No. 20-5917

IN THE SUPREME COURT OF THE UNITED STATES

ERIC MALMSTROM, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the district court abused its discretion in declining to order a hearing, on the court's own initiative, to determine whether petitioner was competent to stand trial.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (D. Me.):

United States v. Malmstrom, No. 18-cr-52 (Apr. 1, 2019)

United States Court of Appeals (1st Cir):

United States v. Malmstrom, No. 19-1218 (July 20, 2020)

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1-13) is reported at 967 F.3d 1.

JURISDICTION

The judgment of the court of appeals was entered on July 20, 2020. The petition for a writ of certiorari was filed on October 1, 2020. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the District of Maine, petitioner was convicted on three counts of

transmitting threatening interstate communications by telephone, in violation of 18 U.S.C. 875(c). Am. Judgment 1. The district court sentenced petitioner to 27 months of imprisonment, to be followed by three years of supervised release. Id. at 2-3. The court of appeals affirmed. Pet. App. 1-13.

1. Starting in the fall of 2017, petitioner placed multiple phone calls from Vinalhaven, Maine to the Swedish Embassy in Washington, D.C., during which he made "threats of violent mutilation of Swedish women" and inserted "references to Islam and to an imaginary Swedish monarch." Pet. App. 2-3. Petitioner placed the calls to the embassy's main line as well as the direct line of a consular employee. Ibid. During one week in February 2018, petitioner recorded over 100 messages on the employee's voicemail. Id. at 3.

In the following weeks, petitioner's calls to the consular employee "included content of an increasingly personal and disturbing nature, such as threatening to harm [the employee's] children and alluding to her partner." Pet. App. 3. On March 5, 2018, petitioner called the consular employee and told her that "he planned to travel by ferry from Maine to Washington to slit her throat and make her children watch." Ibid. The next day, petitioner called the employee from a different telephone number in southern Maine. Ibid. Law enforcement obtained an arrest warrant, believing that petitioner might be heading south to act upon his

threats. Ibid. Federal agents subsequently detained petitioner. Ibid.

In all, petitioner placed 121 calls to the Swedish Embassy's main line and 187 calls to the consular employee's direct line. Pet. App. 4. Over 60 calls were recorded on voicemail. Ibid.

2. A federal grand jury in the District of Maine indicted petitioner on four counts of transmitting threatening interstate communications by telephone, in violation of 18 U.S.C. 875(c). Pet. App. 3-4.

Before trial, petitioner's court-appointed counsel twice sought to withdraw from the case. Pet. App. 4. In the first motion, counsel informed the district court that petitioner wanted a Muslim lawyer. Ibid. Counsel told the court at a hearing, however, that there was "no issue with [his] ability to communicate with [petitioner]." Ibid. The court denied the motion. Ibid. In the second motion, counsel expressed frustration with petitioner's refusal to cooperate with him. Ibid. But after petitioner agreed to resume cooperation, the court denied the motion. Ibid.

During a later conference with the district court, petitioner's counsel "acknowledged [petitioner's] mental instability generally[,] but underscored that mental illness had not been raised in any formal way." Pet. App. 4. Counsel also "emphasize[d] that [petitioner] 'doesn't see himself as mentally

ill' and would 'object vigorously' to any evidence of mental illness being introduced at trial." Ibid.

The government dismissed one count of the indictment, and petitioner proceeded to trial. Pet. App. 4-5. The jury found petitioner guilty on the remaining three counts. Id. at 5.

3. The court of appeals affirmed. Pet. App. 1-13. The court rejected petitioner's sole claim that the district court had abused its discretion by declining, on its own initiative, to order a hearing into petitioner's competency to stand trial under 18 U.S.C. 4241(a). Pet. App. 5-13.

At the outset, the court of appeals accepted petitioner's premise that "convicting a legally incompetent individual would violate due process." Pet. App. 6. The court observed that Section 4241 guards against any infringement of that constitutional protection by requiring a district court to order a competency hearing "if there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense." Ibid. (quoting 18 U.S.C. 4241(a)). But the court of appeals found that the district court had "no reasonable cause" to believe that there was a substantial question about petitioner's competency under that standard, considering "the totality of the circumstances,"

"including the absence of any motion for a competency evaluation." Id. at 10, 13.

The court of appeals rejected petitioner's contention that "the eccentric character of the behavior that gave rise to the indictment * * * itself gave the district court reasonable cause to believe that it should order a competency evaluation sua sponte." Pet. App. 7. The court of appeals explained that competency under Section 4241 "is aimed at assessing a defendant's present ability to participate meaningfully in his trial, not his mental state at the time he perpetrated his offense." Id. at 8. And the court found nothing "in the record that would justify a reasonable inference that [petitioner] was unable to consult rationally with his trial attorney." Id. at 8-9. The mere fact that petitioner "at one point refused to cooperate with his attorney, prompting the latter to file a second motion to withdraw," "did not constitute reasonable cause to question [petitioner's] competency," especially considering that, "by the end of the hearing on the second motion to withdraw, [petitioner] had relented and agreed to continue working with his attorney." Id. at 9.

