

of the psychiatrist and social worker. As one example, Mr. Bernard did not see his psychiatrist for 15 months during his 2-year treatment because of his drinking. The court felt it was unjustified to give controlling weight to the opinions of the psychiatrist and social worker because of Mr. Bernard's gaps in appointments and because he was not seen during critical periods (including when he was drinking) or taking his medications regularly.

The court also agreed with the ALJ that Mr. Bernard seemed to stabilize when he was compliant with his medications and that he slept better, had less depressive symptoms, and experienced reduced tremors. In addition, the court opined that his participation in activities such as riding his bike to the library, playing games, handling finances, and performing maintenance work at his apartment building, was inconsistent with his subjective complaints, bringing his credibility into question. Because the treatment team relied only on Mr. Bernard's interpretation of his experience, they were likely relying on noncredible information.

The ALJ had also found that Mr. Bernard had a sparse work history and made no significant attempt to return to work. His making no effort to take vocational or rehabilitative training indicated his lack of motivation to return to work. Considering the lack of medical evidence indicating disability and Mr. Bernard's high activity level, sparse work history, and lack of motivation, the court found that the ALJ had properly denied giving controlling weight to the opinions of his doctors and social worker. The court also found the ALJ had substantial evidence to support denying benefits to Mr. Bernard.

Discussion

While breaking no new ground, this case serves as a reminder that the judge, not the clinician, makes the final decision on Social Security benefits awarded to a person because of mental illness. Although a clinical opinion is given substantial weight, factors that may detract from the clinician's affirming opinion include the patient's reliability in coming to appointments, medication compliance, and tendency to allow substance use to interfere with the medical treatment plan. Additional factors may include the credibility of the person and motivation to make improvements, despite disabilities.

This case highlights the need for treating clinicians to state the bases for their opinions and conclusions.

Without foundational reasoning for the opinion, the court may rightly give it less credence, if evidence in other parts of the record goes against the opinion. Clinicians can further bolster their credibility if they document findings that are inconsistent with their opinions and indicate how they have taken those findings into account.

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Competency to Waive Right to Counsel

Lia N. Rohlehr, PhD
Forensic Psychology Resident

Debra A. Pinals, MD
Associate Professor of Psychiatry

Law and Psychiatry Program
Department of Psychiatry
University of Massachusetts Medical School
Worcester, MA

Mental Condition Can Keep a Defendant from Making a Knowing and Voluntary Waiver of Counsel

In *Holland v. Florida*, 775 F.3d 1294 (11th Cir. 2014), a Florida court convicted Albert Holland of murder and sentenced him to death for the fatal shooting of police officer Scott Winters. The trial court denied Mr. Holland's repeated requests to represent himself. On appeal, the Florida Supreme Court determined that, because of his serious mental disabilities, Mr. Holland did not knowingly and voluntarily waive his right to counsel and thus upheld the trial court. Subsequently, the federal district court issued a writ of *habeas corpus* on the ground that Mr. Holland's right to represent himself was violated. The 11th Circuit agreed with the Florida Supreme Court and reversed the district court's grant of *habeas* relief.

Facts of Case

In October 1979, a fellow inmate in a federal prison knocked Albert Holland unconscious, leaving him with a serious brain injury. In the early 1980s, Mr. Holland was facing charges of robbery in Washington, D.C. His attorney described him as disheveled, incoherent, and unable to interact meaningfully with counsel. The court found him not guilty by

reason of insanity (NGRI) of the robbery, based on testimony from a doctor that Mr. Holland had a mental defect or disease that interfered totally with his ability to appreciate the wrongfulness of his conduct or to conform his behavior to the requirements of law.

Mr. Holland was sent to St. Elizabeths Hospital, Washington, D.C., and doctors diagnosed “schizophrenia, undifferentiated type, and Organic Amnesic Syndrome.” However, there was uncertainty surrounding whether Mr. Holland’s symptoms were due to schizophrenia or more from “organic psychosis” tied to his brain injury. Mr. Holland escaped from St. Elizabeths and was subsequently charged with a new robbery. He was found NGRI a second time and sent to St. Elizabeths. He escaped from the hospital yet again in May 1986.

Four years later, Mr. Holland attacked and brutally beat a woman in Florida. Police searched for the assailant and a K-9 patrol officer found Mr. Holland. According to witnesses, after a struggle, Mr. Holland grabbed the officer’s gun and fatally shot him in the groin and stomach. Mr. Holland was first tried, convicted, and sentenced to death in 1991. During that trial, his disruptive behavior led to his removal from the courtroom. On direct appeal, the Florida Supreme Court reversed his conviction because admission of testimony about his psychiatric examination violated his right to counsel and his right against self-incrimination.

Before the retrial on remand, Mr. Holland began exhibiting suspicion about his attorney. He believed that the attorney was using jail authorities and Mr. Holland’s father to spy on him and tape him during visitation hours. Mr. Holland’s counsel filed a motion alleging that Mr. Holland was incompetent to stand trial. The trial court authorized three mental health experts to examine him for competence to stand trial, and he was deemed competent, although the court acknowledged that the concerns that he expressed raised questions about his mental status.

