

## Competence to Stand Trial and Competence to Proceed Pro Se: A Unitary Standard?

**Sara G. West, MD**

*Fellow in Forensic Psychiatry  
University Hospitals Case Medical Center  
Cleveland, OH*

**Sherif Soliman, MD**

*Forensic Psychiatrist  
Northcoast Behavioral Healthcare  
Cleveland, OH*

### Competent Defendant's Death Sentence Overturned After Being Denied the Right to Proceed Pro Se

In the case of *People v. Halvorsen*, 165 P.3d 512 (Cal. 2007), Arthur Hans Halvorsen shot four men in three separate incidents on the same day, killing two of them. The defense sought to prove that the crimes were a result of Mr. Halvorsen's mental illness, alcohol use, and financial difficulties. The jury convicted him of two counts of first-degree murder and found multiple-murder special circumstances. For one count, the jury fixed the penalty at life in prison. For the other, the court declared a mistrial when the jury was unable to reach a decision regarding the penalty. During the retrial, the defendant requested on four occasions to represent himself, which the court denied, believing that the defendant was incompetent to do so. Following the retrial, the jury fixed the penalty for the second murder count at death.

#### *Facts of the Case*

On the afternoon of March 31, 1985, Mr. Halvorsen made some business arrangements with a colleague, who testified that Mr. Halvorsen drank at a bar throughout the afternoon, had slurred speech, and was behaving in a loud, erratic fashion. When Mr. Halvorsen left the bar, he was upset to discover that another man who had come into the bar, Roberto Martinez, had not followed through on his promise to put an air compressor in the back of Mr. Halvorsen's truck. Mr. Halvorsen proceeded to Mr. Martinez's house, where he encountered Mr. Martinez's brother-in-law, Benjamin Alcalá. Mr. Halvorsen believed that Mr. Alcalá was lying about Mr.

Martinez's whereabouts to protect him. Mr. Halvorsen shot Mr. Alcalá, wounding him.

Mr. Halvorsen then got in his car and drove to Hammett Vacuum Service, where he had worked the previous year. Calvin Ferguson, an employee of the company, saw Mr. Halvorsen drive up in his truck. Mr. Ferguson approached the vehicle, and Mr. Halvorsen then pointed his gun in his face and fatally shot him for reasons that he could not explain later.

After shooting Mr. Ferguson, Mr. Halvorsen drove off. Vicente Perez, in a vehicle marked Community Alert Patrol, pulled up along side Mr. Halvorsen. Mr. Halvorsen leaned out of his truck and fired his gun, killing Mr. Perez for reasons he could not articulate.

Mr. Halvorsen, who was "laughing about" these events, made a U-turn and got on the freeway to go to the house of a business associate, Eugene Layton. Within a minute of entering Mr. Layton's home, Mr. Halvorsen shot him in the chest. Mr. Layton then cut Mr. Halvorsen's throat with a piece of glass. Mr. Halvorsen was transported to the hospital. Mr. Layton survived the attack.

Several members of Mr. Halvorsen's family testified to a deterioration in his behavior in the period before the crimes. Dr. William Vicary, a forensic psychiatrist, testified that Mr. Halvorsen had bipolar disorder and had symptoms of paranoia and depression. He also had a strong family history of mental illness and suicidal behavior. Despite the diagnosis, Dr. Vicary did not believe that his mental illness provided a basis for a psychiatric defense.

These crimes occurred on March 31, 1985. The first trial's penalty phase ended in a mistrial on August 25, 1987. Over the next several months, Mr. Halvorsen unsuccessfully filed four motions to proceed *pro se*. Ultimately, he was sentenced to death. The case came before the Supreme Court of California in 2007.

