

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: March 11, 2016)

STATE OF RHODE ISLAND

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V.

P1-2004-1286A

JOHN J. EDDY

DECISION

LANPHEAR, J. Before the Court is John J. Eddy’s (Defendant or Mr. Eddy) appeal of a Superior Court Magistrate’s decision denying his motion to correct an illegal sentence or reduce a sentence pursuant to Rule 35 of the Superior Court Rules of Criminal Procedure. On appeal, the Defendant alleges that he was denied counsel during his sentencing hearing in violation of his Sixth Amendment rights and requests that this Court grant him a new sentencing hearing. Jurisdiction is pursuant to G.L. 1956 § 8-2-11.1(d).

I

Facts and Travel

A

The Trial and Sentencing Hearing

On April 21, 2004, the Defendant was indicted on three counts of first-degree child molestation sexual assault and two counts of first-degree sexual assault. Over the course of the next two years, the Court provided the Defendant with three competent and experienced attorneys, all of whom the Defendant discharged. The matter proceeded to trial on February 22, 2006. On the morning that the trial commenced, the Defendant asked whether the trial justice

would consider appointing the Defendant an attorney, should the Defendant make such a request. The trial justice informed the Defendant that he would not grant a request for counsel on the morning that the trial was scheduled to begin. The trial justice noted that the Defendant had chosen not to request counsel, despite many previous opportunities to do so. The next day, after the jury was empaneled and sworn, the Defendant affirmatively requested counsel for the purpose of discussing plea negotiations. The Court denied the Defendant's request for counsel.

On February 24, 2006, a jury found the Defendant guilty on all counts. Mr. Eddy claims that he filed a Motion to Appoint Counsel to represent him in his sentencing hearing on March 20, 2006.¹ In his Motion, the Defendant requested that the Court appoint him counsel prior to any sentencing proceedings because he could not "properly conduct the upcoming sentencing matter as he [had] no knowledge of how to do it and [had] no access to relevant factors to the sentencing." Def.'s Mot. to Appoint Counsel. On April 21, 2006, the trial justice held a hearing on the Defendant's Motion. At the start of the hearing, the trial justice informed the Defendant that the sentencing hearing was scheduled to take place on May 19, 2006. Hr'g Tr. 1:13-14, Apr. 21, 2006. After the trial justice informed the Defendant that he had a right to appeal his conviction following sentencing, the Defendant reinvoked his right to have counsel present at his sentencing hearing. The pertinent portion of the hearing transcript reads:

"The Defendant: I would, you know, I know that the State has objected, and I would re-invoke my right to counsel, to be represented by counsel at that sentencing date, and would like Your Honor to take that under consideration. I did ask on the 23rd of February for counsel, and I'm assuming that request is still . . . I know it was denied on the 23rd, but I would like

¹ This Motion is attached to one of Mr. Eddy's memoranda, but it does not appear to have been filed in March 2006.

counsel to represent me at the sentencing date.” Id. at 4:22-5:4.

The State’s attorney objected on the grounds that the Defendant had dismissed three lawyers throughout the course of the hearing and had waived his right to be represented at sentencing. Id. at 6:7-8, 2:11-12. The trial justice ultimately agreed with the State’s attorney and denied the Defendant’s request. Id. at 6:9. The pertinent portion of the hearing transcript reads:

“The Court: I’m going to deny the request . . . The State has given you three attorneys already. The record will speak for itself, the manner with which you undertook your own defense in this matter. You can’t change your mind every five seconds about whether or not you wish to be represented or not. You have had a constitutional guarantee of three reasonably well-qualified attorneys to undertake your defense. You discharged all three of them.” Id. at 6:9-19.

The Defendant disagreed with the trial justice and stated that his right to counsel at sentencing was “guaranteed” and once again reinvoked his right to an attorney. Id. at 7:9-11.

The trial justice responded,

“The Court: You may do so. Perhaps the Supreme Court may agree with you. I think I have to do what I think is appropriate here based on the travel of this case which I’ve been involved with for over a year. This is not checkers where you can change your mind every other day about who you would like to represent you or how you want to represent yourself. You had more than ample opportunity to have fine, competent attorneys, and you discharged them, so I feel I have discharged my responsibilities to you all the way . . . I would be willing to appoint someone, appoint the Public Defender to represent you for purposes of appeal upon sentencing, but I’m not going to appoint somebody else for sentencing. You can

represent your own views at that time.” Id.
at 7:12-8:3.

