

ment that Mr. Sykes be competent throughout an SVP adjudication. However, the concurring opinion in *Sykes* validly asserted that purported due process protections, such as the right to counsel, notice, and opportunity to be heard, were effectively diluted if a defendant was incompetent. Although the majority emphasized the civil nature of the SVP hearing as a crucial factor in their decision, SVP proceedings are arguably distinct from other, traditional civil commitment schemes, in that a more compelling liberty interest is at stake. Individuals adjudicated as SVPs face a low likelihood of eventual release or even the ability to complete an SVP program. In addition, if there is minimal emphasis on treatment of co-occurring mental disorders (such as schizophrenia) during an SVP commitment, the probability that an individual will successfully complete an SVP program is even lower. Although the majority in *Sykes* followed the lead of at least seven other jurisdictions in reaching its conclusion, the points delineated in the concurring opinion remain compelling. As referenced in *Foucha v. Louisiana*, 504 U.S. 71, 79 (1992), “[d]ue process requires that the nature of commitment bear some reasonable relation to the purpose for which the individual is committed.” It appears in this case that the reasonable relation is a tenuous one, given that Mr. Sykes’s severe psychiatric illness may not be treated while he is in the SVP program, where he may be held for life, an outcome that Mr. Sykes may not have had the capacity or ability to influence or appreciate throughout his trial.

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Habeas Corpus Petitions and the Antiterrorism and Effective Death Penalty Act of 1996

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Tenth Circuit Court Affirms District Court Denial of a Petition for Habeas Relief of Incompetent Petitioner Based on the Standard Laid Out by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA)

In *Ryder v. Warrior*, 810 F.3d 724 (10th Cir. 2016), an Oklahoma man found guilty of two murders and sentenced to death filed a federal *habeas* petition, arguing that he was not competent to stand trial or to waive his right to present mitigating evidence at trial. He had untreated mental illness, which the Tenth Circuit Court acknowledged. Nonetheless, the court held that, under the narrow review permitted by the Antiterrorism and Effective Death Penalty Act of 1996, it had to affirm the denial of *habeas* relief.

Facts of the Case

On April 8, 1999, James Chandler Ryder killed an elderly woman, Daisy Hallum, and her son, Sam Hallum, in a dispute over Mr. Ryder’s belongings. Mr. Ryder had been collecting supplies with the intention of moving to the Yukon Territory, Canada, before January 1, 2000; the day he believed that the apocalypse would occur. Mr. Ryder believed that the Yukon would be the only place that he could survive this event. His ongoing dispute with the Hallums culminated with Mr. Ryder’s beating Ms. Hallum to death and then shooting and killing her son.

The facts pertaining to the murders and the arrest of Mr. Ryder were essentially undisputed. Mr. Ryder was convicted of two counts of first degree murder and sentenced to death for the murder of Ms. Hallum. Before the trial, a favorable plea agreement had been rejected by Mr. Ryder who had stated that he had preferred death to a life sentence. After his conviction in 2000, but before sentencing, his defense attorney raised questions about a competency evaluation that had been completed before the trial finding Mr. Ryder incompetent to assist his attorney. The defense had decided not to raise this question before the trial, based on the belief that defense’s interaction with the defendant did not create a “good faith doubt” as to his competency. The trial court held a hearing during which Mr. Ryder waived his right to present mitigating evidence. The trial judge ruled, after an extensive hearing, that Mr. Ryder was competent, and knowingly and voluntarily had waived his right to present mitigation at the sentencing phase.

Mr. Ryder, with the assistance of a new attorney, appealed his conviction, arguing that his previous counsel had failed to notify the court of competency issues before the trial and sentencing phase and failed to present adequate mitigating evidence. The case was remanded to the trial court so that a retrospective competency hearing could be completed. Dr. Dean Montgomery, who completed the initial evaluation, was called to discuss the findings of two prior competency evaluations that he had conducted in 2000 and 2002. He testified that Mr. Ryder's competency was questionable and noted his hyperreligiosity and apocalyptic delusions. The jury ultimately found that Mr. Ryder had been competent to stand trial.

An application for postconviction relief with the Oklahoma Court of Criminal Appeals and a petition for writ of *certiorari* to the U.S. Supreme Court were both denied. In 2005, Mr. Ryder filed a writ of *habeas corpus* with the United States District Court for the Eastern District of Oklahoma. He requested equitable tolling and abeyance based on his incompetency and relied on the report of Dr. Raphael Morris. Dr. Morris gave Mr. Ryder a diagnosis of paranoid schizophrenia and offered the opinion that he was not competent and had not been competent at the time of his trial. Mr. Ryder's counsel requested a stay of his *habeas* proceedings "until he could be restored to competency." Two years after this stay was granted, a second motion for equitable tolling and abeyance was filed, noting that "even the most basic communication [with Mr. Ryder] was next to impossible" (*Ryder*, p 734).

The filing led the district court to order a hearing to determine Mr. Ryder's competency. Dr. Lee Ann Preston-Baecht examined Mr. Ryder in 2008 and again in 2009. In 2008, Dr. Preston-Baecht was denied access to the historical records by the magistrate "in an effort to ensure an unbiased evaluation" (*Ryder*, p 734). She described Mr. Ryder as being religiously preoccupied, irritable, and tangential, but noted that he did not appear to "express any obviously delusional ideation" (*Ryder*, p 734). As a result of her limited access to Mr. Ryder's historical documentation, a definitive diagnosis was not provided, though she noted a "likely undiagnosed mental health condition" (*Ryder*, p 734). She opined that Mr. Ryder was competent to assist in his *habeas* proceedings.

