

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAVAGHN WAPLES,	§
	§
Defendant Below,	§ No. 367, 2020
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§
STATE OF DELAWARE,	§ Cr. ID No. 1812013462B (S)
	§
Plaintiff Below,	§
Appellee.	§

Submitted: November 30, 2020

Decided: January 6, 2021

Before **VAUGHN, TRAYNOR, and MONTGMERY-REEVES** Justices.

ORDER

After consideration of the notice to show cause and the response, it appears to the Court that:

(1) On November 2, 2020, the appellant, Javaghn Waples, filed a notice of appeal from his January 28, 2020 conviction for possession of a firearm by a person prohibited. As Waples acknowledged in his notice of appeal and as reflected on the docket, the Superior Court has not yet sentenced Waples. The Superior Court docket reflects that, on April 3, 2020, the Superior Court granted defense counsel’s request to continue sentencing until Waples could appear in open court.¹ The docket also

¹ For most of the judicial emergency declared in response to the COVID-19 pandemic, the trial courts have not held in-person hearings with incarcerated defendants.

reflects that the Superior Court recently granted the motion to withdraw filed by defense counsel. Waples has filed a motion for appointment of counsel that is currently pending. The Superior Court docket does not reflect that Waples' former counsel or Waples have requested sentencing by video.

(2) The Senior Court Clerk issued a notice directing Waples to show cause why this appeal should not be dismissed based on this Court's lack of jurisdiction under Article IV, § 11(1)(b) of the Delaware Constitution to hear an interlocutory appeal in a criminal matter. In his response to the notice to show cause, Waples addresses his inability to obtain the materials he needs for his motion to proceed *in forma pauperis*, but does not address the interlocutory nature of his appeal.

(3) Under the Delaware Constitution, the Court may review only a final judgment in a criminal case.² Because Waples has not yet been sentenced for his criminal conviction, this appeal is interlocutory and the Court has no jurisdiction to consider it.³ After the Superior Court sentences Waples, he may file an appeal.

NOW, THEREFORE, IT IS ORDERED, under Supreme Court Rule 29(b), that this appeal is DISMISSED.

BY THE COURT:

/s/ Gary F. Traynor
Justice

² Del. Const. art. IV, § 11(1)(b).

³ *Cirwithian v. State*, 2019 WL 7041892, at *1 (Del. Dec. 20, 2019).