Moreover, the court of appeals explained that it would afford "significant weight" to defense counsel's view of whether his client was able to consult with counsel and reasonably understand the proceedings, in view of counsel's "'unique vantage for

observing whether his client is competent.'" Pet. App. 9 (brackets and citation omitted). Here, the court observed, petitioner's counsel had, before trial, "unequivocally assured the district court that he was unaware of any communication issues," and, after trial, explained that he and petitioner "had been able to repair any past communication issues." Id. at 9-10. Even though petitioner's counsel had expressed a "general acknowledgement that his client may suffer from mental health issues," that "d[id] not, without more, 'reach the reasonable cause threshold to require a sua sponte competency hearing' under section 4241(a)," in light of counsel's "represent[ations] to the district court that [petitioner] could communicate meaningfully with him and assist in the defense." Id. at 10 (brackets, citation, and internal quotation marks omitted). Defense counsel had further informed the district court that petitioner "was able to 'receive' information regarding the proceedings and was able to 'process that information.'" Id. at 11-12 (brackets omitted).

The court of appeals also highlighted multiple examples where petitioner's "actions" before the district court had "loudly proclaimed his grasp of basic procedure": petitioner "spoke directly to the [district] court at the [pretrial] hearing on [his counsel's] second motion to withdraw, indicating that he had rethought the matter and was willing, going forward, to resume communicating with his attorney and assist fully in his defense";

he "expressed a desire to be present for jury empanelment and to participate in jury selection"; he "engaged in a reasoned colloquy with the district court [at trial], relinquishing his right to testify in his own defense"; he "testified lucidly" at a sentencing hearing "while asserting a privilege related to his medical records"; and he "listened to the pronouncement of sentence, apparently appreciated what it signified, and immediately requested an appeal." Pet. App. 12-13. The court of appeals found that those "examples illustrate [petitioner's] ability to understand the most critical parts of the proceeding." Id. at 13.

ARGUMENT

Petitioner renews his contention (Pet. 16-27) that the district court abused its discretion by declining to order a competency hearing on the court's own initiative. The court of appeals correctly rejected that claim, and the decision below does not conflict with any decision of this Court or another court of appeals. Petitioner's fact-bound disagreement with the court of appeals' decision does not warrant further review.

1. A criminal defendant is competent to stand trial under the Due Process Clause if he has a "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." Dusky v. United States, 362 U.S. 402, 402 (1960) (per curiam). This Court has explained that "[t]he

focus of a competency inquiry is the defendant's mental capacity; the question is whether he has the ability to understand the proceedings." Godinez v. Moran, 509 U.S. 389, 401 n.12 (1993) (emphasis omitted); see id. at 402 ("Requiring that a criminal defendant be competent has a modest aim: It seeks to ensure that he has the capacity to understand the proceedings and to assist counsel."). Congress has accordingly provided that a defendant is entitled to a competency hearing, if requested by motion or on the court's own motion, "[a]t any time after the commencement of a prosecution for an offense and prior to the sentencing of the defendant," "if there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense." 18 U.S.C. 4241(a).

The text of Section 4241 reflects the principle that "a competency determination is necessary only when a court has reason to doubt the defendant's competence." Godinez, 509 U.S. at 401 n.12; see Drope v. Missouri, 420 U.S. 162, 180-181 (1975). As this Court has explained, "no fixed or immutable signs * * * invariably indicate the need for further inquiry to determine fitness to proceed." Drope, 420 U.S. at 180. Instead, "the question is often a difficult one in which a wide range of

manifestations and subtle nuances are implicated." Ibid.; see Indiana v. Edwards, 554 U.S. 164, 177 (2008) ("[T]he trial judge * * * will often prove best able to make more fine-tuned mental capacity decisions, tailored to the individualized circumstances of a particular defendant."). Thus, application of Section 4241's reasonable-cause standard turns on "the unique circumstances of [each] case" and is not subject to a "predetermined formula." United States v. Leggett, 162 F.3d 237, 242 (3d Cir. 1998), cert. denied, 528 U.S. 868 (1999); cf. Maggio v. Fulford, 462 U.S. 111, 117 (1983) (per curiam) (holding that a state trial court's determination that no further inquiry into a defendant's competence was required was a "factual conclusion[]" for purposes of federal habeas review).

2. The court of appeals correctly applied those principles in this case when it determined that the district court had "no reasonable cause to undergird * * * a belief" that petitioner was incompetent to stand trial. Pet. App. 13. The court of appeals described record evidence indicating that "[petitioner] [wa]s able to understand the proceedings against him and consult rationally with his counsel so as to assist in his own defense." Id. at 7. Among other things, petitioner personally engaged with the district court at multiple phases of the case. Id. at 9, 12-13. Petitioner also told the district court that he "agreed to continue working with his attorney" despite initially declining to participate, and

he further told the court that he "desire[d] to aid in his defense and participate fully in it." Id. at 9-10. Moreover, petitioner's counsel, who had a "unique vantage for observing whether his client is competent," "unequivocally assured the district court that he was unaware of any communication issues" with petitioner. Id. at 9 (brackets, citation, and internal quotation marks omitted); see Medina v. California, 505 U.S. 437, 450 (1992) ("[D]efense counsel will often have the best-informed view of the defendant's ability to participate in his defense."). Defense counsel additionally informed the court that petitioner was able to "'process'" information and to "communicate meaningfully with him and assist in the defense." Pet. App. 10-12.

