

prison. The court added that there was concern that Mr. Clawson did not pose a “real danger to the community” and that he could be adequately controlled with supervision. He was sentenced to one day followed by 15 years of supervised release, the first 3 years of which he would serve on home confinement with electronic monitoring.

An appeal followed. The government argued that the court erred in reducing Mr. Clawson’s sentence based on his access to medication, not on his substantial cooperation with the government. Mr. Clawson contended that the language of Rule 35(b) does not limit the factors that the court may consider when reducing a sentence. He also argued that the court used Rule 35(b) to prevent a sentence that would have equated to cruel and unusual punishment under the Eighth Amendment, as he would have been incarcerated without access to a needed medication.

Ruling and Reasoning

The Fourth Circuit Court of Appeals held that the district court exceeded its authority under Rule 35(b) by granting the motion based on factors other than the defendant’s cooperation with the government in investigating or prosecuting another person. It found that Federal Rule of Criminal Procedure 35(b) mentions no factors other than assistance to the government that may be considered when deciding sentence reduction. The decision clarified that even if the rules were ambiguous, the heading of the federal rule clarifies its limitations and pointed out that the rule is titled, “Reducing a Sentence *for* Substantial Assistance” (*Clawson*, p 536, italics in original). The court noted that as recently as 2001, the rule explicitly mandated that a district court’s reduction of a defendant’s sentence “reflect[s] a defendant’s subsequent, substantial assistance in the investigation or prosecution of another person who has committed an offense” (*Clawson*, p 536). The court added that the emphasis of Rule 35(b) is on “substantial assistance” and concluded that there could be “troubling and potential consequences” of a broad interpretation of Rule 35(b). In addition, the court disagreed with Mr. Clawson that factors other than assistance may be considered when reducing a sentence. It concluded that, “when deciding whether to grant a Rule 35(b) motion, a district court may not consider any factor other than the defendant’s substantial assistance to the government. Here it is clear that the district court did not adhere to this principle” (*Claw-*

son, p 537). The court also held that the mere possibility of a change in Mr. Clawson’s ADHD treatment did not give rise to an Eighth Amendment violation, as outlined in *Estelle v. Gamble*, 429 U.S. 97 (1976).

Discussion

This case limits the grounds for Rule 35(b) sentence reductions to substantial cooperation with the government. In addition, Mr. Clawson attempted to rely on *Estelle v. Gamble*, wherein the court held that “deliberate indifference to serious medical needs of prisoners constitutes the ‘unnecessary and wanton infliction of pain’ proscribed by the Eighth Amendment” (*Estelle*, p 104). Such deliberate indifference may be manifested by prison doctors, “in their response to the prisoners’ needs or by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed” (*Estelle*, pp 104–5). Mr. Clawson argued that the Bureau of Prisons “announc[ed] its intention to interfere with the regime of treatment that he had been prescribed by his government doctor” (*Clawson*, p 538). The court stated that he had read *Estelle* too broadly and that in the application of *Estelle* to a psychiatric context, the mere difference of opinion regarding an adequate course of treatment does not violate the Eighth Amendment. The court clarified that, in *Bowring v. Godwin*, 551 F.2d 44 (4th Cir. 1977), the appropriate treatment is deferred to sound medical judgment.

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Competency to Stand Trial and Right to Substitute Counsel

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Defendant’s Competency and Right to Substitute Counsel When Purposefully Failing to Communicate With His Attorneys

In *United States v. Simpson*, 645 F.3d 300 (5th Cir. 2011), the Fifth Circuit Court of Appeals deter-

mined that the United States District Court for the Eastern District of Louisiana did not err and upheld the conviction of Eldridge Simpson after determining that he was competent and not entitled to substitute counsel for refusal to communicate with his attorneys and that the use of a liaison counsel did not represent ineffective counsel.

Facts of the Case

Mr. Simpson was indicted on August 10, 2003, for conspiracy to traffic in narcotics, membership in a criminal enterprise, attempted murder, and murder. He was provided two court-appointed attorneys, but he refused to cooperate with them, which caused his attorneys to be concerned that he was incompetent. Five competency hearings were held between March 10 and June 28, 2005. At Mr. Simpson's first competency hearing, Dr. Richard Richoux, the defense expert, testified that Mr. Simpson was not able to assist in his own defense as he was paranoid and did not trust his attorneys. Mr. Simpson refused to cooperate with Dr. Rennie Culver, the government expert who, after reviewing the record, determined that Mr. Simpson was not mentally ill. The hearing was not concluded, to allow the court to obtain Mr. Simpson's mental health records. Dr. Michael Higgins testified on March 14, 2005, that Mr. Simpson did not need medication, was not suicidal, and was not paranoid. Mr. Simpson was subsequently found competent, but on April 27, 2005, a motion was granted to reconsider his competency, and a new competency examination was conducted. Dr. Jim Womack performed the examination at the Federal Medical Center in Texas and reported that Mr. Simpson was not mentally ill. The trial court, however, found that he was incompetent. He was then sent to the Federal Medical Center in Butner, North Carolina, where he was reported competent in February 2006. The court declared him competent at a hearing on April 19, 2006.