Dr. Preston-Baecht was provided the historical documentation for her evaluation in 2009, at which time she observed that Mr. Ryder was "incoherent,

tangential, and delusional." His "significant deterioration" led Dr. Preston-Baecht to diagnose a psychotic disorder, likely paranoid schizophrenia, and opine that he was incompetent.

Based on the reports of Dr. Morris and Dr. Preston-Baecht, the court accepted a stipulation to Mr. Ryder's incompetence for his *habeas* proceedings. During an evidentiary hearing to review these findings, Dr. Morris stated his opinion that Mr. Ryder had been incompetent "well before his *habeas* proceedings commenced" (*Ryder*, p 735). Dr. Preston-Baecht testified regarding her opinion that Mr. Ryder had been incompetent since at least 2009, before her second evaluation.

The court found that Mr. Ryder had been getting progressively worse as a result of paranoid schizophrenia. The court also found that he had failed to show by a preponderance of the evidence that he was incompetent before October 2005 when the statute of limitations on his *habeas* petition ran. The court then found that he became legally incompetent after the 2008 evaluation. Citing the AEDPA limitations of *habeas* claims "to the record that was before the state" (*Ryder*, p 737) and his competence at the time when the statute of limitations expired, the district court held that equitable tolling was not required.

An appeal to the Tenth Circuit Court of Appeals was granted relating to three questions: whether the district court erred in denying a competency-based stay of his *habeas* proceedings; whether Mr. Ryder was incompetent to stand trial and whether the procedures used in Oklahoma violated due process and Sixth Amendment rights; and whether defense counsel was ineffective in failing to fully investigate Mr. Ryder's mental illness as it related to his defense.

Ruling and Reasoning

The court first took up the matter of competency-based stays. The U.S. Supreme Court's ruling in *Ryan v. Gonzales*, 133 S. Ct. 696 (2013), noted that no statutory right exists for a petitioner to be competent during *habeas* proceedings. The Tenth Circuit Court also described the applicable elements of the AEDPA, specifically noting its limitation of *habeas* claims to a review of the record before the state court. Having referenced the ruling in *Gonzales* and the applicable standard of the AEDPA, the court affirmed the ruling of the district court, noting that the denial of a competency-based stay did not constitute abuse of discretion.

The court then addressed the merits of Mr. Ryder's *habeas* claims. These included ineffective assistance of counsel relating to inadequate presentation of mental health status. The court again referenced the standards outlined by the AEDPA. By this standard, a relief from a state court's adjudication would result only from a decision that is "contrary to or involved an unreasonable application of clearly established Federal law," or, "based on an unreasonable determination of the facts" (*Ryder*, p 738). The court ultimately ruled that Mr. Ryder's defense counsel was not ineffective and affirmed the district court's denial of his *habeas* relief.

In response to Mr. Ryder's claim of ineffective counsel in allowing him to waive his right to present mitigating evidence, the Tenth Circuit Court affirmed the finding of the district court. The court reasoned that Mr. Ryder had been found competent at the time of the waiver and the court, having heard directly from Mr. Ryder regarding his willingness to waive this right, found him to be capable of knowingly and voluntarily waiving his right to present mitigating evidence. Citing *Wallace v. Ward*, 191 F.3d 1235 (10th Cir. 1999) the court noted, "failure to present mitigating evidence is not *per se* ineffective assistance of counsel" (*Ryder*, p 749) again stressing the discretion of the trial court.

Discussion

In their conclusion, the Tenth Circuit Court noted the "tragic reality in this case" that "the condition responsible for Mr. Ryder's unwillingness to present mitigating evidence could have been the very evidence that would have persuaded the jury not to impose the death penalty" (*Ryder*, p 749). Observing that Mr. Ryder's mental condition at the time of his waiver of his mitigation case had not yet deteriorated to the point that it would render him incompetent, the court's ruling was affirmed and "compelling mitigating evidence" was never heard by the jury (*Ryder*, p 749). Even the court seemed troubled by its inability to escape the "narrowness of review permitted under AEDPA" (*Ryder*, p 749).

In *Drope v. Missouri*, 420 U.S. 162 (1975), the Supreme Court ruled that during criminal proceedings, a court must reconsider competency whenever the circumstances warrant. When viewed through the narrow scope of the AEDPA, Mr. Ryder's case, along with that of Mr. Gonzales before him, illustrates that, during *habeas* proceedings, a petitioner's

competency is of little consequence. With a psychological evaluation completed two weeks before trial opining that Mr. Ryder was incompetent, it seems that the low bar established in *Drope* would have been met. The fact that a separate evaluation completed 10 years later drew the same conclusion begs the question of how Mr. Ryder's mental illness could be so relevant to his case while being so irrelevant to its outcome.

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Ability to Waive the Right to Counsel When Competency is Questioned

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Ninth Circuit Court Rules That a Defendant Is Required to Have Counsel While Competency to Stand Trial Is in Question

Andrew Kowalczyk was indicted for one count of production of child pornography in 2008, with eight additional counts of production of child pornography four years later. Over six-and-a-half years, nine different defense attorneys were appointed and later withdrawn, and Mr. Kowalczyk was then required to proceed *pro se*, despite the concerns raised about his competency to stand trial. *Amicus* counsel was later appointed. In *United States v. Kowalczyk*, 805 F.3d 847 (9th Cir. 2015), the Ninth Circuit Court of Appeals agreed with Mr. Kowalczyk that counsel is required during competency hearings, but found that the *amicus* counsel appointed by the district court was adequate counsel for Mr. Kowalczyk during the competency hearing.

Facts of the Case

In 2007, Mr. Kowalczyk, who was 33 years old at the time, was arrested when child pornography was allegedly found on a laptop in his possession. In February 2008, he was indicted for one count of production of child pornography. (A superseding indict-