Court's 1977 decision in *Superintendent of Belchertown State School v. Saikewicz*, 370 N.E.2d 417 (Mass. 1977), in which it recognized the right to privacy, ruled that it extended to acceptance or rejection of medical care, and noted that it applied even to incompetent individuals. The Massachusetts Supreme Court again supported the rights of the individual over the state in the 1983 case, *Rogers v. Commissioner of Department of Mental Health*, 458 N.E.2d 308 (Mass. 1983). It concluded that an incompetent individual has the right to a full adversarial hearing on the question of forced medication in a hospital setting. It added that no state interest could supersede this right unless it was an emergency, which was very narrowly defined.

In a 1990 case from Washington State, *Washington v. Harper*, 494 U.S. 210 (1990), the U.S. Supreme Court addressed an inmate's right to refuse psychiatric treatment. Of interest, in this case, the Supreme Court of Washington ruled that the DOC's procedures for forced medication did not provide enough protection for the inmate's rights. The U.S. Supreme Court reversed the decision, noting that the state has a legitimate interest in forcible medication to maintain safety in prisons. In coming to this decision, the Court used the test in *Mathews v. Eldridge*, 424 U.S. 319 (1976), which weighs the state's interests against those of an individual and determines the risk of harm due to error in deciding in favor of the government or the individual. This case is similar to *McNabb v. Department of Corrections*, without the explicit statement of the harm of either decision, which would be the possible death of the inmate or the possible violation of the inmate's privacy rights.

Competence to Waive Mitigation

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Affirmed Denial of Postconviction Relief to an Inmate, Concluding That the Competency Standard for Waiving Death Penalty Mitigation Is the Same as the Standard for Competence to Stand Trial and That the Defendant Was Competent to Waive the Penalty Phase Despite His Narcissistic Disorder

In *Commonwealth of Pennsylvania v. Puksar*, 951 A.2d 267 (Pa. 2008), Ronald Puksar appealed the dismissal of his petition for relief under the Post Conviction Relief Act (PCRA). His petition came after he was convicted on two charges of first-degree murder and sentenced to death. He alleged that he had been incompetent to waive the presentation of mitigating evidence because his depression and personality disorder had rendered him incapable of assisting in his defense once he was convicted. The Supreme Court of Pennsylvania affirmed the dismissal of his petition.

Facts of the Case

Ronald Puksar was charged in 1993 with killing his brother, Thomas Puksar, and his sister-in-law, Donna Puksar. He was convicted of first-degree murder with death penalty specifications in both crimes. In the penalty phase, Mr. Puksar waived the presentation of mitigating evidence. The jury sentenced him to life in prison in the murder of Thomas Puksar. For the murder of Donna Puksar, the jury sentenced him to death after finding one aggravating factor and no mitigating factors.

On appeal, the Supreme Court of Pennsylvania affirmed Mr. Puksar's conviction and sentences. The U.S. Supreme Court denied *certiorari*. Mr. Puksar then petitioned for relief under the Post Conviction Relief Act (PCRA), 42 Pa. Cons. Stat. §§ 9541-9546.

Mr. Puksar argued that numerous errors were made in his case. The matter of interest to forensic psychiatrists is Mr. Puksar's contention that he had been incompetent to waive the presentation of mitigating evidence. He alleged ineffective assistance of counsel, since his trial attorney, Adam Sodomsky, knew he had a history of mental illness and should have had him undergo a competence evaluation before his waiver. In support of his argument, Mr. Puksar introduced the testimony of two prior attorneys, two mental health experts, and Mr. Sodomsky.

Mr. Puksar first presented the testimony of John Boccabella, his attorney during his grand jury ap-

pearance in 1991. At that time, Mr. Boccabella received letters from Lew Warden, Mr. Puksar's lawyer in California. Mr. Warden wrote that Mr. Puksar had a "severe mental illness" and described him as "undoubtedly mentally ill," "deranged," "paranoid schizophrenic," and "mentally or emotionally incompetent to act in his own best interests." Mr. Warden also forwarded copies of Mr. Puksar's mental health records. Based on the contents of the letter and the records, Bocabella hired a forensic psychiatrist, Dr. Larry Rotenberg, to evaluate Mr. Puksar.

Mr. Warden, who had represented Mr. Puksar between 1982 and 1991, testified next. He stated that Mr. Puksar had been depressed, unable to perceive his best legal interests, and resistant to psychiatric treatment. He believed that Mr. Puksar had been delusional because he had misled many experts, including Dr. Rotenberg, regarding his history. Based on these factors, Mr. Warden believed Mr. Puksar had been incompetent to assist him in earlier civil litigation.

Mr. Puksar then presented the testimony of Dr. Rotenberg. After interviewing Mr. Puksar for an hour and reviewing records, Dr. Rotenberg's diagnosis was adjustment disorder with mixed depressive and anxious moods as well as a personality disorder, not otherwise specified. In Dr. Rotenberg's words, Mr. Puksar's personality disorder led to his "not having a terribly good contact with reality" which would have been "even more impaired" during the trial.

Dr. Rotenberg opined that Mr. Puksar's personality disorder would have prevented him from assisting counsel during the penalty phase of his trial. He explained how Mr. Puksar could have been competent to stand trial but incompetent to waive the presentation of mitigating evidence because he would have "given up on the system" after he was found guilty. His anger, depression, and anxiety would have combined with his personality disorder and caused him to "say. . .to hell with it all, the world is not the way I want it to be, and therefore, I'm not going to participate" (*Puksar*, p 271). His narcissism would render him "incompetent to say I'm giving up, I'm not participating, do your will." Even though he might have appeared rational and logical, he would have been "infected by the impairment" of his narcissism.

