

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)
)
 v.) ID No. 1011012275
)
ANDRE McDOUGAL,)
)
 Defendant.)

Submitted: March 6, 2012

Decided: March 6, 2012

On Remand for a Hearing on Defendant's
Affidavit for Waiver of Counsel in the Delaware Supreme Court

ORDER

Paul R. Wallace, Esquire, Department of Justice, Wilmington, DE, Attorney
for the State

Christopher Tease, Esquire, Wilmington, Delaware, Attorney for Defendant

Andrew McDougal, *Pro Se*

JOHNSTON, J.

1. By Order dated February 7, 2012, the Delaware Supreme Court remanded this matter to the Superior Court for an evidentiary hearing to determine if the defendant, Andre McDougal, has made a knowing and voluntary decision to waive representation and to represent himself before the Delaware Supreme Court. The following are the Court's findings.

2. Following a two-day jury trial, McDougal was convicted of the following offenses: (1) Trafficking in Heroin; (2) Possession with Intent to Deliver Heroin; and (3) Possession of a Deadly Weapon by a Person Prohibited. McDougal was declared an habitual offender pursuant to 11 *Del. C.* § 4214(b) and sentenced to two life terms.

3. McDougal filed a timely notice of appeal with the Delaware Supreme Court and then filed an affidavit pursuant to Supreme Court Rule 26(d)(iii), in which he expressed his desire to discharge his attorney and represent himself on appeal. This Court conducted a hearing on March 6, 2012. After placing McDougal under oath, the Court questioned McDougal, as required by *Watson v. State*, 564 A.2d 1107 (Del. 1989).

4. McDougal has not retained private counsel. McDougal stated that he lacks the funds to engage private counsel and that his family is unable to offer financial assistance.

5. McDougal is indigent and remains eligible for the services of the Public Defender. McDougal understands that he continues to have a right to court-appointed counsel. McDougal further understands that he cannot choose his court-appointed counsel and that his trial attorney would serve as his counsel on appeal.

6. Upon questioning, McDougal stated, in detail, his reasons for not wishing to proceed with his court-appointed counsel. McDougal believes that trial counsel did not adequately represent him. McDougal clearly outlined several issues he intends to raise on appeal, including evidentiary disputes and the manner in which he feels his constitutional rights were violated.

7. McDougal has some familiarity with the Delaware criminal justice system's appellate process. McDougal, acting *pro se*, appealed a prior violation of probation sentence to the Supreme Court. He described the sequence of briefs and the basic purpose of briefing legal issues.

8. McDougal knows that the appellate process involves the application of rules of procedure that may be difficult for a non-lawyer to follow or understand. McDougal also knows that he will be expected to comply with the rules and that his failure to do so will adversely delay his appeal and, if egregious or persistent, may even result in the dismissal of an

otherwise meritorious appeal. McDougal feels confident, however, that he will be able to follow the rules and adequately present his arguments in the form required by the rules.

9. McDougal has not consulted with any other individual regarding his decision to proceed *pro se* on appeal.

10. The Court explained to McDougal that there are several disadvantages to proceeding *pro se*, including the fact that he will lose the opportunity to present oral argument to the Delaware Supreme Court. McDougal understands these disadvantages, but, nonetheless, wishes to proceed *pro se*.

11. McDougal has a seventh-grade education. McDougal stated that he was enrolled in a GED program while incarcerated, but has been unable to complete the program. Although McDougal only has a seventh-grade education, the Court finds McDougal to be extremely articulate. McDougal presented his position in a cogent and well-organized manner.

12. McDougal confirmed that he has adequate access to the prison law library. McDougal stated that he has used the law library on previous occasions and is familiar with the procedure to obtain legal materials. Nevertheless, McDougal stated that he wanted greater access to the law library. This Court notes, however, that actual physical access to the prison

law library is a matter within the discretion of the Department of Corrections.

13. McDougal understands that if the Delaware Supreme Court accepts his waiver of counsel, he will not be permitted to interrupt or delay the appellate proceedings in order to secure private counsel or court-appointed counsel. McDougal further understands that once the decision to allow him to waive counsel is made, the matter will be scheduled for disposition in accordance with the Supreme Court rules and he will be expected to comply with that schedule.

THEREFORE, the Court is satisfied that McDougal has made a knowing and voluntary decision to represent himself on appeal. The Court explained the consequences of proceeding *pro se*. McDougal has considered these consequences and has concluded that he can follow the rules and present a cogent argument on appeal.

IT IS SO ORDERED.

/s/ *Mary M. Johnston*
The Honorable Mary M. Johnston