On May 19, 2006, the trial justice conducted the sentencing hearing. At the start of the hearing, the Defendant informed the trial justice that he had never received a copy of the presentence report that the trial justice had referred to at the close of the April 21st hearing. Sentencing Hrg. Tr. 1:14-20, May 19, 2006. After the trial justice provided the Defendant with a copy of the presentence report, the Defendant requested additional time to review the report and file objections. Id. at 1-2. The trial justice informed the Defendant that he did not have standing to object to the report and refused the Defendant’s requests. Id. at 2:8:11.

The hearing proceeded and the Defendant once again told the Court that he did not know how to conduct a sentencing hearing and repeated his request for an attorney. Id. at 17:8-13. The trial justice denied his request and reiterated that the Defendant had discharged three attorneys that the Court had previously appointed for him. Id. at 17:24-18:7. The pertinent portion of the sentencing hearing transcript reads:

“The Defendant: Your Honor, as previously mentioned by the defendant, I can’t do this. I mean, I don’t know how to do a sentencing hearing. I asked back on April 28th for an attorney to represent me for this sentencing hearing and it would be the same thing. I don’t know how to address this.

.....

“The Court: Well, the Court is going to deny your request for an attorney as I have in the past. You have already gone through three. Your right of allocution at this time is simply to give you an opportunity to tell this Court what you think about this sentencing. If you don’t wish to do that, that is perfectly fine. You have a right to do that.” Id.

Following the sentencing hearing, the trial justice sentenced the Defendant to life imprisonment on each of the first three counts of first-degree child molestation sexual assault, the sentences to run concurrently. On the last two counts of first degree sexual assault, the trial justice sentenced the Defendant to life imprisonment, the sentences to run concurrently with each other, but to run consecutively to the sentences imposed for the first three counts. The Defendant timely appealed his conviction to the Rhode Island Supreme Court. On appeal, the Defendant argued that he had not voluntarily waived his right to counsel during his trial. He also argued that the trial justice had erred when he refused to appoint counsel to represent the Defendant on the morning his trial began. Notably, the Defendant did not appeal the trial justice's decision denying his request for counsel during the sentencing hearing. On June 26, 2013, the Court issued an opinion, State v. Eddy, 68 A.3d 1089 (R.I. 2013), affirming the judgment of conviction.

In its opinion, the Court noted that the Defendant had discharged three competent attorneys and had "repeatedly and forcefully" requested to proceed as a self-represented litigant. The Court stated that the trial justice had warned the Defendant of the perils of representing himself, on several occasions. Id. at 1100. The Court also noted that the Defendant had a "colorful history of requesting representation, then stridently demanding that his attorneys be discharged." Id. at 1102. The Court determined that the record contained "ample evidence to support the trial justice's conclusion that defendant had attempted to delay the proceedings at every stage of [the] case." Id. Thus, the Court held that the Defendant had voluntarily waived his right to counsel and that the trial justice had not erred when he refused to appoint new counsel to the Defendant on the morning trial was set to commence. Id.

B

May 29, 2015 Hearing Before the Magistrate

On September 24, 2013, the Defendant timely filed a motion to correct an illegal sentence or modify or reduce a sentence pursuant to Rule 35(a) of the Superior Court Rules of Criminal Procedure (Rule 35).² The matter was set to be heard before a Magistrate of the Superior Court. In support of his motion, the Defendant claimed that 1) his sentence exceeded sentences given to similarly-situated defendants; and 2) the trial justice had denied his request for counsel at his sentencing hearing in violation of his Sixth Amendment rights. Along with his Rule 35 motion, the Defendant simultaneously filed a motion with the Court to appoint counsel, which the Magistrate granted. However, in December 2013, the Defendant discharged his court appointed attorney.

In the summer of 2014, the Defendant once again requested that the Court appoint him an attorney. The Magistrate granted his request and appointed a public defender to represent the Defendant. In late 2014, the Defendant requested that he be allowed to discharge his attorney. At a hearing held on August 5, 2014, the Magistrate refused to allow the Defendant to discharge his attorney. The Magistrate explained that he was denying the request because the Defendant had a “history of getting a lawyer and then dumping the lawyer, representing [himself], and then asking to get a lawyer again.” Hr’g Tr. 16:18-20, Aug. 5, 2014. The Defendant appealed the

² Rule 35(a) of the Superior Court Rules of Criminal Procedure entitled “Correction, decrease or increase of sentence” provides, in pertinent part, that:

“The court may correct an illegal sentence at any time. The court may correct a sentence imposed in an illegal manner and it may reduce any sentence when a motion is filed within one hundred and twenty (120) days after the sentence is imposed, or within one hundred and twenty (120) days after receipt by the court of a mandate of the Supreme Court of Rhode Island issued upon affirmance of the judgment or dismissal of the appeal . . .”

