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IN THE DISTRICT COURT OF APPEAL, FIFTH DISTRICT
STATE OF FLORIDA

JOHN DOBBS,)
)
Appellant,)
)
vs.)
)
STATE OF FLORIDA,)
)
Appellee.)
_____)

DCA CASE NO. 5D07-1057

RESPONSE TO COURT ORDER

Undersigned counsel responds and states as follows:

1. On February 18, 2008, this Honorable Court ordered that the Office of the Public Defender, file a response to Appellant's pro se Motion to Dismiss Counsel. On the same date, undersigned counsel received an attached copy of Appellant's pro se motion, which indicates that the Appellant no longer wants the appointed Public Defender to represent him in this appeal.

2. Appellant's motion to dismiss includes a general assertion of numerous fundamental error arguments he requested be presented by undersigned counsel. On September 24, 2007, undersigned counsel requested additional time to review and consider arguments raised in Appellant's pro se brief submitted to counsel.

3. Upon review, counsel filed a second amended initial brief in this case, prior to Appellant's motion to dismiss counsel, and filed a reply brief. Prior to filing the briefs, counsel reviewed some arguments requested by Appellant, but did not present them for appeal.

Undersigned counsel does not object to Appellant's motion to dismiss counsel, or to present

additional arguments, but stands behind the second amended initial and reply briefs.

4. The second contention is that errors exist in the initial and amended initial briefs as they rely on statement from the transcripts. Counsel acknowledges a general difference of opinion with Appellant about testimony given at trial and the contents of the transcripts. Counsel relied on the transcripts in his review of the record, but outside the allegations in the motion to dismiss, has not been provided specific allegations of inaccuracies in the transcripts. Furthermore, counsel has no response to Appellant's general allegations of counsel's failure to investigate transcript inaccuracies, without citing to specific instances of inaccurate recording or transcription. If Appellant's motion is granted, Appellant will receive the full record on appeal to conduct such review and make specific claims as it relates to his trial.

5. With arguments in the amended initial brief and reply presented to this Honorable Court for review, counsel does not object to being removed to permit Appellant the opportunity to present argument. Appellant should be allowed to present argument for this court's consideration, however, he is not entitled to hybrid representation on appeal. *Logan v. State*, 846 So. 2d 472 (Fla. 2003). While there is no inherent right to pro-se representation at the Appellate level, (See, *Martinez v. Court of Appeal of California*, 528 U.S. 152 (2000)), undersigned counsel likewise has no right to interfere, either with the courts or Appellant's right to present argument, should Mr. Dobbs' request to dismiss counsel and undertake self-representation be granted. Counsel's observations indicate the defendant/appellant's decision is intelligent and voluntary as Appellant has presented a pro se brief with argument to counsel and also seek assistance from his father, a licensed attorney in Michigan, with experience as a criminal defense trial attorney who attended the trial.

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6. The decision to allow a convicted defendant the ability to proceed pro se in appellate proceedings is vested in the sound discretion of the appellate court. *Davis v. State*, 789 So. 2d 978 (Fla. 2001); *Hooks v. State*, 253 So. 2d 424, 427 (Fla. 1971) (citing *Powell v. State*, 206 So. 2d 47 (Fla. 4th DCA 1968); *Bennett v. State*, 389 So. 2d 1225 (Fla. 5th DCA 1980).

7. The Appellant asserts in his motion these arguments are essential to justice. Given the Appellant's express intent, undersigned counsel concludes that continued representation of the Appellant, following the expression of his intention to dismiss counsel, could run afoul of Rules regulating the Florida Bar, in particular the Rules of Professional Conduct under Florida Bar Rule 4-1.16(a)(3), Rule 4-1.16(a)(1), and Rule 4-1.16(3)(b)

8. In the event the instant motion to withdraw is granted, counsel will immediately provide the Appellant with the record as it presently exists.

Respectfully submitted,

JAMES S. PURDY
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT



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COUNSEL FOR APPELLANT

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand delivered to: The Honorable Bill McCollum, Attorney General, 444 Seabreeze Boulevard, Fifth Floor, Daytona Beach, Florida 32118 via his basket at the Fifth District Court of Appeal, and mailed to Mr. John Dobbs, Inmate # C-00618, K1-1202, Santa Rosa Correctional Institution, 5850 E. Milton Road, Milton, Florida 32583-7914, on this 28th day of February 2008.



KEVIN R. HOLTZ
ASSISTANT PUBLIC DEFENDER