The second forensic psychiatrist called to testify was Dr. Neil Blumberg. He had conducted an interview and psychological testing of Mr. Puksar during a nearly eight-hour evaluation. Based on his evaluation and the records, Dr. Blumberg's diagnosis was depressive disorder as well as a personality disorder that caused Mr. Puksar to lie about his history in a delusional manner.

Dr. Blumberg opined that Mr. Puksar had understood the nature and objective of the mitigation waiver conference but had been unable to participate rationally in his defense. He believed that the appellant "was hoping to self destruct and be executed" during the penalty phase, due to his depression and personality disorder. Like Dr. Rotenberg, Dr. Blumberg believed that Mr. Puksar's incompetence would have arisen abruptly after his conviction.

Finally, Mr. Puksar presented the testimony of Mr. Sodomsky, his trial attorney. He had received Mr. Puksar's mental health records and knew of Dr. Rotenberg's evaluation, but he had not hired a mental health expert to evaluate Mr. Puksar or review his records. He recalled that he had never questioned the appellant's competency. In describing Mr. Puksar, Mr. Sodomsky stated: "[Mr. Puksar was] very adamant in his position, very intelligent, and I enjoyed my conversations with him . . . I never had any indication whatsoever that he wasn't understanding what was being said or that he had any mental deficiency whatsoever."

The Commonwealth of Pennsylvania responded that the testimony of Mr. Puksar's experts was unreliable: Dr. Rotenberg based his opinion on insufficient information, and a substantial amount of time had elapsed between the trial and Dr. Blumberg's evaluation. The commonwealth asserted that observations of the appellant during the trial were more useful in determining competency than evaluations separated in time from the trial. In addition, lay witness testimony may establish competency even if experts provide contrary opinions.

After an evidentiary hearing, the PCRA court dismissed Mr. Puksar's petition. The court stated that, as his counsel, Mr. Sodomsky had the ability to note whether Mr. Puksar had a mental illness that affected his competence. The trial court had also observed Mr. Puksar during the trial and found "no indication that mental health evaluations were necessary." Mr. Puksar then appealed to the Supreme Court of Pennsylvania.

Ruling and Reasoning

The Supreme Court of Pennsylvania did not find merit in Mr. Puksar's claims and affirmed the ruling of the PCRA court denying postconviction relief.

The Supreme Court of Pennsylvania observed that it had not defined a standard of competence to waive the presentation of mitigating evidence, and neither had the U.S. Supreme Court. However, in the landmark case *Godinez v. Moran*, 509 U.S. 389 (1993), the U.S. Supreme Court held that the competence to plead guilty or waive the right to counsel is the same as competence to stand trial. The Supreme Court of Pennsylvania then held in *Commonwealth v. Starr*, 664 A.2d 1326 (Pa. 1995), that the "competency standard for waiving the right to counsel is precisely the same as the competency standard for standing trial, and is not a higher standard" (*Starr*, p 1339). Specifically, "the focus of a competency inquiry is the defendant's mental capacity; the question is whether he has the ability to understand the proceedings" (*Starr*, p 1339).

The Supreme Court of Pennsylvania did not note any reason in this case to establish a different standard for the competence to waive mitigating evidence. The standard for competence to stand trial in Pennsylvania, as established in *Commonwealth v. Appel*, 689 A.2d 891 (Pa. 1997), is whether the defendant has the ability to consult with counsel with a reasonable degree of understanding and whether the defendant has a rational understanding of the nature of the proceedings.

The Supreme Court of Pennsylvania found that the PCRA court did not err in rejecting Mr. Puksar's claim in light of this standard. The appellant's experts did not assert that Mr. Puksar had lacked the capacity to understand the proceedings and what he was waiving. Instead, his experts had opined that he understood the proceedings but had given up on the system itself. This appraisal did not rise to the level of incompetency to waive mitigating evidence.

The Supreme Court of Pennsylvania also considered the fact that there was no disagreement about Mr. Puksar's competence before the penalty phase of his trial. Mr. Sodomsky could not be faulted for not questioning his client's competence if there was no evidence in Mr. Puksar's behavior that indicated incompetence after a guilty verdict. The fact that a defendant wished to waive the presentation of mitigating evidence did not automatically necessitate a psychiatric evaluation of his capacity.

Discussion

This case reinforced the concept of a single standard of competence for standing trial, pleading guilty, and waiving the right to counsel. The Supreme Court of Pennsylvania then extended this standard to the waiver of presentation of mitigating evidence.

It is worthwhile to examine the holding in this case given the recent ruling of the U.S. Supreme Court in *Indiana v. Edwards*, 554 U.S. 208 (2008). In that case, the U.S. Supreme Court held that it was not unconstitutional to establish a higher standard of competence for proceeding *pro se* in a trial than for competence to stand trial with the assistance of an attorney. The reasoning for this included the higher requirements placed on a defendant to mount a defense in the absence of counsel. However, it still held to the earlier ruling in *Godinez v. Moran* that the standard of competence to waive assistance of counsel is the same as the standard for competence to stand trial. In light of this, it is unlikely that the U.S. Supreme Court would define a different standard for competence to waive the presentation of mitigating evidence, since the defendant still possesses the assistance of counsel.

About 20 percent of inmates on death row choose to waive the right to appeal, with the intent of hastening execution. Many find that the quality of life on death row does not merit delaying execution and prefer death to serving life in prison. Thus, Mr. Puksar's decision to waive mitigating evidence can be understood without the presence of mental illness.

Forced Medication for Death Penalty Appeals

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