed *pro se* in at least seven times.¹⁶⁸ Because his appearances at arraignment were not transcribed, it is unclear what was discussed at two of those hearings, but Trial Counsel's letter to the Superior Court dated September 16, 2019—in which the Public Defender states that he does not have a conflict and can serve as standby counsel as

¹⁶⁷ *Id.* at 834 (internal citations omitted).

¹⁶⁸ See A002-03; A011; A021-22; A088-89; A116-17; A119; A128; A151-54; A161-62; A170-71; A247; A251-58.

necessary—suggests that Mr. Muhammad made a similar request on September 12, 2019.¹⁶⁹ On November 4 and 18, 2019, Mr. Muhammad did not specifically request to proceed *pro se*, but certainly made clear that he did not wish for Trial Counsel to be involved with his cases.¹⁷⁰ Even at the December 2, 2019 hearing—where the trial judge ultimately held that Mr. Muhammad could not represent himself—the defendant reminded the Superior Court that he had previously stated that although his preference would not be to represent himself, it was what he wanted to do rather than being represented by Trial Counsel.¹⁷¹ Thus, in eleven of his fourteen appearances in front of a judge related to these cases, Mr. Muhammad either unequivocally asserted his wish to proceed *pro se*, referenced a prior time when he stated as such, or expressed that he did not want Trial Counsel involved with his cases.

The Superior Court refused to allow Mr. Muhammad to enjoy his right to self-representation because of Appellant’s negative answers in the colloquy that took place on December 2.¹⁷² Yet it is apparent from the record that Mr. Muhammad was well-aware of the risks of self-representation, wanted to represent

¹⁶⁹ See A260.

¹⁷⁰ See, e.g. A335; A368.

¹⁷¹ A385.

¹⁷² A389-90.

himself, was prepared to do so, and was acting out of frustration during the final colloquy. Given that trial was scheduled more than a month away, it was unnecessary for the trial judge to decide in the heat of the moment that Mr. Muhammad's long-expressed desire not to have Trial Counsel represent him could not be honored.

First, Mr. Muhammad was warned of the potential hazards and pitfalls related to proceeding *pro se* time and again over the course of his various court appearances. He not only reviewed the waiver of counsel form in the Court of Common Pleas on May 15, 2019, but was orally admonished by the Commissioner of the hazards of self-representation as well.¹⁷³ The same is true of his appearance in the Court of Common Pleas on June 19, 2019.¹⁷⁴ At his June 24, 2019 court date, Mr. Muhammad executed the waiver of counsel form and engaged in a partial colloquy with the judge about the risks associated with self-representation.¹⁷⁵ A full *Briscoe* colloquy occurred in Superior Court on August 19, 2019 when Trial Counsel was permitted to withdraw from the Trafficking case.¹⁷⁶ Although the specifics of what happened at the various arraignment calendars on which

¹⁷³ A072-78; A089-97.

¹⁷⁴ A128-34.

¹⁷⁵ A168-71.

¹⁷⁶ A252-58.

Appellant was scheduled are unclear, the docket reflects that the Superior Court Commissioner continued the matter for the purpose of engaging in a colloquy with Mr. Muhammad; presumably, such colloquy took place on October 8, 2019.¹⁷⁷ By the time Mr. Muhammad appeared before the Court on December 2, 2019, he had engaged in at least four—possibly five—conversations or colloquies with judicial officers regarding the dangers of self-representation.

The Superior Court’s decision to appoint Trial Counsel to represent Mr. Muhammad on December 2, 2019 was unreasonable given that the same judicial officer previously found that Mr. Muhammad had knowingly, intelligently, and voluntarily waived his right to counsel on August 19, 2019. Mr. Muhammad’s answers during the colloquy were satisfactory during the summer. The trial court should have recognized Mr. Muhammad’s frustration—clear from the verbiage used by Appellant during the proceeding—that the substance of those answers had unlikely changed merely four months later. The Superior Court also should have recognized the possibility that the relationship between Mr. Muhammad and Trial Counsel was irreparably broken and fractured given Appellant’s continued insistence that he did not trust Trial Counsel and did not want the attorney involved with his case in any fashion.

¹⁷⁷ See A002-03; A011; A022.

Moreover, it is unclear why another colloquy was even taking place. Trial Counsel was removed from the Drug Cases by the Court of Common Pleas on May 28, 2019.¹⁷⁸ Trial Counsel did not believe that removal to be limited to the Preliminary Hearing Stage, as he informed the Superior Court via letter dated July 26, 2019 that he did not represent Mr. Muhammad in the Drug Cases.¹⁷⁹ He informed the Court during the August 19, 2019 hearing that he and Appellant had “been working together on [the Trafficking Case] and *previously* on two others over the past few months.”¹⁸⁰ He clarified later that he “was removed from the other two cases . . . in the Court of Common Pleas” and that he was not appointed as standby counsel.¹⁸¹ Trial Counsel informed the judge that the Court of Common Pleas had engaged in “a colloquy on [the Drug Cases] and the Court found that his waiver was knowingly, intelligently, and voluntarily offered” and that Mr. Muhammad had been permitted to proceed *pro se* as to those cases.¹⁸² Trial Counsel also no longer represented Mr. Muhammad in the Trafficking Case, as his Motion to Withdraw as Counsel was granted by the Superior Court on August 19,

¹⁷⁸ A116.

¹⁷⁹ A232 (“I do not represent the defendant in either of these cases . . .”).

¹⁸⁰ A241.