Magistrate's decision denying his request to discharge his attorney. On appeal, a trial justice granted the Defendant's request to discharge his attorney and proceed self-represented.

On May 15, 2015, the Defendant filed a motion entitled, "Notice of Voluntary Dismissal (without prejudice) and Notice of Amended Pleadings" under Rhode Island Superior Court Rules of Civil Procedure 41(a)(1)(A) and 15(a). The Defendant sought to dismiss "[a]ny and all other letters submitted by the defendant, that could be construed as a pleading or request for relief, that were submitted to the court since September 24, 2013." Def.'s Notice of Voluntary Dismissal and Notice of Am. Pleadings, at 2. The Magistrate held a hearing on May 29, 2015 on Defendant's Rule 35 motion. At the start of the hearing, the Magistrate outlined the claims before the Court on Defendant's Rule 35 motion. Hr'g Tr. 2:3-5, May 29, 2015. The transcript reads, in pertinent part:

"The Court: The issue [the Defendant] presented in the September 24th, 2013 filing was that he was sentenced to a term of imprisonment that far exceeded the normal terms imposed, and he raised a second issue in that filing that he was sentenced without benefit of counsel.

...

"The Court: On April 15th, 2014, [the Defendant] filed what this Court is treating as an amendment to his original Rule 35 motion indicating that scientific medical evidence, that is, a report from Kent County Memorial Hospital, proved conclusively that he could not have committed these crimes." Id. at 2:7-21.

The Defendant explained that he only planned on addressing whether the trial justice had violated his Sixth Amendment right to counsel at the sentencing hearing. Id. at 4:1-7. The Defendant told the Magistrate that he wanted to withdraw his disproportionate sentencing claim

and address it at a later date. Id. at 4:10-24. The Defendant explained that, although he was prepared to argue the claim, he had not been allowed access to the supporting documentation he had stored at the ACI. Id. The Defendant also requested that the Magistrate allow him to withdraw his claim regarding the 2014 Medical Report. Id. at 5:4-5.

The Magistrate denied his request to withdraw the two claims or amend his petition and told the Defendant to address all three issues. Id. at 5:6-8. The Defendant then insisted that he had submitted the 2014 Medical Report for the limited purpose of putting in on the record, and that he had not intended to proffer it as an additional claim in his original Rule 35 motion. The transcript reads, in pertinent part:

“The Defendant: Well, I would ask the Court to demonstrate to myself, the defendant, how you’re interpreting that submission as some kind of . . . relief that—I don’t see where that is a proper filing before this Court for consideration. So can you demonstrate to me how that’s being interpreted by this Court as such?”

“The Court: Mr. Eddy, you submitted that not only to me but to Judge Krause, and in both submissions you asked for the Court to consider and give you the appropriate relief that those documents would do. Now, Mr. Eddy . . .

“The Defendant: No, I didn’t. I asked it be placed on the record.” Id. at 5:13-6:1.

The Magistrate then reiterated that the Defendant should proceed on all three claims because the Court was not going to hear the matter “piecemeal.” Id. at 6:4-9. The Defendant asked the Magistrate for clarification as to why he had denied the Defendant’s motion. The hearing transcript reads, in pertinent part:

“The Defendant: Is it the Court’s position that neither Rule 41 nor Rule 15 of my submissions govern my right to withdraw any previous pleadings? Is that the Court’s position?”

“The Court: My ruling, sir, is that you presented to this Court three separate issues under Rule 35. You’ve presented nothing to me that allows you to do anything but proceed on those motions or those requests. Rule 41 and Rule 15 are similar rules. I don’t recognize those rules as controlling a Rule 35 request for relief.” Id. at 8:13-22.

The Magistrate then prompted the Defendant to address the Court regarding the 2014 Medical Report claim. Id. at 9:12-13. The Defendant insisted that he had withdrawn that claim, to which the Magistrate replied:

“The Court: You see, Mr. Eddy, you have a history that goes back as far as your trial on this case that you bait and switch on issues. If the Judge allows you to proceed, then you complain that you should not have been allowed to proceed without counsel. And then if you proceed with counsel, you make the opposite argument. This Court will not fall into that trap with you, sir. You will present whatever evidence you want on the [2014 Medical Report] defense, and then we’ll move on to the other issues.” Id. at 9:23-10:7.

