

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KEVIN L. DICKENS,	§
	§ No. 278, 2009
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0807041493
	§
Plaintiff Below-	§
Appellee.	§

Submitted: July 9, 2010  
Decided: August 11, 2010

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices

**ORDER**

This 11th day of August 2010, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) On January 23, 2009, the defendant-appellant, Kevin L. Dickens, acting *pro se*, was found guilty by a Superior Court jury of nine counts of Assault in a Detention Facility. He was sentenced to fifty-four years of Level V imprisonment, to be suspended after twenty-one years for probation. This is Dickens’ direct appeal.

(2) The following evidence was presented at trial. In 2008, Dickens was an inmate in the Secure Housing Unit (“SHU”) at the James T. Vaughn Correctional Center in Smyrna, Delaware. On May 6, 2008,

Dickens was removed from his cell so that correctional officers could collect a disposable razor that he had refused to return to them. He told the officers that he would return the razor only after the lights had been turned off. Dickens allowed himself to be handcuffed behind his back before leaving the cell, in accordance with procedure at the SHU. He was then escorted to an interview room, where he was given his lunch. While being escorted to the interview room, Dickens became unruly and started yelling in the face of one of the correctional officers. After entering the interview room, Dickens was shackled to the bottom of a table. One of his hands was uncuffed so that he could be re-cuffed with his hands in front of him to permit him to eat his lunch. Dickens snatched his hand away and began to eat, with the handcuff and the handcuff key dangling from his wrist. After one of the correctional officers demanded that he return the handcuff key, Dickens threw juice from his cup into the officer's face. He then began punching one of the other officers in the face. The officers were unable to subdue Dickens until they sprayed him with pepper spray. The officers sustained bruises, swelling, and lacerations in the incident.

(3) On May 11, 2008, another incident involving Dickens occurred. He told a correctional officer that he would not return his lunch tray until the lights had been turned off. After Dickens repeatedly refused to obey the

officer's orders to return the tray, the quick response team ("QRT"), consisting of six officers in protective gear, was assembled. When Dickens continued to refuse to hand over his tray and refused to come to the door to be cuffed, one of the officers sprayed pepper spray into the cell. Dickens then threw a mixture of feces and urine at the officer. After apparently successfully subduing Dickens with the pepper spray, the QRT entered the cell, at which point Dickens threw more of the mixture at them and covered himself with feces. During the struggle to subdue Dickens, the QRT members were covered with the feces/urine mixture and sustained physical injuries such as lacerations and bruising. Dickens sustained cuts to his ear and feet.

(4) In this appeal, Dickens claims that a) the assault in a detention facility statute, Del. Code Ann. tit. 11, §1254, is unconstitutional because it violates equal protection; b) the Superior Court's denial of his request for a trial continuance to obtain a mental health evaluation was an abuse of discretion; c) he was denied his constitutional right to the assistance of counsel; and d) the Superior Court judges involved in his case were biased against him.

(5) Dickens' first claim is that the Delaware assault in a detention facility statute is unconstitutional because it violates equal protection

principles by treating prisoners differently from non-prisoners. This issue was raised by Dickens in a previous appeal in this Court.<sup>1</sup> In the Order deciding that appeal, we reasoned that, in order for statutory discrimination to be unconstitutional, the distinction drawn must be “patently arbitrary and bear no rational relationship to a legitimate governmental interest.”<sup>2</sup> We concluded that, because the statutory distinction between prisoners and non-prisoners is rationally related to the legitimate state purpose of protecting correctional officers and other employees in detention facilities, there was no violation of equal protection.<sup>3</sup> Dickens’ first claim raises an issue that was previously raised by Dickens in another appeal and decided squarely against him by this Court. As such, the claim is without merit.

(6) Dickens’ second claim is that the Superior Court’s denial of his request for a trial continuance so that he could obtain a mental health evaluation was an abuse of discretion. The record reflects that Dickens’ motion was presented to the Superior Court approximately one week prior to the date his trial was scheduled to commence. On the morning of trial, the Superior Court considered all pre-trial motions, including Dickens’ motion for a mental health evaluation. The judge afforded Dickens ample

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<sup>1</sup> *Dickens v. State*, Del. Supr., No. 472, 2008, Jacobs, J. (July 23, 2010).

<sup>2</sup> *Id.* (citing *Hughes v. State*, 653 A.2d 241, 247 (Del. 1994)).

<sup>3</sup> *Id.*

opportunity to argue the basis of his motion. In denying the motion, the judge found that Dickens already had been afforded a mental health evaluation in 2008, four months prior to the incidents in this case, and, moreover, that Dickens was unable to articulate why a new evaluation was necessary. The record reflects no abuse of discretion on the part of the Superior Court in denying Dickens' request for a new mental health evaluation. As such, we conclude that Dickens' second claim is without merit.

(7) Dickens' third claim is that he was denied his constitutional right to the assistance of counsel. The record reflects that, prior to trial, Dickens voluntarily waived his right to counsel and decided to represent himself.<sup>4</sup> The record also reflects that, in light of the motion judge's denial of his request for a mental health evaluation, Dickens told the trial judge that he wanted to be excused from the trial and tried *in absentia*. After conducting an extensive colloquy with Dickens to ascertain that his decision was voluntary, the trial judge had standby counsel participate in jury selection and then sit as a bystander throughout the trial in case Dickens changed his mind and decided to participate. The trial judge also arranged for Dickens to watch the trial from another location. Dickens, at his request,

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<sup>4</sup> *Snowden v. State*, 672 A.2d 1017, 1020 (Del. 1996).

made a closing statement to the jury. In accordance with Dickens' wishes, the trial judge ruled that his standby counsel would not be representing him at trial. The record reflects that the trial judge properly permitted Dickens to be tried *in absentia*, but did not impinge upon his right to self-representation.<sup>5</sup> Taking all of the above into consideration, we conclude that Dickens' claim of a constitutional denial of his right to counsel is without any factual foundation and is completely without merit.

(8) Dickens' fourth, and final, claim is that the Superior Court judges who dealt with his case throughout the trial process were biased against him. The sole basis for this claim appears to be the fact that the motion and trial judges made rulings adverse to him. However, a judge's adverse rulings, standing alone, do not constitute a valid basis for the judge's disqualification on the ground of bias.<sup>6</sup> In the absence of any factual basis for Dickens' fourth claim, we conclude that it, too, is without merit.

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>5</sup> *Id.*

<sup>6</sup> *Petition of Wittrock*, 649 A.2d 1053, 1054 (Del. 1994).