

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

CORNELL HESTER,)	Supreme Court Case No. 587, 2010
)	
Defendant Below-)	Court-Below – Superior Court
Appellant,)	of the State of Delaware
)	in and For New Castle County Cr. A
v.)	No.: 0591963
)	
STATE OF DELAWARE,)	Cr. ID No. 0912010604
)	
Plaintiff Below-)	
Appellee.)	

ORDER

Date Submitted: February 4, 2011
Date Decided: March 1, 2011

Upon Appellant's Motion to Proceed *Pro Se* Upon Appeal
To the Supreme Court of Delaware. **FINDINGS AND CONCLUSIONS.**

Paul Wallace, Esq., Deputy Attorney General, Department of Justice, 820 N. French Street, Wilmington, DE 19801, Attorney for the State of Delaware.

John S. Edinger, Jr., Esq., Assistant Public Defender, 820 North French Street, Wilmington, DE 19801, Trial Counsel for Defendant.

Cornell Hester, *Pro se* Defendant.

Jurden, J.

By Order dated February 4, 2011,¹ the Delaware Supreme Court remanded the above-captioned case to Superior Court for the limited purposes of determining whether Cornell Hester (“Defendant”) has made a knowing and voluntary decision to waive representation and to proceed *pro se* on his appeal to the Delaware Supreme Court. It appears to the Court that:

1. Defendant was convicted and sentenced in this Court to Burglary 2nd Degree, Offensive Touching, Harassment, two counts of Criminal Mischief, Unlawful Imprisonment 2nd Degree, and Malicious Interference with Emergency Communications.

2. On February 18, 2011, the Court conducted an evidentiary hearing to determine whether Defendant had knowingly and voluntarily waived his right to counsel and proceed *pro se* on his direct appeal. After placing Defendant under oath, the Court, guided by *Watson v. State*,² questioned him at length regarding his decision to waive his court-appointed counsel and represent himself on appeal.

Findings of Fact

3. Defendant has not retained private counsel and has not asserted an intention to do so.

4. Defendant is a high school graduate who has attended six months of community college. Defendant’s extensive criminal history establishes that he has been acquainted with the criminal justice system for some time.

5. Defendant is indigent and remains eligible for the services of the Public Defender. Defendant understands that he continues to have the right to court-appointed counsel. He further understands that he cannot choose his court-appointed counsel.

¹ See *Hester v. State*, No. 587, 2010, Jacobs, J. (Del. Feb. 4, 2011) (ORDER).

² *Watson v. State*, 564 A.2d 1107 (Del. 1989).

Defendant's trial counsel, Mr. Edinger, would serve as counsel on appeal. Defendant maintains that he wishes to proceed *pro se*, rather than have Mr. Edinger as counsel.

6. The Court discussed with Defendant at length his reasons for electing to proceed *pro se* on appeal. He continues to believe that a conflict remains between him and his trial counsel due in part, to an alleged threat made by Mr. Edinger against Defendant. He believes that Mr. Edinger could not and would not adequately represent him on his appeal.

7. Defendant understands that his appeal will involve the application of rules of evidence and procedure that may prove difficult for a non-lawyer.³ Defendant also understands that he will be required to comply with the Supreme Court's rules and that noncompliance with the rules may delay or prejudice his appeal.⁴

8. Defendant has not consulted with another attorney or his family concerning his intent to waive counsel and proceed *pro se*.

9. The Court explained to Defendant that there are several disadvantages to proceeding *pro se*, including the fact that he will lose the opportunity to present oral argument to the Supreme Court.⁵

10. Defendant understands that if waiver of counsel is permitted, he will not be permitted to interrupt or delay the appellate process because he wants counsel.⁶

Conclusions of Law

11. Delaware courts traditionally have extended the right of self representation to the appellate process when it is determined that the defendant has made his decision

³ Evidentiary Hearing Transcript at 10 (Feb. 18, 2011) (hereafter "Tran.").

⁴ Tran. at 19.

⁵ Tran. at 19-20.

⁶ Tran. at 22.

knowingly and voluntarily.⁷ The Court is satisfied that Defendant has made a knowing and voluntary decision to represent himself. The Court explained the consequences of proceeding *pro se*. Defendant considered the consequences and concluded that he can do a better job than his court-appointed counsel. Under the circumstances, the Court finds the Defendant has knowingly, intelligently, and voluntarily waived his right to court-appointed counsel and invoked his right to self-representation.

IT IS SO ORDERED.

Jan R. Jurden, Judge

⁷ See e.g. *Watson*, 564 A.2d at 1109; *Shelton v. State*, 645 A.2d 569 (Del. 1994) (TABLE).