

Incompetency Periods in Speedy Trial Calculations

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Time During Which a Defendant Is Not Competent to Stand Trial is Excludable for Purposes of Calculating a Speedy Trial

In *Newman v. Cottrell*, 503 S.W.3d 74 (Ark. 2016), the Supreme Court of Arkansas vacated and remanded the capital murder conviction of Rickey Newman on the grounds that the defendant was not competent to stand trial at the time of his conviction. Nearly two years later, the Crawford County Circuit Court found Mr. Newman fit to proceed through retrial. Mr. Newman moved to dismiss for violations of his right to a speedy trial. The circuit court judge Gary Cottrell denied the motion. Mr. Newman petitioned for writ of *certiorari* to the state supreme court, who denied the petition.

Facts of the Case

The Crawford County Circuit Court convicted Mr. Newman of one count of capital murder on June 10, 2002, and sentenced him to death. On January 16, 2014, the Supreme Court of Arkansas vacated the conviction and sentence and remanded the case to the circuit court on the grounds that Mr. Newman was not competent to stand trial at the time of his original trial in 2002. The mandate was issued on February 5, 2014. On February 28, 2014, the circuit court suspended proceedings and committed Mr. Newman to the custody of the Arkansas Department of Human Services for restoration of fitness to proceed. On advice of his counsel, Mr. Newman refused to cooperate with any assessment. On April 21, 2014, Mark Peacock, PhD, of the Arkansas State Hospital, filed a report stating that he could not assess the true extent of Mr. Newman's knowledge or his capacity to assist his attorney due to Mr. New-

man's lack of cooperation. Dr. Peacock opined that Mr. Newman's refusal to cooperate was a voluntary act and not based on mental disease or defect.

Mr. Newman filed a motion to disqualify the prosecuting attorney. On August 27, 2014, the circuit court granted the motion and appointed a special prosecutor. After the court granted the special prosecutor a continuance, the trial moved from October 27, 2014, to April 6, 2015. On October 10, 2014, the special prosecutor filed a motion for a fitness examination on the basis of the previous judicial finding of Mr. Newman's incompetence and a letter written to the court by Mr. Newman, without his counsel's knowledge, that stated Mr. Newman thought his competency had not changed since his trial in 2002. In the letter, he also requested that the death penalty remain an option, despite maintaining his innocence, because death would be his only peace. The court granted the motion for evaluation on November 6, 2014, and allowed Bradley Diner, MD, a private psychiatrist not practicing with the Arkansas State Hospital, to examine Mr. Newman. On February 26, 2015, Dr. Diner filed his report to the court, stating that he could not fully assess Mr. Newman's fitness on the basis of records alone, that he believed Mr. Newman's behavior was deliberate, and that he recommended Mr. Newman return to the Arkansas State Hospital for assessment by direct examination and observation of his behavior, affect, interpersonal interactions, and cognitive skills.

On April 1, 2015, the circuit court again ordered Mr. Newman to the Arkansas State Hospital, citing that there had been no meaningful evidence presented that suggested a material change in Mr. Newman's fitness since the time of his first trial in 2002. On June 25, 2015, Dr. Peacock filed a report with the circuit court stating that Mr. Newman had achieved restoration. At a subsequent hearing held on September 18, 2015, the court requested a final report from Dr. Diner, which he filed on October 2, 2015, opining that Mr. Newman was fit to proceed. The court agreed with the opinions of Drs. Peacock and Diner and found Mr. Newman fit to proceed on November 4, 2015. Mr. Newman subsequently filed a motion to dismiss his case for violation of the right to a speedy trial, which the circuit court denied, and a petition for writ of *certiorari* was filed.

Ruling and Reasoning

The Supreme Court of Arkansas denied the petition. The court found no error on the face of the record or that Mr. Newman met the requirements of a writ of *certiorari* as set forth in *Smith v. Fox*, 193 S.W.3d 238 (Ark. 2004). Arkansas Rule of Criminal Procedure 28 requires the state to try a defendant within 12 months, excluding periods of authorized delay. Ark. R. Crim. P. 28.3(a) (2002) specifies exclusionary periods as “resulting from other proceedings concerning the defendant, including but not limited to an examination and hearing on the competency of the defendant and the period during which he is incompetent to stand trial, hearings on pretrial motions, interlocutory appeals, and trials of other charges against the defendant.” In addition, Ark. R. Crim. P. 28.2(f) (2002) states “the time for trial shall commence running from the date of the order invalidating the conviction, unless the state appeals the order invalidating the conviction, in which case the time for trial shall commence running on the date of remand by the appellate court.” Therefore, the time for trial started on February 7, 2014, the date on which the mandate was issued to remand the case back to the circuit court for a new trial. This start date required that the state try Mr. Newman by February 7, 2015, unless there were authorized periods of delay.

Mr. Newman argued that while there were authorized periods of delay, his right to a speedy trial was violated despite these authorized periods. He based this argument on the court’s ruling in *Davis v. State*, 291 S.W.3d 164 (Ark. 2009), in which the court ruled that the circuit court erred by excluding the entire period between an order for mental evaluation and the subsequent hearing, rather than only the time between the order for evaluation and the filing of the report from the evaluation. Based on this ruling, Mr. Newman argued that the date required for speedy trial should only have been extended to September 22, 2015, using only the time between the evaluation orders and the filing of the reports as excludable.

The court noted that Mr. Newman disregarded the portion of Ark. R. Crim. P. 28.3(a) which states that the period during which a defendant is incompetent to stand trial is excludable for purposes of determining a speedy trial. In *Davis*, the

defendant had not yet been found incompetent, so this portion of Ark. R. Crim. P. 28.3(a) did not apply. As Mr. Newman had not been ruled competent during the period from the mandate on February 7, 2014, until November 4, 2015, this entire period was excludable and Mr. Newman’s right to a speedy trial had not been violated. Moreover, the court highlighted that if a defendant has been ruled incompetent, then the court must find him restored to competency before proceedings can continue, per *State v. Thomas*, 439 S.W.3d 690 (Ark. 2014).

Discussion

This case highlights two main points of interest. First, after having his June 10, 2002, conviction reversed and remanded because a postconviction appeal found that he had lacked the fitness to proceed during the time of his original trial, he was assumed, without current fitness-to-proceed evaluation, to lack fitness to proceed after more than 11 years from the time of his original trial and was committed to the Arkansas State Hospital for restoration treatment. Since fitness to proceed, like other competences, is time and task specific, this finding highlights various perspectives regarding fitness to proceed, such as the relevance of proximity of evaluation to determination of fitness versus the court’s view that, in the absence of new evidence to the contrary, an individual previously found not fit remains presumed unfit. Second, the case emphasizes that delays due to the court’s finding of lack of competence, regardless of duration, do not count against speedy trial requirements, highlighting that determinations of fitness are the court’s discretion and not completed at the time of the fitness-to-proceed evaluations. Another interesting aspect of the case is that the defendant’s lack of cooperation with the evaluations, on advice of his counsel, further prolonged the process. Had the court found that the delay violated the speedy trial requirements, it would have created undue burdens on the restoration process to meet the speedy trial requirements and perhaps would have provided motivation for other defendants to delay their trial process by refusing cooperation with fitness evaluations.

Disclosures of financial or other potential conflicts of interest: None.