

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PETER KOSTYSHYN,)
) No. 176, 2003
 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. 0109019316
)
 Plaintiff Below,)
 Appellee.)

Submitted: January 6, 2004
Decided: January 30, 2004

BEFORE **VEASEY**, Chief Justice, **HOLLAND** and **STEELE**, Justices.

ORDER

This 30th day of January 2004, upon consideration of the briefs of the parties, it appears to the Court as follows:

1. In February 2003, a Superior Court jury convicted Peter Kostyshyn of Criminal Trespass in the Third Degree, Harassment, Offensive Touching, Assault in the Second Degree, and Falsely Reporting an Incident.
2. In this appeal, Kostyshyn seeks *de novo* review of the trial judge's denial of his request to proceed *pro se*.¹ The fundamental right to represent oneself in a criminal proceeding is protected by the Sixth Amendment to the United States

¹ *Stigars*, 674 A.2d at 479.

Constitution and by Article I, § 7 of the Delaware Constitution.² In *Zuppo v. State*, we explained that when entertaining a motion to proceed *pro se* a trial judge must (a) determine if the defendant has made a knowing and intelligent waiver of his right to counsel and (b) inform the defendant of the risks inherent in going forward without the assistance of legal counsel.³ Further, we noted that even when those two steps are followed, a defendant's right to self-representation is not absolute.⁴

3. From the beginning, Kostyshyn engaged the Superior Court in a manner intended to manipulate and disrupt all proceedings related to him. After filing a “raft of motions ..., most of which have no relevance or make much sense,” a trial judge found them, “not worthy of serious consideration and [did] not justify the waste of judicial and other public and private resources that would have to be expended on them.” On the first day of trial, Kostyshyn repeatedly stymied the progress of the trial by raising, though never clearly, the issue of self-representation. When the trial judge repeatedly asked him whether he wished to address the court regarding his representation, Kostyshyn was ambiguous and non-responsive. Finally, the trial judge posed the question, “If he [Kostyshyn's attorney] were to remove himself, are you saying that you want to represent

² *Stigars v. State*, Del. Supr., 674 A.2d 477, 479 (1996); *Hooks v. State*, Del. Supr., 416 A.2d 189, 197 (1980) (citing *Faretta v. California*, 422 U.S. 806, 807 (1975)); *Snowden v. State*, 672 A.2d 1017, 1020 (Del.1996).

³ 807 A.2d at 547 (citing *Faretta v. California*, 422 U.S. 806,835(1975); *Briscoe v. State*, 606 A.2d 103, 107-108 (Del. 1992)).

⁴ *Id.* (citing *Payne v. State*, 367 A.2d 1010, 1015-1017 (Del. 1976)).

yourself?” Kostyshyn’s answer was an unequivocal, “No.” Kostyshyn later confirmed again that he simply wanted *different* trial counsel. Before the jury was empaneled, Kostyshyn again attempted to delay the trial by speaking out repeatedly and attacking his attorney’s competency. When pressed by the trial judge, Kostyshyn made it clear that he did not intend to waive his right to counsel.

4. After the jury was empaneled, Kostyshyn raised, for the first time, questions about his ability to participate in the trial. He indicated through notes passed to his attorney that he “doesn’t feel he’s competent,” and revealed that lack of access to his heart medication was causing significant pain. Finally, as the jury was readied to return, Kostyshyn engaged the trial judge in an exchange about sequestering some members of the gallery.⁵ Frustrated with his attorney, and sensing that the jury would soon return, Kostyshyn then exclaimed, “He’s fired, He’s fired. I request to go *pro se*.” After the trial judge denied his request, he renewed his complaints of physical pain and repeatedly sought to leave the

⁵ The following exchange occurred:

The Court: I take it none of the folks in the gallery are witnesses that need to be sequestered?

Mr. Miller: They’re not mine, Your Honor.

Mr. O’Connell: Two of the people are the ones Mr. Kostyshyn had identified earlier. I have spoken to them outside of Mr. Kostyshyn’s presence and inside his presence, and they don’t believe they are witnesses at all. Mr. Kostyshyn says they’re part of his defense team. They say they’re not.

The Court: Then they can stay in the courtroom.

Defendant: Your Honor, for the record –

The Court: No, Mr. Kostyshyn, not for the record. You’re represented by counsel.

The Defendant: Then I request to leave, Your Honor.

courtroom claiming that he could not physically continue. The trial judge granted Kostyshyn's request to leave the courtroom for medical reasons.

5. In *Zuppo v. State*, we cautioned that the right to self-representation was not a license to disrupt, either the criminal calendar or a trial in progress.⁶ Further, we acknowledged that after a trial has begun, a trial judge may address self-representation after weighing the legitimate interests of the defendant against the prejudice that may result from the potential disruption of proceedings already in progress.⁷ Finally, the United States Supreme Court has noted that a defendant's interest in acting as his own lawyer may be outweighed by the government's interest in ensuring integrity and efficiency in the trial process.⁸ Kostyshyn's behavior is factually apposite to that of the defendant in *Pitts v. State*.⁹ There, we rejected a similar appeal, stating: "Under the difficult circumstances facing the trial judge, he properly exercised his discretion in denying self-representation."¹⁰

6. *De novo* review of the record makes it clear that Kostyshyn made no genuine, unequivocal request to proceed *pro se*. His conduct can only be found to have been disruptive and his purposes purely dilatory. For those reasons, his appeal is wholly without merit. The trial judge patiently delivered logically structured rulings recognizing and reconciling the competing fundamental interests

⁶ 807 A.2d at 547 (citing *Buhl v. Cooksey*, 233 F.3d 783, 797 (3d Cir. 2000)).

⁷ *Id.* at 548 (citing *United States v. Stevens*, 83 F.3d 60, 66-67 (2d Cir. N.Y. 1996)).

⁸ *Id.* (citing *Martinez v. Court of Appeals of California*, 528 U.S. 152, 162, (2000)).

⁹ 1988 WL 113303 (Del.).

¹⁰ *Id.* at **2.

of both Kostyshyn and the State. Accordingly, the trial judge acted appropriately within her discretion by denying Kostyshyn's request to proceed *pro se*.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, AFFIRMED.

/s/ Myron T. Steele
Justice