

No.

IN THE SUPREME COURT OF THE UNITED STATES

EDWARD TIGER,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition for a Writ of Certiorari
to the Fourth District Court of Appeals
For the State of Florida

PETITION FOR A WRIT OF CERTIORARI

Dane K. Chase, Esquire
Florida Bar Number: 0076448
Chase Law Florida, P.A.
111 2nd Ave NE
Suite 334
Saint Petersburg, Florida 33701
Direct: (727) 350-0361
Facsimile: (866) 284-1306
Email: dane@chaselawfloridapa.com

* Counsel of Record

QUESTION PRESENTED

Whether a finding that a criminal defendant is presently competent to proceed is a jurisdictional prerequisite to a court's authority to deprive an accused of his life or liberty under the due process clause of the fifth and fourteenth amendments where a question as to the defendant's competency has been raised?

PARTIES TO THE PROCEEDING

Parties to the proceeding include Edward Tiger (Appellant/Petitioner), Dane K. Chase, Esquire (Appellant/Petitioner's Counsel), and Ashley Moody, Esquire (Attorney General, State of Florida).

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PETITION FOR WRIT OF CERTIORARI

OPINION BELOW

The decision of the Fourth District Court of Appeals, State of Florida, *infra*, is attached as Appendix A.

JURISDICTION

The Judgment of the Fourth District Court of Appeals, State of Florida, was entered on January 16, 2020. This Court's jurisdiction is invoked under Title 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. amend. VI.

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV, § 1.

STATEMENT OF FACTS

On November 3, 2006, Mr. Tiger was found guilty following trial of one count of sexual battery in Broward County, Florida. Prior to sentencing, an issue concerning Mr. Tiger's competency to proceed arose, and, as such, two experts evaluated Mr. Tiger for purposes of making a competency determination. On April 13, 2007, a sentencing hearing was held, during which the following exchange occurred:

THE COURT: I ordered a pre-sentence investigation in the case. I have reviewed that. Have both sides received a copy of the pre-sentence investigation report?

THE PROSECUTOR: Yes, Your Honor.

DEFENSE COUNSEL: Yes, Your Honor.

THE COURT: Are there any objections or exceptions taken?

THE PROSECUTOR: No, Your Honor.

THE COURT: Mr. Witlin?

DEFENSE COUNSEL: Ms. Zack will need to produce evidence of - - if the Court is relying on the report.

THE PROSECUTOR: I don't intend to rely on the pre-sentence investigation for any purpose.

DEFENSE COUNSEL: We have received it and, in addition, the evaluations performed regarding competency.

THE COURT: I received those as well. I reviewed the report of Dr. Brannon who evaluated Mr. Tiger in March of 2007. He is an expert in psychology. Dr. Brannon rendered the opinion that Mr. Tiger is competent to proceed.

Dr. Day, an expert in the field of psychology, was appointed to evaluate Mr. Tiger. He also rendered the mine (sic) were Mr. Tiger is competent to proceed.

Is there any further issue in regards to the competency of Mr. Tiger?

DEFENSE COUNSEL: No, Your Honor.

THE PROSECUTOR: No, Your Honor.

(State of Florida v. Edward Tiger, Broward County Circuit Court Case No. 06-CF-10555, Sentencing Transcripts, at 2-4).

Thereafter, Mr. Tiger was sentenced to 30 years imprisonment. On May 30, 2019, Mr. Tiger filed a Fla. R. Crim. P. 3.800(a) Motion to Correct Illegal Sentence arguing that the 30 year sentence imposed upon him is illegal, as the sentencing court failed to make an independent determination regarding his competency to proceed with sentencing prior to imposing sentence upon him, and that he is therefore entitled to have his Judgment and Sentence vacated.

Thereafter, the state filed a response arguing that Mr. Tiger was not entitled to relief because he had failed to demonstrate how his sentence was illegal. The circuit court ultimately adopted the state's response as its order and denied relief accordingly. Mr. Tiger then appealed to the Fourth District Court of Appeal, State of Florida, which per curiam affirmed on January 16, 2020.

This Petition follows.

REASONS FOR GRANTING THE PETITION

- I. THIS COURT SHOULD GRANT REVIEW TO ESTABLISH THAT WHERE THE QUESTION OF A CRIMINAL DEFENDANT'S COMPETENCY HAS BEEN RAISED, A FINDING AS TO THE DEFENDANT'S PRESENT COMPETENCY TO PROCEED IS A JURISDICTIONAL PREREQUISITE TO A COURT'S AUTHORITY TO DEPRIVE AN ACCUSED OF HIS LIFE OR LIBERTY UNDER THE DUE PROCESS CLAUSE OF THE FIFTH AND FOURTEENTH AMENDMENTS.