A new competency hearing was held on June 9, 2006, after Mr. Simpson requested new counsel and refused to cooperate with his attorneys, who then tried to withdraw from the case. The district court denied the motions and concluded that Mr. Simpson had voluntarily refused to cooperate with his attorneys. At the competency hearing, Dr. Harold Ginzburg testified that Mr. Simpson was paranoid only in respect to his two attorneys. Dr. Ginzburg was not able to rule out malingering, because Mr. Simpson

was not properly medicated. Mr. Simpson indicated to Dr. Ginzburg that he was willing to work with attorneys other than the two who had been appointed. Dr. Culver reiterated previous testimony that Mr. Simpson was not mentally ill and was capable of communicating with his attorneys but refused. Mr. Simpson was found to be competent. The final competency hearing was held June 23, 2006 after Mr. Simpson wrote nonsensical notes during *voir dire*. An expert, consented to by both parties, testified that Mr. Simpson was paranoid but not mentally ill, and the court ruled that he was competent.

On June 28, 2006, the court appointed a liaison counsel to assist Mr. Simpson and his attorneys in working together. Mr. Simpson reported to the liaison counsel that he had lost faith in his attorneys because they questioned his mental health repeatedly and he did not believe unpaid attorneys would give their best efforts.

Mr. Simpson's co-defendant, Terrance Benjamin, was facing the death penalty and pleaded guilty after a death-qualified jury was selected. Mr. Simpson unsuccessfully moved to strike that same jury in his case.

Mr. Simpson also argued on appeal that he was not competent to stand trial and that his Sixth Amendment right to effective representation had been violated. Mr. Simpson also argued that the U.S. District Court for the Eastern District of Louisiana should have honored his request to strike the jury, because he was a noncapital defendant being tried alone and should not be tried by a death-qualified jury.

Ruling and Reasoning

The Fifth Circuit ruled against Mr. Simpson, finding that "A defendant who has it within his voluntary control to . . . cooperat[e], is not incompetent merely because he refuses to cooperate" (*Simpson*, p 306, internal quotations omitted). It noted that the district court had proceeded with the utmost caution regarding his competency, conducting five competency hearings and having him evaluated at two Federal Medical Centers. The court considered that he may have had a mental condition, referring to his symptoms of paranoia. However, his own admission that he would cooperate with lawyers other than the two provided to him and his limited suspicious symptoms helped the court to determine that he was

purposefully refusing to communicate with his attorneys. He also had a history of behavior suggesting that he might exaggerate his symptoms for secondary gain, and there was evidence to suggest he was engaging in manipulative behavior. The court found that the district court's competency finding was neither arbitrary nor unwarranted and affirmed the lower court's decision.

The Fifth Circuit ruled against Mr. Simpson's claim that his Sixth Amendment right to effective counsel had been violated. He argued that his counsel was ineffective for three reasons: a complete breakdown in communication with his attorneys had occurred, entitling him to substitute counsel; the nature of the appointment of liaison counsel was unclear to him and deprived him of his right to an unambiguous appointment of counsel; and the liaison counsel appointment was not conflict free, as the counselor had to serve two masters.

A previous decision by the Fifth Circuit in *United States v. Young*, 482 F.2d 993 (5th Cir. 1973), stated that substitute counsel should be appointed only for "good cause," which includes a complete breakdown in communication. The court had already determined that a conviction reversal was inappropriate when the breakdown can be attributed to the defendant's intransigence and not to the neglect of defense counsel or the trial court. In two cases cited by Mr. Simpson, *United States v. Lott*, 310 F. 1231 (10th Cir. 2002), and *United States v. Mullen*, 32 F.3d 891 (4th Cir. 1994), the circumstances were different. The breakdown in communication in *Lott* occurred because the defense attorney did not respond to the defendant's letters and seemed to ignore the defendant altogether. In *Mullen*, on the day of trial, the defendant had to choose between *pro se* representation and continuing with previously appointed counsel after requesting that a family-hired attorney be appointed to the case. The Fifth Circuit agreed with the district court that Mr. Simpson, not the attorneys, was the root cause of the communication problem that he had experienced with his attorneys. As Mr. Simpson was adjudged competent, it was reasonable to conclude that he was capable of cooperating with his lawyers. The Fifth Circuit could not find good cause to appoint substitute counsel where none exists. "Under the facts before us, neither the Sixth Amendment nor our precedent suggests that Simpson was entitled to the

appointment of substitute counsel" (*Simpson*, pp 308–9).

The court also held that he was not entitled to a non-death-qualified jury.

Discussion

The lack of communication between an attorney and client can affect a defendant's competency to stand trial. Competency is defined as a defendant's having "the present ability to consult with his lawyer with a reasonable degree of rational understanding and a rational as well as factual understanding of the proceedings against him" (*Dusky v. United States*, 362 U.S. 402 (1960)). However, the question here is the defendant's intentional refusal to communicate with his attorney, rather than a mental impairment as the cause of the breakdown in communication. In this case, the defendant's purposeful lack of communication did not make him incompetent. He expressed that he would communicate with other attorneys if they were appointed for him, and he was not pleased with his two appointed attorneys because they questioned his competency.

A defendant's intentional refusal to communicate with his attorneys does not lead to a violation of his Sixth Amendment right, as Mr. Simpson proposed. Rather a defendant's intentional failure to communicate is a problem that the defendant chooses to make for himself. If a breakdown in communication occurs because the attorneys fail to fulfill their legal duties, then the defendant may have cause to request and obtain new counsel. However, this was not so in Mr. Simpson's case. As Mr. Simpson was determined competent, one can assume he could have communicated with his attorneys if he had chosen to do so.

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Continued Civil Commitment of Insanity Acquittees

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