¹⁸¹ A250.

¹⁸² A250.

2019.¹⁸³ Simply put, the determination that Mr. Muhammad was proceeding *pro se* had been made months earlier, and he had subsequently been representing himself in a competent manner. The Court’s revisiting of the issue was improper.

Finally, Mr. Muhammad’s frustration during the December 2 hearing was not necessarily unwarranted. This was his fourteenth court appearance, and his ninth time discussing issues related to his representation. Despite Appellant’s frequent pronouncements that he did not want Trial Counsel involved in his cases in any way,¹⁸⁴ Trial Counsel continued to attend the majority—if not all—of those hearings.¹⁸⁵ Mr. Muhammad had received conflicting information from the Court as to whether his pending lawsuit against Trial Counsel created a conflict of interest.¹⁸⁶ Additionally, it is clear that Mr. Muhammad did not understand the

¹⁸³ A258.

¹⁸⁴ See A093-94 (“If this is my option, this is not due process if this is what I’m stuck with. . . . So I would rather just hang myself instead of letting him do it.”); A119 (“Just as long as that counselor is off of my case for good. . . . I don’t want to see that guy anymore ever.”); A161-62 (“And I’m not going through with this if he’s attached to my case. He’s already been recused off of another case. So if he’s sitting there next to me when I already got him off my case -- I don’t want this guy no where near my case. So if that’s why this is not getting -- going in circles because you keep attaching him to me. I don’t want him. . . . I don’t want this guy. Please get him away from me. Do anybody hear me? That’s all I’m saying. You keep attaching him to me. I don’t want this guy next to me.”); A247 (“There’s no way I want him attached to my case.”); A335 (“I just don’t want somebody to arrest witnesses that’s right here, that I had a witness, and it violated my Constitutional right, when I got a compulsory right to obtain a witness in my favor and have them arrested. I don’t want that. He’s doing that.”).

¹⁸⁵ Whether Trial Counsel was present at all of the arraignment calendars is unclear due to the absence of transcripts. See A414.

¹⁸⁶ Compare A256 (wherein the trial court states that the lawsuit created a “direct conflict”) with A333-34 (wherein the trial court advises that the lawsuit does not create a conflict, and Trial

basis for the Superior Court’s denial of his various motions, as the Court had previously offered no explanation for its decision beyond the judge’s indication that he disagreed with Appellant’s interpretation of the Criminal Rules and that the Court would “let [Mr. Muhammad] take [the judge] up on that.”¹⁸⁷

Additionally, Mr. Muhammad did not engage in “serious and obstructionist misconduct” such that his self-representation should have been terminated. While he was somewhat obstinate during the December 2 colloquy, he had already answered the Court’s questions to its satisfaction months earlier. Nor was there any indication that he was attempting to interfere with the orderly administration of justice or unnecessarily stall his pending cases.

In fact, Appellant’s actions are insignificant in comparison to prior defendants whose right to self-representation have been terminated. In *Cooke v. State*, the defendant was granted permission approximately five months prior to trial to proceed *pro se*.¹⁸⁸ During his trial, Cooke engaged in a variety of disruptive conduct: making improper comments during his opening statement, arguing with the trial judge about the rules of evidence, exceeding the scope of direct

Counsel could permissibly represent Appellant) and A368 (wherein the trial court informs Appellant that the lawsuit bars Trial Counsel from representing Appellant, but that Mr. Muhammad is not entitled to another court-appointed attorney).

¹⁸⁷ A327-28.

¹⁸⁸ *Cooke v. State*, 97 A.3d 513, 523 (Del. 2014).

examination when cross-examining witnesses, and refusing to behave in a civil and courteous manner.¹⁸⁹ After each instance of Cooke’s inappropriate behavior, the trial judge was forced to send the jury out of the room so as to explain the legal basis for the Court’s decision to the defendant, as well as to admonish him to behave properly.¹⁹⁰ Ultimately, the trial court terminated Cooke’s right to proceed *pro se*, and standby counsel stepped in to handle the rest of the trial.¹⁹¹

The defendants in *Payne v. State* were similarly disruptive during trial.¹⁹² In *Payne*, the defendants “decided to use court-appointed counsel as ‘amicus curiae’ and relied extensively on counsel throughout the trial.”¹⁹³ During the trial, multiple defendants “uttered profanities and engaged in disruptive conduct.”¹⁹⁴ The trial judge ejected defendants from the courtroom several times, telling them they could return if they could behave appropriately.¹⁹⁵

Mr. Muhammad demonstrated no such disrespectful or disruptive behavior. While he zealously advanced arguments in support of his motions—and sought

¹⁸⁹ *Id.* at 533-36.

¹⁹⁰ *Id.* at 536.

¹⁹¹ *Id.*

¹⁹² 367 A.2d 1010 (1976).

¹⁹³ *Id.* at 1016.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

clarification as to the legal rationale for their denial—he was ultimately respectful toward the Court during his presentation.

Appellant attempted to exercise his constitutional right to self-representation. The matter was discussed repeatedly during the pendency of his cases. He participated in multiple colloquies and expressed understanding of the potential pitfalls of proceeding *pro se*. Nevertheless, the Superior Court—despite previously ruling that Mr. Muhammad knowingly, intelligently and voluntarily waived his right to counsel—forced Appellant to utilize the services of Trial Counsel. Such ruling was error and mandates reversal.

CONCLUSION

For the reasons stated herein, Mr. Muhammad respectfully requests that this Honorable Court reverse the judgment of the Superior Court.

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