

to the U.S. Department of Labor, approximately 30 percent of veterans are service-connected for disability benefits. Differentiating between genuine and feigned symptoms can be a difficult task for clinicians. A 2022 article helped outline ways that providers can look for malingered versus true symptoms in veterans (Umbrasas KV. Explanatory models differentiating servicemember malingering from delayed symptom report. *J Am Acad Psychiatry Law*. 2022 Jun;50(2):182–93). Careful evaluation, record review, and application of Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision (DSM-5-TR) criteria by all clinicians help guard against malingering.

Waiver of Statutory Right to Competency Hearing

Gurtej Gill, MD

Fellow in Forensic Psychiatry

Tetyana Bodnar, MD

Assistant Professor of Psychiatry

Department of Psychiatry

University Hospitals Cleveland Medical Center

Case Western Reserve University

Cleveland, Ohio

The Right to a Court-Ordered Competency Evaluation and Hearing Is Not Preserved Unless Raised in a Timely Manner

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Key words: competency to stand trial; statutory waiver; North Carolina law; due process

In *State v. Wilkins*, 386 N.C. 923 (N.C. 2024), the Supreme Court of North Carolina addressed whether a defendant had waived his statutory right to a competency hearing under North Carolina General Statutes § 15A-1002 (2017) during trial proceedings. The defendant, Jamey Lamont Wilkins, was charged with drug-related offenses, assaulting a government employee, and communicating threats. Although the trial court initially granted his motion for a competency evaluation, Mr. Wilkins posted bond before the evaluation occurred and never raised the problem again. The court held that Mr. Wilkins waived his statutory right through inaction and conduct inconsistent with asserting the right.

Facts of the Case

Mr. Wilkins was arrested in February 2018 for suspicion of throwing contraband over the wall of and into a prison, when the sport utility vehicle (SUV) he was riding in was stopped by officers. After the driver consented to a search of the vehicle, deputies found drugs hidden in footballs. During the stop, Mr. Wilkins was described as being irate and was ultimately charged. While detained pretrial, he exhibited erratic behavior, including threatening jail staff and reporting to his defense attorney that he was “losing his grip on reality” (*Wilkins*, p 924).

Although there was no evidence that Mr. Wilkins had a history of mental illness, his court-appointed counsel filed an unopposed motion for a competency evaluation under § 15A-1002(a), citing mood swings, confusion, and concerns from jail personnel. The trial court granted the motion on March 15, 2018, ordering the sheriff to transport Mr. Wilkins to a facility for evaluation. Before the evaluation occurred, Mr. Wilkins was transferred to a prison because of his ongoing behavioral concerns and threats against jail staff, other inmates, and himself. He posted bond and was released on March 28, 2018.

Over the next three years, Mr. Wilkins retained private counsel and rejected plea deals before ultimately proceeding to trial in July 2021. At no point was the problem of his competency raised again; neither Mr. Wilkins nor his defense attorney requested a competency evaluation or hearing. At trial, Mr. Wilkins affirmed his understanding of proceedings and declined to testify. He was described as comporting himself appropriately during proceedings. Mr. Wilkins was convicted on four of seven charges and sentenced to 51 months in prison.

On appeal, Mr. Wilkins argued the trial court violated North Carolina General Statutes § 15A-1002 by proceeding without the ordered evaluation. The court of appeals affirmed his conviction, finding waiver under precedent in *State v. Young*, 291 N.C. 562 (N.C. 1977).

Ruling and Reasoning

The Supreme Court of North Carolina affirmed the lower court, holding Mr. Wilkins had waived his statutory right to a competency hearing by failing to assert the right, demonstrating conduct inconsistent with asserting the right, and lack of postrelease efforts. Despite multiple opportunities over three years, including plea hearings, trial, and sentencing, Mr. Wilkins never renewed his request for an

evaluation or questioned his competency. By posting bond, proceeding with trial, and affirmatively engaging with counsel and the court (e.g., confirming he understood charges and trial decisions), Mr. Wilkins demonstrated readiness for trial. Further, after his release on bond, Mr. Wilkins could have sought an outpatient evaluation or requested modification of the order, but he took no action.

The majority distinguished statutory rights under § 15A-1002 from constitutional due process protections. Although constitutional competency claims require “substantial evidence” of incompetence and cannot be waived, statutory rights can be waived through inaction. Citing *Young*, the court emphasized that defendants must proactively raise statutory claims during trial. In this case, Mr. Wilkins’s pre-trial behavior (e.g., mood swings) did not outweigh his subsequent conduct affirming competence.

Dissent

Justice Earls, joined by Justice Riggs, dissented, stating that statutory duties to Mr. Wilkins were ignored. According to the dissent, the trial court and the state failed to enforce the evaluation order. The sheriff never transported Mr. Wilkins, and the court did not follow up, violating § 15A-1002’s mandate to ensure that evaluations are completed. The court indicated that waiver presupposes competence.

Inferring waiver from Mr. Wilkins’s trial conduct is circular, as competency itself was never assessed after it was raised. A defendant cannot knowingly waive rights if incompetence is suspected, but not evaluated. Further, in distinguishing prior case law, the dissent noted that cases like *Young* involved completed evaluations, whereas here, the statutory process “collapsed” because of institutional failures. The majority improperly shifted the burden to Mr. Wilkins to remedy the state’s noncompliance.

The dissent emphasized that § 15A-1002 places the responsibility on courts, not defendants, to resolve competency questions once they are raised.

Discussion

The *Wilkins* case underscores crucial problems in mental health law. First, with respect to statutory versus constitutional rights, the majority’s strict waiver doctrine for statutory claims contrasts with constitutional protections, which require hearings if substantial evidence of incompetence exists. This creates a gap for defendants who initially raise concerns but later fail to follow through, as they may

lose statutory safeguards, even if underlying mental health concerns persist.

Additionally, the problem of procedural compliance versus substance is highlighted when systemic failures undermine statutory intent, such as when evaluations are ordered but not enforced. Courts risk depriving defendants of protections by prioritizing procedural finality over substantive oversight.

Jails often lack the resources to address inmates’ mental health crises. Mr. Wilkins’s pretrial behavior (threats, mood swings) signaled potential mental illness, yet his release and subsequent “normal” conduct were regarded as conclusive and illustrative of competency. These factors risk overlooking episodic or situational incompetence. Defense counsel may need to consistently renew competency motions, even after the initial court orders are issued. Prosecutors and courts would benefit from establishing tracking systems to ensure evaluations are conducted, especially following custody changes.

The case emphasizes the tension between judicial efficiency and the protection of vulnerable defendants. Although the majority prioritizes finality, the dissent cautions against presuming competence without evidence, especially when the system itself fails to adhere to mental health protocols.

Qualified Immunity Protections for Mental Health Providers

Alice Fok, MD, PhD
Fellow in Forensic Psychiatry

Nicole Brooks, MD
Clinical Assistant Professor

Department of Psychiatry and Behavioral Sciences
Stanford University
Palo Alto, California

Pennsylvania’s Medical Providers Can Be Held Civilly Liable When Denying a Patient’s Verbal Request for Voluntary Inpatient Psychiatric Admission

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Key words: gross negligence; qualified immunity; Mental Health Procedures Act (MHPA); civil commitment; malpractice

In *Matos v. Geisinger Medical Center*, 334 A.3d 288 (Pa. 2025), the Pennsylvania Supreme Court examined the scope of qualified immunity protections for