After the Defendant finished his argument regarding his right to counsel during the sentencing hearing, the Magistrate remarked on the Defendant’s intelligence and stated that the Defendant had “made an excellent presentation representing [himself].” Id. at 39:9-13. Following the close of the State’s objection to the Defendant’s Rule 35 motion, the Magistrate granted a continuance to allow the Defendant time to submit and present documents to the Court regarding his disproportionate sentencing claim. Id. at 44:12-17. On June 5, 2015, the Defendant filed an appeal of the Magistrate’s decision denying the Defendant’s motion to

dismiss and amend his pleadings. The Defendant mailed his Notice of Appeal to the Magistrate's clerk.

C

July 3, 2015 Hearing Before the Magistrate

On June 12, 2015, the Defendant filed a complaint against the Magistrate with the Commission on Judicial Tenure and Discipline. The Defendant filed a Motion to Recuse Magistrate on June 19, 2015. In support of his Motion, the Defendant alleged that the Magistrate “ha[d], on numerous occasions, made derogatory comments” about the Defendant and treated him with “ill will and contempt.” Def.’s Mot. to Recuse Magistrate, at 2. The Defendant also alleged that the Magistrate intentionally used “dilatatory tactics” during the proceeding and had incorporated ex parte communications with the State’s attorney into the official record. Id. at 2-3.

On July 3, 2015, the Magistrate held a hearing on the Defendant’s Motion to Recuse Magistrate and Rule 35 motion. At the start of the hearing, the Magistrate addressed the Defendant’s June 5, 2015 appeal. Hr’g Tr. 9:8-16, July 3, 2015. The Magistrate informed the Defendant that he had not followed the proper procedure in filing the appeal, and returned the Defendant’s letter containing the Notice of Appeal back to the Defendant. Id. at 9:17-25. Next, the Magistrate addressed the Defendant’s Motion to Recuse Magistrate. Id. at 10:5. The Magistrate stated “[t]here has been absolutely nothing elicited from the defendant indicating that there is any support to show that I have any bias or preconceived opinion in this matter.” Id. at 10:24-11:2. The Magistrate went on to say that the Defendant may have taken offense when the Magistrate referred to him as a rapist. Id. at 11:4-6. However, the Magistrate contended that he

only used the term rapist to describe the Defendant after the Defendant referred to himself as a rapist. Id. at 11:6-11. The Magistrate denied the Defendant's Motion. Id. at 12:3-7.

Lastly, the Magistrate addressed the three claims that the Defendant raised in support of his Rule 35 motion. The Magistrate concluded that the Defendant should have raised the issue as to whether he was improperly denied an attorney at his sentencing hearing when he appealed his conviction to the Supreme Court. Thus, the Magistrate determined that the Defendant was barred from raising that issue in his Rule 35 motion under the doctrine of res judicata. The Magistrate also concluded that the 2014 Medical Report did not prove that the Defendant was innocent of his underlying convictions. Lastly, the Magistrate declined to reduce the Defendant's sentence based on the Defendant's allegation that the sentences were disproportionate in comparison to other similarly-situated defendants. The Magistrate emphasized that sentencing decisions are made on a case-by-case basis and that the trial justice had followed sentencing guidelines. Thus, the Magistrate denied the Defendant's Rule 35 motion.

The Defendant timely appealed the Magistrate's decision. The Defendant essentially makes three arguments on appeal. First, the Defendant contends that the trial justice violated the Defendant's Sixth Amendment right to counsel during his sentencing hearing and requests that this Court grant him a new sentencing hearing. Second, the Defendant claims that the Magistrate had an obligation to recuse himself from the proceedings. Third, the Defendant claims that the Magistrate erred when he instructed his clerk not to file his Notice of Appeal.

II

Standard of Review

A Superior Court justice's review of a magistrate's decision is governed by § 8-2-11.1(d), which provides, in pertinent part, that:

“A party aggrieved by an order entered by the administrator/magistrate shall be entitled to a review of the order by a justice of the superior court. Unless otherwise provided in the rules of procedure of the court, the review shall be on the record and appellate in nature. The court shall, by rules of procedure, establish procedures for review of orders entered by the administrator/magistrate, and for enforcement of contempt adjudications of the administrator/magistrate.” Sec. 8-2-11.1(d).

