

IN THE SUPREME COURT OF THE STATE OF DELAWARE

EMIL WATSON,	§
	§
Defendant Below-	§ No. 338, 2007
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0312019673
Plaintiff Below-	§
Appellee.	§

Submitted: December 21, 2007

Decided: March 12, 2008

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

**ORDER**

This 12th day of March 2008, upon consideration of the parties' briefs and the record on appeal, it appears to the Court that:

(1) The appellant, Emil Watson, filed this appeal from the Superior Court's denial of his first motion for postconviction relief. We find no merit to Watson's appeal. Accordingly, we affirm the Superior Court's judgment.

(2) The record reflects that a Superior Court jury convicted Watson in 2004 of multiple drug-related charges, including trafficking cocaine. The Superior Court sentenced him as an habitual offender. His convictions and sentence were

affirmed on direct appeal.<sup>1</sup> Thereafter, he filed his first motion for postconviction relief, which raised four issues: (i) the trial judge erred in allowing Watson to proceed pro se at trial; (ii) the trial judge erred in making evidentiary rulings; (iii) the evidence was insufficient to support his convictions; and (iv) his appointed counsel provided ineffective assistance on direct appeal. The Superior Court found no merit to Watson's contentions that he was denied his right to counsel at trial or that appellate counsel provided ineffective assistance. The Superior Court further concluded that Watson's remaining claims were procedurally barred. This appeal followed.

(3) In his opening brief, Watson again argues that the Superior Court erred in holding that he had voluntarily waived his right to trial counsel. Watson also argues that the Superior Court erred in holding that his other postconviction claims were procedurally barred. We review the Superior Court's denial of postconviction relief for abuse of discretion.<sup>2</sup>

(4) The record reflects that Watson first raised the issue of representing himself at a suppression hearing held in July 2004 because of a dispute between Watson and his lawyer over Watson's desire to call a witness whom his lawyer believed would be harmful to Watson's case. After some discussion with the

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<sup>1</sup> *Watson v. State*, 892 A.2d 366 (Del. 2005).

<sup>2</sup> *Dawson v. State*, 673 A.2d 1186, 1190 (Del. 1996).

judge, Watson indicated his intent to proceed with his counsel's representation, following his counsel's strategy for the hearing. At the conclusion of the suppression hearing, however, Watson again raised the issue of representing himself. The judge instructed Watson to file a formal motion, which he did.

(5) Prior to the start of the trial, the trial judge considered Watson's motion. Watson was offered the opportunity to take a recess to see if he could work out his differences with his lawyer. Watson refused and remained adamant in his desire to proceed pro se, despite the trial court's warnings about the hazards of self-representation. Trial proceeded with Watson exercising his constitutional right to represent himself. His former counsel remained in the courtroom as stand-by counsel to assist, if Watson so desired.

(6) A criminal defendant has a constitutional right to self-representation.<sup>3</sup> Before permitting a defendant to exercise that right, however, the trial court must conduct an inquiry to determine that the defendant's decision is made knowingly and voluntarily and that the defendant is aware of the risks inherent in proceeding to trial without counsel.<sup>4</sup> In this case, we find that the trial court conducted a thorough inquiry into Watson's decision to proceed pro se. The trial court warned Watson of the risks and gave him the opportunity to reconcile his differences with

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<sup>3</sup> *Faretta v. California*, 422 U.S. 806, 819 (1975).

<sup>4</sup> *Briscoe v. State*, 606 A.2d 103, 107, 108 (Del. 1992).

his counsel. Under the circumstances, we find no error or abuse in the trial court's conclusion that Watson had waived his right to counsel knowingly and voluntarily.

(7) Watson's final claim is that his appellate counsel was ineffective for failing to argue on appeal that the evidence was insufficient to support his convictions and for failing to challenge certain evidentiary rulings made at trial. To prove his claims of ineffective assistance of counsel, Watson must show: (a) that his counsel's representation fell below an objective standard of reasonableness; and (b) that, but for counsel's unprofessional errors, there is a reasonable probability that the outcome of the case would have been different.<sup>5</sup> Watson's claims fail on both prongs.

(8) Watson's insufficiency claim essentially challenges the credibility of the testimony of his codefendant, Markita Clayton, who testified that Watson had given her the drugs that were found in her panties. It was entirely within the purview of the jury to credit Clayton's testimony, however.<sup>6</sup> Therefore, any challenge to the sufficiency of the evidence would have been unsuccessful on appeal. Appellate counsel, therefore, committed no error in failing to raise an insufficiency claim on appeal.

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<sup>5</sup> *Strickland v. Washington*, 466 U.S. 668, 688 (1984).

<sup>6</sup> *Pryor v. State*, 453 A.2d 98, 100 (Del. 1982).

(9) Similarly, there is no merit to Watson's claim that the Superior Court abused its discretion in the way it handled the jury's request, during its deliberations, to obtain a copy of the transcript of Clayton's testimony. The record reflects that the trial judge informed the jury that an official transcript of Clayton's testimony was not prepared yet. The judge further informed the jurors that, if they had a specific question about Clayton's testimony, then it might be possible to read back a portion of the testimony. The jury did not follow up on the judge's offer.

(10) A trial judge has broad discretion to determine whether and to what extent to permit the jury, in its deliberations, to rehear trial testimony.<sup>7</sup> There was no abuse of the trial judge's discretion in Watson's case. Thus, appellate counsel cannot be faulted for failing to raise this claim on appeal.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland  
Justice

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<sup>7</sup> *Flonnory v. State*, 893 A.2d 507, 525 (Del. 2006).