At issue in this Petition is whether a finding that a criminal defendant is presently competent to proceed is a jurisdictional prerequisite to a court's authority to deprive an accused of his life or liberty where a question of the defendant's competency has been raised.

"The test for incompetence is ... well settled." *Cooper v. Oklahoma*, 517 U.S. 348, 354, 116 S. Ct. 1373, 1377, 134 L. Ed. 2d 498 (1996). "A defendant may not be put to trial unless he 'has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding ... [and] a rational as well as factual understanding of the proceedings against him.'" *Cooper*, 517 U.S. at 354, 116 S. Ct. at 1377 (quoting, *Dusky v. United States*, 362 U.S. 402, 402, 80 S.Ct. 788, 4 L.Ed.2d 824 (1960) (*per curiam*)). Additionally, this Court's precedent makes clear a doctor's prior assessment of a defendant's competency is not dispositive, *see, Pate v. Robinson*, 383 U.S. 375, 386, 86 S. Ct. 836, 842, 15 L. Ed. 2d 815 (1966) (A doctor's prior assessment was not dispositive on the issue of whether the defendant was presently competent to proceed), the question is whether a defendant has a present ability to communicate with his lawyer and a present understanding of the proceedings against him. *See, Cooper v.*, 517 U.S. at 354, 116 S. Ct. at 1377.

Although this Court's precedent indicates that a finding of *present* competency to proceed is a jurisdictional requirement for a court to proceed against a defendant where an issue of competency has been raised, *see, e.g., Cooper*, 517 U.S. at 354, 116 S. Ct. at 1377 ("A defendant may not be put to trial unless he [is presently competent to proceed]"), it has not specifically held so, and a question therefore remains as to whether a present finding of competency to proceed is a jurisdictional requirement in such circumstances.

In *Johnson v. Zerbst*, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938) the Court explained that "Since the Sixth Amendment constitutionally entitles one charged with crime to the assistance of counsel, compliance with this constitutional mandate is an essential jurisdictional prerequisite to a federal court's authority to deprive an accused of his life or liberty." *Johnson*, 304 U.S. at 467, 58 S. Ct. at 1024. Additionally, this Court has:

...repeatedly and consistently recognized that "the criminal trial of an incompetent defendant violates due process." *Medina v. California*, 505 U.S. 437, 453, 112 S.Ct. 2572, 2581, 120 L.Ed.2d 353 (1992); *Drope v. Missouri*, 420 U.S. 162, 171-172, 95 S.Ct. 896, 903-904, 43 L.Ed.2d 103 (1975); *Pate v. Robinson*, 383 U.S. 375, 378, 86 S.Ct. 836, 838, 15 L.Ed.2d 815 (1966). Nor is the significance of this right open to dispute. As Justice KENNEDY recently emphasized:

"Competence to stand trial is rudimentary, for upon it depends the main part of those rights deemed essential to a fair trial, including the right to effective assistance of counsel, the rights to summon, to confront, and to cross-examine witnesses, and the right to testify on one's own behalf or to remain silent without penalty for doing so. *Drope v. Missouri*, 420 U.S. 162, 171-

172, 95 S.Ct. 896, 903-904, 43 L.Ed.2d 103 (1975).” *Riggins v. Nevada*, 504 U.S. 127, 139-140, 112 S.Ct. 1810, 1817-1818, 118 L.Ed.2d 479 (1992) (opinion concurring in judgment).

Cooper, 517 U.S. at 354, 116 S. Ct. at 1376-77 (footnotes omitted). It follows that if the Sixth Amendment right to counsel is an “essential jurisdictional prerequisite to a federal court's authority to deprive an accused of his life or liberty,” and that the right to the effective assistance of counsel is dependent upon the defendant's competency, the defendant's present competency to proceed is likewise an “essential jurisdictional prerequisite to a federal court's authority to deprive an accused of his life or liberty,” because a proceeding against “an incompetent defendant violates due process.” *Johnson*, 304 U.S. at 467, 58 S. Ct. at 1024; *Medina*, 505 U.S. at 453, 112 S.Ct. at 2581; *Cooper*, 517 U.S. at 354, 116 S. Ct. at 1376-77.

Furthermore, Mr. Tiger's case is the ideal vehicle for establishing that whether a criminal defendant is *presently* competent to proceed is a jurisdictional prerequisite to a court's authority to proceed against him. Prior to Mr. Tiger's sentencing a question was raised regarding his competency to proceed. Accordingly, psychological evaluations were ordered, and doctors evaluated Mr. Tiger and prepared reports which indicated that as of the time of the evaluations Mr. Tiger was competent to proceed. At the outset of Mr. Tiger's sentencing the court noted that two doctors had previously determined Mr. Tiger was competent to proceed, however, the court made no finding as to his *present* competency to proceed. Under this Court's precedent the sentencing court simply did not have jurisdiction to proceed until a finding was made as to Mr. Tiger's *present* competency to proceed.

