

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT**

Hillsborough County

Hillsborough Superior Court Southern District

State v. Dale E Holloway, JR

226-2019-CR-00814

ORDER ON STATUS OF COUNSEL

The defendant filed a motion for hearing on status of counsel on October 20, 2020. (Court Index No. 96). The Court granted this motion on October 30, 2020. An ex parte hearing on the status of counsel was held on November 12, 2020. Mr. Holloway and his counsel (Donna J. Brown and Brian T. Lee) attended this closed hearing. The closed hearing was followed by a hearing in the State's presence (ACA Catherine Devine and ACA Brian Grelek-McKeon) during which the Court engaged in an extensive colloquy with Mr. Holloway regarding his right to counsel. After this colloquy, the Court finds that Mr. Holloway has not asserted an unequivocal waiver of his right to counsel. The colloquy made it quite evident that Mr. Holloway desires appointment of new contract counsel. He does not want to represent himself in a criminal proceeding involving charges of attempted murder, first degree assault, second degree assault, felon in possession, and simple assault. Under the applicable law, the Court indulges every reasonable presumption against a waiver of counsel. In this case, the complexity of the discovery, the multitude of witnesses, the necessity for a significant defense investigation, the likelihood of expert trial testimony, and the seriousness of the pending charges run directly against a waiver. Mr. Holloway needs to make informed choices about pretrial and trial strategies with experienced defense counsel. These choices involve difficult decisions of constitutional moment which require advice, direction and guidance from qualified counsel. It became clear over the course of the colloquy that Mr. Holloway was not waiving his right to counsel in a knowing, voluntary and intelligent manner. Quite to the contrary, many of his answers evidenced a reluctance to waive his right of counsel under the existing circumstances. In fact, he asserted on multiple occasions during the colloquy that he was being forced to represent himself.

Attorney Brown and Attorney Lee are providing Mr. Holloway with effective legal representation. He has experienced legal counsel who are conducting a meaningful defense for him. They have filed appropriate motions at different stages of this proceeding to address bail, discovery, extended terms of imprisonment, and other relevant pretrial issues. Further, defense counsel is engaging in strategies to build defenses in this case. Unfortunately, Mr. Holloway disagrees with counsel's approach despite their active involvement with him. He strongly feels that they are not acting in his best interest under his unique view of the applicable law. In essence, he does not trust the combined experience, knowledge and education of two highly capable lawyers who possess a total of 56 years of criminal defense practice. Importantly, both Attorney Brown and Attorney Lee stand ready, willing and able to represent Mr. Holloway. Unfortunately, an irremediable breakdown in the attorney-client relationship has developed based on Mr. Holloway's fervent disagreement with the approach of his counsel. He is unwilling to try to bridge the gap in this disagreement even though defense counsel is willing to address his concerns.

The Court reluctantly grants Mr. Holloway's request for newly appointed contract counsel. However, he needs to be cognizant that while he controls certain moments of constitutional concern in his case (i.e. the right to plead not guilty or guilty; the right to waive a jury trial; and the right to testify on his own behalf), defense counsel are charged with engaging in the legal strategies and judgments related to a zealous and effective defense at both the pretrial and trial stages of this criminal proceeding. It is imperative for Mr. Holloway to develop a trusting relationship with his new counsel and rely on their knowledge, training, education and experience in the pursuit of his defense. Defense counsel are not in any way obligated under the applicable case law or the existing rules of professional conduct to blindly follow the directives of their client. Their obligation is to zealously and effectively represent the interests of their client within the bounds of the law. Mr. Holloway simply needs to be open to taking the advice and direction of counsel after meaningful exchanges with them as this case moves forward.

The Court is extremely appreciative for the quality legal representation provided to Mr. Holloway by Attorney Brown and Attorney Lee. As a result of this order, their representation of Mr. Holloway is terminated and the case administrator shall appoint new contract counsel.

The Clerk is directed to schedule a status webex hearing in 30 days.

November 17, 2020

Date



Judge Charles S. Temple

**Clerk's Notice of Decision
Document Sent to Parties
on 11/18/2020**