

found that the additional requirement of an overall assessment did not reduce the liberty of a defendant by applying medical community standards incorrectly through identifying strengths to offset determined weaknesses in adaptive functioning and, therefore, did not exceed the state's authority as recognized by the Supreme Court to define intellectual disability. The decision highlights that, while states are tasked with determining which defendants have intellectual disability, this determination can vary procedurally among states if the state's procedure of determination comports with existing federal law to ensure the decisions are guided by medical knowledge and provide protections to defendants who have intellectual disabilities.

Threshold for Repeated Competency Evaluations

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No Abuse of Discretion in Denying Additional Competency Hearings Before Trial and Sentencing

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In *United States v. Cometa*, 966 F.3d 1285 (11th Cir. 2020), the Eleventh Circuit Court of Appeals considered an appellant's claim that a federal district court had erred in not holding additional trial competency hearings. The appellant also asserted that the district court had not sufficiently weighted the evidence that supported his claim as to the need for additional hearings. The court affirmed the district court's ruling.

Facts of the Case

In December 2016, Stephen Cometa, a military veteran, arrived at his psychiatrist's office with two semiautomatic weapons. A struggle ensued, during which the weapon discharged twice. No one was injured. During an interview with the FBI, Mr.

Cometa related that he had been unhappy with his treatment for chronic pain and posttraumatic stress disorder (PTSD). He was subsequently indicted for assault with a firearm, as well as other charges.

Mr. Cometa was evaluated for competency to stand trial two days after his arrest. Dr. Michel Herkov, a psychologist, opined that Mr. Cometa had bipolar disorder and was incompetent to proceed because he would have difficulty assisting his attorney in the preparation of a defense. Mr. Cometa was also evaluated by Dr. Lisa Feldman, a forensic psychologist, who concluded that Mr. Cometa was displaying signs of a mental disorder and was not competent. In May 2017, Mr. Cometa was committed for competency restoration. During the four-month period of competency restoration, Mr. Cometa was treated by mental health professionals, including Dr. Evan Du Bois, who diagnosed borderline personality disorder and PTSD. He was returned to jail with a recommendation that he be found competent to proceed. Two months later, defense counsel informed the district court about their concern that Mr. Cometa was becoming incompetent again, and informed the court of their intent to employ the insanity defense. Mr. Cometa was then recommitted for evaluation of his competency as well as his sanity at the time of his alleged offenses.

Six months later, Dr. Du Bois reported that Mr. Cometa remained competent and that fluctuations in Mr. Cometa's presentation were not due to a serious mental illness, but instead to an underlying personality disorder. Dr. Du Bois opined that Mr. Cometa's symptoms were not likely to be amenable to medication management, and that, during the evaluation period, Mr. Cometa had not been prescribed medication. Additionally, Dr. Du Bois noted that Mr. Cometa did not satisfy the requirements for the insanity defense.

At a second arraignment in 2018, Mr. Cometa's new counsel related concerns over the "anguish" that Mr. Cometa was experiencing. Mr. Cometa had informed counsel that he wanted to plead guilty and be executed "within 30 days." Nevertheless, counsel did not believe Mr. Cometa's statements necessarily meant he was incompetent to proceed. The district court then found that, despite the fact that Mr. Cometa refused to indicate understanding as to his charges and their associated penalties, he did indeed understand said matters.

At trial, Mr. Cometa's counsel requested a new inquiry into his client's competence on the basis of a

review of Mr. Cometa's history, as well as prior expert reports indicating Mr. Cometa's incompetence to proceed. Counsel also raised concerns about his client's inconsistent stance regarding an insanity defense, as well as his inability to make a decision on whether or not to testify. Testimony was adduced concerning Mr. Cometa's "severe mental illness" history. The district court found that Mr. Cometa was physically and mentally capable of testifying, and was only "pretending not to be able to" (*Cometa*, p 1290). Mr. Cometa was found guilty by the jury.

Mr. Cometa then filed a motion to be allowed to proceed *pro se*. He also requested that he receive a new psychological evaluation related to his objections concerning information in the presentence report asserting that he would pose a risk to the community. The district court determined that, although the court considered it unwise for Mr. Cometa to represent himself, Mr. Cometa's requested waiver of counsel was knowing and voluntary. Counsel was dismissed. The district court denied his request for a new psychological evaluation because he had already been afforded multiple psychological evaluations. Mr. Cometa was sentenced in March 2019. He appealed, arguing that the district court erred in not ordering additional competency hearings prior to his trial.

Ruling and Reasoning

The Eleventh Circuit Court reviewed the district court's decision under the abuse of discretion standard. Citing the Due Process Clause of the Fifth Amendment, the circuit court noted Mr. Cometa's right "not to be tried and convicted while incompetent" (*Cometa*, p 1291). Referencing their own decision in *United States v. Wingo*, 789 F.3d 1226 (11th Cir. 2015), the court said that such a proceeding would be tantamount to trying a defendant *in absentia*. The circuit court also emphasized that the defendant must remain competent "throughout an entire trial," citing *United States v. Perkins*, 787 F.3d 1329 (11th Cir. 2015).

The circuit court said that the threshold standard necessitating a competency hearing was that of "bona fide doubt" as to a defendant's competency. Relying on *United States v. Dixon*, 901 F.3d 1322 (11th Cir. 2018), the court detailed three factors to be considered in the determination of whether a hearing was necessary: prior medical opinion as to the defendant's competence, evidence of a defendant's irrational behavior, and the defendant's demeanor at trial. The court said

that there are "no immutable signs" indicative of a need for a hearing, but that courts must consider the "aggregate of evidence" (*Wingo*, p 1236).

