

Unfortunately, 40 years after Mr. Mann's discharge from service and 15 years after he first filed a claim for service connection, his case remains unresolved.

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Determining When to Hold a Competency Hearing

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Granting a Competency Hearing Under Reasonable Cause Is at the Discretion of the Court

In *United States v. Frazier*, No. 13–4462, 2014 U.S. App. Lexis 11646 (4th Cir. 2014), the United States Court of Appeals for the Fourth Circuit, held that an appellant was not entitled to a competency hearing and that he had waived the right to appeal his sentence after accepting a plea in the U.S. District Court of Maryland.

Facts of the Case

On August 14, 2010, Dwayne Frazier and two other individuals carjacked two vehicles and robbed their owners at gunpoint in Baltimore, Maryland; they were caught and arrested that night. In January 2012, a grand jury indicted Mr. Frazier and a co-defendant on charges of conspiracy to commit carjacking, two substantive carjacking counts, two counts of possession and brandishing of a firearm in furtherance of a crime of violence, and possession of a firearm by a convicted felon.

Before the start of Mr. Frazier's trial, defense counsel filed a letter under seal with the district court regarding his concern that Mr. Frazier may not be competent to proceed to trial. In particular, defense counsel questioned Mr. Frazier's ability to weigh the options of going to trial versus accepting a plea, to assist in his defense, and to decide whether to testify.

In an *ex parte* hearing before the judge, Mr. Frazier's attorney described his concerns regarding his in-

teractions with and observations of his client: his stained fingernails, glassy eyes, difficulty with attention and concentration, and inappropriate affect, that, taken together, led him to believe that Mr. Frazier was under the influence of narcotics while in the Chesapeake Detention Facility and may not be able to assist in his defense. Mr. Frazier attributed his strange behavior to high levels of stress and anxiety, for which he was taking Neurontin and Prozac. He also admitted smoking, but explained that he had never had a positive urinalysis for any substance.

At the request of the court, authorities at the detention facility were queried and confirmed that there was no indication that Mr. Frazier had been using illegal drugs while detained. Based on Mr. Frazier's statements and information from the facility, the district court determined that he was competent to proceed to trial. The court also noted that he had written letters to the court in which he was able to express himself without difficulty. The court acknowledged that Mr. Frazier sometimes appeared to giggle inappropriately, but found this behavior consistent with his manner.

Rather than proceed to trial, Mr. Frazier accepted a plea offer and pleaded guilty to one count of carjacking, receiving a sentence of 144 months in prison. He subsequently appealed his sentence, contending that the court had erred: first, by not holding a competency hearing to determine whether he could proceed to trial and by applying the wrong standard in determining his competency by not considering whether he could assist in his own defense and, second, by sentencing him to the agreed upon 144 months' imprisonment.

Ruling and Reasoning

The U. S. Court of Appeals for the Fourth Circuit affirmed the judgment of the district court. On the first contention, the court considered whether the district court had exercised appropriate discretion in deciding against a competency evaluation for Mr. Frazier. The court held that, based on available evidence (i.e., the lack of positive drug screens demonstrating narcotic use, his own statements that his odd behavior was related to stress and anxiety for which he was medicated, and his letter to the court demonstrating his ability to express himself in a coherent and organized way), the trial court did not have reasonable cause to suspect that he was incompetent to proceed to trial.

In response to Mr. Frazier's argument that the trial court had failed to consider both his competency to understand the nature and consequences of the proceedings against him and his competency to assist in his own defense, the court reasoned that his argument mischaracterized the district court's examination during the *ex parte* hearing. The court held that his argument wrongly assumed that the district court had determined that he had a mental disease or defect. The court explained that 18 U.S.C. § 4241 (a) (2012) presupposes that before a court may evaluate the effects of a defendant's mental illness on his ability to understand the nature and consequences of the trial proceedings or to properly assist in his own defense, it must have already found that the defendant in fact has a mental illness. Given that the district court's examination of available evidence did not indicate that he had a mental illness, it was not necessary to proceed with a competency evaluation. The court also held that when given the opportunity to address defense counsel's concerns about competency, he attributed his odd behavior to stress, depression, and prescribed medication. The court reasoned that Mr. Frazier's taking Neurontin and Prozac did not necessarily confirm that he had a mental disease or defect. Finally, the appeals court held that the trial court had no reason to request a competency evaluation, since he did not appear to show signs of incompetency during the *ex parte* hearing or the sentencing hearing and seemed to understand without difficulty and respond appropriately to the court's questions and concerns. Finally, his defense counsel also abandoned his concerns during the plea hearing and stated that Mr. Frazier was competent.

The court concluded that the requirement of 18 U.S.C. § 4241(a) to grant a competency hearing when reasonable cause exists cannot be extended to require such a hearing whenever defense counsel raises concerns about his client's competency or simply because a defendant is taking prescribed medication. Granting a competency hearing when there is reasonable cause is ultimately at the discretion of the district court.

Regarding Mr. Frazier's second contention, that the court erred by deferring to the plea agreement in determining his sentence, the court considered that the recommended 144-month sentence was within a reasonable range. Most important, the court also emphasized

that in his plea agreement Mr. Frazier knowingly waived the right to appeal his sentence; therefore, that portion of his appeal should be dismissed.

Discussion

The appeals court's interpretation of 18 U.S.C. § 4241 creates a potential gap in the application of competency evaluations for defendants who have mental illness that is not yet diagnosed. Requiring that mental illness be present *a priori* to merit a competency evaluation precludes the assessment of offenders (especially, young offenders) who may have an emerging illness and those who are mentally ill but who have not been treated by mental health professionals and so do not have a diagnosis. The court's determination that 18 U.S.C. § 4241 (a) cannot be extended to require competency hearings whenever defense counsel raises concerns about a client's competency curtails a relatively common experience in state courts, where, as the first professional to engage with a person whose mental disease or illness has never been assessed, a defense attorney is often a case finder. Competency evaluations are most often requested by defense counsel. This case raises the question of what evidence would warrant reasonable cause for a competency hearing, if not of the difficulty an attorney has working with a client.

Frazier demonstrates the complexity of the question of legal competency in a criminal court. The presence of mental illness is at the crux of the decision to order a competency evaluation and to determine competency. A diagnosis, however, is not the determining factor in competency; rather, the extent of interference in the legal process, because of a disorder, is at issue in the finding. Mr. Frazier had symptoms that needed to be treated, and, from a mental health perspective, he most likely had a diagnosis; but from a legal point of view, he was able to converse with the court and to accept a resolution that his attorney viewed as indicating that he was competent. Psychiatric diagnoses are based on independent data and factors that emerge from the science of medicine. Competency to proceed in criminal court is a matter of function. In the trial court's assessment, Mr. Frazier functioned well enough and, without a preexisting diagnosis, the court had no reason to question his competency. Thus, no professional mental health evaluation was brought to bear on the issue raised by defense counsel.

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