

Plea Considerations with an Unresolved Competence to Stand Trial Motion

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The Mississippi Supreme Court Ruled That a Hearing to Determine Competence to Stand Trial Must be Held Before Further Judicial Proceedings May Occur if There Is Reasonable Ground to Believe the Defendant Is Incompetent to Stand Trial

In *Hollie v. State*, 174 So. 3d 824 (Miss. 2015), the Supreme Court of Mississippi reversed and remanded a decision by the trial court that convicted a defendant of murder and armed robbery, resulting in a death sentence. The state supreme court decided that the defendant should have been granted an evidentiary hearing on the matter of his competence to stand trial and that his pleas should not have been accepted without a determination on his adjudicative competence. The Mississippi Supreme Court remanded the case to the trial court for a retrial and a hearing on the defendant's competence to stand trial.

Facts of the Case

On September 5, 2009, Erik Wayne Hollie had an argument about religion with Lalit Patel, a gas station employee. The next day, Mr. Hollie returned to the gas station, pulled a knife during an altercation with Mr. Patel, stole a pack of cigarettes, and left without paying for gas. Two days later Mr. Hollie went to the Wesson Pawn and Gun Shop, killed the owner, Denmon Ward, and left with several handguns from the store. Mr. Hollie turned himself in to police the following day, confessing to both crimes. He informed police that he was led to the pawn shop by "the Lord," but did not know the reason why he killed the owner. He made several statements referencing mental health concerns and also made statements that the police could kill him and that he planned to die in the morning.

Mr. Hollie was indicted for armed robbery of Mr. Patel and for the capital murder of Mr. Ward. Mr. Hollie initially declined appointment of an attorney,

but later asked for an attorney to be appointed for him. Defense counsel requested an evaluation of his competence to stand trial and criminal responsibility, and an examination was ordered by the trial judge. The examination was completed by Dr. Criss Lott, but Mr. Hollie pleaded guilty to both crimes before a competency or sanity hearing was provided. Mr. Hollie's pleas were accepted, and the evaluations were never entered into evidence.

At sentencing, Mr. Hollie produced an affidavit prohibiting his attorney from any action in his defense or on his behalf. The affidavit also indicated that Mr. Hollie had made the waiver of his constitutional rights knowingly and voluntarily, against advice of counsel. The jury was then selected without aid of the defense, and Mr. Hollie requested that the jury sentence him to death and "let the Lord deal with [him]" (*Hollie*, p 827).

Mr. Hollie's prior felony conviction (i.e., the armed robbery of Mr. Patel) and the robbery of Mr. Ward after his murder were considered aggravating factors. On the basis of these factors, Mr. Hollie was sentenced to death for the murder of Mr. Ward and to 50 years for armed robbery of Mr. Patel.

Because no motion was made by the defense to appeal or for postconviction relief, the Office of the State Public Defender filed for substitution of counsel and an out-of-time appeal. The trial court granted Mr. Hollie's requests, but after the state argued that the trial court did not have jurisdiction to permit the motions, the trial judge reversed his previous order. The state made a motion to set a date for execution with the Supreme Court of Mississippi, which was denied in accordance with the procedure in Miss. Code Ann. § 99-19-105 (2013), which mandates a review for all death sentences.

Ruling and Reasoning

The Mississippi Supreme Court held that the trial court should have provided a hearing to determine Mr. Hollie's competence to stand trial. Although the convictions were not on direct appeal, the court decided that the trial court had made reversible errors, and the convictions and sentences for both cases were vacated and remanded to the trial court. The court decided that Mr. Hollie would be retried for both cases in the trial court and would be granted a mental evaluation on his competence to stand trial.

The Uniform Rule of Circuit and County Court Practice (U.R.C.C.C.) § 9.06 was adopted by the Mississippi Supreme Court to ensure that Mr. Hol-

lie's constitutional due process rights were protected. This rule holds that the court must order a mental examination of a defendant's competence to stand trial if there is reasonable ground to believe the defendant is incompetent. If such an examination has been ordered, the court must conduct a hearing. The court also relied on previous cases (*Pate v. Robinson*, 383 U.S. 375 (1966); *Coleman v. State*, 127 So.3d 161; *Smith v. State*, 149 So.3d 1027 (Miss. 2014)) that provided a backdrop for the present analysis regarding the necessity of judicial determination of competence to stand trial. Because of the Mississippi Constitution's Double Jeopardy Clause, Mr. Hollie was not eligible for the death penalty upon remand in the trial court.

Dissent

In a dissenting opinion, Justice Randolph discussed the overarching aim to ensure that Mr. Hollie was provided a fair trial and that there was no miscarriage of justice. Justice Randolph argued that the error in this case was not a reversible error, and agreed with the trial court's convictions and sentences. As evidence of his opinion, Justice Randolph cited the two-year period between sentencing and the complaint, as well as the fact that Mr. Hollie did not appeal and did not seek postconviction relief. Justice Randolph reflected on the decision in the 2013 Mississippi case, *Batiste v. State*, 121 So. 3d 808 (Miss. 2013), which held that without a contemporaneous objection, any error made by the trial court is waived. He also purported that the data (i.e., Dr. Lott's evaluation) provided evidence that Mr. Hollie was in fact competent to stand trial and that this opinion was communicated to the court and opposing counsel. Therefore, Justice Randolph argued that there was ample evidence of Mr. Hollie's competence. Further, when given the opportunity, defense counsel did not present any evidence of Mr. Hollie's incompetence. Justice Randolph also addressed the comparisons made to the earlier cases, and asserted that the cases had critical distinctions from Mr. Hollie's case which rendered them inapplicable to the current decision.