Petitioner identifies no misapplication of law in the court of appeals' analysis. Indeed, the court applied the same competency standard that petitioner advocates. See Pet. 17. Petitioner's objections to the court's decision instead reflect fact-bound disagreements with the court's application of the competency standard to the totality of the circumstances of this case. Those disagreements provide no basis for this Court's review. See United States v. Johnston, 268 U.S. 220, 227 (1925) ("We do not grant * * * certiorari to review evidence and discuss specific facts.").

In any event, petitioner's objections lack merit. Petitioner asserts that "the facts of the crime * * * gave the [district] court reasonable cause to believe that [he] may presently be

suffering from a mental disease which would render him mentally incompetent." Pet. 18; see Pet. 16 (invoking "[t]he facts of Petitioner's crime, standing alone") (emphasis omitted); Pet. 18-22 (summarizing petitioner's offense conduct); Pet. 22 (arguing that "both the prosecutor and defense counsel" agreed "that the crime undoubtedly showed Petitioner suffered from a mental illness"); Pet. 25 (arguing that "[i]t is immaterial that the [district] court's limited interactions with Petitioner did not" call into question petitioner's competency "because here the facts of the crime standing alone were sufficient to create a reasonable belief that Petitioner may suffer from mental illness which would render him incompetent"). But as the court of appeals correctly observed, the competency standard "is aimed at assessing a defendant's present ability to participate meaningfully in his trial, not his mental state at the time he perpetrated his offense." Pet. App. 8; see Godinez, 509 U.S. at 401 n.12 ("The focus of a competency inquiry * * * is whether [the defendant] has the ability to understand the proceedings.") (emphasis omitted). Petitioner's threatening phone calls to the Swedish embassy, although bizarre and possibly related to mental illness, did not create a reasonable belief that he was unable to understand his criminal proceedings or to assist counsel with his defense -- especially when there was additional evidence indicating that he did have those abilities at the time of his trial.

Petitioner cites Pate v. Robinson, 383 U.S. 375 (1966), for the proposition that a "defendant's uncontradicted 'history of pronounced irrational behavior' [is] enough to mandate a [competency] hearing" irrespective of the defendant's demeanor at trial. Pet. 18 (quoting 383 U.S. at 386); see Pet. 21 (same). Petitioner is incorrect. The Court in Pate did not establish that offense conduct must be considered in isolation when evaluating whether there are reasonable doubts about the defendant's competence to stand trial. Instead, the Court held only that the defendant had not "deliberately waived the defense of his competence to stand trial by failing to demand a sanity hearing as provided by [state] law," where "the record show[ed] that [defense] counsel throughout the proceedings insisted that [the defendant's] present sanity was very much in issue." 383 U.S. at 384; see Medina, 505 U.S. at 450 (describing "[t]he rule announced in Pate" as one about waiver). Here, by contrast, petitioner and his counsel expressly opposed making his mental health an issue at trial. See pp. 3-4, supra. Moreover, petitioner's attempt, on appeal, to focus entirely on one kind of evidence (his offense conduct) is unsupported by Pate itself, where the Court based its decision on "two kinds of evidence," only the first of which was "a number of episodes of severe irrationality in [the defendant's] past." 383 U.S. at 389 (Harlan, J., dissenting).

The decision below accords with other courts of appeals in recognizing that the possibility that a defendant may suffer "some degree of mental illness cannot be equated with incompetence to stand trial" as long as the defendant is capable of understanding the proceedings and assisting in his defense. United States v. Vamos, 797 F.2d 1146, 1150 (2d Cir. 1986), cert. denied, 479 U.S. 1036 (1987); see Pet. App. 10 (explaining that some indication of mental illness "without more" does not provide reasonable cause for a sua sponte competency hearing, and "[h]ere, there was no 'more'"); see also, e.g., Medina v. Singletary, 59 F.3d 1095, 1107 (11th Cir. 1995) ("Not every manifestation of mental illness demonstrates incompetence to stand trial; rather, the evidence must indicate a present inability to assist counsel or understand the charges.") (quoting United States ex rel. Foster v. DeRobertis, 741 F.2d 1107, 1012 (7th Cir. 1984), cert denied, 469 U.S. 1193 (1985)), cert. denied, 517 U.S. 1247 (1996); Legget, 162 F.3d at 244-245 (3d Cir.); United States v. Davis, 93 F.3d 1286, 1290 (6th Cir. 1996); Vogt v. United States, 88 F.3d 587, 591 (8th Cir. 1996). In light of the representations by petitioner and his counsel that he was capable of understanding the criminal proceedings and participating in his defense, combined with the record evidence of petitioner's understanding and participation in his defense, see pp. 9-10, supra, petitioner cannot establish that the district court abused its discretion by declining sua sponte to

order a competency evaluation solely on the basis of petitioner's offense conduct.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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