

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA

vs.

ALBERT EDWARD BROOKE,
Defendant

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:
:

NO. 128 CR 03
129 CR 03

Jean A. Engler, Esquire
Assistant District Attorney

Counsel for Commonwealth

Kent D. Watkins, Esquire

Counsel for Defendant

Criminal Law - PCRA - Self-representation - Competency Required to
Waive Counsel - Ineffectiveness of Standby Counsel

1. To be eligible for PCRA relief, a defendant must establish that the issues on which he bases his claim have not been previously litigated or waived. The question of a defendant's mental competency to waive counsel and to represent himself is not waived during the period of self-representation.
2. A defendant who claims he was mentally incompetent to waive his right to counsel or to enter a plea, has the burden of establishing this claim by a preponderance of the evidence.
3. The focus of a competency inquiry is the defendant's mental capacity; the question is whether he has the cognitive *ability* to understand the proceedings. The competence that is required of a defendant seeking to waive his right to counsel is the competence to *waive the right*, not the competence to represent himself. The level of competency required for a defendant to waive his right to counsel is the same as that required for a defendant to plead guilty or to stand trial.
4. Before a criminal defendant who is mentally competent to waive counsel will be permitted to do so, his decision must be a knowing and voluntary one: it must be established that he was advised of his right to counsel and that he understood both the significance and consequences of not having counsel. The object of the "knowing and voluntary" inquiry, in contrast to that for mental competency, is to determine whether the defendant actually does understand the significance and consequences of a particular decision and whether the decision is uncoerced. In assuming his own representation, a defendant assumes the consequences of that representation, including doing so to his own detriment.
5. A defendant who knowingly and intelligently waives his right to counsel, and has the mental capacity to do so, may not

later claim ineffectiveness of counsel in his own representation of himself.

6. The role of standby counsel to a defendant who insists on representing himself is limited: to assist the defendant if and when he requests assistance and to be available to represent him in the event that termination of the defendant's self-representation is necessary. A defendant who claims that his standby counsel was ineffective must establish that such counsel failed to perform competently within the limited scope of the duties assigned to or assumed by him. Counsel will not be found ineffective for respecting his client's wishes.

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MEMORANDUM OPINION

Nanovic, P.J. - February 4, 2009

The Defendant, Albert Edward Brooke, has appealed from our Order dated November 5, 2008, denying his Petition for Post-Conviction Relief as amended by court-appointed counsel. In his PCRA Petition, two specific issues are raised: whether Defendant was mentally competent to represent himself and whether standby counsel was ineffective in permitting him to enter a plea. Both

issues were fully addressed and discussed in the Memorandum Opinion which accompanied our November 5, 2008 Order and to which the Superior Court is respectfully directed.

Following Defendant's appeal from the November 5, 2008 Order, we directed Defendant to file a concise statement of the matters which he intends to raise on appeal. Defendant has done so. Although this statement appears to raise the same issues included in the PCRA Petition, as amended, and addressed in the Memorandum Opinion of November 5, 2008, to the extent Defendant now seeks to raise additional issues not included in the amended, counseled petition, they have been waived.

In accordance with the foregoing, it is respectfully requested that Defendant's appeal be denied and that our Order of November 5, 2008 be affirmed. For the Court's convenience, a copy of our November 5, 2008 Memorandum Opinion is attached to this opinion.

BY THE COURT:

P.J.