

prosecutorial delay. Thus, *Striker* has no bearing on the resolution of this case” (*Hand*, p 508). The court disagreed that the current case was an example of a violation of the right to a speedy trial.

The court instead indicated that the delay in admitting Mr. Hand was due to WSH’s lack of resources, which resulted in the imposition of sanctions on WSH and did not warrant the dismissal of his charges with prejudice. The case underscores the importance of forensic examiners completing reports in a timely manner while ensuring evaluation services are accurate and reliable reflections of competency-related capacities. The court stressed the need for timely provision of mental health services when a defendant is displaying active symptoms of mental illness. The completion of timely evaluation and treatment services within the court’s timelines is essential, but failure to do so is unlikely to result in dismissal of charges with prejudice.

Reassessment of Competency

Kisha Clune, MD
Resident in Psychiatry

Jennifer Piel, MD, JD
Associate Professor of Psychiatry
Associate Director, Psychiatry Residency Program
Program in Mental Health, Policy and the Law

Department of Psychiatry and Behavioral Sciences
University of Washington
Seattle, Washington

Trial Court Did Not Abuse Its Discretion in Not Ordering Another Trial Competency Evaluation Where the Record Had No Evidence of Defendant Having Significant Changes in Mental Condition

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In *State v. McCarthy*, 446 P.3d 167 (Wash. 2019), the Supreme Court of Washington considered whether the trial court erred in not ordering a third trial competency hearing for a man previously found competent to stand trial by a jury. The court also addressed whether deference should be afforded a trial court when it does not *sua sponte* order a competency hearing. The court ruled that the trial court did not abuse its discretion when it did not order a

competency evaluation based on the evidence presented at the time.

Facts of the Case

Over a two-day period, Matthew McCarthy forced his way into a stranger’s house on three occasions. On one occasion, he was looking for his ex-wife, whom he mistakenly believed to be present in the residence. On the subsequent night, he again entered looking for his wife; he later entered to search for his cell phone. On the first occasion, he pushed the home’s occupant against a wall. The state charged Mr. McCarthy with burglary predicated on assault. The state informed Mr. McCarthy that he could face life in prison without parole because of his criminal history.

Mr. McCarthy’s public defender expressed concern for his competence to stand trial due, in part, to apparently delusional beliefs regarding his ex-wife and governmental misconduct. Although Mr. McCarthy objected to the competency hearing proceeding against his will, the trial court ordered a competency evaluation. The doctor who evaluated Mr. McCarthy, Dr. Daniel Lord-Flynn, submitted a diagnosis of bipolar disorder and substance use disorders but found that Mr. McCarthy demonstrated understanding of the legal proceedings and could assist in his own defense. Dr. Lord-Flynn tentatively opined that he was competent. But, after receiving additional information from the public defender that Mr. McCarthy was unable to effectively work with her, Dr. Lord-Flynn concluded that Mr. McCarthy was not competent due to his inability to assist in his own defense. The trial court ordered a 90-day period for restoration of competence. Mr. McCarthy maintained that he was competent and requested another opinion on the question. The second evaluator, Dr. Debra Brown, concluded that Mr. McCarthy was incompetent due to his inability to work with his counsel.

After an initial 90-day treatment period to restore competence, conflicting evidence as to Mr. McCarthy’s competence led the court to order a second 90-day treatment period. At the second period’s conclusion, Dr. Lord-Flynn again evaluated Mr. McCarthy, with Dr. Brown observing the assessment. There remained conflicting opinions as to whether Mr. McCarthy could assist counsel in his defense. The trial court ordered a jury trial to determine competence.

At the competency trial, both evaluators testified that Mr. McCarthy had mental disorders, but they differed as to whether he was competent. Dr. Lord-Flynn opined that his competence had been restored through treatment, including medication adherence, and that Mr. McCarthy was capable of assisting in his own defense so long as it was with a different attorney. Dr. Brown found Mr. McCarthy to be paranoid, delusional, and unable to assist in his own defense. The trial jury found him competent.

The trial court permitted Mr. McCarthy's counsel to withdraw and appointed a new public defender. At the next hearing Mr. McCarthy motioned to proceed *pro se*. With assistant counsel made available to him, the judge granted his motion, despite the state's raising concern that Mr. McCarthy continued to voice delusions. The judge said, "We went through a whole competency trial. You were found to be competent. In listening to you today, you don't sound a whole lot different than you did at the competency trial" (*McCarthy*, p 170, citing Verbatim Report of Proceedings (May 13, 2019), p 709). During pretrial proceedings, Mr. McCarthy turned down a plea that would have prevented the assignment of persistent offender status by pleading guilty to a nonstrike offense. At this point the state again raised concerns that Mr. McCarthy voiced delusions about governmental misconduct. The trial court expressed concern about Mr. McCarthy's representing himself, and Mr. McCarthy agreed to let his former assistant counsel take over. The case then proceeded to trial, and Mr. McCarthy appeared coherent when speaking and exhibited appropriate behavior in the courtroom. He was found guilty of first-degree burglary and sentenced to life as a persistent offender.

Both Mr. McCarthy and his counsel filed appeals, with his appellate counsel arguing that Mr. McCarthy's persistent delusions (including beliefs about governmental misconduct and a relationship between his ex-wife and the victim) were sufficient grounds to question his competence and that the court erred in failing to order a reevaluation *sua sponte*. The court of appeals, which conducted an independent review of the facts, vacated Mr. McCarthy's conviction and remanded the case to the trial court. The state petitioned for review, arguing that the Court of Appeals had applied the wrong standard of review; that abuse of discretion should be the standard applied; and that a proper remedy, if error occurred, would be to remand to review

whether Mr. McCarthy had in fact been competent to stand trial rather than to vacate the conviction.