Pursuant to Superior Court Administrative Order No. 94-12, the Court's review of a magistrate's decision is conducted de novo. Administrative Order No. 94-12(h) provides in pertinent part that:

“The Superior Court justice shall make a de novo determination of those portions to which the appeal is directed and may accept, reject or modify, in whole or in part, the judgment, order or decree of the Master. The justice, however, need not formally conduct a new hearing and may consider the record developed before the Master, making his or her own determination based on that record whether there is competent evidence upon which the Master's judgment, order or decree rests. The justice may also receive further evidence, recall witnesses or recommit the matter to the Master with instructions.” Administrative Order No. 94-12(h).

Accordingly, a Superior Court justice is afforded “broad discretion in his or her review of the [magistrate's] decision.” Paradis v. Heritage Loan & Inv. Co., 678 A.2d 440, 445 (R.I. 1996). On appeal, the trial justice may “accept or reject the evidence presented and . . . need not formally conduct a new hearing.” Id. The record on appeal includes “[t]he original papers and exhibits filed with the clerk of the Superior Court, the transcript of the proceedings, and the docket entries.” Administrative Order 94-12(f).

III

Analysis

A

Defendant's Right to Counsel at the May 19, 2006 Sentencing Hearing

At the proceeding before the Magistrate, the Defendant contended that the trial justice's denial of his request for an attorney at his sentencing hearing violated his Sixth Amendment right to counsel. The Magistrate determined that Defendant should have raised this argument when he appealed his conviction to the Supreme Court and held that the doctrine of res judicata barred the Defendant from bringing the Sixth Amendment claim in his Rule 35 motion.

The doctrine of res judicata precludes litigants from raising for the first time on appeal an issue that should have been raised in a prior proceeding. Carillo v. Moran, 463 A.2d 178, 182 (R.I. 1983). However, the Rhode Island Supreme Court will not consider a sentencing challenge raised pursuant to a Rule 35 motion on direct appeal absent extraordinary circumstances. State v. Day, 925 A.2d 962, 985 (R.I. 2007). It is well settled that in Rhode Island, "a challenge to a criminal sentence must begin with the filing of a [Rule 35] motion in the Superior Court." Id. Only after a defendant "is aggrieved by the Superior Court's decision regarding the motion" may a defendant appeal a sentencing challenge to the Supreme Court. Id. (citing State v. Collins, 679 A.2d 862, 867 (R.I. 1996)).

Here, the Defendant raised his Sixth Amendment claim as grounds for correcting an illegal sentence pursuant to a Rule 35 motion. Because a defendant may not bypass Superior Court review of a Rule 35 motion, the Defendant could not have raised this claim when he appealed his conviction to the Supreme Court. See id. Therefore, the doctrine of res judicata does not apply in this set of circumstances. Accordingly, this Court must consider the merits of

the Defendant's Sixth Amendment claim in the context of his Rule 35 motion to correct an illegal sentence.

The Sixth Amendment affords criminal defendants the right to counsel at all critical stages of the criminal process unless a defendant knowingly and voluntarily waives that right. Montejo v. Louisiana, 556 U.S. 778, 786 (2009). The United States Supreme Court has held that sentencing hearings constitute a critical stage in a criminal proceeding. Gardner v. Florida, 430 U.S. 349, 358 (1977). Therefore, absent a valid waiver, a defendant is entitled to the effective assistance of counsel at sentencing hearings. See id. In this case, it is undisputed that the Defendant validly waived his right to counsel during the trial phase of the proceeding below. See Eddy, 68 A.3d at 1100-01 (“Accordingly, we hold that [Mr. Eddy] validly waived his right to counsel”). However, on appeal, the Defendant alleges that he did not knowingly and voluntarily consent to represent himself at the sentencing hearing. Rather, the Defendant claims that he expressly revoked his earlier waiver prior to sentencing. Thus, the narrow issue before this Court is whether the Defendant's earlier valid waiver during his trial remained in effect at the sentencing hearing.