#### *Ruling and Reasoning*

The California Supreme Court reversed the death sentence and affirmed the guilty verdict. The court found that the trial court erred in denying Mr. Halvorsen's motions for self-representation. The court noted that, in *Faretta v. California*, 422 U.S. 806 (1975), the U.S. Supreme Court held that the right to self-representation was rooted in the Sixth Amendment and could be asserted by any defendant who was competent to stand trial. The court held

that the trial court's reason for denying the motion, incapacity that did not rise to the level of incompetence to stand trial, was not valid. Citing *Godinez v. Moran*, 509 U.S. 389 (1993), the court held that the legally relevant inquiry was whether the defendant's waiver of his right to the assistance of counsel was knowing and voluntary.

The court rejected the defendant's argument that the trial court erred in not holding a competency hearing. The court held that competency hearings were not required by the Fourteenth Amendment or the California Penal Code because there was no substantial evidence of incompetence. The defense argued that the defendant's competence should have been called into question for four reasons. First, family members testified that the defendant's mood and behavior had changed before the shootings. Second, Dr. Vicary testified that the defendant had a mental illness. Third, the trial court determined that the defendant was not competent to represent himself. Finally, the court noted that the defendant focused on and testified about religious and moral issues.

The court similarly rejected the defense argument that the trial court erred in allowing Dr. Vicary to testify on cross-examination that he did not believe there was sufficient evidence to support a "psychiatric defense." The court found that, even if the testimony was inadmissible, it did not prejudice the jury. They reasoned that Dr. Vicary repeatedly stated that the question of whether the defendant was guilty of murder or manslaughter was properly left to the jury. The court further noted that Dr. Vicary's opinion that the primary reason for the killings was the defendant's psychotic state was "repeatedly undercut" on cross-examination.

#### Discussion

In *Dusky v. United States*, 362 U.S. 402 (1960), the standard for competence to stand trial assumes the assistance of counsel. The question presented in this case is whether it is permissible to apply a different standard for competence to proceed *pro se*. A review of the cases that form the legal context for this case helps explain why it was decided as it was and why it might be decided differently if the same issue were raised today.

In *Westbrook v. Arizona*, 384 U.S. 150 (1966), the U.S. Supreme Court vacated a decision by the Supreme Court of Arizona, which had affirmed the petitioner's conviction. The Court reasoned that, al-

though there had been a hearing regarding competence to stand trial, there had not been a "hearing or inquiry" on the petitioner's competence to waive his right to counsel. Citing *Westbrook*, the Ninth Circuit Court of Appeals held that waiving the right to counsel or pleading guilty required a higher standard of competence than competence to stand trial (*Seiling v. Eyman*, 478 F.2d 211 (9th Cir. 1973)). The standard adopted was whether the defendant had the capacity to make a "reasoned choice."

In *Godinez v. Moran*, 509 U.S. 389 (1993), the U.S. Supreme Court considered the case of a defendant who, while competent to stand trial, declared to the trial court that he wished to dismiss his attorney and change his plea to guilty for the three murder charges against him, which he was allowed to do. The Ninth Circuit held that the trial court erred in applying the standard for competence to stand trial rather than the reasoned-choice standard. The U.S. Supreme Court reversed the Ninth Circuit. They found that competence to waive the right to counsel or plead guilty did not require a higher standard than competence to stand trial. However, the Court held that trial courts had to be satisfied that the defendant's waiver of his rights was "knowing and voluntary" (*Godinez v. Moran*, 509 U.S. 389 (1993), quoting *Johnson v. Zerbst*, 304 U.S. 458, 465 (1938)).

The present case was decided in light of the *Godinez* decision, and the California Supreme Court cited *Godinez* in support of its holding that the proper legal inquiry was whether the defendant's waiver of his right to counsel was knowing and intelligent, not whether he was competent to represent himself. However, this case may have been adjudicated differently if it had taken place after the U.S. Supreme Court's decision in *Indiana v. Edwards*, 128 S. Ct. 2379 (2008).

