

IN THE CRIMINAL COURT OF HAMILTON COUNTY, TENNESSEE

STATE OF TENNESSEE	)	
<i>Plaintiff,</i>	)	DOCKET NO (s). 311081
	)	
v.	)	
	)	DIVISION II
DONYELL DEWAYNE HOLLAND,	)	
<i>Defendant.</i>	)	

**MOTION TO CONSIDER WHETHER
DEFEDANT SHOULD PROCEED PRO SE,
OR ALTERNATIVELY TO WITHDRAW,
OR ALTERNATIVELY TO STRIKE PRO
SE MOTION FOR NEW TRIAL**

Comes now the Defendant, **DONYELL DEWAYNE HOLLAND**, through counsel, and moves the Court for an evidentiary hearing to determine whether the Defendant should proceed pro se with this action. For cause, movant would show that the Defendant has lodged his own pleadings, specifically a motion for a new trial, prematurely, and has assigned as an error the Court's denial of his motion to proceed pro se, which this Defendant argued before the beginning of the jury trial in this cause. Moreover, because the motion for a new trial is jurisdictional in nature, there can only be one pleading that the Court can consider, and indeed only one motion for a new trial has any legal effect whatsoever¹, leaving counsel in a procedural quagmire that can have profound consequences on Mr. Holland's rights and available remedies.²

¹ A defendant in a criminal case may not proceed pro se while simultaneously being represented by counsel. *Williams v. State*, 44 S.W.3d 464, 469 (Tenn. 2001).

² See *State v. Allen*, No. M2014-01475-CCA-R3-CD, 2017 WL 1736711, at *2 (Tenn. Crim. App. May 3, 2017) ("Although the Defendant's pro se motion for a new trial was filed within the thirty days required by Tennessee Criminal Procedure Rule 33(b), the record reflects that the Defendant was represented by trial counsel. As a result, the Defendant's pro se motion was a nullity, which rendered the motion filed by subsequent counsel untimely."); see also *Jackson v. State*, No. W2019-00731-CCA-R3-PC, 2020 WL 5792961, at *5 (Tenn. Crim. App. Sept. 25, 2020).

FILED BY: *[Signature]*
DATE: *6-20-20*
TIME: *3:19 pm*
BY: *[Signature]*

The procedural posture of this matter has changed significantly since the jury returned a guilty verdict, as well as the Defendant's attendant rights and liabilities relative thereto, and the issue ought to be addressed by the Court, as this Defendant continues to file pleadings without the advice and concurrence of counsel and insists on advancing his cause in his own way. The Defendant, of course, does not have to follow the advice of counsel, and indeed can prosecute his defense in his own way, and he is certainly not required to have an attorney represent him. However, what is not permitted is to simultaneously represent oneself and have the assistance of counsel at the ready.³

If the Court finds that this Defendant wishes to proceed pro se, then counsel for the Defendant would move to withdraw as counsel of record in this matter.

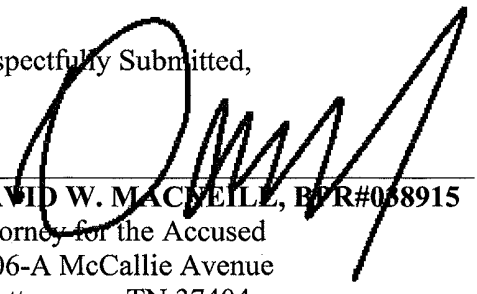
Alternatively, if the Defendant elects to continue to avail himself of the benefit of learned counsel, then Defendant would move to strike the pro se motion for a new trial, and to allow counsel for the Defendant to file a motion for a new trial correctly and consistent with the Tennessee Rules of Criminal Procedure.

WHEREFORE, PREMISES CONSIDERED, DEFENDANT PRAYS THAT:

1. This matter be set for an evidentiary hearing pursuant to T.R.E. Rule 104.
2. The Court enter an order relieving counsel of record of his representation of this Defendant if this Defendant elects to proceed pro se.
3. That the Defendant's Motion for a New Trial, filed pro se, be stricken from the record in this cause if this Defendant elects to continue to be represented by present counsel.
3. General relief.

³ *Williams v. State*, 44 S.W.3d 464, 469 (Tenn. 2001).

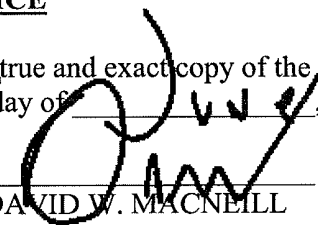
Respectfully Submitted,



DAVID W. MACNEILL, BPR#038915
Attorney for the Accused
1506-A McCallie Avenue
Chattanooga, TN 37404
dmacneill@chattanooga-attorney.com
423-364-4365

CERTIFICATE OF SERVICE

I hereby certify that I mailed or otherwise delivered a true and exact copy of the foregoing motion to all parties of interest or their counsel on this 20 day of July, 2024.



DAVID W. MACNEILL

Cc: Mr. Paul Moyle, III, Assistant District Attorney, 600 Market Street, Suite 310,
Chattanooga, TN 37402

Mr. Charlie Minor, Esq., Assistant District Attorney, 600 Market Street, Suite 310,
Chattanooga, TN 37402

Mr. Donyell Holland, Silverdale Detention Center, 7609 Standifer Gap Road
Chattanooga, TN 37421