Neither the United States Supreme Court nor the Rhode Island Supreme Court have ruled on whether a defendant has a right to reinvoke the right to counsel at a sentencing hearing after waiving the right during trial. However, the federal circuit courts—including the First Circuit Court of Appeals—have held that “a trial court must give due consideration to a defendant's request for counsel at sentencing, despite a previous waiver of that right.” Robinson v. Ignacio, 360 F.3d 1044, 1058 (9th Cir. 2004); see also United States v. Taylor, 933 F.2d 307, 311 (5th Cir. 1991) (finding that a District Court erred when it refused to allow a defendant to retract his waiver of his right to counsel at a sentencing hearing); United States v. Mateo, 950 F.2d 44, 50

(1st Cir. 1991) (remanding a case after finding that a defendant had not waived his right to counsel at a sentencing hearing); United States v. Fazzini, 871 F.2d 635, 643 (7th Cir. 1989) (“[A] defendant’s express revocation of an earlier waiver upon the commencement of a new phase of the trial requires at least an inquiry by the district judge into the defendant’s representational desires.”); Davis v. United States, 226 F.2d 834, 840 (8th Cir. 1955) (holding that a defendant’s request for counsel prior to sentencing requires the court to determine whether an earlier waiver has been revoked). The rationale behind this rule appears to be that “the revocation of the waiver is a ‘change in circumstances’ sufficient to require, if not the actual appointment of counsel, at least a new inquiry by the judge.” Fazzini, 871 F.2d at 643.³

However, a defendant’s right to an attorney at sentencing is not unqualified. Robinson, 360 F.3d at 1059. A court may deny a defendant’s renewed request for counsel at sentencing if the request is an attempt to delay proceedings or otherwise abuse the court system. See Fazzini, 871 F.2d at 644 (affirming a trial justice’s denial of a defendant’s request for counsel at sentencing on the grounds that the defendant’s revocation of his earlier waiver “was just a continuation of his attempts before trial to obtain the appointment of a fifth counsel”); but see

³ Several circuit courts have held that a defendant’s valid waiver of the right to counsel during the trial portion of a criminal proceeding *may* remain in effect during sentencing absent a defendant’s express revocation of an earlier waiver or a substantial change in circumstances. United States v. McBride, 362 F.3d 360, 367 (6th Cir. 2004); see also United States v. Unger, 915 F.2d 759, 762 (1st Cir. 1990) (holding that absent an intervening event, a defendant’s prior waiver remained in effect at sentencing); Fazzini, 871 F.2d at 643 (holding that only a substantial change in circumstance requires courts to inquire as to whether a defendant wishes to revoke an earlier waiver at sentencing); Arnold v. United States, 414 F.2d 1056, 1059 (9th Cir. 1969) (holding that after a defendant waives the right to counsel at trial, a court need not obtain a new waiver at every renewed appearance of the Defendant). Following this line of reasoning, because the Defendant reinvoked his right to counsel prior to sentencing, this Court cannot simply conclude that the Defendant’s earlier waiver remained in effect without further analysis. Rather, the Defendant’s revocation of his earlier waiver constituted a substantial change in circumstances, requiring the trial court to at least inquire as to the Defendant’s desire for representation. See Fazzini, 871 F.2d at 643.

Robinson, 360 F.3d at 1059 (holding that the district court had erred in denying a defendant's request for counsel at a sentencing hearing because the record did not support the court's finding that the defendant had requested counsel in bad faith or as a further attempt to delay proceedings); Taylor, 933 F.2d at 311 (holding that the district court erred when it refused to allow a defendant to retract his waiver of the right to counsel at sentencing because nothing in the record suggested that the defendant had requested counsel in an attempt "to achieve some mischief" or delay proceedings). A finding of bad faith may be warranted if a defendant's request is made at the last minute, in the midst of sentencing proceedings, or as a continuation of dilatory tactics which occurred prior to sentencing. See Robinson, 360 F.3d at 1060; Fazzini, 871 F.2d at 644.

Here, there is ample evidence that the Defendant attempted to disrupt and delay the proceedings at trial. At sentencing, however, the Defendant reasserted his request to view the presentence report and once again invoked his right to counsel. The Court cannot infer that the Defendant's actions were merely a continuation of his dilatory tactics or made in bad faith. Rather, the Defendant requested representation and asked for a copy of the presentence report well before the sentencing hearing, not at the last minute or in the midst of sentencing proceedings. See Robinson, 360 F.3d at 1060 (noting that because the defendant sent a letter requesting an attorney well before the sentencing hearing began, his request was not a delay tactic); Taylor, 933 F.2d at 311 (holding that there was no evidence that defendant's request for counsel at sentencing was a delay tactic, especially in light of the fact that he made his request twenty days before the hearing was scheduled).