Johnson , 304 U.S. at 467, 58 S. Ct. at 1024; *Medina*, 505 U.S. at 453, 112 S.Ct. at 2581; *Cooper*, 517 U.S. at 354, 116 S. Ct. at 1376–77. Accordingly, Mr. Tiger's case is ideal for establishing that a finding of *present* competency to proceed is a jurisdictional prerequisite because in his case no such finding was made.

Consequently, this Court should grant review, establish that a finding of *present* competency to proceed is a jurisdictional prerequisite to a court proceeding against a criminal defendant where the question of the defendant's competency has been raised, and ultimately vacate Mr. Tiger's Judgment and Sentence, and remand his case to the trial court where the state is free to again proceed against him, provided that at the time of any proceedings that follow, he is competent to proceed. *Drope v. Missouri*, 420 U.S. 162, 183, 95 S. Ct. 896, 909, 43 L. Ed. 2d 103 (1975) (State court erred by failing to make proper inquiry into defendant's competency to proceed, and this Court concluded that remanding for a nunc pro tunc determination of competency would be inadequate to protect the defendant's due process rights, and instead reversed the defendant's judgment, and remanded the case with directions that the state was "free to retry petitioner, assuming, of course, that at the time of such trial he is competent to be tried.")

CONCLUSION

For the reasons stated above, this Court should grant Mr. Tiger's Petition for Writ of Certiorari, establish that a finding of present competency to proceed is a jurisdictional prerequisite to a court proceeding against a criminal defendant where the question of the defendant's competency has been raised, and ultimately vacate Mr. Tiger's Judgment and Sentence, and remand his case to the trial court where the state is free to again proceed against him, provided that at the time of any proceedings that follow, he is competent to proceed.

Respectfully Submitted,



Dane K. Chase, Esq.
Florida Bar No. 0076448
Chase Law Florida, P.A.
111 2nd Ave Ne
Suite 334
Direct: (727) 350-0361
Email: dane@chaselawfloridapa.com
Counsel for Petitioner

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APPENDIX A

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

EDWARD TIGER,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D19-2855

[January 16, 2020]

Appeal of order denying rule 3.800 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Dennis D. Bailey, Judge; L.T. Case No. 06-010555-CF10A.

Dane K. Chase of Chase Law Florida, P.A., Saint Petersburg, for appellant.

No appearance required for appellee.

PER CURIAM.

Affirmed.

LEVINE, C.J., WARNER and DAMOORGIAN, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.

APPENDIX B

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v.

EDWARD TIGER,

Defendant.

CASE NO.: 06-10555CF10A

JUDGE: D. BAILEY

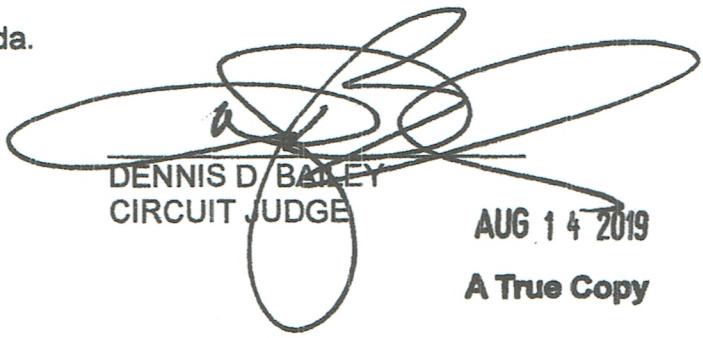
ORDER DENYING DEFENDANT'S MOTION TO CORRECT ILLEGAL SENTENCE

THIS CAUSE comes before the Court upon Defendant's Motion to Correct Illegal Sentence, brought pursuant to Florida Rule of Criminal Procedure 3.800(a). Having considered Defendant's motion, the response of the State, applicable law, and being otherwise fully advised in the premises, this Court finds as follows:

Defendant is not entitled to relief in this matter. The State has filed a response which contains a thorough recital of the issues and the law. As such, this Court hereby adopts the reasoning set forth therein, a copy of which has previously been provided to Defendant and remains a part of the court file. Accordingly,

It is **ORDERED AND ADJUDGED** that Defendant's Motion is hereby **DENIED**.

DONE AND ORDERED on this 14th day of August, 2019, in Chambers,
Fort Lauderdale, Broward County, Florida.


DENNIS D. BAILEY
CIRCUIT JUDGE

AUG 14 2019

A True Copy

Copies furnished to:

Dane K. Chase, Esq., Attorney for Defendant

Susan Odzer Hugentugler, Esq., Office of the State Attorney, Appeals Division