

IN THE CRIMINAL COURT OF HAMILTON COUNTY, TENNESSEE

STATE OF TENNESSEE,)
)
Plaintiff,) SECOND DIVISION
)
vs.)
) NO(s). 317210
DONYELL DEWAYNE HOLLAND,)
)
Defendant.)

ORDER APPOINTING ADVISORY COUNSEL

This cause came before the Court upon the request of the Defendant to represent him in the above matter. For the reasons given below, the Court hereby appoints Jay Underwood, to participate as advisory counsel for the Defendant.

The Supreme Court has held that a criminal defendant may proceed *pro se* if his or her decision to do so is voluntary and intelligent.¹ In the present case, and pursuant to Tenn. R. Crim. P. 44(b), the Court conducted a hearing with the Defendant in open court. During this hearing, the Court reviewed with the Defendant, who had been sworn, a list of questions designed to explain the obligations and difficulties of *pro se* representation.² The Court also strongly advised the Defendant that it would be in his best interest to be represented by an attorney, rather than representing himself.

At the conclusion of this hearing, the Defendant requested that he be permitted to represent himself, and he executed a written waiver of the right to counsel as required by Tenn. R. Crim. P. 44(b)(2). Upon the Defendant's request and waiver of the right to counsel, the Court permitted the Defendant to represent himself in the defense of the above case(s).

The Court has also considered the appointment of advisory counsel to assist the Defendant in representing himself.³ Although the exact role of advisory counsel is largely undefined, some basic principles are evident.

¹ See *Faretta v. California*, 422 U.S. 806, 835 (1975) (citing *Johnson v. Zerbst*, 304 U.S. 458, 464-65 (1938)).

² See, e.g., *Smith v. State*, 987 S.W.2d 871, 875 (Tenn. Crim. App. 1998) ("When an accused desires to proceed pro se, the trial judge must conduct an intensive inquiry as to his ability to represent himself.").

³ See *McKaskle v. Wiggins*, 465 U.S. 168, 183 (1984); *Faretta*, 422 U.S. at 834 n.36 (noting that the "State may—even over objection by the accused—appoint a 'standby counsel' to aid the accused if and when the accused requests help, and to be available to represent the accused in the event that termination of the defendant's self-representation is necessary").

- First, the United States Supreme Court has placed two limitations on that role: “First, the *pro se* defendant is entitled to preserve actual control over the case he chooses to present to the jury. . . . Second, participation by standby counsel without the defendant’s consent should not be allowed to destroy the jury’s perception that the defendant is representing himself.”⁴
- Next, the Supreme Court has also observed that a defendant’s right to represent himself is not infringed when standby counsel assists the *pro se* defendant in overcoming routine procedural or evidentiary obstacles to the completion of some specific task, such as introducing evidence or objecting to testimony, that the defendant has clearly shown he wishes to complete. Nor is the right to self-representation infringed when counsel merely helps to ensure the defendant’s compliance with basic rules of courtroom protocol and procedure.⁵
- Finally, the Supreme Court has also recognized that the appointment of advisory counsel can “relieve the [trial] judge of the need to explain and enforce basic rules of courtroom protocol.”⁶

With these principles in mind, the Court believes that appointment of advisory counsel to assist the Defendant is appropriate. In addition, the Court has previously made inquiry as to whether the Defendant is able to afford to hire counsel to assist him in his defense. From these examinations, the Court finds that the Defendant is not able to afford to hire counsel of his choice.

Accordingly, based upon the Defendant’s request and the record as a whole, the Court hereby **ORDERS** as follows:

1. Jay Underwood is hereby appointed as advisory counsel to assist the Defendant in the prosecution of his post-conviction petition, with an appointment fee of \$50.00.
2. Jay Underwood, of course, shall both recognize, and not unreasonably interfere with, the Defendant’s right of self-representation. However, to the extent possible, Mr. Underwood is requested to perform the following tasks, among others, at the request of the Defendant:
 - a. to help explain and enforce basic rules of courtroom protocol, procedure, and decorum;
 - b. to assist the Defendant in overcoming routine procedural or evidentiary obstacles to completing a specific task, such as the introduction of evidence or in making or addressing objections to evidence or testimony, that the Defendant has indicated that he wants to complete;

⁴ See *Wiggins*, 465 U.S. at 178.

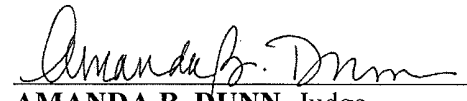
⁵ See *id.* at 183.

⁶ See *id.* at 184.

- c. to aid the Defendant by means of technical assistance in the prosecution of his petition and to assist in preserving the record in the event of a possible appeal by any party; and
- d. to be available to represent the Defendant should the Defendant decide that he no longer wishes to represent himself or if the termination of self-representation becomes necessary for any reason.

It is so ordered.

Enter.


AMANDA B. DUNN, Judge