Further, neither Defendant's motion requesting new counsel nor his conduct during the sentencing hearing indicate that the Defendant strategically requested counsel in order to

manipulate or delay proceedings. See State v. Thornton, 800 A.2d 1016, 1030 (R.I. 2002) (upholding a trial court's decision denying a defendant's last minute request for counsel after finding that the defendant's pre-trial motions indicated that the defendant's requests were strategically designed to manipulate and delay the proceedings). The record reveals that the Defendant told the trial justice on two separate occasions that he needed an attorney because he did not know how to conduct a sentencing hearing. Sentencing Hrg. Tr. 17:8-13, May 19, 2006; Def's Mot. to Appoint Counsel, Mar. 20, 2006. As such, the trial justice's failure to allow the Defendant to withdraw his waiver of counsel at sentencing was improvident. See Taylor, 933 F.2d at 311.

As our Supreme Court has often stated, “[a] judge has no more difficult duty nor awesome responsibility than the pronouncement of sentence in a criminal case.” State v. Crescenzo, 114 R.I. 242, 263, 332 A.2d 421, 433 (1975). There is no doubt that the Defendant in this case turned an already challenging duty into a daunting task for the trial court justice. At sentencing, the Defendant denied responsibility for his disruptive and belligerent conduct during the trial and at one point refused to enter the courtroom. Fortunately, Mr. Eddy was tried before an honorable and distinguished member of this Court, Mr. Justice Darigan. Justice Darigan has conducted hundreds of trials and is not only highly respected among his fellow justices, but also by members of the bar. As our Supreme Court noted in its decision denying the Defendant's appeal, “[t]he record clearly demonstrates that throughout the proceedings, the trial justice exercised great patience with [the Defendant], and, indeed, he ‘bent over backwards’ to accommodate him on numerous occasions.” Eddy, 68 A.3d at 1109.

This Court further emphasizes Justice Darigan's patient efforts throughout the trial to balance the rights of the Defendant with the needs of the victims, his attempts to insulate the jury

from the Defendant's antagonistic attitude towards his attorneys and the Court, and his clear, persistent goal to conduct a fair and efficient trial. Given the Defendant's disruptive conduct and record of requesting and dismissing counsel in an attempt to delay proceedings during the trial, Justice Darigan's refusal to appoint the Defendant new counsel at sentencing, shortly before the victim's scheduled testimony, is not surprising. Even a judge possessing Justice Darigan's trademark courtesy, respect and comprehension of the law has limits. Regardless, in the eyes of this Court, Justice Darigan is a highly esteemed, distinguished gentleman, on and off the bench, with an unfettered reputation.

This Court must now resentence the Defendant. Under normal circumstances, the justice conducting a trial is responsible for sentencing a criminal defendant. See State v. Mollicone, 746 A.2d 135, 137 (R.I. 2000) (holding that there is "a strong policy against interfering with a trial justice's discretion in sentencing matters"). A trial justice is uniquely situated in that he has observed the witnesses' personalities and demeanor during trial, has a keen understanding of the evidence, and is thoroughly familiar with the circumstances of the crime and the many aspects of the defendant's life. See id. at 138 (noting that in imposing a sentence, a trial justice is guided by factors including "(1) the severity of the crime, (2) the defendant's personal, educational, and employment background, (3) the potential for rehabilitation, (4) the element of societal deterrence, and (5) the appropriateness of the punishment"). Occasionally, another judge may be required to step in.

This Court also deeply regrets that this Decision may cause further pain to the victims in this case. One cannot imagine the emotional trauma of attending a trial and then assisting with sentencing. To be asked to do so again is simply unfair, but the Defendant's right to a fair procedure must be paramount. Given the evidence before it, this Court is constrained to find that

the Defendant's Sixth Amendment right to counsel was violated when the trial justice refused to appoint the Defendant an attorney at his sentencing hearing. Accordingly, this Court grants the Defendant's Rule 35 motion to correct an illegal sentence and orders a new sentencing hearing.

B

Defendant's Motion to Recuse the Magistrate

Next, the Defendant claims that the Magistrate had an obligation to recuse himself upon receipt of the Defendant's motion to recuse and upon notice that the Defendant had filed a complaint against him. However, the Defendant's argument is without support.