During further pretrial hearings, Mr. Holland repeatedly requested permission to represent himself and dispense with counsel. The trial court conducted a *Faretta* inquiry, which follows the ruling in *Faretta v. California*, 422 U.S. 806 (1975), which held that criminal defendants have a constitutional right to refuse counsel and represent themselves in state criminal proceedings when such refusal is made volun-

tarily and intelligently. Mr. Holland exhibited little familiarity with the legal process and said he had no training. He offered that he would not violate any rules, but admitted that he did not know the rules he could violate. At this point, the trial court ruled that “Mr. Holland does not have any specific legal training, is not familiar with the rules of evidence, nor trial procedures, is not familiar with how a trial is conducted, even though he’s sat through them in the past” (*Holland*, p 1301). Based on these findings, the court denied his motion to represent himself, finding that he was incapable of doing so. He repeatedly sought to represent himself, and several *Faretta* inquiries were made, each resulting in a denial of his motions.

The jury eventually convicted Mr. Holland of first-degree murder, armed robbery, attempted sexual battery, and attempted first-degree murder. Before the penalty phase began, he asked for new attorneys. This request was denied. He then refused to speak with counsel or the court and instead read a book during court proceedings outside the presence of the jury. The jury recommended the death penalty by a vote of eight to four, and the trial court sentenced him to death. He appealed on the grounds that his constitutional right to represent himself had been violated.

The Florida Supreme Court determined that the trial court did not abuse its discretion in refusing to allow Mr. Holland to represent himself, because “it is clear that the trial court applied the *Johnston* factors in denying Mr. Holland the right to represent himself” (*Holland*, p 1304), referring to *Johnston v. State*, 497 So. 2d 863 (Fla. 1986), which held that in determining whether a defendant has knowingly and intelligently waived his right to counsel, a trial court should inquire into, among other things, the defendant’s age, mental status, and lack of knowledge and experience in criminal proceedings. According to the Florida Supreme Court, “[t]he record contains numerous instances of Mr. Holland’s unstable mental condition” and “it is clear from Mr. Holland’s responses to the trial court’s inquiries that Mr. Holland lacked sufficient knowledge of criminal proceedings” (*Holland*, p 1304). Subsequently, the United States District Court for the Southern District of Florida granted a writ of *habeas corpus* finding that the Florida Supreme Court’s decision was inconsistent with the finding in *Faretta*.

Ruling and Reasoning

The 11th Circuit Court held that the district court erred in ordering *habeas* relief on Mr. Holland's *Faretta* claim, because the Florida Supreme Court reasonably concluded that his mental condition kept him from making a knowing and voluntary waiver of the right to counsel. Of note, this case originated before *Indiana v. Edwards*, 554 U.S. 164 (2008), but the circuit court reviewed these claims anew in light of the points addressed in *Indiana v. Edwards*, to determine whether the decision violated a current understanding of Mr. Holland's constitutional rights as articulated by the U.S. Supreme Court.

The Florida Supreme Court found that Mr. Holland failed to demonstrate that the denial of his self-representation claim was contrary to or an unreasonable application of *Faretta v. California*. The court emphasized that when a defendant seeks to waive the right to counsel, a determination that he is competent to stand trial is not enough. The waiver must be intelligent and voluntary. In addition, a defendant should understand the potential dangers and disadvantages of self-representation. The trial court decision also relied on *Johnston v. State*. Thus, the court ruling indicates that even though *Indiana v. Edwards* was decided well after Mr. Holland's claim, no fault could be found in the Florida Supreme Court's ruling that resulted in a finding also supported by the more current *Edwards* case. Therefore, the grant of the writ of *habeas corpus* was reversed and remanded with instructions for the district court to reinstate Mr. Holland's conviction and sentence.

Discussion

Previous case law has addressed various competencies, as well as the role that mental health plays in legal decisions regarding these competencies. Although the ruling in *Godinez v. Moran*, 509 U.S. 389 (1993), established that the elements of decision-making at trial fall under one standard for competency to stand trial and *Faretta v. California* established that defendants have a right to represent themselves, *Indiana v. Edwards* established that when a defendant seeks to waive his right to counsel, a determination that he is competent to stand trial is not enough. This case supported the views that mental state affects different competencies to different degrees. Although Mr. Holland was deemed competent to stand trial, his mental state precluded him from representing himself and dispensing with de-

fense counsel. It is important to note that a defendant does not need extensive knowledge of the legal system to represent himself. Furthermore, although no formal standard for competence to represent oneself was decided on by the U.S. Supreme Court, a defendant likely does need sufficient presence of mind to represent himself, which can be hampered by symptoms of mental illness. A judge would determine whether the symptoms rose to a level that warranted a finding of incompetence to proceed *pro se*. The *Edwards* Supreme Court decision demonstrated the risk that allowing a defendant with mental illness to represent himself could lead to an unfair and humiliating spectacle of a trial. In this case, the court then offered a protection for defendants with serious mental symptoms by insisting that Mr. Holland have representation. Mental health professionals must be aware of what competencies are required when conducting various types of forensic evaluations. They must also understand, and effectively convey to the court, how specific symptoms of mental illness might affect each particular type of competency.

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Considerations Related to Alternative Educational Placement and Tuition Reimbursement Under IDEA

Amy L. Wevodau, PhD
Fellow in Forensic Psychology

Lauren C. Miller, PhD
Assistant Professor

Law and Psychiatry Program
Department of Psychiatry
University of Massachusetts Medical School
Worcester, MA

The Individuals With Disabilities Education Act (IDEA) Dictates That All Youth be Provided With Access to an Appropriate Education That Meets Their Unique Educational Needs

In *Hardison v. Board of Education of the Oneonta City School District*, 773 F.3d 372 (2d Cir. 2014), the Second Circuit Court of Appeals reversed a determination by the State Review Officer (SRO) denying the parents of A.N.H., an emotionally disabled child,