

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOSEPH WALKER,	§
	§ No. 475, 2000
Defendant Below,	§
Appellant,	§
	§
v.	§ Court Below: Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County,
	§ Cr.A. No. IK99-01-0001
Plaintiff Below,	§
Appellee.	§

Submitted: September 25, 2000
Decided: October 10, 2000

Before **HOLLAND, BERGER,** and **STEELE,** Justices.

ORDER

This 10th day of October 2000, it appears to the Court that:

1. On September 25, 2000, the appellant, Joseph Walker, filed a notice of appeal, pro se, from an order of the Superior Court dated August 28, 2000. The Superior Court's order refused to act upon Walker's pro se motion for a new trial on the ground that Walker was represented by counsel, and Walker had not been permitted to participate pro se as co-counsel.
2. The record reflects that Walker was convicted in February 2000 of attempted rape in the second degree. He was declared an habitual offender and

sentenced in July 2000. His direct appeal from that conviction and sentence is currently pending before this Court.¹

3. It is clear that the Superior Court's refusal to act upon Walker's pro se motion for a new trial was entirely appropriate. Walker's pending direct appeal divested the Superior Court of jurisdiction to address the merits of a motion for a new trial.² Moreover, the Superior Court's refusal to address the merits of Walker's motion for a new trial is an interlocutory ruling in this criminal matter.³ Under the Delaware Constitution, this Court may review only a final judgment in a criminal case.⁴ As a result, this Court does not have jurisdiction to review the Superior Court's interlocutory ruling in this case.⁵

4. If Walker intends for the Superior Court to rule upon the merits of his motion for a new trial, his counsel may seek to remand his pending appeal and then his counsel must file a motion for new trial with the Superior Court. The Superior Court has no duty to consider a defendant's pro se motions, if the defendant is represented by counsel.⁶ Counsel is the only person who is

¹*See Walker v. State*, Del. Supr., No. 383, 2000.

²*Eller v. State*, Del. Supr., 531 A.2d 951, 952 (1987); Super. Ct. Crim. R. 33.

³*See Robinson v. State*, Del. Supr., 704 A.2d 269, 271 (1998).

⁴Del Const. Art. IV, § 11(1)(b).

⁵*See Gottlieb v. State*, Del. Supr., 697 A.2d 400 (1997); *Rash v. State*, Del Supr., 318 A.2d 603 (1974).

⁶*In the Matter of Haskins*, Del. Supr., 551 A.2d 65, 66-67 (1988).

authorized to act on behalf of the defendant, unless the court otherwise grants permission for the defendant to act as co-counsel.⁷

NOW, THEREFORE, IT IS ORDERED that this appeal is DISMISSED, *sua sponte*, pursuant to Supreme Court Rule 29(c).

BY THE COURT:

/s/ Carolyn Berger
Justice

⁷*Id.*