In *Edwards*, the U.S. Supreme Court held that the Constitution allows for states to apply a separate standard of competence to proceed *pro se*. If the defendant was found to lack the mental capacity to conduct the proceedings himself, he may be required to proceed with the assistance of counsel. The Court reasoned that prior precedents such as *Dusky* had assumed the presence of counsel. The Court further noted that mental illness impairs different abilities in different ways over time and said that this fact "cautions against using a single competency standard. . . ." The Court stated that the right to self representation would not "affirm the dignity" of a defendant who lacks

the capacity to conduct his trial and may undercut the fairness of the trial.

If the issue in *Halvorsen*, whether a higher standard of competence is required for a defendant to proceed *pro se*, were presented today, it would probably be determined by whether the individual state had elected to adopt a higher standard. In the future, some states are likely to define standards for competence to proceed *pro se*.

## Drug Diversion Program Rights

**Ryan Chaloner Winton Hall, MD**  
Fellow in Forensic Psychiatry

**Susan Hatters Friedman, MD**  
Senior Instructor in Psychiatry

School of Medicine  
Case Western Reserve University  
Cleveland, OH

### Participants in Diversion Programs Requiring a Guilty Plea to Qualify Have a Protected Liberty Interest and Right to Due Process if Termination Results in a Loss of Liberty

In *State v. Rogers*, 170 P.3d 881 (Idaho 2007), the Idaho Supreme Court considered whether a defendant who pleaded guilty in return for admittance into a diversionary drug program had a protected liberty interest (an interest protected by the Due Process Clause of the Fourteenth Amendment) in remaining in the program and was entitled to due process proceedings if terminated from the program. The court found that since the defendant had pleaded guilty to enter the program, he had a liberty interest in staying in the program. He was entitled to due process protection, just as individuals on probation or parole are. The Idaho Supreme Court based its decision primarily on the U.S. Supreme Court cases of *Morrissey v. Brewer*, 408 U.S. 471 (1972), and *Gagnon v. Scarpelli*, 411 U.S. 778 (1973).

#### Facts of the Case

Paul Lawrence Rogers was originally charged with possession of methamphetamines and driving without privileges. As part of a plea bargain, he pleaded guilty to possession of drugs in exchange for having his other charges (and prior unrelated charges) dropped. It was also understood that upon successful completion of the Ada County Drug Court Pro-

gram, the possession charge would be dismissed. During Mr. Rogers' involvement in the drug court, he twice violated the program rules and was sanctioned. After those sanctions, Mr. Rogers' behavior in the program improved. However, he was later terminated from the program after the drug court judge learned that he had been soliciting other drug court participants to enter into a "prostitution ring" or the "adult entertainment business." Mr. Rogers was then sentenced to a five-year prison term, with a one-year incarceration before eligibility for parole.

On appeal, Mr. Rogers asserted that his termination from the diversionary program violated his Fourteenth Amendment due process rights. He also claimed that the evidence indicating he was soliciting other members of the drug court program was not substantial and compelling enough to justify his termination from the program.

The court of appeals upheld the original ruling of the drug court, and the Idaho Supreme Court granted *certiorari*. Even though Mr. Rogers was on parole when the Idaho Supreme Court heard the case, the court believed that he still had a valid grievance, since his termination resulted in a felony conviction on his record.

#### Ruling and Reasoning

The Idaho Supreme Court agreed with Mr. Rogers that his due process rights had been violated when he was terminated from the drug court. The court ruled that he was deprived of a liberty that he held, not one that he merely desired, as opposed to defendants who enter a diversionary program before pleading. Mr. Rogers' situation was equated with individuals who had their parole or probation revoked. (In the cases of *Morrissey v. Brewer* and *Gagnon v. Scarpelli*, the United States Supreme Court ruled that individuals on parole or probation, respectively, are entitled to due process proceedings before those statuses can be terminated.) Since the court found that Mr. Rogers' due process rights had been violated, they vacated his conviction and remanded the case to the drug court for further proceedings. The Idaho Supreme Court did not therefore have to address whether there was enough information for the judge to terminate Mr. Rogers' participation in the diversionary program.

#### Discussion

Therapeutic jurisprudence, or utilizing the law as a therapeutic agent to address underlying causes of