

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

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| STATE OF DELAWARE, |) | |
| |) | |
| v. |) | ID#: 9811014143 |
| |) | Supreme Court No. 566, 2000 |
| ANDRE R. THOMAS, |) | |

Submitted: April 10, 2001
Decided: April 30, 2001

FINDINGS OF FACT AND CONCLUSIONS OF LAW ON REMAND

In response to the Supreme Court’s April 10, 2001 Order, the Superior Court held a fact-finding hearing to determine whether the Office of the Public Defender has a conflict that would prevent its appointment in Thomas’ appeal.

The Court started the hearing by explaining the hearing’s purpose and how the Court intended to proceed. The Court then asked:

Mr. Thomas, what’s the basis for your April 3rd motion and its allegation that the Public Defender has a conflict of interest?

Thomas answered the Court’s question with a question. Instead of telling the Court the basis for his claim, Thomas asked whether he would be allowed to call

witnesses to prove his unspecified claims. Rather than answer Thomas' question, which was not constructive, the Court insisted that Thomas state the basis for his claim. Thomas, in effect, refused to reveal his claim until the Court addressed his concerns. Finally, after the Court threatened to abort the hearing if Thomas insisted on asking the Court questions instead of providing the basis for his claim, Thomas offered two, possible conflicts.

First, Thomas insisted that the Public Defender "has represented, a state agent in my case" With further difficulty, the Court was able to establish that the alleged "state agent" is Thomas' former cellmate, Norwood Wyatt.

The second alleged conflict of interest concerns Thomas' claim that someone from the Office of the Public Defender, either an attorney or an investigator, breached the attorney-client privilege by revealing confidential information to the Delaware Psychiatric Center.

Unfortunately, instead of trying to explain the alleged conflicts of interest, Thomas stubbornly insisted that he could establish the claims only if he were allowed to call eleven witnesses. Those witnesses included his five previous attorneys, two of the public defender's investigators, the prosecutor, the head of the Delaware Psychiatric Center and two Department of Correction officials.

Fortunately, even without Thomas' cooperation, the Court has extensive familiarity with his claims concerning his former cellmate and the Delaware Psychiatric Center. Those matters already have been discussed in the Court's October 27, 2000 Opinion and Order Denying Defendant's Motion for a New Trial.¹ The issue concerning the cellmate actually was litigated extensively in a pretrial hearing. The cellmate was represented by another assistant public defender, but the Court has held and it continues to hold that the cellmate never was a "state agent." Moreover, there is no reasonable basis to believe that Thomas' cellmate attempted to poison Thomas and there is evidence refuting that claim.

The Court also is familiar with Thomas' claims that the public defender violated the attorney-client privilege by revealing confidences to the Delaware Psychiatric Center. While the public defender, appropriately, forwarded some information to the Delaware Psychiatric Center in connection with its psychiatric evaluation of Thomas, the information was not confidential and, more importantly, Thomas suffered no harm as a result of anything turned

¹ *State v. Thomas*, Del. Super. Cr. A. No. 9811014143, Silverman, J. (Oct. 27, 2000), Order at 13-14.

over by the public defender to the Delaware Psychiatric Center. Again, extensive fact-finding was conducted and a record was made during pre-trial hearings.

In summary, while Mr. Thomas perceives conflicts of interests on the public defender's part, there is no factual basis to support the conclusion that the public defender has an actual conflict of interest. Furthermore, the public defender takes the position that there is no conflict of interest and the public defender's appellate unit is prepared to represent Mr. Thomas on appeal.

Despite repeated attempts, the Court was unable to conduct the follow-up colloquy called for by the remand order. Instead of answering the questions specified in the order, Thomas insisted on making an extensive record about the many ways he insists that his rights have been violated, especially by the fact that the Court would not let him call witnesses to corroborate his claims.

Nevertheless, Thomas twice indicated that he had read the April 10, 2001 remand order. Moreover, before Thomas' obstinance made it impossible to continue the colloquy, the Court was able to cover several of the points that the colloquy was intended to address.² But unless Thomas is allowed to conduct an

² *Thomas v. State*, Del. Supr., No. 566, 2000, Veasey, C.J. (Apr. 10, 2001) (ORDER).

evidentiary hearing concerning his allegations against the public defender, it will be impossible for this Court to complete the colloquy called for by the remand order.

Moreover, while Thomas desperately needs professional, legal representation, it is highly unlikely that he will cooperate with any attorney, either court-appointed or privately retained. So far, efforts by the public defender, court-appointed conflict counsel and private counsel have not satisfied Thomas.

For the foregoing reasons, the Court finds that the Office of the Public Defender has no conflict of interest that disqualifies it from representing Thomas on appeal and the appellate unit of the Office of the Public Defender is prepared to represent him on appeal. The Court further finds that, that if Thomas is allowed to appear *pro se*, he understands that he will be required to comply with all pertinent rules of the Supreme Court. Thomas appears to understand that non-compliance with pertinent rules may delay or prejudice his appeal, that allowance of oral argument is discretionary with the Supreme Court, that it is unlikely that he will be allowed to give oral argument and that he will not be permitted to interrupt or delay the appellate process to secure the assistance of court-appointed counsel simply because he has changed his position.

Finally, the Court finds that although Thomas seeks court-appointed counsel, he refuses to waive any of his rights and he is unwilling or unable to accept representation by any attorney, except on his terms.

The full transcript of the hearing on remand is part of the record now. The Prothonotary shall send a certified copy of the transcript to Thomas, along with these findings and conclusions.

IT IS SO ORDERED.

Judge

**oc: Prothonotary
pc: Cathy L. Howard, Clerk of the Supreme Court
Paul Wallace, Deputy Attorney General
Dean DelCollo, Esquire
Andre Thomas, Pro Se Defendant**