It is well established that "[t]he party seeking recusal bears the burden of establishing that the judicial officer possesses a personal bias or prejudice by reason of a preconceived or settled opinion." State v. Howard, 23 A.3d 1133, 1136 (R.I. 2011) (internal quotation marks omitted). Judicial officers have a duty to recuse themselves if they are "unable to render a fair or an impartial decision in a particular case." Mattatall v. State, 947 A.2d 896, 902 (R.I. 2008) (quoting Kelly v. Rhode Island Public Transit Authority, 740 A.2d 1243, 1246 (R.I. 1999)). However, judicial officers "have an equally great obligation **not** to disqualify themselves when there is no sound reason to do so." Id. The defendant must show that from the record, "one can reasonably infer from the conduct of the judge that he was unable to render an impartial decision." Cavanagh v. Cavanagh, 118 R.I. 608, 622, 375 A.2d 911, 917 (1977)). The subjective feelings of a criminal defendant "cannot without more constitute the test for the disqualification of a trial judge." State v. Clark, 423 A.2d 1151, 1158 (R.I. 1980).

In his motion to recuse, the Defendant argued—without pointing to any specific occurrences—that on "numerous occasions" the Magistrate had "made derogatory comments about, and to, the defendant." Def.'s Mot. to Recuse Magistrate, at 2. He further alleged that the

Magistrate had treated the Defendant with “ill will” and “contempt.” Id. The Defendant also claimed that the Magistrate engaged in “dilatory tactics,” as well as “ex parte communications with the States [sic] Attorney.” Id. at 2-3.

A full examination of the record reveals that the Magistrate expressed frustration towards the Defendant for his combative behavior during the hearing. However, heated exchanges and critical comments directed toward the Defendant do not, on their own, indicate prejudice. Cavanagh, 118 R.I. at 622, 375 A.2d at 918; see also Crescenzo, 114 R.I. at 261-62, 332 A.2d at 432 (“Prejudice is not established because [the judicial officer] has made his observations in language not used by the diplomatic corps. If it were, disqualification would be a matter of routine rather than the unique situation that it should be.”). Further, the Defendant was able to present his motion in full and the record indicates that the Magistrate heard and fully considered all of the issues that the Defendant raised in his motion. See Cavanagh, 118 R.I. at 622, 375 A.2d at 918 (declining to find prejudice because there was no indication that respondent was unable to present his case in full and noting that all issues raised by the respondent were heard and fully considered). Lastly, the Court cannot find any evidence of the Defendant’s claim that the Magistrate engaged in ex parte communications with the State’s attorney and incorporated these conversations into the record.

Thus, in view of the record in this case, the Court does not find support for the Defendant’s contention that the Magistrate should have disqualified himself from the proceedings. Moreover, as this case is before the Court on de novo review, the Magistrate’s denial of the motion is affirmed.

C

Defendant's Notice of Appeal

On appeal, the Defendant also contends that the Magistrate violated his right to the appellate process when he instructed his clerk not to file the Defendant's June 5, 2015 appeal of the Magistrate's ruling. However, this argument is moot. The Defendant is currently before this Court on de novo review of the Magistrate's denial of the Defendant's Rule 35 motion. See Administrative Order No. 94-12(h). Thus, the Defendant's right to the appellate process has not been violated. Moreover, since the Defendant declined to argue the merits of his argument as it relates to the 2014 Medical Report during this proceeding on appeal, the Court will not address that portion of the Magistrate's decision.

IV

Conclusion

For the reasons stated above, this Court holds that the Defendant's Sixth Amendment right to counsel was violated when the trial justice denied his request for an attorney at sentencing. Accordingly, the Defendant's Rule 35 motion to vacate an illegal sentence is granted in part. This Court will reserve the case for future scheduling. Counsel will be referred for the Defendant. The Defendant is referred to the Public Defender's office for a determination of financial eligibility and for representation, if the Public Defender deems it appropriate. A status conference will be held on March 24, 2016 to discuss determination of Defendant's attorney, the scheduling of sentencing and whether a presentence report is requested.

Mr. Eddy has been convicted of three counts of first-degree child molestation sexual assault and two counts of first-degree sexual assault. He is ordered held without bail.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: State of Rhode Island v. Eddy

CASE NO: P1-2004-1286A

COURT: Providence County Superior Court

DATE DECISION FILED: March 11, 2016

JUSTICE/MAGISTRATE: Lanphear, J.

ATTORNEYS:

For Plaintiff: Shannon G. Signore, Esq.

For Defendant: John J. Eddy, pro se
Rhode Island Public Defender's Office