

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

STATE OF DELAWARE,	:
	:
v.	:
	:
JONATHAN McCLEMENTS,	:
ID NO: 9705020483	:
	:
Defendant.	:

ORDER

Pursuant to the Order of the Delaware Supreme Court dated August 22, 2008, the Court held an evidentiary hearing regarding the defendant's ability to appear *pro se* before the Supreme Court. After questioning the defendant, under oath, concerning pertinent matters, this Court has determined that the defendant is competent to proceed on his own behalf in the appellate process.

Findings of Fact

The Court found the following after thorough examination of the defendant's abilities:

(a) Mr. McClements has not retained private counsel to represent him on appeal.

(b) Mr. McClements has an average monthly combined income of approximately \$100. The sources of his income are a small allowance from his mother and very limited wages from the state prison. The Court, therefore, concludes that Mr. McClements is an indigent person based on this information.

(c) Mr. McClements, as he repeatedly stated, is well aware of his right to court-

appointed counsel. Indeed, he has consulted with appointed counsel concerning his grounds for appeal. Mr. McClements differs with counsel on the nature and efficacy of this appeal. Therefore, after considerable thought, which he described, he feels he is able to proceed with this matter better *pro se* than with counsel. Mr. McClements believes that to be so because of this difference of opinion, which is significant and substantial.

(d) Except as described above, Mr. McClements states that he has not consulted with any other persons, including attorneys, in making his decision to waive the right to counsel.

(e) Mr. McClements understands that the appellate process will not be delayed or interrupted, even for consultation with or participation by counsel, if he changes his mind about counsel in the future.

(f) Mr. McClements testified that his education level is completion of a General Educational Development (GED) Test. Mr. McClements has also completed course work toward gaining a high school diploma. He describes his understanding of writing and literacy as consistent with the educational levels required to complete high school.

(g) A recent psychiatric examination of Mr. McClements, noting his desire to represent himself, reported not only competency but specific understanding about the legal system.

(h) Mr. McClements has experience in the *pro se* appellate process. He has completed a motion concerning Superior Court Criminal Rule 35(b), which ultimately

led to this evaluation.

(i) Relative to earlier aspects of this case, counsel for Mr. McClements, who represented him at that time, confirmed Mr. McClements' "cogent and coherent" thoughts on the topic.

(j) Mr. McClements does have access to Delaware Supreme Court briefs, rules, and opinions. He is admitted to the Law Library for approximately 6-7 hours per week. This law library is constantly staffed with a paralegal. It appears that Mr. McClements understands both the appellate process and the composition of Supreme Court briefs.

(k) Mr. McClements understands that oral arguments are granted only at the discretion of the Supreme Court, and that it is unlikely that an opportunity to appear at oral argument will be granted in this *pro se* criminal appeal.

(l) Mr. McClements understands the requirement that he must comply with the rules of the Supreme Court. Mr. McClements is aware that his noncompliance with appropriate rules of the Supreme Court could delay his appeal, and potentially could prejudice it to the point of dismissal.

(m) This Court has determined that Mr. McClements' stated desire to proceed with his Supreme Court appeal has been arrived at knowingly and voluntarily.

Conclusion

As a result of the Evidentiary Hearing conducted on September 15, 2008, the Court finds that Mr. McClements may proceed *pro se* in his appeal to the Delaware Supreme Court.

State of Delaware v. Jonathan McClements
ID No: 9705020483

SO ORDERED this 17th day of September, 2008.

/s/ Robert B. Young

J.

RBV/sal

oc: Prothonotary

cc: Counsel

Supreme Court

File