Ruling and Reasoning

The Washington Supreme Court first addressed the proper standard of review in the case. The state argued that the standard is abuse of discretion, whereas Mr. McCarthy's counsel argued for an independent review of the record by appellate courts, given the constitutional significance. Citing *State v. Sisouvanh*, 290 P.3d 942 (Wash. 2012), the court explained that an "abuse of discretion standard often is appropriate" (*Sisouvanh*, p 949) when the trial court is in the better position to make a determination; the assessment is fact-intensive; the trial court has more experience in the type of determination to be made; there could be no easily constructed rule for the determination; and there is strong interest in the finality of the ruling to avoid appeals. Relying on *Sisouvanh* and other cases, the court ruled that the proper standard is abuse of discretion.

Having determined the standard of review to be abuse of discretion, the Washington Supreme Court turned to whether the trial court abused its discretion in not ordering another competency hearing for Mr. McCarthy. State law requires trial courts to order competency hearings when there is reason to doubt a defendant's competency under Wash. Rev. Code § 10.77.060(1)(a) (2016). When there has been a determination of trial competence, the court is not required to revisit the topic absent additional objective evidence of a change in the defendant's condition. In a review of the record, Mr. McCarthy was found to understand consistently the proceedings against him. For Mr. McCarthy, the question of competency focused on whether he was able to assist in his own defense. The court was convinced that Mr. McCarthy acted reasonably when he reappointed counsel after the trial court expressed concern about him representing himself. The court said that the record indicated no significant change in Mr. McCarthy's mental condition following his competency trial. The court ruled that the trial court did not abuse its discretion in not ordering a reevaluation of competency *sua sponte* and reversed the appellate court decision on this point.

Discussion

The Washington Supreme Court's ruling in this case specifies that a reevaluation of competency is

not expected *sua sponte* unless the trial court becomes aware of a significant change in the defendant's mental condition via an objective incident or action. Although the court has an obligation to protect the fairness of the trial for the criminal defendant, this case underscores the discretion afforded to trial courts on the subject of competency reevaluation. This opinion aligns with one of the stated tenants of the abuse of discretion standard; that is, to give deference to trial court decisions where there is a "strong interest in finality and avoiding appeals" (*McCarthy*, p 172, citing *Sisouvanh*, p 949).

Thus, the standard of review, abuse of discretion, adheres to its aim of finality. Whereas this standard results in a more workable precedent for the workings of our legal system, it is notably somewhat at odds with a psychiatric model of competency, wherein one's competence may be fluid and context-specific. There are instances when a retrospective review of trial competency is called for, which is exemplified by the landmark case of *Wilson v. United States*, 391 F.2d 460 (D.C. Cir. 1968). In *Wilson*, the court ruled that at the conclusion of a case where a defendant's competence is questioned due to amnesia, the court should consider several factors to assess whether the defendant had a fair trial. But it would be unworkable and overwhelm the court's resources were all such defendants to have a retrospective review of trial competency at the conclusion of their cases.

Weight of Expert Witness Testimony in a Disability Claim

Benjamin Otopalik, MD, MPH
Fellow in Forensic Psychiatry

Chinmoy Gulrajani, MD, MBBS
Associate Professor of Psychiatry

Department of Psychiatry and Behavioral Sciences
University of Minnesota - Twin Cities
Minneapolis, Minnesota

In Determining Disability Eligibility, the Arbiter May Assign Different Weights to Testimony from Expert Examiners and Treating Clinicians

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In *Dols v. Saul*, 931 F.3d 741 (8th Cir. 2019), the Eighth Circuit Court of Appeals decided whether an Administrative Law Judge (ALJ) from the Social Security Administration (SSA) erred in concluding that the claimant, Mr. Dols, had only moderate functional restriction due to mental illness, thereby disqualifying him from receiving Supplemental Security Income (SSI). In addition, the court ruled on whether the ALJ erroneously granted "great weight" to a psychological expert's opinion and "no weight" to Mr. Dols' drug and alcohol counselor's opinion.

Facts of the Case

In 2013, Robert Dols applied for SSI. His first and second claims were denied. An ALJ then held a hearing to review Mr. Dols' case. At the hearing, Mr. Dols testified, as did a psychological expert, Dr. Michael Lace, and Mr. Dols' licensed drug and alcohol counselor, Ms. Nancy Kaley. Dr. Lace provided his opinion based upon a review of the available records. Applying the five-step rubric established in 20 C.F.R. § 416.920(a) (2012) for determining SSI eligibility, the ALJ determined that, although Mr. Dols had several impairments (autism spectrum disorder, anxiety and depression, cerebral dysfunction, obsessive compulsive disorder, and a history of substance abuse and dependence), these impairments only met the level of moderate, rather than the requisite marked functional restrictions. The ALJ denied Mr. Dols' claim of SSI. The ALJ's determination then became the SSA Commissioner's final decision.

Mr. Dols subsequently filed suit with the United States District Court for the District of Minnesota. The district court granted summary judgment in support of the Commissioner's denial of Mr. Dols' claim. Mr. Dols appealed to the Eighth Circuit Court of Appeals on grounds that his mental impairments satisfied criteria outlined in the SSA Code of Federal Regulations and the ALJ erred by granting great weight to Dr. Lace's opinion and none to Ms. Kaley's.

Ruling and Reasoning

The Eighth Circuit Court of Appeals determined that substantial evidence supported the ALJ's determination, thus affirming that Mr. Dols did not meet criteria to receive SSI.