Mr. Cometa argued that prior expert opinions stating that he was incompetent to proceed should have been given more weight. The circuit court held that the district court's reliance on Dr. Du Bois' reports was reasonable given that said reports were more recent and were based on a longer period of observation. The circuit court also cited the U.S. Supreme Court's opinion in *Pierce v. Underwood*, 487 U.S. 552 (1988), detailing the essential "evidentiary deference" afforded to district courts in abuse-of-discretion reviews.

As to the matter of variable medication adherence, the circuit court pointed out that Dr. Du Bois had evaluated Mr. Cometa twice and had opined that medication was unnecessary to maintain Mr. Cometa's competency. The court noted that Dr. Herkov reported that Mr. Cometa had a history of "paranoia, delusions, and hearing voices," had been diagnosed with bipolar disorder, and had previously been prescribed psychotropic drugs (*Cometa*, p 1289). The circuit court also noted, however, that Dr. Du Bois had spent more than 200 days evaluating Mr. Cometa and had concluded that Mr. Cometa's "fluctuations in mood" were not due to bipolar disorder, but instead, to a personality disorder.

The circuit court noted that Mr. Cometa had made several statements during court proceedings that could legitimately raise concern about his trial competency. Mr. Cometa had stated that he was an "enemy combatant" and a "POW [prisoner of war] being tried." Mr. Cometa complained that the "government was violating" his "constitutional rights and trying to kill" him (*Cometa*, p 1289). The court found that the available evidence in the case suggested that Mr. Cometa's statements represented a voluntary choice to not cooperate. The court noted that other federal circuit courts had held that "refusing to cooperate" with the defense attorney is not necessarily evidence of incompetency. In essence, a defendant may be capable of working effectively with an attorney but choose not to do so (see *United States v. Heard*, 762 F.3d 538 (6th Cir. 2014)). The court held that the district court did not abuse its discretion by failing to holding additional competency hearings.

Discussion

In *Cometa*, the circuit court found that there was sufficient evidence to support the district court's ruling

that the defendant was competent, although pretending not to be so. Thus, the court believed that he was attempting to exercise his fundamental constitutional right not to be tried while incompetent, but doing so while he was actually competent. In scientific terms, this would be considered a false positive. If he actually was a false positive, then his constitutional rights were upheld. Of course, the danger lies in an overzealous stance toward such cases, which might result in a false negative. This would mean that a court found an involuntarily uncooperative defendant competent, thus leading to an *in absentia* trial and a violation of the defendant's constitutional rights.

In *United States v. Greer*, 158 F.3d 228 (5th Cir. 1998), the defendant received an additional sentence for obstruction of justice after the district court ruled that he had feigned mental illness to delay or prevent further prosecution. The appellants in *Greer* argued that allowing sentencing enhancements to be imposed upon defendants who feign incompetency could conceivably dissuade nonfeigning defendants from exercising their constitutional right to avoid being tried while incompetent. Although the Fifth Circuit Court affirmed the district court's decision, they did acknowledge the potential "chilling" effect that might occur if such penalties were applied routinely.

Mental Health Mitigation Evidence and Ineffective Assistance of Counsel

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Failure to Present Evidence of Mental Illness in Death Penalty Mitigation May Establish an Ineffective Assistance of Counsel Claim

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In *United States v. Runyon*, 983 F.3d 716 (4th Cir. 2020), the U.S. Court of Appeals for the Fourth

Circuit considered the claim that a lawyer's failure to investigate fully, and present mitigating evidence of, a defendant's brain injury and mental illness constituted ineffective assistance of counsel in violation of the Sixth Amendment. A district court had dismissed the claim. The Fourth Circuit disagreed, held that the claim was colorable, and remanded the case for an evidentiary hearing to resolve the matter.

Facts of the Case

David Runyon shot and killed Cory Voss as part of a murder-for-hire conspiracy with Mr. Voss's wife, Catherina Voss, and her lover, Michael Draven. Mrs. Voss and Mr. Draven had decided to murder Mr. Voss to collect his Navy death benefits, including a \$400,000 life insurance policy payout. They hired Mr. Runyon to commit the murder. On the night of April 29, 2007, Mrs. Voss sent Mr. Voss to the bank to withdraw money from an account she had recently opened. While Mr. Voss was at the ATM, Mr. Runyon, who was waiting in hiding, got into Mr. Voss's truck. The next morning, Mr. Voss was found dead in his truck near the bank.

The police eventually arrested and charged Mr. Runyon, Mrs. Voss, and Mr. Draven. Mrs. Voss and Mr. Draven received sentences of life imprisonment. As for Mr. Runyon, a federal jury found him guilty of conspiracy to commit murder for hire, carjacking resulting in death, and murder with a firearm in relation to a crime of violence. Because Mr. Runyon had a history of head trauma, his lawyer engaged several experts, including a neuropsychologist and a neuropsychiatrist, in preparation for the penalty phase of trial. These experts examined Mr. Runyon, ordered brain imaging, and offered opinions that Mr. Runyon had impaired executive functioning, had a neurological disorder, and required further testing. During the penalty phase, however, Mr. Runyon's lawyer did not investigate these matters further or present any mitigation evidence of a neurocognitive disorder. The jury, after weighing other mitigating and aggravating factors, recommended the death penalty, which the district court imposed.

In 2015, after exhausting the appeals process, Mr. Runyon filed a *habeas corpus* motion claiming eighteen grounds for relief, including ineffective assistance of counsel. Mr. Runyon presented evidence from