Justice Lamar filed a partial dissent, arguing that it is correct to vacate the death sentence, but Mr. Hollie's convictions should not be set aside. In his opinion, the question before the court was whether the evidence supported the finding of a statutory aggravating circumstance to meet criteria for a death sentence.

Discussion

The case of *Hollie v. Mississippi* presents another iteration in the analysis of the necessary due process rights afforded to criminal defendants when mental health may be a concern. As discussed at length in the majority opinion, this decision took into consideration the findings of earlier cases, including *Pate*, *Coleman*, and *Smith*. In *Pate*, the Court found that the defense cannot simultaneously argue a defendant is incompetent and waive the right to a trial due to the inherent decisional capacities necessary to make such a waiver. Although a contemporaneous objection was not made before the trial court, the Supreme Court held that a reversible error was made due to the violation of the defendant's constitutional rights to a fair trial when his competency remained in question. This decision closely resembles the case of *Hollie*, as a basis of the dissent was the lack of a contemporaneous objection made before the trial court. Although an examination was ordered and completed, a hearing was not provided, and Mr. Hollie's plea was accepted without further inquiry into his competency.

The decision in *Hollie* speaks to the broader question of why such hearings are necessary in protecting the rights of criminal defendants. In accordance with URCCC § 9.06 and as established by earlier cases, the trial court must provide a separate competency hearing before resuming trial proceedings once a mental health evaluation has been completed. As established in *Daubert*, the trial judge has the authority to determine whether an expert's psycholegal opinion is reliable and relevant and, therefore, whether it should be admitted into evidence. However, it is insufficient for a trial judge to simply review and accept the expert's opinion once admitted, as it would result in a deprivation of due process and a defendant may not receive a fair trial (*Pate v. Robinson*). For example, without an adversarial hearing on competency, a defendant would not have the opportunity to question or challenge the expert's findings, or to present a second opinion. This is the standard protocol for evidence admitted into criminal proceedings, but it is sometimes overlooked regarding the question of a defendant's mental health. Without a hearing, a defendant's right to present evidence and to defend himself would be compromised, and criminal trials might continue without adequate appraisal of whether the defendant meets criteria for competence to stand trial. Incompetent defendants may fall through the cracks and get funneled through an ad-

versarial system they do not understand or appreciate, in violation of due process.

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Redaction of Court-Ordered Competence to Stand Trial Evaluations

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The Vermont Rules for Public Access to Court Records (P.A.C.R.) State That Relevant Portions of Competency Reports Otherwise Accessible by the Public May be Redacted but Require a Specific Finding of “Good Cause” and “Exceptional Circumstances” on a Case-Specific Basis

In the current case, the Vermont Supreme Court combined two Superior Court cases in which the judge made similar rulings. In *State v. Gotavaskas*, 134 A.3d 536 (Vt. 2015), the Vermont Supreme Court reversed decisions by a superior court judge to seal portions of competence-to-stand-trial reports of defendants in two separate criminal cases. The Vermont Supreme Court held that the Vermont Rules for Public Access to Court Records (P.A.C.R., 2015) required a necessary showing of “good cause” and “exceptional circumstances” on a case-by-case basis to redact nonrelevant portions of a forensic report entered into evidence. The cases were reversed and remanded to the superior court so that proper findings could be made on the relevance of information in the competence reports.

Facts of the Case

Anthony Gotavaskas was charged with burglary of an occupied dwelling, providing false information, and operation of a motor vehicle without the owner’s consent in 2013. During arraignment, he raised the question of competence to stand trial, and the trial court ordered an evaluation of his competence. He

was evaluated by a psychiatrist who opined that he was competent. The state offered the competency evaluation into evidence during a competency hearing, arguing that the entire report should be entered into evidence under Vt. Stat. Ann. tit. 13, § 4816(e) (2015). Mr. Gotavaskas stipulated to the finding of competence but objected to the admission of the entire report into evidence. He offered a redacted report which excluded portions that he felt were not relevant to the opinion. The state argued that the psychiatrist relied on all portions of the report to reach his decision; thus, the entire report should be entered into evidence. The court redacted the competency report to include only information about the psychiatrist’s impression of Mr. Gotavaskas and specific findings related to competence. The nonredacted portions of the report were entered into evidence, and the redacted portions were excluded because the court felt they were “less relevant” to the finding of competency.

Approximately six months later, Mr. Gotavaskas was evaluated by the same psychiatrist, who opined Mr. Gotavaskas was not competent to stand trial, and the court so ruled. Both parties stipulated to a finding of incompetency but again disagreed about the portions of the report that should be entered into evidence.

The second case involved Grant Bercik, who was charged with simple assault in September 2013. Several months later, the court granted motions for competency and sanity evaluations. Mr. Bercik was evaluated by a psychiatrist who opined that he was not competent to stand trial. During the competency hearing, the state and the defense both agreed that Mr. Bercik was not competent, but differed regarding whether the competency report would be admitted into evidence. The state argued to have the entire report admitted into evidence, but Mr. Bercik requested that the court temporarily seal the report. Although the report was not entered into evidence, the court made a finding of incompetency based on the conclusions contained in the report and sealed it.

The two defendants moved for the court to redact their competency evaluations to include only portions relevant to competency pursuant to Vt. Stat. Ann. tit. 13, §4816(e)(2015) and the P.A.C.R. § 6(a) (2015). The court granted the defendants’ motions, ruling that the defendants had a privacy interest and that the redacted information (“personal history, past diagnoses, medical and substance abuse history,